

**Decree of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China**

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**No. 57**

The Catalogue for the Guidance of Foreign Investment Industries (Amended in 2007), which has been approved by the State Council, is hereby promulgated and shall come into force as of December 1st, 2007. The Catalogue for the Guidance of Foreign Investment Industries as promulgated by the former State Development Planning Commission and the Ministry of Commerce on March 30, 2004 shall be annulled at the same time.

**Ma Kai, Director of the State Development and Reform Commission**  
**Bo Xilai, Minister of the Ministry of Commerce**  
**October 31, 2007**

**Catalogue for the Guidance of Foreign Investment Industries (Amended in 2007)**

**Catalogue of Encouraged Foreign Investment Industries**

**I. Farming, Forestry, Animal Husbandry and Fishery Industries**

- (1) Improvement of low and medium yielding field
- (2) Planting, development and production of woody edible oil, ingredient and industrial raw material
- (3) Planting technology, without social effects of pollution, of vegetables (including edible fungus and melon-watermelon), dried fruits, teas and serial development and production of these products
- (4) Development and production of new technology of sugar-yielding crops, fruit trees, forage grass
- (5) Production of flowers and plants, and construction and operation of nursery base
- (6) Planting of rubber, sisals and coffees
- (7) Cultivation of traditional Chinese medicines (limited to equity joint ventures or contractual joint ventures)
- (8) Reusing in fields and comprehensive utilization of straws and stalks of crop, development and production of resources of organic fertilizers
- (9) Planting of forest trees (including bamboo) and cultivation of fine strains of forest trees and cultivation of new breed varieties of polyploid trees and genetically engineered forest trees
- (10) Breeding of aquatic offspring (excluding precious quality varieties peculiar to China)
- (11) Construction and operation of ecological environment protection projects preventing and treating desertification and soil erosion such as planting trees and grasses, etc.
- (12) Breeding of aquatic products, cage culture in deep water, large-scale breeding of aquatic products and breeding of eco-ocean products

**II. Mining and Quarrying Industries**

- (1) Prospecting, exploitation and utilization of coal-bed gas (limited to equity joint ventures or contractual joint ventures)
- (2) Venture prospecting and exploitation of petroleum, natural gas (limited to equity joint ventures or contractual joint ventures)
- (3) Exploitation of oil and gas deposits (fields) with low osmosis (limited to equity joint

ventures or contractual joint ventures)

- (4) Development and application of new technologies that can increase the recovery factor of crude oil(limited to equity joint ventures or contractual joint ventures)
- (5) Development and application of new technologies for prospecting and exploitation of petroleum, such as geophysical prospecting, well drilling, well-logging and downhole operation, etc.(limited to contractual joint ventures)
- (6) Prospecting and exploitation of such conventional oil resources as oil shale, oil sand, heavy oil and super heavy oil(limited to contractual joint ventures)
- (7) Prospecting, exploitation, and beneficiation of iron ores and manganese ores
- (8) Development and application of new technologies for improving the utillance of tailings and the comprehensive utilization of recovery technology of the mine ecology
- (9) Prospecting and exploitation of submarine flammable ice(limited to contractual joint ventures)

### III. Manufacturing Industries

#### 1. Farm Products Processing Industry

- (1) Development and production of biology feeds, straws and stalks feeds and aquatic feeds
- (2) Aquatic products processing, seashell products cleansing and processing, and development of function food made from seaweed
- (3) Storage and processing of vegetables, dried fruits, fowl and livestock products

#### 2. Food Manufacturing Industry

- (1) Development and production of fond for babies and agedness, as well as function food
- (2) Development, production and processing of forest food
- (3) Production of natural addictive for foodstuff and food ingredients(limited to equity joint ventures or contractual joint ventures)

#### 3. Drinks Manufacturing Industry

- (1) Development and production of drinks of fruits, vegetables, albumen, tea, coffee and vegetables

#### 4. Tobacco Processing Industry

- (1) Production of secondary cellulose acetate and processing of tows(limited to equity joint ventures or contractual joint ventures)
- (2) Production of tobacco slices in the way of paper making(limited to equity joint ventures or contractual joint ventures)
- (3) Production of filter rods (limited to equity joint ventures or contractual joint ventures)

