

than that for the previous year, shall be permitted, upon examination and approval by the taxation authorities, to re-offset 50% of the amount actually used for technology development fee for the taxable income for the same year, upon examination and approval of taxation authorities concerned. In the enterprises where technology development fee has increased by over 10% from that for the previous year, and 50% of the amount actually used by the enterprises is higher than the taxable income for this year, the enterprises may be permitted to offset the portion which is not exceeding their taxable income; for the exceeding portion, they shall not be allowed to offset in this year or for the succeeding years.

#### How to establish a foreign enterprise in Zhejiang Province

Foreign investment enterprises registrations will be processed by foreign investment department in Department of Commerce of Zhejiang Province.

1. The encouraged and approved projects and foreign investment enterprises with the total investment below \$500 million are approved by the city, county and development zones of Zhejiang province.
2. The encouraged foreign investment enterprises, limited foreign investments with total investment below \$500 million, and approved foreign investments above \$500 million and below \$1000 million are approved by province commerce department of Zhejiang province.
3. The limited foreign investment with total investment above \$500 million, and approved foreign investment above

\$1000 million are approved by Ministry of Commerce of China.

#### Turkey and Zhejiang

Trade: Turkey is the 17<sup>th</sup> export market of Zhejiang. In 2009, the total trade between Zhejiang and Turkey was USD 1.79 billion; the total export was USD 1.72 billion, and the total import was USD 70 million. In the first three quarters of 2010, the total bilateral trade was USD 2.117 billion, an increased of 69.76%; the total export and import was USD 2.005 billion and USD 112 million, an increased by 66.49% and 160% year on year.

Major export products: ships (USD 109 million), knitting products (USD 6.704 million), textile (USD 5.168 million), Automotive parts (USD 3.646 million); Major import products: Copper (USD 14.69 million), Chrome (USD 12.16 million), Iron (USD 12.16 million), plastic (USD 11.01 million).

#### FDI from Turkey

At the end of August 2010, Turkey set up 61 enterprises in Zhejiang with the actual use of foreign capital was USD 27.26 million. The main sectors are textile, communication equipments, computer and other electrical equipment producing, selling. There are 7 enterprises with an investment of over USD 50 million.

#### > The major projects from Turkey investment

Whenzhou Jiouli Industrial Co., Ltd. :  
Whenzhou Rixing Metals Factory Joint Venture with Turkey Industrial Metals

Manufactory Imp.& Exp. Industry and Trade Co., Ltd., the total investment was USD 20 million. Major industries: production and Sale CNC machine tools, Electric Equipments, research and development and sales.

NGY Office tools electric techniques and foreign trade Co., Ltd. invests and sets up Ningbo Xin Doushi Automotive parts Co., Ltd. and Ningbo Keyuan Automotive parts Co., Ltd., the total investment was USD 19.8 million.

*> Other project from Turkey investment*

Chunan Qiandao Lake Quanshun Textile Co.,Ltd. which is located in Chunan County (Hangzhou). It is foreign-owned company which produce & Sell textile and cloth with total investment of USD 15 million.

Changxing Anke Shu Rubber Technology Co., Ltd. which is located in Changxing County (Huzhou) and it is foreign-owned company which produces & Sells Rubber and insulating materials with total investment of USD 12.5 million.

Ünsa (HZ) Packaging Manufacturing Co.,Ltd. which is located in HZ Economy and Technology Development Area. It is a foreign-owned packaging manufacturing with total investment of USD 7.5 million.

ZJ Areffa Industrial Co.,Ltd. which is located in the area owned by Lishui City Foreign Trade Bureau. It is foreign-owned which produces and sells optical glasses, the sun glasses, glasses and optical

instruments with a total investment of USD 5 million.

**Zhejiang investment in Turkey**

At the end of August 2010, there are 36 enterprises invest in Turkey with total investment of USD 25.76 million which involves major industries: Machinery, Electronic, and textile. There are 4 projects are over USD 1 million.

*> Major projects of Zhejiang companies invest in Turkey*

Turkey Muli Mine International Imp. & Exp. Trade Corporation with total investment of USD 8.8 million – The local company is Wenzhou Xinbao Imp. & Exp. Co., Ltd. The main industry is Chrome Mining and sales.

Turkey Shenma Motorcycle Industry & Trade Co., Ltd. with total investment of USD 6.32 million – The local company is Cixi Kangxin Motorcycle Co., Ltd. It mainly produces and sells motorcycle & bicycle & parts.

*> Other projects in Turkey:*

Haitian Turkey Co., Ltd. in Turkey which is set up by Haitian Machinery Ltd. with total investment of USD 2 million. Mainly doing the Plastics machinery processing, assembly and sales

Turkey Zhongkai Trade Co., Ltd. which is set up by Ningbo Kaitong Motorcycle Manufactory Ltd. doing wholesale of motorcycle parts sale & services.

## Hangzhou – Capital City of Zhejiang Province

### General Economic Review

Economic Indicators of 2009	Value	Growth (y-o-y)
GDP	509.87 billion RMB (\$342.7bn)	10%
Per Capita GDP	74924RMB(\$10968)	9.1%
Added Value Output		
- Primary industry	19.03 billion RMB(\$17.5bn)	3.2%
- Secondary industry	243.49 billion RMB(\$178.48bn)	6.8%
- Tertiary industry	247.35 billion RMB(\$148.1bn)	13.9%
Value-added Industrial Output	179.2 billion RMB(\$124.36bn)	6.1%
Fixed-assets Investment	229.17 billion RMB(\$161.89bn)	15.7%
Retail Sales	108.5 billion RMB(\$129.94bn)	15.8%
Inflation (CPI)	98.6 (2008 = 100)	-1.4%
Total Foreign Trade	\$40.42bn	-15.9%
Exports	\$27.18bn	-19.1%
Imports	\$13.24bn	-8.4%
Utilized Foreign Direct Investment	\$4.01bn	21.2%
Overseas Investment	\$186million	45.7%

Hangzhou, the capital of Zhejiang Province, is the provincial centre in economy, culture, science and education. It is a famous city in history and culture. Located at the southern wing of the Yangtze River Delta, the west end of

Hangzhou Bay, the lower reaches of Qiantang River and the southern end of the Grand Canal (Beijing – Hangzhou), it is one of the most important central cities in the southern wing of the Yangtze River Delta and a hub of transportation in southeast China. In 2009, Hangzhou's

comprehensive economic strength continued to rank No.2 (after Guangzhou) among all provincial capitals, No.3 (after Guangzhou and Shenzhen) among all sub-provincial cities and No.8 of all large and medium sized cities of China. It won the title of "China Mainland Best Commercial City" by "Forbes" Magazine; it is listed as No.1 of 2009 Happiest Cities of China; China's top ten creative cities and top ten dynamic cities.

Benefiting from the geographic features, Hangzhou is blessed for its agricultural production with rich myriad plants, forests, animals and birds. The mineral resources include large and medium scale metal and non-metal deposits.

The main industries in Hangzhou city are Machinery, silk garments, ready-made clothes, textile, IT and beverage industries.

There are 74 private enterprises are involve in China's Top 500 private enterprises in Hangzhou.

- *China Guangxia Holdings* – Main Industries: Contraction and Real Estate
- *WAHAHA Group Co., Ltd* – Main Industry: Beverage
- *Zhejiang Hengyi Group Co., Ltd* – Main Industry: Chemical – DTY, FDY, POY, PSF, Bottle Grade Chip, PET-CHIP, PTA.
- *Zhongtian Group Co., Ltd* – Main Industry: Construction and Real Estate

- *Zhejiang Rongsheng Holding Group Co., Ltd* – Main Industry: Investment enterprise – fields of petrification, chemical fibre, real estate, logistics and trade.

#### Infrastructure

Aviation: Hangzhou Xiaoshan International Airport is a key trunk line airport, a tourism city airport and an international scheduled flight airport of China as well as a class A airport for openness to the outside world. Its passenger throughput and its freight and post throughput are both among the top-10 in China. Up to the end of 2008, there had been 193 airlines, in which 38 international or district airlines to Tokyo, Osaka, Bangkok, Singapore, Seoul, Pusan, as well as HK and Macao.

Highway: Hangzhou is the hub of 5 expressways (Shanghai-Hangzhou-Ningbo Expressway, Hangzhou-Nanjing Expressway, Hangzhou-Jinhua-Quzhou Expressway, Hangzhou-Thousand Island Lake Expressway and Hangzhou-Huangshan Expressway) and 11 national and provincial highways. Now it has formed a network of expressways and special highways with complete facilities.

#### Railroad:

Hangzhou is a key railroad hub in southeast China, connecting three important railroad lines of the country: Shanghai-Kunming Railroad, Hangzhou-Xuanheng (Anhui Province) Railroad and Hangzhou-Ningbo Railroad. The city is one of the key points in the whole of China's railroad network.



### **Development Zones**

It is the effective way for foreign investment in Hangzhou to set up in national owned development areas. They provide the "one-stop" service for foreign companies, and services are free. From the Corporation and projects approving operation, location selection, Human Resources Recruiting, to the equipment purchasing, development areas have comprehensive services system to assist organizations producing and developing in Hangzhou.

Three main national development areas:

#### **Hangzhou Qianjiang Development Zone**

Hangzhou Qianjiang Economic Development Zone is located at the northwest part of Hangzhou Linping industry area, attached to Hangzhou People's Municipal Government. There is one main public centre to arrange for the public facilities services to the ambient area; Two axes – the public construction development axis and industry development axis formed a "CROSS" by relying on the main roads Xinghe Road and Xingyuan Road; Five industrial parks, of which the mechanical & electrical integration industrial park, the mechanical & electrical and packaging industrial parks which cover two sections, the new material and new energy industry parks also cover two sections.

#### **Hangzhou Economic & Technological Development Area**

HEDA is located in eastern Hangzhou Municipality, which was ratified by the

State Council in 4, 1993 as a national-grade development zone, and exercises jurisdiction over an area of 104.7 k m<sup>2</sup>. Zhejiang Hangzhou Export Processing Zone was built in this area. Over 700 domestic or foreign enterprises were established in the area, of which 31 enterprises were in World Top 500.

#### **Hangzhou High and New Technology Industry Development Area**

Hangzhou Hi-tech Industry Development Zone was approved by the State Council as a state level Hi-tech Industrial Development Zone. The main region is located in the northwestern part of Hangzhou's urban district, adjacent to the West Lake. This is an area of culture, education and a base for the electronics industry. It is composed of three parts, with the main regions being the Zhijiang Sci-Tech Industrial Park and Xiasa Sci-Tech Industrial Park.

Hangzhou Hi-tech Software Park is situated in the Zhijiang Sci-tech Industry Park, which mainly relies on colleges, universities and scientific research institutes to attract personnel and funding, promotes the grouping of computer software technology and other optimal productive factors, and works to establish an industrialized production capacity.

#### **FDI in Hangzhou City**

In 2009, the foreign investment reached USD 4.014 billion, up by 21.2%, and the domestic investment was USD 8.4136 billion, up by 18.5%. By the end of 2009, there were 117 projects built in Hangzhou funded by 70 companies of the World Top

500 Companies. In the total year, 79 domestic investment projects were attracted and over RMB 100 million and the funds total USD 4 billion. There were 19 domestic headquarters was introduced.

#### FDI Policies

The main FDI policies are follow the FDI policies of Zhejiang Province. On the other hand, depending on the special policies of development zones, there are some preference policies for foreign investment:

#### Hangzhou Economic & Technological Development Area:

*Tax policy:* Since Jan 1st, 2008, the enterprises enjoying preferential policies of low tax rates, switch gradually to legal tax rates in 5 years since new tax law was imposed on. Among them, the enterprises enjoying 15% income tax, shall pay 18% of income tax in 2008, and 20% in 2009, 22% in 2010, 24% in 2011, 25% in 2012; the enterprises paying 24% income tax, shall pay 25% of income tax from 2008.

For the enterprises enjoying preferential policies for harvesting no profits, their preferential terms begin from 2008.

(In accordance with State council's Notification on Practicing Enterprises' Income Tax Transitional Preferential Policies)

*Customs Policies:* Enterprises in conformity with certain conditions shall enjoy relevant reduction and remission policies in fields of export tariff, import tariff and processing trade, stipulated by the state.

#### How to establish a foreign investment enterprise in Hangzhou City

Except the official establish and approval policies by Zhejiang province, different development zones and associations provided convenience services for foreign investments to set up businesses in Hangzhou city.

Such as Hangzhou Economic & Technological Development Area Management Commission is an agency of Hangzhou Municipal Government, which practices standard management and single-stop services, project establishment, company establishment, approval and registration, land application and construction procedure can all take place in the handling hall of the management commission.

HEDA performs thorough services and coordination for investment consulting, registration and other procedures, pre-coordination before construction, capital increase development, etc.

#### Process for Foreign-Investment Enterprises to Get Approved and Registration:

1. Initial consulting and examination of projects (Branches of the Investment Promotion Bureau)
2. Undertaking name inquiry and registration

Formal application to Investment Promotion Bureau Branches (necessary approval materials provided when it needs trade departments responsible for the work

or environment protection departments to perform presupposed approvals)

3. Management Council's approval

4. Receive advance code of the organization

5. Type and receive approval certificate (Investment promotion department of Investment Promotion Bureau)

6. Approval of business license (District branch of Industrial and Commercial Bureau)Receive Business License

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15 July 2000

**Changes in China's Policy on Attracting Foreign Investment after WTO Entry**

With the gradual removal of obstacles to China's WTO accession, it looks increasingly likely that China will be joining the world trade body in 2000. Chinese leaders have said on many occasions this year that China would open further to the outside world following its entry into the WTO, suggesting that changes would be made to the country's policy on foreign investment. Foreign investors interested in gaining access to the China market must keep abreast of the latest developments.

Since China is planning a series of reforms at various levels, new measures will be formulated covering such areas as the establishment of investment companies by foreign enterprises, joint-venture enterprises engaged in contracting projects, and the setting up of research and development institutions by multinational firms. China will also be reviewing and revising its policies regarding taxation and foreign exchange transactions of foreign-invested enterprises (FIEs) in bank accounts opened in different localities.

Premier Zhu Rongji has said many times in public that China would take its opening-up to a new stage. At the Asia Society's annual corporate meeting held last May, Zhu pointed out that WTO membership will afford China an important opportunity to further open up. The country will speed up its opening-up process in such areas as energy, transportation, telecommunications and environmental protection. At the same time, China's doors will open wider to foreign investment in service sectors ranging from banking, insurance, to tourism, commerce and trade. Efforts will also be made to attract more foreign capital to the reorganisation and reform of state-owned enterprises (SOEs). Beijing will review and amend existing foreign-related laws and regulations in light of WTO requirements and set up an economic and trade system in line with both international practices and national conditions.

Minister of Foreign Trade and Economic Cooperation, Shi Guangsheng, also said on the same occasion that with the prospect of entering the WTO at the beginning of the new century, China will push ahead its opening-up drive in a more active manner. This move is bound to create new opportunities for foreign investors. Under the present strategy of developing the western region, China is stepping up the construction of transportation, telecommunications, energy and other infrastructure projects in the region while paying more attention to environmental protection. Priority is also given to the promotion of science, technology and education, and great efforts are made to foster talent and improve the overall quality of workers. The government is giving the necessary policy support to all these endeavours. Shi added that developing China's western region will create a favourable environment for foreign investment. China welcomes foreign companies to set up R&D centres or invest in new- and high-technology in the country. Foreign investors are also encouraged to participate in China's SOE reform and reorganisation in the form of equity holding, leasing, acquisition, and joint operation.

**Standardising National Treatment Following WTO Accession**

As liberalisation of investment is the global trend of development, China has to honour its commitments following its entry into the WTO.

1. Action must be taken to adjust its policy regarding foreign direct investment in accordance with the principle of national treatment. In other words, discriminatory treatment against domestic enterprises and preferential treatment for FIEs should be abandoned.
2. Services sectors such as telecommunications, banking and distribution will open further to foreign investment and geographical restrictions will be removed.
3. Existing policies and laws that are inconsistent with international practices would be adjusted

and revised to ensure that China's laws do not contravene WTO rules and regulations.

4. During the transitional period, continuous efforts would be made to narrow the gap with international norms. The WTO Agreement on Trade-related Investment Measures (TRIMs) has placed higher demands on intellectual property rights (IPR) in China. If China cannot offer effective protection to the legitimate rights of IPR owners from other WTO members, it may lose the concessions and preferential treatment it enjoys, or even face retaliation. After its entry into the WTO, China must continue to improve its IPR laws to meet the requirements set in the agreement.

#### Utilised Foreign Investment in China

Unit: US\$ bn

Year	Total Amount	Foreign Loan	Foreign Direct Investment	Other Foreign Investment
Utilised Foreign Investment	459,564	137,339	305,922	16,303
1979-1982	12,357	10,690	1,166	0.603
1983	1,981	1,065	0.636	0.280
1984	2,703	1,286	1,258	0.161
1985	4,647	2,688	1,661	0.298
1986	7,258	3,043	3,824	0.370
1987	8,452	5,815	2,314	0.333
1988	10,220	6,487	3,194	0.539
1989	10,059	6,286	3,392	0.381
1990	10,280	6,534	3,487	0.268
1991	11,554	6,898	4,366	0.300
1992	19,202	7,911	11,007	0.284
1993	38,960	11,189	27,515	0.256
1994	51,212	9,267	31,767	0.179
1995	48,133	10,127	37,521	0.205
1996	53,804	12,669	41,725	0.310
1997	64,408	12,021	45,257	7.130
1998	58,557	11,810	45,461	7.091
1999	52,650	10,212	40,319	2.128

Note: Starting from 1997, the amount of foreign bonds issued has been categorised under Other Foreign Investment instead of Foreign Loan.

Source: Statistical Survey of China 2000

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6. China must take the initiative to adjust other policies related to foreign investment. Such adjustments should include using industrial policies to give support to its capital- and technology-intensive industries in order to offset the negative impact of trade liberalisation on these industries and promote industrial upgrading. The taxation policy should be adjusted in such a way that it could play a better role in the redistribution of income and mitigate possible social instability resulting from a widening of income gaps. Efforts should also be made to bring about a

higher savings rate and to attract and sustain the inflow of foreign capital.

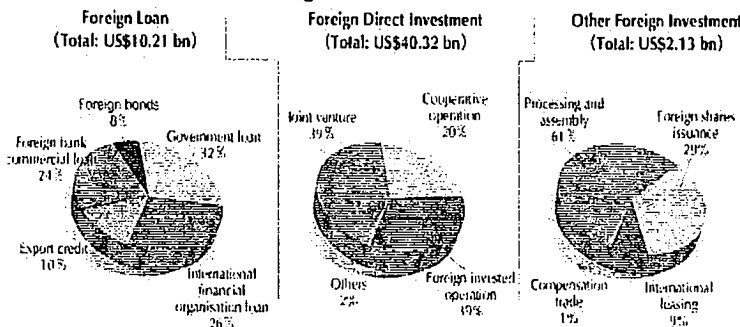
It is obvious that these adjustments of policies on foreign investment are aimed at gaining early WTO accession. Based on analyses from different sources, it can be expected that adjustments mainly cover the following aspects:

1. With regard to enlarging the business scope of investment companies established by foreign enterprises, the Chinese government is considering granting export rights to such companies which source domestic raw materials for export. Meanwhile, encouragement will be given to enterprises engaged in R&D, and approval will be granted to investment companies to market domestically-produced goods directly.
2. As for joint-venture enterprises engaged in contracting projects, China would consider giving support to qualified domestic companies to team up with leading international companies in establishing such enterprises. China may further expand the business scope of these enterprises this year, giving them support in contracting overseas projects. At the same time, the construction industry will be liberalised.
3. On the question of foreign exchange transactions of FIEs in bank accounts opened in different localities, the Chinese government will continue to improve measures which have already been put into force. For example, FIEs with accounts in different localities will be allowed to make foreign exchange transactions among these accounts. New regulations governing foreign exchange transactions in bonded areas will also be introduced.
4. On the establishment of R&D institutions by multinational companies, China will continue its policy of "market in exchange for technology". It may be willing to concede a larger slice of the market to projects involving a higher level of cooperation that provide systems design technology and have great market potential in China. Incentives such as tax concessions will be gradually introduced for the development of projects with international funding.
5. In processing trade, China is gradually improving the related tax system. It is clear that China encourages the development of the processing trade, especially the processing of products with a high added value, which serves as a channel for its participation in international cooperation.
6. On taxation, the following tax concessions contravening WTO rules and regulations would be adjusted accordingly:
  - i. Only domestically-produced equipment in technological transformation projects is eligible for tax deduction. With effect from July 1, 1999, the purchase of domestically-produced equipment by domestic enterprises for technological transformation under the state's industrial policy can enjoy a 40% deduction on the total amount of price and tax shown on the special VAT invoice, and the amount is to be deducted from the additional amount of enterprise income tax payable a year prior to the purchase of the equipment. If the amount to be deducted is greater than the amount of tax payable, the outstanding amount may be spread out for up to five years. Domestically-produced equipment entitled to tax deduction can still be computed for depreciation at the original price. However, the fact that this preferential policy does not apply to imported equipment goes against the principle of national treatment.
  - ii. Instant tax rebate for self-developed products. For example, after paying VAT at the statutory 17% rate on the sale of computer software developed by themselves, ordinary Chinese taxpayers are eligible for an instant rebate on that part of actual tax burden in excess of 6%. While this regulation is intended to encourage innovation and the

development of high technology, it discriminates against similar computer software from other WTO members.

- iii. Higher tax burden on imported goods than on domestic goods. For example, while imported agricultural products such as grain are subject to a 13% VAT, the marketing of domestically-produced grain and agricultural products is exempt from VAT. Commercial enterprises dealing in agricultural products are allowed to withhold an amount equivalent to 10% of the purchase price as tax deduction for VAT payment.
- iv. Tax deduction and exemption on the basis of export performance. FIEs engaged in exports are eligible for a 50% deduction on enterprise income tax if their export volume exceeds 70% of their output value for the current year. Although this does not constitute a violation of the principle of national treatment, it amounts to the subsidising of domestic products and is in contravention of WTO countervailing regulations.
- v. Incentives for the use of domestic raw materials. In order to encourage export-oriented processing enterprises to use domestically-produced steel, China offers tax exemption, deduction and rebate to processing enterprises purchasing steel from Baoshan, Anshan, Shoudu and 24 other steel production enterprises. Also, as a solution to the problem of the overstocking of cotton, China encourages enterprises to use domestically-produced cotton for export processing by offering them tax exemption, deduction and rebate. However, it is against WTO regulations to offer subsidies to enterprises for using import substitutes.

#### Utilised Foreign Investment in China in 1999



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#### Distribution of Foreign Investment in China in 1999

Unit: US\$ '000



Municipality/Province	No. of Projects	% Change	Utilised Amount	% Change
National Total	169,180	-14.55	48,318,710	-11.21
Beijing	6,249	-0.92	1,955,790	-6.89
Tianjin	5,790	-13.16	1,763,990	-16.34
Shanghai	5,201	-25.29	1,642,000	-27.06
Shandong	791	-21.28	391,490	60.03
Inner Mongolia	1,600	-25.27	645,540	-28.91
Guangdong	11,470	-12.45	1,061,210	-31.33
Guilin	2,459	-12.57	540,260	-26.39
Henan	3,130	-25.29	318,280	-25.54
Shanghai	13,721	-1.41	2,810,640	-11.21
Guangxi	19,701	6.03	617,540	-3.16
Shenzhen	11,130	-15.31	1,232,620	-6.10
Qinghai	1,250	-3.40	261,310	-5.27
Yunnan	14,191	-28.22	1,024,040	-4.32
Guangxi	2,451	-26.65	320,890	-31.69
Shanghai	17,171	-22.50	7,767,780	-2.54
Hubei	2,610	-23.46	521,130	-13.11
Hubei	2,610	-21.21	914,800	-26.67
Hubei	3,201	-23.08	643,740	-20.10
Guangdong	30,131	-10.20	11,617,500	-3.02
Guangxi	2,231	-16.12	615,120	-26.33
Guangxi	1,590	-10.50	484,480	-32.44
Chongqing	1,691	-27.47	219,930	-44.52
Shanghai	1,051	-12.10	341,010	-2.45
Guizhou	430	-41.10	89,930	-9.61
Yunnan	1,161	-15.92	151,850	-5.41
Shanghai	1,571	-19.99	211,970	-19.37
Guangxi	1,670	-1.42	41,040	-6.21
Qinghai	151	-37.50	4,580	-
Yunnan	251	-19.44	312,400	-17.66
Yunnan	750	-1.04	24,040	-10.94
Yunnan				

Note: The figures of national total does not only represent the summation of data from all municipalities and provinces, it also includes data from different departments.

\*not available

Source: Statistical Survey of China 2000

## Recommendations for Foreign Investors

In view of these policy changes, foreign businesses already have investments or planning to invest in the mainland must re-evaluate China's investment environment and make the necessary adjustments to their strategies.

## Re-evaluation of Investment Costs

### 1. Costs versus preferential policies

Following its entry into the WTO, China has to formulate its foreign investment policies in accordance with TRIMs. It must do away with all regulations that are not in line with the principle of national treatment and ensure that foreign investors enjoy the same rights as SOEs.

In light of this, foreign investors are unlikely to receive any preferential treatment for their future ventures in China. Thus, they are advised to take all possible costs into consideration, especially hidden costs such as apportionments, taxes, and all kinds of labour costs and funds, including housing fund and social insurance (e.g. pension, medical care, work-related injuries, unemployment and maternity leave).

## 2. Selected industries versus selected regions

In the past, many special zones and bonded areas were established to lure foreign investors, and foreign firms were offered various kinds of preferential treatment. Following its entry into the WTO, China must adopt unified investment policies for the whole nation and must not favour one region over another, or it will be accused of violating the principle of national treatment. In future, China will gradually shift to a policy of giving preferential treatment to selected industries rather than selected regions.

## 3. Tax concessions versus indirect concessions

Before, China introduced preferential measures for different regions and different types of investors in order to lure foreign investment. In taxation, concession was offered on enterprise income tax and import tariffs. However, the principle of national treatment dictates that FIEs should neither be discriminated against nor treated favourably. Therefore, it can be expected that the Chinese government will gradually reduce and ultimately abolish all tax concessions. Indirect concessions will be offered instead. For instance, FIEs may be allowed a faster rate of depreciation, tax exemption, deduction and rebate, and transfer of losses. Special reserve fund may also be set aside as an indirect means of support to FIEs. These methods are not bound by international taxation regulations and embody the principle of fairness in taxation.

### Breaking Regional Protectionism

1. China's entry into the WTO will help eliminate regional protectionism and reduce the special privileges enjoyed by regional industries. Local protectionism is a problem that has been bothering the central government for a long time. WTO accession will provide the external force that can finally eliminate local protectionism and bring about fair competition.
2. New interest groups have emerged in China in the wake of reform and opening up. These interest groups are obstructing China's further opening up. Entry into the WTO will bring in external forces to boost internal reform. This will help create a sound economic and political environment and usher in a new wave of reform and opening up.
3. China's entry into the WTO as a developing country will give it the time it badly needs for large-scale industrial restructuring. China's WTO talks with the US centered on trade in services, including telecommunications, banking, insurance, securities, retailing and wholesaling, tourism, sea, land and air transport, accounting, legal services, consultancy, advertising, education, culture, and foreign trade. As it takes time for China to adjust its industrial structure, it will only be opening its service sectors gradually and conditionally. Foreign firms seeking market access into China's service sectors must therefore have a good grasp of its tempo and timetable for opening up, and prepare themselves before it is their time to move in.

### Domestic Market

After China becomes a member of the WTO, FIEs will have a freer hand in opening up its domestic market. They may combine foreign sales with domestic sales to minimise investment risks, using export sales to support their expansion of the domestic market. The following are some suggestions for FIEs:

1. Building a national logistics and distribution network

Apart from distribution channels and the building of brand image, the biggest headache of manufacturers in their quest to open up China's domestic market is how to deliver their goods to the sales outlets. China is a vast country, which means transportation is a big problem whether by train or by truck. An important strategy for FIEs seeking a share of China's domestic market is to establish national logistics centres in major cities.

2. Franchising chain operation to domestic enterprises

Most Chinese entrepreneurs want to build up their own business. FIEs may extend their successful chain-operated business to the Chinese mainland and charge royalties for the use of the brand or company name and the provision of equipment, materials, interior decoration, technical support, training and so on. In this way, they will not only be able to bypass the legal problems of establishing domestic trading companies, but will be able to quickly gain market access. This is a win-win approach that can minimise the investment risks of foreign firms while satisfying the urge of mainlanders to set up their own business.

### **China's Foreign Investment Policies that Contravene WTO Agreements**

The General Agreement on Tariffs and Trade (GATT), the precursor of the WTO, reached three agreements relating to the establishment of a global investment mechanism during the Uruguay Round, which ended in 1994. These are the Agreement on Trade-Related Investment Measures (TRIMs), Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), and General Agreement on Trade in Services (GATS). The inclusion of investment measures in multilateral trade talks was a major breakthrough of the Uruguay Round as well as an achievement by GATT in establishing a global investment protection mechanism. This is the basis of the effects of WTO accession on China's policies on foreign investment.

GATT included investment measures in trade talks because countries and regions across the world had set their own conditions on foreign investment as prerequisites for their market access (or purchase of domestic enterprises of the host country) or as subsidies or incentives. These measures are of two types. The first type covers incentives for investment, including tax concessions, tariff concessions, investment subsidies, and acquisitions and mergers. The second type covers operational requirements, including restrictions on profit repatriation, foreign exchange control, and requirements on local equity, local content, domestic sales, trade balance, licencing, technology transfer, product specifications, exports proportion, and import substitutes. TRIMs requires that the principles of national treatment, quantitative restriction and transparency established by GATT should apply to these measures. In other words, the host government should do away with unreasonable measures that contravene the principles of national treatment and quantitative restriction, and should promptly announce trade-related investment laws and policies.

### **Preferential Treatment for FIEs**

The three agreements mentioned above have the principle of national treatment at the core. In international direct investment, national treatment means that foreign enterprises should receive the

same treatment as domestic enterprises in incorporation, ownership, control, judicial matters, legal protection, and matters relating to the investment property or investment activities.

China's existing policies on foreign investment are inconsistent with the principle of national treatment and the three WTO agreements in two main respects, namely FIEs are given both preferential and discriminatory treatments. In order to attract foreign direct investment, China implements a dual-track tax system whereby domestic and foreign enterprises are levied different income taxes. The income tax concessions extended to foreign firms are not granted to domestic enterprises, especially private operations. As for circulation-related taxes, foreign firms can enjoy rebates on their tax burden resulting from the replacement of the consolidated industrial and commercial tax and special consumption tax by VAT, consumption tax and business tax, but domestic enterprises do not have this privilege. With regard to tariffs, foreign enterprises are exempt from tariffs on the import of production equipment, parts and components as well as raw materials, auxiliary materials, components, parts and packaging materials imported for the production of goods for export in accordance with law (this measure was abolished in 1996 but reinstated in 1998). Foreign investors and technical personnel are allowed to import, tax free, a given quantity of articles for daily use. Foreign direct investment projects may apply to the government for the use of land, and the government will assign land use rights to them for a given period in the form of leasing. Special economic zones and open coastal cities often offer considerable concessions to foreign firms on land use fees. Foreign direct investment projects on education, culture, science and technology, medical and health care, and public facilities as well as export-oriented and hi-tech projects enjoy even more favourable terms. Foreign enterprises also have priority in investment approval and have the privilege of recruiting talent from other cities. They are granted import and export rights, management autonomy, a free hand in foreign exchange management and greater flexibility in setting their wage scales.

#### **Discriminatory Treatment for FIEs**

Despite the many privileges, foreign enterprises receive discriminatory treatment in certain areas, which mainly finds expression in the fact that they face much stricter requirements than domestic enterprises in bank loan seeking, business scope, equity ratio, and application for export licences and quotas. Foreign enterprises are also subject to local content requirements, foreign exchange balancing requirements and export to domestic sales ratio. It is therefore not surprising that foreign investors often complain about unfair treatment in acquiring raw materials, applying for bank loans and obtaining guarantee for a fixed price level compared with domestic enterprises. Complaints about discriminatory treatment are particularly strong against requirements on localisation, import-export balance and credit control in the automobile, petrochemical, chemical and computer industries.

As for trade in services, foreign firms are subject to strict requirements or even denied access. On IPR, China's existing Trademark Law, Patent Law and Copyright Law also fall far short of the requirements of TRIPs.

July 27, 2009

**Circular of the General Administration of Customs and National Development and Reform Commission on Issues Concerning Examination and Approval of Tax Exemption Confirmation for Domestic and Foreign-Invested Projects under Encouragement**

Shu Shui Fa [2009] No.290

Guangdong Sub-Administration of Customs, Customs directly under the General Administration of Customs (GAC), development and reform commissions and commission for economic relations and trade of provinces, autonomous regions, municipalities directly under the Central Government and separately planning cities, and the Development and Reform Commission of Xinjiang Production and Construction Corp.,

For the purpose of implementing the *Circular of the State Council on Adjustment of the Tax Policies for Import of Equipment* (Guo Fa [1997] No.37, hereinafter referred to as the *Circular*), improving work on examination and approval of investment projects under encouragement, and enhancing cooperation between Customs directly under the GAC and the investment authorities of provinces, autonomous regions, municipalities directly under the Central Government and separately planning cities (hereinafter referred to as the project examination and approval authorities at the provincial level), according to the plan of the State Council that the *Guiding Catalogue for Industrial Structure Adjustment* and the *Guiding Catalogue for Foreign Investment Industries* shall be formulated under the arrangement of the National Development and Reform Commission (NDRC), the relevant issues are hereby notified as follows:

**I** The project examination and approval authorities at the provincial level shall be responsible for examining whether an investment project is applicable to the entry of industries under encouragement when giving approval to the domestic or foreign-invested project and issuing the Project Confirmation Certificate. As the examination and approval authorities for tax reduction and exemption for import of equipment under the domestic and foreign-invested projects under encouragement, the Customs shall be responsible for assisting the project examination and approval authorities at the provincial level and fully executing state policies on import tax.

**II** The Customs directly under the GAC (or its authorized sub-customs) in the place where the domestic or foreign-invested project is located shall accept the application for tax reduction and exemption for the relevant investment project on the strength of the Project Confirmation Certificate issued by the project examination and approval authorities at the provincial level. If the Customs directly under the GAC holds the expression of the contents of the entry of industries is unclear and may cause disputes or it is obviously improper to apply an entry of industries under encouragement, it shall proactively connect with the project examination and approval authorities at the provincial level. If the project examination and approval authorities at the provincial level believe the applicable entry of industries is correct, it shall report to the NDRC for confirmation and make a copy of the submitted document to the Customs directly under the GAC in the place where the project is located.

Before the NDRC giving its reply, the Customs may not accept the application for tax reduction and exemption for the investment project concerned temporarily. If the company undertaking the said project applies for release of the

goods against guarantees for tax, the Customs may accept the said application.

When replying the project examination and approval authorities at the provincial level about its opinions on whether any entry of industries under encouragement is applicable for the investment project concerned, the NDRC shall make a copy of the opinion for the Customs directly under the GAC in the place where the project is located. The Customs shall decide whether to handle the relevant procedures for filing, examination and approval of the domestic or foreign-invested project concerned according to the confirmation opinion of the NDRC.

III Where the Customs has handled the tax reduction and exemption filing and approval procedures for any domestic or foreign-invested project on the strength of the Project Confirmation Certificate issued by the examination and approval authorities at the provincial level, while the auditing department or the Customs has any question about the applicable entry of industries under encouragement for the investment project concerned after review, such issues shall be handled according to the relevant provisions of Article 2 herein.

If the entry of industries under encouragement is inapplicable for the investment project concerned after review of the NDRC, the Customs shall stop to accept the application for tax reduction and exemption for the investment project concerned according to the confirmation opinion of the NDRC, and meanwhile impose tax on the imported goods which tax has been reduced or exempted according to the relevant laws and regulations.

IV When handling the tax reduction and exemption filing and approval procedures for any domestic or foreign-invested project on the strength of the Project Confirmation Certificate issued by the examination and approval authorities at the provincial level, the Customs shall enhance its examination on whether the entry of industries under encouragement is applicable; and if it has any doubt, it shall communicate with the examination and approval authorities at the provincial level in a timely manner to avoid putting forward any doubt on the applicability after the filing and approval procedures for the investment project has been finished.

V The Customs shall comply with the principles prescribed in Article 1 to 4 herein when encountering such issues as examination and approval beyond power, divided projects and other violations of provisions when handling the tax reduction and exemption filing and approval procedures for any domestic or foreign-invested project on the strength of the Project Confirmation Certificate issued by the examination and approval authorities at the provincial level.

VI Where any examination and approval authorities at the provincial level often makes mistakes of use of applicable entry of industries under encouragement, divides projects, approves projects beyond its power and jurisdiction or decentralizes its power of issuance of the Project Confirmation Certificate in violation of provisions, the NDRC shall suspend the power of the examination and approval authorities at the provincial level and decide whether to resume its power according to its rectification.

VII The Project Confirmation Certificates that shall be issued by other departments under the State Council and other examination and approval authorities at the provincial level shall be handled by reference with the principles prescribed herein.

**General Administration of Customs of the PRC  
National Development and Reform Commission of the PRC  
July 7, 2009**

~~Article~~ The foreign-invested projects approved on December 31, 2008 or before in accordance with the *Catalogues of Predominant Foreign Invested Industries in Central-Western Areas* (Revision of 2004) (Decree No. 13 [2004] of the National Development and Reform Commission and the Ministry of Commerce) or the *Catalogues of Predominant Foreign Invested Industries in Liaoning Province* (Decree No. 47 [2006] of the National Development and Reform Commission and the Ministry of Commerce), the imported equipment for self use related to the projects and the imported technologies and parts and auxiliary equipment and spare parts along with the above-mentioned equipment prescribed by contracts may be kept subject to the *Circular of the State Council on Adjusting Tax Policy on Import Equipment* (Guo Fa [1997] No. 37) and the relevant provisions in Public Notice No. 103 [2008] of the General Administration of Customs. The related project unit shall hold the letter of confirmation for projects issued by the competent investment authority (among which "the approval entry of industry policy for projects" shall be filled in still based on the original one and code) and other related materials to go through the filing procedures for deduction and exemption of tax to the Customs before December 31, 2009. In case of failure to handling such procedures after the specified period, the Customs shall no longer accept the applications for the above-mentioned deduction and exemption of tax.

~~Article~~ For the foreign-invested projects in progress that are not listed in the *Catalogues of Predominant Foreign Invested Industries in Central-Western Areas* (Revision of 2004) or the *Catalogues of Predominant Foreign Invested Industries in Liaoning Province*, if conforming to the provisions of the *Catalogues of Foreign Invested Industries in Central-Western Areas* (Revision of 2008), they may apply for making up for the letter of confirmation for projects with the competent investment authority according to the relevant provisions. The imported equipment for self use of the project in progress and the imported technologies and parts and auxiliary equipment and spare parts along with the above-mentioned equipment prescribed by contracts are subject to the preferential taxation policies on import according to the provision of Article 1 of this Public Notice, but the tax that has been levied on the imported equipment shall not be refunded.

The Public Notice is hereby specially made.

Attachment: *Catalogues of Foreign Invested Industries in Central-Western Areas* (Revision of 2008)  
(Omitted)

The General Administration of Customs  
January 19, 2009

## **Circular on Terminating Tax Refund Policies on Purchase of Domestically-Manufactured Equipment by Foreign-Invested Enterprises**

Cai Shui [2008] No. 176

Finance departments (bureaus) and state administration of taxation of provinces, autonomous regions, municipalities directly under the Central Government, separately planning cities, and the Finance Bureau of Xinjiang Production and Construction Corp.:

To coordinate with the reform of the national VAT transformation and regulate the tax regime, and upon approval by the State Council, the implementation of VAT refund policies on purchase of domestically-manufactured equipment by foreign-invested enterprises shall be terminated, and the relevant issues are hereby notified as

follows:

I As of 1 January 2009, the policies on full refund of VAT for purchase of domestically-manufactured equipment by foreign-invested enterprises within the total investment shall be terminated. Abolished at the same time are the following documents and clauses:

(I) Circular of the State Administration of Taxation on Printing and Distributing the Trial Measures of Administration for Tax Rebates on Purchase of Domestically-Manufactured Equipment by Foreign-Invested Enterprises (Guo Shui Fa [1997] No. 171);

(II) Article 1 of the Circular of the Ministry of Finance and the State Administration of Taxation on Several Specific Issues concerning the Tax Refund (Exemption) on Exported Goods (Cai Shui [2004] No. 116);

(III) Notice of the Ministry of Finance and the State Administration of Taxation on Adjusting the Scope of Tax Refund Policies for Purchase of Home-Made Equipment for Foreign-invested Projects (Cai Shui [2006] No. 61);

(IV) Circular of the State Administration of Taxation and the National Development and Reform Commission on Printing and Distributing the Trial Implementation Measures on Tax Refund Administration for Purchase of Home-Made Equipment for Foreign-invested Projects (Guo Shui Fa [2006] No. 111), and

(V) Circular of the State Administration of Taxation on Tax Refund for Purchase of Domestically-Manufactured Equipment by Construction Enterprises Entrusted by Foreign-invested Enterprises by Contract of Labour and Materials (Guo Shui Han [2007] No. 637).

II For the purpose of guaranteeing the steady transformation of policy adjustment, with respect to the domestically-manufactured equipment purchased by foreign-invested enterprises before June 30, 2009 (inclusive, the same below), if the verification information of special invoices of VAT has been checked free of error, the former provisions for VAT refund policies may apply at discretion provided the following requirements are met:

(I) Letter of Confirmation of Foreign-invested Projects Conforming to State Industrial Policies was obtained prior to November 9, 2008 and filing had been done with the competent tax authority prior to December 31, 2008;

(II) Domestically-manufactured equipment has been actually purchased with special invoices of VAT and tax refund has been reported to the competent tax authority prior to June 30, 2009, and

(III) The purchased domestically-manufactured equipment has been listed in the List of Purchased Home-Made Equipment for Projects.

III The VAT amount for purchase of domestically-manufactured equipment by foreign-invested enterprises that have enjoyed the VAT refund policy shall not be set off against VAT on sales as input of VAT.

IV The domestically-manufactured equipment purchased by foreign-invested enterprises that have enjoyed VAT refund policy shall be supervised and administered by the competent tax authorities, with the supervision period of five years, during which if the enterprises are transformed to domestic-funded ones or such situations as transfer and gift of ownership of equipment as well as leasing and reinvestment occur, the refunded tax shall be made up to the competent tax refund authorities with made-up tax calculated by the following formula:

The made-up tax = net value of domestically-manufactured equipment × the applicable tax rate

Net value of domestically-manufactured equipment refers to the net value of equipment calculated after the accrual



☑ The five-year supervision period of domestically-manufactured equipment that has handled tax refund commences from the date of issuance of the Income Refund Notice by the tax authority for the domestically-manufactured equipment. Within the supervision period, foreign-invested enterprises shall report the data and materials concerning the deposit areas and the accounting books of fixed assets and certificate encodings, and digital photos of equipment to the competent tax authorities for filing; and the tax authorities shall regularly check and examine the operation status of the domestically-manufactured equipment, and in case of made-up tax required as prescribed in the provisions of policies, tax making up shall be conducted according to law.

☑ Other issues shall still be implemented in accordance with the provisions of Document Guo Shui Fa [2006] No. 111.

☑ Upon implementation of the newly-revised Provisional Regulations of the People's Republic of China on Value-Added Tax, the application of the policies for the projects in the category of encouragement for foreign investment checked and approved in compliance with the prescribed provisions prior to January 1, 2009 shall be formulated separately.

State Administration of Taxation  
National Development and Reform Commission  
December 16, 2008

## **Decree of the State Council of the People's Republic of China**

No. 538

The Interim Regulations of the People's Republic of China on Value Added Tax revised and adopted by the 34<sup>th</sup> standing meeting of the State Council on November 5, 2008 is hereby promulgated, which shall enter into force on January 1, 2009.

Premier Wen Jiabao  
November 10, 2008

## **Interim Regulations of the People's Republic of China on Value-Added Tax**

(Promulgated by No.134 Decree of the State Council of the People's Republic of China on December 13, 1993, and revised and adopted by the 34<sup>th</sup> standing meeting of the State Council on November 5, 2008)

**Article 1** All units and individuals engaged in the sales of goods, provision of processing, repairing and replacement services, and the importation of goods within the territory of the People's Republic of China are the taxpayers of Value-Added Tax (hereinafter referred to as the "taxpayers"), and shall pay VAT in accordance with the Regulations.

# WORLD TRADE ORGANIZATION

WT/DS358/1  
G/L/813  
G/SCM/D74/1  
G/TRIMS/D/25  
7 February 2007  
(07-0520)

Original: English

## CHINA – CERTAIN MEASURES GRANTING REFUNDS, REDUCTIONS OR EXEMPTIONS FROM TAXES AND OTHER PAYMENTS

### Request for Consultations by the United States

The following communication, dated 2 February 2007, from the delegation of the United States to the delegation of China and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the People's Republic of China pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Articles 4 and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), and Article 8 of the *Agreement on Trade-Related Investment Measures* ("TRIMs Agreement"), with regard to certain measures granting refunds, reductions, or exemptions from taxes or other payments otherwise due to the government by enterprises in China. As required by Article 4.2 of the SCM Agreement, a Statement of Available Evidence is attached to this request for consultations.

These measures include the following, as well as any amendments and any related or implementing measures:

- *Circular of the State Administration of Taxation Concerning Transmitting the Interim Measure for the Administration of Tax Refunds to Enterprises with Foreign Investment for Their Domestic Equipment Purchases;*<sup>1</sup>
- *Circular of the Ministry of Finance and the State Administration of Taxation Concerning the Issue of Tax Credit for Business Income Tax for Homemade Equipment Purchased by Enterprises with Foreign Investment and Foreign Enterprises;*<sup>2</sup> read in conjunction with *Circular of the State Administration of Taxation on Printing and Distributing the Measures Concerning Business Income Tax Credit on the Investment of Enterprises with Foreign Investment and Foreign Enterprises by Way of Purchasing Homemade Equipment;*<sup>3</sup>

<sup>1</sup> GuoShiFa [1999] No. 171 (20 August 1999), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>2</sup> CaiShuiZi [2000] No. 49 (14 January 2000), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>3</sup> GuoShuiFa [2000] No. 90 (18 May 2000), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

- *Circular on Distribution of Interim Measures Concerning Reduction and Exemption of Enterprise Income Tax for Investment in Domestically Made Equipment for Technological Renovation;*<sup>4</sup>
- Articles 75(7) and 75(8) of the *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*,<sup>5</sup> read in conjunction with Articles 8 and 9 of the *Provisions of the State Council on the Encouragement of Foreign Investment*<sup>6</sup> and Articles 6 and 8 of the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*,<sup>7</sup>
- Article 73(6) of the *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*,<sup>8</sup> read in conjunction with Articles 6 and 7 of the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*,<sup>9</sup> and Section XIII of the *Catalogue for the Guidance of Foreign Investment Industries*,<sup>10</sup>
- Article 81 of the *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*,<sup>11</sup> read in conjunction with Articles 6 and 10 of the *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*,<sup>12</sup> and Article 10 of the *Provisions of the State Council on the Encouragement of Foreign Investment*,<sup>13</sup>
- Article 3 of the *Provisions of the State Council on the Encouragement of Foreign Investment*,<sup>14</sup>
- Articles 3 and 6 of the *Circular of the People's Bank of China, the State Administration of Foreign Exchange, the Ministry of Foreign Trade and Economic Cooperation and the State Administration of Taxation Concerning Printing and Distribution Detailed Rules on Rewarding and Punishment Concerning Provisional Regulations over Examination of Export Collections of Foreign Exchange*,<sup>15</sup>

<sup>4</sup> CaiShui [1999] No. 290 (8 December 1999).

<sup>5</sup> Decree [1991] No. 85 of the State Council (30 June 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>6</sup> GuoFa [1986] No. 95 (11 October 1986), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>7</sup> Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>8</sup> Decree [1991] No. 85 of the State Council (30 June 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>9</sup> Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>10</sup> Order [2004] No. 24 of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China (30 November 2004), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>11</sup> Decree [1991] of the State Council (30 June 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>12</sup> Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>13</sup> GuoFa [1986] No. 95 (11 October 1986), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>14</sup> GuoFa [1986] No. 95 (11 October 1986), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>15</sup> YinFa [2000] No. 58 (17 February 2000), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

- *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Imported Equipment*,<sup>16</sup> read in conjunction with Section XIII of the Catalogue for the Guidance of Foreign Investment Industries.<sup>17</sup>

These measures appear to provide such refunds, reductions or exemptions to enterprises in China on the condition that those enterprises purchase domestic over imported goods, or on the condition that those enterprises meet certain export performance criteria. Accordingly, the measures appear to be inconsistent with Article 3 of the SCM Agreement. Furthermore, to the extent the measures accord imported products treatment less favorable than that accorded "like" domestic products, they appear inconsistent with Article III:4 of the GATT 1994 and Article 2 of the TRIMs Agreement. The measures also appear not to comply with China's obligations under paragraphs 7.2-7.3 and 10.3 of Part I of its Accession Protocol<sup>18</sup>, as well as paragraph 1.2 of Part I of its Accession Protocol (to the extent that it incorporates paragraphs 167 and 203 of the Report of the Working Party on the Accession of China<sup>19</sup>), which forms part of the terms of accession agreed between China and the WTO and is an integral part of the *Marrakesh Agreement Establishing the World Trade Organization*.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

<sup>16</sup> GuoFa [1997] No. 37 (29 December 1997), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>17</sup> Order [2004] No. 24 of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China (30 November 2004), available at [www.fdi.gov.cn](http://www.fdi.gov.cn).

<sup>18</sup> WT/L/432.

<sup>19</sup> WT/MIN(01)/3.

Statement of Available Evidence

- *Circular of the State Administration of Taxation Concerning Transmitting the Interim Measure for the Administration of Tax Refunds to Enterprises with Foreign Investment for Their Domestic Equipment Purchases*<sup>20</sup>
- *Circular of the Ministry of Finance and the State Administration of Taxation Concerning the Issue of Tax Credit for Business Income Tax for Homemade Equipment Purchased by Enterprises with Foreign Investment and Foreign Enterprises*<sup>21</sup>
- *Circular of the State Administration of Taxation on Printing and Distributing the Measures Concerning Business Income Tax Credit on the Investment of Enterprises with Foreign Investment and Foreign Enterprises by Way of Purchasing Homemade Equipment*<sup>22</sup>
- *Circular on Distribution of Interim Measures Concerning Reduction and Exemption of Enterprise Income Tax for Investment in Domestically Made Equipment for Technological Renovation*<sup>23</sup>
- *Provisions of the State Council on the Encouragement of Foreign Investment*<sup>24</sup>
- *Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*<sup>25</sup>
- *Rules for Implementation of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises*<sup>26</sup>
- *Circular of the People's Bank of China, the State Administration of Foreign Exchange, the Ministry of Foreign Trade and Economic Cooperation and the State Administration of Taxation Concerning Printing and Distribution Detailed Rules on Rewarding and Punishment Concerning Provisional Regulations over Examination of Export Collections of Foreign Exchange*<sup>27</sup>

<sup>20</sup> GuoShiFa [1999] No. 171 (20 August 1999), available at [www.fdi.gov.cn](http://www.fdi.gov.cn) (English translation by Ministry of Commerce of People's Republic of China).

<sup>21</sup> CaiShuiZi [2000] No. 49 (14 January 2000), available at [www.fdi.gov.cn](http://www.fdi.gov.cn) (English translation by Ministry of Commerce of People's Republic of China).

<sup>22</sup> GuoShuiFa [2000] No. 90 (18 May 2000), available at [www.fdi.gov.cn](http://www.fdi.gov.cn) (English translation by Ministry of Commerce of People's Republic of China).

<sup>23</sup> CaiShui [1999] No. 290 (8 December 1999) (English translation).

<sup>24</sup> GuoFa [1986] No. 95 (11 October 1986), available at [www.fdi.gov.cn](http://www.fdi.gov.cn) (English translation by Ministry of Commerce of People's Republic of China).

<sup>25</sup> Order [1991] No. 45 of the President of the People's Republic of China (9 April 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn) (English translation by Ministry of Commerce of People's Republic of China).

<sup>26</sup> Decree [1991] No. 85 of the State Council (30 June 1991), available at [www.fdi.gov.cn](http://www.fdi.gov.cn) (English translation by Ministry of Commerce of People's Republic of China).

<sup>27</sup> YinFa [2000] No. 58 (17 February 2000), available at [www.fdi.gov.cn](http://www.fdi.gov.cn) (English translation by Ministry of Commerce of People's Republic of China).

- *Circular of the State Council Concerning the Adjustment in the Taxation Policy of Imported Equipment*<sup>28</sup>
  - *Catalogue for the Guidance of Foreign Investment Industries*<sup>29</sup>
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<sup>28</sup> GuoFa [1997] No. 37 (29 December 1997), available at [www.fdi.gov.cn](http://www.fdi.gov.cn) (English translation by Ministry of Commerce of People's Republic of China).

<sup>29</sup> Order [2004] No. 24 of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China (30 November 2004), available at [www.fdi.gov.cn](http://www.fdi.gov.cn) (English translation by Ministry of Commerce of People's Republic of China).



# China Business Insight

E8 + E9 - Page 8.

E10 (a) - Page 9.

December, 2010

## China Zhejiang Province, Hangzhou City

### Zhejiang Province Overview

- General Economic Review
- Infrastructure
- Development Zones
- FDI in Zhejiang Province
- FDI Policies
- Foreign enterprises establishment
- Relationship with Turkey

### Hangzhou – Capital City of Zhejiang Province

- General Economic Review
- Infrastructure
- Development Zones
- FDI in Hangzhou City
- FDI Policies
- Foreign enterprises establishment

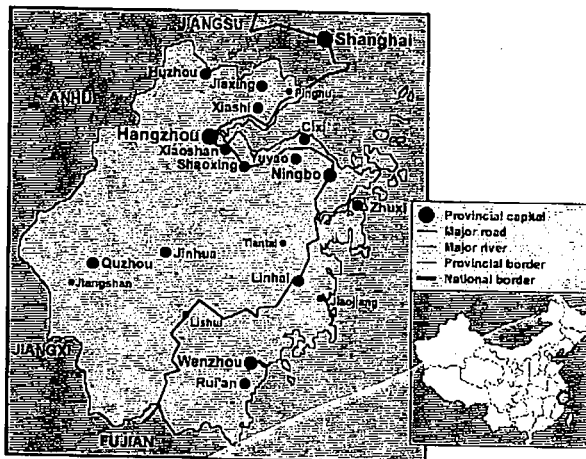
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## Zhejiang Province



### General Economic Review

Zhejiang province is situated along the southeast coast of China. It has been called "the land of fish and rice, the house of silk and tea, the capital of cultural heritage, and the paradise of tourists." The total population is 51.8 million. There are 11 cities and 89 districts in Zhejiang Province,

In 2009, the aggregate turnover of 4232 commodity markets hits USD 171 billion, leading in the country for 19 consecutive years, each of the 18 markets yield over RMB 10 billion. The turnover of the wholesale markets, e.g., Yiwu China

Commodity City, Shaoxing China Textile City, Yongkang Hardware City, Shengzhou Ties Market, and Haining Leather City are the first in respective sectors.

The Main industries in Zhejiang Province are light textile, machinery, IT, Chemical industry, Medical industry and building material industry. Textile industry is one of Zhejiang's pillar industries, which economic aggregate, export volume and total profit is the leading in China. Machinery industry is the leading industry of Zhejiang province. In 2009 and the total IT industry was USD 59.2 billion.



Economic Indicators of 2009	Value	Growth (y-o-y)
GDP	509.87 billion RMB (\$76.98bn)	10%
Per Capita GDP	74924RMB(\$10968)	9.1%
Added Value Output		
- Primary industry	19.03 billion RMB(\$2.87bn)	3.2%
- Secondary industry	243.49 billion RMB(\$36.76bn)	6.8%
- Tertiary industry	247.35 billion RMB(\$37.35bn)	13.9%
Value-added Industrial Output	179.2 billion RMB(\$27.06bn)	6.1%
Fixed-assets Investment	229.17 billion RMB(\$34.6bn)	15.7%
Retail Sales	108.5 billion RMB(\$18.38bn)	15.8%
Inflation (CPI)	98.6 (2008 = 100)	-1.4%
Total Foreign Trade	\$40.42bn	-15.9%
Exports	\$27.18bn	-19.1%
Imports	\$13.24bn	-8.4%
Utilized Foreign Direct Investment	\$4.01bn	21.2%
Overseas Investment	\$188million	

### Free Trade Zone

After the opening of Ningbo Port in 1978, Zhejiang province started its foreign trades and businesses. Through the improvement of foreign trade, increasing national development areas, and industry restructure, foreign trade and investment growth rapidly and become the main contribution to the local economy. From 1978 to 2008, the average growth rate of foreign trade of Zhejiang Province was

31%, by comparing with the average growth of GDP in Zhejiang Province was 13.2%. The foreign trade accounted 68.2% of the local economy.

Due to the rapid trade and economical development of Ningbo Port government decided to open Ningbo Free Trade Zone (FTZ) in the region in 1984. Ningbo FTZ is one of the 15 FTZ authorized by the State Council of China and is the only FTZ in Zhejiang Province. Ningbo FTZ has been

implementing the strategy; "To prosper the area with industries, and to strengthen the area with science and technology", thus, advanced manufacturing industry and modern service industry has been developed in Ningbo FTZ. At present, 3 functional industries including international trade, advanced manufacturing, warehousing and logistics has been developed in well coordination. NFTZ has become the manufacturing base for advanced production, international trade path, and center of modern logistics of Ningbo City and Zhejiang Province.

#### Preferential Policies at Ningbo FTZ

Economy and Trade Enterprises inside Ningbo FTZ enjoy a wide range of business scopes unless otherwise regulated by the State. Medium and giant scale enterprises are encouraged to do all-round and comprehensive business of processing, trading and commercial services.

Projects of the investment capital with no more than USD30 million are examined and approved by the administrative committee.

*Custom:* NFTZ exercises the system; "inside the boundary, outside the customs", and has integrated the operation between Port and Ningbo FTZ. Foreign goods can get into Ningbo FTZ freely (without going through customs clearance, paying tariff, presenting import and export certificate only with the customs registration through Electronic Data Interchange (EDI). Ningbo FTZ Customs has direct customs clearance operations with 4 international

airports. As for the overseas scholars' high-tech projects, the Administrative Committee provides special project subsidy, loan interest subsidy for R&D and manufacturing projects, rental fee subsidy and other incentives.

*Foreign Exchange:* In Ningbo FTZ, foreign exchange bank account is allowed; foreign exchange can be kept for company's cash flow; no foreign exchange verification and cancellation formalities needed for Import & export trade. Foreign exchange under trade items can be transferred overseas as required from operation. Annual post-tax profit can be transferred freely out of China, among which RMB can be exchanged into foreign exchange and transferred outside the country. The amount of domestic sales volume can be used to buy foreign currency after approval.

*Income Tax:* Tax rate for foreign-funded manufacturing enterprises is 15%. As for enterprises operating for more than 10 years, income tax will be, since the first profitable year, exempted for the first 2 years and refunded 50% for the next 3 years.

*Corporate Income Tax of processing trade:* Tax rate for foreign funded manufacturing companies is 15%. As for enterprises with operation period exceeding 10 years, starting from the first profit-making year, 100% tax remittal for the first 2 years and 50% tax relief for the subsequent 3 years. After the tax holidays, hi-tech and export-oriented enterprises can continue to enjoy the related tax rebate.

Taxes are exempted for machines and equipment needed to build infrastructure facilities for productive in the area, building materials needed to construct production plants and storage facilities and reasonable amount of office equipment and stationery used by the inside enterprises and administrative bodies.

Raw materials, parts, components, packaging materials, and other consumptive materials for the processing of products used by the inside enterprises are tax bonded.

VAT: Export products can claim VAT refund, sales to enterprises in the zone is exempted from VAT.

*Financial Subsidy:* Manufacturing enterprises can get project subsidy according to the elements of projects investment amount, advanced technology etc. Regulating tax for the direction of fixed assets investment is exempted.

Refunded VAT for exporter: VAT can be refunded for export products that are made of Chinese materials or made by Chinese equipment and most fees have been cancelled; the government will subsidize the cost of water & power capacities enlargement for projects to some proportion.

#### Infrastructure

Airways: Zhejiang has seven airports located respectively in Hangzhou, Ningbo, Wenzhou, Zhoushan, Yiwu, Taizhou and Quzhou. Among them, the handling capacity of passengers and freight of Hangzhou Xiaoshan International Airport

ranks the 8th in China. Highways: The total length of the highways is over 90,000 kms and the density of the highway network is 93.6 kms per 100 square kilometers. A "Four-Hour Highway Ring" has been constructed to connect the provincial capital Hangzhou with other cities on the land.

Railways: Zhejiang railway transportations network has been formed with lines of Shanghai-Hangzhou, Zhejiang-Jiangxi, Anhui-Hangzhou, etc., whereas Hangzhou, the capital, is the hub.

Water Traffic: There are seven major coastal and river ports located in Ningbo, Zhoushan, Wenzhou, Taizhou, Jiaxing, etc. The Ningbo-Zhoushan Port is a large comprehensive harbor with a handling capacity of 100 million tons. It is open to over 600 ports in over 100 countries and regions. Its annual goods throughput has exceeded 400 million tons, ranking the 2nd in China and the 4th in the world.

#### Development Zones

Aside from Ningbo FTZ Zhejiang Province has several important Development Zones. One of them is the Ningbo Economic and Technological Development Zone.

Ningbo Economic & Technical Development Zone, known as the NETD, was founded with the approval of China's State Council in October of 1984, covering an area of 29.6 square kilometers. NETD is among China's earliest and largest national development zones.