#### 5. Textile Industry

- (1) Production of special textiles for industrial use with high and new technology
- (2) Weaving and dyeing as well as post dressing of high-grade loomage face fabric
- (3) Processing of special natural fiber products satisfying the requirement of comprehensive utilization of ecology and resources and environment protection(including other animal fiber, fibrilia, bamboo fiber, mulberry silk and colored cotton other than wool)
- (4) Production of clothes with computer integrated manufacturing system
- (5) Production of top-grade carpet, embroider and drawnwork product

#### 6. Leather, Coat and Feather(Down and Feather) Products Industry

- (1) Cleaning processing of leather and fur
- (2) Post ornament and processing of leather with new technology
- (3) Top-grade leather(sofa leather and car cushion leather)

#### 7. Lumber Processing Industry and Wood 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

#### 8. 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 (limited to equity joint ventures or contractual joint ventures)
9. Petroleum Refining and Coking Industry
- (1) Deep processing of needle coke and coal tar
10. Chemical Raw Material and Products Manufacturing Industry
- (1) Production of ethylene with an annual production capacity of 600,000 tons or over (The Chinese party shall hold relative majority of shares)
- (2) Processing and manufacturing of derivatives of downstream products of ethylene and comprehensive utilization of ethylene side-products such as C4-C9
- (3) Production of ethylene with an annual production capacity of 200,000 tons or over Polyvinyl chloride resin (in the way of ethylene)
- (4) Production of further processed products of sodium-process bleaching powder, polyvinyl chloride and organosilicon
- (5) Production of basic organic chemical industrial raw materials such as the of benzene, methylbenzene, dimethylbenzene, etc. and its derivatives
- (6) Production of supporting raw materials for synthesized materials: bisphenol-A production and production of propylene oxide in the way of oxidizing propylene with hydrogen peroxide )
- (7) Production of synthetic fibre raw materials: precision terephthalic acid, vinyl cyanide, caprolactam, nylon 66 salt and polyurethane elastic fiber
- (8) Production of synthetic rubber: liquid butadiene styrene rubber by butadiene method(excluding styrene-butadiene rubber), butyl rubber, isoamyl rubber, polyurethane rubber, acrylic rubber, chlorophydrin rubber, ethylene-propylene-rubber, fluororubber, silicon rubber and other special rubber production)
- (9) Production of engineering plastics and plastic alloys: PPO, engineering plastic nylon of 11 and 12, polyurethane, polysulfone, PAR, liquid crystal polymer and other products
- (10) Fine chemistry industry: new products and technology for catalytic agent, auxiliary and additive; 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 (excluding N,N-dimethylformamide), oil-well auxiliaries, surface active agent, water treatment agent, adhesives, inorganic fibre, inorganic nano material production and deep processing of pigment encapsulation.
- (11) Production of low hysteresis and high abrasion carbon black
- (12) Production of environment-friendly printing ink and environment-friendly arene-oil
- (13) Production of nature spices, synthetic spices and single ion spices
- (14) Production of high capability coatings, water automotive coatings and assorted water resin .
- (15) Production of chlorofluorocarbon substitution
- (16) Production of organic fluorine chemical products(excluding CFC/HCFC and tetrafluoroethylene)
- (17) Production of fluorine recycling from phosphorus chemicals and aluminum smelting
- (18) Production of mass coal chemical industrial products(The Chinese party shall hold the majority of shares)
- (19) Development and production of new technology and products for the forestry chemicals
- (20) Production of ion film for caustic soda, abio-filtration membrane and function membrane
- (21) Development and production of inorganic, organic and biologic films for environment protection
- (22) Development and production of new-type fertilizer: biologic fertilizer, high-density fertilizer, compound fertilizer, controlled release fertilizer, compound microbial inoculant,

Compound microbial manure, degradation agent for stalks and garbage and microbial preparation of special functions

(23) Development and production of new varieties of effective, safe agriculture chemicals and pesticides

(24) Development and production of biopesticide and bio-control products: microbial insecticide, microbial fungicide, agricultural antibiotic, insect pheromone, enemy insect and microbial herbicide

(25) Comprehensive utilization and disposal of exhaust gas, discharge liquid, waste residue

(26) Production of organic polymer material: organic silicone modified coatings for ship shell, covering film for plane, rare earth cerium sulphide red dye, lead-free in electronic packages, serials of special sizing agent by photoetching for color Plasma Display Panel, small diameter and large specific surface area superfine fibre, high precision fuel filter paper, Li-ion battery membrane, multi-function compound accessory ingredient for plastic processing, citric acid diglyceride, fludioxonil, cyazofamid

#### 11. Medical and Pharmaceutical Products Industry

(1) Production of new type compound medication of active composition medication (including bulk drug and preparation)

(2) Production of amino acids: serine, tryptophan, histidine, methionine for feed

(3) Production of new anti cancer medication, new cardio-cerebrovascular medication and new nervous system using medication

(4) New type, high effective and economical contraception medication and instrument

(5) Production of new type medication using bioengineering technology

(6) Production of high physiological active medication heterocyclic fluoride containing fluorine, like heterocyclic fluoride, and intermediate

(7) Production of genetic engineering bacterin (AIDS bacterin, third bacterin, contraception bacterin)

(8) Production of biology bacterin

(9) Production of bcg vaccine and poliomyelitis vaccine

(10) Exploitation and production of marine drug

(11) Drug preparation: production of new formulation using new technologies of sustained-release, release, targeting and percutaneous absorption

(12) Exploitation and production of new type of pharmaceutical adjuvant

(13) Production of biomedicine material and ware(except flesh body, sample, human organ tissue and sample processing)

(14) Production of animal using antibacterial raw material drug

(15) Exploitation and production of animal using antibacterial drug, insect repellent, pesticide, anticoccidial drug and new formulation (16) Production of new diagnosis reagent

#### 12. Manufacturing Industry of Chemical Fiber

(1) Production of hi-tech chemical fiber of differential chemical fiber, aramid, carbon fiber, polyethylene of high-strength and high-modulus, polyphenylene sulfide(PPS) and so on

(2) Production of Environmental Protection chemical fiber of New Solvent cellulose fiber

(3) Production of new style of fiber and non-fiber polyester: PTT, PEN, PBT

(4) Production of new style fiber material made use of renewable resources, biomass technology: PLA, PDO

(5) Production of polyamide, single line production capacity of 100 ton a day

(6) Production of meridian tyre aramid fiber and tyre cord

#### 13. Industry of Plastic Products

(1) Exploitation and production of new technology and new production of agricultural film(photo-degradable film and multi-function film)

(2) Digestion and recycle of waste plastics



- (3) Exploitation and production of new technology and new production of plastic soft package (high barrier, multi-function film and material)
14. Non-metal Mineral Products Processing Industry
- (1) Develop and produce new energy-saving, environment-protecting architecture material: 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.
- (2) Use plastic to replace steel and wood, energy-saving and high-efficient chemical architecture material production.
- (3) Produce more than 10,000,000 sq.m. elastomer, plastic changeable asphaltum waterproof coiled materials, high-quality width (more than 2 meters) EPDM waterproof coiled materials and matched materials, durable PVC coiled material, TPO waterproof coiled materials.
- (4) Production of screen electromagnetic wave glass, micro-electronics glass base plate, penetrating infrared nonlead glass, electron grade large spec quartz glass pervasion pipe, exceeding two generation and three generation microchannel plate, optic fiber panel and inverse image implement and glass fiber.
- (5) 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 50,000 tons or more.
- (6) Production of sequential fiberglass original silk felt, fiberglass surface felt, micro-electronics fiberglass cloth and thin felt.
- (7) Production of coherent fiber bundle and laser medical optic fiber.
- (8) Production of sanitation porcelain with an annual production of 1,000,000 pieces or over
- (9) Standardization refine of ceramic material and production of high-level decorative materials used for ceramics.
- (10) Production of high-level refractory material used in furnaces for cement kiln, top grade (electronic) glasses, ceramics and glass fiber.
- (11) Production of ceramic carrier, AlN ceramic base piece, multiple-hole ceramics use in car catalyzing equipment.
- (12) Production of inorganic, non-metal materials and products: artificial crystal, carbon/carbon complex materials, special kind of ceramics, special kind of airproof materials, quick oil sealed materials, special kinds of cementation materials, special type latex materials, water rubber materials, heat-transfer coefficient is or less than 0.025W/mK under normal temperature heat insulation materials and so on.
- (13) Production of high tech compound materials: sequential fiber increasing thermoplasticity compound materials and prepreg, endure heat > 300°C colophony compound material moulding craftwork assistant materials, colophony compound material oar, colophony compound material top grade sports articles, special capability glass steel tube (pressure > 1.2MPa), special function compound materials and products, deep water and diving compound material products, medical and healing use compound material products, carbon/carbon compound materials and brake piece, high capability ceramic compound materials and products, metal compound materials and products, metal layer compound materials and products, pressure  $\geq 320$ MPa super-high-pressure compound rubber pipes, air bus aviation tyres.
- (14) Production of precise high capability ceramics and functional ceramic materials: carborundum super-minute powder (purity > 99%, average granule diameter < 1 $\mu$ m), Si<sub>3</sub>N<sub>4</sub> super-minute powder (purity > 99%, average granule diameter < 1 $\mu$ m), high pure and super-minute alumina powder (purity > 99%, average granule diameter < 0.5 $\mu$ m), low temperature sintered zirconia powder (sintered temperature < 1350°C), high pure AlN powder (purity > 99%, average granule diameter < 1 $\mu$ m), rutile TiO<sub>2</sub> powder (purity > 98.5%), white char black (average granule diameter < 100nm = , barium titanate (purity > 99%, average granule diameter < 1 $\mu$ m = .