NETD is dedicated to optimizing its investment environment and is awarded

ISO14001 in 2002. Meanwhile, the administrative committee of NETD is also awarded ISO9001 certificate. By the end of Jun. 2009, the zone had approved more than 1416 foreign-funded enterprises involving US\$23 billion in total investment and US\$ 11.8 billion in contracted capital among which over 380 are large-sized projects each with total investment over US\$ 10 million. NETD has already become the strategic focus of opening-up and new economic growth both in Ningbo and Zhejiang Province.

There are six advantageous industries in the zone: Plastic molding industry, textile & garment industry, foundry industry, stationery industry, cereal & oil and foodstuffs processing industry, port logistics industry.

#### **Foreign Direct Investment (FDI) in Zhejiang Province**

There were 45,773 approved foreign-funded enterprises with a total investment of USD 282.5 billion, including contract value of USD 152.3 billion, and actual FDI of USD 76 billion. 89 of the Top Fortune 500 have invested among 233 enterprises. Regions along Shanghai-Hangzhou-Ningbo expressway and economic development zones are hotspots for foreign investor.

The top FDI countries and regions are: HK (\$5,797.17), VIRGIN IS. (\$1,020.13), US (\$386.43), Japan (\$383.95), and Singapore (\$321.26).

#### **FDI Policy**

##### **(1)Enterprise Income Tax**

The income tax on enterprises with foreign investment established in Special Economic Zones, on foreign enterprises which have establishments or places in Special Economic Zones engaged in production or business operations, and on production-oriented enterprises with foreign investment in Economic and Technological Development Zones, shall be levied at the reduced rate of fifteen percent.

The income tax on production-oriented enterprises with foreign investment established in coastal economic open zones or in the old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones are located, shall be levied at the reduced rate of twenty-four percent.

The income tax on enterprises with foreign investment engaged in energy resource, transportation, port, and dock projects may be levied at the reduced rate of fifteen percent with the approval of the State Administration of Taxation.

Production-oriented enterprises with foreign investment scheduled to operate for a period of not less than ten years shall, from the year beginning to make profit, be exempted from income tax in the first and second years and allowed a fifty percent reduction in the third to fifth year. However, the exemption from or reduction of income tax on enterprises with foreign investment engaged in the exploitation of resources such as petroleum, natural gas, rare

metals, and precious metals shall be regulated separately by the State Council.

Chinese-foreign equity joint ventures engaged in port and dock construction where the period of operation is 15 years or more shall, following application by the enterprise and approval thereof by the tax authorities of provinces, autonomous regions, or municipalities directly under the Central Government of the location and commencing with the first profit-making year, be exempt from enterprise income tax from the first year to the fifth year and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year.

Enterprises with foreign investment engaged in agriculture, forestry or animal husbandry and enterprises with foreign investment established in remote underdeveloped areas may, upon application filed by the enterprise and approval by the competent department of tax affairs under the State Council, be allowed a fifteen to thirty percent reduction of the amount of income tax payable for a period of another ten years following the expiration of the period for tax exemption or reduction.

Export-oriented enterprises invested in and operated by foreign businesses may be levied at the reduced rate of fifty percent after the expiration of the period for tax exemption or reduction in accordance with the provisions of the Tax Law if the export value accounts for 70% or more of that year's total output value of the enterprise. However, export-oriented enterprises in the special economic zones and economic

and technological development zones and other such enterprises subject to enterprise income tax at the tax rate of 15% that qualify under the above-mentioned conditions shall pay enterprise income tax at the tax rate of 10%.

Advanced technology enterprises invested in and operated by foreign businesses which remain advanced technology enterprises after the period of enterprise income tax exemptions or reductions has expired in accordance with the provisions of the Tax Law may continue to be taxed by half for an additional three years.

Losses incurred in a tax year by any enterprise with foreign investment and by an establishment or a place set up in China by a foreign enterprise to engage in production or business operations may be made up by the income of the following tax year. Should the income of the following tax year be insufficient to make up for the said losses, the balance may be made up by its income of the subsequent year, and so on, over a period not exceeding five years.

#### (2) Individual Income Tax

For foreign nationals working in enterprises with foreign investment or foreign enterprises set up in China, their taxable income is the balance of their monthly income after the deductions for expenses of 3200 RMB in addition to a monthly deduction for expenses of 800 RMB.

#### (3) Profit

The profits that foreign investors make from the enterprises with foreign

investment are exempt from the income tax.

#### (4) Importing Equipment

Tariffs and import link value-added tax shall be exempted with respect to import equipment for their own use (including technology, matching components and parts along with imported equipment in accordance with contract) within the total amount of investment of encouraged projects in line with the Catalogue for the Guidance of Foreign Investment Industries, with the exception of the commodities listed in the Catalogue of Non-Duty-Free Commodities to Be Imported for Foreign-Funded Projects.

Foreign-funded enterprises whose business scope falls into the Encouragement Industry Catalogue stipulated by the state, or foreign-funded R&D centers, or foreign-funded technically advanced enterprises or foreign-funded export-oriented enterprises will be exempted from tariffs and import link value added tax in accordance with Circular of the State Council on the Adjustment of Tax Policy on Equipment Imports (Guo Fa [1997] No. 37) when they import, for their own technical updating, equipment and supporting parts, auxiliaries and relative technology within their original business scope that the local enterprises cannot produce or supply or the local products' performance cannot meet their requirement.

If foreign-funded enterprises import equipment for self use, as well as technology, matching components and

parts along with imported equipment in accordance with contract in order to manufacture the commodities listed in the Catalog of the State High-tech Products, these items, except the ones listed in Catalogue of Non-Duty-Free Commodities to Be Imported for Domestic Investment Projects (Guo Fa [1997] No. 37), shall be exempted from tariffs and import link value-added tax.

(5) Purchasing Domestic Equipment For investment projects whose capital of foreign investors reaches 25% or above of the capital paid up by all the investors of the foreign-funded enterprises and which also accord with the encouraged types in Catalogue for the Guidance of Foreign Investment Industries and Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State, the unused domestic equipment purchased by foreign-invested enterprises with currency in China (including products of plastic, rubber, ceramic and porcelain and petrochemical tubes purchased together with the equipment and listed in purchase contracts), will be refunded the value-added tax in full amount.

For equipment purchased from the domestic market specified in the Catalogue of Non-Duty-Free Commodities to Be Imported for Foreign-Funded Projects and Catalogue of Non-Duty-Free Commodities to Be Imported for Domestic Investment Projects issued by the State Council, enterprises cannot enjoy the preferential policy of tax drawback.

#### (6) Reinvestment

Any foreign investor of an enterprise with foreign investment which reinvests its share of profit obtained from the enterprise directly into that enterprise by increasing its registered capital, or uses the profit as investment capital to establish other enterprises with foreign investment to operate for a period of not less than five years shall, upon approval by the tax authorities of an application filed by the investor, be refunded forty percent of the income tax already levied on the reinvested amount.

Where foreign investors reinvest directly to set up or expand export-oriented or advanced technology enterprises within the boundaries of China, the entire portion of enterprise income tax levied on the reinvested amount may, in accordance with the provisions of the State Council, be refunded.

(7) Fixed Assets Depreciation. Where, for special reasons, it is necessary to shorten the useful life of fixed asset, an application may be submitted by the enterprise to the local tax authorities which following examination and verification shall be reported level-by-level to the State Tax Bureau for approval. Such fixed assets include:

(1) machinery and equipment subject to strong corrosion by acid or alkali and factory buildings and structures subject to constant shaking and vibration;

(2) machinery and equipment operated continually year-round for the purpose of raising the utilization rate or increasing the intensity of use;

(3) fixed assets of a Chinese-foreign contractual joint venture having a period of cooperation shorter than the useful life specified in Article 35 of these Rules and which will be left with the Chinese party upon termination of the cooperation.

(8) Miscellaneous Income tax of the royalty received for the supply of technical know-how in scientific research, exploitation of energy resources, development of the communications industries, agricultural, forestry and animal husbandry production, and the development of important technologies may, upon approval by the competent department for tax affairs under the State Council, be levied at the reduced rate of ten percent. Where the technology supplied is advanced or the terms are preferential, exemption from income tax may be allowed.

Incomes of units or individuals (including enterprises with foreign investment, R&D centers invested and set up by foreign investors, foreign enterprises and foreign nationals) from technology transfer, business of technology development and related business of technical consultancy and service shall be exempt from business tax.

Imported advanced technologies that are listed in the Catalog of State New and High-Tech Products, and the software fee paid overseas in accordance with the contract, are exempt from customs duty and import-link value added tax.

Enterprises with foreign investment where technology development fee in China has increased by over 10% (including 10%)

than that for the previous year, shall be permitted, upon examination and approval by the taxation authorities, to re-offset 50% of the amount actually used for technology development fee for the taxable income for the same year, upon examination and approval of taxation authorities concerned. In the enterprises where technology development fee has increased by over 10% from that for the previous year, and 50% of the amount actually used by the enterprises is higher than the taxable income for this year, the enterprises may be permitted to offset the portion which is not exceeding their taxable income; for the exceeding portion, they shall not be allowed to offset in this year or for the succeeding years.

#### How to establish a foreign enterprise in Zhejiang Province

Foreign investment enterprises registrations will be processed by foreign investment department in Department of Commerce of Zhejiang Province.

1. The encouraged and approved projects and foreign investment enterprises with the total investment below \$500 million are approved by the city, county and development zones of Zhejiang province.
2. The encouraged foreign investment enterprises, limited foreign investments with total investment below \$500 million, and approved foreign investments above \$500 million and below \$1000 million are approved by province commerce department of Zhejiang province.
3. The limited foreign investment with total investment above \$500 million, and approved foreign investment above

\$1000 million are approved by Ministry of Commerce of China.

#### Turkey and Zhejiang

Trade: Turkey is the 17<sup>th</sup> export market of Zhejiang. In 2009, the total trade between Zhejiang and Turkey was USD 1.79 billion; the total export was USD 1.72 billion, and the total import was USD 70 million. In the first three quarters of 2010, the total bilateral trade was USD 2.117 billion, an increased of 69.76%; the total export and import was USD 2.005 billion and USD 112 million, an increased by 66.49% and 160% year on year.

Major export products: ships (USD 109 million), knitting products (USD 6.704 million), textile (USD 5.168 million), Automotive parts (USD 3.646 million); Major import products: Copper (USD 14.69 million), Chrome (USD 12.16 million), Iron (USD 12.16 million), plastic (USD 11.01 million).

#### FDI from Turkey

At the end of August 2010, Turkey set up 61 enterprises in Zhejiang with the actual use of foreign capital was USD 27.26 million. The main sectors are textile, communication equipments, computer and other electrical equipment producing, selling. There are 7 enterprises with an investment of over USD 50 million.

#### > The major projects from Turkey investment

Whenzhou Jiouli Industrial Co., Ltd. :  
Whenzhou Rixing Metals Factory Joint Venture with Turkey Industrial Metals



Manufactory Imp.& Exp. Industry and Trade Co., Ltd., the total investment was USD 20 million. Major industries: production and Sale CNC machine tools, Electric Equipments, research and development and sales.

NGY Office tools electric techniques and foreign trade Co., Ltd. invests and sets up Ningbo Xin Doushi Automotive parts Co., Ltd. and Ningbo Keyuan Automotive parts Co., Ltd., the total investment was USD 19.8 million.

*> Other project from Turkey investment*

Chunan Qiandao Lake Quanshun Textile Co.,Ltd. which is located in Chunan County (Hangzhou). It is foreign-owned company which produce & Sell textile and cloth with total investment of USD 15 million.

Changxing Anke Shu Rubber Technology Co., Ltd. which is located in Changxing County (Huzhou) and it is foreign-owned company which produces & Sells Rubber and insulating materials with total investment of USD 12.5 million.

Unsa (HZ) Packaging Manufacturing Co.,Ltd. which is located in HZ Economy and Technology Development Area. It is a foreign-owned packaging manufacturing with total investment of USD 7.5 million.

ZJ Areffa Industrial Co.,Ltd. which is located in the area owned by Lishui City Foreign Trade Bureau. It is foreign-owned which produces and sells optical glasses, the sun glasses, glasses and optical

instruments with a total investment of USD 5 million.

**Zhejiang investment in Turkey**

At the end of August 2010, there are 36 enterprises invest in Turkey with total investment of USD 25.76 million which involves major industries: Machinery, Electronic, and textile. There are 4 projects are over USD 1 million.

*> Major projects of Zhejiang companies invest in Turkey*

Turkey Muli Mine International Imp. & Exp. Trade Corporation with total investment of USD 8.8 million – The local company is Wenzhou Xinbao Imp. & Exp. Co., Ltd. The main industry is Chrome Mining and sales.

Turkey Shenma Motorcycle Industry & Trade Co., Ltd. with total investment of USD 6.32 million – The local company is Cixi Kangxin Motorcycle Co., Ltd. It mainly produces and sells motorcycle & bicycle & parts.

*> Other projects in Turkey:*

Haitian Turkey Co., Ltd. in Turkey which is set up by Haitian Machinery Ltd. with total investment of USD 2 million. Mainly doing the Plastics machinery processing, assembly and sales

Turkey Zhongkai Trade Co., Ltd. which is set up by Ningbo Kaitong Motorcycle Manufactory Ltd. doing wholesale of motorcycle parts sale & services.

## Hangzhou – Capital City of Zhejiang Province

### General Economic Review

Economic Indicators of 2009	Value	Growth (y-o-y)
GDP	509.87 billion RMB (\$342.7bn)	10%
Per Capita GDP	74924RMB(\$10968)	9.1%
Added Value Output		
- Primary industry	19.03 billion RMB(\$17.5bn)	3.2%
- Secondary industry	243.49 billion RMB(\$178.48bn)	6.8%
- Tertiary industry	247.35 billion RMB(\$148.1bn)	13.9%
Value-added Industrial Output	179.2 billion RMB(\$124.36bn)	6.1%
Fixed-assets Investment	229.17 billion RMB(\$161.89bn)	15.7%
Retail Sales	108.5 billion RMB(\$129.94bn)	15.8%
Inflation (CPI)	98.6 (2008 = 100)	-1.4%
Total Foreign Trade	\$40.42bn	-15.9%
Exports	\$27.18bn	-19.1%
Imports	\$13.24bn	-8.4%
Utilized Foreign Direct Investment	\$4.01bn	21.2%
Overseas Investment	\$186million	45.7%

Hangzhou, the capital of Zhejiang Province, is the provincial centre in economy, culture, science and education. It is a famous city in history and culture. Located at the southern wing of the Yangtze River Delta, the west end of

Hangzhou Bay, the lower reaches of Qiantang River and the southern end of the Grand Canal (Beijing – Hangzhou), it is one of the most important central cities in the southern wing of the Yangtze River Delta and a hub of transportation in southeast China. In 2009, Hangzhou's

comprehensive economic strength continued to rank No.2 (after Guangzhou) among all provincial capitals, No.3 (after Guangzhou and Shenzhen) among all sub-provincial cities and No.8 of all large and medium sized cities of China. It won the title of "China Mainland Best Commercial City" by "Forbes" Magazine; it is listed as No.1 of 2009 Happiest Cities of China; China's top ten creative cities and top ten dynamic cities.

Benefiting from the geographic features, Hangzhou is blessed for its agricultural production with rich myriad plants, forests, animals and birds. The mineral resources include large and medium scale metal and non-metal deposits.

The main industries in Hangzhou city are Machinery, silk garments, ready-made clothes, textile, IT and beverage industries.

There are 74 private enterprises are involve in China's Top 500 private enterprises in Hangzhou.

- *China Guangxia Holdings* – Main Industries: Contraction and Real Estate
- *WAHAHA Group Co., Ltd* – Main Industry: Beverage
- *Zhejiang Hengyi Group Co., Ltd* – Main Industry: Chemical – DTY, FDY, POY, PSF, Bottle Grade Chip, PET-CHIP, PTA.
- *Zhongtian Group Co., Ltd* – Main Industry: Construction and Real Estate

- *Zhejiang Rongsheng Holding Group Co., Ltd* – Main Industry: Investment enterprise – fields of petrification, chemical fibre, real estate, logistics and trade.

#### Infrastructure

Aviation: Hangzhou Xiaoshan International Airport is a key trunk line airport, a tourism city airport and an international scheduled flight airport of China as well as a class A airport for openness to the outside world. Its passenger throughput and its freight and post throughput are both among the top-10 in China. Up to the end of 2008, there had been 193 airlines, in which 38 international or district airlines to Tokyo, Osaka, Bangkok, Singapore, Seoul, Pusan, as well as HK and Macao.

Highway: Hangzhou is the hub of 5 expressways (Shanghai-Hangzhou-Ningbo Expressway, Hangzhou-Nanjing Expressway, Hangzhou-Jinhua-Quzhou Expressway, Hangzhou-Thousand Island Lake Expressway and Hangzhou-Huangshan Expressway) and 11 national and provincial highways. Now it has formed a network of expressways and special highways with complete facilities.

#### Railroad:

Hangzhou is a key railroad hub in southeast China, connecting three important railroad lines of the country: Shanghai-Kunming Railroad, Hangzhou-Xuanheng (Anhui Province) Railroad and Hangzhou-Ningbo Railroad. The city is one of the key points in the whole of China's railroad network.

### **Development Zones**

It is the effective way for foreign investment in Hangzhou to set up in national owned development areas. They provide the "one-stop" service for foreign companies, and services are free. From the Corporation and projects approving operation, location selection, Human Resources Recruiting, to the equipment purchasing, development areas have comprehensive services system to assist organizations producing and developing in Hangzhou.

Three main national development areas:

#### **Hangzhou Qianjiang Development Zone**

Hangzhou Qianjiang Economic Development Zone is located at the northwest part of Hangzhou Linping industry area, attached to Hangzhou People's Municipal Government. There is one main public centre to arrange for the public facilities services to the ambient area; Two axes – the public construction development axis and industry development axis formed a "CROSS" by relying on the main roads Xinghe Road and Xingyuan Road; Five industrial parks, of which the mechanical & electrical integration industrial park, the mechanical & electrical and packaging industrial parks which cover two sections, the new material and new energy industry parks also cover two sections.

#### **Hangzhou Economic & Technological Development Area**

HEDA is located in eastern Hangzhou Municipality, which was ratified by the

State Council in 4, 1993 as a national-grade development zone, and exercises jurisdiction over an area of 104.7 k m<sup>2</sup>. Zhejiang Hangzhou Export Processing Zone was built in this area. Over 700 domestic or foreign enterprises were established in the area, of which 31 enterprises were in World Top 500.

#### **Hangzhou High and New Technology Industry Development Area**

Hangzhou Hi-tech Industry Development Zone was approved by the State Council as a state level Hi-tech Industrial Development Zone. The main region is located in the northwestern part of Hangzhou's urban district, adjacent to the West Lake. This is an area of culture, education and a base for the electronics industry. It is composed of three parts, with the main regions being the Zhijiang Sci-Tech Industrial Park and Xiasha Sci-Tech Industrial Park.

Hangzhou Hi-tech Software Park is situated in the Zhijiang Sci-tech Industry Park, which mainly relies on colleges, universities and scientific research institutes to attract personnel and funding, promotes the grouping of computer software technology and other optimal productive factors, and works to establish an industrialized production capacity.

#### **FDI in Hangzhou City**

In 2009, the foreign investment reached USD 4.014 billion, up by 21.2%, and the domestic investment was USD 8.4136 billion, up by 18.5%. By the end of 2009, there were 117 projects built in Hangzhou funded by 70 companies of the World Top

500 Companies. In the total year, 79 domestic investment projects were attracted and over RMB 100 million and the funds total USD 4 billion. There were 19 domestic headquarters was introduced.

#### FDI Policies

The main FDI policies are follow the FDI policies of Zhejiang Province. On the other hand, depending on the special policies of development zones, there are some preference policies for foreign investment:

Hangzhou Economic & Technological Development Area:

*Tax policy:* Since Jan 1st, 2008, the enterprises enjoying preferential policies of low tax rates, switch gradually to legal tax rates in 5 years since new tax law was imposed on. Among them, the enterprises enjoying 15% income tax, shall pay 18% of income tax in 2008, and 20% in 2009, 22% in 2010, 24% in 2011, 25% in 2012; the enterprises paying 24% income tax, shall pay 25% of income tax from 2008.

For the enterprises enjoying preferential policies for harvesting no profits, their preferential terms begin from 2008.

(In accordance with State council's Notification on Practicing Enterprises' Income Tax Transitional Preferential Policies)

*Customs Policies:* Enterprises in conformity with certain conditions shall enjoy relevant reduction and remission policies in fields of export tariff, import tariff and processing trade, stipulated by the state.

#### How to establish a foreign investment enterprise in Hangzhou City

Except the official establish and improvement policies by Zhejiang province, different development zones and associations provided convenience services for foreign investments to set up businesses in Hangzhou city.

Such as Hangzhou Economic & Technological Development Area Management Commission is an agency of Hangzhou Municipal Government, which practices standard management and single-stop services, project establishment, company establishment, approval and registration, land application and construction procedure can all take place in the handling hall of the management commission.

HEDA performs thorough services and coordination for investment consulting, registration and other procedures, pre-coordination before construction, capital increase development, etc.

Process for Foreign-Investment Enterprises to Get Approved and Registration:

1. Initial consulting and examination of projects (Branches of the Investment Promotion Bureau)
2. Undertaking name inquiry and registration

Formal application to Investment Promotion Bureau Branches (necessary approval materials provided when it needs trade departments responsible for the work

or environment protection departments to perform presupposed approvals)

3. Management Council's approval

4. Receive advance code of the organization

5. Type and receive approval certificate (Investment promotion department of Investment Promotion Bureau)

6. Approval of business license (District branch of Industrial and Commercial Bureau)Receive Business License

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<http://www.hhtz.gov.cn/hhtz/DesktopDefault.aspx?tabid=1>

## Circular of the General Administration Customs on Import Taxation Policy for Further Encouraging Foreign Investment

Statute Type: Regulatory legal documents Subject: tax of the customs

Record Number: ShuShui (1998) No.791 Department: the General Administration Customs

Promulgation Date: 1999-11-22 Effective Date: 1999-08-01

Effectiveness:

Article 1 For importation, within their productive operation scope originally approved, of self-using equipment and technology, fittings and spare parts that can not be produced at home or their capacities can not meet the demands, by the established foreign investment enterprises under Encouraged Category and Restrictive Category B, research and development centres with foreign investment, foreign investment enterprises with advanced technology and foreign investment enterprises of export oriented products (hereinafter referred to as five categories of enterprises for short) for technology reform, Customs duties and import tax may be exempt in accordance with the Circular of the State Council on the Adjustment of the Taxation Policy On Imported Equipment (Guofa (1996) No. 37).

1. Those enjoying tax exemption incentives specified in this Article should meet the following conditions: (1) Their sources of funds should be self-owned funds (specifically referred to the enterprise's reserve funds, development funds, deducting depreciation fee and profit after tax payment) outside the total amount of investment of the five categories of enterprises; (2) The use of imported commodities: renewal or maintenance, within the productive operation scope originally approved, of the original equipment of the enterprises (complete set of equipment and production lines are not included); (3) Import commodities scope: equipment not capable to produce at home (commodities outside the List of Import Commodities by Home Investment Projects Not to Be Exempted from Tax) as well as technology, fittings and spare parts forming complete set with the above mentioned equipment (including those imported along with the equipment or those imported in separation).

2. Procedures to go through for levy or exemption from tax: (1) Importation testimony produced: Testimonial Paper for Importation, by Enterprises with Foreign Investment, of Renewal Equipment, Technology, Fittings and Spare Parts (for the form, see Attachment one below) produced by the departments concerned in accordance with the provisions of sub-sections one and two, Paragraph 1 of this Article, of which testimonial paper for enterprises under Encouraged Category and Restrictive Category B should be produced by the original authorities for examination and approval that had produced project confirmation (for the above mentioned enterprises set up with approval prior to the date of December 31, 1997, their testimonial paper should be produced by the original authorities for examination and approval); testimonial paper for research and development centres with foreign investment should be produced by the original authorities for examination and approval (for the details, see the sub-section one, Paragraph 1, Article 2 of the present Circular); testimonial paper for products export-oriented enterprises and enterprises with advanced technology should be produced by the Ministry of Foreign Trade and Economic Cooperation or by the departments of foreign trade and economic cooperation of the various provinces, autonomous regions, municipalities directly under the Central Government and municipalities separately listed on the State plan that had issued Confirmation Paper for products Export-Oriented Enterprises with Foreign Investment and Confirmation Paper for Enterprises with Foreign Investment with Advanced Technology. (2) Procedures to go through for testimony for levy or exemption from tax: Customs directly under the General Administration of Customs in the places where the enterprises are located shall produce testimonial paper by the above mentioned testimonial papers, contracts and Import licences and other material related after verifying the importation commodities scope against the provisions of sub-section three, Paragraph 1 of this Article.

3. Specific rules: (1) In case the five categories of enterprises carry out technology reform beyond the scope as defined by sub-section two, Paragraph 1 of this Article, their importation should be testified by Registration Certificate for Confirmation of Technology Reform Projects produced according to their respective examination and approval power by the State or the provincial economic and trade commission (for the form, see Attachment 2); (2) In case the five categories of enterprises carry out equipment renewal and maintenance or technology reform by using their own funds, which needs to import commodities within the confines of the List of Import Commodities by Home Investment Projects Not to Be Exempt from Tax, and if the commodities are surely of the same kind of products whose capacities can not meet the demands, they shall be verified by the State Industrial department in charge of the said products, and shall have to produce from the same department Certificate for Importation of the Same Kind of Equipment Needed by Enterprises with Foreign Investment for Equipment Renewal or Technology Reform that Can Not Be Produced at Home (for the form, see Attachment 3). And Customs directly under the Customs General Administration shall handle the procedures for examination and approval for tax exemption for the equipment and technology forming a complete set imported, by the above mentioned testimony and Certificate for



Importation by Enterprises with Foreign Investment, of Renewal Equipment, Technology, Fittings and Spare Parts or Registration Certificate for Confirmation of Technology Reform Projects, and contracts, import license and other material related.

Article 2 Importation, within their total amount of investment, by research and development centres established by using foreign investment, of self-using equipment and technology, fittings and spare parts forming a complete set which can not be produced at home or their capacities can not meet the demands, shall be exempt from Customs duties and import tax in accordance with the Provisions of Circular of the State Council On the Adjustment of Taxation Policy On Imported Equipment (Guofa [1999] No. 37).

1. Those enjoying taxation incentives specified in this Article should meet the following conditions: (1) The enjoying units should be research institutions set up within the enterprises with foreign investment or separately established, specially engaged in the development of products or technology that are approved by the State Planning Commission, State Economic and Trade Commission, the Ministry of Foreign Trade and Economic Cooperation as well as the departments or bureaus of planning commissions, economic and trade commissions and foreign trade and economic cooperation of the various provinces, autonomous regions, municipalities directly under the Central Government and municipalities separately listed on the State plan; (2) The source of funds is confined within the total amount of investment; (3) Import commodities scope: self-using equipment can not be produced at home or their capacities can not meet the demands (referred to commodities outside the List of Import Commodities by Foreign Investment Projects Not to Be Exempt from Tax) and technology, fittings and spare parts forming complete set which do not constitute laboratories with production size or medium experiment norm, and do not include ships, airplanes, special types of vehicles and construction machinery.

2. Procedures to go through for levy and exemption from Tax: (1) Project confirmation paper to be produced: Project confirmation paper for research and development centres with foreign investment shall be produced, according to the examination and approval power over the above mentioned research institutions, and the provisions of sub-sections one and two, Paragraph 1 of this Article, by the State Planning Commission, the State Economic and Trade Commission, Ministry of Foreign Trade and Economic Cooperation and the departments or bureaus of planning commissions, economic and trade commissions and foreign trade and economic cooperation of the various provinces, autonomous regions, municipalities directly under the Central Government and municipalities separately listed on the State plan. The form and contents of the project confirmation paper are the same with those of Confirmation Papers for Home and Foreign Investment Projects Encouraged for Development by the State attached to Document ShuShui [1999] No. 1062. (2) Handling of the certificate for levy or exemption from tax: Customs directly under the General Administration of Customs in the places where the enterprises are located shall handle the certificate by the above mentioned projects for confirmation paper and the relevant material and on the analogy of the provisions of Document ShuShui [1999] No. 1062.

Article 3 For those projects conforming to the list of the advantageous industries and advantageous projects for utilizing foreign investment of the central and west provinces, autonomous regions and municipalities directly under the State Council (the list will separately be issued after approval by the State Council, same below), their import within their total amount of investment, of self-using equipment which can not be produced at home or their capacities can not meet the demands, and technology, fittings and spare parts forming a complete set, shall be exempt from import duties and import tax, except those prescribed in Document GuoFa [1999] No.37 entitled the List of Import Commodities by Foreign Investment Projects Not to Be Exempt from Tax. The relevant procedures shall be handled on the analogy of the regulations on foreign investment projects described in Document ShuShui [1999] No.1062.

Article 4 For those projects conforming to the list of the advantageous industries and advantageous projects for utilizing foreign investment in the central and west provinces, autonomous regions and municipalities directly under the State Council, the scope of commodities imported with their own funds outside their total amount of investment which enjoy preferential taxation policy and the procedures for tax exemption shall be handled on the analogy of the relevant provisions on the five categories of enterprises described in Article 1 of the present Circular.

Article 5 Where the goods imported with tax exemption in accordance with the regulations of this Circular are goods under the Customs' supervision and control, they shall not be sold and transferred freely by the enterprises themselves. Equipment replaced owing to equipment renewal

or technology reform, if continually to be used within the enterprises, shall be managed over according to the period for supervision and control by the Customs, and shall be exempt from additional tax payment in case the equipment is sold or transferred within the period for supervision and control to enterprises enjoying preferential taxation policy for imported equipment. In other cases, tax shall be levied according to the laws and regulations related.

Article 6 Customs directly under the General Administration of Customs where the enterprises are located should strengthen contact and coordination with the Customs where the goods are imported and should raise up working efficiency. Customs directly under the Customs General Administration should inform as soon as possible the Customs where the goods are imported for handling the procedures for check and approval of tax exemption after verifying without error the Certificate for Levy or Exemption from Tax for Imported Goods presented. In case the Customs where the enterprises are located are not the seating places of the Customs directly under the General Administration of Customs, applications can be accepted and examined by the Customs at lower level in the seating place, be reported to the Customs directly under the Customs General Administration for verification and for producing certificate for levy or exemption from tax. The General Administration of Customs will organize forces to supplement and readjust as soon as possible the Management System for Tax Reduction and Exemption and to computerize the management of this preferential taxation policy.

Article 7 This preferential taxation policy involves multi-departments and multi-policies, and the various Customs should learn and grasp in real earnest the spirit of the document, and should strictly carry it out and should not expand at their will tax exemption scope. The Customs should actively contact local governments and the responsible departments concerned to do well propaganda work.

Article 8 The present Circular shall be enforced from September 1, 1989, but the tax payment already collected shall not be returned. Those declared and imported after this date but without going through tax levy procedures, Customs clearance shall be made for them with tax exemption, and their securities already charged shall be returned to them. For any question and situation that may arise in implementation, please report in time to the Department for Customs Duties Collection and Control of the General Administration of Customs. Attachment 1: Certificate for Importation of Renewal Equipment, Technology, Fittings and Spare Parts by Enterprises with Foreign Investment (omitted) Attachment 2: Certificate Registered for Confirmation for Technology Reform Projects (omitted) Attachment 3: Certificate for Importation of the Same Kind of Equipment Needed by Enterprises with Foreign Investment for Equipment Renewal or Technology Reform that Can Not Be Produced at Home (omitted)

The Customs General Administration 1989-11-22

# WORLD TRADE ORGANIZATION

WT/DS390/1  
G/L/882  
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## CHINA - GRANTS, LOANS AND OTHER INCENTIVES

### Request for Consultations by Guatemala

The following communication, dated 19 January 2009, from the delegation of Guatemala to the delegation of China and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The Government of Guatemala hereby requests consultations with the Government of the People's Republic of China ("PRC") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Articles 4 and 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), and Article 19 of the *Agreement on Agriculture*, with regard to certain measures offering grants, loans, and other incentives to enterprises in China. As required by Article 4.2 of the SCM Agreement, a Statement of Available Evidence is attached to this request for consultations.

A. These grants, loans, and other incentives are reflected in the following measures, as well as in any amendments or any related or implementing measures:

I. The instruments below, that relate to the China World Top Brand Programme:

CWTB-1. *Circular on Carrying Out Evaluation of Products to Be Recognized as China World Top Brand*<sup>1</sup>;

CWTB-2. *Circular on Application of China World Top Brands in 2006*<sup>2</sup>;

CWTB-3. *Circular on Application of China World Top Brands in 2008*<sup>3</sup>;

CWTB-4. *Measures for the Administration of Chinese Name-Brand Products*<sup>4</sup>;

CWTB-5. *Notice Concerning the Issuing of Opinions on Promoting the Brand-Driven Strategy & Its Incentive Measures*<sup>5</sup>;

<sup>1</sup> GZJZ [2005] No. 95.

<sup>2</sup> ZJZH [2006] No. 11.

<sup>3</sup> ZJZH [2008] No. 23.

<sup>4</sup> AQSIQ Order No. 12 (29 December 2001).

<sup>5</sup> FFB [2007] No. 274.

- CWTB-6. *Notices Concerning Printing and Distributing the Implementation Regulation on Economic Development Fund Supporting Industrial Technology Progress in Futian District Shenzhen*<sup>6</sup>;
- CWTB-7. *Notices of Gansu Provincial People's Government Concerning Printing and Distributing Incentive Methods for Enterprises Entitled with Famous Brand Products in Gansu Province*<sup>7</sup>;
- CWTB-8. *Notice on Methods of Implementing Brand Praise and Incentive for Industrial Enterprises in Guangxi Zhuang Autonomous Region*<sup>8</sup>;
- CWTB-9. *Several Related Policies on Implementation of Guiyang's Science and Technology Development Planning During the "Eleventh Five-Year Plan" (2006-2010)*<sup>9</sup>;
- CWTB-10. *Opinions of the Party Committee and People's Government of Jinhua City on Promoting the Building of "Jinhua Brand"*<sup>10</sup>;
- CWTB-11. *Circular of Jiujiang Municipal People's Government on Adjusting and Enriching the Incentive Policy for Creating a City of Brand*<sup>11</sup>;
- CWTB-12. *Circular on Printing and Distributing the Method of Nanhai District, Foshan City for Supporting and Awarding Independent Innovation, Brand Drive and Enterprise IPO*<sup>12</sup>;
- CWTB-13. *Opinions of Nanping Municipal People's Government on Supporting Development of Key Industrial Enterprise*<sup>13</sup>;
- CWTB-14. *Opinions on Promoting Fast and Healthy Development of Characteristic Manufacturing Industry through Implementing Industrial Upgrading Projects*<sup>14</sup>;
- CWTB-15. *Circular of Sichuan Provincial People's Government on Printing and Distributing the "Opinions on Forcefully Pressing Ahead Industrial Brands Strategy in Sichuan"*<sup>15</sup>;
- CWTB-16. *Circular on Forwarding the Detailed Reward Rules for the Strategy of Drive with Top Brands in Suzhou City*<sup>16</sup>;
- CWTB-17. *Circular on Forwarding the Policy Measures for Pushing on the Strategy of Drive with Top Brands*<sup>17</sup>;

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<sup>6</sup> FBF [2007] No. 53.

<sup>7</sup> GZF [2007] No. 72.

<sup>8</sup> Gui Zheng Ban Fa [2007] No. 42.

<sup>9</sup> ZFF [2006] No. 51.

<sup>10</sup> SW [2006] No. 21.

<sup>11</sup> JZW [2007] No. 93.

<sup>12</sup> NF [2007] No. 128.

<sup>13</sup> Nan Zheng Zong [2007] No. 219.

<sup>14</sup> QWF [2007] No. 20.

<sup>15</sup> CFF [2007] No. 38.

<sup>16</sup> SFB [2005] No. 109.

<sup>17</sup> SFB [2005] No. 115.

- CWTB-18. *Notice Issued by the Office of Wenzhou Municipal Government for the Distribution of Quality & Branding Award Management Measures in Wenzhou*<sup>18</sup>;
- CWTB-19. *Opinions of Wuyi County Party Committee and People's Government on Further Encouraging and Promoting the Development of SMEs*<sup>19</sup>;
- CWTB-20. *Notices Concerning Printing and Distributing the Implementing Regulations Issued by the Bureau of Finance and the Economic Development Administration of Xiamen to Support the Development of High Quality Well-Known Products in Xiamen*<sup>20</sup>;
- CWTB-21. *Suggestions on Supporting Key Industrial Enterprises Issued by the People's Government of Yandu District, Yancheng City*<sup>21</sup>;
- CWTB-22. *Suggestions on Accelerating the Implementation of Brand Strategy*<sup>22</sup>;
- CWTB-23. *Circular on Ensuring Proper Use and Management of Guangdong Brand Development Fund*<sup>23</sup>;
- CWTB-24. *Notice of Issuing the Directive on Supporting the Development of Name Brands for Export*<sup>24</sup>.

II. The instruments below, that relate to the Chinese Famous Export Brand Programme:

- FXB-1. *Circular of the General Office of the State Bureau of Quality Supervision, Inspection and Quarantine for Issuing the "Measures for the Control of the Evaluation of Chinese Famous-Brand Products (for Trial Implementation)"*<sup>25</sup>;
- FXB-2. *Notice of General Office of Ministry of Commerce Concerning Recommending Candidates of "Chinese Export Famous Brands"*<sup>26</sup>;
- FXB-3. *Notice of Issuing the Directive on Supporting the Development of Name Brands for Export*<sup>27</sup>;
- FXB-4. *Circular of Changxing County People's Government on Further Promoting Foreign Trade Development*<sup>28</sup>;
- FXB-5. *Opinions of Deying County People's Government on Strengthening the Building of Advanced Manufacturing Bases*<sup>29</sup>;

<sup>18</sup> WZB [2006] No. 147.

<sup>19</sup> Available at: [http://www.zjwy.gov.cn/dzkw/wj\\_style.jsp?fileID=1312](http://www.zjwy.gov.cn/dzkw/wj_style.jsp?fileID=1312).

<sup>20</sup> Xiaocaiqi [2007] No. 21.

<sup>21</sup> DZF [2007] No. 102.

<sup>22</sup> ZZF [2007] No. 81.

<sup>23</sup> YCF [2007] No. 64.

<sup>24</sup> Shang Mao [2005] No. 124.

<sup>25</sup> Guozhijian [2001] No. 32.

<sup>26</sup> SBMH [2007] No. 25.

<sup>27</sup> Shang Mao [2005] No. 124.

<sup>28</sup> CZF [2005] No. 45.

- FXB-6. *Circular on Printing and Distributing the Policy Opinions for Accelerating Innovative Development of Industrial Economy*<sup>30</sup>;
- FXB-7. *Notice Concerning the Issuing of Opinions on Promoting the Brand-Driven Strategy & Its Incentive Measures*<sup>31</sup>;
- FXB-8. *Circular on Printing and Distributing the "Provisional Regulation on the Use of Fujian Export Brand Development Fund"*<sup>32</sup>;
- FXB-9. *Circular of the Foreign Trade and Economic Cooperation Department of Fujian Province on Recommending Candidate Enterprise for the 2008-2009 "Famous Export Brands the Foreign Trade and Economic Cooperation Department of Fujian Province Mainly Cultivates and Develops [Foreign Trade and Economic Cooperation Department of Fujian Province]"*<sup>33</sup>;
- FXB-10. *Circular on Printing and Distributing the Opinions on Recognizing "Famous Export Brands the Foreign Trade and Economic Cooperation Department of Guangdong Province Mainly Cultivates and Develops"*<sup>34</sup>;
- FXB-11. *Suggestions on the "Export Brands Particularly Cultivated and Developed by the Department of Foreign Trade and Economic Cooperation Department of Guangdong Province" (Revised Edition)*<sup>35</sup>;
- FXB-12. *Notices Concerning Alternative Name List Supplementary to the Export Brands Particularly Cultivated and Developed by the Department of Foreign Trade and Economic Cooperation of Guangdong Province*<sup>36</sup>;
- FXB-13. *Circular on Ensuring Proper Use and Management of Guangdong Brand Development Fund*<sup>37</sup>;
- FXB-14. *Notice Regarding Support Policies to Promote the Development of Our City's Foreign Trade and Economic Cooperation for 2005*<sup>38</sup>;
- FXB-15. *Notice of the Administrative Office of the Hangzhou Municipal People's Government on Revision of the Evaluation and Selection Requirements and Award Measures for the "Golden Dragon Awards" in Hangzhou's Foreign Trade Export*<sup>39</sup>;

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<sup>29</sup> DZF [2008] No. 29.

<sup>30</sup> CZF [2007] No. 54.

<sup>31</sup> FFB [2007] No. 274.

<sup>32</sup> MCW [2007] No. 17.

<sup>33</sup> MWJMF [2008] No. 31.

<sup>34</sup> YWJMJJ [2007] No. 1.

<sup>35</sup> Available at: <http://www.gddoftec.gov.cn/jsmyc/main/shownews.asp?newsid=299&channelid=16>.

<sup>36</sup> YWJMJJH [2008] 31.

<sup>37</sup> YCF [2007] No. 64.

<sup>38</sup> Hang Wai Jing Mao Ji Cai [2005] No. 225; Hang Cai Qi Er [2005] No. 602.

<sup>39</sup> Hang Zheng Ban [2007] No. 47.

- FXB-16. *Directives of the Administrative Office of the Hangzhou Municipal People's Government on Promoting the Development of Independent Export Brands*<sup>40</sup>;
- FXB-17. *Circular of the Provincial Department of Commerce, Development and Reform Commission, Economic Commission, Department of Finance, Department of Science and Technology, Bureau of State Tax, Administration for Industry and Commerce, Bureau of Quality and Technical Supervision, and Entry-Exit Inspection and Quarantine Bureau of Heilongjiang Province and Harbin Customs on Printing and Distributing the "Guiding Opinions of Heilongjiang Province on Supporting the Development of Famous Export Brands"*<sup>41</sup>;
- FXB-18. *Circular on Printing and Distributing the Newly Revised "Method for Selection of Henan Famous Export Brands"*<sup>42</sup>;
- FXB-19. *Guiding Opinions on Supporting the Development of Henan (Famous) Export Brands in the "11th Five-Year Plan" Period*<sup>43</sup>;
- FXB-20. *Notice Regarding Selection of 2007-2008 "Jiangsu Province Export Brands for Focused Cultivation and Development"*<sup>44</sup>;
- FXB-21. *Opinion on Promoting Better and Quicker Development of Private Economy*<sup>45</sup>;
- FXB-22. *Opinion of the Party Committee and People's Government of Jinhua City on Promoting the Building of "Jinhua Brand"*<sup>46</sup>;
- FXB-23. *Opinions of Jindong District Party Committee and People's Government of Jinhua City on Accelerating Industrial and Export-Oriented Economic Development*<sup>47</sup>;
- FXB-24. *Circular of Jiujiang Municipal People's Government on Adjusting and Enriching the Incentive Policy for Creating a City of Brand*<sup>48</sup>;
- FXB-25. *Circular on Printing and Distributing the Method of Nanhai District, Foshan City for Supporting and Awarding Independent Innovation, Brand Drive and Enterprise IPO*<sup>49</sup>;
- FXB-26. *Notice of the Department of Commerce and Department of Finance of Ningxia Hui Autonomous Region on Printing and Issuing the Administrative Measures of Ningxia Hui Autonomous Region for the Awarding and Promoting of Brand Export Commodities*<sup>50</sup>;

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<sup>40</sup> Hang Zheng Ban [2007] No. 10.

<sup>41</sup> Hei Shang Lian Fa [2006] No. 1.

<sup>42</sup> Yu Shang Mao [2008] No. 1.

<sup>43</sup> Yushangmao [2006] No. 13.

<sup>44</sup> Suwaijingmaomao 2007 No. 122.

<sup>45</sup> JZF [2007] No. 113.

<sup>46</sup> SW [2006] No. 21.

<sup>47</sup> Available at: [http://zsj.jindong.gov.cn/news/ZCFG\\_9214/200811431343.html](http://zsj.jindong.gov.cn/news/ZCFG_9214/200811431343.html).

<sup>48</sup> JZW [2007] No. 93.

<sup>49</sup> NF [2007] No. 128.

<sup>50</sup> Ning Shang (Gui Cai) FA [2006] No. 159.

- FXB-27. *Notice of the People's Government of Quanzhou Fengze District on Issuing Regulations Concerning the Support to Key Enterprises*<sup>51</sup>;
- FXB-28. *Opinion on Promoting Fast and Healthy Development of Characteristic Manufacturing Industry through Implementing Industrial Upgrading Projects*<sup>52</sup>;
- FXB-29. *Notice on Printing and Distribution of 2006 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong*<sup>53</sup>;
- FXB-30. *Opinions of Shaoxing Municipal People's Government on Further Encouraging the Development of Open Economy in Urban Areas*<sup>54</sup>;
- FXB-31. *Circular of Sichuan Provincial People's Government on Printing and Distributing the "Opinions on Forcefully Pressing Ahead Industrial Brands Strategy in Sichuan"*<sup>55</sup>;
- FXB-32. *Circular on Forwarding the Detailed Reward Rules for the Strategy of Drive with Top Brands in Suzhou City*<sup>56</sup>;
- FXB-33. *Circular on Forwarding the Policy Measures for Pushing on the Strategy of Drive with Top Brands*<sup>57</sup>;
- FXB-34. *Circular on Forwarding the Opinions of Foreign Trade Office of Tianjin Municipal Government on Accelerating Development of Proprietary Export Brands of Tianjin City*<sup>58</sup>;
- FXB-35. *Circular of Wuxing District People's Government of Huzhou City on Further Encouraging Foreign Trade Development*<sup>59</sup>;
- FXB-36. *Opinion of Wuyi County Party Committee and People's Government on Further Encouraging and Promoting the Development of SMEs*<sup>60</sup>;
- FXB-37. *Measures for Managing Xiamen's Key Export Enterprise Assistance Fund*<sup>61</sup>;
- FXB-38. *Notice from the Xiamen Trade Development Bureau and the Xiamen Finance Bureau on the publishing of Measures for Managing Xiamen's Key Export Enterprise Assistance Fund Implementation Plan*<sup>62</sup>;

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<sup>51</sup> Quanfengzhengzong [2008] No. 22.

<sup>52</sup> QWF [2007] No. 20.

<sup>53</sup> LCQ [2006] No. 5.

<sup>54</sup> SZF [2007] No. 66.

<sup>55</sup> CFF [2007] No. 38.

<sup>56</sup> SFB [2005] No. 109.

<sup>57</sup> SFB [2005] No. 115.

<sup>58</sup> JZF [2007] No. 005.

<sup>59</sup> WZF [2005] No. 9.

<sup>60</sup> Available at: [http://www.zjwy.gov.cn/dzkw/wj\\_style.jsp?fileID=1312](http://www.zjwy.gov.cn/dzkw/wj_style.jsp?fileID=1312).

<sup>61</sup> Xia Fu Ban [2006] No. 117.

<sup>62</sup> Xiamen Trade Development Gui Cai [2006] No. 268.



- FXB-39. *CPC Committee of Yinzhou District, Ningbo City People's Government of Yinzhou District, Ningbo City Opinions on Promoting Economic Development of Yinzhou District*<sup>63</sup>;
- FXB-40. *Notices on Publication of Interim Procedures on Management of Zhejiang Province Export Brands Fund*<sup>64</sup>;
- FXB-41. *Notice Concerning Relevant Policies on Promotion of Foreign Trade & Economic Development in 2005*<sup>65</sup>;
- FXB-42. *Suggestions on Accelerating the Implementation of Brand Strategy*<sup>66</sup>;
- FXB-43. *Notice Issued by the Office of Wenzhou Municipal Government for the Distribution of Quality & Branding Award Management Measures in Wenzhou*<sup>67</sup>;
- FXB-44. *Opinions on Accelerating Open Economy of Organizations Directly Under Municipal Government*<sup>68</sup>;
- FXB-45. *Opinion of Nanping Municipal People's Government on Supporting Development of Key Industrial Enterprises*<sup>69</sup>;
- FXB-46. *Circular on Printing and Distributing the Interim Measures of Yangzhou City for Administration of the Incentive Fund for Famous-brand Export Products*<sup>70</sup>;
- FXB-47. *Implementing Rules of Support Policies for Patented Brands of Service Outsourcing Companies by Zhabei District*<sup>71</sup>;
- FXB-48. *Notices for Evaluation and Rewards of 2008-2009 Export Brand Particularly Cultivated and Developed in Heilongjiang*<sup>72</sup>;
- FXB-49. *Measures for the Administration of Famous-Brand (Industrial) Products of Guangdong Province*<sup>73</sup>;
- FXB-50. *Measures for the Administration of Famous-Brand (Agricultural) Products of Guangdong Province*<sup>74</sup>;

<sup>63</sup> YYD [2008] No. 1.

<sup>64</sup> ZCQZ [2006] No. 207.

<sup>65</sup> ZCQZ [2005] No. 145.

<sup>66</sup> ZZJ [2007] No. 81.

<sup>67</sup> WZB [2006] No. 147.

<sup>68</sup> LZJ [2004] No. 38.

<sup>69</sup> Nan Zheng Zong [2007] No. 219.

<sup>70</sup> YCQ [2007] No. 23; YWJMM [2007] No. 008.

<sup>71</sup> Economic Commission of Zhabei District, Shanghai (June 2007) available at: <http://www.shiso.gov.cn/Policy/ZBPolicydetail.aspx?id=77>.

<sup>72</sup> HSMF [2008] No. 37.

<sup>73</sup> Available at: <http://www.lawinfochina.com/law/display.asp?db=1&id=2737&keyword=famous%20brand%20guangdong>.

<sup>74</sup> Available at: <http://www.lawinfochina.com/law/display.asp?db=1&id=2768&keyword=famous%20brand%20guangdong>.

- FXB-51. *Circular of Ministry of Commerce, China Export & Credit Insurance Corporation Concerning Utilizing Export Credit Insurance to Support the Development of Name Brand Export.*<sup>75</sup>

III. The instruments below:

- L-1. *Notice Regarding Support Policies to Promote the Development of Our City's Foreign Trade and Economic Cooperation for 2005*<sup>76</sup>;
- L-2. *Opinions of Jindong District Party Committee and People's Government of Jinhua City on Accelerating Industrial and Export-Oriented Economic Development*<sup>77</sup>;
- L-3. *Opinions of Shaoxing Municipal People's Government on Further Encouraging the Development of Open Economy in Urban Areas*<sup>78</sup>;
- L-4. *Notice Concerning Relevant Policies on Promotion of Foreign Trade & Economic Development in 2005*<sup>79</sup>;
- L-5. *Circular of the Provincial Department of Commerce, Development and Reform Commission, Economic Commission, Department of Finance, Department of Science and Technology, Bureau of State Tax, Administration for Industry and Commerce, Bureau of Quality and Technical Supervision, and Entry-Exit Inspection and Quarantine Bureau of Heilongjiang Province and Harbin Customs on Printing and Distributing the "Guiding Opinions of Heilongjiang Province on Supporting the Development of Famous Export Brands"*<sup>80</sup>;
- L-6. *Opinions on Accelerating Open Economy of Organizations Directly Under Municipal Government*<sup>81</sup>;
- L-7. *Circular of Nanchang Municipal People's Government on Printing and Distributing the Interim Measures for Administration of Nanchang Foreign Trade Development Fund*<sup>82</sup>;
- L-8. *Trial Opinions of Jiangdong District, Ningbo City on Promoting Steady Foreign Trade Development*<sup>83</sup>;
- L-9. *Opinions of Jiangdong District, Ningbo City on Promoting Steady Foreign Trade Development*<sup>84</sup>;

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<sup>75</sup> Shang Mao Fa [2005] No. 332.

<sup>76</sup> Hang Wai Jing Mao Ji Cai [2005] No. 225; Hang Cai Qi Er [2005] No. 602.

<sup>77</sup> Available at: [http://zsj.jindong.gov.cn/news/ZCFG\\_9214/200811431343.html](http://zsj.jindong.gov.cn/news/ZCFG_9214/200811431343.html).

<sup>78</sup> SZF [2007] No. 66.

<sup>79</sup> ZCQZ [2005] No. 145.

<sup>80</sup> Hei Shang Lian Fa [2006] No. 1.

<sup>81</sup> LZJ [2004] No. 38.

<sup>82</sup> Hong Fu Fa [2007] No. 31.

<sup>83</sup> DZF [2004] No. 13.

<sup>84</sup> Dong Zheng Fa [2005] No. 25.

- L-10. *2005 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong*<sup>85</sup>;
- L-11. *Notice on Printing and Distribution of 2006 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong*<sup>86</sup>;
- L-12. *Notice on Printing and Distribution of 2003 Policies for Encouraging and Expanding Foreign Trade Export to Shandong*<sup>87</sup>;
- L-13. *2004 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong*<sup>88</sup>;
- L-14. *Circular of Wuxing District People's Government on Further Encouraging the Development of Open Economy in Urban Areas*<sup>89</sup>;
- L-15. *Measures for Managing Xiamen's Key Export Enterprise Assistance Fund*<sup>90</sup>;
- L-16. *Notice from the Xiamen Trade Development Bureau and the Xiamen Finance Bureau on the publishing of Measures for Managing Xiamen's Key Export Enterprise Assistance Fund Implementation Plan*<sup>91</sup>;
- L-17. *Opinions on Further Accelerating the Development of Open Economy*<sup>92</sup>;
- L-18. *CPC Committee of Yinzhou District, Ningbo City People's Government of Yinzhou District, Ningbo City Opinions on Promoting Economic Development of Yinzhou District*<sup>93</sup>;
- L-19. *Notices on Publication of Interim Procedures on Management of Zhejiang Province Export Brands Fund*<sup>94</sup>;
- L-20. *Circular on Changxing County People's Government on Further Promoting Foreign Trade Development*<sup>95</sup>;
- L-21. *Notices Concerning Printing and Distributing the Implementation Regulation on Economic Development Fund Supporting Industrial Technology Progress in Futian District Shenzhen*<sup>96</sup>;
- L-22. *Notice Issued by the Office of Wenzhou Municipal Government for the Distribution of Quality & Branding Award Management Measures in Wenzhou*<sup>97</sup>;

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<sup>85</sup> Available at: <http://shandong.mofcom.gov.cn/aarticle/sjtongzhigg/200502/20050200018389.html>.

<sup>86</sup> LCQ [2006] No. 5.

<sup>87</sup> LWJMCZ [2003] No. 180.

<sup>88</sup> LWJMCZ [2003] No. 1037.

<sup>89</sup> SZF [2005] No. 9.

<sup>90</sup> Xia Fu Ban [2006] No. 117.

<sup>91</sup> Xiamen Trade Development Gui Cai [2006] No. 268.

<sup>92</sup> XZF [2007] No. 1.

<sup>93</sup> YYD [2008] No. 1.

<sup>94</sup> ZCQZ [2006] No. 207.

<sup>95</sup> CZF [2005] No. 45.

<sup>96</sup> FBF [2007] No. 53.

- L-23. *Notice of the Administrative Office of the Hangzhou Municipal People's Government on Revision of the Evaluation and Selection Requirements and Award Measures for the "Golden Dragon Awards" in Hangzhou's Foreign Trade Export*<sup>97</sup>;
- L-24. *Directives of the Administrative Office of the Hangzhou Municipal People's Government on Promoting the Development of Independent Export Brands*<sup>98</sup>;
- L-25. *Notice of the People's Government of Quanzhou Fengze District on Issuing Regulations Concerning the Support to Key Enterprises*<sup>100</sup>;
- L-26. *Notice on Recommending of Alternative Name List for 2005-2006 "Export Brand Merchandise in Shanghai"*<sup>101</sup>;
- L-27. *Implementing Rules of Support Policies for Patented Brands of Service Outsourcing Companies by Zhabei District*<sup>102</sup>;
- L-28. *Notice of Shanghai Municipal Commission of Foreign Trade and Economic Cooperation for Carrying out Confirmation of 2007-2008 "Export Brands in Shanghai"*<sup>103</sup>;
- L-29. *Measures on Promoting the Development of the City Open Economy in 2006*<sup>104</sup>;
- L-30. *Notices for Evaluation and Rewards of 2008-2009 Export Brand Particularly Cultivated and Developed in Heilongjiang*<sup>105</sup>;
- L-31. *Notice Regarding Support Policies to Promote the Development of Our City's Foreign Trade and Economic Cooperation for 2005*<sup>106</sup>;
- L-32. *Notice Regarding Selection of 2007-2008 "Jiangsu Province Export Brands for Focused Cultivation and Development"*<sup>107</sup>.

B. The measures listed in Section A above appear to provide enterprises in China with grants, loans, and other incentives that are contingent upon export performance. Accordingly, the measures appear to be inconsistent with Article 3 of the SCM Agreement. Additionally, to the extent that these measures provide subsidies for agricultural products, they appear to be inconsistent with Articles 3, 8, 9, and 10 of the Agreement on Agriculture. The measures also appear to be inconsistent with the China's obligations under paragraph 12.1 of Part I of its Accession Protocol<sup>108</sup>, as well as

<sup>97</sup> WZB [2006] No. 147.

<sup>98</sup> Hang Zheng Ban [2007] No. 47.

<sup>99</sup> Hang Zheng Ban [2007] No. 10.

<sup>100</sup> Quanfengzhengzong [2008] No. 22.

<sup>101</sup> HJMMC [2005] No. 143.

<sup>102</sup> Economic Commission of Zhabei District, Shanghai (June 2007) available at: <http://www.shiso.gov.cn/Policy/ZBPolicydetail.aspx?id=77>.

<sup>103</sup> Available at: <http://www.1128.org/html/dzzw/ggl/2008/08/doc45735.shtml>.

<sup>104</sup> Available at: [http://www.zh.gov.cn/English/Investment/Policy/200802/t20080218\\_19097.htm](http://www.zh.gov.cn/English/Investment/Policy/200802/t20080218_19097.htm).

<sup>105</sup> HSMF [2008] No. 37.

<sup>106</sup> Hang Wai Jing Mao Ji Cai [2005] No. 225; Hang Cai Qi Er [2005] No. 602.

<sup>107</sup> Suwaijingmaomao 2007 No. 122.

<sup>108</sup> WT/L432.

paragraph 1.2 of Part I of its Accession Protocol (to the extent that it incorporates paragraph 234 of the Report of the Working Party on the Accession of China)<sup>109</sup>, which forms part of the terms of accession agreed between the China and the WTO and is an integral part of the Marrakesh Agreement Establishing the World Trade Organization. Finally, the grants, loans, and other incentives appear to be inconsistent with Article III:4 of the GATT 1994 to the extent that the measures benefit products of Chinese origin but not imported products.

Guatemala looks forward to receiving your reply to the present request. I propose that a mutually convenient date and venue for these consultations be agreed between our two Missions.

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<sup>109</sup> WT/MIN(01)/3.

**Statement of Available Evidence**  
**Pursuant to Article 4.2 of the SCM Agreement**

This statement of available evidence relates to the nature and existence of the subsidies in question. The grants, loans and other incentives of concern are reflected in the following measures, as well as in any amendments or any related or implementing measures. The grants, loans and other incentives of concern are those that appear to have the character of prohibited subsidies as they are contingent upon export performance.

1. *Circular of the General Office of the State Bureau of Quality Supervision, Inspection and Quarantine for Issuing the "Measures for the Control of Evaluation of Chinese Famous-Brand Products (for Trial Implementation)"*<sup>110</sup>;
2. *Circular on Carrying Out Evaluation of Products to Be Recognized as China World Top Brand*<sup>111</sup>;
3. *Circular on Application of China World Top Brands in 2006*<sup>112</sup>;
4. *Circular on Application of China World Top Brands in 2008*<sup>113</sup>;
5. *Measures for the Administration of Chinese Name-Brand Products*<sup>114</sup>;
6. *Product Quality Law of the People's Republic of China*<sup>115</sup>;
7. *Decision of the State Council Concerning Several Issues on Further Strengthening Product Quality Work*<sup>116</sup>;
8. *Notice Concerning the Issuing of Opinions on Promoting the Brand-Driven Strategy & Its Incentive Measures*<sup>117</sup>;
9. *Notice Concerning Printing and Distributing the Implementation Regulation on Economic Development Fund Supporting Industrial Technology Progress in Futian District Shenzhen*<sup>118</sup>;
10. *Notice of Gansu Provincial People's Government Concerning Printing and Distributing Incentive Methods for Enterprises Entitled with Famous Brand Products in Gansu Province*<sup>119</sup>;
11. *Notice on Methods of Implementing Brand Praise and Incentive for Industrial Enterprises in Guangxi Zhuang Autonomous Region*<sup>120</sup>;

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<sup>110</sup> Guozhijian [2001] No. 32.

<sup>111</sup> GZJZ [2005] No. 95.

<sup>112</sup> ZJZH [2006] No. 11.

<sup>113</sup> ZJZH [2008] No. 23.

<sup>114</sup> AQSIQ Order No. 12 (29 December 2001).

<sup>115</sup> Adopted at the 30th Meeting of the Standing Committee of the Seventh National People's Congress on 22 February 1993.

<sup>116</sup> Issued by Document Guofa No. 24 [1999] of the State Council on 25 December 1999.

<sup>117</sup> FFB [2007] No. 274.

<sup>118</sup> FBF [2007] No. 53.

<sup>119</sup> GZF [2007] No. 72.

<sup>120</sup> Gui Zheng Ban Fa [2007] No. 42.

12. *Several Related Policies on Implementation of Guiyang's Science and Technology Development Planning During the "Eleventh Five-Year Plan" (2006-2010)*<sup>121</sup>;

13. *Opinions of the Party Committee and People's Government of Jinhua City on Promoting the Building of "Jinhua Brand"*<sup>122</sup>;

14. *Circular on Jiujiang Municipal People's Government on Adjusting and Enriching the Incentive Policy for Creating a City of Brand*<sup>123</sup>;

15. *Circular on Printing and Distributing the Method of Nanhai District, Foshan City for Supporting and Awarding Independent Innovation, Brand Drive and Enterprise IPO (NF [2007] No 128)*;

16. *Opinions of Nanping Municipal People's Government on Supporting Development of Key Industrial Enterprise*<sup>124</sup>;

17. *Opinions on Promoting Fast and Healthy Development of Characteristic Manufacturing Industry through Implementing Industrial Upgrading Projects*<sup>125</sup>;

18. *Circular of Sichuan Provincial People's Government on Printing and Distributing the "Opinions on Forcefully Pressing Ahead Industrial Brands Strategy in Sichuan"*<sup>126</sup>;

19. *Circular on Forwarding the Detailed Reward Rules for the Strategy of Drive with Top Brands in Suzhou City*<sup>127</sup>;

20. *Circular on Forwarding the Policy Measures for Pushing on the Strategy of Drive with Top Brands*<sup>128</sup>;

21. *Notice Issued by the Office of Wenzhou Municipal Government for the Distribution of Quality & Branding Award Management Measures in Wenzhou*<sup>129</sup>;

22. *Opinions of Wuyi County Party Committee and People's Government on Further Encouraging and Promoting the Development of SMEs*<sup>130</sup>;

23. *Notice Concerning Printing and Distributing the Implementing Regulations Issued by the Bureau of Finance and the Economic Development Administration of Xiamen to Support the Development of High Quality Well-Known Products in Xiamen*<sup>131</sup>;

24. *Suggestions on Supporting Key Industrial Enterprises Issued by the People's Government of Yandu District, Yancheng City*<sup>132</sup>;

<sup>121</sup> ZFF [2006] No. 51.

<sup>122</sup> SW [2006] No. 21.

<sup>123</sup> JZW [2007] No. 93.

<sup>124</sup> Nan Zheng Zong [2007] No. 219.

<sup>125</sup> QWF [2007] No. 20.

<sup>126</sup> CFF [2007] No. 38.

<sup>127</sup> SFB [2005] No. 109.

<sup>128</sup> SFB [2005] No. 115.

<sup>129</sup> WZB [2006] No. 147.

<sup>130</sup> Available at: [http://www.zjwy.gov.cn/dzww/wj\\_style.jsp?fileID=1312](http://www.zjwy.gov.cn/dzww/wj_style.jsp?fileID=1312).

<sup>131</sup> Xiacaiqui [2007] No. 21.

<sup>132</sup> DZF [2007] No. 102.

25. *Suggestions on Accelerating the Implementation of Brand Strategy*<sup>133</sup>;
26. *Circular on Ensuring Proper Use and Management of Guangdong Brand Development Fund*<sup>134</sup>;
27. *Notice of Issuing the Directive on Supporting the Development of Name Brands for Export*<sup>135</sup>;
28. *Notice of General Office of Ministry of Commerce Concerning Recommending Candidates of "Chinese Export Famous Brands"*<sup>136</sup>;
29. *Circular of Changxing County People's Government on Further Promoting Foreign Trade Development*<sup>137</sup>;
30. *Opinions of Deqing County People's Government on Strengthening the Building of Advanced Manufacturing Bases*<sup>138</sup>;
31. *Circular on Printing and Distributing the Policy Opinions for Accelerating Innovative Development of Industrial Economy*<sup>139</sup>;
32. *Circular on Printing and Distributing the "Provisional Regulation on the Use of Fujian Export Brand Development Fund"*<sup>140</sup>;
33. *Circular of the Foreign Trade and Economic Cooperation Department of Fujian Province on Recommending Candidate Enterprise for the 2008-2009 "Famous Export Brands the Foreign Trade and Economic Cooperation Department of Fujian Province Mainly Cultivates and Develops"*<sup>141</sup>;
34. *Circular on Printing and Distributing the Opinions on Recognizing "Famous Export Brands the Foreign Trade and Economic Cooperation Department of Guangdong Province Mainly Cultivates and Develops"*<sup>142</sup>;
35. *Suggestions on the "Export Brands Particularly Cultivated and Developed by the Department of Foreign Trade and Economic Cooperation Department of Guangdong Province" (Revised edition)*<sup>143</sup>;
36. *Notice Concerning Alternative Name List Supplementary to the Export Brands Particularly Cultivated and Developed by the Department of Foreign Trade and Economic Cooperation of Guangdong Province*<sup>144</sup>;

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<sup>133</sup> ZZF [2007] No. 81.

<sup>134</sup> YCF [2007] No. 64.

<sup>135</sup> Shang Mao [2005] No. 124.

<sup>136</sup> SBMH [2007] No. 25.

<sup>137</sup> CZF [2005] No. 45.

<sup>138</sup> DZF [2008] No. 29.

<sup>139</sup> CZF [2007] No. 54.

<sup>140</sup> MCW [2007] No. 17.

<sup>141</sup> MWJMF [2008] No. 31.

<sup>142</sup> YWJMJJ. [2007] No. 1.

<sup>143</sup> Available at: <http://www.gdoftec.gov.cn/jsmyc/main/shownews.asp?newsid=299&channelid=16>.

<sup>144</sup> YWJMJJH [2008] 31.



37. *Notice Regarding Support Policies to Promote the Development of Our City's Foreign Trade and Economic Cooperation for 2005*<sup>145</sup>;

38. *Notice of the Administrative Office of the Hangzhou Municipal People's Government on Revision of the Evaluation and Selection Requirements and Award Measures for the "Golden Dragon Awards" in Hangzhou's Foreign Trade Export*<sup>146</sup>;

39. *Directives of the Administrative Office of the Hangzhou Municipal People's Government on Promoting the Development of Independent Export Brands*<sup>147</sup>;

40. *Circular of the Provincial Department of Commerce, Development and Reform Commission, Economic Commission, Department of Finance, Department of Science and Technology, Bureau of State Tax, Administration for Industry and Commerce, Bureau of Quality and Technical Supervision, and Entry-Exit Inspection and Quarantine Bureau of Heilongjiang Province and Harbin Customs on Printing and Distributing the "Guiding Opinions of Heilongjiang Province on Supporting the Development of Famous Export Brands"*<sup>148</sup>;

41. *Circular on Printing and Distribution the Newly Revised "Method for Selection of Henan Famous Export Brands"*<sup>149</sup>;

42. *Guiding Opinions on Supporting the Development of Henan (Famous) Export Brands in the "11th Five-Year Plan" Period*<sup>150</sup>;

43. *Circular on Carrying Out Survey on the Brand Building Status of the Enterprises with Provincial Famous Export Brands*<sup>151</sup>;

44. *Notice Regarding Selection of 2007-2008 "Jiangsu Province Export Brands for Focused Cultivation and Development"*<sup>152</sup>;

45. *Opinions on Promoting Better and Quicker Development of Private Economy*<sup>153</sup>;

46. *Opinions of Jindong District Party Committee and People's Government of Jinhua City on Accelerating Industrial and Export-Oriented Economic Development*<sup>154</sup>;

47. *Status for the Support and Cultivation of Famous Export Brands in Jiangxi Province*<sup>155</sup>;

48. *Notice of the Department of Commerce and Department of Finance of Ningxia Hui Autonomous Region on Printing and Issuing the Administrative Measures of Ningxia Hui Autonomous Region for the Awarding and Promoting of Brand Export Commodities*<sup>156</sup>;

<sup>145</sup> Hang Wai Jing Mao Ji Cai [2005] No. 225; Hang Cai Qi Er [2005] No. 602.

<sup>146</sup> Hang Zheng Ban [2007] No. 47.

<sup>147</sup> Hang Zheng Ban [2007] No. 10.

<sup>148</sup> Hei Shang Lian Fa [2006] No. 1.

<sup>149</sup> Yu Shang Mao [2008] No. 1.

<sup>150</sup> Yushangmao [2006] No. 13.

<sup>151</sup> Available at: [http://www.yzwjm.gov.cn/Article\\_Show.asp?ArticleID=1329](http://www.yzwjm.gov.cn/Article_Show.asp?ArticleID=1329).

<sup>152</sup> Suwajingmao 2007 No. 122.

<sup>153</sup> JZF [2007] No. 113.

<sup>154</sup> Available at: [http://zsj.jindong.gov.cn/news/ZCFG\\_9214/200811431343.html](http://zsj.jindong.gov.cn/news/ZCFG_9214/200811431343.html).

<sup>155</sup> Special Commissioner's Office in Shanghai (19-04-2007).

<sup>156</sup> Ning Shang (Gui Cai) FA [2006] No. 159.

49. *Notice of the People's Government of Quanzhou Fengze District on Issuing Regulations Concerning the Support to Key Enterprises*<sup>157</sup>;
50. *Notice on Printing and Distribution of 2006 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong*<sup>158</sup>;
51. *Opinions of Shaoxing Municipal People's Government on Further Encouraging the Development of Open Economy in Urban Areas*<sup>159</sup>;
52. *Circular on Forwarding the Opinions of Foreign Trade Office of Tianjin Municipal Government on Accelerating Development of Proprietary Export Brands of Tianjin City*<sup>160</sup>;
53. *Circular of Wuxing District People's Government of Huzhou City on Further Encouraging Foreign Trade Development*<sup>161</sup>;
54. *Measures for Managing Xiamen's Key Export Enterprise Assistance Fund*<sup>162</sup>;
55. *Notice from the Xiamen Trade Development Bureau and the Xiamen Finance Bureau on the publishing of Measures for Managing Xiamen's Key Export Enterprise Assistance Fund Implementation Plan*<sup>163</sup>;
56. *CPC Committee of Yinzhou District, Ningbo City People's Government of Yinzhou District, Ningbo City Opinions on Promoting Economic Development of Yinzhou District*<sup>164</sup>;
57. *Notice on Publication of Interim Procedures on Management of Zhejiang Province Export Brands Fund*<sup>165</sup>;
58. *Notice Concerning Relevant Policies on Promotion of Foreign Trade & Economic Development in 2005*<sup>166</sup>;
59. *Opinions on Accelerating Open Economy of Organizations Directly Under Municipal Government*<sup>167</sup>;
60. *Circular of Nanchang Municipal People's Government on Printing and Distributing the Interim Measures for Administration of Nanchang Foreign Trade Development Fund*<sup>168</sup>;
61. *Trial Opinions of Jiangdong District, Ningbo City on Promoting Steady Foreign Trade Development*<sup>169</sup>;

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<sup>157</sup> Quanfengzhengzong [2008] No. 22.

<sup>158</sup> LCQ [2006] No. 5.

<sup>159</sup> SZF [2007] No. 66.

<sup>160</sup> JZF [2007] No. 005.

<sup>161</sup> WZF [2005] No. 9.

<sup>162</sup> Xia Fu Ban [2006] No. 117.

<sup>163</sup> Xiamen Trade Development Gui Cai [2006] No. 268.

<sup>164</sup> YYD [2008] No. 1.

<sup>165</sup> ZCQZ [2006] No. 207.

<sup>166</sup> ZCQZ [2005] No. 145.

<sup>167</sup> LZJ [2004] No. 38.

<sup>168</sup> Hong Fu Fa [2007] No. 31.

<sup>169</sup> DZF [2004] No. 13.

62. *Opinions of Jiangdong District, Ningbo City on Promoting Steady Foreign Trade Development*<sup>170</sup>;
63. *2005 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong*<sup>171</sup>;
64. *Notice on Printing and Distribution of 2003 Policies for Encouraging and Expanding Foreign Trade Export to Shandong*<sup>172</sup>;
65. *2004 Policies for Encouraging the Development of Foreign Trade & Economic Cooperation in Shandong*<sup>173</sup>;
66. *Opinions on Further Accelerating the Development of Open Economy*<sup>174</sup>;
67. *Circular on Changxing County People's Government on Further Promoting Foreign Trade Development*<sup>175</sup>;
68. *Circular on Printing and Distributing the Interim Measures of Yangzhou City for Administration of the Incentive Fund for Famous-brand Export Products*<sup>176</sup>;
69. *Notice on Recommending of Alternative Name List for 2005-2006 "Export Brand Merchandise in Shanghai"*<sup>177</sup>;
70. *Implementing Rules of Support Policies for Patented Brands of Service Outsourcing Companies by Zhabei District*<sup>178</sup>;
71. *Measures for the Administration of Famous-Brand (Industrial) Products of Guangdong Province*<sup>179</sup>;
72. *Measures for the Administration of Famous-Brand (Agricultural) Products of Guangdong Province*<sup>180</sup>;
73. *Notice of Shanghai Municipal Commission of Foreign Trade and Economic Cooperation for Carrying out Confirmation of 2007-2008 "Export Brands in Shanghai"*<sup>181</sup>;
74. *Measures on Promoting the Development of the City Open Economy in 2006*<sup>182</sup>;

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<sup>170</sup> Dong Zheng Fa [2005] No. 25.

<sup>171</sup> Available at: <http://shandong.mofcom.gov.cn/aarticle/sjtongzhigg/200502/20050200018389.html>.

<sup>172</sup> LWJMCZ [2003] No. 180.

<sup>173</sup> LWJMCZ [2003] No. 1037.

<sup>174</sup> XZF [2007] No. 1.

<sup>175</sup> CZF [2005] No. 45.

<sup>176</sup> YCQ [2007] No. 23; YWJMM [2007] No. 008.

<sup>177</sup> HJMMC [2005] No. 143.

<sup>178</sup> Economic Commission of Zhabei District, Shanghai (June 2007) available at <http://www.shiso.gov.cn/Policy/ZBPpolicydetail.aspx?id=77>.

<sup>179</sup> Available at: <http://www.lawinfochina.com/law/display.asp?db=1&id=2737&keyword=famous%20brand%20guangdong>.

<sup>180</sup> Available at: <http://www.lawinfochina.com/law/display.asp?db=1&id=2768&keyword=famous%20brand%20guangdong>.

<sup>181</sup> Available at: <http://www.1128.org/html/dzzw/ggl/2008/08/doc45735.shtml>.

<sup>182</sup> Available at: [http://www.zh.gov.cn/English/Investment/Policy/200802/i20080218\\_19097.htm](http://www.zh.gov.cn/English/Investment/Policy/200802/i20080218_19097.htm).

WT/DS390/1, G/L/882,  
G/SCM/D83/1, G/AG/GEN/82  
Page 18

75. *Shanghai Export Brands List of Awardees in 2005-2006*<sup>183</sup>;
76. *11<sup>th</sup> Five Year Plan Guidelines*<sup>184</sup>;
77. *Notices for Evaluation and Rewards of 2008-2009 Export Brand Particularly Cultivated and Developed in Heilongjian*<sup>185</sup>;
78. *Circular of Ministry of Commerce, China Export & Credit Insurance Corporation Concerning Utilizing Export Credit Insurance to Support the Development of Name Brand Export*.<sup>186</sup>
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<sup>183</sup> Available at: <http://www.maofa.sh.cn/shangbiao/pingpai.asp>.

<sup>184</sup> Available at: <http://ghs.ndrc.gov.cn/ghjd/115gyxj/010a.htm>.

<sup>185</sup> HSMF [2008] No. 37.

<sup>186</sup> Shang Mao Fa [2005] No. 332.

# Central China Foreign Investment Promotion Plan

Promulgated by the People's Bank of China on July 3, 2009

## Preface

With the accelerating economic globalization and regional economic integration, the fourth global gradient transfer of industries and swifter capital flow from coastline to west, China's central region is now witnessing brand new challenges and opportunities in introducing foreign capitals.

China's regional policies for future utilization of foreign investment are supposed to promote balanced inter-regional development in the spirit of building a harmonious society. Thereafter, the central region is faced with greater challenges in bringing more advanced technologies and making better use of foreign investment by unleashing its comparative advantages.

As the central region represents a key footprint in attracting foreign capital, reinforcing efforts to promote foreign investment is essential to follow up on the central government's strategic plans to facilitate the rise of central China and to improve the competitiveness and innovation of this region. The Ministry of Commerce has taken the initiative to formulate this plan for foreign investment promotion in central China, as part of the effort to set a benchmark for preparing future plans for other regions.

With the help of the World Bank's Foreign Investment Advisory Service (FIAS), Department of Foreign Investment Administration of Ministry of Commerce, Chinese Academy of International Trade and Economic Cooperation of the Ministry of Commerce, together with the foreign investment authorities of Shanxi, Anhui, Jiangxi, Henan, Hubei and Hunan provinces formed a task force and jointly launched the preparation for Central China Foreign Investment Promotion Plan (hereinafter referred to as "Plan") in the first half of 2007. The draft Plan has been prepared on the basis of extensive information-gathering, analysis and research that lasted over two years.

The Plan covers six central provinces, i.e. Shanxi, Anhui, Jiangxi, Henan, Hubei and Hunan, an area of 1.027 million square km and home to a population of 361 million. The Plan is prepared for the period between 2009 and 2014.

It is the first regional investment promotion plan jointly completed by the Ministry of Commerce of China, international organizations and local governments. As a guideline for the aforementioned six provinces in promoting foreign investment, the Plan specifies the guiding principles, objectives, tasks, development priorities and key measures for different stages, and proposes the approaches and policies for coordinated development, with a view to effectively guiding these provinces to

establish and improve the mechanism for investment promotion.

### **I. Guiding Principles and Basic Approaches**

As the global economic structure and the labor division are undergoing major changes, the central region should take the great opportunity of the new-round international industrial shift to promote coordinated regional development and further open.

To this end, the central region needs an overall strategy of investment promotion in the principle of scientific development perspective to explore innovative, professional and efficient mechanisms suited to this region for management system reform, team building, and investment promotion. The guiding principles are to further mindset open up; expand the scale and optimize the structure of external investment, and give play to the key role of investment in pushing forward independent innovation, industrial upgrade and coordinated regional growth; and to innovate the regional cooperation mechanism to allow for complementary advantages and mutual development.

Based on these guiding principles, the basic approaches for foreign investment promotion are:

#### **(I) Strengthen advantages & circumvent disadvantages**

Global foreign direct investment (FDI) will nevertheless keep on growing in the long run, despite an array of risks that will ensue due to the global financial crisis and economic recession. Two features will figure predominately in the growth of a new round FDI: for one thing, more hi-tech and high value-added manufacturing and R&D activities will be moving out of developed countries, and for the other, international capital will have a stronger preference for better government credit, policies and systems, property rights, law enforcement, technical standards, and greater cultural friendliness.

Such a trend into high value-added manufacturing and service outsourcing has offered great possibilities for the central region to develop continued advantages by participating in the work division of global industrial chain and accommodating the domestic and overseas industrial shift.

Thanks to the implementation of the Rise of Central China strategy, the investment environment in the central region has improved substantially, and development systems, policies and mentality have changed dramatically over the last two years. The market conditions for an international and domestic industrial shift are there, and the region has kicked off a good start in attracting foreign investment.

When adjusting the policies for attracting external capital, the region has to be fully aware of its comparative advantages to maximize advantages for industrial growth and economic benefits. Accounting for 10.7 percent of the total land area, 28.1 percent of the population and 19.5 percent of GDP, the central region is the economic hinterland and the transportation hub of China. With a solid foundation and enormous advantages, it plays a vital role in the overall economic and social

development, with great potential yet to be tapped into.

In terms of the industrial foundation, the central region has a full assortment of industries and is a key heavy industry base, with 15 boasting absolute or relative advantages among 30 manufacturing sectors. In recent years, the electronic information, bio-pharmaceutics, new materials and other emerging industries have shown sound development momentum, and a number of distinctive hi-tech industry clusters have taken shape.

Transportation-wise, located at the gateway to the west, and the center of the huge crossing—Eurasian Continental Bridge and the golden watercourse of the Yangtze River, the region is a giant hub that connects the east with the west and the south with the north, which basically shapes a convenient land, water and air transportation network equipped with better infrastructure.

In terms of the production elements cost, this region has vast land available for industrial use, 1.4 times larger than the eastern region, and abundant technological resources, while the cost of labor force, highly skilled, is only 60 percent of that in eastern region. In the long term, the region is expected to become the country's major base for commercial grain production and efficient agriculture, resource- and labor-intensive industries. It is also expected to become an important hi-tech industry base. The central region will be a key pillar for China's sustained and rapid economic development, and an emerging growth area.

Thanks to the implementation of the Rise of Central China strategy, infrastructures, institutional structure and human resources have been improved greatly in the central region, adding to its existing advantages offered by abundant labor force, low business cost and the complete range of industries.

However, restrictions persist: first, this region has yet to open up further, as the combined exports accounted for only 4.3 percent of the national total, and the actual utilization of foreign investment was only 11.5 percent of all; second, heavy industrial and primary processed products such as manufacturing, energy and raw materials represent a significant proportion. The industrial growth is mainly dependent on high inputs and high consumption of resources, due to the lack of deep processing and hi-tech capacity; and third, the low industrialization, urbanization, and marketization level has so far proved unappealing to high-end manufacturing from the outside. As a result, this region is not closely linked with external markets; moreover, institutional reform is lagging far behind.

When it comes to attracting foreign investment, the central region is yet to establish a standard operating mechanism for investment promotion, as well as vertical and multi-layered operation networks.

Generally speaking, the central region fares better than the western region in terms of development conditions available, and the coastal area, potential-wise. The central region must pinpoint its

positioning so as to play out advantages and circumvent disadvantages in attracting foreign investment.

## **(II) Define goals and priorities**

The central region should make it its strategic goal to follow the principle of vigorous attraction and effective use of foreign investment, optimize the capital allocation, and promote technological advancement and further progress of the market economic system. Every effort should be consistent with applicable state plans and requirements, particularly those for the implementation of major strategies, and the overall trend of the international and domestic industrial shift. Problems in connection with investment promotion should be identified and addressed, so should goals and priorities.

Division of work, coordination, giving full play to local advantages and distinctiveness should be the principle of the investment promotion work in the central region. It is expected that this region will improve overall competitiveness, with a growing annual foreign capital received and a fast growing productivity. Investments from outside of the region play a greater role in the development of local economy, and serves as a driver in propelling the rise of central China.

Due to the great similarity in their industry structure, the provinces of this region will inevitably be competing with one another for investment if no precautions are taken. To avoid such a specter, the provinces should define their positioning of industrial division region-wide, and construct a mutually complimentary collaboration system consistent with the goal of coordinated development, thereby minimizing the possibility of structural overlapping and excessive rivalry among and between them. The region should work to create a competitive and unique manufacturing cluster by focusing on such factors as comparative advantage, regional industrial layout, coordination between economic and social development, and population and resources, and implementation of an industrial value-chain strategy. Foreign capital should be channeled to fund technological upgrading in key industries and enterprises, so as to help create a batch of leading and internationally competitive enterprises with greater overall performance and core competitiveness.

The six central provinces are home to seven model service outsourcing cities, 20 key zones for processing industry. The Ministry of Commerce will be establishing demonstration zones of the sort as part of the effort to support this region in the process of industrial transfer. On top of that, such provinces should also identify the key industries that are in need of investment, so that mobile capital can be utilized to improve the industrial structure and competitive edge. There should be definitive and feasible goals for key sectors, regions and methods in connection with foreign investment promotion.

## **(III) Innovate methods and mechanisms**



Continuous innovation in market mechanism—specifically, establishing a market- and investor-oriented promotion body and a sound and efficient system—is necessary for attracting more investment and for better utilization.

It is equally important that a sound investment environment that features good government accountability, efficiency, security and business-friendliness be built and improved to provide investors with standardized and comprehensive services, and to optimize the allocation of resources. The priority should be given to standardized investment services and good investment environment with continuous improvement.

Governments at all levels should work together to set up a harmonized, orderly, standardized, competitive and market-based mechanisms for investment promotion, through integrating investment resources and strengthening communication and decision-making, so as to create synergy between national development plans, projects, industries, businesses and resources. They should also improve the working methods to improve the mechanism and management expertise. In the meantime, the promotion system that is comprised of the governments, professional bodies and local industries should also be enhanced so that intermediaries can serve as a bridge that links the government and businesses.

## **Central China Foreign Investment Promotion Plan**

Promulgated by the People's Bank of China on July 3, 2009

### **(IV) Strive for a win-win situation**

The central provinces should adhere to the basic guideline of taking measures adaptable to their local conditions and their respective advantages, according to the National Central Region Development Plan and the actual developmental context in each province.

As these provinces enjoy great potential and unique advantages for attracting investment, efforts should be made to seize the opportunities presented by the international and domestic industrial shift to transform this region into a competitive base for manufacturing, hi-tech, energy and key raw materials industries, for development and output of human resources and for accommodation of the industrial shift.

With the ultimate goal being rapid and sound economic development, the central provinces should always look at the whole picture, properly addressing the relationship between local and regional, and immediate and long-term interests. Close cooperation is necessary in resource and industrial development, infrastructure integration, and construction of a unified market, in order to create desirable synergy. There must be a long-term mechanism and platform for regular communication

and constant cooperation between the provinces to promote integration of investment resources, overall competitiveness of the whole region, and better development, as well as better regional image.

Constant exchange mechanism should be formulated to encourage collaboration among six central provinces in the pursuit of faster and better growth. Joint Conference for Investment Promotion Agencies of Central China, for one, can be a good idea. With effective information and experience sharing at the Joint Conference, investment promotion agencies from the central provinces can better cooperate with one another for optimal benefits.

It is important to communicate with investment promotion agencies and intermediaries, through seminars, field visits and information-sharing, and to cultivate and share common operation resources and channels for a win-win situation.

## **II. Priorities and Key Objectives**

### **(I) Key Industries**

Central provinces should, by referring to the Foreign Investment Industrial Guidance Catalogue (amended in 2008) and Guiding Catalogue for Foreign Investment in the Dominant Industries of the Central and Western Regions (amended in 2008), as well as the trend of the new round of industrial shift, identify their respective industrial advantages and development profiles for the purpose of developing accurate positioning and long term strategies, and rejuvenating the key and competitive industries by pooling resources.

While the manufacturing industry should be made a priority, investment into the primary and tertiary industries should also be vigorously pursued, especially into modern agricultural and sophistic processing industry, as well as trade, finance, science and technology, education, culture, health, sports, tourism, and infrastructure construction, by means of franchising, leasing, and equity transfer.

Based on the economic development profiles and unique resource advantages of the central region, the key beneficiaries of investment promotion should be feature industries with solid foundation, growth potential, great capacity of employment, and resource advantages, including featured agricultural products and food production; energy and raw materials industries; mining, metallurgical and petrochemical equipment, farm machinery, vehicles, and ship-building; clothing, food, light industry, electronics and other labor-intensive industries; logistics, transportation, and other modern services; electronic information, featured biological industries, new energy, new materials, and other hi-tech industries. Meanwhile, the infrastructure industry should also be made a key area.

The central region, most notably the central cities that have abundant well-educated but low-cost work force, and sound industrial foundation, enjoys tremendous comparative advantages in service outsourcing. As service products do not involve physical transportation, service outsourcing can help

the central region overcome the restrictions of landlocked geographical conditions, and shorten the distance to coastal areas.

It must be noted that flexibility is required in positioning the target industries. To make the Plan more targeted and helpful, the provinces should keep track of the changes in comparative industrial advantages, make regular adjustments, as appropriate, in accordance with the Foreign Investment Industrial Guidance Catalogue and Guiding Catalogue for Foreign Investment in the Dominant Industries of the Central and Western Regions, and report to competent authorities relevant amendments and suggestions.

### **(II) Key investment methods**

Effective attraction of FDI is a systematic work that involves bringing in stable and low-risk capitals, as well as high technology, scientific management expertise, and international marketing channels. With a capital structure conducive to creating optimal benefits and high spill-over effects from economic activities, joint ventures should remain a major means of foreign investment to be encouraged.

Alongside this, other means, including mergers and acquisitions, investment in funds and securities, participation in reorganization and upgrading of state-owned enterprises (SOEs), and listing in domestic and overseas capital markets should also be encouraged.

As cross-border mergers and acquisitions (M&As) have become the main form of FDI, central provinces should pay sufficient attention to attracting multinational corporations, especially encouraging their mergers and acquisitions of local businesses.

International practices, including IPO abroad, and BOT or TOT financing should be followed to increase overseas financing by multiple methodologies.

### **(III) Key investment zones**

Starting almost from scratch, the central region does not yet have the capacity to accommodate foreign investment in the region as a whole. Prioritization and proper arrangement are necessary to channel foreign capital to central cities, port cities and those with convenient transportation; provincial-level economic and hi-tech development zones; and heavy industry parks with great potentials.

Priority zones include the economic belts along the Yangtze River and Beijing-Guangzhou Railway, city circles identified by the six provinces respectively, as well as areas that are closely linked with the Yangtze River Delta, Pearl River Delta and the Bohai Bay Rim.

At present, the seven state-level and provincial-level economic and technological development

zones from the central region have already developed a fairly advanced infrastructure capable of accommodating investment projects, featured industrial clusters, and a wealth of management experience in industrial development, and therefore are in the best position to embrace the industrial transfer. These development zones and industrial parks should play a leading role to exert build-up and ripple effects. By bringing in flagship projects and supporting industrial projects, they can reduce industrial costs and help form industrial clusters within the region.

#### **(IV) Key sources of investment**

When making efforts to attract foreign investment with market-oriented approaches, the provinces should identify their target investors.

Western Europe, North America, and the Asia-Pacific region are where the world's export of capital occurs most frequently and where original and innovative intellectual property rights, hi-tech and high value-added manufacturing industries and service industries are concentrated, while multinationals are the major carriers of technological transfer worldwide, accounting for 85 percent of the capacity for technology development. The central region should make it a priority to attract powerful multinationals from these regions, in order to substantially improve the share of investment from developed economies.

This, however, does not mean to belittle the role of small and medium-sized foreign capitals. If the central provinces should interpret it as an absolute policy and are spurred to compete for investment from multinationals, the cost of cooperation will rise as a result. The provinces must review the structure of foreign capital sources and assess applicability of foreign investment, that is, whether it is consistent with the overall level of local productivity and consumption, in accordance with a market-oriented principle. It should be noted that a large number of established and professional small and medium-sized enterprises (SMEs) from developed countries are considering branching out into overseas markets to slash costs and maintain their traditional advantages in this fiercely competitive market.

Based on the existing economic and especially the industrial development profiles, and given the mounting pressure of unemployment in the region, the provinces should consider it a medium- and long-term strategy to attract the investment of SMEs from Taiwan, Hong Kong and Macao, Japan and South Korea. While formulating and implementing policies, the provinces should give considerations to the affordability of SMEs.

The provinces should further organize investment promotion events in key target countries and areas in support of the state-prescribed "Businesses Going West" initiative and cooperate with the Yangtze River Delta, Pearl River Delta and Bohai Bay Rim economic zones to flexibly adjust the business investment strategies according to the increased FDI in these regions.

### **III. Promotion Measures and Supporting Policies**

#### **(I) Establish a sound promotion system**

In recent years, government investment promotion departments and professional intermediary agencies have been set up in the region to effectively facilitate foreign capital promotion activities, together with the local investment organizations with their respective responsibilities and priorities. The provinces and cities should establish and refine service systems for investment promotion in accordance with their specific conditions and requirements.

The government investment promotion departments are responsible for providing guidance, management and coordination, including formulating and implementing well-conceived investment promotion plans, guiding the establishment of a modern promotion system and taking effective measures.

Inter-provincial joint conferences and regular communication and consultation mechanisms should be established for the provinces to share resources and information with their neighbors, and negotiate cross-provincial investment promotion activities, thereby preventing waste of resources and industrial layout disorder. It is suggested that the provinces establish dedicated bodies to take charge of the investment promotion for key industries, regions and projects in their jurisdictions, and provide subordinating departments at the city and county levels with guidance and coordination. With province-level promotion bodies playing a leading role, the cities and counties should establish investment promotion bureaus (centers), and towns, promotion offices if possible, so that a complete administrative facilitation network can be formed.

#### **(II) Reinforce capacity-building for promotion agencies**

The Ministry of Commerce will conscientiously help improve the expertise and skills of frontline investment promotion staff by consolidating relevant resources from different regions and carrying out professional training programs from time to time, including inviting foreign experts to teach them on how to seek various effective promotion methods that are suited to their local conditions when holding exhibitions and special promotion events, receiving foreign delegations, going on business trips with leaders, and participating in international forums; how to make the promotion services more considerate and targeted; and how to strike a chord with potential investors at the first instance.

#### **(III) Reinforce the construction of promotion platform**

While hosting "Central China Investment and Trade Fair" and investment promotion events, the central provinces should actively participate in "China International Investment and Trade Fair", "China International Hi-Tech Fair" and other large-scale international investment promotion events

so as to build a platform and large network for investment promotion. Efforts remain:

To establish a regional information and resource platform and a service-sharing mechanism, an information and network platform of desirable scale and level should be established to make better use of the Internet so that investors can have easy access to complete and accurate information, considerate on-line services for answers to their questions.

At the same time, laws and regulations in connection with investment policies can be instantly published and made known to ensure information-sharing with major international investment promotion bodies. In this way, the investment promotion agencies can become effective service interfaces.

To bring in and employ customer relations management and customer tracking software systems, etc. to collect, analyze and process useful information, especially investor-related information, and provide investors and investment targets with all-round counseling services by establishing contact and communication mechanisms with potential investors.

Most investment promotion activities are currently short-term ones that can not be sustained due to the shift of location and time. It is therefore necessary to explore effective and long-term mechanism-based investment promotion platforms on top of the existing on-line business promotion interface and physical promotional events, such as fairs, business promotion fairs and exhibitions.

To effectively facilitate the transfer of export-oriented industries from coastal areas to the central region, the Ministry of Commerce has established in Kunshan and Shanghai industrial transfer promotion centers as platforms for the central region to showcase its investment environment, attract investment projects and conduct cooperation negotiation. On one hand, the promotion centers help the appointed staff from the central and western regions to pick up new ideas and skills by introducing new methods of investment promotion, industrial development and transfer trends abroad, and successful practices of other investment promotion agencies; while on the other hand, they proactively organize match-making exchanges between the appointed staff and local overseas investment agencies, business associations, regional headquarters of multinational companies, and businesses interested in investing in the central and western regions.

The establishment of these industrial transfer promotion centers will be conducive to comprehensive upgrade of the eastern region's participation in global division of labor, and the central region's capacity to accommodate transferred industries.

#### **(IV) Formulate modernized promotion modes**

The central provinces should formulate their own modernized investment promotion approaches by learning from the latest models and strategies employed around the world, and trying out promotion

strategies. Efforts should be made to achieve the following:

Transition from passive operations to proactive ones. On the basis of fully understanding the goals and needs of foreign investors, as well as an accurate grasp of the local investment environment and advantages, the provinces should make comprehensive use of all possible marketing strategies and means to engage target investors, introducing the local investment environment and programs, to facilitate the materialization of projects.

## **Central China Foreign Investment Promotion Plan**

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Transition from a local basis to a systematic policy approach. The provinces should innovate institutional mechanisms to further improve and develop the administrative, judicial, market and cultural environments, and give prominence to the building of government and business integrity so as to "attract, reassure, serve and protect investors with good will, credibility, quality and rule of law."

Transition from a less-organized approach to a well-organized one, by designing promotion packages consistent with international practices; preparing brief and standard brochures; implementing business-to-business, themed, professional, industry chain-related, network-oriented and group-based investment promotion tactics; and launching featured promotion for key projects.

Transition from a solely result-based approach to a cost-conscious one, through conducting scientific assessment of promotion performance, outcome and resource utilization efficiency; reinforcing regulation over investment promotion bodies; adjusting goals, strategies, plans and resource distribution when problems are detected, to avoid further losses and damages to the promotion work; and creating effective incentives.

In addition, the responsibilities of government bodies should be specified, and financial support strengthened. Local governments should provide investment promotion bodies with financial support to cover the costs incurred in the process of promotion and in human resources training; establish a range of technical service agencies to provide institutional guarantee for efficient implementation of promotion plans.

### **(V) Shape a better regional image**

Being less open than the coastal areas, the central region should step up publicity efforts to project a good image to the outside with cost-effective means. Success will hinge upon a

number of factors, including positioning by the state and media report, apart from its own economic development profiles and local government behavior.

Chief among all tasks of image-branding are changing the mentality and government functions, and improving the environment for social and economic development. Bearing in mind the importance and necessity of a great social and economic profile for attracting foreign investment, the central provinces—especially the central cities of this region—should take measures to augment their regional features and project modern and unique city images.

As a second step, awareness-raising and publicity campaigns for the investment promotion endeavors should be launched to ensure all sectors and enterprises have a better understanding of the promotion work being undertaken and contribute their input accordingly, and help foreign investors have a clearer picture of the investment environment, policies and opportunities available in the central provinces.

To forge the central region into an investment destination with the greatest potential entails planned image-branding actions involving general and in-depth publicity via newspaper, magazines, radio, TV, Internet and other media channels. Beyond that, professional foreign bodies should be engaged to help promote the image of central China across the globe, and get the world to know more about this region.

#### **IV. Investment Climate**

##### **(I) Improve investment environment**

The investment promotion effort is one that involves business-friendly policies, mechanisms, service platforms and environment, all of which are necessary conditions for attracting industries that are moving inwards, and slashing transaction costs, otherwise the industrial transfer won't happen. It is a long-term priority for promotion agencies in the central region to expand the room for industrial development as well as to provide investors with standard investment services and sound business environments.

Central provinces should make efforts to build an integral, sound, effective, and safe investment environment, as a key link for further opening-up.

The provinces should create a liberal policy environment, a clean and efficient administrative environment, a trustworthy and fair market environment, and a fair and just legal environment, and a harmonious cultural environment, and strive to realize a transition in investment promotion from mainly resorting to offering preferential policies to creating a sound holistic environment.

The governments should standardize their behavior, improve service quality, and innovate



management mindset, so that foreign-funded enterprises can enjoy the same level of administrative services that they receive in the coastal areas. On one hand, the attention to details is required to provide business-friendly and considerate services, including facilitations for business visits, information-sharing and market research, at every stage. Minimized costs for investment, decision-making and operations are greater attraction to foreign capital and will boost the potential investors' confidence. On the other hand, a transparent and efficient administration environment should be created to better serve foreign investors, including through reinforcing coordination between departments, enhancing customs clearance environment and efficiency, and establishing a safeguard mechanism for efficient administration. Mechanisms for accountability, service commitment, once-for-all notification, limited-hours settlement, and complaint accountability should be further put in place in the central region so as to improve the administrative efficiency of government departments.

Afterservice services for enterprises that have settled in the region must be properly addressed to support their development. Any practice that disrupts the business operation and infringes upon investors' interests, a lack of good faith, or random law enforcement by government bodies for instance, must be completely rectified. The coordination and complaint handling functions of foreign investment service centers should be strengthened to address disputes and complaints.

Investment promotion agencies should constantly study and predict investors' up-to-date needs for investment environment and the changing trends of evaluation standards in order to pursue better investment environment.

**(II) Build a stable and transparent foreign capital administration system quickly**

To build a foreign investment administration system consistent with the requirements of the market economy and international rules is also vitally important for improving the promotion work. With the development of the marketization, the administration function of government departments is also being reinforced. However, conflict of interests between competent departments has hampered the administration efficiency. As a result, breakthroughs are hard to come by in the current promotion work.

Regional development is all about regional integration, which boils down to institutional integration. Without a sound institutional mechanism and policy environment, there can be no correct orientation and effective incentive for investment promotion activities. To accelerate the formation of a stable, transparent foreign capital management system, a fair, foreseeable policy environment and standardized and simplified procedures are essential for following up on promotion plans and improving outcomes.

**(III) Improve supporting policies and services**

Efforts must be made to reinforce support for the competitive industries in the central region, including giving preferential treatment to the central region in terms of geological arrangement of major projects. In other words, locating in the central region major industrial projects that are consistent with state industrial policies; and providing businesses with policy credits to help them bring in key technologies and equipment, and reducing the proportion of the capital for key projects after approval.

The central region must further build the capacity for accommodating incoming industries from abroad and the coastal areas; establish industrial transfer demonstration zones in the state-level and mature province-level economic development parks and provide these zones with discounted government loans for infrastructure construction. Attention should be paid to attracting quality investment projects, especially the high-end ones with high added-value, high ripple effect, and low energy consumption through policy incentives and guidance, so as to push forward the industrial upgrading.

The provincial and cities governments should fully support the investment promotion work in accordance through establishing an investment promotion joint conference system to collect inputs from all relevant departments, regularly study the major items on investment promotion and address problems and issues that arise in the materialization process of investments.

Provinces and cities should establish investment promotion associations with the membership consisting of international investment institutions, well-known international business associations, multinational corporations, domestic investment promotion agencies, foreign-invested enterprises and government departments; hold regular events to enhance understanding and cooperation, and information collecting and sharing between investment promotion bodies, and host training programs to provide the government with suggestions on policies and strategies.

#### **(IV) Provide financial and human resources support**

Without sufficient input, there won't be sustainable momentum in the promotion activities. The central region should be generously supported financially by the central and provincial governments, including setting aside a larger proportion from the Central Foreign Trade Development Fund.

Staff training is an important guarantee for improving the investment promotion activities, techniques and skills. In this context, the existing resources should be consolidated, and government support and guidance strengthened to develop a team of professionals familiar with operational procedures and methods of investment promotion work, including job rotations to the coastal areas. Experts and consultant groups should be closely engaged to provide investors with a full range of professional services before and after the investment is made. Governments

at all levels should designate dedicated civil servants who are familiar with economics and policies and proficient in foreign languages to the forefront of investment promotion work.

**(V) Build a sound evaluation and supervision system**

The evaluation system, mechanism and incentives for foreign investment promotion, as well as investment environment evaluation and accountability systems must be improved from the perspectives of technical contents, economic and social relevance and contribution to sustainable development of projects.

The Ministry of Commerce will, together with relevant departments, strengthen tracking, analysis and supervision of the implementation of the Plan; organize interim evaluation of the implementation; and make flexible adjustments where appropriate, to ensure the effective execution of the Plan.

Comprehensive evaluation of work efficiency, service quality, law enforcement, policy follow-up, and handling of complaints filed by foreign investors should be conducted, with the results made public through the media on a yearly basis at the provincial, city and county levels. An accountability system, where awards are granted on the basis of merits, with poor performing departments subject to disciplinary actions, should be put in place in order to guide government departments to shift their focus from quantity to quality in foreign investment promotion.

[Previous](#) [1](#) [2](#) [3](#)

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This is the weblink for the 2007 catalog of encouraged FIES :

[http://www.fdi.gov.cn/pub/FDI\\_EN/Laws/GeneralLawsandRegulations/MinisterialRulings/P020071121358108121219.pdf](http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/MinisterialRulings/P020071121358108121219.pdf)

1. Before 2009, FIEs were subject to the urban real-estate tax, while domestic enterprises had to pay the house property tax. On 1 January 2009, the State Council abolished the urban real-estate tax, and FIEs and domestic enterprises are subject to the house property tax. As a result, domestic enterprises and FIEs are now subject to equal tax treatment except that FIEs do not need to pay city maintenance tax and construction tax, which domestic companies do pay. Since 2007, land allocation has been through tendering and bidding procedures for domestic firms and FIEs. Since 2008, a statutory rate of 25%, set in accordance with the Enterprise Income Tax Law, has been applicable to all enterprises, except for some

Non-confidential attachment C-1.2.7

"grandfathering" of incentives during a transitional period of five years<sup>1</sup> (Chapter III(4)(i)).  
[www.wto.org/english/tratop\\_e/tpr\\_e/s230-02\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/s230-02_e.doc)

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<sup>1</sup> See WTO (2008) for details.

B/11/2010

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Bill Davidson <bill.davidson@roh.com.au>

## Catalogue of Foreign Investment Advantageous Industries in Central and Western China AND Foreign Investment Industrial Guidance Catalogue

Toby Forwood <issint@ozemail.com.au>

Mon, Mar 29, 2010 at 5:07 PM

To: Bill Davidson <bill.davidson@roh.com.au>

Thanks .

Good guidance . Yes – let's see what the Top 3's provinces offer .

**From:** Bill Davidson [mailto:bill.davidson@roh.com.au]

**Sent:** Monday, 29 March 2010 4:54 PM

**To:** Toby Forwood

**Subject:** Re: Catalogue of Foreign Investment Advantageous Industries in Central and Western China AND Foreign Investment Industrial Guidance Catalogue

Toby - herewith more details generally relating to favoured industries and an example of what a province can offer - in this case the example is Weihai, which may not come up on the ARW radar, but the level of data provided [including labour rates, electricity costs etc] would be useful for the provinces in which our Top 3 are located. Bill

### Favorable policies for foreign investors to central and western China

Editor:AT0086.com| Resource:AT0086.com

#### My Favorite

In order to coordinate economic development in different areas, the Chinese government is encouraging foreign investment in central and western China. Key measures being taken are as follows.

In order to coordinate economic development in different areas, the Chinese government is encouraging foreign investment in central and western China. Key measures being taken are as follows.

1). The state has approved and issued the Catalogue of Advantageous Sectors for Foreign Investment in Central and Western Regions. Projects included in this catalogue enjoy the same policy as offered to projects of encouraged category in the Industrial Catalogue for Foreign Investment, and favorable tax policy applies to the import of necessary equipment, parts, spares and technology used in such projects.

2). There will be fewer restrictions in investment fields, and on the conditions for establishment of foreign-invested enterprises in central and western China, as well as on the proportion of shares owned by the foreign contingent of the foreign-invested enterprises in these areas.

3). Encouraged Projects in central and western China shall pay income tax at the reduced rate of 15 percent for three years on expiry of the current favorable tax period.

4). If foreign-invested enterprises reinvest in central and western China with foreign capital accounting for 25 percent or more of the project, the new project will enjoy policies offered to enterprises with foreign investment.

5). Trial projects approved by the central government should, in principle, be carried out simultaneously in eastern, central and western China. On approval from the state government, provincial and autonomous regional capitals and municipalities may open the fields of commerce, foreign trade and banking to foreign investment on a trial basis. Foreign-funded banks in western China may embark on RMB business gradually. Foreign investors may invest in telecommunications and tourism insurance in accordance with relevant regulations, and set up Sino-foreign joint venture accounting firms, engineering design companies, railway and highway freight transport and public utility companies, and other fields open to foreign investment.

6). Provinces, municipalities and autonomous regions in central and western China may select a built-up development area in the provincial or regional capital and apply for the status of a national economic and technological development zone.

7). Enterprises with foreign investment engaged in energy and transportation infrastructure will pay income tax at the reduced rate of 15 percent with approval from the State Bureau of Taxation.

8). In the interests of protecting the ecological environment, income from special products reverting cultivated land to forestry and grassland is exempt from special agricultural product tax for a period of ten years.

9). There are also preferential policies for land use and mineral resource exploration, promoting forest farming and grass planting on barren mountain slopes and fields, and the reverting of cultivated land to forest and grassland. Those who revert cultivated land to forest and grassland enjoy land use rights, as well as rights of ownership of forest or grassland. Economic entities and individuals may apply to utilize barren mountain slopes and fields according to legal procedures, plant trees and grass, and practice ecological environmental protection. Alternatively, they can be granted the land use rights directly from the state, in which case the land utilization fee will be either exempted or reduced. Land use rights will remain unchanged for a period of 50 years. On expiration of this period, application may be made for renewal of these rights. The granted rights of land use may be inherited, or transferred on payment of a transfer fee. The government supports activities involving mineral resource exploration, evaluation, rational utilization and protection.

10). Foreign investment is encouraged in agriculture, water conservancy, transportation, energy, ecological and environmental protection, tourism, mining, municipal engineering and other infrastructure projects in western China. The establishment of foreign-invested research and development centers are also encouraged, and will be given support in terms of funding for accessory projects and pertinent policies.

11). Trials in western China to utilize foreign capital through BOT and TOT methods are encouraged. The state supports enterprises in the encouraged and permitted categories in the west to attract foreign investment through assignment of operation right, offering equity interests and enterprise merger and reorganization.

### Geographic Features

**Location:** Located at the eastern tip of Shandong Peninsula, between 36°41' N—37°35' N, and 121°11' E—122°42' E. The city is surrounded by sea on three sides. The coastal line is 985km. long.

**Area:** The general area is 5436 sq. km. The downtown area is 731 sq. km.

## Decree of the National Development and Reform Commission and the Ministry of Commerce

No. 4

The *Catalogue of Advantaged Industries for Foreign Investment in the Central-Western Region (Amended in 2008)* approved by the State Council is hereby promulgated. It shall enter into force on Jan. 1, 2009. The *Catalogue of Advantaged Industries for Foreign Investment in the Central-Western Region (Amended in 2004)* promulgated in July 2004 (No. 13 Decree of the NDRC and MOFCOM of 2004) and the *Catalogue of Advantaged Industries for Foreign Investment in Liaoning Province* promulgated in Sep. 2006 (No. 47 Decree of the NDRC and MOFCOM of 2006) shall be repealed simultaneously.

According to the *Provisions on Guiding the Orientation of Foreign Investment* (No. 346 Decree of State Council), foreign-invested projects falling within the Catalogue herein may enjoy the preferential policies for foreign-invested projects under the category of encouragement. Foreign-invested projects under construction in line with the provisions of the Catalogue herein may be executed in accordance with relevant policies herein.

Chairmen of National Development and Reform Commission: Zhang Ping

Minister of Ministry of Commerce: Chen Deming

Dec. 23, 2008

## Catalogue of Advantaged Industries for Foreign Investment in the Central-Western Region (Amended in 2008)

### Shanxi Province

1. Plantation of forage grass, feedstuff and crops and deep processing thereof
2. Restoration of farmland to forests and grasslands, protection of natural forests and subsequent development of other national key ecological projects
3. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming, and protective cultivation
4. Restoration and reconstruction of ecological system in mined-out and subsidence areas of mining areas
5. Comprehensive utilization of silica resources (excl. exploration and exploitation)
6. Comprehensive utilization of kaolin (excl. exploration and exploitation)
7. Development of applied technologies for coal processing and production of products (controlled by Chinese party)
8. Production and development of downstream chemical products of coalbed gas
9. Comprehensive utilization of byproducts of coke
10. Deep processing of silk products
11. Printing of printed matters of package and decoration
12. Technical development and production of high-grade glass products and hi-tech ceramics (including ceramic for industrial use)
13. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
14. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
15. Production of stainless steel products

16. Technical development and production of precise castings and forgings
17. Production of rubber conveyer belts with steel cable as the core
18. Production of hydraulic-pressure technical systems and molds thereof
19. Production of medium-sized and small dry-land and mountain agricultural machinery and supporting tools thereof
20. Electricity generation, heat supply and other comprehensive utilization of the remaining heat of middling coal and coking coal
21. Value-added telecom services (within the commitment framework of China's entry into the WTO)
22. Passenger transportation by road (controlled by Chinese party)
23. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
24. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Autonomous Region of Inner Mongolia**

1. Restoration of farmland to forests and grasslands and pastures to grasslands, protection of natural forests and subsequent development of other national key ecological projects
2. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming, and protective cultivation
3. Finishing and deep processing of beet saccharine and comprehensive utilization of byproducts
4. Finishing and deep processing of copper, lead, zinc and aluminum (excl. exploration, exploitation and smelting)
5. Comprehensive utilization and finishing and deep processing of nonmetal minerals (andalusite, bentonite, dolomite, crystalline graphite, perlite and zeolite) (excl. exploration and exploitation)
6. Development of hi-tech products of wool textile and knitgoods
7. Development of applied technologies for coal processing and production of coal products (controlled by Chinese party)
8. Deep processing of rare earths and production of applied rare earths products
9. Development and utilization of downstream chemical products of natural gas (excl. products under the categories of restriction and prohibition of the *Policies on Utilization of Natural Gas*)
10. Processing of Mongolian medicines (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
11. Development and utilization of biological pharmacy products by using the viscera of cattle and sheep (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
12. Production of specially-needed ethical products, handicraft articles and materials of packing containers and glass products for daily use
13. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
14. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
15. Electricity generation, heat supply and other comprehensive utilization of the remaining heat of middling coal and coking coal
16. Value-added telecom services (within the commitment framework of China's entry into the WTO)
17. Passenger transportation by road (controlled by Chinese party))
18. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)



19. Development, construction and operation of ecological tourist resources such as snow, forests and pastures
20. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Liaoning Province**

1. Development and production of the seeds (seedlings) of vegetables and fruits (excl. transgenic seeds) (controlled by Chinese party)
2. Breeding of meat chickens, pigs, beef cattle and meat sheep and deep processing of such products
3. Subsequent development of national key ecological projects including restoration of farmland to forests and grasslands
4. Processing and comprehensive utilization of oil shale, magnesium and zircon (relatively controlled by Chinese party)
5. Spinning, knitting and garment processing of high-grade cotton, fir, hemp, silk (tussah silk) and chemical fiber
6. Deep processing of natural medicine, raw material medicine and Chinese patent medicine and production of their derivatives (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
7. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
8. Production of such products as methanol with coal as raw materials by using large equipment and technologies (over 0.6mn tons per year)
9. Production of million-ton ethylene and its downstream deep-processed products
10. High-performance radial tire production
11. Production of metal packing, automatic three-dimensional storage and logistic warehousing equipment
12. Production of automobile spare parts (automobile gear boxes, automobile engine crankshafts, connecting rods, cylinder bodies, cylinder covers, engine electronic spraying systems, automobile shock absorbers, clutches, engine timing chains, automobile lamps and automobile instruments)
13. Production of marine auxiliary engine of diesel engine, accessories and spare parts;
14. Development and production of numerically-controlled medical equipment and key components and parts;
15. Deep processing of copper plate and strip with high precision
16. Production of steel lines and ultra-thin steel ropes
17. Medical institutions (limited to joint equity or cooperation)
18. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
19. Protection, development and operation of tourist areas (spots) and building of their supporting facilities
20. Projects of deep-processing and continuous industry in resource-exhausted cities upon approval of state investment authorities

**Jilin Province**

1. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming, and protective cultivation
2. Breeding of meat chickens, meat geese, pigs, beef cattle and meat sheep and deep processing of such products
3. Development and processing of special ecological foods and drinks from Changbai Mountain including nuts, wild vegetables, fungus, forest frogs, tussahs and honey (excl. national second-class protection plants such as Korean pine seeds and tricholoma matsutake)
4. Production of drinking natural mineral water (controlled by Chinese party)
5. Development and comprehensive utilization of diatomite (excl. exploration and exploitation)
6. Spinning, knitting and garment processing of high-grade cotton, fir, hemp and chemical fiber
7. Development and production of animal and plant medicine resources (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)

8. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
9. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
10. High-performance radial tire production
11. Production of automobile spare parts (automobile gear boxes, automobile engine crankshafts, connecting rods, cylinder bodies, cylinder covers, engine electronic spraying systems, automobile shock absorbers, clutches, engine timing chains, automobile lamps and automobile instruments)
12. Production of wind and bio-energy power generation equipment (limited to joint equity or cooperation)
13. Value-added telecom services (within the commitment framework of China's entry into the WTO)
14. Passenger transportation by road (controlled by Chinese party)
15. Automobile financial services
16. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
17. Vocational educational institutions (limited to cooperation)
18. Medical institutions (limited to joint equity and cooperation)
19. Development of snow tourist resources and construction and operation of skiing places
20. Protection, development and operation of tourist areas (spots) and building of their supporting facilities
21. Projects of deep-processing and continuous industry in resource-exhausted cities upon approval of state investment authorities

Heilongjiang Province

1. Development and production of the seeds (seedlings) of vegetables and fruits (excl. transgenic seeds) (controlled by Chinese party)
2. Restoration of farmland to forests and grasslands, protection of natural forests and subsequent development of other national key ecological projects
3. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming, and protective cultivation
4. Projects of hydro junctions, irrigation in paddy fields and water-saving irrigation in dry fields
5. Production of drinking natural mineral water (controlled by Chinese party)
6. Production sugar with beets and comprehensive utilization of byproducts
7. Potato deep-processing
8. Breeding of meat chickens, pigs, beef cattle and meat sheep and deep processing of such products
9. Development of applied technologies for coal processing and products production (controlled by Chinese party)
10. Deep processing of graphite products (excl. production lines of graphite electrodes with common or high power)
11. Deep processing of natural medicine, raw material medicine and traditional Chinese medicine and production of their derivatives (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
12. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
13. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
14. Production of cutting tools and measuring tools
15. High-performance radial tire production
16. Production of automobile spare parts (automobile gear boxes, automobile engine crankshafts, connecting rods,

- cylinder bodies, cylinder covers, engine electronic spraying systems, automobile shock absorbers, clutches, engine timing chains, automobile lamps and automobile instruments)
17. Development and production of medical equipment and key components
  18. Production of power-grid intelligent management and control system equipment
  19. Value-added telecom services (within the commitment framework of China's entry into the WTO)
  20. Passenger transportation by road (controlled by Chinese party)
  21. Vocational educational institutions (limited to cooperation)
  22. Medical institutions (limited to joint equity and cooperation)
  23. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
  24. Development of forest and snow tourist resources and construction and operation of skiing places
  25. Protection, development and operation of tourist areas (spots) and building of their supporting facilities
  26. Projects of deep-processing and continuous industry in resource-exhausted cities upon approval of state investment authorities

#### Anhui Province

1. Development and application of protective cultivation technologies
2. Deep processing and comprehensive utilization of kaoliang and silkworm cocoons
3. Comprehensive utilization of associated coal resources including kaolin, coalbed gas, mine water and natural coke (excl. exploration and exploitation)
4. Comprehensive utilization of nonmetal minerals (calcite, bentonite, kaolin, attapulgite clay, limestone and quartz) (excl. exploration and exploitation)
5. Spinning, knitting and garment processing of high-grade cotton, fir, hemp, silk and chemical fiber
6. Large integrated deep-processing of coking and salification and comprehensive utilization of coal (controlled by Chinese party)
7. Processing and production of Chinese medicinal plants, extracts of Chinese traditional medicine and Chinese patent medicine (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
8. Deep processing and comprehensive utilization of nonferrous metals including copper, lead and zinc (limited to joint equity and cooperation)
9. Printing of printed matters of package and decoration
10. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
11. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
12. High-performance radial tire production
13. Production of automobile spare parts (automobile gear boxes, automobile engine crankshafts, connecting rods, cylinder bodies, cylinder covers, engine electronic spraying systems, automobile shock absorbers, clutches, engine timing chains, automobile lamps and automobile instruments)
14. Production of complete sets of equipment for production of new dry-processing cement
15. Production of large oxygen producing machines, coke ovens and heavy cast steel machines
16. Development and production of large digital forging and pressing equipment and components thereof
17. Development and Production of folk-lift trucks, excavators and special cars and components and spares thereof
18. Production of high-efficient compressors and special enameled wires for refrigerators and air-conditionings
19. Technical development and production of high-performance magnetic materials and devices
20. Value-added telecom services (within the commitment framework of China's entry into the WTO)

21. Passenger transportation by road (controlled by Chinese party)
22. Medical institutions (limited to joint equity and cooperation)
23. Vocational educational institutions (limited to cooperation)
24. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
25. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Jiangxi Province**

1. Dressing of copper resources and extract and finishing and deep processing of associated elements
2. Dressing, Smelting, application and deep processing of nonmetal minerals including kaolin, power quartz, wollastonite, sepiolite, dolomite for use in chemical industry
3. Spinning, knitting and garment processing of high-grade cotton, fir, hemp, silk (tussah silk) and chemical fiber
4. Deep processing of rare earths and production of applied products
5. Production of fine chemical products such as inorganic and organic chlorines (excl. organic chlorines with high residues)
6. Deep processing of natural medicine, raw material medicine and Chinese patent medicine and production of their derivatives (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
7. High-performance radial tire production
8. Printing of printed matters of package and decoration
9. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
10. Production of automobile spare parts (automobile gear boxes, automobile engine crankshafts, connecting rods, cylinder bodies, cylinder covers, engine electronic spraying systems, automobile shock absorbers, clutches, engine timing chains, automobile lamps and automobile instruments)
11. Development and production of medical equipment in categories of medical electronic one and biomedical material one
12. Production of high-efficient compressors and special enameled wires for refrigerators and air-conditionings
13. Development and production of new projection and display products including LCos, DLP and LCD
14. Value-added telecom services (within the commitment framework of China's entry into the WTO)
15. Passenger transportation by road (controlled by Chinese party)
16. Vocational educational institutions (limited to cooperation)
17. Medical institutions (limited to joint equity and cooperation)
18. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
19. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Henan Province**

1. Restoration of farmland to forests and grasslands, protection of natural forests and subsequent development of other national key ecological projects
2. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming, and protective cultivation
3. Exploitation and processing of trona (controlled by Chinese party)
4. Deep processing of aluminum, lead and zinc (excl. exploration, exploitation and smelting)
5. Development of applied technologies for coal processing and products production (controlled by Chinese party)
6. High-grade cotton textile and garment processing

7. Deep processing of silk products
8. Production of super-hard material products
9. Production of spiramycin and antihypertensive.
10. Deep processing of natural medicine, raw material medicine and Chinese patent medicine and production of their derivatives (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
11. Printing of printed matters of package and decoration
12. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
13. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
14. Production of automobile spare parts (automobile gear boxes, automobile engine crankshafts, connecting rods, cylinder bodies, cylinder covers, engine electronic spraying systems, automobile shock absorbers, clutches, engine timing chains, automobile lamps and automobile instruments)
15. Development and production of large agricultural machines
16. Development and production of complete sets for large coal production, oil drilling, nonferrous metal rolling and new dry-processing cement production
17. Production of automatically comprehensive management equipment for electric energy
18. Development and production of new projection and display products including LCos, DLP and LCD
19. Value-added telecom services (within the commitment framework of China's entry into the WTO)
20. Passenger transportation by road (controlled by Chinese party)
21. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
22. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Hubei Province**

1. Development and application of protective cultivation technologies
2. High-grade cotton textile and garment processing
3. Production of non-woven fabrics and medical textiles
4. Development and production of animal and plant medicine resources (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
5. Deep processing of silk products
6. Printing of printed matters of package and decoration
7. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
8. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
9. Production of high-efficient compressors and special enameled wires for refrigerators and air-conditionings
10. Production of automobile spare parts (automobile gear boxes, automobile engine crankshafts, connecting rods, cylinder bodies, cylinder covers, engine electronic spraying systems, automobile shock absorbers, clutches, engine timing chains, automobile lamps and automobile instruments)
11. Key parts of numerically-controlled machine tools (high-speed principal axis, knife and power chunk)
12. Production of special steel cables and ropes (avg. tensile strength > 2200MPa)
13. Development and production of laser medical equipment
14. Development of photoelectron technologies and products (incl. optical fiber perform and Light Emitting Diode (LED))
15. Value-added telecom services (within the commitment framework of China's entry into the WTO)