- (15) Production of diamond film tools, thickness is 0.3mm or less super-thin artificial diamond saw piece.
- (16) Deep processing of non-metal mineral products (super-thin comminution, high level pure, fine production, modification)
- (17) Production of super high power black lead electrode.
- (18) Production of pearlite mica (granule diameter: 3-150 $\mu$ m).
- (19) Production of multiple dimension and multiple direction integer weaving fabric and profile modeling fabric.
- (20) Use new dry cement kiln to innocuously dispose combusting industry castoff and life garbage.

#### 15. Non-Ferrous Metallurgical Smelting and Rolling Processing Industry

- (1) Production of diameter > 200mm silicon single crystal and polishing piece, multiple crystal silicon.
- (2) Production of high tech non-ferrous metallurgical materials: new type high capability hydrogen storing materials, lithium hydronium battery electrode materials, compound semiconductor materials (gallium arsenide, gallium phosphide, gallium Reexplanation, gallium nitride), high temperature superconduct materials, memory alloy materials (titanium nickel, copper and iron memory alloy materials), super minute (nanometer) calcium carbide and super minute (nanometer) crystal hard ally, superhard compound materials, noble metal compound materials, aluminum foil used for radiator, middle and high pressure cathode capacitance aluminum foil, special kind of large aluminum alloy materials, aluminum alloy precise model forge product, electrization railway built on stilts leads, super-thin copper strip, erosion proof heat exchanger copper alloy material, high capability copper nickel, copper and iron alloy strip, beryllium copper strip, thread, tube and stick process material, high temperature bearable tungsten filament, magnesium alloy cast, non-lead solder, magnesium alloy and its applicable products, bubble aluminum, titanium alloy strip materials and titanium jointing pipes, atomic energy grade sponge zirconium, tungsten and molybdenum deep machining products.

#### 16. Metal products industry

- (1) Production of lightened car, automobile and environment protecting new materials (bodywork aluminum board, aluminum magnesium alloy materials, automobile aluminum alloy frame and so on).
- (2) Development and production of high-grade hardware for construction, hot-water heating equipment and hardware parts.
- (3) Production and processing (including painting and processing inner and outer surface of the products) of metal packing products (thickness < 0.3mm) used to pack all kinds of grain, oil and food, fruits, vegetables, beverages, daily using materials and such contents.