16. Passenger transportation by road (controlled by Chinese party)
17. Vocational educational institutions (limited to cooperation)
18. Construction of automobile LPG or CNG filling stations
19. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
20. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Hunan Province**

1. Finishing and deep processing of lead and zinc resources (excl. exploration, exploitation and smelting)
2. Production of bismuth compounds (controlled by Chinese party)
3. Deep development of hormones (excl. hormones under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
4. Printing of printed matters of package and decoration
5. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
6. Processing of big caliber steel tubes
7. Concrete machinery: concrete pumps, concrete pump trucks, concrete spreaders and concrete mixing and transporting cars; hoisting machinery: tower cranes, construction lifters and crane trucks; road construction machinery: asphalt spreaders, cold milling machines, rollers (with 220hp or more), asphalt concrete mixing machines, graders and beaters; sanitation machinery: road sweepers and road cleaning vehicles; earthmoving plants: rotary drilling machines and excavators (above 30t); development and production of engineering machinery including hydraulic valves, hydraulic rams and gears as well as key components and parts thereof
8. Production of high-efficient vane pumps and water conservancy machinery
9. High-speed bimetallic cutting tools
10. Production of complete sets of new rubber machines
11. Value-added telecom services (within the commitment framework of China's entry into the WTO)
12. Passenger transportation by road (controlled by Chinese party)
13. Vocational educational institutions (limited to cooperation)
14. Production of radio and TV programs and films
15. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
16. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Guangxi Zhuang Autonomous Region**

1. Subsequent development of national key ecological projects including restoration of farmland to forests and grasslands
2. Development and production of animal and plant medicine resources (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
3. Deep processing of can sugar and comprehensive utilization of byproducts thereof
4. Deep processing of rosin
5. Deep processing of barite
6. Deep processing of silk products
7. Production of specially-needed ethical products, handicraft articles with ethical characteristics and materials for packing containers
8. Production of superior ceramics for daily use
9. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)

10. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
11. High-performance radial tire production
12. Production of automobile spare parts (automobile gear boxes, automobile engine crankshafts, connecting rods, cylinder bodies, cylinder covers, engine electronic spraying systems, automobile shock absorbers, clutches, engine timing chains, automobile lamps and automobile instruments)
13. Technical development and production of key components and parts of large engineering machinery
14. Value-added telecom services (within the commitment framework of China's entry into the WTO)
15. Passenger transportation by road (controlled by Chinese party)
16. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
17. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

#### Chongqing Municipality

1. Planting of oranges, breeding of pigs and deep processing thereof
2. Restoration of farmland to forests and grasslands, protection of natural forests and subsequent development of other national key ecological projects
3. Development and application of water-saving irrigation technologies
4. Spinning, knitting and garment processing of high-grade cotton, fir, ramie, silk, bamboo fibers and chemical fibers
5. Development and production of downstream chemical products of natural gas (excl. products under the categories of restriction and prohibition of the *Policies on Utilization of Natural Gas*)
6. Production of polyurethanes and raw materials thereof and new engineering plastics
7. Production of biomaterials, synthetic macromolecule biomaterials, natural macromolecule biomaterials and bio-based intermediate compounds
8. Processing and production of Chinese medicinal plants, extracts of Chinese traditional medicine and Chinese patent medicine (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
9. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
10. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
11. Finishing and deep processing of aluminum (limited to joint equity and cooperation)
12. Production of complete vehicle of motorcycles (with foreign shares no more than 50%) and production of components and parts of motorcycles
13. Production of automobile spare parts (automobile gear boxes, automobile engine crankshafts, connecting rods, cylinder bodies, cylinder covers, engine electronic spraying systems, automobile shock absorbers, clutches, engine timing chains, automobile lamps and automobile instruments)
14. Development and production of new medical equipment
15. Production of power generation equipment by using solar, wind and other new energies and parts and components thereof (limited to joint equity and cooperation)
16. Production of large digital IC with width of wires less than 0.25µm
17. Value-added telecom services (within the commitment framework of China's entry into the WTO)
18. Passenger transportation by road (controlled by Chinese party)
19. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
20. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Sichuan Province**

1. Development and production of the seeds (seedlings) of vegetables and fruits (excl. transgenic seeds) (controlled by Chinese party)
2. Breeding of pigs, beef cattle, meat sheep and poultry and deep processing of such products
3. Restoration of farmland to forests and grasslands, protection of natural forests and subsequent development of other national key ecological projects
4. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming, and protective cultivation
5. Deep processing of rare earths and production of applied products
6. Development of new technologies and products of vanadium titanium-magnetite (controlled by Chinese party)
7. Production and development of downstream chemical products of natural gas (excl. products under the categories of restriction and prohibition of the *Policies on Utilization of Natural Gas*)
8. Deep processing of silk products
9. Production of high-performance inorganic fluorine chemical products (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
10. Development and production of animal and plant medicine resources (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
11. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
12. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
13. High-performance radial tire production
14. Production of automobile spare parts (automobile gear boxes, automobile engine crankshafts, connecting rods, cylinder bodies, cylinder covers, engine electronic spraying systems, automobile shock absorbers, clutches, engine timing chains, automobile lamps and automobile instruments)
15. Production of engineering machinery such as cranes, excavators, loaders, hydraulic presses, concrete machinery, road rollers, forklift trucks, bulldozers and graders (controlled by Chinese party)
16. Development and production of numerically-controlled medical equipment and key components and parts
17. Production of natural gas compressors (containing coalbed gas compressors)
18. Value-added telecom services (within the commitment framework of China's entry into the WTO)
19. Passenger transportation by road (controlled by Chinese party)
20. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
21. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Guizhou Province**

1. Restoration of farmland to forests and grasslands, protection of natural forests and subsequent development of other national key ecological projects
2. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming
3. Deep processing of potatoes, konjaks and other products
4. Deep processing of meats (beef, pork, mutton and poultry meats), capsicums, buckwheat, yams and walnuts
5. Deep processing of ramie products
6. Development of applied technologies for coal processing and production of products (controlled by Chinese party)
7. Smelting of titanium resources (controlled by Chinese party)



8. Deep processing of silk products
9. Production of phosphor and sulfur chemical and industrial products
10. Development and production of animal and plant medicine resources (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
11. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
12. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
13. Finishing and deep processing of aluminum and other nonferrous metals (limited to joint equity and cooperation)
14. Production of abrasive materials and abrasive tools
15. Production of automobile spare parts (automobile gear boxes, automobile engine crankshafts, connecting rods, cylinder bodies, cylinder covers, engine electronic spraying systems, automobile shock absorbers, clutches, engine timing chains, automobile lamps and automobile instruments)
16. Value-added telecom services (within the commitment framework of China's entry into the WTO)
17. Passenger transportation by road (controlled by Chinese party)
18. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
19. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Yunnan Province**

1. Development and production of superior mulberry and silkworm products
2. Restoration of farmland to forests and grasslands, protection of natural forests and subsequent development of other national key ecological projects
3. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming
4. Finishing and deep processing of nonferrous metals of copper, lead and zinc (excl. exploration, exploitation and smelting) (controlled by Chinese party)
5. Development and application of special edible resources
6. Processing and development of flaxes and comprehensive utilization of byproducts
7. Development of applied technologies for coal processing and production of products (controlled by Chinese party)
8. Deep processing of silk products
9. Development of applied technologies in phosphor fine chemical industry and production of products (controlled by Chinese party)
10. Development and production of animal and plant medicine resources (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
11. Printing of printed matters of package and decoration
12. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
13. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
14. Production of diesel engines for light vehicle use and components and parts thereof
15. Value-added telecom services (within the commitment framework of China's entry into the WTO)
16. Passenger transportation by road (controlled by Chinese party)
17. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)

**18. Protection, development and operation of tourist areas (spots) and building of their supporting facilities****Tibet Autonomous Region**

1. Restoration of farmland to forests and grasslands, protection of natural forests and subsequent development of other national key ecological projects
2. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming
3. Development and utilization of saline resources (controlled by Chinese party)
4. Production of drinking natural mineral water (controlled by Chinese party)
5. Deep processing of yak-fur products and production of Tibetan carpets
6. Processing and production of woolen products
7. Processing and production of Chinese medicinal plants, extracts of Chinese traditional medicine and Chinese patent medicine (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
8. Production of new kinds and formulations of Tibetan medicines (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
9. Production of specially-needed ethical products, handicraft articles and materials for packing containers and glass products for daily use
10. Value-added telecom services (within the commitment framework of China's entry into the WTO)
11. Passenger transportation by road (controlled by Chinese party)
12. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)

**13. Protection, development and operation of tourist areas (spots) and building of their supporting facilities****Shaanxi Province**

1. Development and production of potato and cotton seeds and seedlings (controlled by Chinese party)
2. Restoration of farmland to forests and grasslands, protection of natural forests and water head sites and subsequent development of other national key ecological projects
3. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming, and protective cultivation
4. Spinning, knitting and garment processing of high-grade cotton, fir and chemical fiber
5. Deep processing of silk products
6. Development and production of animal and plant medicine resources (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
7. Development and production of downstream chemical products of natural gas (excl. products under the categories of restriction and prohibition of the *Policies on Utilization of Natural Gas*)
8. Development of applied technologies for coal processing and production of products (controlled by Chinese party)
9. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
10. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
11. Finishing and deep processing of titanium resources (controlled by Chinese party)
12. Design and production of blast-furnace gas energy recovery turbine units
13. Value-added telecom services (within the commitment framework of China's entry into the WTO)
14. Passenger transportation by road (controlled by Chinese party)
15. Medical institutions (limited to joint equity and cooperation)

16. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
17. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Gansu Province**

1. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming, and protective cultivation
2. Development and production of seeds of melons and fruits, vegetables and flowers (controlled by Chinese party)
3. Establishment of bases for growing high-quality wine grapes
4. Plantation and processing of high-quality beer raw materials
5. Development and production of downstream chemical products of natural gas (excl. products under the categories of restriction and prohibition of the *Policies on Utilization of Natural Gas*)
6. Deep processing of rare earths and production of applied products
7. Establishment of GAP production bases for Chinese traditional medicinal plants and deep processing (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
8. Finishing and deep processing of nonferrous metals including aluminum, copper and nickel (controlled by Chinese party)
9. Production of petroleum drilling and refining equipment
10. Processing of oil and gas pipelines
11. Production of Mono pumps (single-screw pumps), water pumps and fine grinding machines
12. Production of precisely numerically-controlled machines and tools
13. Wind and solar energy power generation and equipment manufacturing industry thereof (limited to joint equity and cooperation)
14. Value-added telecom services (within the commitment framework of China's entry into the WTO)
15. Passenger transportation by road (controlled by Chinese party)
16. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
17. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Ningxia Autonomous Region**

1. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming, and protective cultivation
2. Plantation and deep processing of medlars and grapes
3. Development and production of specially-needed ethical products and Islamic foods
4. Production of chemical raw materials for drugs by means of fermentation and development and production of intermediates and amino acid products
5. Development and production of carbon-based materials
6. Deep processing of gypsums and ceramic raw clays
7. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
8. Finishing and deep processing of metals including tantalum and niobium (controlled by Chinese party)
9. High-performance radial tire production
10. Production and processing of numerically-controlled machines, large precise bearings, mining equipment, automatic instruments and large precise castings
11. Production and processing of large comprehensive mining equipment and flameproof electric machinery

12. Development and production of wind and solar energy power generation equipment (limited to joint equity and cooperation)
13. Value-added telecom services (within the commitment framework of China's entry into the WTO)
14. Passenger transportation by road (controlled by Chinese party)
15. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
16. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Qinghai Province**

1. Protection, plantation, breeding, processing and utilization of altiplano animal and plant resources (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
2. Restoration of farmland to forests and grasslands, protection of natural forests and water head sites and subsequent development of other national key ecological projects
3. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming, and protective cultivation
4. Construction of bases for organic natural crops and livestock and deep processing of products
5. Deep processing of yak-fur products
6. Development and production of downstream chemical products of natural gas (excl. products under the categories of restriction and prohibition of the *Policies on Utilization of Natural Gas*)
7. Production of new kinds and formulations of Chinese traditional and Tibetan medicines (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
8. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
9. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
10. Value-added telecom services (within the commitment framework of China's entry into the WTO)
11. Passenger transportation by road (controlled by Chinese party)
12. Vocational educational institutions (limited to cooperation)
13. Medical institutions (limited to joint equity and cooperation)
14. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
15. Protection, development and operation of tourist areas (spots) and building of their supporting facilities

**Xinjiang Uygur Autonomous Region (incl. Xinjiang Production and Construction Corp)**

1. Restoration of farmland to forests and grasslands, protection of natural forests and water head sites and subsequent development of other national key ecological projects
2. Development and application of technologies of water-saving irrigation and water-saving irrigation for dry land farming, and protective cultivation
3. Plantation and deep processing of high-quality tomatoes, distinctive bergamot bears, grapes, melons, Chinese dates and medlars)
4. Construction of bases for growing high-quality wine grapes
5. Plantation and processing of natural spices
6. Processing of beet sugar and comprehensive utilization of byproducts
7. Plantation of flax and production of flax products
8. Upgrade and change of top-grade cotton and wool products

9. Deep processing of silk products
  10. Comprehensive utilization of vermiculite, mica, asbestos, magnesite, graphite, limestone, andalusite, dimension stones and other nonmetal ores (excl. exploration and exploitation)
  11. Development of applied technologies for coal processing and production of products (controlled by Chinese party)
  12. Production and development of downstream products of salt chemical industry (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
  13. Comprehensive utilization of oil-gas associated resources
  14. Recovery and utilization of blow-down gas
  15. Plantation and processing medicinal plants with Uygur characteristics and development of new techniques of pharmacy (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
  16. Development and production of wind and solar energy power generation equipment (limited to joint equity and cooperation)
  17. Development and utilization of biological pharmacy products by using the viscera of cattle and sheep (excl. those that under the categories of restriction and prohibition of the *Catalogue for the Guidance of Foreign Investment Industries*)
  18. Production of specially-needed ethical products, handicraft articles and materials of packing containers and glass products for daily use
  19. Technical development and deep processing of superior float glass of special varieties (super white, super thin and online Low-E)
  20. Production of new dry-processing cement by using cement clinker with a daily production of 4,000t or more
  21. Deep processing of nonferrous metals including copper, lead, zinc and aluminium (limited to joint equity and cooperation)
  22. Value-added telecom services (within the commitment framework of China's entry into the WTO)
  23. Passenger transportation by road (controlled by Chinese party)
  24. Construction and operation of urban gas supply, heat supply and water supply and drainage systems (controlled by Chinese party in large cities)
  25. Protection, development and operation of tourist areas (spots) and building of their supporting facilities
- the National Development and Reform Commission and the Ministry of Commerce 2008-12-23

## **Circular of the Ministry of Commerce on Delegating Approval Authority over Foreign Investment to Local Counterparts**

Shang Zi Fa [2010] No. 209

For the purpose of carrying out and implementing the Several Opinions of the State Council on Further Utilizing Foreign Investment (Guo Fa [2010] No. 9) and deepening the system of the foreign investment management system, relevant issues on the approval and management authority over foreign investment enterprises to local counterparts are hereby notified as follows:

**Article 4** The competent commerce authorities and national economic and technological development zones of provinces, autonomous areas; municipalities directly under the central government, cities specifically designated in the state plan, Xinjiang Production and Construction Corps and sub-provincial cities (inclusive of Harbin, Changchun, Shenyang, Jinan, Nanjing, Hangzhou, Guangzhou, Wuhan, Chengdu and Xi'an) (hereinafter referred to as local approval authorities) shall be responsible for the approval and management of and over the establishment and alteration of foreign investment enterprises of encouragement and permission with total investment of USD300m and foreign investment enterprises of restriction with total investment of USD50m in the Catalogue for the Guidance of Foreign Investment Industries (hereinafter referred to as quota). The quota for a foreign-invested joint stock company shall be computed in accordance to registered capital, that for a foreign-invested joint stock company restructured from other form in accordance to net assets value in the wake of assessment and that for a domestic enterprise by a foreign investor in the form of merger and acquisition in accordance with transaction amount.

**Article 5** The local approval authorities shall be responsible for the approval and management of and over the single increase of capital with the amount below the quota.

**Article 6** The local approval authorities shall be responsible for the approval and management of and over the establishment and alteration of foreign investment enterprises of encouragement above the quota and without the comprehensive balance of the state.

**Article 7** The local approval authorities shall be responsible for the approval and management of and over the establishment and alteration of foreign investment companies with registered capital of below USD300m, foreign-invested joint venture enterprises with total capital of below USD300m and foreign-invested venture investment enterprises.

**Article 8** The local approval authorities shall in accordance with related provisions conduct approval and management of and over the establishment and alteration (inclusive of above quota and increase of capital) of foreign investment enterprises in the service industry except otherwise the approval by the Ministry of Commerce as explicitly prescribed in laws and regulations. In event a foreign investment enterprise shall in accordance with related provisions gain the pre-license of the competent industry sector of the state or ask it for advice, it should gain written documents or opinion of agreement. The establishment and alteration of foreign investment enterprises in the areas of finance and telecommunication shall be still subject to the existing laws and regulations.

**Article 9** The local approval authorities shall be responsible for the approval and management of and over the alteration (exclusive of the situation where a single increase of capital reaches or surpasses the quota or the one as prescribed in Article 5 herein) of the foreign investment enterprises established under the approval of the Ministry of Commerce, the former Ministry of Foreign Trade and Economic Cooperation and related departments under the State Council.

**Article 10** The competent commerce authorities at all levels should strictly execute the policy for foreign investment industries of the state. Foreign investment involved in the industries of macro-adjustment and control and overcapacity shall be strictly examined and checked and recorded in accordance with relevant provisions of the state.

**Article 11** The competent commerce authorities at all levels should in accordance with the Circular of the Ministry of Commerce on Further Improving the Approval of Foreign Investment (Shang Zi Han [2009] No.



## China alert Tax and regulatory developments

Issue 1, January 2008

T6, 43

### Grandfathering treatments under the Corporate Income Tax Law

#### In brief

- The State Council issued two circulars to clarify transitional and grandfathering rules with respect to old tax incentives.

#### Relevant regulations discussed in this issue

*Notice on the Implementation of Rules of the Grandfathering Relief under the CIT Law, Guofa (2007) No. 39, issued on 26 December 2007 by the State Council, effective from 1 January 2008 (Circular 39)*

*Notice on the Implementation of Grandfathering Relief in respect of High and New Technology Enterprises in Special Economic Zones and Shanghai Pudong New Area, Guofa (2007) No. 40, issued on 26 December 2007 by the State Council, effective from 1 January 2008 (Circular 40)*

The State Council passed two tax circulars – Circular 39 and Circular 40 – on 26 December 2007 to clarify the grandfathering treatment provided under Article 57 of the new Corporate Income Tax (CIT) Law.

#### Circular 39

In this circular, the State Council stipulates the grandfathering treatment for existing enterprises (i.e. enterprises with business licenses dated prior to 16 March 2007) that are entitled to preferential tax treatments under the old Enterprise Income Tax (EIT)/Foreign Enterprise Income Tax (FEIT) laws. The grandfathering treatments are:

#### I. CIT rates

(a) Transitional treatment for the reduced tax rate of 15 percent under the old laws will be as follows:

2007	2008	2009	2010	2011	2012
15%	18%	20%	22%	24%	25%

(b) The 24 percent reduced rate will transit to the standard CIT rate of 25 percent from 2008.

#### II. Tax holidays

Tax holidays (e.g. "two-year exemption followed by three-year 50 percent reduction" or "five-year exemption followed by five-year 50 percent reduction"), will be treated as follows:

(a) Unutilised tax holidays can continue until expiry

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(b) Tax holidays will be deemed to start from 1 January 2008, even if the company is not yet turning a profit.

### III. Scope of the grandfathering treatments

Circular 39 sets out the details of the "old" incentives that are eligible for the grandfathering relief. We note that, compared with the old FEIT Law and Implementation Rules, the following incentives are not included in the list:

- Reduced tax rate and tax holiday for foreign-invested banking institutions
- Extended tax holiday for export-oriented foreign-invested enterprises (FIEs) and advanced technology FIEs
- Discretionary extended tax reduction for FIEs engaged in agriculture, forestry or animal husbandry, or FIEs located in remote underdeveloped areas.

### IV. Other important messages

The State Council also stipulates that enterprises qualified for both the aforementioned grandfathering treatments and tax incentives under the new CIT Law can choose to receive the most favourable tax incentives. However, there is no duplicate entitlement in respect of the incentives. A company cannot change its entitlement to incentives once a choice is made.

The State Council clarifies that the existing preferential EIT/FEIT policy pertaining to the development of western China shall continue to be effective.

### Circular 40

According to Article 57 of the CIT Law, hi-tech enterprises established on or after 1 January 2008 in six zones can enjoy a five-year tax holiday of two years tax exemption followed by three years 50 percent reduction starting from the first revenue generating year. In this notice, the State Council clarifies the conditions for the entitlement to the tax holiday:

1. The six zones include five special economic zones (Shenzhen, Zhuhai, Shantou, Xiamen and Hainan) and Shanghai Pudong New Area
2. Companies classified as "newly-established encouraged hi-tech enterprises" should comply with Article 93 of the Implementation Rules of the CIT Law. In addition, they should be recognised in accordance with the "Administrative Rules for the Recognition of Hi-tech Enterprises" (to be issued by the authorities)
3. If an enterprise fails to qualify to be classified as an "encouraged hi-tech enterprise" in any year during the five-year tax holiday, from



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that particular year it can no longer receive the remaining tax holiday, even if it re-qualifies as a hi-tech enterprise in a later year

4. A company is required to separately account for income and expenses from businesses inside (i.e. entitled to the holiday) and outside (i.e. not entitled to the holiday) the six zones to calculate its entitlement to the tax holiday.

By Lewis Lu, Partner and Flame Jin, Senior Manager

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Notice of the State Administration of  
Taxation on Printing and Issuing the  
Measures for the Administration of Tax  
Deduction or Exemption (for Trial  
Implementation)

Guo Shui Fa [2005] No. 129

The state and local taxation bureaus of all provinces, autonomous regions, municipalities directly under the Central Government and Yangzhou Taxation Institute:

With a view to regulating and intensifying the administration of tax deduction or exemption, the State Administration of Taxation has formulated the Measures for the Administration of Tax Deduction or Exemption (for Trial Implementation) and hereby prints and distributes it to you for implementation.

Annex: Measures for the Administration of Tax Deduction or Exemption (for Trial Implementation)

State Administration of Taxation  
August 3, 2005

Measures for the Administration of Tax  
Deduction or Exemption (for Trial  
Implementation)

Chapter I General Provisions

Article 1 With a view to regulating and intensifying the administration of tax deduction and exemption, the present Measures are formulated in accordance with the Law of the People's Republic of China on Tax Collection and Administration (hereinafter referred to as the Law on Tax Collection and Administration) and the Detailed Rules for Implementation thereof and the provisions of the relevant laws, regulations and rules on tax deduction or exemption.

Article 2 The term "tax deduction or exemption" as mentioned in the present Measures refers to the treatment of tax deduction or tax exemption that is granted to a taxpayer under the laws and regulations on tax collection and the relevant provisions of the state on tax collection (hereinafter referred to as the provisions of tax laws). The term "tax deduction" refers to the deduction of some amount of tax from the tax payable; while "tax exemption" refers to the exemption of tax under a special tax category or item.

Article 3 The tax authorities at various levels shall, in accordance with the principles of legality, openness, impartiality, high efficiency and convenience, standardize the administration of tax deduction and exemption.

Article 4 The tax deduction or exemption are classified into the tax deduction or exemption by way of approval and the tax deduction or exemption by way of archival filing. The term "tax deduction or exemption by way of approval" refers to the item of tax deduction or exemption that shall be subject to the examination and approval of the tax authority. The term "tax deduction or exemption by way of archival filing" refers to the item of tax deduction or exemption for which the formalities of examination and approval have been eliminated and which is not subject to the examination and approval of the tax authority.

Article 5 A taxpayer who enjoys the tax deduction or exemption by way of approval shall submit relevant materials and file an application for approval. The tax deduction or exemption thereof is implemented upon the approval and verification of the tax authority that has the power of examination and approval (hereinafter referred to as the competent tax authority), as is prescribed in the present Measures. Where a taxpayer fails to file an application or fails to obtain the approval and verification of the competent tax authority, he may not enjoy any tax deduction or exemption.

A taxpayer that requests for enjoying the tax deduction or exemption by way of archival filing shall file an application for archival filing. The relevant tax deduction or exemption shall be implemented as of the date when the tax authority has handled the formalities of registration and record keeping. A taxpayer that fails to go through the archival filing in accordance with the relevant provisions may not enjoy any tax deduction or exemption.

Article 6 For a taxpayer that concurrently engages in activities under the item of tax deduction or exemption as well as item of non-tax-deduction or exemption, the tax amount thereof shall be verified and calculated separately, that is, the tax-computation base for those activities under the item of tax deduction or exemption as well as the amounts to be deducted or exempted shall be separately calculated. If they cannot be verified and calculated separately, no tax exemption or reduction is allowed. If they cannot be verified and calculated in a clear way, the tax authority shall verify and determine them in a reasonable way.

Article 7 A taxpayer may enjoy the treatment of tax deduction or exemption under the law. For anyone who fails to enjoy the said treatment, which result in his overpayment of taxes, if there is no definite provision that the refund of the overpaid taxes shall be subject to the examination and approval of the tax authority or there is no prescribed time limit for filing an application for such refund, the taxpayer may, within the time limit as prescribed in Article 51 of the Law on Tax Collection and Administration, file an application for refunding the overpaid taxes, but no interest calculated at the bank deposit rates for the corresponding period of time will be available.

Article 8 The authority in charge of the examination and approval of tax deduction or exemption shall be provided for by laws, regulations and rules on tax collection. Where the tax deduction or exemption is subject to the examination and approval of the State Administration of Taxation, it shall be reported to the State Administration of Taxation through the tax authority of the province, autonomous region, municipality directly under the Central Government or the city under separate state planning. Where the tax deduction or exemption is subject to the examination and approval of the tax authority at or below the provincial level, it shall be subject to the examination and approval of the tax authority at the provincial level, which shall determine the power of examination and approval, and as is the general principle, it is subject to the examination and approval of the tax authority of the county (district) where the taxpayer is located. For any item with a large sum of tax to be deducted or exempted or the condition is complicated, the tax authority of the province, autonomous region, municipality directly under the Central Government or the city under separate state planning shall, pursuant to the principles of efficiency and convenience, supervision and responsibility, define the power of examination and approval in a proper manner.

The tax authorities at various levels shall carry out the examination and approval for tax deduction or exemption in accordance with the prescribed power and procedures and are not allowed to carry out any examination and approval by exceeding their power or violating the relevant provisions.

## Chapter II Application, Report, Examination and Approval, and Implementation of Tax Deduction or Exemption

Article 9 A taxpayer who applies for tax deduction or exemption by way of approval shall, within the period as prescribed by policies for tax deduction or exemption, file a written application with the administrative tax authority and report the following materials:

- (1) An application report for tax deduction or exemption, clearly indicating the reason, basis, scope, period, quantity, amount, and so on;
- (2) The financial statements and a tax return;
- (3) The certification materials as issued by the relevant departments; and
- (4) Other material as required by the tax authority.

The materials reported by a taxpayer shall be authentic, accurate and complete. The tax authority may not require a taxpayer to submit any technical material or any other material that is irrelevant to the tax deduction or exemption item it applies for.

Article 10 A taxpayer may apply to the administrative tax authority for tax deduction or exemption or may apply to the competent tax authority directly.

For any application that is accepted by the administrative tax authority where the relevant taxpayer is located and shall be subject to the examination and approval of the tax authority at a higher level, the administrative tax authority shall, within 10 workdays as of acceptance of the application, directly report it to the tax authority at a higher level that has the power of examination and approval.

Article 11 The tax authority shall handle the applications for tax deduction or exemption in light of the following circumstances:

(1) If the tax deduction or exemption item as applied for is not subject to the examination of the tax authority before implementation, the taxpayer shall be informed of the non-acceptance in a timely manner;

(2) If the application material concerning tax deduction or exemption is not detailed enough or has any mistake, the taxpayer shall be informed of it and allowed to correct it.

(3) If the application material concerning tax deduction or exemption is incomplete or out of line with the statutory form, the taxpayer shall be informed of all the content that needs to be supplemented and corrected in a one-off manner within 5 workdays; and

(4) If the application material concerning tax deduction or exemption is complete and complies with the legal form, or the taxpayer has submitted all the tax deduction or exemption materials as is required to be supplemented or corrected by the tax authority, the application thereof shall be accepted.

Article 12 When the tax authority accepts or refuses to accept an application for tax deduction or exemption, it shall issue a written certification affixed with the special seal thereof and indicated with the date as well.

Article 13 The examination and approval for tax deduction or exemption is an examination on the situation whether the materials provided by the relevant taxpayer is pertinent to the statutory requirements of tax deduction or exemption. It does not change the responsibility of a taxpayer to file tax returns in a faithful manner.

Where it is necessary for the tax authority to carry out an on-the-spot verification of the contents of the application materials, it shall assign 2 or more working staff to conduct the on-the-spot verification according to the

prescribed procedures and put the verification on record. Where it is both heavy and time-consuming for a superior tax authority to carry out on-the-spot verification regarding tax deduction or exemption, it may entrust the tax authority at the county level where the enterprise is located to conduct the verification.

Article 14 Where the period for tax deduction or exemption exceeds 1 tax year, the examination and approval shall be carried out in a one-off way.

Where the condition for a taxpayer to enjoy the tax deduction or exemption changes, it shall be reported to the tax authority within 15 workdays as of the change, and the tax deduction or exemption shall be terminated after the examination of the tax authority.

Article 15 The tax authority that has the power to examine and approve an application of a taxpayer for tax deduction or exemption shall complete the examination and approval within the time limit provided for as follows in a timely manner and make a decision thereon:

The tax authority at the county or district level in charge of the examination and approval of tax deduction or exemption shall, within 20 workdays, make a decision on the examination and approval. The tax authority at the prefectural or municipal level in charge of the examination and approval of tax deduction or exemption shall, within 30 workdays, make a decision on the examination and approval. The tax authority at the provincial level in charge of the examination and approval of tax deduction or exemption shall, within 60 workdays, make a decision on the examination and approval. In case an authority fails to make the relevant decision within the prescribed time limit may, upon the approval of the principal of the tax authority at the same level, the period for examination and approval may be extended for another 10 workdays and the taxpayer concerned shall be informed of the reason for the extension.

Article 16 Where an application for tax deduction or exemption satisfies the statutory requirements and standards, the competent tax authority shall, within the prescribed time limit, make a written decision on granting the approval. In the case of disapproval for the tax deduction or exemption, an explanation shall be given and the taxpayer concerned shall be informed of the right to apply for administrative reconsideration or file an administrative lawsuit according to law.

Article 17 Where the tax authority makes a decision on examination and approval of tax deduction or exemption, it shall, within 10 workdays as of the day when the decision is made, serve the taxpayer with the written decision of examination and approval of tax deduction and exemption.

Article 18 Prior to the service of the reply for tax deduction or exemption, the relevant taxpayer shall file tax returns and pay taxes in accordance with the relevant provisions.

Article 19 Prior to the implementation of the tax deduction or exemption by way of archival filing, a taxpayer shall file the following materials with the administrative tax authority for record:

- (1) The implementation of the policies for tax deduction or exemption; and
- (2) Relevant materials as required by the administrative tax authority.

The administrative tax authority shall, within 7 workdays as of the date of filing of the taxpayer's application, complete the work of registration and archival filing and inform the taxpayer to implement.

### Chapter III Administration and Supervision of Tax Deduction and Exemption

Article 20 The tax deduction or exemption enjoyed by a taxpayer shall be incorporated into the normal tax return to apply for the tax deduction or exemption.

Upon the expiration of the period for tax deduction or exemption, a taxpayer shall file relevant tax returns and pay taxes.

The tax authority and tax administrators shall strengthen the administration of and supervision over tax deduction and exemption.

Article 21 The tax authority shall combine the inspection of tax return, law enforcement and other specific inspections with the through investigation and rectification on the of tax deduction or exemption items on a periodical basis every year to intensify its supervision and examination. The major contents shall include:

(1) Whether or not a taxpayer satisfies the qualifications for tax deduction or exemption, whether or not the taxpayer cheats for tax deduction or exemption by means of concealing the relevant information or providing any false material;

(2) If the condition for a taxpayer to enjoy tax deduction or exemption changes, whether or not he has gone through the formalities for tax deduction or exemption in light of the change after the tax authority has made a second examination;

(3) If the amount of tax deduction or exemption is granted for a special purpose, whether or not the taxpayer has used the tax deduction or exemption for the prescribed purpose; where a time period is prescribed for tax deduction or exemption, whether or not the taxpayer have resumed the tax payment since the expiration;

(4) Whether or not a taxpayer unlawfully has enjoyed any tax deduction or exemption without the examination and approval of the tax authority; or

(5) Whether or not any tax deduction or exemption that a taxpayer has enjoyed fails to be reported.

Article 22 A responsibility system of "he who carries out the examination and approval shall take the responsibility" shall be adopted for the examination and approval of tax deduction or exemption. The tax authorities at various levels shall incorporate the examination and approval of tax deduction or exemption into the post responsibility assessment system and establish a system of investigating into the responsibility of administrative law enforcement of tax collection.

(1) Establishing and improving the system of examination and approval, track-down and feedback. The tax authorities at various levels shall carry out the track-down and feedback on the examination and approval work on a periodical basis and duly improve the working mechanism of examination and approval.

(2) Establishing an appraisal and examination system for examination and approval files. The examination and approval authority at various levels shall establish all categories of files for examination and approval and keep them in a proper manner. The superior tax authority shall assess and examine the archived materials on a periodical basis.

(3) Establishing a hierarchical supervision system. The superior tax authority shall establish a frequent supervision system so as to strengthen the supervision of the examination and approval work of the tax authority at lower levels, including whether or not the tax deduction or exemption has been examined and approved according to the capacity, requirements and the time limit as prescribed in the present Measures.

Article 23 The tax authority shall, according to the time and procedures as prescribed in the present Measures and pursuant to the principles of fairness, transparency, honesty, high efficiency and convenience, accept the application that is filed by a taxpayer for tax deduction or exemption and carry out the

relevant examination and approval in a timely manner. Where the tax authority fails to accept or carry out the relevant examination and approval in a timely manner without any objective causes, or a mistake is resulted in the examination and approval and verification it carries out due to its failure to comply with the prescribed procedures, it shall be subject to relevant liabilities in accordance with the relevant provisions of the Law on Tax Collection and Administration and the tax law enforcement responsibility system.

Article 24 Where the business situation of a taxpayer does not meet the requirements of tax deduction or exemption, or a taxpayer obtains the treatment of tax deduction or exemption by fraudulent means, or where there is a change in the condition for enjoying the tax deduction or exemption and the taxpayer concerned fails to report it to the tax authority, or a taxpayer deducts or exempts his taxes without applying for approval in accordance with the procedures as prescribed by the present Measures, the tax authority shall deal with it in accordance with the relevant provisions of the Law on Tax Collection and Administration.

In case an enterprise fails to pay taxes or fails to underpay tax as a result of a mistake as incurred by the tax authority in the process of examination and approval or verification, it shall be dealt with in accordance with Article 52 of the Law on Tax Collection and Administration.

Any tax authority that exceeds its power to approve any tax deduction or exemption shall be dealt with in accordance with the provisions of Article 84 of the Law on Tax Collection and Administration.

Article 25 The tax authority shall, in accordance with the principle of "substance over form", carry out a post supervision and examination over the business situation of enterprises. In the process of examination, where finding any mistake in an appraisal as committed by the relevant department of professional or economic appraisal, it shall coordinate and communicate with the relevant departments for correction, disqualify the relevant taxpayer for preferential treatments in a timely manner, and urge to take legal actions against the relevant persons responsible. In case a relevant department unlawfully provides certification documents to a taxpayer resulting in the non-payment or underpayment of tax payable, it shall be dealt with in accordance with the provisions of Article 93 of the Detailed Rules for Implementing the Law of the People's Republic of China on Tax Collection and Administration.

#### Chapter IV Archival Filing of Tax Deduction or Exemption

Article 26 The administrative tax authority shall establish a management account of tax deduction or exemption for taxpayers, which registers the approval time, item, maximum years, amount of tax deduction or exemption in details and establish a dynamic administration and supervision mechanism of tax deduction or exemption.

Article 27 For the annual tax deduction or exemption of a newly-established enterprise that has suffered a serious natural disasters such as hurricane, fire, flood or earthquake, etc., or that is located in former revolutionary base areas, areas inhabited by minority ethnic groups, remote or border areas, or poverty-stricken areas or in the western regions, whose deducted or exempted share of tax belonging to the central revenue reaches 1 million Yuan or more, it is no longer subject to the examination and approval of the State Administration of Taxation; instead, the authority of examination and approval shall be specified by the tax authority at the provincial level. The tax authority in charge of examination and approval shall report the information on tax deduction and exemption by taxpayer

(including the item, base and amount of tax deduction or exemption) to the tax authority at the provincial level for archival filing on the basis of households. Article 28 The tax authorities of all provinces, autonomous regions, municipalities directly under the Central Government and the cities under separate state planning shall, prior to the end of June each year, report in writing the information on tax deduction and exemption and submit a summary report of the previous year to the State Administration of Taxation. The fulfillment of tax deduction or exemption items that are subject to the examination and approval of the State Administration of Taxation shall be reported in writing by the tax authorities at the provincial level.

The summary report on tax deduction or exemption shall include the following contents: the basic information and analysis of tax deduction or exemption; the implementation of the policies for tax deduction or exemption as well as the existing problems; the experiences in the administration of tax deduction and exemption, and relevant suggestions.

Article 29 The measures for the accounting and statistics of tax deduction or exemption shall be separately formulated and distributed.

## Chapter V Supplementary Provisions

Article 30 The present Measures shall go into effect as of October 1, 2005. In case of any discrepancy between previous provisions and the present Measures, the present Measures shall prevail.

Article 31 The state and local taxation bureaus of all provinces, autonomous regions, municipalities directly under the Central Government and the cities under separate state planning may formulate specific implementation plans in accordance with the present Measures.

Annex:

### Examination and Approval Requirements of the Deduction or Exemption of Enterprise Income Tax

I. Preferential Policies for the Income Tax of Software Development Enterprises or Integrated Circuit Design Enterprises:

1. A software development enterprise shall concurrently satisfy the following requirements:

(1) Having obtained the Ascertainment Certificate of Software Enterprises as issued by the administrative department of information industry at the provincial level;

(2) Undertaking the development and production of computer software, system integration, application services and other corresponding technical services as main business, with the exception of those enterprises that only engage in software trade who may not enjoy the preferential tax policy;

(3) Having more than one software product that are developed by the enterprise or whose intellectual property right is owned by the enterprise, or providing such services as the system integration of computer information that has passed the qualification grade accreditation;

(4) Having the technical equipment and business place that are necessary for software development and relevant technical services.

(5) The technical personnel that engage in the development of software products and technical services occupying no less than 50 % of the total number



of its employees.

(6) The funds for the research and development of software techniques and products constituting more than 8% of its income as generated from software. and

(7) The annual sales income from software constituting more than 35% of its total annual income. In particular, the sales income from self-produced software accounts for more than 50% of its total sales income from software.

2. An integrated circuit design enterprise shall concurrently satisfy the following requirements:

(1) Having acquired the relevant certificates and certification documents as issued by an accreditation institution under the entrustment of the Ministry of Information Industry;

(2) Undertaking the integrated circuit design as its main business;

(3) Having the basic conditions, such as the business place, software and hardware facilities and personnel and so on, that comply with the design and development of integrated circuits, having standardized management on working procedures and integrated circuit design and having the means and capability to guarantee the quality of its design products; and

(4) The income from self-designed integrated circuit products and the income from entrusted designing products taking up more than 30% of its total annual income.

3. The key software enterprise under the state planning shall be the enterprise that is included in the list of key software enterprises, which are jointly determined by the National Reform and Development Commission, the Ministry of Commerce, the Ministry of Information Industry, and the State Administration of Taxation, and shall have obtained the Certificate of Key Software Enterprises under the state planning, as accredited by the China Software Industry Association.

4. The term "newly established software enterprise or integrated circuit enterprise" refers to an enterprise that is newly established after July 1, 2000. The term "profit-making year" refers to the first tax year, in which an enterprise is profitable since the start of production and business operations. Where an enterprise runs at a loss at the initial stage of its establishment, it may carry forward the losses to subsequent years in accordance with the provisions of tax law and the year when all the losses have been made up (the enterprise may exceed the prescribed makeup year) and there are still taxable incomes shall be deemed as the first profit-making year. The period for the income tax deduction or exemption shall be calculated as of the profit-making year in a consecutive manner and may not be extended due to any loss that occurs in the course.

## II. Preferential Policies for the Income Tax of Enterprises that Employ Laid-off Workers

### 1. Scope of Laid-off Workers

Specifically including:

1. laid-off workers of state-owned enterprises;
2. unemployed workers of state-owned enterprises;
3. workers for whom other positions shall be found for due to bankruptcy of a state-owned enterprise;

4. other unemployed persons in the urban or suburban areas that receive the minimum living allowance and have been out of work for 1 year or more.

A laid-off worker an enterprise employs shall hold the Preferential Re-employment Certificate as issued by the administrative department of labor and securities.

### 2. Specific Requirements for Commercial Enterprises

(1) The term "commercial enterprise" refers to an enterprise that is involved in the retail industry (excluding the retail of tobacco products), or in the accommodation and catering industry (excluding tourist hotel). The term "commercial retail enterprise" refers to an retail enterprise that has its business place and counters for the sale of products and that doesn't produce any product by itself and directly supplies product to ultimate consumers, including department stores, supermarkets and retail stores engaging in the sale of various commodities, etc.

(2) A newly established commercial enterprise shall have obtained a Certification of Reemployment of Laid-off Workers By A Newly-established Commercial Enterprise as approved and issued by the administrative department of labor and social security. An established commercial enterprise shall have obtained the Certification of Reemployment of Laid-off Workers By An Established Commercial Enterprise as approved and issued by the administrative department of labor and social security.

(3) The number of laid-off personnel as employed in the current year shall comply with the required proportion.

(4) The enterprise shall establish a stable labor relationship with laid-off workers by concluding labor contracts or agreements for a term of 1 year or more and purchase endowment insurance for the resettled laid-off workers.

### 3. Specific Requirements for Service Enterprises

(1) The term "service enterprise" refers to an enterprise that engages in the business operations as prescribed in the tax items of "service industry" under business tax and excludes such service enterprises that engage in advertising, sauna bath, massage, Internet bar, or oxygen bar.

(2) A newly established service enterprise shall have obtained a Certification of Reemployment of Laid-off Personnel By A Newly-established Service Enterprise as approved and issued by the administrative department of labor and social security. An established service enterprise shall have obtained the Certification of Reemployment of Laid-off Personnel By An Established Service Enterprise as approved and issued by the department of labor and social security.

(3) For other requirements, it shall be implemented by applying mutatis mutandis the requirements for commercial enterprises.

4. An Economic Entity which is Established by a Medium and Large-sized State-owned Enterprise through Segmentation of the Primary Business from the Sideline Ones and Restructuring of the Sideline Ones and Resettlement of Redundant Personnel

(1) An economic entity shall satisfy the following requirements:

(a) Using non-core assets and idle assets of the former enterprise as well as the efficient assets of a policy-related bankrupt enterprise (hereinafter referred to as the "three-type assets");

(b) Conducting independent accounting, having defined property rights clearly and realizing the pluralistic ownership of property rights;

(c) Employing more than 30% of redundant workers of the former enterprise; and

(d) Making amendment to labor contracts or concluding new labor contracts with the resettled personnel.

In particular, the department of public finance or the administrative department of stat-owned assets as authorized by the department of public finance shall issue relevant certification documents certifying the confirmation of the "three-type assets" of a local enterprise. The department of economy and trade shall issue relevant certification documents certifying the separation of the

primary business from the secondary ones and the restructuring of the secondary ones as well as the pluralistic ownership of property rights. The administrative department of labor and social security shall issue the relevant certification documents certifying the determination of redundant workers and the conclusion of labor contracts with them and their employment proportion. A central enterprise shall produce the joint reply of the State Economic and Trade Commission, the Ministry of Finance and the Ministry of Labor and Social Security and the ascertainment certificate as issued by the group enterprise (parent company).

(2) For the scope of separation of the primary business from the secondary ones, restructuring of the secondary ones of medium and large-sized state-owned enterprises (hereinafter referred to as enterprises), it shall be a medium and large-sized state-owned or state-owned holding enterprise. In particular, the term "state-owned holding" refers to the exclusive state-owned holding, which means that the state-owned capital (stock) takes up more than 50% of the total asset of the enterprise.

(3) The standards for the classification of state-owned enterprises shall be implemented in light of the Circular on Printing and Distributing the Interim Provisions on the Standards of Medium and Small Enterprises as jointly issued by the former State Economic and Trade Commission, the former State Planning Commission, the Ministry of Finance and National Bureau of Statistics of China (Guo Jing Mao Zhong Xiao Qi [2003] No. 143).

(4) The determination scope for non-core assets of an enterprise: The term "non-core assets" refers to the business entity that is not closely related to the major business operations of the principal enterprise and has certain survival and development potential as well as the relevant assets, mainly including entities engaged in component and part processing, repair and maintenance, transportation, design, consultation and scientific research institutions that serve the major business.

(5) The service enterprises for processing labor and employment and the small community processing enterprises have obtained an Ascertainment Certification of Admitting Laid-off Personnel By A Service Enterprise for Processing Labor and Employment or an Ascertainment Certification of Admitting Laid-off Personnel By A Small-sized Community Processing Enterprise. The other requirements shall be implemented by applying mutatis mutandis the aforesaid standards;

(6) The term "a newly-established enterprise that resettles laid-off workers" refers to an enterprise that is newly established after September 30, 2002.

III. Preferential Policies for the Income Tax of Enterprises that Resettle Ex-servicemen in Towns and Cities Seeking Jobs by Themselves

(1) The term "ex-servicemen in towns and cities seeking jobs by themselves" refers to the officers and compulsory servicemen that satisfy the requirements of resettlement in towns and cities, have concluded an Agreement on Self-Employment By Retired Soldiers with the civil affairs department in the resettlement place and obtained a Certificate of Self-Employment by Ex-serviceman in Towns and Cities;

(2) The taxpayer is a newly established service enterprise (excluding an enterprise that engages in advertising, sauna bath, massage, internet bar or oxygen bar) or a commercial enterprise (excluding a commercial enterprise that engages in the wholesale business, both wholesale and retail business or other non-retail business) where the aforesaid ex-servicemen are employed. In particular, the term "service enterprise" refers to an enterprise that engages in the business operations set forth in the tax item of "service industry" under the business tax.

(3) The enterprise has obtained an ascertainment certificate of employment of the aforesaid ex-servicemen by a newly-established service enterprise or commercial retail enterprise;

(4) The number of aforesaid ex-servicemen who are newly employed in the current year comes up to the prescribed proportion; and

(5) The enterprise have concluded labor contracts with aforesaid ex-servicemen for a term of 1 year or more and have purchased social insurance for them.

#### IV. Preferential Policies for the Income Tax on Transfer of Technical Achievements that Serve in all Industries by Scientific Research Entities and Colleges and Universities

1. Scientific research institutes under the ownership by the whole people and with an independent accounting system, which have been recognized by the science and technology committee of the province, autonomous region, municipality directly under the Central Government or the city under separate state planning and has passed the examination of the tax authority at the same level, with the exception of one subordinate to a enterprise or public institution and any organization engaging in technical development, consultation, or service agency.

2. Colleges and universities that have been approved by the people's government above the provincial level or by the state administrative department of education and whose academic credential are recognized by the state, as well as the design and research institutes and scientific research institutes as established by colleges and universities for integration of scientific research, production and education and study.

3. Having obtained the effective certification document or instrument on sponsoring the educational institution from the sponsor (namely, the government or educational department) and the technology contract that has been recognized and registered, and being able to provide the itemized schedules concerning the actual income as derived from technical services.

#### V. Preferential Policies for the Transfer of Technical Achievements, etc by Enterprises or Public Institutions.

1. It shall be an institution that engages in the scientific and technical development subordinate to a public institution owned by the whole people, a privately-run scientific and technical institution or a public institution that is established by a medium and large-sized state-owned enterprise for scientific and technical development; and

2. It shall have obtained a technical contract that has been recognized by and registered with a competent accreditation institution and shall be able to provide the itemized schedules concerning the actual income as derived from technical services.

#### VI. Preferential Policies for the Income Tax of Logistics Entities of Colleges and Universities

1. The colleges and universities which logistics entities belong to shall be institutions of higher learning that have been approved by the people's government above the provincial level or by the state administrative department of education and whose academic credentials are recognized by the state.

2. A logistics entity shall be an establishment with legal personality as well as independent accounting system that is separated from the former logistics department in a college or university, and has its major income derived from providing services chiefly for the relevant college or university.

Any other entity as established beyond the College Logistics Reform may not enjoy any tax exemption policy as the "logistics entity of a college or university".

3. For the part of income that is rent and service income as derived from providing logistic services to students, teachers and teaching, a logistics entity may enjoy the preferential policy of tax deduction or exemption; for any other part, it may not enjoy any preferential tax policy.

4. A logistics entity shall have the certification document regarding the logistics reform of the college and university.

#### VII. Preferential Policies for the Income Tax of Transformed Scientific Research Institutes

1. It shall be one of the 242 scientific research institutes that are subordinate to any of the 10 state bureaus under the former State Economic and Trade Commission or one of the 134 scientific research institutes that are subordinate to any of the 11 departments (entities), such as the Ministry of Construction, etc., upon the approval of the State Council, which have been transformed into an enterprise or that has been incorporated into an enterprise. A scientific research institute which, upon the approval by the Ministry of Science, the Ministry of Finance, and the General Office of the Central Organization & Staffing Committee, has been transformed into an enterprise or has been incorporated into an enterprise, from a public scientific research institute subordinate to the department (entity) under the State Council, may enjoy the aforesaid preferential policies.

2. The starting time of enjoying the relevant tax preference shall be the registration day of the transformation.

3. The stock right owned by the former scientific research institute shall come up to the prescribed standard.

4. It shall have obtained the reply of the relevant department on system reform and the reform scheme as approved; and

5. The stock right owned by the scientific research institution after an overall reform shall take up more than 50% of the stock right of the new enterprise.

#### VIII. Preferential Policies for the Tax Policies of Service Centers of All Departments and Organs under the CPC Central Committee and the State Council

1. It shall be an office service center of any department of the Central Government, ministry or affiliated institution of the State Council after the logistics system reform, which has been approved by the General Office of the Central Organization & Staffing Committee, including the office service entities without an independent accounting system that provide logistics services for office work or living of the staff, such as, the dining room, transportation team, medical office, kindergarten, barber's room, laundry room, bath room, the subsidiary foodstuff base (forestation base), etc. of an organ.

2. It shall conduct independent accounting with legal personality of a public institution or enterprise and shall have gone through the formalities of tax registration.

3. The income shall be generated from the logistic services as provided within the organ, which is the income from all kinds of labor and technical services that are provided according to the work requirements of the departments and organs whose administrative office funds are fully appropriated by the public finance of the state.

4. An office service center that has gone through the reform shall verify and calculate the income from providing logistic services within an organ and the income from providing services to outsiders in a separate manner. Any center that cannot verify and calculate the aforesaid incomes separately may not enjoy any preferential tax policy.

5. For an enterprise as newly established by an office service center that

mainly engages in business operations and services for the purpose of resettling reassigned personnel, the specific examination and approval requirements for income tax preference are as follows:

(1) Where the number of reassigned workers in the current year exceeds 60% of the total number of employees of an enterprise, the enterprise may be exempted from income tax for 3 years. After the tax exemption period has expired, where the number of newly reassigned workers in the current year exceeds more than 30% of the total personnel that are originally employed, the enterprise income tax may be collected at a reduced rate of 50% for 2 years.

(2) The total number of employees in an enterprise comprises all kinds of personnel that work in the enterprise, including the temporary workers it employs, contract workers, and retirees.

(3) The relevant enterprise shall establish a stable labor relationship with the reassigned workers by concluding labor contracts or agreements for a term of 1 year or more.

(4) The labor relationship between reassigned workers and their former entities has terminated, and the new entity has bought endowment insurance for reassigned workers.

6. For the office service centers that have gone through the official logistic reform as carried out by the local party committees or governments at the provincial level, it shall be implemented by applying mutatis mutandis the aforesaid requirements.

IX. Preferential Policies for the Income Tax of Enterprises that Specially Engage in Producing Products That Fall into the Catalogue of the Equipment (Products) in the Environmental Protection Industry as Encouraged by the State at Present

1. The enterprise shall produce equipment (products) that fall into the Catalogue of the Equipment (Products) in the Environmental Protection Industry as Encouraged by the State at Present (first batch).

2. The enterprise shall be capable of conducting independent accounting and independently calculating its profits and losses.

3. The enterprise shall have obtained the certification of environmental equipment (product) production enterprises as issued by the former economic and trade commission (the development and reform commission) at or above the prefectural level.

X. Preferential Policies for the Income Tax of Forestry Enterprises

(1) The subject to enjoy the tax preference includes all the enterprises and public institutions that engage in tree planting, forest tree seeds and nursery stock and the preliminary processing of forest products.

(2) The income thereof shall be derived from the planting of trees, forest tree seeds and nursery stock and the preliminary processing of forest products. The scope of the planting of trees, forest tree seeds and nursery stock and the preliminary processing of forest products shall be implemented by applying mutatis mutandis the provisions of the Circular of the Ministry of Finance and the State Administration of Taxation on the Enterprise Income Tax of Agricultural Enterprises and Institutions (Cai Shui Zi [1997] No. 49) and

(3) The planting of trees, forest tree seeds and nursery stock and the preliminary processing of forest products that are exempted from taxes shall be calculated respectively from any other business operation, and the information thereof shall be provided in an accurate manner.

XI. Preferential Policies for the Income Tax of Fishery Enterprises

1. A pelagic fishery enterprise shall satisfy the following requirements for tax deduction or exemption:

(1) It shall have obtained a Qualification Certificate of Pelagic Fishery

Enterprises as issued by the Ministry of Agriculture, which is still within the period of validity.

(2) The income thereof shall be derived from the business operations of pelagic fishery.

2. A fishery enterprise shall satisfy the following requirements for tax deduction or exemption:

(1) It shall have obtained a "Fishing License of the Fishery Industry", which is still within the period of validity.

(2) The income shall be derived from the fishery operations in the open seas or pelagic fishery. The income that is derived from the fishery operations in near seas and inland rivers may not be qualified for any tax preference.

3. For the income of a state-owned agricultural pelagic fishery enterprise and other state-owned agricultural fishery enterprise that is derived from the preliminary processing in the fishery industry, the enterprise income thereof may be exempted from tax according to the Circular of the Ministry of Finance and the State Administration of Taxation on the Income Tax of State-owned Agricultural Enterprises and Institutions (Cai Shui Zi [1997] No. 49).

4. The fishery enterprises shall be able to carry out verification and calculation on their tax-free business separately from the taxable business.

#### XII. Preferential Policies for the Income Tax Concerning Western Development

(1) Enterprises that enjoy preferential tax policies for participation in the Western Development shall be Chinese-funded enterprises locating in the western regions in the Catalogue of Encouraged Industries of the state. The aforesaid western regions comprise the Municipality of Chongqing, Sichuan Province, Guizhou Province, Yunnan Province, Shaanxi Province, Gansu Province, Qinghai Province, Tibet Autonomous Region, Ningxia Hui Autonomous Region, Xinjiang Uygur Autonomous Region, Xinjiang Production and Construction Corps, Inner Mongolia Autonomous Region, and Guangxi Zhuang Autonomous Region. For Xiangxi Tujia and Miao Autonomous Prefecture of Hunan Province, Enshi Tujia Autonomous Prefecture of Hubei Province, Yanbian Korean Autonomous Prefecture of Jilin Province, the preferential tax policies shall be implemented in light of those for the western regions.

(2) It shall be an enterprise that is established and operated by an investor himself that may enjoy the tax preference. Any construction enterprise that only undertakes project construction may not enjoy the tax preferential treatment.

(3) It shall be able to provide the itemized schedules on the total income of project operations as well as on its total income.

(4) An enterprise that enjoys a tax preference at reduced tax rate of 15% shall satisfy the following requirements:

(a) It shall undertake the industrial projects as prescribed in the Catalog of Industries, Products and Technologies That Are Encouraged by the State at Present (Revised 2000) as the major business operations.

(b) The income as derived from its main business shall take up more than 70% of its total income. (c) It has obtained the certification documents regarding the key industries, products and technologies that are encouraged by the state, which are issued by the competent department of the industry at or above the provincial level.

(5) An enterprise that engages in transportation, electric power, water conservancy, post service, and broadcasting and television shall satisfy the following requirements for the tax preferential treatment of "two-year exemption and three-year half-payment":

(a) The income thereof as derived from its main business shall take up more than 70% of the total income.

(b) The term "transportation enterprise" refers to an enterprise that is newly established by investment to engage in the operation of road, railway, aviation, port and wharf as well as pipeline transportation. The term "newly-established power enterprise" refers to an enterprise that is newly established with investment to engage in the power operation. The term "newly-established water conservancy enterprise" refers to an enterprise that is newly established with investment to engage in water resource development as well as prevention and control of flooding damages in respect of comprehensive harnessing of rivers and lakes, flood prevention and control, irrigation, water supply, water resources protection, hydraulic power generation, soil and water conservation, river dredging, construction of dike and levee. The term "newly-established postal enterprises" refers to an enterprise that is newly established by investment to undertake postal operations. The term "newly-established broadcasting and television enterprise" refers to an enterprise that is newly established to engage in the business operations of broadcasting and television.

(6) The national autonomous areas shall provide the approval document of the corresponding people's government at the provincial level for tax deduction or exemption on a periodical basis.

(7) Where it is hard to determine whether an investment project falls into the catalogue of encouraged projects, the tax authority shall require the enterprise to provide the certification documents as issued by the competent department of the industry at or above the provincial level and, in conjunction with other relevant materials, carry out the examination and verification.

#### XIII. Preferential Policies for the Income Tax of Juvenile Activity Places

(1) It shall be the public places for extramural activities, such as the juvenile's or children's palace and juvenile activity center that carry out education in science and technology, culture, moral and patriotism as well as physical activities especially for young students.

(2) It shall have obtained the certification materials as issued by the communist youth league at or above the county level certifying that it exclusively engages in public activities for young students; and

(3) It shall have obtained the business license as issued by the administrative departments of culture or physical education.

#### XIV. Preferential Policies for the Income Tax of Enterprises That Produce and Assemble Special Articles for the Wounded and Disabled

1. The enterprise shall be an enterprise that produces and assembles special articles for the wounded and disabled within the scope of the Catalogue of Special Articles for the Wounded and Disabled in China (first batch).

2. The annual sales income as derived from the sale of special articles that are produced or assembled for the wounded and disabled shall take up more than 50% of its total income (excluding the export income).

3. It shall have complete accounting books and documents and be able to provide accurate and complete taxation materials to the competent tax authority. The income thereof as derived from the production and assembling of special articles for the wounded and disabled may be verified and calculated independently and accurately.

4. It shall have good conditions for its production and assembling and other supplementary conditions that are helpful for the recovery of the wounded and disabled. In particular:

(1) The enterprise shall have no less than 2 specialized technical personnel who have acquired the qualification certificate of manufacture of artificial limbs and orthopedic appliances. Where the production personnel of an enterprise exceed 20, the specialized technical personnel who have acquired the



qualification certificate of manufacture of artificial limbs and orthopedic machines shall take up no less than 1/6 of the total production personnel.

(2) It shall have such special equipment and tools for measurement and modeling, gypsum processing, vacuum forming, burnishing and decorating, bench-work and assembly, alignment, thermoforming and artificial limb training.

(3) The reception room for the wounded and disabled shall be no less than 15 sq meters, the room for the manufacture of artificial limbs and orthopedic machines shall be no less than 20 sq meters, and the room for artificial limb training shall be no less than 80 sq meters.

5. The enterprise shall provide the roster of the manufacturers of special articles for the wounded and disabled and the relevant Practitioners' Certificate (photocopy).

XV. The starting time for tax exemption and deduction shall be implemented in accordance with the following provisions:

1. If it's provided for by any law, regulation or any relevant tax policy of the state, it shall be implemented in line with the relevant provisions.

2. The first day of production and operation when the tax deduction or exemption treatment for a newly-established enterprise is implemented refers to the day when the taxpayer earns its first income.

3. If it's prescribed that the aptitude certificate or other qualification certificate shall be issued by the relevant governmental department or industrial association, which is regarded as the requirement for the deduction or exemption of enterprise income tax, the newly-established enterprise may, from the day when the relevant department has verified its aptitude or qualification, enjoy the enterprise income tax deduction or exemption within the remnant period of tax deduction or exemption in accordance with Item 2 of this Article.