#### 17. General Machine-building Industry

- (1) Manufacturing of numerically controlled machine tools of high level and key spare parts: numerically controlled machine tools which exceed quintuple linkage, digital control coordinate spindle processing centre, digital control system which exceeds quintuple linkage and servomechanism installations, high-speed and super-strong knives for exact digital control manufacturing.
- (2) Manufacturing of multi-station forging forming machine of 1000 tons or more
- (3) Manufacturing of equipments for braking up and smashing retired cars
- (4) Manufacturing of soft FTL product line
- (5) Manufacturing of vertical articulated industrial robots, welding robots and welding equipments thereof
- (6) Manufacturing of special processing machines: complete sets of laser cutting and welding equipments, exact processing laser equipments, digital-control and low-speed wire-cuts, submicron cracker
- (7) Manufacturing of wheel or crawler crane of 300 tons or more (limited to equity joint

ventures or contractual joint ventures)

(8) Design and manufacturing of high pressure plunger pumps of pressure(35-42MPa) and engine, design and manufacturing of low-speed big torque engine of pressure(35-42MPa)

(9) Manufacturing of electro-hydraulic proportion servo elements

(10) Design and manufacturing of integrated multi-path valves of pressure(21-31.5MPa) , pneumatic solenoid valves of less than 0.35W high-frequency electrical control valves of more than 200Hz

(11) Design and manufacturing of hydrostatic drive device

(12) Development and manufacturing of non-contacting gas film seal of pressure more than 10MPa, dry gas seal of pressure more than 10MPa (including experience device)

(13) Development and manufacturing of macromolecule material device for automobiles(rub piece, changed phenol aldehyde plunger, non-metal liquid pressure mother pump and so on)

(14) Manufacturing of car boss axletree of 3 and 4 generation(function elements of boss axletree of flange and transducer inside or outside of the axletree , digital control machine tool or processing centre axletree of high or mid class(the processing center should have more than three axis interlocking function and 3-4 $\mu$ m repeated precision) , high-speed wire or board rolling mill axletree(assistant axletree and roller axletree of single-wire rolling mill of more than 120m/s and of thin-board rolling mill of more than 2mm) , high-speed railway axletree(with speed of more than 200km/h) , low-noise axletree of vibration of less than Z4(Z4, Z4P, V4, V4P) , level P4, P2 axletree of various axletree

(15) Production of high temperature resistant and insulation material (with F, H insulation class), as well as insulation shaped parts

(16) Development and manufacturing of fluid pressure rubber sealing

(17) Manufacturing of high binding spares of 12.9 level or more

(18) Manufacturing of casting and forging workblanks for-cars and motorcycles

(19) Remanufacturing of machine tools, spare parts of cars(except five matured varieties)and project machines.

#### 18. Special Equipment Manufacturing

(1) Manufacturing of mine trolley mining, loading and transporting device : mechanical drive tipper for mine of 100 tons or more, mobile crusher , wheeled digger of 3000m<sup>3</sup>/h or more , loading machine for mine of 5 m<sup>3</sup> or more , electric driving mining machine of 2000 kw or more and so on

(2) Manufacturing of geophysical, logging equipment: MEME geophone, digital telemetry seismograph, digital imaging, computerized logging system, horizontal wells, directional wells, drilling rig equipment and apparatus, MWD logging while drilling

(3) Manufacturing of oil exploration, drilling, gathering and transportation equipment: floating drilling systems and floating production systems which will work in more than 500 meters of water depth, working depth greater than 600 meters undersea oil production, gathering and transportation equipment, power of winch greater than 3,000 kilowatts, top driving force greater than 850 kilowatts, drilling pump more than 1,800 kilowatts of power by deep-sea oil rig, drilling depth of 9,000 meters above the desert land drilling rig and oil rig, 10 million tons / year oil refining installations with 80 tons and above Pistons edge reciprocating compressor, NC oil Sham Tseng logging, oil Drilling Mud Hole solid operating highway tunnel monitoring equipment, ventilation, disaster prevention and relief system equipment manufacturers

(4) Design and manufacturing of skeleton shield integrated system with diam of 6 meters, TBM system integrating with diam of 5 meters; manufacturing of large digging drilling of caliber of 1 meter and depth of 30 meters, design and manufacturing of push bench with diam of 1.2 meters or more, manufacturing of large complete non-digging pipeline laying device with pulling power of 200 tons or more, manufacturing of consecutive wall underwater drilling machine, manufacturing of automatic vertical