## **Policies in English Version**

## Content

SH02 Circular on Adjusting Relevant Lists of Tentative Provisions on Tax Policies for Import of Major Technical Equipment (partial) .....	3
JS01 Preferential Tax Policy Guidance For Enterprises with Foreign Investment and Foreign Enterprises .....	4
SZ03 Provisions on Guiding the Orientation of Foreign Investment .....	30
ZJ01 Catalogue of Encouraged Foreign Investment Industries in Zhejiang Province .....	36
ZJ02 Provisions of the State Council concerning the encouragement of investments by compatriots from Taiwan .....	48
ZJ04 Provisions of the State Council concerning the encouragement of Investments by overseas Chinese and Compatriots from HongKong and Macao .....	54
ZJ05 Using Foreign Investment to Reorganize State-owned Enterprises Tentative Provisions .....	60
ZJ06 Interim Provisions on the Takeover of Domestic Enterprises by Foreign Inverstors .....	69
ZJ07 Preferential Policies of Zhejiang Province .....	88
ZJ08 Catalogue of Restricted Foreign Investment Industries .....	92
ZJ09 Catalogue of Prohibited Foreign Investment Industries .....	96
ZJ10 Industrial Policies of Zhejiang Province .....	99

## **SH02 Circular on Adjusting Relevant Lists of Tentative Provisions on Tax Policies for Import of Major Technical Equipment (partial)**

Cai Guan Shui [2010] No. 17

April 13, 2010

The financial departments (bureaus) and offices of the State Administration of Taxation of all provinces, autonomous regions, municipalities directly under the Central Government and cities specifically designated in the state plan, the financial bureau of Xinjiang Production and Construction Corps, the Guangdong branch of the General Administration of Customs, all customs directly under the General Administration of Customs, the financial supervision commissioner's offices of the Ministry of Finance in all provinces, autonomous regions, municipalities directly under the Central Government and cities specifically designated in the state plan,

In accordance with the Circular of the Ministry of Finance, the National Development and Reform Commission, the Ministry of Industry and Information Technology, the General Administration of Customs, the State Administration of Taxation, and the National Energy Administration on Adjusting Tax Policies for Import of Major Technical Equipment (Cai Guan Shui [2009] No. 55), in light of the development of related domestic industries, based on the extensive solicitation of opinions of relevant competent departments, trade associations and enterprises, following deliberation and determination, the equipment catalogues and commodity lists attached to the Tentative Provisions on Tax Policies for Import of Major Technical Equipment (hereinafter referred to as the Tentative Provisions) are to be adjusted. The circular is hereby given as below:

Article 1 The Catalog of Major Technical Equipment and Products under State Support (amended in 2010) (see Appendix 1) and List of Key Components and Material Commodities Imported for Key Technical Equipment and Products (amended in 2010) (see Appendix 2) have come into effect as of April 15, 2010.

## JS01 Preferential Tax Policy Guidance For Enterprises with Foreign Investment and Foreign Enterprises

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Preferential Tax Policy Guidance For Enterprises with Foreign Investment and Foreign Enterprises

Preferential Turnover Tax Policy

Items shall be exempt from VAT

Preferential tax policies for agricultural means of production

Preferential VAT policies for part of the products made through multiple utilization of resources

Preferential consumption tax policies for scented soap and vehicle tire

Preferential Tax Policies of EFIs and FEs Income Tax

Taxation at reduced rates

Taxation on enterprise income at 15%

Taxation on enterprise income at 24%

Fixed term tax reductions and exemptions

Two year's exemptions adjoining three year's 50% reduction

Other fixed term tax reductions and exemptions

Tax refund on reinvestment

Comprehensive regional tax incentives

Other tax incentives

Withholding tax

Profit (Dividend)

Interest

Royalty

Rentals

Benefits Received from Transfer of Property

Preferential Turnover Tax Policy

1. Items shall be exempt from VAT:

1. Self-produced agricultural products sold by agricultural producers;
2. Contraceptive medicines and devices;
3. Antique books;
4. Instruments and equipment imported which is directly used in scientific research, experiment and education,
5. Materials and equipment imported from foreign government and international organizations as assistance free of charge;
6. Equipment and machinery required to be imported under contract processing, contract assembly and compensation trade,

7. Articles imported directly by organizations for the disabled for special use by the disabled;
8. Sale of goods which have been used by the sellers.
- II. Preferential tax policies for agricultural means of production:
  1. Following goods are exempted from VAT:
    - i. Forage, including large amount unitary forage, mixed forage, compound feed, concentrated forage,
    - ii. Agricultural films;
    - iii. Certain kind of chemical fertilizer;
    - iv. Agricultural pesticides within designated scope produced and sold by pesticide factories,
    - v. Seeds, seedling, chemical fertilizer, pesticide and agriculture machinery marketed by whole sales and retail.
  - III. Preferential VAT policies for part of the products made through multiple utilization of resources:
    1. The construction building materials, which combined with content of 30% coal gangue, stone coal, powdered coal and furnace slag (not including blast furnace wet slag), should be exempted from VAT.
    2. The gold extracted from liquid waste and offscum should be exempted from VAT.
  - IV. Preferential consumption tax policies for low pollution emission vehicles:

Beginning from Jan. 1st 2000, cars, cross-country vehicles and mini-buses with low pollution emission will be granted with 30% reduction of the consumption tax.
  - V. Preferential consumption tax policies for scented soap and vehicle tire:
    1. Beginning from Jan. 1st, 2001, scented soap listed in the taxation item of "Skin & Hair Care Product" would be exempted from consumption tax.
    2. Beginning from Jan. 1st, 2001, "radial tire" listed in the vehicle tire taxation item will be exempted from consumption tax. The renovated tire will be free from consumption tax. The consumption tax on the rest of the tires will be levied at 10%.

## Part II Preferential Tax Policies of EFIs and FE Income Tax

### I. Taxation at reduced rates

#### 1. Taxation on enterprise income at 15%

A 15% Enterprise Income Tax rate shall apply to those EFIs located in Special Economic Zones, Foreign Enterprises (hereinafter referred to as FE) with establishments or fixed places in Special Economic Zones engaged in production and business operation, as well as those EFI of production nature which have establishments in Economic and Technological Development Zones.

The Enterprise Income Tax on EFI in Coastal Economic Open Zones, in old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones are located, or other places specified by the State Council, may be imposed at the reduced rate of 15%, provided that the operation activities of those enterprises are centered on power and energy, transportation and communication, harbor

and port, dock and wharf, and other projects inspired by the State Council. The specific rules shall be stipulated by the State Council.

(Section 1, 3 of Article 7, the Tax Law)

The application of 15% reduced Enterprise Income Tax rate mentioned in paragraph 1 of article 7, Tax Law, is limited to incomes procured by enterprises from production and business operation in the respective areas specified in paragraph 1, article 7.

(Section 1 of Article 71, the Detailed Rules)

The Special Economic Zones mentioned in paragraph 1, article 7, refers to those special areas sanctioned by the State Council including Shenzhen, Zhuhai, Shantou, Xiamen, Hainan Island; the Economic Technological Development Zones refers to areas set up in coastal port cities which are under the approval of the State Council.

(Article 69, the Detailed Rules)

The enterprises that may enjoy 15% of the reduced income tax rate, as stipulated in paragraph 3, article 7 of the Income Tax Law, are mainly listed below:

1. EFIs of production nature which have establishments in the old urban districts of the cities where the Coastal Economic Open Zones, Special Economic Zones, the Economic Technological Development Zones are located, and which are engaged in the following projects:

- a. Technology intensive or knowledge intensive projects;
- b. Projects with foreign investment of \$30 million or more, and with a long period of recovery of investment;
- c. Projects engaged in energy, transportation and communication, port constructions
2. Foreign-Chinese Equity Joint Ventures engaged in the construction of ports and docks;
3. Foreign banks, Foreign-Chinese Joint Invested Banks and other financial institutions located in Special Economic Zones or other places approved by the State Council, with the capital provided by foreign investors or operation funds acquired from the headquarters of foreign banks totaling no less than \$10 million; and at the same time with an operation period of ten years or more;
4. EFIs of production nature set up in Pudong New Area, Shanghai; and any EFI engaged in energy exploitation and transportation construction projects such as airports, ports, railways, highways, and electricity power stations;
5. The accredited high technological EFIs set up in New and High-Technology Industrial Development Zones identified by the State Council; or the accredited new technological EFI situated in Beijing New Technology Development and Experiment Zones;
6. Any EFI established in other places specified by the State council and engaged in such projects as encouraged by the State.

Any EFI which meet the criteria set in item 1 of this Article shall, upon the application's having been endorsed by the State Administration of Taxation, be eligible for a reduced income tax rate of 15%.

(Article 73, the Detailed Rules)

2. Taxation on enterprise income at 24%

Any EFI of a production nature situated in the urban district of the cities which boast a Coastal Economic Open Zone, a Special Economic Zone or an Economic and Technology Development Zone shall be eligible for a reduced income tax rate of 24%.

(Section 2 of Article 7, the Tax Law)

The tax objectives enjoying a 24% rate, as stated in paragraph 2, Article 7 of the Income Law, shall only be limited to income derived from production or business operation within the areas specified in paragraph 2, Article 7 of the Income Law.

(Section 2 of Article 71, the Detailed Rules)

The 'Coastal Economic Open Zones' stated in paragraph 2, Article 7 of the Income Law, refers to any coastal city, county, or district sanctioned by the State Council.

(Article 70, the Detailed Rules)

## II. Fixed term tax reductions and exemptions

### 1. Two year's exemptions adjoining three year's 50% reduction

Any EFI of a production nature intended to conduct business in China for at least 10 years shall, from its first profits-making year, be entitled to two year's income tax exemption adjoining three year's 50% reduction. However, such exemptions and reductions shall not apply to those EFI engaged in the exploitation of such natural resources as oil, natural gas, rare and precious metals, since tax policies of these lines shall be formulated separately by the State Council. In addition, it is compulsory for those EFIs which have already enjoyed tax exemptions and reductions to spit out the exact amount if their actual operation period is no more than 10 years.

(Section 1 of Article 8, the Tax Law)

The tax incentives specified in paragraph 1, Article 8 of the Tax Law shall not be put on those EFIs engaged in the exploitation of such natural resources as petroleum, natural gas, rare and precious metals, unless and until other related regulations are made by the State Council.

(Article 78, the Detailed Rules)

Any EFI which meet the qualifications of paragraph 1, Article 8 of the Tax Law, which may enjoy tax exemptions or concessions, shall report its line, main products, operation period, etc to the local competent tax authorities for approval, otherwise its tax incentives shall be denied.

(Section 2 of Article 74, the Detailed Rules)

### 2. Other fixed term tax reductions and exemptions

Any relevant regulation issued by the State Council prior to the effectiveness of this Law will still hold to the extent that the relevant regulation has provided more attractive tax treatment as of a longer period of exemption or reduction for those EFIs which undertake production and construction projects like energy, communications, harbor, docks etc, or has provided such preferential tax treatment as exemptions and reductions for those EFIs engaged in non-production nature projects.

(Section 2 of Article 8, the Tax Law)

'Any relevant regulation issued by the State Council prior to the effectiveness of this Law' in paragraph 2, Article 8 of the Tax Law covers the following regulations of tax exemptions and reductions decreed by the State Council:

a. Any Chinese-foreign equity joint ventures undertaking port or dock construction with an operation period exceeding 15 years shall, upon its application having been endorsed by the competent tax authorities at the provincial level, from the first year of its making profits, be exempted from enterprise income tax for five consecutive years adjoining another five



years of 50% reduction.

b. Any EFI established in Hainan Special Economic Zone with its operation period no less than 15 years shall, upon its application having been endorsed by Hainan provincial tax authorities, be granted income tax exemption starting from the first profit-making year, for 5 consecutive years adjoining another 5 years of 50% tax reduction, provided that that EFI should fall into the category of undertaking the construction of such infrastructure projects as airports, ports, docks, railways, highways, power stations, coal mines, water conservancy, or in the development and operation of agriculture.

c. Any EFI established in Pudong New District, Shanghai, with its operation period no less than 15 years shall, upon its application having been endorsed by the Shanghai tax authorities, be granted income tax exemption starting from the first profit-making year, for 5 consecutive years adjoining another 5 years of 50% tax reduction, provided that that EFI should fall into the category of undertaking the construction of such energy and communication projects as airports, ports, railways, highways, and power stations.

d. Any EFI of the service sector situated in Special Economic Zones, with its total foreign investment amounting to \$5 million or more, and with its operation period exceeding 10 years shall, upon its application having been endorsed by the competent tax authorities, be granted income tax exemption for the first profit-making year, tagged along with 50% tax reduction for the second and third year.

e. Foreign banks, Foreign-Chinese Joint Invested Banks and other financial institutions located in Special Economic Zones or other places approved by the State Council shall, upon the application having been endorsed by the competent tax authorities, be exempted from income tax for the first profit-making year adjoining another two years of 50% tax reduction, provided that the capital granted by foreign investors or operation funds acquired from the headquarters of foreign banks is no less than \$10 million, and that those financial institutions shall conduct business in China for no less than ten years.

f. Any Chinese-foreign equity joint venture recognized as new and high-technology enterprise and established in new and high-technology industrial development zones approved by the State Council, with its operation period exceeding 10 years shall, upon its application having been endorsed by the competent tax authorities, be eligible for exemption from Enterprise Income Tax for the first and second profit-making years. To those EFIs located in the Special Economic Zones and in the Economic Technology Development Zones, the appropriate tax incentives of those zones shall remain applicable.

g. Any export-oriented EFI shall, after its expiration of exemption or reduction stated in the Tax Law, be entitled to a further 50% reduction on Enterprise Income Tax at a rate specified in the Tax Law, provided that at least 70% of its annual products have been exported. In addition, for those export-oriented EFIs which are situated in the Special Economic Zones, the Economic Technological Development Zones or which have already enjoyed 15% rate and exported 70% of its annual products or more, the Enterprise Income Tax rate shall be further reduced from 15% to 10%.

h. Technological advanced enterprises with foreign investment may, upon the expiration of the Enterprise Income Tax exemption and reduction period as stipulated by the Tax Law, enjoy a further 50% reduction in Enterprise Income Tax for three years based on the rate

stipulated by the Tax Law, provided that they remain technologically advanced enterprises.

i. Other regulations relating to the exemption and reduction of enterprise income tax having been promulgated, or having been approved for promulgation by the State Council. In applying for Enterprise Income Tax exemption or reduction pursuant to the provisions of Item 6, and Item 7, and Item 8 of this Article, any EFI shall submit the relevant certifying documents issued by the competent departments to the local tax authorities for examination and confirmation.

(Article 75, the Detailed Rules)

### III. Tax refund on reinvestment

Foreign investors of any EFI who reinvest directly in the same EFI with his (her) share of profits so as to increase registered capital, or use his share of profits as capital investment to set up other EFIs whose operation period is no less than 5 years shall, upon the investors' application having been approved by the relevant competent tax authorities, be refunded 40% of Income Tax already paid on the reinvestment amount. However, other preferential tax regulations shall be applicable if there exist such regulations issued by the State Council. Furthermore, a foreign investor is bound to repay his (her) refunded tax if he (she) withdraws investment before the expiration of a period of 5 years.

(Article 10, the Tax Law)

#### 1. Prerequisite and qualification for rebate on reinvestment

The expression of 'reinvest directly' mentioned in Article 10, the Tax Law, means that foreign investors of any EFI increase their proportion of registered capital with their share of profits derived from the same EFI or use those profits as capital to set up new EFIs.

In assessing the refundable tax amount in accordance with the provisions of Article 10 of the Tax Law, the said foreign investor shall provide supporting documents certifying the attributable year in which the profits were reinvested; where no supporting documents can be provided, the local tax authorities shall determine the year using appropriate methods. Foreign investors shall, within one year from the date the funds are actually invested, apply to the original tax collecting authorities for tax refund and submit a document certifying the amount and duration of the added or new capital investment.

(Article 80, the Detailed Rules)

The 'period of operation' in Article 10 of the Tax Law shall be counted according to the following principals: the period of operation shall be counted from the date when the reinvestment funds are actually invested, if foreign investors in any EFI directly reinvest the profits allocated from that EFI into the same enterprise or other EFIs who have already started production or operations (including trial production, trial operation); however, the period of operation shall be counted from the date when the new enterprise starts production or operation (including trial production or operation), if the foreign investors reinvest in establishing new EFIs.

(GUO SHUI FA NO. 009 [1993])

Regarding reinvesting in China with the profits obtained from his EFI, a foreign investor must first use the said profits to make up his insufficient legal capital, if such is the case; therefore, only the rest of that profit in the form of reinvestment shall be eligible for tax refund according to relevant regulations.

(GUO SHUI HAN FA NO. 304 [1990])

Any foreign investor in EFIs shall not enjoy such incentives as tax refund if the profits with which he reinvests are derived from liquidation.

(GUO SHUI FA NO. 009 [1993])

Where a foreign partner of any Chinese-foreign equity joint venture first remits his share of profits outside China, saves it in foreign banks or uses it as working capital for trade, and then reinvests it in Chinese-foreign equity joint venture, the provisions for the tax refund on reinvestment shall not apply.

(CAI SHUI WAI ZI NO. 82)

## 2. Repayment of 60% of tax refund

Any foreign investor making reinvestment so as to establish and expand export-oriented or technologically advanced enterprises shall repay 60% of tax refund if he fails to meet the standards of export-oriented enterprises in three years after starting production or operation; or if he fails to be recognized as technologically advanced enterprises within the said three years.

(Section 3 of Article 81, the Detailed Rules)

## 3. Other regulations concerning tax refund

EFIs whose total shares are held by foreign investors, and who are totally engaged in investment business shall be treated as foreign investors, thus enjoying the incentives of tax refund specified in the Detailed Rules and other relevant regulations.

(CAI SHUI ZI NO. 083)

The preferential regulations regarding a tax refund on reinvestment stipulated in the Tax Law and in the Detailed Rules only apply to foreign investors. EFIs in China who invest in other places as investors are not foreign investors. The preferential regulations regarding a tax refund on the reinvestment stipulated in the Tax Law and the Detailed Rules for foreign investors only apply to EFIs whose total share are held by foreign investors and who are totally engaged in investment business, since such EFIs may be regarded as foreign investors according to the provisions of Section 2 in Article 1 of CAI SHUI ZI [083] 1994 "Notice on Several Taxation Problems Regarding the Enterprises with Foreign Investment Engaged in Investment Business" issued by the Ministry of Finance and the State Administration of Taxation. Apart from that, no other EFIs shall be granted tax refund on reinvestment specified in the Tax Law and its Detailed Rules.

(GUO SHUI HAN FA NO. 154 [1995])

## IV. Comprehensive regional tax incentives

### 1. Special Economic Zones, Economic Technological Development Zones and Coastal Open-up Cities

#### a. Special Economic Zones (SEC)

Income Tax shall be collected at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in SEC obtained by foreign investors who have no establishments in China except where tax exemption are carried out according to tax laws. The SEZ People's Governments shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or who transfer advanced know-how.

#### b. Economic Technological Development Zones (ETDZ)

Income Tax shall be collected at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in ETDZ obtained by foreign investors who have no establishments in China except where tax exemption are carried out according to tax laws. The People's Government of the city where ETDZ is located shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or who transfer advanced know-how.

c. Coastal Open-up Cities (COC)

Income Tax shall be levied at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in OLD URBAN DISTRICTS obtained by foreign investors who have no establishment in China, except where tax exemption are carried out according to tax laws. The People's Government of the city shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or whose transferred know-how is advanced.

(GUO FA NO. 161[1984])

2. Coastal Open Areas

Income Tax shall be levied at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in Economic Open Areas obtained by foreign investors who have no establishment in China, except where tax exemption are carried out according to tax laws. The People's Government of the provinces, autonomous regions and municipalities shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or whose transferred know-how is advanced.

(CAI SHUI ZI NO. 091 [1988])

3. New and High technology Industrial Development Zones

According to provisions specified in Section 2 of Article 7, Section 1 of Article 8, the Tax Law, and Item 5 & 6 in Section 1 of Article 75, the Detailed Rules, those tax incentives applied to New-and-High Technology EFIs (NHTEFI) can be further expounded as the following:

a. Those new-and-high technology EFIs set up in New and High-Technology Industrial Development Zones identified by the State Council, or the new technological EFIs situated in Beijing New Technology Development and Experiment Zones, shall, from the date when their status as NHTEFI have been recognized, be levied on income tax at a reduced rate of 15%.

b. Aside from New-and-High Technology set up in Beijing New Technology Development and Experiment Zones (BNTDEZ), any other New-and-High Technology EFI of production nature intended to conduct business in China for at least 10 years shall, from its first profit-making year, be entitled to two year's income tax exemption adjoining three year's 50% reduction.

c. Where the tax year in which an EFI is recognized as New-and-High Technology EFI comes after its profit-making year, or where the tax year in which an EFI located in BNTDEZ is recognized as New-and-High Technology EFI comes after its starting operation year, the remaining tax exemption period (if any) shall still take hold. However, if the time when an EFI is recognized as New-and-High Technology EFI comes after the

expiration of tax exemption period, no relevant tax incentives shall be available.

(GUO SHUI FA NO. 151 [1994])

#### 4. Tourist and Holiday Resort Areas

Enterprise Income Tax shall be levied at the reduced rate of 24% for EFIs established in these areas; of which the production EFIs scheduled for an operating period no less than 10 years shall, from the year it begins to make profit, be exempted from Income Tax for the first and second years and allowed a 50% reduction of Income Tax for the third to the fifth years.

Tax incentives already implemented in the region where the national tourist holiday resort area is located shall be continued in the national tourist holiday resort area.

(GUO SHUI FA NO. 248 [1992])

#### 5. Provincial Capital and Coastal Open-up Cities

Income Tax shall be levied at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in the said city areas obtained by foreign investors who have no establishment in China, except where tax exemption are carried out according to tax laws. The People's Municipal Government shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or whose transferred know-how is advanced.

(GUO SHUI FA NO. 218 [1992])

#### 6. Suzhou Industrial Park

a. According to the provisions in 'Reply to the Relevant Questions About Development and Construction of Suzhou Industrial Park' (Document No. 9 [1994]) made by the State Council (hereinafter referred to as 'Reply'), EFIs engaged in construction projects for infrastructure facilities regarding communication and energy resources such as the construction of ports, docks, railways, highways and power stations shall enjoy a reduced income tax rate of 15% according to Section 1 of Article 7, the Tax Law. The enterprise income tax shall be levied at the reduced rate of 15% on EFIs who are engaged in the above projects and who operate outside the Suzhou Industrial Park but still in Suzhou city, provided the said EFIs conform to the provisions in Item 1 of Section 1 in Article 73, the Detailed Rules and at the same time get the approval from the State Administration of Taxation.

b. On the basis of the existing tax incentives policies of the State, Chinese-foreign equity joint ventures engaged in construction of ports and docks in Suzhou city shall enjoy exemption from Enterprise Income Tax for 5 years from the first profit making year and a 50% reduction of the Enterprise Income Tax for the following 5 years according to Item 1 of Section 1 in Article 75, the Detailed Rules. The EFIs engaged in construction projects regarding communication, energy resources and infrastructure such as railways, highways, power stations and the accessory facilities in Suzhou Industrial Park shall enjoy a fixed term tax exemption and reduction of Income Tax according to Section 1 of Article 8, the Tax Law. However, for the very large scale and special projects which need more tax incentives, the relevant enterprise may file a report to the competent taxation authorities for approval according to the provisions in Article 3 of the Reply.

c. Chinese-Singapore Equity Development Company responsible for the development

and construction of Suzhou Industrial Park and mainly engaged in the construction of infrastructure and public facilities in the Park may enjoy tax incentives applying to the production EFIs established in Economic and Technological Development Zones.

(GUO SHUI HAN FA NO. 128 [1995])

#### 7. Bonded Areas

The Enterprise Income Tax shall be levied at the reduced rate of 15% for production EFIs engaged in processing products for export in the bonded areas.

(GUO SHUI HAN FA NO. 1123 [1991])

- To those production EFIs in Zhangjiagang Bonded Area (ZBA) who process products for export purposes, the reduced rate of 15% shall be applicable.

No local income tax shall be levied on EFIs located in ZBA.

- Any production EFIs in ZBA scheduled for an operating period no less than 10 years shall, from the year it begins to make profit, be exempted from Income Tax for the first and second years and allowed a 50% reduction of Income Tax for the third to the fifth years. In addition, the export-oriented EFI shall, after its expiration of exemption and reduction period, be entitled to a more preferential income tax rate of 10%, provided that at least 70% of its annual products have been exported. And those technological advanced enterprises with foreign investment may, upon the expiration of the Enterprise Income Tax exemption and reduction period as stipulated by the Tax Law, enjoy a further reduced rate of 10% on Enterprise Income Tax for three years, provided that they remain technologically advanced enterprises.

- Income Tax shall be levied at the reduced rate of 10% on income from dividends, interest, rentals, royalties and other sources in the said city areas obtained by foreign investors who have no establishment in China, except where tax exemption are carried out according to tax laws. The People's Government of Jiangsu Province shall make decisions on more favorable tax exemption and reduction for foreign investors who provide capital or equipment on terms preferential to China or whose transferred know-how is advanced.

- Foreign investors of any EFI who reinvest directly in the same EFI with his (her) share of profits so as to increase registered capital, or use his share of profits as capital investment to set up other EFIs whose operation period is no less than 5 years shall, upon the investors' application having been approved by the relevant competent tax authorities, be rebated 40% of Income Tax already paid on the reinvestment amount. Furthermore, if the said profits are reinvested in order to establish or expand export-oriented enterprises and high-tech enterprises, all the paid tax for the said profits shall be refunded.

(SU SHUI WAI FA NO. 020 [1993])

#### 8. Kunshan Economic and Technology Development Zone (KETDZ)

Any EFI established in Kunshan Economic and Technology Development Zone shall be levied at the reduced rate of 15% on its Enterprise Income Tax.

Aside from the above tax incentive, no other preferential tax policies applying to Economic and Technology Development Zones in Coastal Open Cities are available for EFIs established in Kunshan Economic and Technology Development Zone.

(HUO SHUI HAN FA NO. 424 [1992])

#### IV. Other tax incentives

1. Tax incentives concerning agriculture, forestry, animal husbandry, and tax incentives in remote undeveloped areas

EFIs engaged in agriculture, forestry and animal husbandry, or established in remote undeveloped areas may, upon the enterprises' applications having been approved by the competent tax authorities under the State Council, be allowed a 15% to 30% reduction of the amount of Income Tax payable for a period of 10 years following the expiration of the period for tax exemption or reduction provided for in the previous provisions.

(Section 3 of Article 8, the Tax Law)

2. Tax exemption on long-term investment

Where an EFI invests in another enterprise within China, the profits (dividends) obtained from the enterprise receiving the investment may be excluded from the taxable income of that EFI; however, expenses and losses incurred in such above-mentioned investments shall not be deducted from the taxable income of that EFI.

(Article 18, the Detailed Rules)

3. Tax incentives for two kinds of enterprises

As stipulated in Section 8 of Article 1, the Detailed Rules, any technologically advanced EFI may, upon the expiration of tax exemption & reduction on Enterprise Income, be granted a further 50% reduction on Enterprise Income Tax for another three consecutive years, provided that the EFI remains to be technologically advanced enterprise after the said expiration; however, if the half reduced rate falls under 10%, the effective tax rate shall still be 10%, according to the provisions in Section 3, Article 3 of "Implementation of the Tax Incentives Regarding 'Regulations on Encouraging Investment of Foreign Enterprise' by the State Council".

(GUO SHUI FAN NO. 165 [1991])

As stipulated in Section 7 of Article 75, the Detailed Rules, any export-oriented EFI may, upon the expiration of tax exemption & reduction as provided in the Tax Law, be granted a further 50% reduction in Enterprise Income Tax based on the rate listed in the Tax Law, provided that the said EFI export no less than 70% of its annual products. As regards the determination of what makes up the total value of exported goods, some specific rules have been laid down in "Implementation Regulation of the Ministry of Foreign Trade and Economic Cooperation on Recognition and Confirmation of Export-oriented EFIs and Technologically Advanced EFIs" promulgated on January 26, 1995, by the Ministry of Foreign Trade and Economic Cooperation. Furthermore, the SAT (State Administration of Taxation) shares the same view in this respect, which indicates that the total value of goods exported by export-oriented EFIs shall be composed of the following parts:

1. Value of goods exported by the EFI itself;
2. Value of goods exported by Imp. & Exp. Corporations as agency of the EFI;
3. Value of the goods exported by Imp. & Exp. Corporations buying those goods from the EFI.
4. Expenses of processing materials supplied by clients outside China;
5. Value of goods exported in such approaches as recognized by the Ministry of Foreign Trade and Economic Cooperation.

In computation of the proportion of exported goods to total output of any EFI, some reference can be drawn upon figures in the Performance Statements which are inspected

and confirmed by the Ministry of Foreign Trade and Economic Cooperation.

(GUO SHUI HAN FA NO. 645 [1995])

1. Any EFI undertaking port-and-docks-related projects shall, upon the approval of its application, be granted relevant tax incentives for revenues derived from such special activities as loading or unloading of cargo, transshipment, deposit, storage, container assembling or dismantling, transportation within port areas, fixing or maintenance of ships within the docks etc, since such revenues can be regarded as business or operation revenues of the said EFI. However, activities like goods delivery outside ports, ships maintenance outside docks, offshore rescue, productions on the basis of utilization of waste or remnant materials shall not be considered as business or operation activities of the foregoing EFI, hence the corresponding revenues shall be given no tax incentives and shall be calculated and filed separately as required by Article 2 of this Circular.

2. According to relevant provisions in the Detailed Rules, tax incentives shall be given to a port-and-dock-related EFI conducting special activities as specified above, only after it submits its application for approval to the competent tax authorities at provincial level or the State Administration of Taxation (SAT); no tax offices in any city or county are granted the right of sanctioning such applications.

3. In pursuance of Article 2 of this Circular, field tax offices should submit to competent provincial tax authorities for approval the enterprise's methods of discriminating between revenues & costs from common activities and revenues & costs derived from special activities.

4. The gamut of documents presented to tax authorities by an EFI which requires tax incentives for revenues from special activities is as follows:

- a. Enterprise's application;
- b. Business license,
- c. Contract or business charter,
- d. Certificate for undertaking special activities,
- e. Capital assessment reports by Chinese Certified Public Accountant.

(SU GUO SHUI FA NO. 440 [1995])

#### 4. Deduction of research & development (R&D) expenses from taxable income

Recent resolution made by the State Council indicates that any EFI's actual incurred R&D expenses shall, upon the application having been endorsed by competent tax authorities, be allowed a 50% deduction from its annual taxable income, provided that the said EFI's annual R&D expenses go up by 10% or more. Some specific rules concerning implementation of the corresponding tax incentives are put as follows:

1. The filing period limit, checking or inspecting procedure and the approval rights shall be regulated, after having taken in account of the local pragmatic situation, by the provincial competent tax authorities with reference to the current tax laws & regulations as well as this Circular, and shall be further reported to the State Administration of Taxation for future reference.

The R&D expenses mentioned in the foregoing provision include: new product designing fee or art and craft process designing fee arising from developing new products, new technology, and new manufacturing process; equipment performance test fee; material or semi-products developing fee; expenses on purchasing technological books and



reference materials; periodical trial fee outside the scope of State Strategy Planning; salaries or wages of research workers; depreciation of research equipment; other expenses relevant to the research and development of new products and technology. However costs of buying technology or its utilization rights from another enterprise, as well as costs for maintenance and after-sales service of resulted technology shall fall outside the scope of R&D expenses.

2. Where an EFI's annual R&D expenses have increased by 10% or more over the previous year, and the 50% of the said R&D exceeds the amount of its annual taxable income, only the overlapped amount shall be deducted, while the excess amount is disallowed deduction in that year and the year that comes after.

In case that an EFI's annual taxable income is zero resulting from the profits being carried over to offset its previous year's losses, as permitted by Article 11, the Tax Law, the annual R&D expenses deduction shall not be applicable.

3. This Circular shall also apply for the R&D expenses arising from business activities or operations of any Foreign Enterprises with permanent establishment or fixed places in China.

4. This Circular shall be effective as of January 1st, 2000.

(GUO SHUI FA NO. 173 [1999])

5. Income tax credit for investment with purchased domestic equipment

To carry out the CCCCPC and the State Council's guidelines of attracting foreign investment and encouraging EFIs and Foreign Enterprises to utilize domestic equipment, this regulation addressing some problems on income tax credit for investment with purchased domestic equipment has been promulgated and made public as follows:

1. For any EFI established in China, 40% of the investment with purchased domestic equipment may be credited from the annual increased parts of income tax on the said EFI when purchasing domestic equipment, provided that three requirements are satisfied:

a. The value of the purchased domestic equipment must be within the total amount of investment;

b. The purchased domestic equipment must be in the list of "encouraged category" or "restricted category (B)" of the "Industry Guidance Catalogue for Foreign Investment", as stipulated in "Circular of the State Council on Adjustment of Tax Policies for Imported Equipment"

(GUO FAN NO 37 [1997])

c. The purchased domestic equipment must not be in the list of catalogue of "Imported Commodities for Foreign Invested Projects without Tax Exemption" as stipulated in the Circular NO 37 issued by the State Council.

This regulation shall also be applicable to Foreign Enterprises with permanent establishment or fixed places in China.

Any purchased domestic equipment whose value is beyond the total amount of investment, shall also enjoy 40% credit from the EFI's annual increased parts of income tax provided that the said equipment is used for the following purposes:

To increase economic profits; raise product quality; diversify products categories; promote update of products; lower costs and energy consumption; utilize comprehensively the natural resources; dispose or handle of wastes; enhance work security and safety; modify

the present facilities and production process with advanced and appropriate new technology, new process, new equipment and new materials.

2. The purchased domestic equipment eligible for tax credit refers to any equipment produced domestically for the purpose of business activities and operations, whereas equipment imported from abroad or manufactured through a vehicle of "SAN LAI YI BU" shall not be legally recognized as purchased domestic equipment.

3. Where any EFI or FI is entitled to tax credit from its annual income as a result of investment with domestic equipment, the amount of its annual increased taxable income shall be the maximum credit threshold. For those EFIs whose annual increased taxable income are insufficient for the said credit, the non-credited amount can be deferred to subsequent years for later credit, provided that there is an annual increase in taxable income. However, the credit period shall be no more than 5 years.

In addition, any EFI or FI eligible for tax reductions and exemptions, as stipulated in tax laws or regulations promulgated by the Standing Committee of People's Congress, the People's Congress, and the State Council, shall, during its tax exemption and reduction period, be granted an appropriate extension of credit period with a maximum threshold of 7 years.

4. When applying for income tax credit on investment with domestic purchased equipment, any EFI or FI shall present the competent tax authorities with invoices of domestic purchased equipment and other relevant vouchers.

5. The original value of any domestic equipment purchased by an EFI or FI shall not include the refunded amount of Value Added Tax.

6. When computing taxable income, the value of purchased domestic equipment, part of which is to be credited, can still be depreciated on the basis of its original value.

7. In case that an EFI or FI leases or sells out the domestic equipment within 5 years from the date it is purchased, the said EFI or FI shall repaid the credited amount of enterprise income tax.

8. This regulation shall be effective as of July 1st, 1999. The detailed compliance rules shall be regulated by the State Administration of Taxation.

6. Preferential tax policies for development of software industry and integrated circuit industry

#### Article 1. Tax incentives for software makers

a. Beginning from June 24th, 2000 to the end of 2010, the self-developed & self-manufactured software products sold by any general VAT taxpayer shall, upon the VAT having been levied at the legal rate of 17%, be granted VAT refund at a rate of 14%. However, the amount of VAT refunded shall only be used for the purpose of developing new software products or expanding business activities, and thus no enterprise income tax will be imposed on that amount since it is not considered as part of taxable income of the said taxpayer.

b. Enterprises newly established in China shall, upon having been recognized as software makers, be entitled to an income tax exemption, starting from its first profit-making year, for two years, and then be further granted a 50% reduction for the next 3 consecutive years.

c. In any tax year, those key software makers listed in the National Strategic Layout

Projects who in the mean time fail to be treated with income tax exemptions, shall be levied at a reduced rate of 10% on enterprise income tax.

d. Remuneration of employees in any software enterprise and the training expenses can be deducted from the enterprise's taxable income on the basis of their actual incurred amount.

e. Any purchased software whose value amounts to the standard value of fixed assets or intangible assets, shall be treated and accounted as fixed assets or intangible assets. For domestic enterprises buying this software, this accounting method shall be endorsed by the corresponding competent authorities, whereas EFIs whose total investment exceeds \$30 million, such approval shall go to the State Administration of Taxation. In addition, for those EFIs whose total investment is less than \$30 million, the depreciation period or amortization period for the purchased software may be cut short after being approved by competent tax authorities. However the minimum depreciation or amortization period shall be 2 years.

f. Enterprises engaged in design of integrated circuit shall be taxed as software makers, thus enjoying relevant tax incentives for software industry.

The 'design of integrated circuit' refers to the process during which the design requirements of system, logic, and properties are converted into concrete physical process.

#### Article 2. Tax incentives for integrated circuit industry

a. Starting from July 24th, 2000 to the end of 2010, the self-manufactured integrated circuit products (including single transistor silicon unit) sold by any general VAT taxpayer shall, upon the VAT having been levied at the legal rate of 17%, be granted VAT refund at a rate of 11%. However, the amount of VAT refunded shall only be used for the purpose of developing new integrated circuit products or expanding business activities, and thus no enterprise income tax shall be imposed on that amount since it is not considered as part of taxable income of the said taxpayer.

The 'integrated circuit products' refers to those products whose electronic components are integrated into a placard of semi-transistor or a ceramics plane, enclosed in certain bulks so as to perform specific electronic or systematic functions.

For those integrated circuit products exported or sold to other export-oriented enterprises for export purpose, the VAT refund incentives shall not be applicable.

b. For the manufacture equipment of any domestic integrated circuit enterprise, its depreciation period can be reduced after being approved by the competent tax authorities, whereas the approval of manufacture equipment of any EFI with total investment no less than \$30 million goes to the State Administration of Taxation. In addition, even for EFIs whose investment is no more than \$30 million, the depreciation period may still be cut short after being endorsed by the competent tax authorities. However, the minimum depreciation period shall be 3 years.

c. For integrated circuit manufacturers whose total investment exceeds 8 billion RMB or whose integrated circuit line width is less than 0.25 um, the following extra tax incentives shall be available:

i. Sharing the same tax incentives for investment in energy and transportation and communication projects;

ii. The imported raw materials for production purpose shall be exempted from custom duty and VAT at imported stage.

The Custom shall facilitate the declaration process for those integrated circuit enterprises which satisfy the above conditions.

d. Where a recognized integrated circuit enterprise introduces integrated circuit technology, sets of production equipment or imports special equipment and apparatus for integrated circuit, no tariff or VAT at imported stage shall be imposed; however, this exemption shall not be applicable to those technology and equipment listed in "Imported Commodities for Foreign Invested Projects without Tax Exemption" or "Imported Commodities for Domestic Invested Projects without Tax Exemption" (GUO FA NO. 37 [1997]) promulgated by the State Council.

**Article 3. Tax administration for software and integrated circuit industries**

a. The standard for the determination of software makers shall be set jointly by the Ministry of Information Industry, the Ministry of Science & Technology, the State Administration of Taxation. Relevant tax incentives shall be available for those software makers whose names are officially publicized in the list after the said software makers' having been nominated by the Association of Software Industry at city's level and jointly approved by the Departments of Information Industry and the Competent Tax Authorities at the same level.

The list of key software makers within the scope of National Strategic Layout Projects shall be jointly drawn up by the National Committee of Economic Planning & Programming, the Ministry of Information Industry, the Ministry of Foreign Trade & Economic Cooperation as well as the State Administration of Taxation.

b. The integrated circuit enterprise, upon its status having been recognized by the competent government departments and approved by the tax authorities at the same level, shall be treated with corresponding tax incentives.

The list of integrated circuit products free of tax, as specified in Section 3, Article 2 of this Regulation shall firstly and jointly be drawn up by the Ministry of Information Industry, the National Committee of Economic Planning & Programming, the Ministry of Foreign Trade & Economic Cooperation as well as the General Custom, then submitted to the State Council for final approval.

c. The recognition and administration of integrated circuit enterprises shall follow the same procedure as that of software makers.

d. All the software makers and integrated circuit enterprises shall undergo an annual test, those who fail the test shall forfeit the status of software makers or integrated circuit enterprises, thus deprived of the relevant tax incentives.

The competent Custom House should be immediately informed as soon as a software maker or integrated circuit is stripped of its tax incentive status.

Other detailed rules for the administration of software makers and integrated circuit enterprises shall be regulated in the future.

July 1st, 2000 shall be the effective date for Articles of this Regulation where no effective date is specified. And this Regulation shall also override any previous relevant regulations in which there are different provisions.

(CAI SHUI ZI NO. 25 [2000])

#### V. Concessions and exemptions on local income tax

For EFIs engaged in industries or projects which are encouraged by the State, governments at the provincial level are authorized to decide whether or not, as the case may be, to give those EFIs concessions or exemptions on local income tax.

(Article 9, the Tax Law)

#### Regulation of Jiangsu Province

##### Concerning Concessions and Exemptions on

##### Local Income Tax for Enterprises with Foreign Investment

Article 1. This regulation is formulated in accordance with the specific conditions of Jiangsu Province and provisions in Article 6 & 9 of the Tax Law.

Article 2. Any EFI established in Jiangsu shall abide by this regulation in order to enjoy tax reductions and exemptions on its local income.

Article 3. EFIs of production nature shall be free of local income tax during the period of 'two year exemption adjoining three year 50% reduction'

Article 4. Any EFI of production nature which is also recognized as an export-oriented enterprise shall, upon the expiration of exemption on local income tax specified in Article 3 of this regulation, be further exempted from local income tax, provided that the said EFI exports products exceeding 50% of its annual output.

Article 5. Any EFI of production nature which is also a technologically advanced enterprise shall, upon the expiration of exemption on local income tax specified in Article 3 of this regulation, be further exempted from local income tax for another three years.

Article 6. EFIs levied at a reduced rate of 15%, as stipulated in the Tax Law, shall be free of local income tax, provided that those EFIs are of the following types:

1. EFIs of production nature established in the Economic Technological Development Zones.

2. EFIs of production nature which have establishments in the old urban districts of the cities where the Coastal Economic Open Zones, the Economic Technological Development Zones are located, and which are engaged in the following projects:

- a. Technology-concentrated or knowledge-concentrated projects;

- b. Projects with foreign investment of \$30 million or more, and with a long period of recovery of investment;

- c. Projects engaged in energy, transportation and communication, port constructions

3. Chinese-foreign equity joint ventures engaged in the construction of ports or docks.

4. The recognized high technological EFIs set up in New and High-Technology Industrial Development Zones identified by the State Council.

5. Any EFI established in other places specified by the State Council and engaged in such projects as encouraged by the State.

Article 7. No local income tax shall be levied on EFIs situated in Development Zones, New Industry Zones or Industry Villages established under the approval of governments at the provincial level.

Article 8. The final say or interpretation of this regulation goes to the competent tax authorities at the provincial level.

Article 9. This regulation, which enters into force from the date it gets promulgated, shall override any previous regulation containing different provisions on the exemptions of local

income tax.

VI. The gamut of EFIs of production nature

'EFIs of production nature' in Section 1 and 2 of Article 7 and Section 1 of Article 8, the Tax Law, refers to the EFIs engaged in the following industries:

- a. Machine building and electronic industries;
- b. Energy industries (not including oil and natural gas exploitation);
- c. Metallurgical, chemical and building material industries;
- d. Light, textile and packaging industries;
- e. Medical apparatus and pharmaceutical industries;
- f. Agriculture, forestry, animal husbandry, fishery and water conservancy;
- g. Construction industry;
- h. Communication and transportation industries (not including passenger transportation);
- i. Development of science and technology, geological survey and industrial information consultancy that directly serve production and maintenance and repair service for production equipment and precision instruments;
- j. Other industries that are recognized by the responsible department for taxation affairs under the State council.

(Article 72, the Detailed Rules)

According to Section 10 of Article 72, the Detailed Rules, 'other industries' recognized as EFIs of production nature can be further expounded as the following:

EFIs professionally engaged in the following businesses may be recognized as production enterprises with foreign investment:

- a. Those engaged in engineering design and in providing labor services (including consultation for such projects as construction, installation and assembling);

Consultation includes technological assistance and guidance for the improvement of existing productive technology used for projects or used in enterprises, for the improvement of business administration, for selection of technologies and for improvement of the function, efficiency and quality etc. of the existing manufacturing equipment or products of the enterprise;

- b. Those engaged in feeding, aquaculture (including aquatic farming), farming (including flowers raising), raising poultry, livestock, dogs and cats etc.;

- c. Those engaged in scientific research and development of manufacturing technology;

- d. Those engaged in directly providing users with warehousing and transport services with their own transport vehicles and storage facilities.

1. EFIs professionally engaged in the following business shall not be regarded as production enterprises with foreign investment;

- a. Those engaged in indoor or outdoor preparation and decoration, or installation and set up of indoor appliance;

- b. Those engaged in advertisements, card and picture making as well as book and magazine issuing;

- c. Those engaged in food processing, mainly for sale at their own canteen or at their store front;

- d. Those engaged in the maintenance and repair of domestic appliances and repair of articles for daily use.

2. 'Maintenance and repair of production equipment and precision instruments' mentioned in Item 9 of Section 1 in Article 72, the Detailed Rules, does not include the maintenance and repair of vehicles, electrical appliances, computer monitoring systems, ordinary instruments and ordinary meters.

(GUO SHUI FA NO.109 [1992])

EFIs particularly engaged in the development and management of real estate, and in the sale of residence buildings, do not belong to production enterprise with foreign investment, thus no tax incentives are applicable.

(GUO SHUI HAN FA NO.505 [1990])

Regulations on Determining Production Enterprises with Foreign Investment

1. The development of science and technology, geological surveys and industrial consultations directly serving production refer to: such development whose result may directly constitute technology for manufacturing products, or directly constitute technology for management of the flow of production; such survey whose data may be directly used for development and utilization of all kinds of natural resources; and consultations and software development which are carried out specifically for the utilization of technology or for the development and utilization of natural resources. However, the development, surveys and consultations mentioned above do not include such services provided to various enterprises as accounting, auditing, legal services, assets appraisals, market information collecting and brokerage etc. as well as computer software development not serving technology or development and utilization of resources as mentioned above.

2. All EFIs, particularly engaged in sales of goods made from purchased goods in a simple way, e.g. the purchased goods are assembled, packaged, cleaned, selected or organized, etc. belong to those engaged in sales, if the goods on sale remain the same in shape, function and composition as and when they are purchased. Therefore enterprises such as the following shall not be recognized as production enterprises with foreign investment: enterprises which sell goods simply repaired with imported or purchased sets of appliances or equipment and parts; enterprises engaged in the sales of various purchased beverage and foods, which are simply bottled and packed; and the trade providing such specific services as bottling and packaging.

If enterprises with foreign investment, previously recognized as EFIs, do not conform to the principle of this Notice or if the taxation authorities find it difficult to make decisions in the future, they shall report the case to the State Administration of Taxation, who shall give an official written reply after examination and verification of the case.

(CAI SHUI ZI NO.051 [1994])

An investment company engaged in the investment business and other businesses related to investment (including services such as management, training, agency, etc. for the enterprise receiving the investment), according to the relevant laws and regulations, is not a production enterprise as stipulated in Article 7 and Article 8, the Tax Law, and in Article 72, the Detailed Rules, hence in this case no tax incentives regarding production enterprises with foreign investment shall be applicable.

(CAI SHUI ZI NO. 083 [1995])

The EFIs engaged in transport activities, as mentioned in Item 8 of Section 1 in Article 72 of the Detailed Rules, include those engaged in the house moving transport business, but

does not include those engaged in the letter delivery business.

(GUO SHUI HAN FA NO. 383 [1994])

On the matter of how EFIs concurrently engaged in production and non-production types business, shall enjoy tax incentives

1. EFIs whose business scope as defined in its business license does not cover production, shall not be taken as production enterprises to enjoy relevant tax incentives, whatever proportion the enterprise's production business may take in its actual operation.

2. The following tax incentives shall be granted to EFIs whose business scope as defined in the business license covers both production business and non-production business, or whose business scope as defined in the business license only covers the production business, but, who actually also conducts non-production business:

a. In the tax exemption and reduction period counted from the first profit making year of the enterprise according to the provisions in Article 8 of the Tax Law, the EFIs engaged in both production and non-production business may apply to the competent tax authorities in the year when the EFI's income from production business is over 50% of its total business income, to enjoy the corresponding tax exemption and reduction for the year, after the examination and verification by the competent tax authorities; the EFI shall not enjoy the corresponding tax exemption and reduction if its income from production business is less than 50% of the total business income for that year.

b. The EFIs engaged both in production and non-production businesses and established in the areas where tax is levied at the reduced rate according to Article 7, the Tax Law, and the relevant regulations by the State Council, shall enjoy the tax reductions starting with the first year when income from production exceeds 50% of the total income.

(GUO SHUI FA NO. 209 [1994])

The EFIs engaged in specifically in land leveling business for land development and house construction may be regarded as building enterprises defined in Item 7 of Section 2 in Article 72, the Detailed Rules, thus enjoying tax incentives applying to EFIs of production nature.

(GUO SHUI HAN FA NO. 388 [1994])

The so called 'EFIs particularly engaged in indoor and outdoor preparation and decoration, or installation and setting up of indoor appliances who shall not be regarded as production EFIs include:

a. Enterprises engaged in installation of lifts and escalators;

b. Enterprises engaged in preparation and installation of doors and windows etc. for buildings and structures.

(GUO SHUI HAN FA NO. 389 [1994])

EFIs particularly engaged in the development and management of real estate, do not belong to production enterprises with foreign investment as defined in Article 7 and Article 8 of the Tax Law, and they shall not enjoy the tax incentives for production enterprises with foreign investment.

(GUO SHUI FA NO. 153 [1995])

#### IV. Withholding Income Tax



### 1. Profit (Dividend)

'Profit' mentioned in Article 19 of the Tax Law refers to income allocated according to the ratio of investment and shares and other non-debt profit sharing rights.

(Article 60, the Detailed Rules)

Profits derived by a foreign investor from an enterprise with foreign investment shall be exempt from Income Tax.

(Article 19, the Tax Law)

'Profit derived by a foreign investor from an enterprise with foreign investment' as referenced in Paragraph 3 Item 1, Article 19 of Tax Law refers to the profit made by an enterprise with foreign investment after deduction of the payment of Income Tax or reduced Income Tax, or the profit which is exempted from Income Tax, in accordance with the stipulations of the Tax Law.

(Article 63, the Detailed Rules)

Income Tax shall not be collected on the dividends and extra dividends allocated to foreign investors from the profits made by enterprises with foreign investment or those allocated to foreign individuals by Chinese-foreign equity joint ventures according to the provisions of Article 19 of the Tax Law and Section 2 of Article 5 of the Detailed Rules.

Enterprise Income Tax and Individual Income Tax shall not be levied, provisionally, on income from dividends (extra dividends) allocated to foreign enterprises and foreign individuals who have B shares and China's offshore shares by enterprises in China issuing those shares.

(GUO SHUI FA No.045 [1993])

### 2. Interest

#### (1). Scope of Interest

Interest refers to the following income received by foreign enterprises which have no establishments or sites in China: interest derived within China such as on deposits or loans, interest on bonds, interest on other provisional payments and deferred payments.

(Item 2 of Article 6, the Detailed Rules)

'Arrangement fee', 'assumption fee' and 'proxy fee' in loan agreements, which occurred with the loan business, should be treated as interest and taxable income.

(CAI SHUI WAI ZI No.264 [1985])

According to the concerning items of international tax agreements and Article 19 of the Tax Law, interest paid by branches of foreign banks when getting loans from head banks or other financial institutions belongs to the interest derived from China by foreign banks and other financial institutions. Therefore, Income Tax on the interest shall be withheld by the branches of foreign banks from each interest payment.

(GUO SHUI FA No.123 [1997])

Clarification is given as follows regarding the guarantee income tax:

A. Where a foreign enterprise has no established organization or site in China but derives guarantee income from sources within China, or where it has such established organizations or sites within China but its guarantee income is not really connected with those organizations or sites, such an enterprise shall pay Income Tax on that income according to the Article 19 of the Tax Law.

Guarantee income derived from China mentioned above refers to the guarantee fees paid

by enterprises, institutions or individuals in China who received guarantee from enterprises outside China in economic activities such as credit, transaction, goods transportation, process, leasing, project undertaking, etc..

B. The tax rate of guarantee income should be executed according to the Tax Law, concerning regulations, set or restricted tax rate of interest income stipulated in tax agreements.

C. The notification shall enter into force from March 1, 1998. As for those agreements signed before the notification, tax of the guarantee fees occurred and paid afterwards shall be exempted.

(CAI SHUI ZI No.1 [1998])

(2). Tax Deduction & Exemption of Income from Interest

Income from interest on loans made to the Chinese Government or Chinese State banks by international financial organizations shall be exempt from Income Tax. The interest income derived by a foreign bank from loans made to Chinese State Banks at preferential interest rates shall be exempt from Income Tax.

(Item 2&3 of Article 19, the Tax Law)

'International financial organizations' mentioned in Paragraph 3, Item 2, Article 19 of the Tax Law refers to international financial institutions like the International Monetary Fund, the World Bank, the Asian Development Bank, the International Development Association, the International Fund for Agricultural Development, etc..

'Chinese State banks' mentioned in Item 2&3, Paragraph 3, Article 19 of the Tax Law refers to the People's Bank of China, the Industrial and Commercial Bank of China, the Agricultural Bank of China, the Bank of China, the People's Construction Bank of China, and other financial institutions authorized by State Council to engage in the business of foreign exchange deposits and loans, etc. for foreign clients. (Article 64, 65 of the Detailed Rules)

The European Investment Bank belongs to the 'International financial organizations' mentioned in Article 19 of the Tax Law, so it may enjoy the tax incentives stipulated in that article.

(GUO SHUI HAN FA No.328 [1995])

According to Article 65 of the Detailed Rules, financial institutions with foreign investment in China, such as branches of foreign banks, banks and financial affair companies with foreign investment, etc., do not belong to the 'Chinese State Banks' described in Item 3, Paragraph 3, Article 19 of the Tax Law. Therefore, Income Tax shall be levied on the interest of loans made to foreign financial institutions by foreign banks.

(GUO SHUI HAN No.372 [1997])

3. Royalty

(1). Scope of Royalty

Royalty refers to the income received from the provision of patents, technical know-how, trademarks and copyright for use in China, which is derived by foreign enterprises in China who have not established organizations or sites.

(Item 2 of Article 6, the Detailed Rules)

Clarification is given as follows regarding the Income Tax collection on income from copyright (derived inside China) of movies, audio products and audio-video products

collected by foreign companies, enterprises and other organizations (hereinafter referred to as 'foreign enterprises') who do not have establishments in China.

i. Income Tax shall be levied at the rate of 20% as stipulated in the Tax Law on income obtained by foreign enterprises from use of the copyright of movies, audio-video products and audio products provided by foreign enterprises to Chinese companies, enterprises and institutions (including TV stations, broadcasting stations, film distribution and projection companies and audio-video publishing houses) except those in the special economic zones, economic and technological development zones and coastal economic open zones where such Income Tax may be collected at the reduced rate of 10% according to the relevant provisions. Income Tax shall be withheld from each payment given by the payers of royalty fees.

ii. As for the copyrights of movies, audio-video products and audio products provided by foreign enterprises to be used in education, scientific research, environmental protection and medical care etc., if they are really helpful to the scientific and cultural communication between China and other countries and the royalties are relatively low, thus needing tax incentives such as tax exemption and reduction, the foreign enterprises may present application to the local tax authorities via the copyright purchasers and then the application shall be reported to the State Administration of Taxation for approval after examination and verification by the local taxation authorities.

iii. If the foreign enterprise who provides copyrights of movies, audio-video products and audio products comes from a country with whom China has signed an agreement for prevention of double taxation, the foreign enterprise may ask for and enjoy the tax incentives on royalties at a limited rate according to the agreement.

iv. The purchasers (companies, enterprises and institutions) of the copyrights of movies, audio-video products and audio products provided by the foreign enterprise shall withhold tax at each royalty payment according to the provisions of the Tax Law. The taxation authorities shall collect fines or surcharges for overdue tax payments according to the provisions of Article 14 and 15 of the "Income Tax Law of the People's Republic of China on Foreign Enterprises", if the tax is not withheld in time or the tax that should be withheld is not withheld.

v. This notification shall enter into force from September 1, 1990. At the same time, the notification of CAI SHUI WAI ZI No. 46 shall stop executing.

As for those copyright transfer agreements signed before the notification enter into force, articles clearly put in agreements about tax incentives such as tax exemption and reduction can still be executed until the deadline of agreements (not including prolonged agreements henceforth).

(GUO SHUI HAN FA No.960 [1990])

(2).Calculation of payable royalty tax

The gross royalties obtained from the provision of patents and technical know-how include the drawing and information fees, technical service fees, personnel training fees and other relevant fees.

(Article 59, the Detailed Rules)

Where a foreign enterprise has no established organization or site in China but derives royalties from sources within China, or where it has such established organizations or

sites within China but the royalties it earns are not really connected with those organizations or sites, such an enterprise shall deduct the business tax payment handed in according to "Provisional Regulations of the People's Republic of China on Business Tax" when the enterprise income tax is calculated.

(CAI SHUI ZI No.59 [1998])

(3) Tax Exemption and Deduction of royalties

Income Tax on royalties received for the supply of technical know-how in scientific research, exploitation of energy resources, development of the communication industries, agricultural, forestry and animal husbandry production, and the development of important technology may, upon approval by the responsible department for tax affairs under State Council, be levied at the reduced rate of 10%. Where the technology supplied is advanced or the terms are preferential, exemption from Income Tax may be allowed.

(Article 19, the Tax Law)

Reduction or exemption of Income Tax on royalties as provided for in Item 4, Paragraph 3, Article 19 of the Tax Law is applicable to the following:

I. Royalties obtained from the provision of the following technical know-how in farming, forestry, animal husbandry and fishery:

i. Technology provided to improve soil and grassland, to reclaim and develop barren hills, and to fully utilize natural conditions;

Biotechnology to nurture new species and varieties of fauna and flora and to produce high efficient but low toxic agricultural chemicals;

iii. Technology to provide farming, forestry, animal husbandry and fishery with scientific production and management, to preserve the ecological balance, and to increase the capability of fighting natural disasters;

II. Royalties obtained from the provision of technical know-how to academies of science, colleges and universities, and other scientific research institutions to conduct scientific research or scientific experimentation independently or cooperatively;

III. Royalties obtained from the provision of technical know-how for the development of energy resources and transportation;

IV. Royalties obtained from the provision of technical know-how for energy conservation and the prevention and control of environmental pollution;

V. Royalties obtained from the provision of technical know-how for the development of the following important fields of technology:

i. production of mechanical and electronic equipment;

ii. nuclear power;

iii. production of large scale integrated circuits;

iv. production of photo-integrated microwave semi-conductors and microwave integrated circuits and microwave electron tubes;

v. manufacturing of high-speed electronic computers and micro-processors;

vi. optical telecommunications;

vii. remote ultra-high voltage direct current electricity transmission;

viii. liquification, gasification and integrated utilization of coal.

(Article 66, the Detailed Rules)

If the foreign investors of the joint venture enterprises use the evaluated price of special

technology to invest as capital stock and do not collect royalties separately, the withholding income tax can be exempted.

(CAI SHUI WAI ZI No.12 [1984])

#### 4. Rentals

Income Tax shall be exempted, provisionally, on ship rentals obtained by foreign companies or enterprises to Chinese companies or enterprises for international transportation. However, Income Tax shall be collected according to the provision in Article 11 of the Tax Law for ship rentals obtained by foreign enterprises to Chinese companies or enterprises for coastal or inland water transportation.

(CAI SHUI ZI No.32 [1984])

Through the approval of the State Council, clarifications concerning the withholding income tax of the rentals are given as follows:

i. Withholding Income Tax shall be exempted on airplane rentals obtained by foreign enterprises to Chinese airline companies in accordance with rental contracts signed before September 1,1999.

ii. Withholding Income Tax shall be collected, according to the concerning regulations of the Tax Law and the Detailed Rules, on airplane rentals obtained by foreign enterprises to Chinese airline companies in accordance with rental contracts signed after September 1,1999. Chinese airline companies shall withhold the Income Tax of the rentals from each payment.

(CAI SHUI ZI No.251 [1999])

#### 5. Benefits Received from Transfer of Property

'Other income' referred to in Article 19 of the Tax Law includes gains from transfer of property including houses, buildings, structures and their attached facilities located in China or from the assignment of right to use of land.

'Gains from transfer of property' referred to in the preceding paragraph means the net gain or profit received from the balance of the transfer after deduction of the original value of the property. The local tax authorities shall assess the original value of the property according to specific conditions if proper evidence on the original value cannot be provided by a foreign enterprise.

(Article 61, the Detailed Rules)

Income Tax shall be exempted, provisionally, on the net income obtained by foreign enterprises from transfer of their own B shares or Chinese offshore shares issued by enterprises in China if those shares do not belong to the foreign enterprise's establishments or sites in China. Tax exemption also applies to the income of foreign individuals from transfer of their own B shares or Chinese offshore issued by enterprises in China.

If foreign enterprises and foreign individuals transfer the stock of the enterprises with foreign investment in China, the Withholding Income Tax or the Individual Income Tax shall be levied at 20% on the excess part of the transfer gains over the investment according to the provisions in Document CAI SHUI WAI ZI No. 033 issued by the Ministry of Finance (87) and in Document CAI SHUI ZI No.114 issued by the Ministry of Finance (84).

(GUO SHUI FA No.045 [1993])

During the period in which a company may want to reorganize towards establishing stronger management, if foreign enterprises want to transfer their own stock of enterprises in China or enterprises with foreign investment want to transfer stock of enterprises in or outside China to companies with the relation of directly owned, indirectly owned or owned 100% stock by the same person, including the investment companies with that relation inside China, they are allowed to transfer with the cost price. Income Tax shall not be collected because no benefit or loss from transfer of stock occurs.  
(GUO SHUI HAN No.207 [1997])

"CCCCP" is the abbreviation of "the Central Committee of Chinese Communist Party"  
"SAN LAI YI BU" stands for 4 modes of transnational trade, which are respectively mode of processing with materials supplied by clients outside China, mode of assembling equipment supplied by clients outside China, mode of processing according to the samples provided by oversea clients, and mode of compensation transactions

This English document is not an official translation and is for reference ONLY. In case of discrepancy, the original version in Chinese shall prevail.\*\*\*)

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## **SZ03 Provisions on Guiding the Orientation of Foreign Investment**

Decree [2002] No.346 of the State Council

The Provisions on Guiding the Orientation of Foreign Investment are hereby promulgated and shall enter into force on April 1, 2002.

Premier of the State Council: Zhu Rongji

February 11, 2002

Enclosure: The Provisions on Guiding the Orientation of Foreign Investment

Article 1 In order to guide the orientation of foreign investment, to keep the orientation of foreign investment in line with the national economy and social development planning of China, and to protect of the lawful rights and interests of investors, these Provisions have been formulated according to the laws and provision on foreign investment and the requirements of industrial policies of the State.

Article 2 These Provisions shall be applicable to the projects of investment and establishment of Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and foreign-capital enterprises (hereinafter referred to all as enterprises with foreign investment), and projects with foreign investment in other forms (hereinafter referred to as projects with foreign investment) within the territory of China.

Article 3 The Guidance Catalog of Industry with Foreign Investment and the Catalog of Dominant Industries with Foreign Investment of the Mid-west Region shall be formulated by the State Development Planning Commission, the State Economic and Trade Commission, the Ministry of Foreign Trade and Economic Cooperation jointly with other relevant departments under the State Council, and shall be promulgated upon the approval of the State Council; when it is needed to partly adjust the Guidance Catalog of Industry with Foreign Investment and the Catalog of Dominant Industries with Foreign Investment of the Mid-west Region in light of the actual situation, the State Economic and Trade Commission, the State Development Planning Commission, the Ministry of Foreign Trade and Economic Cooperation jointly with the relevant departments under the State

Council shall make the revision and promulgation timely.

The Guidance Catalog of Industry with Foreign Investment and the Catalog of Dominant Industries with Foreign Investment of the Mid-west Region shall be the basis of the application of relevant policies in directing and examining and approving projects with foreign investment and enterprises with foreign investment.

Article 4 Projects with foreign investment fall into 4 categories, namely encouraged, permitted, restricted and prohibited ones.

The Projects with foreign investment that are encouraged, restricted and prohibited shall be listed in the Guidance Catalog of Industry with Foreign Investment. And the projects with foreign investment that don't fall into the categories of encouraged, restricted or prohibited projects shall be the permitted projects with foreign investment. The permitted projects with foreign investment shall not be listed in the Guidance Catalog of Industry with Foreign Investment.

Article 5 A project in any of the following situations shall be listed as the encouraged projects with foreign investment:

- 1) being of new agriculture technologies, agriculture comprehensive development, or energy, transportation and important raw material industries;
- 2) being of high and new technologies or advanced application technologies that can improve the product performance and increase the technology economic efficiency of the enterprises or those that can produce the new equipments and new materials which the domestic production capacity fails to produce;
- 3) meeting the market needs and being able to improve the product level, develop new markets or increase the international competitive capacity of the products;
- 4) being of new technologies and new equipments that can save energy and raw material, comprehensively utilize resources and regenerate resources, and prevent environment pollutions;
- 5) being capable of bring into the advantages of human power and resources of the mid-west region into full play and being in conformity to the industrial policies of the State;
- 6) other situations as provided for by laws and administrative regulations.



Article 6 A project in any of the following situations shall be a restricted project with foreign investment:

- 1) being of technology lagged behind;
- 2) being adverse to saving resources and improving environment;
- 3) engaged in the prospecting and exploitation of the specific type of mineral resources to which the State applies protective exploitation;
- 4) falling into the industries that the State opens step by step;
- 5) other situations as provided by laws and administrative regulations.

Article 7 A project in any of the following situations shall be a prohibited project with foreign investment:

- 1) harming the State safety or impairing the public interests;
- 2) polluting the environment, damaging natural resources or harming human health;
- 3) occupying too much farmland and being adverse to the protection and development of land resources;
- 4) harming the safety and usage of military facilities;
- 5) using the particular techniques or technologies of China to produce products;
- 6) other situations as provided for by laws and administrative regulations.

Article 8 The Guidance Catalog of Industry with Foreign Investment may provide that a enterprise with foreign investment is "limited to joint venture, contractual venture", "with Chinese party at the holding position" or "with Chinese party at the relatively holding position".

"Limited to joint venture and operative venture" shall refer to that only Chinese-foreign joint ventures and Chinese-foreign contractual joint ventures are allowed; "with the Chinese parties at the holding position" shall refer to that the total investment

proportion of the Chinese parties in the project with foreign investment shall be 51% or more; "with Chinese parties at the relatively holding position" shall refer to that the total investment proportion of the Chinese parties in the project with foreign investment shall be higher than the investment proportion of any foreign party.

Article 9 Apart from enjoying the preferential treatments according to the provisions of the relevant laws and administrative regulations, the encouraged projects with foreign investment that engage in the construction and operation of energy, transportation, municipal infrastructure (coal, oil, natural gas, electric power, railways, highways, ports, airports, city roads, sewage disposition, and garbage disposition, etc.) that needs large amount of investment and long term for recovery may expand their relevant business scope upon approval.

Article 10 The permitted projects with foreign investment of which the products are all directly exported shall be regarded as the encouraged project with foreign investment; the restricted projects with foreign investment of which the export sales accounts for more than 70% of their total amount of sales may be regarded as the permitted projects with foreign investment upon the approval of the people's governments of provinces, autonomous regions, municipalities directly under the Central Government and municipalities separately listed on the State plan or the competent department under the State Council.

Article 11 The conditions may be eased for the permitted and restricted projects with foreign investment that really can bring the advantages of the mid-west region into full play; among which, those listed in the Guidance Catalog of Industry with Foreign Investment may enjoy the preferential policies for the encouraged projects with foreign investment.

Article 12 Projects with foreign investment shall be examined and approved, and put on record respectively by the departments of development planning and the economic and trade departments according to the limit of authority for examination and approval; the contracts and articles of association of enterprises with foreign investment shall be examined and approved, and put on record by the departments of foreign trade and economic cooperation. Among which, the projects with foreign investment under the limit for restricted projects with foreign investment shall be subject to the examination and approval of the corresponding competent departments of the people's governments of the

provinces, autonomous regions, municipalities directly under the Central Government and municipalities separately listed on the State plan, and shall be reported to the competent departments at the next higher level and the competent industrial departments, the power for examination and approval of this kind of projects may not be granted to the authorities at lower levels. The projects with foreign investment in the service area that are opened to the outside world step by step shall be subject to the examination and approval according to the relevant provisions of the State.

The projects with foreign investment involving quotas and licenses must apply to the departments for quotas and licenses first.

Where there are otherwise provisions of laws and administrative regulations on the procedures and measures for the examination and approval of projects with foreign investment, those provisions shall be observed.

Article 13 With respect to the projects with foreign investment examined and approved in violation of the present provisions, the organ of examination and approval at the next higher level shall cancel it within 30 workdays from the day of receiving the documents for record of that project, its contract and articles of association shall be void, the department of enterprise registration shall not register it and the customs shall not handle the procedures for import and export for it.

Article 14 Where the applicant of a project with foreign investment manages to obtain the approval for the project by deceiving or other illicit means, his legal liabilities shall be investigated for according to law regarding the seriousness of the circumstances; the organ of examination and approval shall cancel the approval for that project and the relevant competent organs shall deal with it correspondingly according to law.

Article 15 Where any of the personnel of the organ of examination and approval abuses his power or neglects his duties, criminal responsibilities shall be investigated for according to the provisions of the criminal law on the crime of abusing powers or the crime of neglecting duties; where the circumstances are not serious enough for criminal punishment, administrative punishment of recording a special demerit or more severe punishment shall be given.

Article 16 With respect to the investment projects established by overseas Chinese

and the investors from the Hong Kong Special Administration Region, Macao Special Administrative Region or Taiwan Area, these Provisions shall be applicable by reference in implementation.

Article 17 These Provisions shall enter into force on April 1, 2002. The Interim Provisions on the Guidance of Foreign Investment Directions approved by the State Council on June 7, 1995 and promulgated by the State Planning Commission, the State Economic and Trade Commission and the Ministry of Foreign Trade and Economic Cooperation on June 20, 1995 shall be nullified simultaneously.

## **ZJ01 Catalogue of Encouraged Foreign Investment Industries in Zhejiang Province**

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### **I. Farming, Forestry, Animal Husbandry and Fishery Industries**

1. Improvement of low and medium yielding field
2. Planting technology, without social effects of pollution, of vegetables (including edible fungus and melon-watermelon), fruits, teas and serial development and production of these products
3. Development and production of new breed varieties (excluding those gene-modified varieties) of fine quality, high-yielding crops such as sugar-yielding crops, fruit trees, flowers and plants, forage grass and related new techniques
4. Production of flowers and plants, and construction and operation of nursery base
5. Reusing in fields and comprehensive utilization of straws and stalks of crop, development and production of resources of organic fertilizers
6. Cultivation of traditional Chinese medicines (equity joint ventures or contractual joint ventures only)
7. Planting of forest trees (including bamboo) and cultivation of fine strains of forest trees
8. Planting of caoutchoucs, sisals and coffees
9. Breeding of quality varieties of breeder animals, breeder birds and aquatic offspring (excluding precious quality varieties peculiar to China)
10. Breeding of famous, special and fine aquatic products, as well as cage culture in deep water
11. Construction and operation of ecological environment protection projects preventing and treating desertification and soil erosion such as planting trees and grasses, etc.

### **II. Mining and Quarrying Industries**

- \*1. Venture prospecting and exploitation of petroleum, natural gas
- \*2. Exploitation of oil and gas deposits (fields) with low osmosis
- \*3. Development and application of new technologies that can increase the recovery factor of crude oil
- \*4. Development and application of new technologies for prospecting and exploitation of petroleum, such as geophysical prospecting, well drilling, well-logging and downhole operation, etc.
5. Prospecting and exploitation of coal and associated resources
6. Prospecting and exploitation of coal-bed gas
7. Exploration and beneficiation of gold mines with low quality or difficult to beneficiate (equity joint ventures or contractual joint ventures only)

8. Prospecting, exploitation, and beneficiation of iron ores and manganese ores
9. Prospecting and exploitation of copper ores, plumbum ores and zinc ores (equity joint ventures or contractual joint ventures only, wholly foreign-owned enterprises are permitted in west regions)
10. Prospecting and mining of aluminum ores (equity joint ventures or contractual joint ventures only, wholly foreign-owned enterprises are permitted in west regions)
11. Mining and beneficiation of chemical mines including sulfur ores, phosphate ores, kalium ores, etc.

### III. Manufacturing Industries

#### 1. Food Processing Industry

- (1) Storage and processing of food, vegetables, fruits, fowl and livestock products
- (2) Aquatic products processing, seashell products cleansing and processing, and development of function food made from seaweed
- (3) Development and production of drinks of fruits, vegetables, albumen, teas and coffees
- (4) Development and production of food for babies and agedness, as well as function food
- (5) Production of dairy products
- (6) Development and production of biology feeds and albumen feeds

#### 2. Tobacco Processing Industry

- (1) Production of secondary cellulose acetate and processing of tows
- (2) Production of tobacco slices in the way of paper making

#### 3. Textile Industry

- (1) Production of special textiles for engineering use
- (2) Weaving and dyeing as well as post dressing of high-grade loomage face fabric

#### 4. Leather, Coat Products Industry

- (1) Processing of wet blue skin of pig, cow and sheep with new technology
- (2) Post ornament and processing of leather with new technology

#### 5. Lumber Processing Industry and Bamboo, Bine, Palm, Grass Products Industry

- (1) Development and production of new technology and products for the comprehensive utilization of "sub-quality, small wood and fuel wood" and bamboo in the forest area

#### 6. Paper Making and Paper Products Industry

- (1) Project based on the mode of integration of forest and paper with an annual production capacity of over 300 thousand tons of chemical wood pulp or an annual production capacity of over 100 thousand tons of chemical mechanical wood pulp (equity joint ventures or contractual joint ventures only)
- (2) Production of high-quality paper and cardboard (equity joint ventures or contractual joint ventures only)

#### 7. Petroleum Refining and Coking Industry

- (1) Deep processing of needle coke and coal tar
- (2) Production of heavy traffic road asphalt

#### 8. Chemical Raw Material and Products Manufacturing Industry

- (1) Production of alkene through catalyzing and cracking of heavy oil
- (2) Production of ethylene with an annual production capacity of 600 thousand tons or over (the Chinese partners shall hold relative majority of shares)

- (3) Comprehensive utilization of ethylene side-products such as C5-C9
  - (4) Mass production of corvic (in the way of ethylene)
  - (5) Production of organochlorine serial chemical industrial products (excluding high-residual organochlorine products)
  - (6) Production of basic organic chemical industrial raw materials such as the production of benzene, methylbenzene, dimethylbenzene, etc. and its derivatives
  - (7) Production of supporting raw materials for synthesized materials: bisphenol-A, 4,4' diphenylmethane, diiso-cyan ester, and vulcabond toluene
  - (8) Production of synthetic fibre raw materials: precision terephthalic acid, vinyl cyanide, caprolactam and nylon 66 salt
  - (9) Production of synthetic rubber: liquid butadiene styrene rubber by butadiene method, butyl rubber, isoamyl rubber, butadiene neoprene rubber, butadiene rubber, acrylic rubber, chlorophydrin rubber
  - (10) Production of engineering plastics and plastic alloys
  - (11) Fine chemistry industry: new products and technology for catalytic agent, auxiliary and pigment; processing technology for the commercialization of dye (pigment); production of high-tech chemicals for electronics and paper-making, food additives, feed additives, leather chemical products, oil-well auxiliaries, surface active agent, water treatment agent, adhesives, inorganic fibre, inorganic powder stuffing and equipment
  - (12) Production of auxiliary agent, preparation agent, and dye-stuff for textile and chemical fibre ladder
  - (13) Production of depurant of automobile tail gas, catalyzer and other assistant agents
  - (14) Production of nature spices, synthetic spices and single ion spices
  - (15) Production of high capability dope
  - (16) Production of chloridized titanium white
  - (17) Production of chlorofluorocarbon substitution
  - (18) Production of mass coal chemical industrial products
  - (19) Development and production of new technology and products for the forestry chemicals
  - (20) Production of ion film for caustic soda
  - (21) Production of biologic fertilizers, high-density fertilizers (potash fertilizer, phosphate fertilizer) and compound fertilizers
  - (22) Development and production of new varieties of effective, low poison and low residual agriculture chemicals and pesticides
  - (23) Development and production of biology agriculture chemicals and pesticides
  - (24) Development and production of inorganic, organic and biologic films for environment protection
  - (25) Comprehensive utilization and disposure of exhaust gas, discharge liquid, waste residue
9. Medicine Industry
- (1) Production of material medicines under patent and administrative protection in our country or chemical material medicines which we have to import
  - (2) Vitamins: production of niacin
  - (3) Amino acid: production of serine, tryptophan, histidine, etc.

- (4) Production of analgesic-antipyretic medicines with new technique and new equipment
- (5) Production of new variety of anticarcinogen medicines, as well as cardiovascular and cerebrovascular medicines
- (6) Production of new, effective and economical contraceptive medicines and devices
- (7) Production of new variety of medicines which are produced by means of biological engineering technology
- (8) Production of vaccine through genic engineering technology (vaccine against AIDS, vaccine against type-C hepatitis, contraceptive vaccine, etc.)
- (9) Development and production of medicines made from allopathics
- (10) Production of diagnostic reagent for AIDS and radioimmunity diseases
- (11) Medicines and pharmaceuticals: production of new products and new dosage forms adopting new techniques such as slow release, control release, target preparation and absorbed through skins
- (12) Development and applications of new variety of adjuvant medicines
- (13) Processing and production of traditional Chinese herb medicines, products which distill from traditional Chinese herb medicines and Chinese patent medicines (excluding preparing technique of traditional Chinese medicines in small pieces ready for decoction)
- (14) Production of biological medical materials and products
- (15) Production of antibiotic material medicines used for animals (including antibiotics and chemical synthesis medicines)
- (16) Development and production of new products and new dosage forms of antibiotic medical, anthelmintic, insecticide, anti-coccidiosis medicines used for animals

#### 10. Chemical Fibre Manufacturing Industry

- (1) Production of differential chemical fibre and high, new technological fibre such as aromatic synthetic fibre, functional environment-amicable amorphous synthetic fibre with an annual production capacity of over 5000 tons, carbon fibre, high tensile and high modulus polythene
- (2) Production of chemical fibre of environmental protection variety such as direct viscose and aseptis spinning, etc.
- (3) Production of polyester used for non-fibre with a daily production capacity of over 500 tons, and production of new type polyester used for fibre and non-fibre (poly terephthalic acid propylene glycol ester, poly sebacic acid glycol ester, polybutylene terephthalate (PBT), etc.)

#### 11. Plastic Products Industry

- (1) Production of polyamide film which can keep fresh
- (2) Development and production of new products and new technologies for agricultural films (photolysis film, multifunctional film and the raw materials, etc.)
- (3) Reutilization and counteraction of waste and old plastic

#### 12. Non-metal Mineral Products Processing Industry

- (1) Production of fine-quality floating glass with a daily melting capacity of 500 tons or over (only in mid-west region of China)
- (2) Production of new type dry process cement of clinker with a daily output capacity of 2,000 tons or over (only in midwest region of China)
- (3) Production of glass fibre (product line with technology of wire drawing in tank furnace)



and glass fibre reinforced plastic products with an annual capacity of 10,000 tons or more

(4) Production of high level sanitation porcelain with an annual production of 500,000 pieces or over

(5) Standardization refine of ceramic material and production of high-level decorative materials used for ceramics

(6) Production of high-level refractory material used in furnaces for glass, ceramics and glass fibre

(7) Production of inorganic, non-metal materials and products (artificial crystal, high-capability complex materials, special kind of glass, special kind of ceramics, special kind of airproof materials and special kinds of cementation materials)

(8) Production of new type of building materials (lightweight high-intensity and multi-function materials for wall, high-level environment protecting decorating and finishing materials, high quality water-proof and airproof materials, and effective thermal insulation materials)

(9) Deep processing of non-metal mineral products (super-thin comminution, high level pure, fine production, modification)

### 13. Ferrous Metallurgical Smelting and Rolling Processing Industry

(1) Production of direct and fusion reduced iron

### 14. Non-Ferrous Metallurgical Smelting and Rolling Processing Industry

(1) Smelting of gold mines with low quality or difficult to beneficiate (equity joint ventures or contractual joint ventures only, wholly foreign-owned enterprises are permitted in west regions)

(2) Production of hard alloy, tin compound and antimony compound

(3) Production of non-ferrous composite materials, new type of alloy materials

(4) Utilization of rare-earth

### 15. Metal Products Industry

(1) Design and manufacturing of non-metal products molds

(2) Design and manufacturing of car and motorcycle molds (including plunger die, injection mold, moldingdie, etc.) and chucking appliances (chucking appliances for welding, inspection jig, etc.)

(3) Development and production of high-grade hardware for construction, hot-water heating equipment and hardware parts

### 16. General Machine-building Industry

(1) Manufacturing of numerically controlled machine tools, digital control system and servomechanism installations which exceed triaxiality linkage

(2) Manufacturing of high performance welding robot and effective welding and assembling production equipment

(3) Production of high temperature resistant and insulation material (with F, H insulation class), as well as insulation shaped parts

(4) Production with techniques of proportional, servo-hydraulic pressure, low-power pneumatic control valve and stuffing static seal

(5) Production of precision plunger dies, precision cavity molds and standard components of molds

(6) Manufacturing of precision bearings and all kinds of bearings used specially for

principal machines

(7) Manufacturing of casting and forging workblanks for cars and motorcycles

17. Special Equipment Manufacturing

(1) Development and manufacturing of new technology and equipment for the storage, preservation, classifying, packing, drying, transporting and processing of food, cotton, oil, vegetables, fruits, flowers, pastura plants, meat and aqua-products

(2) Manufacturing of facility agriculture equipment

(3) Manufacturing of new technical agriculture and forestry equipment

(4) Design and manufacturing of engines for tractors, combine harvesters, etc.

(5) Manufacturing of equipment for reusing in fields and comprehensive utilization of straws and stalks of crop

(6) Manufacturing of equipment for comprehensive utilization of waste agriculture products and waste fowl and livestock products which are bred in scale

(7) Manufacturing of water-saving irrigation equipment with new technique

(8) Manufacturing of earthwork for wet land and desilting machines

(9) Technology of hydrophily ecological system for protecting environment and equipment manufacturing

(10) Manufacturing of equipment for scheduling system which is used in long-distance transmitting water engineering

(11) Manufacturing of special machines and equipment for flood prevention and emergency rescue

(12) Manufacturing of key equipment in food industry such as high-speed asepsis canning equipment and brander equipment, etc.

(13) Production technology and key equipment manufacturing of aminophenol, zymin, food additive

(14) Manufacturing of complete set of equipment with an hourly feed processing capacity of 10 tons or more and key spare parts

(15) Manufacturing of multi-color offset press for web and folio of paper or larger size

(16) Manufacturing of equipment with new technique for post ornament and processing of leather

(17) Manufacturing of high-tech involved special industrial sewing machines

(18) Manufacturing of complete set of equipment of new type of knitting machines, new type of paper (including pulp) making machines

(19) Design and manufacturing of new type of mechanical equipment for highways and ports

(20) Manufacturing of equipment for highways and bridges maintenance, automatic detection

(21) Manufacturing of equipment for operation supervisory control, ventilation, disaster prevention and rescue system of highway and tunnels

(22) Design and manufacturing of large equipment for railway construction and maintenance

(23) Manufacturing of equipment for garden machines and tools with new technique

(24) Manufacturing of special equipment for cities' sanitation and environment work

(25) Manufacturing of machines for road milling and overhauling

- (26) Manufacturing of tunneling diggers, equipment of covered digging for city metro
  - (27) Manufacturing of city sewage-disposal equipment with capacity of 80,000 tons/day or more, industrial sewage film treatment equipment, up-flow anaerobic fluidized bed equipment, and other biological sewage disposal equipment, recycling equipment for waste plastics, desulphurization and denitration equipment for industrial boiler, large high-temperature resistant, acid resistant bag dust remover, incinerating equipment for rubbish treatment
  - (28) Manufacturing of turbine compressors and combined comminutors of the complete set of equipment with an annual production capacity of 300,000 tons or over of synthetic ammonia, 480,000 tons or over of urea, 450,000 tons or over ethylene
  - (29) Technique for desulfurization of thermal power station and equipment manufacturing
  - (30) Manufacturing of sheet conticasters
  - (31) Deep processing technique and equipment manufacturing of plate glass
  - (32) Manufacturing of equipment for downhole trackless mining, loading and transporting, mechanical power-driven dump trucks for mining of 100 tons or over, mobile crushers, 3,000 m<sup>3</sup>/h or over bucket excavator, 5 m<sup>3</sup> or larger mining loader, full-section tunneling machines
  - (33) Design and manufacturing of new instruments and equipment for prospecting and exploitation of petroleum
  - (34) Manufacturing of cleaning equipment for electromechanical wells and production of medicines
  - (35) Manufacturing of electronic endoscopes
  - (36) Manufacturing of medical X-ray machines set with high-frequency technique, direct digital imagery processing technique and low radiation (80kW or over)
  - (37) Manufacturing of equipment for high magnetic field intensity and superconduct (MRI)
  - (38) Manufacturing of machines for collecting blood plasma only
  - (39) Manufacturing of equipment for auto elisa immuno system (including the functions of application of sample, elisa photo meter, wash plate, incubation, data, post treatment, etc.)
  - (40) New techniques of quality control of medicine products and new equipment manufacturing
  - (41) New analytical techniques and extraction technologies, and equipment development and manufacturing for the effective parts of traditional Chinese medicines
  - (42) Producing and manufacturing of new packing materials, new containers for medicine, and advanced medicine producing equipment
18. Communication and Transportation Equipment Industries
- \* (1) Manufacture of complete automobiles (including R&D activities)
  - (2) Manufacture of engines for automobiles (including R&D activities)
  - (3) Manufacture of key spare parts for automobiles: complete disc brakes, complete driving rods, automatic gearboxes, fuel pumps of diesel engine, inhalant supercharger of engines, electromotion steering system, adhesive axial organ (used for four-wheel drive), gas filling vibration absorber, air spring, hydraulic tappet, cluster gauge
  - (4) Production of automobile electronic devices (including engine control system, underchassis control system, autocar body electric control system)

- (5) Manufacture of vehicles for special-purpose in petroleum industry; vehicles for deserts, etc.
  - (6) Technology and equipment for railway transportation: design and production of locomotives and main parts, design and production of equipment for railways and bridges, related technology and equipment production for rapid transit railway, production of equipment for communicational signals and transportation safety monitoring, production of electric railway equipment and instrument
  - (7) Equipment for urban rapid transit track transportation: design and manufacture of powered car and main parts for metro, city light rail
  - (8) Design and manufacture of civil planes (Chinese partner shall hold the majority of shares)
  - (9) Production of spares parts for civil planes
  - (10) Design and manufacture of civil helicopters (Chinese partner shall hold the majority of shares)
  - (11) Design and manufacture of aeroplane engines (Chinese partner shall hold the majority of shares)
  - (12) Design and manufacture of civil air-borne equipment (Chinese partner shall hold the majority of shares)
  - (13) Manufacture of light gas-turbine engine
  - (14) Design and manufacture of crankshafts of low-speed diesel engine for vessel
  - (15) Repairing, design and manufacture of special vessels, high-performance vessels (the Chinese partner shall hold the relative majority of shares)
  - (16) Design and manufacture of the equipment and accessories of high-speed diesel engines, auxiliary engines, radio communication and navigation for vessels (the Chinese partner should hold relative majority shares)
  - (17) Manufacture of fishing boats and yachts made of glass fibre reinforced plastic
19. Electric Machinery and Equipment Industries
- (1) Fire power equipment: manufacture of super-critical units of 600,000 kW or over, large gas turbines, gas-steam combined cycle power equipments of 100,000 kW or over, coal gasification combined cycle technique and equipment (IGCC), pressure boost fluidized bed (PFBC), large scale air cooling generating units of 600,000 kW or more, large scale cycle fluidized bed (CFB) boiler of 300 thousand kW (equity joint ventures or contractual joint ventures only)
  - (2) Hydropower plant equipment: manufacture of large pump-storage power units of 150,000kW and over, large tubular turbine units of 150,000kW or over (equity joint ventures or contractual joint ventures only)
  - (3) Nuclear-power plant equipment: manufacture of power units of 600,000kW or over (equity joint ventures or contractual joint ventures only)
  - (4) Power transmitting and transforming equipment: manufacture of super high-voltage DC power transmitting and transforming equipment of 500 kilovolts or over (equity joint ventures or contractual joint ventures only)
20. Electronic and Telecommunications Industries
- (1) Manufacture of digital television, digital video camera, digital record player, digital sound-playing equipment

- (2) Manufacture of new type plate displays, medium and high resolution color kinescope and glass shielding
- (3) Manufacture of key parts used in big-screen color project display, such as optical engine, lamp-house, screen for projection, high definition projection pipe
- (4) Manufacture of digital audio and visual coding or decoding equipment, digital broadcasting TV studio equipment, digital cable TV system equipment, digital audio broadcast transmission equipment
- (5) Design of integrated circuit and production of large scale integrated circuit with a line width of 0.35 micron or smaller
- (6) Manufacture of medium- and large-sized computers, portable microcomputers, high-grade server
- (7) Development and manufacture of drivers of high capacity compact disk and disk and related parts
- (8) Manufacture of 3-dimension CAD, CAT, CAM, CAE and other computer application system
- (9) Development and manufacture of software
- (10) Development and production of materials specific for semi-conductors and components
- (11) Manufacture of electronic equipment, testing equipment, tools and moulds
- (12) Manufacture of new type electronic components and parts (slice components, sensitive components, sensors, frequency monitoring and selecting components, hybrid integrated circuit, electrical and electronic components, photoelectric components, new type components for machinery and electronics)
- (13) Manufacture of hi-tech green batteries: non-mercury alkali-manganese batteries, powered nickel-hydrogen batteries, lithium-ion batteries, high-capacity wholly sealed maintenance-proof lead-acid accumulators, fuel batteries, pillar-shaped zinc-air batteries
- (14) Development and manufacture of key components for high-density digital compact disk driver
- (15) Reproduction of read-only compact disk and manufacture of recordable compact disk
- (16) Design and manufacture of civil satellites (Chinese partner shall hold the majority of shares)
- (17) Manufacture of civil satellites effective payload (Chinese partner shall hold the majority of shares)
- (18) Manufacture of spare parts for civil satellites
- (19) Design and manufacture of civil carrier rockets (Chinese partner shall hold the majority of shares)
- (20) Manufacture of telecommunication system equipment for satellites
- (21) Manufacture of receiving equipment of satellite navigation and key components (equity joint ventures or contractual joint ventures only)
- (22) Manufacture of optical fibre preformrod
- (23) Manufacture of serial transmission equipment of digital microwave synchronization of 622 MB/S
- (24) Manufacture of serial transmission equipment of phototiming synchronization of 10

GB/S

- (25) Manufacture of equipment for cut-in communication network with broad band
- (26) Manufacture of optical cross-linking equipment (OXC)
- (27) Manufacture of ATM and IP data communication system
- (28) Manufacture of mobile communication systems (GSM, CDMA, DCS1800, DECT, IMT2000): mobile telephone, base station, switching equipment and digital colonization system equipment
- (29) Development and manufacture of high-end router, network switchboard of gigabit per second or over
- (30) Manufacture of equipment for air traffic control system (equity joint ventures or contractual joint ventures only)
- 21. Machinery Industries for Instrument and Meter, Culture and Office
  - (1) Development and production of digital cameras and key components
  - (2) Development and manufacture of precision on-line measuring instrument
  - (3) Manufacture of new technical equipment for safe production and environment protection detecting instrument
  - (4) Manufacture of new-tech equipment of water quality and fume on-line detecting instrument
  - (5) Manufacture of instrument and equipment for hydrological data collecting, processing, transmitting and flood warning
  - (6) Production of new type of meters' spare parts and materials (mainly new switches and function materials for meters such as intelligent sensors, socket connectors, flexible circuit boards, photoelectric switches and proximity switches.)
  - (7) Manufacture of new type printing devices (laser printers, ink-jet printers)
  - (8) Maintenance of precision instrument and equipment, post-sale services
- 22. Other Manufacture Industries
  - (1) Development and utilization of clean-coal technical product (coal gasification, coal liquefaction, water-coal, industrial lump-coal)
  - (2) Coal ore dressing by washing and comprehensive utilization of powered coal (including desulphurized plaster), coal gangue

#### IV. Production and Supply of Power, Gas and Water

- 1. Construction and management of thermal-power plants with a single unit installed capacity of 300,000kW or above
- 2. Construction and management of power plants with the technology of clean coal burning
- 3. Construction and management of heat power plants
- 4. Construction and management of power plants with natural gas;
- 5. Construction and management of hydropower stations with the main purpose of power generating
- 6. Construction and management of nuclear-power plants (Chinese partner shall hold the majority of shares)
- 7. Construction and management of new energy power plants (solar energy, wind energy, magnetic energy, geothermal energy, tide energy and biological mass energy, etc.)

## 8. Construction and management of urban water plants

### V. Water Resources Management Industry

1. Construction and management of key water control projects for comprehensive utilization (Chinese partner shall hold the relative majority of shares)

### VI. Communication and Transportation, Storage, Post and Telecommunication Services

1. Construction and management of grid of national trunk railways (Chinese partner shall hold the majority of shares)
2. Construction and management of feeder railways, local railways and related bridges, tunnels and ferry facilities (equity joint ventures or contractual joint ventures only)
3. Construction and management of highways, independent bridges and tunnels
4. Construction and management of public dock facilities of ports
5. Construction and management of civil airports (Chinese partner shall hold the relative majority of shares)
6. Air transportation companies (Chinese partner shall hold the majority of shares)
7. General aviation companies for agriculture, forest and fishery (equity joint ventures or contractual joint ventures only)
- \*8. International liner and tramp maritime transportation business
- \*9. International containers inter-model transportation
- \*10. Road freight transportation companies
11. Construction and management of oil (gas) pipelines, oil (gas) depots and petroleum wharf
12. Construction and management of the facilities of coal delivery pipelines
13. Construction and management of storage facilities relating to transportation services

### VII. Wholesale and Retail Trade Industry

- \*1. Wholesale, retail and logistic distribution of general goods

### VIII. Real Estate Industry

1. Development and construction of ordinary residential houses

### IX. Social Service Industry

#### 1. Public Facility Service Industries

- (1) Construction and management of urban access-controlled roads
- (2) Construction and management of metro and city light rail (Chinese partner shall hold the majority of shares)
- (3) Construction and management of treatment plants for sewage, garbage, the dangerous wastes (incineration and landfill), and the facilities of environment pollution treatment

#### 2. Information, Consultation Service Industries

- (1) Information consulting agencies of international economy, science and technology, environmental protection
- \* (2) Accounting and auditing

## X. Public Health, Sports and Social Welfare Industries

1. Service agencies for the elderly and the handicapped

## XI. Education, Culture and Arts, Broadcasting, Film and TV Industries

1. Higher education institutes (equity joint ventures or contractual joint ventures only)

## XII. Scientific Research and Poly-technical Services Industries

1. Biological engineering technique and bio-medical engineering technique
2. Isotope, irradiation and laser technique
3. Ocean and ocean energy development technology
4. Seawater desalting and seawater utilization technology
5. Oceanic monitoring technology
6. Development of energy-saving technology
7. Technology for recycling and comprehensive utilization of resources
8. Technology for environment pollution treatment and monitoring
9. Technology for preventing from desertification and desert improvement
10. Application technique of civil satellite
11. Research and development centers
12. Centers for hi-tech, new products developing, and incubation of enterprises

## XIII. Permitted foreign invested projects whose products are to be wholly exported directly



## **ZJ02 Provisions of the State Council concerning the encouragement of investments by compatriots from Taiwan**

### **Important Notice:**

This English document is coming from the "LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA GOVERNING FOREIGN-RELATED MATTERS" (1991.7) which is compiled by the Bureau of Legislative Affairs of the State Council of the People's Republic of China, and is published by the China Legal System Publishing House. In case of discrepancy, the original version in Chinese shall prevail.

### **Whole Document (法规)**

#### **PROVISIONS OF THE STATE COUNCIL CONCERNING THE ENCOURAGEMENT OF INVESTMENTS BY COMPATRIOTS FROM TAIWAN**

(Adopted by the Tenth Executive Meeting of the State Council on June 25, 1988, promulgated by Decree No. 7 of the State Council of the People's Republic of China on July 3, 1988, and effective as of the date of promulgation)

#### **Article 1**

These Provisions are formulated in order to promote economic and technological exchanges between China's mainland and the region of Taiwan, thereby boosting common prosperity of the two parts of the motherland on both sides of the Straits, and to encourage companies, enterprises and individuals on Taiwan (hereinafter referred to as "investors from Taiwan") to make investments on China's mainland.

#### **Article 2**

Investors from Taiwan may make investments in all provinces, autonomous regions, municipalities directly under the Central Government, and special economic zones on China's mainland.

Investors from Taiwan are encouraged to engage themselves in land development operations in Hainan Province and on the designated islands and in areas along the coastal regions of the Provinces of Fujian,

Guangdong and Zhejiang.

#### Article 3

The investments made by investors from Taiwan on China's mainland may take the following forms:

- (1) to establish enterprises with the capital wholly owned by investors from Taiwan;
- (2) to establish equity or contractual joint ventures;
- (3) to carry out compensation trade, to process supplied materials, to assemble supplied parts, and to carry out contractual production;
- (4) to purchase shares and various kinds of bonds and debentures of existing enterprises;
- (5) to purchase real estate;
- (6) to obtain land use right according to law and to engage in land development operations; and
- (7) to adopt other forms of investment permitted under the laws and regulations.

#### Article 4

Investors from Taiwan may make investments in various trades in China's mainland: industries, agriculture, service trades, and other trades that are in conformity with the orientation of social and economic development. Investors from Taiwan may select investment projects from the lists of projects published by the departments concerned under various local people's governments; they may also put forward, of their own accord, proposals as to their investment intent and file their applications to the departments of foreign economic relations and trade or to the examining and approving organs designated by various local people's governments in areas where they intend to make investments.

The State encourages investors from Taiwan to make investments in the establishment of export oriented enterprises and of technological advanced enterprises and gives corresponding preferential treatment to such enterprises.

#### Article 5

With respect to the various types of enterprises established with investments by investors from Taiwan - enterprises with the capital wholly owned by investors from Taiwan, equity and contractual joint ventures (hereinafter referred to as "enterprises with investments by compatriots from Taiwan"), they shall all be operated in accordance with these Provisions; in addition to this, they may also enjoy the corresponding preferential treatment as enjoyed by enterprises with foreign investments with reference to the relevant provisions in foreign-related economic laws, decrees and regulations of the state.

With respect to the other forms of investment made by investors from

Taiwan on China's mainland, and with respect to those investors from Taiwan who have not set up business offices on the mainland, but have dividends, interest, rental, royalties and other incomes that come from China's mainland, in addition to the application of these Provisions, reference shall be made to the relevant foreign-related economic law, decrees and regulations.

Article 6

Investors from Taiwan may make investments by using freely convertible currencies, machinery and equipment or other physical goods, industrial property right, and proprietary technology.

Article 7

The investments made on China's mainland by investors from Taiwan, the assets they have purchased, their industrial property rights, their profits from investments, and other lawful rights and interests shall be protected by state laws, and may be transferred or inherited according to law.

Investors from Taiwan shall, in their activities on China's mainland, abide by state laws, decrees and regulations.

Article 8

The state shall not nationalize the investments made by investors from Taiwan or other assets belonging to them.

Article 9

Where the state, in light of the needs of social and public interest, has to requisition the enterprises with investments by compatriots from Taiwan, the State shall handle the requisitioning according to the legal procedures and the investors concerned shall be duly compensated.

Article 10

The lawful profits gained by the investors from Taiwan from their investments, their other lawful income and the funds after liquidation may be remitted out of China's mainland according to law.

Article 11

Machinery and equipment imported to meet the needs of the enterprises with investments by compatriots from Taiwan and included in the total amount of investment, the motor vehicles for use in production, the office equipment, as well as the articles and means of communications for personal use and within reasonable quantities, imported by individual compatriots from Taiwan during the period when they work in the aforesaid enterprises shall be exempted from Customs duties and consolidated industrial and commercial tax, and also from application of import licences.

The raw and processed materials, fuels, bulk parts, spare and component parts, primary parts, and fittings, which are imported by the enterprises with investments by compatriots from Taiwan for the production of export

commodities, shall all be exempted from Customs duties and consolidated industrial and commercial tax and also from obtaining import licences, and placed under the supervision of the Customs. In case that the aforesaid imported raw materials and parts are used for the production of commodities to be sold on the market of China's mainland, it is imperative to make up the procedures for importation and to pay taxes and duties according to the regulations. The export commodities produced by the enterprises with investments by compatriots from Taiwan shall, with the exception of those commodities the export of which is under restriction by the state, be exempted from Customs duties on export goods and consolidated industrial and commercial tax.

#### Article 12

Enterprises with investments by compatriots from Taiwan may obtain loans from financial institutions of China's mainland; they may also obtain loans from financial institutions outside China's mainland, and may use their assets as well as their rights and interests as mortgage or security.

#### Article 13

With respect to the enterprises with the capital wholly owned by investors from Taiwan, their period of operation shall be determined by the investors themselves; as to equity and contractual joint ventures their period of operation shall be determined, through consultation, by the various parties to the ventures, they may also choose not to stipulate a period of operation.

#### Article 14

The composition of the board of directors of equity joint ventures and the appointment of the chairman of the board of directors, the composition of the board of directors or of the joint managerial organs of contractual joint ventures and the appointment of the chairman or the appointment of the director of the joint managerial organs, shall be determined, through consultation, by the various parties to the equity or contractual joint ventures in light of the proportion of investments or the terms of contract.

#### Article 15

Enterprises with investments by compatriots from Taiwan shall conduct their operational and managerial activities in accordance with the approved contract or articles of association. The enterprises' decision-making power for business operations and management shall not be interfered with.

#### Article 16

The technical and managerial personnel, engaged by individuals and enterprises investing on China's mainland may apply and obtain multiple-journey travel documents.

Article 17

The investors from Taiwan, who make investments on China's mainland, may appoint their relatives or friends residing on the mainland as their agents. The agents should hold legally effective letters of authority.

Article 18

In areas where enterprises with investments by compatriots from Taiwan are concentrated, the investors from Taiwan may apply to the local people's government for the establishment of the association of investors from Taiwan.

Article 19

With respect to equity and contractual joint ventures to be established, on China's mainland, with investments by investors from Taiwan, the application for the establishment of the aforesaid enterprises shall be filed by the mainland party; as to the enterprises to be established with capital wholly owned by investors from Taiwan, the application shall be filed directly by the investors from Taiwan themselves, or they may entrust their relatives or friends residing on the mainland, or entrust the institution providing advisory services, with the application. The applications for the establishment of enterprises with investments by investors from Taiwan shall be accepted and handled, in a unified manner, by the local department for foreign economic relations and trade, or by the examining and approving organs designated by the local people's government. Cases concerning the examination and approval of the application for the establishment of enterprises with investments by compatriots from Taiwan shall be handled in accordance with the authority prescribed by the State Council. Departments for foreign economic relations and trade at various levels or the examining and approving organs designated by the local people's government shall, within forty-five days of receipt of complete application documents, make the decision on whether the said application is approved or disapproved.

The applicants shall, within thirty days receipt of the written approval, file an application to the department for the administration of industry and commerce, and, in accordance with the relevant procedures for registration and administration, go through the procedures for registration and obtain business licences.

Article 20

With respect to the investors from Taiwan who have made investments in China's mainland, in case that a dispute arises during the execution of, or in connection with, a contract, the parties concerned shall try their best to settle the dispute through consultation or mediation.

Where the parties concerned are unwilling to settle the dispute through consultation or mediation, or the consultation or mediation has failed, the parties concerned may, in accordance with the stipulation of the

arbitration articles in the contract, or in accordance with the written arbitration agreement reached by the parties concerned after the dispute has arisen, submit their dispute to the arbitration authorities on China's mainland or in Hong Kong for settlement.

In the event that the parties concerned did not include an arbitration article in their contract, and on written arbitration agreement has been reached after the dispute has arisen, then the dispute may be brought before the people's court.

Article 21

The right to interpret these Provisions resides in the Ministry of Foreign Economic Relations and Trade.

Article 22

These Provisions shall go into effect as of the date of promulgation.

## **ZJ04 Provisions of the State Council concerning the encouragement of Investments by overseas Chinese and Compatriots from HongKong and Macao**

### **Important Notice:**

This English document is coming from the "LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA GOVERNING FOREIGN-RELATED MATTERS" (1991.7)

which is compiled by the Bureau of Legislative Affairs of the State Council of the People's Republic of China, and is published by the China Legal System Publishing House.

In case of discrepancy, the original version in Chinese shall prevail.

### **Whole Document**

#### **PROVISIONS OF THE STATE COUNCIL CONCERNING THE ENCOURAGEMENT OF INVESTMENTS BY OVERSEAS CHINESE AND COMPATRIOTS FROM HONG KONG AND MACAO**

(Promulgated by Decree No. 64 of the State Council of the People's Republic of China on August 19, 1990, and effective as of the date of promulgation)

##### **Article 1**

These Provisions are formulated with a view to promoting the economic development of our country and to encouraging overseas Chinese and compatriots from Hong Kong and Macao (hereinafter referred to as "overseas Chinese investors and those from Hong Kong and Macao") to make investments in China's inland areas.

##### **Article 2**

Overseas Chinese investors and those from Hong Kong and Macao can make investments in the various provinces, autonomous regions, municipalities directly under the Central Government, and special economic zones in China's inland areas.

Overseas Chinese investors and those from Hong Kong and Macao are encouraged to engage themselves in business operations of land development in accordance with the pertinent regulations of the state.

##### **Article 3**

The investments made by the overseas Chinese investors and those from Hong Kong and Macao may take the following forms:

- (1) to establish enterprises with the capital wholly owned by the overseas Chinese investors and those from Hong Kong and Macao;
- (2) to establish equity joint ventures and contractual joint ventures;
- (3) to carry out compensation trade, to process supplied materials, to assemble supplied parts, and to carry out contractual production;
- (4) to purchase shares and various bonds and debentures of existing enterprises;
- (5) to purchase real estate;
- (6) to obtain land use right according to law and to engage in land development operation;
- (7) to use other forms of investment permitted under the laws and regulations.

#### Article 4

Overseas Chinese investors and those from Hong Kong and Macao can make investments in various trades in China's inland areas: in industries, in agriculture, in service trades, and in other trades that are in conformity with the orientation of social and economic development. Overseas Chinese investors and compatriots from Hong Kong and Macao may select their investment projects from the lists of projects made public by the departments concerned under various local people's governments; they may also put forward, of their own accord, proposals as to their investment intent and file their applications to the departments of foreign economic relations and trade or to the examining and approving organs designated by various local people's governments located in areas where they intend to make their investments.

The State encourages overseas Chinese investors and those from Hong Kong and Macao to make investments in the establishment of export-oriented enterprises and of technologically advanced enterprises, and gives corresponding preferential treatment to such enterprises.

#### Article 5

With respect to the various types of enterprises established with investments by overseas Chinese investors and those from Hong Kong and Macao - enterprises with the capital wholly owned by such investors equity, joint ventures, and contractual joint ventures (hereinafter referred to as "enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao"), they shall all be operated in accordance with these Provisions; in addition, they may also enjoy the corresponding preferential treatment as enjoyed by enterprises with foreign investments, in the light of the relevant provisions in the state laws, decrees and regulations on external economic relations. Cases



concerning other forms of investment made by such investors in China's inland areas, and concerning their dividends, interest, rental, royalties and other incomes that come from China's inland areas without establishing business offices here, shall be handled in accordance with these Provisions, and, if need be, with reference to foreign-related economic laws, decrees and regulations of the State.

#### Article 6

Overseas Chinese investors and those from Hong Kong and Macao may make their investments by using convertible currencies, machinery and equipment or other physical goods industrial property rights, and proprietary technology.

#### Article 7

The investment made in China's inland areas by overseas Chinese investors and those from Hong Kong and Macao, the assets they have purchased, their industrial property rights, the profits from their investments, and other lawful rights and interests shall be protected by State laws, and may be transferred or inherited according to law. Overseas Chinese investors and those from Hong Kong and Macao shall abide by State laws and regulations in their activities in inland areas.

#### Article 8

The State shall not nationalize the investment made by overseas Chinese investors and compatriots from Hong Kong and Macao or other assets belonging to them.

#### Article 9

Where the state, in accordance with the needs of social and public interest, has to requisition the enterprises with investments by overseas Chinese investors and those from Hong Kong and Macao, the state shall handle the case according to the legal procedures and the investors concerned shall be duly compensated.

#### Article 10

The lawful profits gained by overseas Chinese investors and those from Hong Kong and Macao from their investments, their other lawful incomes and the funds after liquidation may be remitted out of China's inland areas according to law.

#### Article 11

Machinery and equipment imported to meet the needs of enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao and, included in the total amount of investment, motor vehicles for use in production, office equipment, as well as articles and means of communications for personal use and within reasonable quantities, imported by overseas Chinese and compatriots from Hong Kong and Macao during the period when they work in the aforesaid enterprises shall be exempted from Customs duties and consolidated industrial and commercial tax, and also

from the application for import licences.

The raw and processed materials, fuels, bulk parts, spare and component parts, primary parts, and fittings, which are imported by enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao for the production of export commodities, shall all be exempt from Customs duties and consolidated industrial and commercial tax and also from the application for import licences and placed under the supervision of the Customs. In case that the aforesaid imported materials and parts are used for the production of commodities to be sold on China's inland markets, it is imperative to make up the procedures for importation and to pay taxes and duties according to the regulations.

The export commodities produced by the enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao shall, with the exception of those commodities the exportation of which is under restriction by the State, be exempt from Customs duties on export goods and consolidated industrial and commercial tax.

#### Article 12

Enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao may obtain loans from financial institutions in China's inland areas; they may also obtain loans from financial institutions outside China's inland areas, and may use their assets as well as their rights and interests as mortgage or security.

#### Article 13

With respect to enterprises with the capital wholly owned by overseas Chinese investors and compatriots from Hong Kong and Macao, their period of operation shall be determined by the investors themselves; as to equity joint ventures and contractual joint ventures, their period of operation shall be determined, through consultation, by the various parties to the above-said joint ventures; they may also set no limit to the period of operation.

#### Article 14

The composition of the board of directors of joint ventures and the appointment of the chairman of the board of directors, the composition of the board of directors or of the joint management organs of contractual joint ventures and the appointment of the chairman or the appointment of the director of the joint management organs, shall be determined, through consultation, by the various parties to the equity joint ventures or to the contractual joint ventures in the light of the proportion of investments or the terms of contract.

#### Article 15

Enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao shall conduct their operational and management activities in accordance with the approved contract or articles of association. The

enterprises' decision-making power for business operations and management shall not be interfered with.

Article 16

Overseas Chinese and compatriots from Hong Kong and Macao who have made investments in China's inland areas, and the technical and managerial personnel engaged from outside the boundaries of China's inland areas by enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao, may apply for multi-journey travel documents.

Article 17

Overseas Chinese investors and those from Hong Kong and Macao who make investments in China's inland areas may appoint their relatives or friends residing in the inland areas as their agents. The agents should hold legally effective letters of authority.

Article 18

In areas where enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao are concentrated, overseas Chinese investors and those from Hong Kong and Macao may apply to the local people's government for the establishment of the association of overseas Chinese investors and investors from Hong Kong and Macao.

Article 19

With respect to equity joint ventures and contractual joint ventures to be established in China's inland areas, with the investments by overseas Chinese investors and those from Hong Kong and Macao, the application for the establishment of the aforesaid enterprises shall be filed by the inland party; as to the enterprises to be established with capital wholly owned by overseas Chinese investors and those from Hong Kong and Macao, the application shall be filed directly by such investors themselves, or they may entrust their relatives or friends residing in China's inland areas, or entrust the institution providing consultancy services, with the application. Applications for the establishment of enterprises with investments by overseas Chinese and compatriots from Hong Kong and Macao shall be accepted and handled exclusively by the local department for foreign economic relations and trade, or by the examining and approving organs designated by the local people's government.

The examination and approval of the applications for the establishment of enterprises with investments from overseas Chinese and compatriots from Hong Kong and Macao shall be handled in accordance with the authorization by the State Council. Departments for foreign economic relations and trade at the various levels or the examining and approving organs designated by the local people's government shall, within forty-five days of receipt of complete application documents, make the decision on whether the said application is approved or disapproved.

The applicant shall, within thirty days of receipt of the written

approval, file an application to the department for the administration of industry and commerce, and, in accordance with the relevant procedures for registration and administration, go through the procedures for registration and obtain the business licence.

#### Article 20

With respect to overseas Chinese investors and those from Hong Kong and Macao who have made investments in China's inland areas, in case that a dispute arises during the execution of or in relation to a contract, the parties concerned shall try their best to settle the dispute through consultation or mediation.

In case that the parties concerned are unwilling to settle the dispute through consultation or mediation, or the dispute cannot be settled through consultation or mediation, the parties concerned may, in accordance with the stipulations of the arbitration articles in the contract, or in accordance with the written arbitration agreement reached by the parties concerned after the dispute has arisen, submit their dispute to the arbitration authorities in China's inland areas or elsewhere for settlement.

In the event that the parties concerned did not specify an arbitration article in their contract, and no written arbitration agreement has been reached after the dispute occurs, then the dispute may be brought before the people's court.

#### Article 21

The right to interpret these Provisions rests with the Ministry of Foreign Economic Relations and Trade.

#### Article 22

These Provisions shall go into effect as of the date of promulgation.

## **ZJ05 Using Foreign Investment to Reorganize State-owned Enterprises Tentative Provisions**

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Using Foreign Investment to Reorganize State-owned Enterprises Tentative Provisions  
(Promulgated by the State Economic and Trade Commission, the Ministry of Finance,  
the State Administration for Industry and Commerce and the State Administration of  
Foreign Exchange on 8 November 2002 and effective as of 1 January 2003.)

Article 1 These Provisions have been formulated pursuant to the PRC, Company Law, the PRC, Contract Law and State laws and regulations concerning foreign investment and administration of State-owned assets, in order to attract and regulate the use of foreign investment to reorganize State-owned enterprises, promote the strategic restructuring of the State-owned economy, accelerate the pace at which State-owned enterprises establish modern corporate systems and safeguard social stability.

Article 2 These Provisions shall govern the use of foreign investment to reorganize State-owned enterprises and company system enterprises with State-owned equity (with the exception of financial enterprises and listed companies) or to establish them as company system foreign-invested enterprises (hereafter, Use of Foreign Investment to Reorganize State-owned Enterprises).

Article 3 For the purpose of these Provisions, the Use of Foreign Investment to Reorganize State-owned Enterprises shall include the following:

1. the owner of State-owned property rights in a State-owned enterprise assigns all or part of the property rights to a foreign company, enterprise or other economic organization or individual (Foreign Investor) and the enterprise is reorganized as a foreign-invested enterprise;
2. the owner of State-owned equity in a company system enterprise assigns all or part of the State-owned equity to a Foreign Investor and the enterprise is reorganized as a foreign-invested enterprise;
3. the domestic creditor of a State-owned enterprise assigns its claim to a Foreign Investor and the enterprise is reorganized as a foreign-invested enterprise;
4. a State-owned enterprise or a company system enterprise with State-owned equity sells all or its main assets to a Foreign Investor and the Foreign Investor uses the assets

that it purchased, alone or together with the enterprise that sold the assets, to establish a foreign-invested enterprise: or

5. a State-owned enterprise or a company system enterprise with State-owned equity attracts investment from a Foreign Investor to increase its capital and its shares and the enterprise is reorganized as a foreign-invested enterprise.

Article 4 The State-owned enterprises and company system enterprises described in Items (1), (2), (3) and (5) of Article 3 hereof shall be termed "Enterprises to be Reorganized".

The State-owned property rights of State-owned enterprises and the State-owned equity of company system enterprises shall collectively be termed "State-owned Property Rights". The owners of State-owned property rights and State-owned equity shall collectively be termed "Owners of State-owned Property Rights".

The term "Owner of State-owned Property Rights" means a department authorized by the State or an organization, an enterprise owning State-owned capital or other economic organization authorized to invest by the State. The Owners of State-owned Property Rights, creditors of State-owned enterprises that assign their claims and enterprises that sell their assets shall collectively be termed the "Reorganizing Party".

Article 5 The Reorganizing Party shall select a Foreign Investor that satisfies the following conditions:

1. having the business qualifications and technical level required by the Enterprise to be Reorganized;
2. having a fine business reputation and management capabilities: and
3. having a solid financial position and economic strengths.

The Reorganizing Party shall require the Foreign Investor to submit a restructuring programme to improve the enterprise's corporate governance structure and promote the sustained growth of the enterprise. The restructuring programme shall include the development of new products, technical transformation and a related investment plan, measures to strengthen corporate management, etc.

Article 6 The following principles shall be complied with when Using Foreign Investment to Reorganize State-owned Enterprises:

1. abiding by State laws and regulations and ensuring the economic security of the State;

2. satisfying the requirements of State industrial policy: if the business scope of the enterprise (including those enterprises in which it has a direct or indirect interest) is in an industry in which foreign investment is prohibited by the Foreign Investment Industrial Guidance Catalogue. Foreign Investors may not participate in the reorganization: if the enterprise is one in which the Chinese party must have a controlling interest or a relative controlling interest, the Chinese party shall maintain its controlling interest or relative controlling interest after the reorganization;

3. being beneficial in the economic restructuring effort and promoting the optimal deployment of State-owned capital;

4. emphasizing the introduction of advanced technology and management experience, establishing a compliant corporate governance structure and promoting corporate technical advance and industrial upgrading;

5. adhering to the principles of openness, fairness, impartiality and good faith, preventing the loss of State-owned assets, not evading, repudiating or suspending the claims of banks and other creditors, not prejudicing the lawful rights and interests of staff and workers and safeguarding the lawful rights and interests of Foreign Investors; and

6. promoting fair competition and not leading to monopolization of the market.

Article 7 Prior to the assignment of the property rights of a State-owned enterprise or a wholly State-owned company or the State-owned equity of a limited liability company invested in and established by two or more State-owned enterprises or two or more State-owned investment entities other than State-owned enterprises, the Reorganizing Party shall seek the opinions of the staff and worker congress of the Enterprise to be Reorganized. The assignment of the State-owned equity of a company system enterprise shall require the consent of the shareholders' meeting of the Enterprise to be Reorganized. If claims against a State-owned enterprise are to be assigned, the consent of the Owner of the State-owned Property Rights of the Enterprise to be Reorganized shall be required. Prior to selling all of or its main assets, the enterprise shall obtain the consent of the Owner of the State-owned Property Rights of the enterprise or the shareholders' meeting of the enterprise and notify its creditors thereof.

Article 8 The Use of Foreign Investment to Reorganize a State-owned Enterprise shall satisfy the following requirements:

1. Prior to the reorganization of the enterprise, the Owner of the State-owned Property Rights shall arrange for an inventory of the assets, a determination of the property rights and a screening of the claims and debts of the Enterprise to be Reorganized, engage qualified intermediary organizations to conduct a financial audit and to conduct an asset appraisal in accordance with such relevant regulations as the Administration of State Asset Valuation Procedures (State Council Order No.91), the

Several Issues Concerning the Administration of State Asset Valuation Provisions (Ministry of Finance Order No.14), etc. After the appraisal results have been approved or placed on the record in accordance with regulations, they shall serve as the basis for determining the price of the State-owned Property Rights or assets.

2. If the controlling interest in the enterprise is to pass to, or if all or the main business assets of the enterprise are to be sold to, the Foreign Investor after the reorganization, the Reorganizing Party and the Enterprise to be Reorganized shall formulate an appropriate plan to settle the staff and workers that shall be subject to the approval of the staff and worker congress. The Enterprise to be Reorganized shall use its existing assets to pay in full all such expenses as the wages of its staff and workers, non-refunded pooled wages, unpaid social insurance premiums, etc. The Enterprise to be Reorganized shall offer its staff and workers two options. It shall, in accordance with the law, execute new labour contracts with, or amend the labour contracts of, its staff and workers who are kept on. It shall, in accordance with the law, pay severance pay to those staff members and workers whose labour contracts are terminated and for those staff and workers, the responsibility for whom is transferred to the social insurance authority, it shall pay in full in one lump sum the social insurance premiums. The funds required shall be deducted from the net assets of the Enterprise to be Reorganized before the reorganization or on a priority basis from the proceeds derived by the Owner of the State-owned Property Rights from the assignment of the State-owned Property Rights.

3. If the reorganization is to be effected through the sale of assets, the original enterprise shall succeed to the enterprise's claims and debts, otherwise the reorganized enterprise shall succeed to the enterprise's claims and debts. The assignment of mortgaged or pledged State-owned Property Rights or assets shall comply with the relevant provisions of the PRC, Security Law. The successor to the debts shall execute relevant agreements for the disposal of claims and debts with the creditors.

4. The Reorganizing Party shall publish information on the reorganization, recruit Foreign Investors extensively and investigate the Foreign Investors' qualifications, reputation, financial position, management capabilities, payment guarantees, business ethics, etc. It shall give priority consideration to medium and long-term Foreign Investors that can offer advanced technology, management experience and a high degree of industrial compatibility.

The Reorganizing Party and the Foreign Investor shall respond to the reasonable demands of the opposite party by providing relevant truthful and detailed information and data, may not mislead or deceive the opposite party and shall bear the appropriate confidentiality obligations.

5. If the enterprise reorganization is to be effected through the assignment of



State-owned Property Rights or the sale of assets, the Reorganizing Party shall preferentially opt for an open competitive pricing method to determine the Foreign Investor and assignment price. When selecting an open competitive pricing method of assignment, the relevant procedures shall be carried out in accordance with the law and the relevant details on the State-owned Property Rights to be assigned or the assets to be sold shall be announced publicly. If assignment by agreement is opted for, such assignment shall be conducted in an open manner.

Regardless of the assignment method opted for, the Reorganizing Party and the Foreign Investor shall execute an assignment agreement in accordance with the relevant State regulations and these Provisions. The terms of the assignment agreement shall mainly include the basic information on the State-owned Property Rights to be assigned, the settlement arrangements for the staff and workers, the disposal of claims and debts, the assignment ratio, the assignment price, the method of payment and payment conditions, matters relating to the delivery of the property rights, corporate restructuring, etc.

Article 9 The Use of Foreign Investment to Reorganize State-owned Enterprises shall be effected in accordance with the following procedure:

1. The Reorganizing Party (if there are two or more Reorganizing Parties, one shall be selected as the Reorganizing Party) shall submit a reorganization application to the competent department in charge of foreign trade and economic cooperation at the same level. Such documents as a feasibility study, details of the Reorganizing Party and the Enterprise to be Reorganized, details of the Foreign Investor (including its financial statements for the most recent three years audited by a certified accountant and the market share accounted for by the products or services of the enterprises in the same industry in China actually controlled by the Foreign Investor), the reorganization program (including the arrangements for the settlement of staff and worker and for the disposal of claims and debts and the corporate restructuring program), the business scope and equity structure of the reorganized enterprise (including the enterprises in which it has a direct or indirect interest) shall be included with the reorganization application materials.

The department in charge of foreign trade and economic cooperation that received the application shall examine the same in accordance with the authority bestowed by the Guiding the Direction of Foreign Investment Provisions and the relevant laws and regulations. If an enterprise operated by the central government or Party authorities and its wholly-owned enterprises or the enterprises in which it has controlling interest is to be reorganized, or if the Enterprise to be Reorganized directly or indirectly holds equity in a listed company or if the reorganized enterprise is to have total assets of not less than US\$30 million, the examination shall be conducted by the State Council department in charge of foreign trade and economic cooperation. If the reorganization of such an enterprise might lead to monopolization of the market or impede fair competition, hearings shall be organized before the examination. The department in charge of foreign

trade and economic cooperation shall issue its official reply on whether or not it consents to the reorganization within 45 working days after receipt of the reorganization application materials. If hearings are held, the official reply shall be issued within three months.