drilling system

- (5) Design and manufacturing of large lifting machine of 100 tons or more 320hp
- (6) Design and manufacturing of pedrail soil shifter of ground pressure of 0.03MPa or less, power of 220 hp or more , large soil shifter of 520 hp or more
- (7) Design and manufacturing of purge machine of 100 m<sup>3</sup>/h or more, digging device in digging vessel of 5000 tons or more
- (8) Design and manufacturing of tuffcrete diosmosing-proof wall for flood control bar
- (9) Manufacturing of machine for underwater mass : soil shifter, loader and digger 9 miles under water
- (10) Manufacturing of devices of road bridge maintaining and automatic testing
- (11) Manufacturing of devices of road tunnel supervision, winding, disaster control and rescuing system
- (12) Design and manufacturing of the large-scale railway construction, and operation of large-scale road maintenance machinery and safety equipment
- (13) Manufacturing of (asphalt) shingles equipment, galvanized steel and other metal roof production equipment
- (14) Manufacturing of spot spraying polyurethane waterproof thermal insulation system equipment which could protect environment and conserve energy, technology and equipment of polyurethane sealant paste preparation, technology and production equipment of modified silicone sealing paste preparation
- (15) Design and manufacturing of thin-slab continuous casting machine, high-precision strip mill (with thickness of precise 10 microns)
- (16) Manufacturing of devices of direct reverting iron and liquation reverting iron
- (17) Manufacturing of high power DC electric arc furnace of 50 tons or more
- (18) Manufacturing of colorful panting or plating board devices
- (19) Manufacturing of selecting device for multi-element, fine-powder and hard-selecting mine
- (20) Manufacturing of key devices of 800000 tons/year or more of oxene complete devices : air compressor of pyrolysis gas, oxene and elemicin, complicated powder making machine of 1000000 tons/year, centrifuge with diam of 800 millimeter, unattackable pump and valve that can work under conditions of temperature 250°C and pressure 15Mpa, valve that can work under conditions of temperature -55°C or less and so on (limited to equity joint ventures or contractual joint ventures)
- (21) Manufacturing of large complete devices of chemical processing of coal (limited to equity joint ventures or contractual joint ventures)
- (22) Design, manufacturing and maintaining of metal product moulds (such as extrusion moulds of pipe, stick and shape of copper, aluminum, titanium and zirconium)
- (23) Design and maintaining of punching mould of cover elements of automobile outside, clamp and test tools of automobile and motorcycle
- (24) Design and maintaining of punching mould with precision of more than 0.02 millimeter (including 0.02 millimeter), precise mould with precision of more than 0.05 millimeter (including 0.05 millimeter) and mould standard elements.
- (25) Design and manufacturing of nonmetal product moulds
- (26) Manufacturing of beer filling device of 60000 bottles /h or more, drink mid or high hot filling device of 5 bottles /h, asepticism filling device of 36000 bottles /h or more
- (27) Manufacturing of producing technologies and key equipments for aminophenol, zymi, food additive and so on
- (28) Manufacturing of complete feed processing equipment of 10tons/h or more and key parts thereof
- (29) Manufacturing of light board and box device of 0.75-millimeter high or less
- (30) Manufacturing of single in folio colorful lithographic printing machine with speed of more than 16000 pages in folio /h (720×1020 millimeters) , diprosopia in folio colorful lithographic printing machine with speed of 13000 pages in folio /h (720×1020 millimeters) , colorful lithographic in folio printing machine with speed of 13000 pages in

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folio /h(1000×1400 millimeters)

(31) Manufacturing of single roll lithographic printing machine with speed of more than 75000 pages in folio /h(787×880 millimeters) , diprosopia single roll lithographic printing machine with speed of more than 170000 pages in folio /h(787×880 millimeters) ,

(32) Manufacturing of colorful soft printing machine with speed of 300meters/m or more and coverage of 1000 millimeters or more

(33) Manufacturing of computer mass color pre-coordination systems, mass color remote handling systems, mass speed following systems, prints quality automatic testing and following systems, no-axis turning technologies, high-speed automatic splicer, paper giving machine and high-speed and automatic remote handling paper folding machine, automatic overprinting system, cooling device, silanion putting system, bias-adjusting device and so on.