If the State has other regulations on the use of foreign investment in the industry of which the Enterprise to be Reorganized and the enterprises in which it has a direct or indirect interest are a part or on the change in the nature of the State-owned shares of the Owners of the State-owned Property Rights in a listed company arising due to the change in the property rights, such regulations shall prevail.

2. The assignment agreement executed by the Reorganizing Party and the Foreign Investor shall be submitted for approval in accordance with the relevant provisions of the Ministry of Finance. Issue of the Circular (ref. Cai Qi [2001] No.325). The assignment agreement shall enter into effect upon approval.

Such documents as the State-owned Property Rights Registration Certificate, information on the approval or record filing of the audit report and asset appraisal report of the Enterprise to be Reorganized, the staff and worker settlement program, the claim and debt agreement, the corporate restructuring program, the relevant resolutions of the Reorganizing Party and the Enterprise to be Reorganized, the opinions or resolution of the staff and worker congress of the Enterprise to be Reorganized, etc. shall accompany the assignment agreement.

3. The Reorganizing Party or the Enterprise to be Reorganized shall, on the strength of the approval documents for the reorganization application and assignment agreement, carry out examination and approval procedures for foreign-invested enterprises in accordance with the law. If the reorganized enter

prise is to be a company limited by shares, matters shall be handled in accordance with the relevant provisions of the PRC Company Law.

4. The reorganized enterprise or the investors shall, on the strength of the approval documents specified in Items (1) and (3) of this Article and in accordance with laws and regulations on the administration of registration, carry out registration procedures with the original registration authority, if it has the authority to register foreign-invested enterprises, or the registration authority with the authority to register foreign-invested enterprises of the place where the enterprise is located. If the reorganized enterprise is to be a company limited by shares, matters shall be handled in accordance with the relevant provisions of the PRC Company Law.

5. The Reorganizing Party shall, on the strength of the approval documents for the reorganization application and assignment agreement, the foreign investment exchange registration certificate and the relevant documents, carry out the procedures for the

delivery of State-owned Property Rights and the procedures for registration of the change of ownership in accordance with relevant provisions and engage a certified accountant to issue a capital verification report in accordance with the law. If the land to be used by the reorganized enterprise is State-owned allocated land, the procedures for the examination and approval and granting of leaseholds shall be carried out in accordance with the law.

6. The foreign exchange proceeds derived by the Reorganizing Party from the assignment of State-owned Property Rights or claims or the sale of assets shall be settled after reporting to the foreign exchange department for its approval on the strength of the approval documents for the reorganization application and assignment agreement and the relevant documents.

If the Enterprise to be Reorganized is to be reorganized through a capital and share increase effected through the attraction of investment from Foreign Investors, it may, subject to the approval of the foreign exchange department, open a foreign exchange capital account to retain the foreign exchange funds injected by the Foreign Investors.

7. The reorganization applications, assignment agreements and the approval certificates therefor of key State enterprises, enterprises whose debt to equity swaps have been approved by the State and enterprises in the restricted category of industries in the Foreign Investment Industrial Guidance Catalogue that are under the investment limit and that are subject to the examination and approval of local departments in charge of foreign trade and economic cooperation and finance shall be submitted to the State Council departments in charge of foreign trade and economic cooperation and finance respectively for the record.

Article 10 Foreign Investors shall pay the assignment price or make their capital contributions in the form of a freely convertible currency or other lawful property rights remitted from overseas. Subject to the approval of the foreign exchange department, they may also pay the assignment price or make their capital contributions in the form of net Renminbi profits or other lawful property rights obtained in China. The afore-mentioned other lawful property rights shall include the following:

1. property obtained by Foreign Investors originating from the liquidation of, the assignment of the equity of, the advance recovery of investment from or the reduction in the capital of other foreign-invested enterprises established by them in China;

2. the State-owned Property Rights or assets of State-owned enterprises or company system enterprises with State-owned equity acquired by Foreign Investors;

3. the claims acquired by Foreign Investors of creditors of State-owned enterprises;  
and

4. other capital contribution methods specified in laws and regulations.

When a certified accountant conducts a capital verification for a Foreign Investor, he shall carry out the capital verification procedure and issue a capital verification report in accordance with the Ministry of Finance and State Administration of Foreign Exchange, Further Strengthening the Work of Capital Verification for Foreign Investment Enterprises and Improving the System of Registration of Foreign Capital and Foreign Exchange Circular (ref. Cai Kuai [2002] No.1017).

Article 11 If the reorganization is effected through an assignment, generally, the Foreign Investor shall pay the entire price within three months after the date on which the foreign-invested enterprise is issued its business licence. In the event that the Foreign Investor truly experiences difficulty in doing so, 60% or more of the total price shall be paid within six months after the date of issuance of the business licence, security shall be provided for the remaining amount and such remaining amount shall be paid in full within one year.

Article 12 If the controlling interest in the enterprise is to pass to, or if all or the main business assets of the enterprise are to be sold to, the Foreign Investor after the assignment of the State-owned Property Rights, the Reorganizing Party has the right, prior to the Foreign Investor paying the price in full, to be kept informed of and supervise the production, operational and financial situation of the reorganized enterprise and the Foreign Investor and the reorganized enterprise shall appropriately facilitate the Reorganizing Party's staying informed and supervising.

Prior to using the acquired assets to invest in and establish a foreign-invested enterprise, the Foreign Investor may not use the aforementioned assets to engage in business activities.

Article 13 The proceeds derived from the assignment of State-owned Property Rights or assets shall be received by the Reorganizing Party and managed and used in accordance with the relevant provisions of the State Council department in charge of finance.

Article 14 The share of the net profits of the reorganized enterprise obtained by the Foreign Investor, proceeds it derives from an equity assignment, the share of the funds that it obtains after the expiration of the business term or termination of the enterprise and other lawful revenues may be remitted abroad in accordance with the law or, subject to the approval of the foreign exchange department, may be reinvested in China.

Article 15 In the course of Using Foreign Investment to Reorganize State-owned Enterprises, tax policies in respect thereof shall be handled in accordance with relevant State laws and administrative regulations on taxation and fee policies in respect thereof shall be handled in accordance with the State Development Planning Commission, State Economic and Trade Commission, Ministry of Supervision, Ministry of Finance,

Auditing Administration and the Office for Checking Unhealthy Tendencies in Business Activities of the State Council, Reduction or Exemption of Charges for Enterprises Undergoing Reform, Reorganization or Restructuring Circular (ref. Ji Jia Fei [1998] No.1077).

Article 16 If a member of the personnel of the Reorganizing Party or the Enterprise to be Reorganized acts ultra vires, is derelict in his duties, secretly colludes with the Foreign Investor, practises graft or accepts bribes thus prejudicing the lawful rights and interests of the State, creditors, staff members and workers, he shall be subjected to administrative penalties and sanctions by the relevant department in accordance with the law; if a criminal offence is constituted, his criminal liability shall be pursued in accordance with the law.

Article 17 If a member of the working personnel of a government authority responsible for examination and approval violates these Provisions by granting approvals without authorization or uses his authority in the examination and approval process for private gain thus prejudicing the lawful rights and interests of the State, creditors, staff members and workers, the administrative liability of the person directly in charge and the personnel in authority shall be pursued by the relevant authority in accordance with the administrative authority of cadres; if a criminal offence is constituted, criminal liability shall be pursued in accordance with the law.

Article 18 The participation of investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and Taiwan and of established foreign-invested enterprises in the reorganization of State-owned enterprises shall be handled with reference to these Provisions.

Article 19 The State Economic and Trade Commission, the Ministry of Finance, the State Administration for Industry and Commerce and the State Administration of Foreign Exchange are in charge of interpreting these Provisions.

Article 20 These Provisions shall be implemented as of 1 January 2003

## **ZJ06 Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors**

August 8, 2006

### **Contents**

Chapter I General Provisions

Chapter II Basic Systems

Chapter III Examination, Approval and Register

Chapter IV Equity-payment-based Takeover of Domestic Companies by Foreign Investors

Section 1 Conditions for Equity-payment-based Takeover

Section 2 Application Documents and Procedures

Section 3 Special Provisions on Special-purpose Companies

Chapter V Antitrust Review

Chapter VI Supplementary Provisions

### **Chapter I General Provisions**

Article 1 For the purposes of promoting and regulating foreign investors' investments in China, absorbing advanced technologies and management experiences from abroad, improving the level of utilizing foreign investments, realizing the reasonable allocation of resources, ensuring employment, as well as maintaining fair competition and state economic security, these provisions are formulated in accordance with the laws and administrative regulations on foreign-funded enterprises, the Company Law and other relevant laws and administrative regulations.

Article 2 The phrase "takeover of a domestic enterprise by a foreign investor" as mentioned in the present provisions means that the foreign investor purchases by agreement the equities of the shareholders of a domestic non-foreign-funded enterprise (hereinafter referred to as "domestic company") or subscribes to the increased capital of a domestic company, and thus changes the domestic company into a foreign-funded enterprise (hereinafter referred to as "share right takeover"); or, a foreign investor establishes a foreign-funded enterprise, and through which it purchases by agreement the assets of a domestic enterprise and operates its assets, or, a foreign investor purchases by agreement the assets of a domestic enterprise, and then invest such assets to establish a foreign-funded enterprise and operate the assets (hereinafter referred to as "asset takeover").

Article 3 To take over a domestic enterprise, a foreign investor shall abide by the laws, administrative regulations, and rules of China, comply with the principles of fairness, reasonableness, making compensation for equal value, as well as good faith, and shall not cause excessive centralization, exclude or limit competition, or disturb the social economic order, or damage the public benefits, or result in any loss to the state-owned assets.

Article 4 To take over a domestic enterprise, a foreign investor shall satisfy the requirements of the laws, administrative regulations, and rules of China concerning the qualifications of investors, and shall comply with the policies on the industry, land, environmental protection, etc.

For the industries where solely foreign-owned operation is not permitted by the "Catalog of Industries for the Guidance of Foreign Investment", the takeover shall not lead to the consequence of a foreign investor's holding all the equity rights of the enterprise; for the industries where it is required for a Chinese party to control or relatively control the shares, the Chinese party shall, after an enterprise in such industries is taken over, still control or relatively control the shares of the enterprise; for the industries where foreign investors are prohibited from operation, no foreign investor shall take over any enterprise in such industries.

The business scope of any enterprise invested by the domestic enterprise prior to the takeover shall meet the requirements in the industrial policies on foreign investments. If it does not, adjustment shall be made.

Article 5 If the takeover of a domestic enterprise by a foreign investor involves the transfer of state-owned property rights of the enterprise and management of state-owned property rights of listed companies, the relevant provisions on the management of state-owned assets shall be followed.

Article 6 Where a foreign investor intends to establish a foreign-funded enterprise by merging a domestic enterprise, it shall, in accordance with these Provisions, be subject to the approval of the examination and approval organ and modify the registration or go through the establishment registration in the registration administrative organ.

If the enterprise to be taken over is a domestic listed company, it shall, pursuant to the Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors, go through the relevant formalities in the securities regulatory institution of the State Council.

Article 7 All parties concerned to the takeover of a domestic enterprise by a foreign investor shall pay taxes under Chinese tax laws and accept the supervision of the tax organs.

Article 8 All parties concerned to the takeover of a domestic enterprise by a foreign investor shall abide by the laws and administrative regulations of China on the administration of foreign exchange. They shall timely go through the approval, register, archival filing and modification formalities in the foreign exchange control organs.

## Chapter II Basic System

Article 9 For a foreign-funded enterprise established after takeover by a foreign investor, if the foreign investor's proportion of investments exceeds 25% of the registered capital of this enterprise, this enterprise shall be entitled to enjoy the treatments to foreign-funded enterprises.

For a foreign-funded enterprise established after takeover by a foreign investor, if the foreign investor's proportion of investments is less than 25% of the registered capital of this enterprise, this enterprise shall not enjoy the treatments to foreign-funded enterprises unless it is otherwise provided for by any law or administrative regulation. It shall follow the relevant provisions on borrowing foreign loans by non-foreign-funded enterprises when it borrows foreign loans. The examination and approval organ shall issue to it a Foreign-funded Enterprise Approval Certificate (hereinafter referred to as the Approval Certificate) with the remark "The proportion of foreign investments is less than 25%". The registration administrative organ and the foreign exchange control organ shall respectively issue to it a Foreign-funded Enterprise Business License and a Foreign Exchange Register Certificate with the remark "The proportion of foreign investments is less than 25%".

Where a domestic company, enterprise or natural person takes over a domestic affiliated company in the name of an overseas company it lawfully established or controls, the foreign-funded enterprise so established shall not enjoy the treatments to foreign-funded enterprises, except that this overseas company subscribes to the increased capital of the domestic company or that it increases the capital of the enterprise established after takeover and the proportion of the capital increase exceeds 25% of the registered capital of the enterprise so established. For a foreign-funded enterprise established in either of the forms as mentioned in this paragraph, if the proportion of investments made by a foreign investor, who is not its actual controller, exceeds the 25% of its registered capital, it shall be entitled to enjoy the treatments to foreign-funded enterprises.

The treatments to a foreign-funded enterprise which is established after a foreign investor takes over a domestic listed company shall be governed by the relevant provisions of the state.

Article 10 The term "examination and approval organ" as mentioned in these Provisions refers to the Ministry of Commerce of the People's Republic of China (hereinafter referred to as the MOFCOM) or the provincial commerce administrative departments (hereinafter



referred to as the provincial examination and approval organs"). The term "registration administrative organ" refers to the State Administration for Industry and Commerce (hereinafter referred to as the SAIC) or its authorized local administrations for industry and commerce. The term "foreign exchange control organ" refers to the State Administration of Foreign Exchange (hereinafter referred to as the SAFE) or its branches.

Under the provisions of laws, administrative regulations, and rules, if a foreign-funded enterprise established after takeover falls within any special category or sector of foreign-funded enterprises which are subject to the examination and approval of the Ministry of Commerce (hereinafter referred to as the MOFCOM), the provincial examination and approval organ shall forward the application materials to the MOFCOM for examination and approval. The MOFCOM shall make a decision of approval or disapproval in pursuance of law.

Article 11 Where a domestic company, enterprise or natural person intends to take over its domestic affiliated company in the name of a company which it lawfully established or controls, it shall be subject to the examination and approval of the MOFCOM.

The parties concerned shall not dodge the aforesaid requirements by making investments within China through the foreign-funded enterprise, or by other ways.

Article 12 Where a foreign investor intends to obtain the actual controlling power of a domestic enterprise it plans to take over, and if any important industry is concerned, or if it has an impact on or may have an impact on the national economic security, or it will lead to the transfer of the actual controlling power of a domestic enterprise which holds a famous trademark or China Time-honored Brand, the parties concerned shall file an application with the MOFCOM.

If the parties concerned fail to do so, but its takeover has had or may have a serious impact on the national economic security, the MOFCOM may, jointly with the relevant departments, demand the parties concerned to terminate the transaction or transfer the relevant equities / assets or take other effective measures to eliminate the takeover's impact on the national economic security.

Article 13 For an equity-based takeover by a foreign investor, the foreign-funded enterprise established after takeover shall succeed to the credits and debts of the domestic company it takes over.

For an asset-based takeover by a foreign investor, the domestic enterprise which sells its assets shall undertake its former credits and debts.

The foreign investor, the domestic enterprise to be taken over, the creditors and other parties concerned may enter into a separate agreement on the disposal of the credits and debts of the domestic enterprise to be taken over, provided that this agreement shall not

impair the interests of any third party or public interests. An agreement on the disposal of credits and debts shall be submitted to the examination and approval organ.

A domestic enterprise to sell assets shall, not later than 15 days before the investor submits the application documents to the examination and approval organ, send a notice to the creditors and shall publish an announcement on a provincial newspaper or above, which is circulated nationwide.

Article 14 The parties to a takeover shall determine the transaction price on the basis of the assessment result of the equities to be transferred or of the assets to be sold, which is given by an asset assessment institution. The parties to a takeover may agree on an asset assessment institution lawfully established within China. A common international assessment method shall be adopted for the asset assessment. It is prohibited to divert any capital abroad in any disguised form by transferring any equities or selling assets at a price which is obviously lower than the assessment result.

The takeover of a domestic enterprise by a foreign investor, which may cause the modification of any equity formed by investments to state-owned assets or transfer of the property right of state-owned assets, shall satisfy the relevant provisions on the management of state-owned assets.

Article 15 The parties to a takeover shall state whether there is a connected relationship between the parties to the takeover. If both parties belong to a same actual controller, the parties shall disclose their actual controller to the examination and approval organ and make an explanation about whether the purpose of takeover and the assessment result conform to the fair value of the market. The parties shall not dodge the aforesaid requirements by trust, holding shares on behalf of others, or by other means.

Article 16 To establish a foreign-funded enterprise by taking over a domestic enterprise, a foreign investor shall, within 3 months from the date of issuance of business license to the foreign-funded enterprise, pay all the considerations to the shareholders who transfer the equities or to the domestic enterprise which sells the assets. In the case of any particular circumstance under which it is necessary to extend the time limit, the foreign investor shall, upon the approval of the examination and approval organ, pay 60% or more of the consideration within 6 months as of the date of issuance of the business license to the foreign-funded enterprise, and pay off the balance of consideration within one year, and distribute the proceeds according to the proportion of investments it has actually contributed.

Where a domestic company subscribes to the increased capital of a domestic company, the shareholders of the limited liability company or of the domestic joint stock limited company established by way of promotion shall pay at least 20% of the newly increased registered capital when the company applies for a business license for foreign-funded enterprise. The time to pay the other newly increased registered capital shall be in line

with the Company Law, the laws on foreign investments and the Regulation on the Administration of Company Registration. If it is provided for in any other law or administrative regulation, such law or administrative regulation shall prevail. Where a joint stock limited company increase the registered capital by issuing new stocks, the shareholders shall subscribe to the new stocks in accordance with the relevant provisions on the payment for shares in the establishment of a joint stock limited company.

Where a foreign investor carries out an asset takeover, it shall stipulate the time limit for contribution of investments in the contract and articles of association of the foreign-funded enterprise to be established. Where the foreign investor establishes a foreign-funded enterprise, and through which purchases the assets of a domestic enterprise and operates such assets, it shall contribute the investments equivalent to the consideration of the assets within the time limit for payment of consideration as provided for in Paragraph 1 of the present Article. As for the remaining investments, the time limit for contribution shall satisfy the relevant provisions on the capital contribution for the establishment of foreign-funded enterprise.

Where a foreign investor establishes a foreign-funded enterprise by merging a domestic enterprise, if its investment proportion is less than 25 % of the registered capital of the enterprise and if it plans to make investments in cash, it shall make full contribution within 3 months from the day when a business license is issued to the foreign-funded enterprise; if it plans to make investments in kind or industrial property, it shall make full contribution within 6 months from the day when a business license is issued to the foreign-funded enterprise.

Article 17 The means of payment for the consideration shall conform to the relevant laws and administrative regulations of the state. If the foreign investor uses the Renminbi assets it lawfully owns as a means of payment, it shall obtain the approval of the department of foreign exchange control. If the foreign investor uses the shares over which it has the right of disposition, it shall comply with Article 4 of these Provisions.

Article 18 After a foreign investor purchases the equities of a domestic company by agreement, and the domestic company has been modified into a foreign-funded enterprise, the foreign-funded enterprise's registered capital shall be the registered capital of the original domestic company, and the proportion of investments contributed by the foreign investor shall be the proportion of the purchased equities in the original registered capital.

Where a foreign investor subscribes to the capital increase of a domestic limited liability company, the registered capital of a foreign-funded enterprise established after the takeover shall be the summation of the registered capital of the former domestic company and the amount of capital increase. As to the foreign investor and other shareholders of the former domestic company it takes over, their respective proportion of capital contributions to the foreign-funded enterprise shall be determined on the basis of the

assessment of the assets of the domestic company.

Where a foreign investor subscribes the capital increase of a domestic joint stock limited company, the registered capital shall be determined under the Company Law.

Article 19 For an equity-based takeover by a foreign investor, the upper limits on the total investments to the foreign-funded enterprise after takeover shall be determined according to the following rates, unless the state provides otherwise:

- (1) If the registered capital is less than US\$ 2.1 million, the total investments shall not exceed 10/7 of the registered capital;
- (2) If the registered capital is not less than US\$ 2.1 million but not more than US\$ 5 million, the total investments shall not exceed two times the registered capital;
- (3) If the registered capital is not less than US\$ 5 million but not more than US\$ 12 million, the total investments shall not exceed 2.5 times the registered capital; and
- (4) If the registered capital is more than US\$ 12 million, the total investments shall not exceed 3 times the registered capital.

Article 20 For an asset-based takeover, the foreign investor shall, according to the transaction price for the purchased assets and the actual production and operation scale, determine the total investments to the foreign-funded enterprise to be established. The proportion between the registered capital and total investments of the foreign-funded enterprise to be established shall conform to the relevant provisions.

### Chapter III Examination, Approval and Registration

Article 21 For an equity-based takeover, a foreign investor shall, pursuant to the total investments of the foreign-funded enterprise to be established after the takeover, the type of the enterprise and the industry it engages in, submit the following documents to the competent examination and approval organ in accordance with the laws, administrative regulations, and rules on the establishment of foreign-funded enterprises:

- (1) A resolution of the shareholders of the domestic limited liability company or of the domestic joint stock limited company on the full consent to the equity-based takeover or asset-based takeover by the foreign investor;
- (2) An application for the establishment of the foreign-funded enterprise;
- (3) A contract and the articles of association of the foreign-funded enterprise to be established after takeover;
- (4) An agreement on the foreign investor's acquisition of equities of shareholders of the domestic company or on the foreign investor's subscription of the capital increase of domestic companies;
- (5) The previous-year financial audit report of the domestic company taken over;
- (6) The certification documents for the identity, registration and credit standing of the investor that have been notarized and certified according to law;
- (7) The descriptions about the enterprises invested by the domestic enterprise taken over;
- (8) The (duplicates) of the business licenses of the domestic company taken over and

enterprises it invests in;

(9) The proposal on the settlement of employees domestic enterprise taken over;

(10) The documents to be submitted as required by Articles 13 through 15 of the present provisions.

If the business scope, scale, obtainment of land use right of a foreign-funded enterprise established after takeover are subject to the license of the relevant government departments, the relevant licensing documents shall be submitted along with the documents as listed in the preceding Paragraph.

Article 22 An equity purchase agreement, or domestic company capital increase agreement shall be governed by Chinese law and shall contain the following contents:

(1) The status of each party to the agreement, including The status of each party to the agreement, including the name and domicile of each party, the name, position and nationality of each legal representative;

(2) The proportion of price of the equities purchased or capital increase subscribed;

(3) The time period of the agreement, and the method of execution thereof;

(4) The rights and obligations of each party to the agreement;

(5) The liabilities for breach of contract, and settlement of disputes; and

(6) The time and place for the conclusion of agreement.

Article 23 For an asset-based takeover, the foreign investor shall, pursuant to the total investments of the foreign-funded enterprise to be established after the takeover, the type of the enterprise and the industry it engages in, submit the following documents to the competent examination and approval organ in accordance with the laws, administrative regulations, and rules on the establishment of foreign-funded enterprises:

(1) A resolution of the property right holders or power authority of the domestic enterprise on the consent to the sale of assets;

(2) An application for the establishment of a foreign-funded enterprise;

(3) A contract and the articles of association of the foreign-funded enterprise to be established;

(4) An asset purchase agreement signed by the foreign-funded enterprise to be established and the domestic enterprise, or by the foreign investor and the domestic enterprise;

(5) The articles of association and the business license (duplicate) of the domestic enterprise it has taken over;

(6) The notice of the domestic enterprise taken over, certifications of the creditors announced, and statement about whether the creditors have raised any objections;

(7) The certification documents for the identity, registration and credit standing of the investor that have been notarized and certified according to law;

(8) The proposal on the settlement of employees of the domestic enterprise that is taken over; and

(9) The documents as required by Articles 13 through 15 if these Provisions.

If the business scope, scale, obtainment of land use right of a foreign-funded enterprise establishment after takeover involve licensing of the relevant government departments, the relevant licensing documents shall be submitted along with the documents as listed in the preceding Paragraph.

Where a foreign investor purchases the assets of a domestic enterprise by agreement and invests such assets in establishing a foreign-funded enterprise, it shall not, prior to the establishment of the foreign-funded enterprise, carry out any business activities with such assets.

Article 24 The agreement on the purchase of assets shall be governed by Chinese law and shall contain the following main contents:

- (1) The status of each party to the agreement, including the name and domicile of each party, the name, position and nationality of each legal representative;
- (2) A list of the assets to be purchased and the price thereof;
- (3) The time period and method for the execution of the agreement;
- (4) The rights and obligations of each party to the agreement;
- (5) The liabilities for breach of contract, and settlement of disputes;
- (6) The time and place for the conclusion of the agreement.

Article 25 Where a foreign investor intends to establish a foreign-funded enterprise by taking over a domestic enterprise, unless it is otherwise provided for in these Provisions, the examination and approval organ shall, within 30 days after the examination and approval organ receives the complete set of documents as required, it shall make a decision of approval or disapproval. If it decides to make a decision of approval, the examination and approval organ shall issue to the foreign investor an approval certificate.

For a foreign investor which intends to purchase the equities of a domestic company by agreement, if the examination and approval organ makes a decision of approval, it shall simultaneously send a copy of the relevant approval documents to the foreign exchange control departments of the places where the equity transferor and the domestic company are located, respectively. The foreign exchange control department of the place where the equity transferor is located shall handle the foreign exchange registration for equity-transfer-based foreign investments, which indicates that the consideration to the foreign investor's equity takeover has been fully paid.

Article 26 For an asset-based takeover, the foreign investor shall, within 30 days after it receives the approval document, apply to the registration administrative organ for establishment registration so as to fetch a foreign-funded enterprise business license.

For an equity-based takeover by a foreign investor, the domestic company taken over shall apply to the original registration administrative organ for modifying its registration in accordance with these Provisions. If the original registration administrative organ has registration jurisdiction, it shall, within 10 days after it receives the application documents,

transfer these application documents to the competent registration administrative organ and simultaneously accompany them by the registration files of the domestic company. When the domestic company taken over applies for modifying the registration, it shall submit the following documents and shall be responsible for their genuineness and validity:

- (1) An application for modifying registration;
- (2) An agreement on the purchase of equities of the domestic company or on the subscription of increased capital of a domestic company by a foreign investor;
- (3) The post-revision articles of association or revisions to the original articles of association, and the foreign-funded enterprise contract which shall be submitted in pursuance of law;
- (4) The foreign-funded enterprise approval document;
- (5) The certification for the qualifications of the foreign investor as the subject, or the identity certification of the foreign investor as a natural person;
- (6) The post-revision name list of the members of the board of directors, the documents which state the name and domicile of the newly increased directors, and the documents on the appointment of the newly increased directors;
- (7) Other relevant documents and certificates as required by the State Administration for Industry and Commerce.

The investor shall, within 30 days after it receives a foreign-funded enterprise business license, go through the registration formalities in the tax, customs, land administration and foreign exchange administration departments.

#### Chapter IV Equity-payment-based Takeover of Domestic Companies by Foreign Investors

##### Section 1 Conditions for Equity-payment-based Takeover

Article 27 The term "equity-payment-based takeover of a domestic enterprise by a foreign investor" means that the shareholders of an overseas company purchase the equities of a domestic company by paying the equities of the overseas company it holds, or that an overseas company purchases the increased capital of a domestic company by paying its increased shares.

Article 28 The term "overseas company" as mentioned in this Chapter shall be a lawfully established company, there is a sound system of company law in its registration place, and the company and its management level have no record of punishment by the regulatory institution within recent 3 years. Except for special-purpose companies as mentioned in Section 3 of this Chapter, an overseas company shall be a listed company and there shall be a sound securities dealing system in the place where it gets listed.

Article 29 The equities of the domestic and overseas companies involved in the equity-based takeover of a domestic company by a foreign investor shall meet the following conditions:

- (1) They are lawfully held by the shareholders and may be transferred in accordance with the law;
- (2) There is no dispute over their ownership, they are not held in pledge and they are not subject to any other limit of right;
- (3) The equities of an overseas company shall be listed publicly in an overseas lawful securities exchange market (excluding the over-counter exchange market); and
- (4) The transaction price of the equities of the overseas company in the recent 1 year remains stable.

The Items (3) and (4) of the preceding Paragraph is inapplicable to the special-purpose companies as mentioned in Section 3 of this Chapter.

Article 30 For an equity-based takeover of a domestic company by a foreign investor, the overseas company or its shareholders shall hire an intermediary institution registered within China to serve as a consultant (hereinafter referred to as the "takeover consultant"). The takeover consultant shall make due investigations to the genuineness of the takeover application documents, the financial status of the overseas company as well as whether the takeover meets the requirements of Articles 14, 28 and 29 of these Provisions, shall make a takeover consultant report and shall put forward express professional opinions on each of the aforesaid items.

Article 31 A takeover consultant shall satisfy the following conditions:

- (1) Having a good reputation and having relevant practicing experiences;
- (2) Having no record of serious violation of any law or regulation; and
- (3) Being capable of investigating and analyzing the legal systems of the registration place of the overseas company and the place where the overseas company is get listed, as well as the financial status of the overseas company.

## Section 2 Application Documents and Procedures

Article 32 An equity-based takeover of a domestic company by a foreign investor shall be subject to the examination and approval of the MOFCOM. The domestic company shall not only submit the documents as required in Chapter III of these Provisions, but also the following documents:

- (1) A statement of the changes of equities and important changes of assets of the domestic company within the recent 1 year;
- (2) A takeover consultant's report;
- (3) The business opening certifications or identity certification documents of the relevant domestic and overseas companies and their shareholders;
- (4) Descriptions about the equities held by the shareholders of the overseas company, and the name list of the shareholders who hold 5 % or more of the equities of the overseas company;
- (5) The articles of association of the overseas company and a description about the guaranties it provides to outsiders; and



(6) The recent annual financial statements upon audit and a report on the stock dealings of the overseas company in the recent half year.

Article 33 The MOFCOM shall, within 30 days after it receives a complete set of documents, examine a takeover application. If the relevant requirements are satisfied, it shall issue to the applicant an approval document, which is given the remark that "For the equity-based takeover of a domestic company by a foreign investor, it will be valid for 6 months as of the date of issuance of a business license."

Article 34 The overseas company shall, within 30 days after it receives an aforesaid approval document, it shall modify the registration in the registration administrative organ and the foreign exchange control organ. The registration administrative organ and the foreign exchange control organ shall respectively issue to it a foreign-funded enterprise business license and a foreign exchange register certificate which are given the remark that "To be valid for 8 months as of the date of issuance".

When a domestic company goes through the registration modification formalities in the registration administrative organ, it shall, in advance, submit an equity change application, the revised articles of association, the equity transfer agreement and other documents signed by the legal representative of the domestic company, which are aimed to resume the structure of equities.

Article 35 Within 6 months as of the date of issuance of a business license, the domestic company and its shareholders shall, in regard to the matters relating to the overseas company's equities it plans to hold, apply to the MOFCOM and the foreign exchange control organ for going through the formalities for the examination, approval and registration of investments to run an enterprise abroad.

The parties concerned shall not only submit to the MOFCOM the documents as required in the Provisions on the Examination and Approval of Investment to Run Enterprises Abroad, but also a foreign-funded enterprise approval certificate with the said remark and a foreign-funded enterprise business license with the said remark. After the MOFCOM examines and approves the overseas company's equities to be held by the domestic company or its shareholders, it shall issue to the applicant a Chinese enterprise overseas investment approval certificate and replace the foreign-funded enterprise approval certificate with a remark by one with no remark.

After a domestic company obtains a foreign-funded enterprise approval certificate without a remark, it shall, within 30 days, apply to the registration administrative organ and the foreign exchange control organ, for replacing the foreign-funded enterprise business license and the foreign exchange register certificate with a remark by new ones with no remark.

Article 36 With 6 months as of the date of issuance of a business license, if the domestic

and overseas companies fail to finish the equity modification formalities, the approval certificate with a remark and the Chinese enterprise overseas investment approval certificate shall be invalidated automatically. The registration administrative organ shall, according to the equity modification registration application documents submitted by the domestic company in advance, examine and approve the modification registration and shall make the equity structure of the domestic company resume to the state prior to the takeover of equities.

In the case of failure to acquire the shares increased by a domestic company, before the registration administrative organ examines and approves the modification registration under the preceding Paragraph, the domestic company shall, pursuant to the Company Law, reduce the registered capital correspondingly and publish an announcement on a newspaper.

If the domestic company fails to go through the relevant registration formalities according to the preceding Paragraph, the registration administrative organ shall punish it in accordance with the Regulation on the Administration of Company Registration.

Article 37 After a domestic company obtains a foreign-funded enterprise approval certificate with a remark and a foreign exchange register certificate with a remark, it shall not distribute its profits to its shareholders, nor provide a guaranty to any connected company, nor make any payment to any outsider for the capital items such as the equity transfer, capital decrease or liquidation.

Article 38 A domestic company or its shareholders may, upon the strength of approval document with no remark and the business license with no remark issued by the MOFCOM and the registration administrative organ, go through the tax modification registration in the tax organ.

### Section 3 Special Provisions on Special-purpose Companies

Article 39 The term "special-purpose company" refers to an overseas company which a domestic company or natural person directly or indirectly controls for the purpose of making its actual domestic company equities get listed abroad.

The provisions of this Section shall apply to a special-purpose company, which, for the purpose of getting listed abroad, its shareholders or the special-purpose company purchase (purchases) the equities of the shareholders of a domestic company or the share increase of a domestic company by paying with the equities of the special-purpose company it holds or by paying with the share-increase of the special-purpose company.

If the parties concerned makes an overseas company, which holds any equities of a special-purpose company, serve as a subject to get listed abroad, this overseas company

shall satisfy the relevant requirements for the special-purpose company as described in this Section.

Article 40 The transaction for the overseas listing of a special-purpose company shall be subject to approval of the securities regulatory institution of the State Council.

The country or region where the special-purpose company gets listed shall have sound legal and regulatory systems, and securities regulatory institution of this country or region shall have signed a memorandum of cooperation and understanding with the securities regulatory institution of the State Council of China and keep an effective cooperation in the regulatory work.

Article 41 A domestic company with its equities listed abroad as mentioned in this Section shall satisfy the following conditions:

- (1) Its property right is clear. There is no dispute or potential dispute over its property right;
- (2) It has a complete business system and a good sustainable operation capacity;
- (3) It has a sound corporate governance structure and internal management system; and
- (4) The company and its main shareholders have no record of serious violation of any law or regulation.

Article 42 To set up a special-purpose company abroad, an overseas company shall apply to the MOFCOM for going through the examination and approval formalities. When doing so, the domestic company shall not only submit to the MOFCOM the documents as required in the Provisions on the Examination and Approval of Investment to Run Enterprises Abroad, but also the following documents:

- (1) The identity certification documents on the final controller of the special-purpose company;
- (2) The business plan on the overseas listing of the special-purpose company; and
- (3) The assessment report made by the takeover consultant on the price of the stocks to be issued by the special-purpose company to get listed abroad in the future.

After the party who establishes or controls a special-purpose company obtains approval document for Chinese enterprise to make overseas investment, it shall apply to the foreign exchange control organ of the place where it is located for going through the formalities for the register of overseas investments.

Article 43 The total value of the stocks of a special-purpose company listed abroad shall not be lower than the value of the equities of the domestic company upon the assessment of the relevant asset assessment institution.

Article 44 Where a special-purpose company intends to take over a domestic company by equities, the domestic company shall not only submit to the MOFCOM the documents as required in Article 32 of these Provisions, but also the following documents:

- (1) The approval documents and certificate for the investor to run an enterprise abroad at

the time of establishment of the special-purpose company;

(2) The foreign exchange register form for the overseas investments of the special-purpose company;

(3) The identity certification documents on the final controller of the special-purpose company, or the business opening certification or articles of association of the special-purpose company;

(4) The business plan on the overseas listing of the special-purpose company; and

(5) The assessment report made by the takeover consultant on the price of the stocks to be issued by the special-purpose company to get listed abroad in the future.

If the parties concerned makes an overseas company, which holds the equities of a special-purpose company, serve as a subject to get listed abroad, the domestic company shall, apart from the aforesaid documents, submit the following documents:

(1) The business opening certification and the articles of association of the overseas company; and

(2) The arrangement of the special-purpose company and the overseas company for the transaction of the equities of the domestic company taken over, as well as the detailed descriptions of the method to convert the equities to money.

Article 45 If the MOFOCOM approves the documents as required in Article 44 of these Provisions upon preliminary examination, it shall issue a letter of in-principle approval. The domestic company shall, upon the strength of the letter of in-principle approval, submit to the securities regulatory institution of the State Council the application documents for getting listed. The securities regulatory institution of the State Council shall make a decision of approval or disapproval within 20 working days.

After the domestic company obtains an approval, it shall apply to the MOFCOM for an approval certificate. The MOFCOM shall issue to it an approval certificate with the remark "For holding equities of overseas special-purpose company, it shall be valid for 1 year as of the issuance of a business license".

If the takeover causes the change of equities of the special-purpose company, the domestic company or natural person holding the equities of the special-purpose company shall, upon the strength of the foreign-funded enterprise approval certificate with a remark, apply to the MOFCOM for going through the formalities for the examination and approval of the change of the overseas investment to run an enterprise abroad and shall apply to the local foreign exchange control organ for modifying the foreign exchange register of overseas investments.

Article 46 The domestic company shall, within 30 days after it receives an approval document with a remark, apply to the registration administrative organ and the foreign exchange control organ for modifying the registration. The registration administrative organ and the foreign exchange control organ shall respectively issue to a foreign-funded enterprise business license and a foreign exchange register certificate with a remark "To

be valid for 14 months as of the date of issuance”.

When the domestic company handles the modification registration in the registration administrative organ, it shall, in advance, submit the equity change application, the revised articles of association, the equity transfer agreement and other documents signed by the legal representative of the domestic company, which are aimed to resume the structure of equities.

Article 47 The domestic company shall, within 30 days after the special-purpose company or its connected overseas company realizes the overseas listing, report to the MOFECOM about the information about the overseas listing and its plan on the transfer-back of the raised funds and apply for a unremarked foreign-funded enterprise approval certificate. At the same time, it shall, within 30 days after the realization of overseas listing, report to the securities regulatory institution of the State Council the information about the overseas listing and provide it with the relevant documents for archival purposes. It shall also submit to the foreign exchange control organ its plan on the transfer-back of the raised funds and execute this plan under the supervision of the foreign exchange control organ. It shall, within 30 days after it receives an unremarked approval certificate, apply to the registration administrative organ and foreign exchange control organ for replaying its foreign-funded enterprise business license and foreign exchange register certificate with a remark by a new unremarked one.

If the domestic company fails to report to the MOFECOM within the aforesaid time limit, its approval certificate with a remark shall be invalidated automatically, its equities structure will resume to the state prior to the equity-based takeover and it shall go through the formalities for modifying the registration in accordance with Article 36 of these Provisions.

Article 48 The funds of a special-purpose company raised from overseas listing shall, according to the transfer-back plan submitted to the foreign exchange control organ for archival purposes, be transferred back into China according to the existing foreign exchange control provisions. The raised funds may be transferred back into China by:

- (1) providing commercial loans to the domestic company;
- (2) setting up a new foreign-funded enterprise within China; and
- (3) taking over a domestic enterprise.

To transfer back the funds of a special-purpose company raised overseas under the aforesaid circumstances, the relevant parties shall abide by the laws and administrative regulations on the administration of foreign investments and on foreign debts. If, as a consequence of the transfer-back of the funds a special-purpose company raised overseas, the domestic company or natural person who holds more equities of the special-purpose company or the net assets of the special-purpose company increase, the parties concerned shall faithfully disclose the relevant information and apply for examination and approval. After it finishes the examination and approval formalities, it shall go through the formalities for modifying the foreign exchange register of foreign

investments and the register of overseas investments.

The profit, bonus and capital change income in a foreign currency obtained by the domestic company or natural person from the special-purpose company shall be transferred back to China within 6 months after the date of obtainment. The profit or dividends may enter into the foreign exchange account for current items or may be converted into RMB. The capital change income in a foreign currency may, upon the examination and approval of the foreign exchange control organ, be deposited in a special capital account opened for it or be converted into RMB.

Article 49 Within 1 year after the date of issuance of a business license, if the domestic company fails to obtain an unremarked approval certificate, the approval certificate with a remark shall be invalidated automatically. The domestic company shall go through the formalities for modifying the registration.

Article 50 After the special-purpose company has realized the overseas listing and the domestic company has obtained an approval certificate and a business license with no remark, if the relevant party concerned continues to take over this domestic company by paying its equities, the provisions of Sections 1 and 2 of this Chapter shall apply to this case.

#### Chapter V Antitrust Review

Article 51 If the takeover of a domestic company by a foreign investor is under any of the following circumstances, the investor shall report the relevant information to the MOFCOM and the State Administration for Industry and Commerce (hereinafter referred to as the SAIC):

- (1) The current-year business volume of any party to the takeover in the Chinese market exceeds RMB 1.5 billion yuan;
- (2) The foreign investor has accumulatively taken over more than 10 enterprises in the domestic relevant industries;
- (3) The market share of any party to the takeover has reached 20% in China; and
- (4) The takeover leads to the fact that the market share of the party to the takeover has reached 25% in China.

When the foreign investor fails to meet the conditions as mentioned in the preceding Paragraph, but upon request of a domestic enterprise of competitive relationship, a relevant functional department or industrial association, the MOFCOM or the SAIC believes that the takeover by the foreign investor involves a huge market share, or that there are other major factors which seriously impact market competition, it may also demand the foreign investor to prepare a report.

The aforesaid merging party includes the connected enterprises of the foreign investor.

Article 52 If the takeover of a domestic company by a foreign investor is under any of the circumstances as mentioned in Article 51 and if the MOFCOM and the SAIC believe that it may lead to excessive concentration, hamper fair competition or impair the interests of the consumer, they shall, within 90 days as of the receipt of all the documents as required, either solely convene through negotiation or jointly convene the relevant departments, institutions, enterprises and other interested parties and hold a hearing, and shall make a decision of approval or disapproval in accordance with the law.

Article 53 Where an overseas takeover is under any of the following circumstances, the parties to the takeover shall, before announcing the takeover proposal or when submitting the said proposal to the competent authority in the country of its locality, submit the takeover proposal to the MOFCOM and the SAIC. The MOFCOM and the SAIC shall examine whether it will lead to excessive centralization in the domestic market, hinder domestic fair competition, or damage the domestic consumers' benefits, and shall make a decision on whether approve the proposal or not:

- (1) The overseas party to the takeover owns more than RMB 3 billion Yuan of assets inside the territory of China;
- (2) The business volume of the overseas party to the takeover in the Chinese market is more than RMB 1.5 billion yuan in the current year;
- (3) The market share of the overseas party to the takeover and its connected enterprises in China has reached 20%;
- (4) The market share of the overseas party to the takeover and its connected enterprises in China has reached 25% due to the overseas takeover; or
- (5) Due to the overseas takeover, there will be more than 15 foreign-funded enterprises in the relevant domestic industries with direct or indirect shares of the foreign-funded enterprises.

Article 54 Where a takeover is under any of the following circumstances, the parties to the takeover may apply to the MOFCOM and the SAIC for exemption of examination:

- (1) The takeover may improve the conditions for fair competition in the market;
- (2) A loss-making enterprise is taken over and the employment is ensured;
- (3) The takeover helps the absorption of advanced technologies and management personnel and is able to improve the enterprise's international competitiveness; or
- (4) The takeover may improve the environment.

#### Chapter VI Supplementary Provisions

Article 55 Where an investment company established by a foreign investor within China intends to take over a domestic enterprise, it shall be governed by these Provisions.

Where a foreign investor intends to purchase the equities of a foreign-funded enterprise within China or to subscribe to the increased capital of a foreign-funded enterprise within China, it shall be governed by the existing laws and administrative regulations on foreign-funded enterprises as well as the relevant provisions on changes of equities of

investors of foreign-funded enterprise; if any matter is not covered by the aforesaid laws, administrative regulations or provisions, it shall be governed by these Provisions.

Where a foreign investor intends to combine with or take over a domestic enterprise through a foreign-funded enterprise established by it within China, it shall be governed by the relevant provisions on the combination and split-up of foreign-funded enterprises and the relevant provisions on domestic investments of foreign-funded enterprise; if any matter is not covered by the aforesaid provisions, it shall be governed by these Provisions.

Where a foreign investor takes over a domestic limited liability company, if it transforms it into a joint stock limited company, or if the domestic company is a joint stock limited company, it shall be governed by the relevant provisions on the establishment of a joint stock limited company; if any matter is not covered by the aforesaid provisions, it shall be governed by these Provisions.

Article 56 For the submission of documents, an applicant or declarer shall classify the documents into different categories under these Provisions and accompany them with a list of documents. All documents required to be submitted shall be written in Chinese.

Article 57 A Chinese natural-person shareholder of a domestic company taken over by equities may, upon approval, continue to be a Chinese investor of the foreign-funded enterprise established after modification.

Article 58 If a natural-person shareholder of a domestic company changes his nationality, the enterprise nature of the company will remain unchanged.

Article 59 The functionaries of the government organs shall be duteous, shall perform their duties in pursuance of the law, shall not seek any improper benefit by taking the advantage of their positions, and shall keep confidential the commercial secrets they have access to.

Article 60 Where an investor from Hong Kong Special Administrative Region, Macao Special Administrative Region or Taiwan Region intends to take over a domestic enterprise of any other region, it shall be governed by these Provisions.

Article 61 These Provisions shall come into force as of September 8, 2006.



## ZJ07 Preferential Policies of Zhejiang Province

2006-3-29 16:18:24

### (1) Enterprise Income Tax

The income tax on enterprises with foreign investment established in Special Economic Zones, on foreign enterprises which have establishments or places in Special Economic Zones engaged in production or business operations, and on production-oriented enterprises with foreign investment in Economic and Technological Development Zones, shall be levied at the reduced rate of fifteen percent.

The income tax on production-oriented enterprises with foreign investment established in coastal economic open zones or in the old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones are located, shall be levied at the reduced rate of twenty-four percent.

The income tax on enterprises with foreign investment engaged in energy resource, transportation, port, and dock projects may be levied at the reduced rate of fifteen percent with the approval of the State Administration of Taxation.

Production-oriented enterprises with foreign investment scheduled to operate for a period of not less than ten years shall, from the year beginning to make profit, be exempted from income tax in the first and second years and allowed a fifty percent reduction in the third to fifth year. However, the exemption from or reduction of income tax on enterprises with foreign investment engaged in the exploitation of resources such as petroleum, natural gas, rare metals, and precious metals shall be regulated separately by the State Council.

Chinese-foreign equity joint ventures engaged in port and dock construction where the period of operation is 15 years or more shall, following application by the enterprise and approval thereof by the tax authorities of provinces, autonomous regions, or municipalities directly under the Central Government of the location and commencing with the first profit-making year, be exempt from enterprise income tax from the first year to the fifth year and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year.

Enterprises with foreign investment engaged in agriculture, forestry or animal husbandry and enterprises with foreign investment established in remote underdeveloped areas may, upon application filed by the enterprise and approval by the competent department of tax affairs under the State Council, be allowed a fifteen to thirty percent reduction of the amount of income tax payable for a period of another ten years following the expiration of the period for tax exemption or reduction.

Export-oriented enterprises invested in and operated by foreign businesses may be levied at the reduced rate of fifty percent after the expiration of the period for tax exemption or reduction in accordance with the provisions of the Tax Law if the export value accounts for 70% or more of that year's total output value of the enterprise. However, export-oriented enterprises in the special economic zones and economic and technological development zones and other such enterprises subject to enterprise income tax at the tax rate of 15% that qualify under the above-mentioned conditions shall pay enterprise income tax at the tax rate of 10%.

Advanced technology enterprises invested in and operated by foreign businesses which remain advanced technology enterprises after the period of enterprise income tax exemptions or reductions has expired in accordance with the provisions of the Tax Law may continue to be taxed by half for an additional three years.

Losses incurred in a tax year by any enterprise with foreign investment and by an establishment or a place set up in China by a foreign enterprise to engage in production or business operations may be made up by the income of the following tax year. Should the income of the following tax year be insufficient to make up for the said losses, the balance may be made up by its income of the subsequent year, and so on, over a period not exceeding five years.

#### (2) Individual Income Tax

For foreign nationals working in enterprises with foreign investment or foreign enterprises set up in China, their taxable income is the balance of their monthly income after the deductions for expenses of 3200 RMB in addition to a monthly deduction for expenses of 800 RMB.

#### (3) Profit

The profits that foreign investors make from the enterprises with foreign investment are exempt from the income tax.

#### (4) Importing Equipment

Tariffs and import link value-added tax shall be exempted with respect to import equipment for their own use (including technology, matching components and parts along with imported equipment in accordance with contract) within the total amount of investment of encouraged projects in line with the Catalogue for the Guidance of Foreign Investment Industries, with the exception of the commodities listed in the Catalogue of Non-Duty-Free Commodities to Be Imported for Foreign-Funded Projects.

Foreign-funded enterprises whose business scope falls into the Encouragement Industry Catalogue stipulated by the state, or foreign-funded R&D centers, or foreign-funded

technically advanced enterprises or foreign-funded export-oriented enterprises will be exempted from tariffs and import link value added tax in accordance with Circular of the State Council on the Adjustment of Tax Policy on Equipment Imports (Guo Fa [1997] No. 37) when they import, for their own technical updating, equipment and supporting parts, auxiliaries and relative technology within their original business scope that the local enterprises cannot produce or supply or the local products' performance can not meet their requirement.

If foreign-funded enterprises import equipment for self use, as well as technology, matching components and parts along with imported equipment in accordance with contract in order to manufacture the commodities listed in the Catalog of the State High-tech Products, these items, except the ones listed in Catalogue of Non-Duty-Free Commodities to Be Imported for Domestic Investment Projects (Guo Fa [1997] No. 37), shall be exempted from tariffs and import link value-added tax.

#### (5) Purchasing Domestic Equipment

For investment projects whose capital of foreign investors reaches 25% or above of the capital paid up by all the investors of the foreign-funded enterprises and which also accord with the encouraged types in Catalogue for the Guidance of Foreign Investment Industries and Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State, the unused domestic equipment purchased by foreign-invested enterprises with currency in China (including products of plastic, rubber, ceramic and porcelain and petrochemical tubes purchased together with the equipment and listed in purchase contracts), will be refunded the value-added tax in full amount.

For equipment purchased from the domestic market specified in the Catalogue of Non-Duty-Free Commodities to Be Imported for Foreign-Funded Projects and Catalogue of Non-Duty-Free Commodities to Be Imported for Domestic Investment Projects issued by the State Council, enterprises can not enjoy the preferential policy of tax drawback.

#### (6) Reinvestment

Any foreign investor of an enterprise with foreign investment which reinvests its share of profit obtained from the enterprise directly into that enterprise by increasing its registered capital, or uses the profit as investment capital to establish other enterprises with foreign investment to operate for a period of not less than five years shall, upon approval by the tax authorities of an application filed by the investor, be refunded forty percent of the income tax already levied on the reinvested amount.

Where foreign investors reinvest directly to set up or expand export-oriented or advanced technology enterprises within the boundaries of China, the entire portion of enterprise income tax levied on the reinvested amount may, in accordance with the provisions of the State Council, be refunded.

#### (7) Fixed Assets Depreciation

Where, for special reasons, it is necessary to shorten the useful life of fixed assets, an application may be submitted by the enterprise to the local tax authorities which following examination and verification shall be reported level-by-level to the State Tax Bureau for approval. Such fixed assets include include:

- (1) machinery and equipment subject to strong corrosion by acid or alkali and factory buildings and structures subject to constant shaking and vibration;
- (2) machinery and equipment operated continually year-round for the purpose of raising the utilization rate or increasing the intensity of use;
- (3) fixed assets of a Chinese-foreign contractual joint venture having a period of cooperation shorter than the useful life specified in Article 35 of these Rules and which will be left with the Chinese party upon termination of the cooperation.

#### (8) Miscellaneous

Income tax of the royalty received for the supply of technical know-how in scientific research, exploitation of energy resources, development of the communications industries, agricultural, forestry and animal husbandry production, and the development of important technologies may, upon approval by the competent department for tax affairs under the State Council, be levied at the reduced rate of ten percent. Where the technology supplied is advanced or the terms are preferential, exemption from income tax may be allowed.

Incomes of units or individuals (including enterprises with foreign investment, R&D centers invested and set up by foreign investors, foreign enterprises and foreign nationals) from technology transfer, business of technology development and related business of technical consultancy and service shall be exempt from business tax.

Imported advanced technologies that are listed in the Catalog of State New and High-Tech Products, and the software fee paid overseas in accordance with the contract, are exempt from customs duty and import-link value added tax.

Enterprises with foreign investment where technology development fee in China has increased by over 10% (including 10%) than that for the previous year, shall be permitted, upon examination and approval by the taxation authorities, to re-offset 50% of the amount actually used for technology development fee for the taxable income for the same year, upon examination and approval of taxation authorities concerned. In the enterprises where technology development fee has increased by over 10% from that for the previous year, and 50% of the amount actually used by the enterprises is higher than the taxable income for this year, the enterprises may be permitted to offset the portion which is not exceeding their taxable income; for the exceeding portion, they shall not be allowed to offset in this year or for the succeeding years.

## ZJ08 Catalogue of Restricted Foreign Investment

### Industries

2006-3-29 17:44:27

#### I. Farming, Forestry, Animal Husbandry and Fishery Industries

1. Development and production of grain (including potatoes), cotton and oilseed (Chinese partner shall hold the majority of shares)

2. Processing of the logs of precious varieties of trees (equity joint ventures or contractual joint ventures only)

#### II. Mining and Quarrying Industries

1. Exploring and mining of minerals such as wolfram, tin, antimony, molybdenum, barite, fluorite (equity joint ventures or contractual joint ventures only)

2. Exploring and mining of precious metals (gold, silver, platinum families)

3. Exploring and mining of precious non-metals such as diamond

4. Exploring and mining of special and rare kinds of coal (Chinese partner shall hold the majority of shares)

5. Mining of szaibelyite and szaibelyite iron ores

6. Mining of celestite

#### III. Manufacturing Industries

##### 1. Food Processing Industry

(1) Production of millet wine and spirits of famous brands

(2) Production of soda beverage of foreign brand

(3) Production of synthetic sweet agent such as saccharin

(4) Processing of fat or oil

##### 2. Tobacco Processing Industry

(1) Production of cigarettes and filter tips

##### 3. Textile Industry

(1) Wool spinning, cotton spinning

(2) Silk reeling

##### 4. Printing and Record Medium Reproduction Industry

(1) Printing of publications (Chinese partner shall hold the majority of shares except printing of package decoration)

##### 5. Petroleum Processing and Coking Industries

(1) Construction and management of refineries

##### 6. Chemical Raw Material and Products Manufacturing Industry

(1) Production of ionic membrane caustic soda

(2) Production of sensitive materials

(3) Production of benzidine

(4) Production of chemical products from which narcotics are easily made (ephedrine, 3, 4-idene dihydro phenyl- 2-acetone, phenylacetic acid, 1-phenyl- 2-acetone, heliotropin, safrole, isosafrole, acetic oxide)

(5) Production of sulphuric acid basic titanium white

(6) Processing of baron, magnesium, iron ores

(7) Barium salt production

#### 7. Medical and Pharmaceutical Products Industry

(1) Production of chloramphenicol, penicillin G, lincomycin, gentamicin, dihydrostreptomycin, amikacin, tetracycline hydrochloride, oxytetracycline, medemycin, kitasamycin, ilotycin, ciprofloxacin and ofloxacin

(2) Production of analgin, paracetamol, Vitamin B1, Vitamin B2, Vitamin C, Vitamin E

(3) Production of immunity vaccines, bacterins, antitoxins and anatoxin (BCG vaccine, poliomyelitis, DPT vaccine, measles vaccine, Type-B encephalitis, epidemic cerebrospinal meningitis vaccine) which are included in the State's Plan

(4) Production of material medicines for addiction narcotic and psychoactive drug (Chinese partner shall hold the majority of shares)

(5) Production of blood products

(6) Production of non-self-destructible expendable injectors, transfusion systems, blood transfusion systems, blood bags

#### 8. Chemical Fibre Production Industry

(1) Production of chemical fibre drawnwork of conventional chipper

(2) Production of viscose staple fibre with an annual single thread output capacity of less than 20,000 tons

(3) Production of polyester and spandex used for fibre and non-fibre with a daily production capacity of less than 400 tons

#### 9. Rubber Products

(1) Cross-ply and old tire recondition (not including radial tire), and production of industrial rubber fittings of low-performance

#### 10. Non-Ferrous Metal Smelting and Rolling Processing Industry

(1) Smelting and separation of rare earth metal (equity joint ventures or contractual joint ventures only)

#### 11. Ordinary Machinery Manufacturing Industry

(1) Manufacture of containers

(2) Manufacture of small and medium type ordinary bearings

(3) Manufacture of truck cranes of less than 50 tons (equity joint ventures or contractual joint ventures only)

#### 12. Special Purpose Equipment Manufacturing Industry

(1) Production of low or middle class type-B ultrasonic displays

(2) Manufacture of equipment for producing long dacron thread and short fibre

(3) Manufacture of crawler dozers of less than 320 horsepower, wheeled mechanical loaders of less than 3 cubic meter (equity joint ventures or contractual joint ventures only)

#### 13. Electronic and Telecommunication Equipment Manufacturing Industry

(1) Production of satellite television receivers and key parts

#### IV. Production and Supply of Power, Gas and Water

1. Construction and operation of conventional coal-fired power plants whose unit installed capacity is less than 300,000kW (with the exception of small power grid)

V. Communication and Transportation, Storage, Post and Telecommunication Services

1. Road passenger transportation companies

\*2. Cross-border automobile transportation companies

\*3. Water transportation companies

\*4. Railway freight transportation companies

5. Railway passenger transportation companies (Chinese partner shall hold the majority of shares)

6. General aviation companies engaging in photographing, prospecting and industry (Chinese partner shall hold the majority of shares)

\*7. Telecommunication companies

VI. Wholesale and Retail Trade Industries

\*1. Commercial companies of commodity trading, direct selling, mail order selling, Internet selling, franchising, commissioned operation, sales agent, commercial management companies, and wholesale, retail and logistic distribution of grain, cotton, vegetable oil, sugar, medicines, tobaccos, automobiles, crude oil, capital goods for agricultural production

\*2. Wholesale or retail business of books, newspapers and periodicals

\*3. Distributing and selling of audiovisual products (excluding movies)

4. Commodity auctions

\*5. Goods leasing companies

\*6. Agencies (ship, freight forwarding, tally for foreign vessels, advertising)

\*7. Wholesaling product oil and construction and operation of gasoline stations

8. Foreign trade companies

VII. Banking and Insurance Industries

1. Banks, finance companies, trust investment companies

\*2. Insurance companies

\*3. Security companies, security investment fund management companies

4. Financial leasing companies

5. Foreign exchange brokerage

\*6. Insurance brokerage companies

VIII. Real Estate Industry

1. Development of pieces of land (equity joint ventures or contractual joint ventures only)

2. Construction and operation of high-ranking hotels, villas, high-class office buildings and international exhibition centers

3. Construction and operation of large scale theme park

IX. Social Service Industry

1. Public Facility Service Industries

(1) Construction and operation of networks of gas, heat, water supply and water drainage in large and medium sized cities (Chinese partner shall hold the majority of shares)

2. Information, Consultation Service Industries

(1) Legal consulting

(2) Market Research (equity joint ventures or contractual joint ventures only)

## X. Public Health, Sports and Social Welfare Industries

1. Medical treatment establishments (equity joint ventures or contractual joint ventures only)

2. Construction and operation of golf courts

## XI. Education, Culture and Arts, Broadcasting, Film and TV Industries

1. Education establishments for senior high school students (equity joint ventures or contractual joint ventures only)

2. Construction and operation of cinemas (Chinese partner shall hold the majority of shares)

3. Production and publication of broadcasting and TV programs and film-making (Chinese partner shall hold the majority of shares)

## XII. Scientific Research and Poly-technical Services Industries

1. Mapping companies (Chinese partner shall hold the majority of shares)

\*2. Inspection, verification and attestation companies for imported and exported goods

XIII. Other industries restricted by the State or international treaties that China has concluded or taken part in.



## **ZJ09 Catalogue of Prohibited Foreign Investment Industries**

2006-3-29 17:42:43

### **I. Farming, Forestry, Animal Husbandry and Fishery Industries**

1. Cultivation of China's rare precious breeds (including fine genes in plants industry, husbandry and aquatic products industry)
2. Production and development of genetically modified plants' seeds
3. Fishing in the sea area within the Government jurisdiction and in in-land water

### **II. Mining and Quarrying Industries**

1. Exploring, mining and dressing of radioactive mineral products
2. Exploring, mining and dressing of rare earth metal

### **III. Manufacturing Industry**

#### **1. Food Processing Industry**

- (1) Processing of green tea and special tea with China's traditional crafts (famous tea, dark tea, etc.)

#### **2. Medical and Pharmaceutical Products Industry**

- (1) Processing of traditional Chinese medicines that have been listed as the State protection resources (musk, licorice, jute, etc.)
- (2) Application of preparing technique of traditional Chinese medicines in small pieces ready for decoction, and production of the products of secret recipe of traditional Chinese patent medicines

#### **3. Non-Ferrous Metal Smelting and Rolling Processing Industry**

- (1) Smelting and processing of radioactive mineral products

#### **4. Manufacture of Weapons and Ammunition**

## 5. Other Manufacturing Industries

- (1) Ivory carving
- (2) Tiger-bone processing
- (3) Production of bodiless lacquerware
- (4) Production of enamel products
- (5) Production of Xuan-paper (rice paper) and ingot-shaped tablets of Chinese ink
- (6) Production of carcinogenic, teratogenic, mutagenesis and persistent organic pollutant products

## IV. Production and Supply of Power, Gas and Water

- 1. Construction and operation of power network

## V. Communication and Transportation, Storage, Post and Telecommunication

### Services

- 1. Companies of air traffic control
- 2. Companies of postal services

## VI. Finance, Insurance Industries

- 1. Futures companies

## VII. Social Service Industry

- 1. Development of wild animal and plant resources protected by the State
- 2. Construction and operation of animal and plant natural reserves
- 3. Social investigation
- 4. Gambling (including the racecourse for gambling)
- 5. Pornographic services

## VIII. Education, Culture and Arts, Broadcasting, Film and TV Industries

1. Educational institutes for basic education (compulsory education)
2. Business of publishing, producing, master issuing, and importing of books, newspapers and periodicals
3. Business of publishing, producing, master issuing and importing of audio and visual products and electronic publications
4. News agencies
5. Radio stations, TV stations, radio and TV transmission networks at various levels (transmission stations, relaying stations, radio and TV satellites, satellite up-linking stations, satellite receiving stations, microwave stations, monitoring stations, cable broadcasting and TV transmission networks)
6. Companies of publishing and playing of broadcast and TV programs
7. Companies of films issuing
8. Companies of video tape showing

## IX. Other Industries

1. Projects that endanger the safety and performance of military facilities

## X. Other industries restricted by the State or international treaties that

China has concluded or taken part in

## Note:

1. In the case that the Mainland/Hong Kong Closer Economic Partnership Arrangement and its supplement or the Mainland/Macao Closer Economic Partnership Arrangement and its supplement have prescribed specific rules, those regulations shall be observed.
2. The items marked "\*" are related to the commitment of China's accession to WTO. Please see the Attachment for details.

## ZJ10 Industrial Policies of Zhejiang Province

2006-3-29 17:41:09

- I. Develop infrastructure construction projects such as transportation, energy resources, water supply and sewage disposal etc.
- II. Introduce advanced and applicable agricultural technology and import improved varieties so as to facilitate the restructuring of agriculture and the development of profitable agriculture and ecological agriculture. Increase agricultural projects oriented towards export and foreign exchange earnings and promote the production of green food, organic food and competitive agricultural products, such as vegetables, fruits, flowers, tea, livestock and poultry and aquatic products etc.
- III. Develop advanced and large-scale raw material projects such as petrochemical industry, synthetic materials, new building materials, etc. by taking advantage of the ports in Zhejiang and by using resources at home and abroad.
- IV. Introduce high and new technology, advanced applicable technology and modern management concept so as to develop traditional industries such as mechanical industry, textile industry, chemical industry, food industry and building materials industry, etc.
- V. Develop market-oriented hi-tech industrial projects such as software, photoelectron, microelectronics, biology, new medicine, new materials, environmental protection and photoelectrical-mechanical-electrical industry projects.
- VI. Develop modern service industry centering on modern logistics, e-commerce, tourism with distinctive features and intermediary service.
- VII. Develop production-oriented projects on new technology and equipment that utilize resources and renewable resources in a comprehensive way and that prevent and control environmental pollution.

### Appendices

2006-3-29 17:40:49

#### I. Notes for Catalogue of Encouraged Industries:

1. Prospecting and exploitation of oil and natural gas: In cooperation with Chinese partner only.
2. Exploitation of oil deposits (fields) with low osmosis: In cooperation with Chinese partner only.
3. Development and application of new technologies that can increase recovery factor of crude oil: In cooperation with Chinese partner only.
4. Development and application of new technologies for prospecting and exploitation of petroleum, such as geophysical prospecting, well-drilling, well-logging and downhole

operation, etc.: In cooperation with Chinese partner only.

5. Manufacturing of automobile and motorcycle: The proportion of foreign investments shall not exceed 50%.

6. International liner and tramp maritime transportation business: The proportion of foreign investments shall not exceed 49%.

7. International container multi-modal transportation: The proportion of foreign investments shall not exceed 50%. Foreign majority ownership will be permitted no later than Dec. 11, 2002. Wholly foreign ownership will be permitted no later than Dec. 11, 2005.

8. Road freight transportation companies: Foreign majority ownership will be permitted no later than Dec. 11, 2002. Wholly foreign ownership will be permitted no later than Dec. 11, 2004.

9. Wholesale, retail and logistic distribution of general goods: As described in No. 5 of Notes for Catalogue of Restricted Industries of the Appendix.

10 Accounting and auditing: In cooperation with Chinese partner and in the form of partnership only.

## II. Notes for Catalogue of Restricted Industries:

1. Cross-border automobile transportation companies: Foreign majority ownership will be permitted no later than Dec. 11, 2002. Wholly foreign owned enterprises will be permitted no later than Dec. 11, 2004.

2. Water transportation companies: The proportion of foreign investment shall not exceed 49%.

3. Rail freight transportation companies: The proportion of foreign investment shall not exceed 49%. Foreign majority ownership will be permitted no later than Dec. 11, 2004. Wholly foreign owned enterprises will be permitted no later than Dec. 11, 2007.

### 4. Telecommunication Companies

(1) Value-added services and paging services in basic telecommunication services: Foreign investments are permitted no later than Dec. 11, 2001 with the proportion of foreign investment not exceeding 30%. The proportion of foreign investment in joint venture shall not exceed 49% no later than Dec. 11, 2002, and shall be allowed to reach 50% no later than Dec. 11, 2003.

(2) Mobile voice and data services in basic telecommunication services: Foreign investments are permitted no later than Dec. 11, 2001 with the proportion of foreign investment not exceeding 25%. The proportion of foreign investment in joint venture shall not exceed 35% no later than Dec. 11, 2002 and shall be allowed to reach 49% no later than Dec. 11, 2004.

(3) Domestic and international services in basic telecommunication services: Foreign investments will be permitted no later than Dec. 11, 2004 with the proportion of foreign investment not exceeding 25%. The proportion of foreign investment in joint venture shall not exceed 35% no later than Dec. 11, 2006 and shall be allowed to reach 49% no later than Dec. 11, 2007.

5. Commodities trade, direct selling, mail-order selling, Internet selling, sales agent, franchising, commercial management; wholesale, retail and logistic distribution of grain,

cotton, vegetable oil, sugar, pharmaceutical products, tobacco, automobile, crude oil, capital goods for agricultural production; wholesale and retail of books, newspapers, periodicals; wholesale of product oil, construction and operation of gasoline station

(1) Commission agents' services and wholesale trade services (excluding salt, tobacco): Foreign invested enterprises are permitted no later than Dec. 11, 2002 with foreign investment not exceeding 50%, but can not engage in the distribution of books, newspapers, magazines, pharmaceutical products, pesticides, mulching films, chemical fertilizers, processed oil and crude oil. Foreign majority ownership will be permitted no later than Dec. 11, 2003. And wholly foreign-owned enterprises will be permitted no later than Dec. 11, 2004, and can engage in the distribution of books, newspapers, magazines, pharmaceutical products, pesticides, mulching films. The distribution of chemical fertilizers, processed oil and crude oil are permitted no later than Dec. 11, 2006.

(2) Retailing services (excluding tobacco): Foreign invested enterprises are permitted but can not engage in the distribution of books, newspapers, magazines, pharmaceutical products, pesticides, mulching films, chemical fertilizers, processed oil. The proportion of foreign investment can reach 50% no later than Dec. 11, 2002, and can engage in the distribution of books, newspapers and magazines. Foreign majority ownership will be permitted no later than Dec 11, 2003. And wholly foreign-owned enterprises will be permitted no later than Dec. 11, 2004, and can engage in the distribution of pharmaceutical products, pesticides, mulching films, and processed oil. The distribution of chemical fertilizers are permitted no later than Dec. 11, 2006. Foreign investors can not take majority ownership of a chain-store that has over 30 branch stores and engages in the distribution of automobiles (the limitation will be lifted no later than Dec. 11, 2006), books, newspapers, magazines, pharmaceutical products, pesticides, mulching films, processed oil, chemical fertilizers, grain, vegetable oil, sugar, tobacco, cotton.

(3) Franchising and wholesale or retail trade services away from a fixed location: Foreign invested enterprises are permitted no later than Dec. 11, 2004.

6. The distribution of audiovisual products (excluding movies): Foreign investments shall be permitted no later than Dec.11, 2004.

7. Goods leasing companies: Foreign majority ownership shall be permitted no later than Dec.11, 2002. Wholly foreign owned enterprises shall be permitted no later than Dec. 11, 2004.

#### 8. Agencies

(1) Ship agencies: The proportion of foreign investment shall not exceed 49%.

(2) Freight forwarding agencies (excluding those services specially reserved for Chinese postal authorities): The proportion of foreign investment shall not exceed 50% (not exceed 49% in the case of courier services). Foreign majority ownership shall be permitted no later than Dec. 11, 2002. Wholly foreign owned enterprises shall be permitted no later than Dec. 11, 2005.

(3) Cargo handling for foreign vessels: In forms of equity joint ventures or contractual joint ventures only

(4) Advertising agencies: The proportion of foreign investment shall not exceed 49%. Foreign majority ownership shall be permitted no later than Dec. 11, 2003. Wholly foreign owned enterprises shall be permitted no later than Dec. 11, 2005.

9. Insurance

(1) Non-life insurance companies: The proportion of foreign investments shall not exceed 51%. Wholly foreign owned enterprises shall be permitted no later than Dec. 11, 2003.

(2) Life insurance companies: The proportion of foreign investments shall not exceed 50%.

10. Securities company, securities investment fund management companies

(1) Securities companies: Foreign investments shall be permitted no later than Dec. 11, 2004 with the proportion of foreign investment not exceeding 1/3.

(2) Securities investment fund management companies: The proportion of foreign investment shall not exceed 33%. The proportion of foreign investment shall be allowed to reach 49% no later than Dec. 11, 2004.

11. Insurance brokerage companies: The proportion of foreign investment shall not exceed 50%. The proportion shall be allowed to reach 51% no later than Dec. 11, 2004. Wholly foreign owned enterprises shall be permitted no later than Dec. 11, 2006.

12. Companies of inspection, verification, attestation for imported and exported goods: Foreign majority ownership shall be permitted no later than Dec.11,2003. Wholly foreign owned enterprises shall be permitted no later than Dec.11, 2005.

Promulgated by the State Development and Reform Commission, the Ministry of Commerce on 2004-11-30

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# State Administration of Taxation

## Further clear that the enterprise income tax preferential policies for the implementation of the transition period caliber issues

Guo Shu Han [2010] 137

Written: 2010-04-31

Font: [ Big ] [ In ] [ Small ]

Provinces, autonomous regions, municipalities and cities under separate state and local taxation:

According to "Ministry of Finance State Administration of Taxation on the implementation of enterprise income tax preferential policies for a number of issues," (Cai Shu [2009] No. 69) of the relevant provisions of the present transition period for the implementation of enterprise income tax preferential policies to further clarify the issue as follows:

First, the tax rate on residents and businesses to choose half of the definition of specific tax

(A) resident companies were identified as high-tech enterprises, while in the "State Council on the Implementation of the Transitional Preferential Policies" (Guo Fa [2007] 39) The first to enjoy the enterprise income tax pursuant to article "two exemptions and three reductions half", "five five half-free" and regular reduction of tax benefits of the transition period, the applicable rate of income tax resident enterprises can choose the applicable tax rate in accordance with the transitional period and for half the taxes to expire, or choose to apply high-tech enterprises 15% tax rate, but can not enjoy the half tax rate of 15%.

(B) the resident companies were identified as high-tech enterprises, and also meet the software manufacturers and IC manufacturing enterprises regularly half income tax concessions, and the residents of the enterprise income tax rate applicable to high-tech enterprises may choose to apply the 15% tax rate, you can also choose to follow the statutory tax rate of 25% tax by half, but can not enjoy the half tax rate of 15%.

(C) of the resident enterprises of the PRC Enterprise Income Tax Law of sixteen Eight of the ordinance, the eighth seventeen, eighth and ninth eighteen ten corporate income tax to provide for half the income, is part of the resident enterprise shall be in respect of income accounted for separately and in accordance with the statutory tax rate of 25% enterprise income tax reduced by half.

(D) high-tech enterprises to reduce the tax rate applicable conditions are a continuation of the policy change but not included in the transition policy, therefore, all resident enterprises approved by the tax authorities for 2007 and previous high-tech enterprises enjoy preferential corporate income tax or new technology, 2008 and subsequent years have not been identified as high-tech enterprises, since 2008 shall not apply to the 15% rate of high-tech enterprises, does not apply to "State Implementation of the Transitional Preferential Policies" (Guo Fa [2007] 39) the first second paragraph of the transition rate, but should be from 2008 for the statutory tax rate of 25%.

Second, on the residents out of bodies corporate tax rate of implementation of the transition period

Resident enterprises approved by the tax authorities in accordance with the years prior to 2007, "State Administration of Taxation on branches of foreign-invested enterprises income tax rate applicable to the issue of notice" (Guo Shu Fa [1997] 49), and its branches in different tax jurisdictions can be enjoyed alone income tax rate reduction, and may continue to reduce the tax rate applicable to the transition alone policy; offers transitional period after the reunification in accordance with "the State Administration of Taxation on the issuance of" cross-regional business corporate income tax collection and management summary of the Interim Measures "notice" (Tax [2008] No. 28) the provisions of Article XVI.

State Administration of Taxation

二〇一〇年四月二十一日

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## China Tax Center

# China Tax & Investment Express

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This CTIE does not replace our China Tax & Investment News which will continue to be prepared and distributed to provide more in-depth analysis of tax and business developments in China.

### Tax circulars

- The further clarification of certain issues related to the implementation of transitional arrangements of Corporate Income Tax preferential treatments (Guoshuihan [2010] No. 157)

#### Synopsis

On 21 April 2010, the State Administration of Taxation (SAT) issued Circular Guoshuihan [2010] No. 157 (Circular 157) to further clarify issues related to the implementation of transitional arrangements of Corporate Income Tax (CIT) preferential treatments based on Circular Caishui [2009] No. 69 (Circular 69) which addressed certain issues related to the implementation of CIT preferential policies.

Circular 157 further clarifies the following:

- Recognized High-and-New Technology Enterprises (HNTEs) that are also eligible for the tax transitional arrangements of CIT preferential treatments, e.g., the "two plus three" or "five plus five" tax holidays with two or five year CIT exemption followed by three or five year CIT 50% reduction, can choose to enjoy either the tax holiday with the applicable CIT rate according to Circular Guofa [2007] No. 39 (Circular 39) or the 15% preferential CIT rate of HNTEs without any reduction.
- Similar to the above, the HNTEs, which are also eligible for the tax preferential treatment of 50% CIT reduction with fixed term due to the status of qualified software companies or semiconductor companies, can choose to enjoy either the tax holiday with the 50% CIT reduction at the 25% statutory rate or the 15% preferential CIT rate for HNTEs without any reduction.
- The tax resident enterprises (TREs) that generate revenue stipulated in Articles 86, 87, 88 and 90 of the Implementation Regulations of the CIT Law of the People's Republic of China ("New CIT Law") should book such revenue separately and enjoy the 50% CIT reduction at the statutory rate of 25%.

- Any prior HNTes which have lost the HNTe status since 1 January 2008 should report CIT at the rate of 25% from 2008.
- Branches of the TREs, which were eligible for the preferential CIT rate according to Circular Guoshulfa [1997] No. 49 (Circular 49) can enjoy the transitional arrangements of preferential CIT rates until maturity; the branches should then follow the requirements of Article 16 of Circular Guoshulfa [2008] No. 28 (Circular 28) on provisional CIT filing and payment upon completion of preferential treatment.

#### Our observations

After the issuance of Circular 39, different ministries or departments issued their special notices, such as Circular Guokefahuo [2008] No.362 (Circular 362) and Circular Caishui [2009] No.69 (Circular 69). The different levels of authorities behind the different circulars as well as the different understandings from the different enterprises and tax authorities cause obscurity in tax administration execution. Many discussions were carried out on this topic. The new Circular 157 has further confirmed the scope of the implementation of transitional arrangements of CIT preferential treatment so that it provided a uniform execution standard for different tax authorities and at the same time guidelines and indications for taxpayers to project over their tax preferential treatments. Taxpayers should consider the implication behind and take special attention as to manage the possible increase of tax cost after the tax preference transitional period.

Per the reading of Circular 157, enterprises may be able to maximize their tax benefits by having been recognized as HNTes during this transitional period, they will also be able to apply for the most beneficial preferential treatments. It would be best for tax efficiency if the enterprises' status of HNTes can be assessed before the end of 2012. And for qualified software companies or semiconductor companies, it will be best if they can be granted with the status of HNTes before the expiration of the "two plus three" tax holiday.

This circular is also important for companies with branches of different applicable tax treatments. Under the former CIT system, branches were divided into two groups: independent accounting branches and non-independent accounting branches. Between the two, only the independent branches are principal CIT payers. New CIT law removed such clause and disregarded the CIT payer status of all branches, where all branches would only consolidate their results with headquarters for tax filing purposes. Circular 157 basically resumes the old arrangement and provides rooms for independent accounting branches to enjoy transitional arrangements of CIT preferential treatments, if any. Those companies with branches entitled to preferential treatments would certainly find this beneficial.

You may click this link to access the full content of Circular 157:

<http://www.chinatax.gov.cn/n8136506/n8136593/n8137537/n8138502/9683114.html>

You may click this link to access the full content of Circular 69:

<http://202.108.90.130/n8136506/n8136563/n8193451/n8946067/n8951069/9230943.html>

You may click this link to access the full content of Circular 39:

[http://www.gov.cn/jwqk/2007-12/29/content\\_847112.htm](http://www.gov.cn/jwqk/2007-12/29/content_847112.htm)

You may click this link to access the full content of Implementation Regulations of the New CIT Law:

[http://www.gov.cn/jwqk/2007-12/11/content\\_830645.htm](http://www.gov.cn/jwqk/2007-12/11/content_830645.htm)

You may click this link to access the full content of Circular 49:

<http://www.chinatax.gov.cn/n480462/n480513/n480979/n554169/998609.html>

You may click this link to access the full content of Circular 28:

<http://www.chinatax.gov.cn/n480462/n480513/n4809902/7634899.html>

#### The launch of tax special inspection in 2010 (Guoshulfa [2010] No. 35)

##### Synopsis

In order to further regulate taxation procedures for developing a better tax environment and stabilizing tax collection, on 16 April 2010, SAT announced a circular regarding the launching of special tax inspection in 2010, i.e., Circular Guoshulfa [2010] No. 35 (Circular 35). Circular 35 provides a list of targets (including industries, activities and entities) that will be subject to tax inspections, the time table, and other requirements. Some highlights on Circular 35 include:

- Inspectorial Activities
  - Industries subject to special tax inspection
    - Instructional Inspection
      - Real estate and construction
      - Pharmaceutical distribution
      - Transportation
    - Non-resident taxation

#### Recommended Inspection

For-profit medical and educational institutions

- Individual income tax filing status for individuals with annual taxable income of more than RMB120,000

Activities specialized in different regions

In addition, all tax bureaus in different locations would continue to perform the inspection on reporting of sales-restricted stock disposal in 2009.

#### 1. Regional specialized inspection

All tax bureaus in different locations would perform inspections on the areas that created a lot of confusions and unlawful practices over taxation; special focuses would be paid on falsification of transportation invoices and defrauding tax return for export refund. The SAT would pick some areas that tax collection is particularly challenging to supervise and investigate directly.

#### 2. The inspection of key taxpayers

- ▷ The SAT would unitarily investigate all major taxpayers and their branches.
- ▷ The SAT will unitarily inspect 50 to 100 taxpayers with greater scale of business operations for the implementation of self-inspections.

#### 3. The SAT would specify the enterprises for tax inspections

Details regarding items c and d above will be announced in the future.

#### 4. Time table

The implementation of special taxation inspection for specified industries and locations has commenced in the beginning of March 2010, lasting till the end of October 2010. And for the key taxpayers' inspection, timing will be decided separately.

#### 5. Requirements

The circular also specifies the SAT's requirements on the various levels of tax authorities over the tax inspection exercise, which include intensifying organizational leadership, scientific and thorough planning, improving working mechanism and creative methodologies.

#### Our observations

*The SAT has been having a practice to plan on the tax inspection exercise on a yearly basis. Although Circular 35 is a directive from the SAT to the lower-level tax authorities, it provides a good reference for taxpayers to keep themselves alert on the direction of tax inspection so that they can get themselves prepared. In fact, some of the items as listed in Circular 35, e.g., the self-inspections on certain large-sized enterprises have already been taken place recently. Taxpayers who are within the scope of inspection should take cautions of this; if necessary, an internal health check would be helpful to get better prepared and necessary actions should be taken to rectify any issues identified before the tax authorities come knock on the door.*

You may click this link to access the full content of the circular 35:  
[http://www.zhicpa.org/news\\_view.asp?newsid=568](http://www.zhicpa.org/news_view.asp?newsid=568)

#### Implementation of tax policies to further accelerate the development of energy conservation and emission reduction (Guoshuihan [2010] No. 180)

##### Synopsis

On 6 May 2010, the SAT issued a notice regarding the implementation of tax policies to accelerate the development of energy conservation and emission reduction, i.e., Circular Guoshuihan [2010] No. 180 (Circular 180) ordered by the State Department. Circular 180 specifies four key elements detailing reasons and procedures for tax authorities to execute.

- ▷ Develop the understanding of using taxation as a means to achieve energy conservation and emission reduction; since 2010 is a crucial year in the Eleventh Five-Year-Plan for the success of such initiative.
- ▷ Strengthen the implementation of tax policies that would enhance energy conservation and emission reduction.
- ▷ Strict implementation of the promotion, consultation and training plan of the tax policies over energy conservation and emission reduction.
- ▷ Strengthen the tax collections over taxpayers with high energy consumption and high emission, and over production. The local tax bureaus should consider targeting these taxpayers for tax inspection purposes. For entities which have been already targeted by the SAT to perform special inspection, the inspection should be intensified.

**Our observations**

*Circular 180 is a good demonstration of how taxation can play an important role over the development direction of the country. While energy conservation and emission reduction is on the top of the agenda in many countries, China, as a general practice, uses taxation as a means to achieve the goal over this initiative. The interesting point of Circular 180 is its mixed effect; it emphasizes the incentives that the government has put into place and at the same time guides the tax authorities to keep an eye on those who may not have behaved very well and encourages the authorities to use taxation as a negative enforcement to increase the awareness of the relevant taxpayers. Taxpayers that may be entitled to the benefits should take proper action to apply for the respective benefits and for those who are at the edge of facing challenge should take immediate action to avoid any negative consequence.*

You may click this link to access the full content of the circular 180:

<http://www.chinatax.gov.cn/n8136596/n8136593/n8137537/n8138502/9682389.html>

**The 2010 Investigation on the sources of Corporate Income Tax (Caishui [2010] No. 28)****Synopsis**

On 5 May 2010, the Ministry and Finance (MOF) and the SAT jointly issued Circular Caishui [2010] No. 28 (Circular 28) regarding the 2010 investigation on sources of CIT.

Circular 28 stipulates that the range, the content, the arrangement and the requirements of the investigation. As an addition compared to the 2009 version, this circular included a new article about speed investigation of key sources of CIT nation-wide. The following is the details:

▷ The range of the speed investigation :

Principles of selecting enterprises for investigation:

- ▷ No less than 10 enterprises and no less than 3 industries will be investigated in each province (autonomous regions and municipalities)
- ▷ Main economic characteristics should be reflected
- ▷ Large-scale enterprises with strong correlation with the national economics should be selected
- ▷ The amount of actual tax paid in the previous year is on top place of the province (autonomous regions and municipalities)
- ▷ Instead of investigating the listed companies, the groups which hold the listed companies should be investigated

The provincial finance department should select representatives of key enterprises based on the above principles and submit the list of key enterprises to the Ministry of Finance for confirmation.

▷ The contents of the speed investigation:

Documentation subject to speed investigation: corporate quarterly financial report, "return on the provisional CIT paid through quarterly tax filings" business-related accounting items, and other information. Details should be filled in accordance with the "Form of speed investigation of key CIT sources" and the "Analysis form of reasons for changes in key indicators of national key corporates".

▷ The schedule of the investigation:

Each region should complete the selection of enterprises and report to the taxation department of Ministry of Finance before 31 May 2010. The speed investigation of key CIT sources began from the first quarter of 2010. Every provincial finance department should report to the Ministry of Finance within 30 days from the date of quarter end. And the period for the reporting of enterprises and lower level financial departments will be decided by the provincial finance department. Data of 2010 Q1 could be submitted simultaneously with the Q2 data within 30 days from the date of the end of 2010 Q2.

Circular 28 took effect on 5 May 2010.

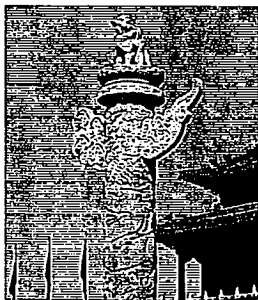
You may click this link to access the full content of the circular 28:

[http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201005/20100512\\_291588.html](http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201005/20100512_291588.html)

# News Flash

## China Tax and Business Advisory

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Based on our rich and deep experience with a strong clientele in technology-related industries, our Technology-Related Tax Service Team appreciates their particular needs for tax services in China. We have specialists to provide tax advisory and compliance services to this special group of clients, in particular to assist in assessing and applying for the technology-related tax incentives offered in the Chinese tax regulations; and planning and resolving challenging tax uncertainties.

### Further Clarification or More Confusion on Transitional Corporate Income Tax Treatments for New/High Technology Enterprises?

In late December 2007, the State Council issued an important tax circular, Guofa [2007] No.39 ("Circular 39"), to address the transitional treatments of tax incentives available to old enterprises established prior to the promulgation of the new Corporate Income Tax ("CIT") Law ("Old Enterprises")<sup>1</sup>. There is one important principle explicitly stipulated in Circular 39 that an Old Enterprise has to make an irrevocable choice between the transitional treatments and the preferential policies under new CIT regime, to prohibit overlapping of tax incentives. Nevertheless, during the past two years, confusion kept coming when some Old Enterprises, particularly New/High Technology Enterprises ("NHTEs"), were required to choose between the available transitional treatments and preferential treatments under the new CIT regime, as there were different interpretation adopted by different local-level tax bureaux on this principle of Circular 39.

The State Administration of Taxation ("SAT") has issued several circulars to make clarification<sup>2</sup>. The latest one is a tax circular, Guoshuihan [2010] No.157 ("Circular 157") promulgated in April 2010, attempting to clarify the transitional CIT treatments for NHTEs and some other important scenarios. However, while this Circular 157 is providing further clarification, it also helps add more confusion.

In this issue of News Flash, we would like to share the salient points of this new circular as well as our observations.

### Salient Points of Circular 157

- *Applicable CIT rate for NHTEs*

The following table summarizes the applicable CIT rate for NHTEs based on the relevant articles of Circular 157.

<sup>1</sup> According to Circular 39, the enterprises entitled to tax benefits from the transitional preferential policies should be Chinese enterprises established prior to 16 March 2007. The scope of projects eligible to tax benefits from transitional preferential policies was defined in the list attached to Circular 39.

<sup>2</sup> Circular CaiShui [2008] No. 21, CaiShui [2009] No. 69, and Circular Guoshuihan [2009] No.203.

Preferential treatments available	New NHTe status under new CIT regime	Applicable CIT rate		Remarks
		Option 1	Option 2	
Half-rate reduction of unutilized tax holiday for Old Enterprises (e.g. "2+3 holiday" and "5+5 holiday") with transitional phase-in rates <sup>3</sup>	Yes	Half of the applicable phase-in rates, i.e., 9%, 10%, 11%, 12% and 12.5% for 2008 to 2012 respectively	15%	Half-rate reduction cannot be applied on the preferential rate of 15% for New NHTEs as per Circular 157.
	No	Half of the applicable phase-in rates, i.e., 9%, 10%, 11%, 12% and 12.5% for 2008 to 2012 respectively	Not available	
Half-rate reduction of unutilized tax holiday for Old Enterprises (e.g. "2+3 holiday" and "5+5 holiday") without transitional phase-in rates	Yes	12.5% under the half-rate reduction period	15%	Half-rate reduction cannot be applied on the preferential rate of 15% for New NHTEs as per Circular 157.
	No	12.5% under the half-rate reduction period	Not available	
Half-rate reduction of tax holiday for "Software production enterprises" and "IC production enterprises"	Yes	12.5% under the half-rate reduction period	15%	Half-rate reduction cannot be applied on the preferential rate of 15% for New NHTEs as per Circular 157.
	No	12.5% under the half-rate reduction period	Not available	
Preferential rate of 15% for Old NHTEs approved under the Foreign Enterprise Income Tax ("FEIT") regime	No	25%	Not available	Old NHTe, where it is not qualified as NHTe under new CIT regime, is not eligible to neither the transitional phase-in rates nor the preferential CIT rate of 15% for New NHTEs under new CIT regime.

- **Half-rate treatment on preferential projects under CIT regime:** Where a tax resident enterprise ("TRE") is applying the half-rate reduction on income generated from the following projects as stipulated in the Detailed Implementation Rules ("DIRs") to the CIT Law, it shall segregate the income for these projects and apply the reduced half-rate of 12.5% (half of the statutory CIT rate of 25%) to such income.
  - Cultivation of flower, crop for tea and other beverage and spice crop
  - Sea water fish farming, fresh water fish farming
  - Public basic infrastructure projects
  - Environmental protection, energy and water conservation projects
  - Transfer of technology (portion of income that exceeds RMB5 million)
- **Transitional treatments for head office and branches:** Where branches of Old Enterprises were subject to a lower income tax rate under the FEIT regime<sup>4</sup>, the branches may separately enjoy the transitional phase-in rates available in their regions until the end of the transitional period. During such period, they may adopt "independent accounting" to account for their relevant profits. After such period, the branches should follow the profit allocation methods as stipulated in a specific circular, Guoshuifa (2008) No. 28.

<sup>3</sup> Circular 39 generally allows certain qualified enterprises to: 1) enjoy phase-in rate from 18% to 25% during the 5-year period from 2008 to 2012; and 2) continue to use the unutilized tax holidays until expiry.

<sup>4</sup> Such policy was in accordance with Circular Guoshuifa [1997] No.49 ("Circular 49").

## PwC Observations

### Implications for NHTEs

- The stipulation of "prohibition of overlapping tax incentives" under Circular 39 has been an unclear issue for many Old Enterprises who are eligible to both transitional treatments and preferential treatments under the new CIT Law. There have been controversies about under what circumstances the incentives would be regarded as "overlapping". One of the key concerns of those Old Enterprises who have obtained the NHTe qualification was whether they should be allowed to apply the unutilized tax holiday based on the preferential rate of 15% for NHTEs, resulting in 7.5%. Now, Circular 157 swept away such uncertainty but not in a favourable way.

We believe the rationale behind it is that even for the newly established NHTEs in those designated areas in 2008 or beyond, they could only be eligible for the half-rate reduction based on 25% over their "2+3 tax holiday", instead of half of 15%.<sup>5</sup> So, it would not be sensible to give more preferential benefit of 7.5% to the Old NHTEs. Circular 157 is essentially requiring Old NHTEs to make an election between the CIT incentives for NHTEs (i.e., flat rate at 15%) and transitional treatments for other qualifications (e.g., 5-year transitional phase-in rates coupled with "2+3 holiday" for manufacturing FIEs).

Old NHTEs would not face a grandfathered "half-rate reduction" for their qualification of NHTe under most cases.<sup>6</sup> The only exception where Old NHTEs could encounter a grandfathered "half-rate reduction" is those located in Beijing Zhongguancun Area ("BJ ZGC")<sup>7</sup> which were entitled to "3+3 holiday". We observed that for the Old NHTEs in BJ ZGC, the Beijing local-level tax bureau is holding the view that the relevant provisions in Circular 157 do not apply to these NHTEs there. Rather, the Beijing local-level tax bureau has allowed the 7.5% rate during the half-rate reduction holiday for Old NHTEs in BJ ZGC. In the absence of further clarification on this issue from the SAT, these NHTEs are highly recommended to carefully study and assess the possibility of change to their adopted tax rate. Timely communication with their in-charge tax bureaus is also advisable.

Another uncertainty was how to interpret the stipulation of "an irrevocable election between the transitional treatments and the preferential policies under new CIT regime" as per Circular 39. Now Circular 157 has clarified that once the NHTe elected to adopt the transitional phase-in rates until the 5-year period expires before they could apply the 15% preferential rate. However, in practice, NHTEs may encounter more complex situations than that having been addressed by Circular 157. For instance, what if an enterprise which was only qualified as NHTe in 2009, but it had already adopted the 5-year transitional phase-in rates in 2008; and then shall it still be allowed to make an election for 2009 and beyond? So far, we observed that there are different interpretation and treatments applied by different local-level tax bureaus to such situation.

- The eligible preferential CIT policies (including both tax holiday and reduced CIT rate) respectively for NHTEs and Software Production Enterprises ("SPE") / IC Production Enterprises ("ICPE") under the new CIT regime are summarized as follows:

	Preferential Policies
NHTEs	• Reduced CIT rate at 15% <sup>8</sup>
Newly established NHTEs in designated areas	• Reduced CIT rate at 15% • "2+3 tax holiday", while half-rate reduction shall be calculated based on the standard rate of 25% <sup>9</sup>
Newly established SPEs and ICPEs	• "2+3 tax holiday" <sup>10</sup>

<sup>5</sup> As per Article 2 of Circular Guofa [2007] No. 40

<sup>6</sup> As per Item 24 and 30 in the appendix to Circular 39

<sup>7</sup> As per Item 25 in the appendix to Circular 39

<sup>8</sup> Article 28 of the CIT Law

<sup>9</sup> Article 2 of Circular Guofa [2007] No. 40

<sup>10</sup> Article 1.2 of Circular Caishui [2008] No. 1

Circular 157 addresses the situation where an Old Enterprise is qualified as both an NHTe and an SPE (or ICPE) and has to elect between the 15% rate for NHTe or half of the standard rate of 25% during the half-rate reduction period available by virtue of their qualification of SPE / ICPE. Such stipulation is not surpassing the tax benefits for NHTes or SPEs / ICPEs offered by previous tax circulars as stated in the above table. It also reinforces the principle that half-rate reduction treatment shall not be applied to the 15% rate for NHTes.

- Last but not least, Circular 157 has confirmed that the preferential CIT rate for NHTes is one of the preferential policies where the qualifying criteria have changed under the new CIT regime. This explains why such benefit had not been covered in the list of transitional preferential policies under Circular 39, but on the other hand, the unutilized tax holidays for NHTes under FEIT regime could be grandfathered. Please be noted that Old NHTes with unutilized tax holidays are required to be qualified as New NHTes based on the qualifying criteria under the new CIT regime before they could be eligible for the grandfathered tax holidays<sup>11</sup>. In view of the above, obtaining the NHTe status under the CIT regime should be the top priority for Old NHTes in securing the available preferential treatments.

#### *Effective date of Circular 157*

- The effective date is not specified in Circular 157. It seems different than the approach in the prior SAT circulars related to the CIT regime which usually stated the effective date to be 1 January 2008. It is possible that the SAT does not intend to bring Circular 157 effective retrospectively. As such, enterprises adopting positions different than those set out in Circular 157 in the prior two years would not be required to make retrospective adjustments. This view appears to echo the stance set out in the SAT's Order [2010] No.20<sup>12</sup> issued early this year, which regulates the administrative procedures for formulation of tax circulars within the Chinese tax organisation. This stance of "non-retrospective effect" is considered fair and practical to taxpayers.

#### *Conclusion*

- Up to this stage, the Chinese tax authorities are still struggling with the transitional treatments for the tax incentives brought forward from the FEIT regime over to the new CIT regime over 2008. It is something inevitable due to the rather complex tax incentive schemes generously allowed under the FEIT regime. It is a no easy task for the SAT to come up with a coherent, reasonable, and simple alignment of all of them. Even Circular 157 has left some issues unanswered or even added more confusion.
- Such situation has caused uncertainties and even risks to taxpayers who wish to enjoy the tax incentives. We would recommend Old Enterprises, especially NHTes to carry out careful analysis and examination as follows:
  - To review and assess the eligibility to the transitional tax treatments or preferential tax treatments based on the latest tax rules;
  - To ensure that income subject to tax incentive under the new CIT regime has been accounted for separately;
  - To review whether the tax policies adopted comply with the latest tax rules;
  - To keep the dialogue with the in-charge local-level tax bureaus to appreciate their local implementation; and
  - To closely monitor the development of the uncertain CIT policies from the SAT.

<sup>11</sup> As per Circular Guoshuihan [2009] No. 203

<sup>12</sup> As per Article 13 of SAT's Order [2010] No.20, tax circulars shall not take retrospective effect, unless it is for the benefits and rights of the targets (i.e. taxpayers in relevant cases).



In the context of this News Flash, China or the PRC refers to the People's Republic of China but excludes Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan Region.

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# Tax Feature

## New Enterprise Income Tax Law in China

by Robert J. Wagner, II, partner of BKD, LLP, Michael To, executive director and Newton Shum, tax manager of Mazars Tax Services Limited. BKD, LLP and Mazars Tax Services Limited are members in Praxity, AUSA, a global alliance of independent firms.

In China, 2007 was an important year for enterprise income tax reform. This article aims at providing you with background information of the recent development of the new enterprise income tax law during 2007 and highlighting key elements you should be aware of when considering investing in China.

### Background

On March 16, 2007, the National Peoples' Congress in China passed the New Enterprise Income Tax Law (NEITL), effective January 1, 2008.

The issuance of the NEITL is viewed as a milestone for China's enterprise income tax reform and brought China's corporate tax regime in line with other developed countries.

Before the issuance of the NEITL, domestic enterprises (DE) and foreign invested enterprises (FIE) in China were taxed under different enterprise income tax laws. The NEITL unified the enterprise tax law applicable to both DE and FIE.

The NEITL is a relatively short notice (it only contains 60 articles) and mainly sets out a framework guiding the future evolution of China's enterprise income tax regime. It introduces a number of significant rules, e.g., types of tax incentives available, anti-avoidance provisions, etc., without providing much detail.

On December 6, 2007, the State Council approved the detailed Enterprise Income Tax Law Implementation Rules (EITLIR), and it was publicly released on December 11, 2007. The EITLIR contains

133 articles and further elaborates some of the terms and rules mentioned in the NEITL.

As of yet, the EITLIR is far from complete, and further notices will be issued by various Chinese authorities from time to time addressing specific tax areas that have not yet been covered by the EITLIR. As of today, the State Council has passed and issued two additional notices, *GuoFa (2007) no.39* and *GuoFa (2007) no.40* on December 26, 2007, regarding the transitional and grandfathering treatments in respect to tax incentives offered under the old tax laws.

### Key Issues Affecting Foreign Investors

If you plan to invest in China, you need to know how the NEITL and the EITLIR will affect your investment, and the degree of impact. In this section, we highlight the key areas contained in the NEITL and EITLIR that you should be aware of when formulating your China investment plan.

#### 1. Enterprise Income tax (EIT) rate

EIT rates effective January 1, 2008 are as follows:

Unified EIT rate effective January 1, 2008	25%
Small-scale/low-profit enterprises	20%
High/new technology enterprises	15%

**Important** – Although details regarding the qualification of high/new technology enterprises have not yet been released, investors should consider the technical contents of their investment which may have the potential to qualify for a lower preferential tax rate.

#### 2. "Tax resident enterprise" and "non-tax resident enterprise"

The NEITL segregates enterprises into two categories: tax resident enterprises and non-tax resident enterprises. Tax resident enterprises will be subject to EIT on worldwide basis, while non-tax resident enterprises will only be subject to EIT on China sourced income.

The NEITL defines the meaning of "tax resident enterprises" to include enterprises incorporated outside China, e.g., a company incorporated under the laws of Hong Kong, with their place of effective management situated in China.

The "place of effective management" is elaborated in the EITLIR. Instead of merely looking at where the board of directors meetings of an enterprise are held, the EITLIR adopts a more comprehensive, but at the same time quite vague, approach to define the place of effective management as "the place where a substantive overall management and control of the production and business operation, personnel, accounting, properties, etc., of an overseas enterprise is situated." No universal rules are available to ascertain the tax residency of overseas enterprises, and each case will be assessed by reviewing its own facts.

**Important** – Foreign investors should plan carefully when formulating their investment in China to ensure that the overall management and control functions of their overseas business activities/entities are not situated in China. Appropriate structures may be adopted to minimize the risk of being considered as a tax resident enterprise in China. Otherwise, their overseas business activities/entities may be deemed as a "tax resident enterprise" and hence exposed to worldwide tax in China.

### 3. Withholding tax

Before January 1, 2008, dividends remitted to foreign investors from FIEs in China are exempt from withholding tax.

The NEITL indicates that effective from January 1, 2008, outbound China sourced passive income (including dividends, royalties, interest, etc.) will be subject to withholding tax at 20%. The EITLIR reduces the withholding tax rate to 10%.

**Important** – The removal of the withholding tax exemption on dividends can increase foreign investors' overall global tax liability. Therefore, they should consider investing into China via intermediate holding companies set up in countries having favorable tax treaties with China. The investment structure should consider the investors' exit strategy.

### 4. Tax Incentives

The NEITL provides a number of tax incentives, including exemption or reduction in EIT rates, reduction in taxable income or tax payable and extra deduction on certain types of expenses. The EITLIR further elaborates the details of these tax incentives. However, many details are still pending further clarification.

Some of the tax incentives are discussed in detail below:

**High/New Technology Enterprises** – As mentioned above, qualifying high/new technology enterprises may enjoy a reduced EIT rate at 15%. According to the EITLIR, in order to obtain the "high/new technology enterprises" qualification, an enterprise is required to possess several characteristics, e.g., R&D personnel should be more than a prescribed percentage of total number of employees, which details will be promulgated later.

One of the characteristics is that a qualifying high/new technology enterprise should own a core proprietary intellectual property, which foreign investors are often reluctant to hold in China, given the inherent challenges with protecting intellectual property in China. Currently, it is uncommon for multinational corpora-

tions to transfer the ownership of their core proprietary intellectual properties to their Chinese subsidiaries due to various reasons, including intellectual properties protection concerns. In addition, there are potentially severe U.S. income tax consequences associated with transferring intellectual property to a foreign corporation.

**Important** – Even the NEITL provides such preferential EIT rate to qualifying high/new technology enterprises. Foreign investors should consider the pros and cons before transferring the ownership of their core proprietary intellectual properties to their Chinese subsidiaries.

**Venture Capital Enterprises** – A venture capital enterprise investing in the equity of a non-listed small or medium high/new technology enterprise for more than two years can credit 70% of its investment amount against its taxable income with an indefinite carry-forward period.

**Tax Exemption/Reduction on Income from Encouraged Projects** – Some general preferential tax treatments granted under the old tax laws are no longer available under the NEITL. Instead, preferential tax treatments are granted depending on the types of projects invested by investors.

Income derived from eligible encouraged projects can either be exempted from EIT or enjoy a reduced EIT rate.

Encouraged projects include those in Table 1 below.

Detailed requirements regarding the qualification of these projects have not yet been promulgated.

### 5. Grandfather rules

The State Council has passed and issued two notices, *GuoFa (2007) no.39* and *GuoFa (2007) no.40* on December 26, 2007, regarding the transitional and grandfathering treatments in respect to tax incentives offered under the old tax laws.

*GuoFa (2007) no.39* – This notice provides the grandfathering treatment for enterprises (both DEs and FIEs), which have obtained business licenses before March 16, 2007 and are entitled to preferential tax treatments under the old tax laws.

This notice confirms the following:

- Enterprises subject to a reduced tax rate of 15% before 2008: The EIT rate will increase gradually over five years according to the following table:
 

Year	EIT rate
2007	15%
2008	18%
2009	20%
2010	22%
2011	24%
2012	25%
- Enterprises subject to a reduced tax rate of 24% before 2008: The EIT rate will increase to 25% in 2008.
- Various tax holidays under old tax laws (most of the tax holidays were only available to FIEs, while some were also available to DEs):
  - For those enterprises that have already started their tax holidays before 2008, they are able to enjoy the remaining tax holidays until expiration

**Table 1 – Encouraged Projects & Tax Incentives Available**

Type of projects	Tax incentives available
Agricultural, forestry, animal husbandry and fishery projects	Exemption from EIT or 50% tax reduction
Infrastructure projects	
Environmental protection, energy and water conservation projects	Three years exemption from EIT, plus three years half tax reduction period

- For those enterprises that have not yet started their tax holidays before 2008, the tax holidays will be deemed to start from January 1, 2008, and they are able to enjoy the remaining tax holidays until expiration

**GuoFa (2007) no 40** – This notice mainly addresses the tax incentives available to high/new technology enterprises newly established, i.e., established after January 1, 2008, in certain locations, as stipulated under Article 57 of the NEITL. Details as follows:

- There are six zones, including five economic zones (Shenzhen, Zhuhai, Shantou, Xiamen and Hainan) and Shanghai Pudong New Area
- These newly established high/new technology enterprises should comply with the requirements stipulated by the NEITL and EITLIR (discussed in Section 4 above)
- Tax incentives available to these enterprises are "2 years exemption followed by 3 years half tax reduction." The tax holiday will commence in the year when the enterprise starts generating income

#### 6. Anti-avoidance provisions

The NEITL introduces a number of anti-avoidance provisions and the EITLIR further elaborates the same.

Anti-avoidance rules include:

- Compulsory transfer pricing (TP) documentation requirement
- Thin capitalization provision
- Controlled foreign corporation (CFC) provision
- General anti-avoidance provision

EITLIR does not provide a very detailed elaboration of the above rules, and further guidance will likely be issued subsequently.

Of the above anti-avoidance provisions, TP may pose the biggest challenges to foreign investors. After the issuance of the NEITL and EITLIR, it is expected that the Chinese tax authorities will turn their focus to TP regulations and enforcement.

**Important** – When formulating the investment plan in China, foreign investors should consider the basis and calculation methods of inter-company pricing adopted in transactions with related companies. In addition, foreign investors need to ensure related party transactions are properly supported by documents. Assistance from a professional is highly recommended. Related party service fees may be deductible, but such fees should be arm's length and supported with proper transfer pricing documentation.

#### 7. Deductions

According to the NEITL and EITLIR, deductibility of some expenses are limited to certain levels or restricted to certain conditions. See Table 2 below.

#### Closing Comment

The issuance of the NEITL and EITLIR marks the launch of China's enterprise income tax reform, but there is still a long way to go. There are still a lot of uncertainties surrounding the NEITL, and further explanations from

the Chinese tax authorities will be announced from time to time. During this transitional period, we expect that foreign investors investing in China will likely be facing uncertainties on various tax positions over many important areas.

We will closely follow future developments of the China enterprise income tax reform. Questions will arise after reading this alert. Further professional opinion may be required.

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**Table 2 – Deductibility of Some Expenses is Limited or Restricted**

Type of expense	Treatment
Entertainment expenses	60% of expenses are tax deductible, subject to a cap of 0.5% of annual turnover
Goodwill acquired	Not deductible until disposal or liquidation
Advertising and promotion expenses	Capped at 15% of annual turnover and remained portion can be carried forward for future deduction
Employee welfare expenses	Deductible up to 14% of total salaries
Employee education expenses	Deductible up to 2.5% of total salaries
Charitable donations	Deductible up to 12% of accounting profit

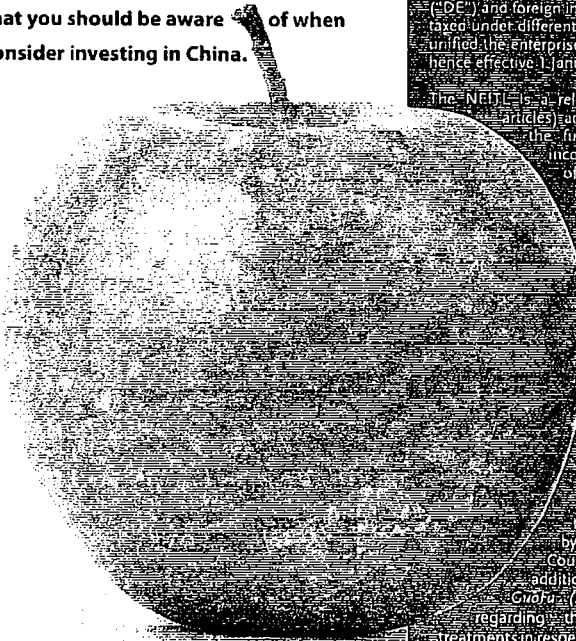


MAZARS

## NEW ENTERPRISE INCOME TAX LAW IN CHINA



2007 was an important year for China's enterprise income tax reform. This Newsletter aims at providing you with background information of the recent development of the new enterprise income tax law during 2007, and highlighting key elements that you should be aware of when consider investing in China.



### Background

On 16 March 2007, the National People's Congress in China passed the New Enterprise Income Tax Law ("NEITL") effective 1 January 2008.

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Prior to the issuance of the NEITL, domestic enterprises ("DE") and foreign investor enterprises ("FIE") in China were taxed under different enterprise income tax laws. The NEITL unified the enterprise tax law applicable to both DE and FIE, hence effective 1 January 2008.

The NEITL is a relatively short notice (only contains 60 articles) and mainly sets out a framework guiding the future development of China enterprise income tax regime. It introduces a number of significant rules (e.g. types of tax incentives available, anti-avoidance provisions, etc.) without providing much details.

On 16 December 2007, the State Council approved the detailed Enterprise Income Tax Law Implementation Rules ("EILIR") and it was publicly released on 18 December 2007. The EILIR contains 132 articles and further elaborates some of the terms and rules mentioned in the NEITL.

As yet, the EILIR is far from complete and further notices will be issued by various Chinese authorities from time to time addressing specific tax areas that have not yet been covered by the EILIR. As of today, the State Council has passed and issued two additional notices (*Guozhuo* (2007) no. 19 and *Guozhuo* (2007) no. 40 on 26 December 2007) regarding the transitional and grandfathering treatments in respect of tax incentives provided under the old tax laws.

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### 3. Withholding tax

Prior to 1 January 2008, dividends remitted to foreign investors from FIEs in China are exempt from withholding tax.

The NEITL indicates that with effect from 1 January 2008, outbound China sourced passive income (including dividends, royalties, interest etc) will be subject to withholding tax at 20%. The EITLIR reduces the withholding tax rate to 10%.

#### Important

According to the NEITL, the EITLIR, and the EITLIR, the withholding tax rate for dividends, interest, and royalties is 10%. The EITLIR also provides that the withholding tax rate for dividends, interest, and royalties is 10%.

### 4. Tax incentives

The NEITL provides a number of tax incentives including exemption or reduction in EIT rates, reduction in taxable income or tax payable, and extra deduction on certain types of expenses. The EITLIR further elaborates the details of these tax incentives. However, many details still pending further clarification.

#### New tax incentives:

- High / new technology enterprises
- Venture capital enterprises
- Encouraged projects
- Extra-deduction on R&D costs and disabled employees' salary
- Tax credit for the acquisition of equipments enhancing environment protection, energy or water saving, and production safety

Some of the tax incentives are discussed in detail below:

#### High / New Technology Enterprises

As mentioned above, qualifying high / new technology enterprises may enjoy a reduced EIT rate at 15%. According to the EITLIR, in order to obtain the "high / new technology enterprises" qualification, an enterprise is required to possess several characteristics (e.g. R&D personnel should be more than a prescribed percentage of total number of employees) which details will be promulgated later.

One of the characteristics is that a qualifying high / new technology enterprise should own a core proprietary intellectual property, which foreign investors usually are reluctant to hold in China given the inherent challenges with protecting intellectual property in China. Currently, it is uncommon for multinational corporations to transfer the ownership of their core proprietary intellectual properties to their Chinese subsidiaries due to various reasons, including intellectual properties protection concerns.

#### Important

According to the NEITL, the EITLIR, and the EITLIR, the withholding tax rate for dividends, interest, and royalties is 10%. The EITLIR also provides that the withholding tax rate for dividends, interest, and royalties is 10%.

If you plan to invest in China, you need to know how the NEITL and the EITLIR will affect your investment, and the degree of impact. In this section, we highlight the key areas contained in the NEITL and EITLIR that you should be aware of when formulating your China investment plan.

### 1. Enterprise income tax ("EIT") rate

EIT rates effective 1 January 2008 are as follows:

Unified EIT rate effective 1 January 2008	25%
Small scale / low profit enterprises	20%
High / new technology enterprises	15%

#### Important

According to the NEITL, the EITLIR, and the EITLIR, the withholding tax rate for dividends, interest, and royalties is 10%. The EITLIR also provides that the withholding tax rate for dividends, interest, and royalties is 10%.

### 2. "Tax resident enterprise" and "non-tax resident enterprise"

The NEITL segregates enterprises into two categories: tax resident enterprises and non-tax resident enterprises. Tax resident enterprises will be subject to EIT on worldwide basis, while non-tax resident enterprises will only be subject to EIT on China sourced income.

The NEITL defines the meaning of "tax resident enterprises" to include enterprises incorporated outside China (e.g. a company incorporated under the laws of Hong Kong) with their place of effective management situated in China.

The "place of effective management" is elaborated in the EITLIR. Instead of merely looking at where the board of directors meetings of an enterprise are held, the EITLIR adopts a more comprehensive (but at the same time quite vague) approach to define the place of effective management as: the place where a substantive overall management and control of the "production" and "business" operation, personnel, accounting, properties and etc of an overseas enterprise is situated. No universal rules are available to ascertain the tax residency of overseas enterprises, and each case will be assessed by reviewing its own facts.

#### Important

According to the NEITL, the EITLIR, and the EITLIR, the withholding tax rate for dividends, interest, and royalties is 10%. The EITLIR also provides that the withholding tax rate for dividends, interest, and royalties is 10%.

**Venture Capital Enterprises**

A venture capital enterprise investing in the equity of a non-listed small or medium high / new technology enterprise for more than two years can credit 70% of its investment amount against its taxable income with an indefinite carry forward period.

**Tax Exemption / Reduction on Income from Encouraged Projects**

Some general preferential tax treatments granted under the old tax laws are no longer available under the NEITL. Instead, preferential tax treatments are granted depending on the types of projects invested by investors.

Income derived from eligible encouraged projects can either be exempted from EIT or enjoy a reduced EIT rate.

Encouraged projects include the following:

Types of projects	Tax incentives available
<ul style="list-style-type: none"> <li>▪ Agricultural, forestry, animal husbandry and fishery projects</li> </ul>	Exemption from EIT or 50% tax reduction
<ul style="list-style-type: none"> <li>▪ Infrastructure projects</li> <li>▪ Environmental protection, energy and water conservation projects</li> </ul>	3 years exemption from EIT plus 3 years half tax reduction period

Detailed requirements regarding the qualification of these projects have not yet been promulgated.

**5. Grandfather rules**

The State Council has passed and issued two notices, *Guofa (2007) no.39* and *Guofa (2007) no.40* on 26 December 2007 regarding the transitional and grandfathering treatments in respect of tax incentives offered under the old tax laws.

**Guofa (2007) no.39**

This notice provides the grandfathering treatment for enterprises (both DEs and FIEs) that have obtained business licenses before 16 March 2007 and are entitled to preferential tax treatments under the old tax laws.

This notice confirms the followings:

- a. Enterprises subject to a reduced tax rate of 15% before 2008: the EIT rate will increase gradually over 5 years according to the following table:

Year	EIT rate
2007	15%
2008	18%
2009	20%
2010	22%
2011	24%
2012	25%

- b. Enterprises subject to a reduced tax rate of 24% before 2008: the EIT rate will increase to 25% in 2008.

- c. Various tax holidays under old tax laws (most of the tax holidays were only available to FIEs, while some were also available to DEs):

- For those enterprises which have already started their tax holidays before 2008, they are able to enjoy the remaining tax holidays until expiry
- For those enterprises which have not yet started their tax holidays before 2008, the tax holidays will be deemed to start from 1 January 2008 and they are able to enjoy the remaining tax holidays until expiry

**Guofa (2007) no.40**

This notice mainly addresses the tax incentives available to high / new technology enterprises newly established (i.e. established after 1 January 2008) in certain locations as stipulated under Article 57 of the NEITL. Details as follows:

- There are 6 zones, including the 5 economic zones (Shenzhen, Zhuhai, Shantou, Xiamen and Hainan) and Shanghai Pudong New Area
- These newly established high / new technology enterprises should comply with the requirements stipulated by the NEITL and EITLIR (discussed in Section 4 above)
- Tax incentive available to these enterprises is "2 years exemption followed by 3 years half tax reduction". The tax holiday will commence in the year when the enterprise starts generating income

## 6. Anti-avoidance provisions

The NEITL introduces a number of anti-avoidance provisions, and the EITLR further elaborates the same.

### Anti-avoidance rules include:

- Compulsory transfer pricing ("TP") documentation requirement
- Thin capitalization provision
- Controlled foreign corporation ("CFC") provision
- General anti-avoidance provision

EITLR does not provide very detailed elaboration of the above rules, and further guidance will likely be issued subsequently.

Of the above anti-avoidance provisions, TP may pose the biggest challenges to foreign investors. After the issuance of the NEITL and EITLR, it is expected that the Chinese tax authorities will turn their focus to TP regulations and enforcement.

### IMPORTANT

When evaluating the investment in and doing business in China, investors should consider the impact of the new tax law and its implementation on their business operations and financial performance. It is recommended that investors consult with local tax advisors to understand the implications of the new law and its implementation on their business operations and financial performance.

Source: China Tax and Finance Journal, 2008, No. 12, P. 12.

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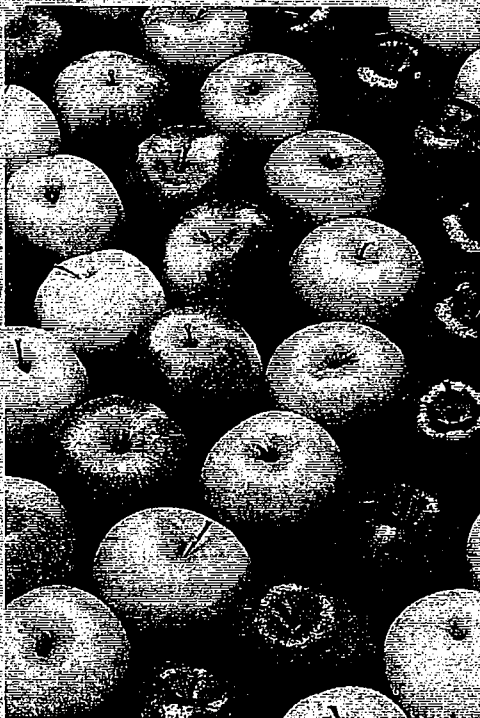
NEW ENTERPRISE  
INCOME TAX LAW  
IN CHINA



## 7. Deductions

According to the NEITL and EITLIR, deductibility of some expenses are limited to certain levels or restricted to certain conditions:

Type of expense	Restriction
▪ Entertainment expenses	60% of expenses are tax deductible, subject to a cap of 0.5% of annual turnover
▪ Goodwill acquired	Not deductible until disposal or liquidation
▪ Advertising and promotion expenses	Capped at 15% of annual turnover and remained portion can be carried forward for future deduction
▪ Employee welfare expenses	Deductible up to 14% of total salaries
▪ Employee education expenses	Deductible up to 2.5% of total salaries
▪ Charitable donations	Deductible up to 12% of accounting profit



## Closing Comment

The issuance of the NEITL and EITLIR marks the launch of China's enterprise income tax reform, but there is still a long way to go. There are still a lot of uncertainties surrounding the NEITL and further explanations from the Chinese tax authorities will be announced from time to time. During this transitional period, we expect that foreign investors investing in China will no doubt facing uncertainties on varies tax positions over many important areas.

We will follow closely on future developments of the China enterprise income tax reform and update you in future issues of our Newsletter. No doubt that questions will arise after reading this Newsletter. Further professional opinion may be required.



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## China issues plan to support nonferrous metal industry

GOV.cn Monday, May 11, 2009

IS

China released a detailed three-year plan to stimulate its nonferrous metal industry focused on industrial restructuring and technology innovation, the State Council, or the country's Cabinet, said in Beijing on Monday.

The nonferrous metal sector should keep a steady operation in 2009, and achieve a sustainable development by 2011, according to the plan.

The country would encourage regrouping among nonferrous metal companies to sharpen the competitive edge of the whole industry, the plan said.

Three-to-five nonferrous metal corporation would be formed out of industrial reconstructing by 2011 with advanced production capacity and technology innovation capability.

Combined copper output of top 10 domestic producers should take up 90 percent of the country's total by 2011, aluminum output 70 percent, lead 60 percent, and zinc 60 percent, according to the State Council.

The government would also encourage the exploitation of nonferrous metals both at home and abroad, supporting companies to invest in mines overseas -- either on their own or with foreign parties.

The country would help with capital injection and foreign reserve application concerning overseas projects.

The export rebate policy would be a "proper" and "flexible" one to encourage nonferrous products with high technology and high added values, according to the plan. ] \*

The State Council also laid out guidelines to eliminate obsolete capacity and digest over capacity. No new project to develop electrolytic aluminum will be allowed in the next three years, the plan said.

The country would put strict control on the production of copper, lead, zinc, titanium and magnesium.

At the same time, China aims to save 1.7 million tonnes of coal and 6 billion KWh of electricity per year, as well as reduce sulfur dioxide by 850,000 tonnes annually as part of industrial upgrading for the nonferrous metallurgy sector.

China was the largest producer and consumer of nonferrous metals with total output of ten major nonferrous metals reaching 25.2 million tonnes and total consumption at 25.17 million tonnes in 2008.

The country's nonferrous metal industry received a severe blow from the global economic downturn after keeping high-speed growth for nearly a decade.

Statistics released by the China Nonferrous Metals Industry Association showed aggregate profit of China's nonferrous metal producers fell 45 percent last year to 80 billion yuan (11.73 billion U.S. dollars).

Along with the support plan for the nonferrous metal sector, the State Council has unveiled stimulus packages for 10 industries since January, such as machinery-manufacturing, electronics and information industries, the light industry and petrochemical sectors.

Editor: Chris

Source: Xinhua

### State Structure

National People's Congress

Presidency

State Council

Central Military Commission

Supreme People's Court

Supreme People's Procuratorate