(34) Deep processing technique and equipment manufacturing of plate glass

(35) Special high-tech Industrial sewing machines manufacturing

(36) Manufacturing of complete set of new type of paper (including pulp) making machines

(37) Manufacturing of equipment with new technique for post ornament and processing of leather

(38) Development and Manufacturing of new agriculture processing and storage equipment: new equipment for the processing, storage, preservation, classifying, packing, and drying of food, oil, vegetables, dried fruits and fresh fruits, flowers, meat and aqua-products; agricultural product quality testing equipment ; the quality detection equipment of agricultural products' damage; Rheometer; Farinograph; ultrafine pulverization equipment; Highly efficient dewatering equipment ; 5-grade plus high efficient fruit juice condensation equipment ; equipment for Disinfection of powder food in Media; Aseptic packaging equipment for Semi-solid and solid food; Packaging Materials for Aseptic packaging, DVS Bacteria Starter for Dairy Production, Disc-type Separation centrifuges

(39) Manufacturing of Agricultural machinery: facility agriculture equipment(greenhouse Automatic irrigation equipment, Autocontrol configuration and fertilization Equipment of Nutritious Liquid, Efficient vegetable nursery equipment, Soil nutrient analysis instruments ), Tractor and associated farm tools with 120 kilowatts and above Matching engine power, Low fuel consumption, low noise and low-emission diesel engine, Spray Machines with Residual fog tablets Recovery Unit matching of large tractor, High-performance rice transplanter, Cotton harvesting machine, Adapted to a variety of row-spacing Self-moving Maize Reaping Machine(Hydraulic drive or mechanical drive)

(40) Manufacturing of new technical forestry equipment

(41) Manufacturing of equipment for reusing in fields and comprehensive utilization of straws and stalks of crop, Manufacturing of equipment for comprehensive utilization of Rice Husk

(42) Manufacturing of equipment for comprehensive utilization of waste agriculture products and waste fowl and livestock products which are bred in scale

(43) Manufacturing of festival fertilizer, pesticide section, water-saving technical Agriculture equipment

(44) Manufacturing of cleaning equipment for electromechanical wells and equipments for Laundering drug production

(45) Manufacturing of electronic endoscopes

(46) Manufacturing of Fundus Cameras

(47) Manufacturing of Medical imaging equipments' Key components(high magnetic field intensity and superconduct MRI, CT, X-ray computed tomography, type-B ultrasonic )

(48) Manufacturing of Medical Ultrasonic Transducer(3D)

(49) Manufacturing of boron neutron capture therapy equipments

(50) Manufacturing of X-ray Stereotactic Radiotherapy System

- (51) Manufacturing of Hemodialysis, Blood Filter
- (52) 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.)
- (53) New techniques of quality control of medicine products and new equipment manufacturing
- (54) New analytical techniques and extraction technologies, and equipment development and manufacturing for the effective parts of traditional Chinese medicines
- (55) Producing and manufacturing of new packing materials, new containers for medicine, and advanced medicine producing equipment
- (56) Development and Manufacturing of equipment of new type of knitting machines, Key parts and Textile testing, laboratory equipment
- (57) Manufacturing of Computer Jacquard artificial fur machine
- (58) Manufacturing of Special Equipments for solar cell production
- (59) Development and Manufacturing of Pollution control equipments
- (60) Manufacturing of City Waste disposal equipments and equipments for Comprehensive Utilization of Rural organic waste
- (61) Manufacturing of Waste plastics, electronics, rubber, battery Recycling Equipments
- (62) Technology of hydrophilic ecological system for protecting environment and equipment manufacturing
- (63) Development and Manufacturing of 100,000 cubic meters and above Daily production seawater desalination and recycling cooling technology and complete sets of equipments
- (64) Manufacturing of special Meteorological observation and analysis equipments
- (65) Development of Seismic station, Seismic Network, and Mobile seismological observation technology System, and Manufacturing of equipments
- (66) Manufacturing of three-drum radial tire building machines
- (67) Manufacturing of Rolling resistance testing machine and Tire noise lab
- (68) Manufacturing of new Heating measurement and Temperature Control Device Technical equipments
- (69) Manufacturing of preparation, storage and transportation equipment and inspection systems of hydrogen energy
- (70) Manufacturing of new Heavy residue gasification Atomization Nozzle, Steam leakage rate of 0.5 percent and below efficient Steam Traps, 1000 ° C and above high-temperature ceramic heat exchanger manufacturer
- (71) Manufacturing of Comprehensive Utilization of waste tire equipments
19. Communication and Transportation Equipment Industries
- (1) Manufacturing of complete automobiles (foreign investments shall not exceed 50%) and construction of automobiles research and development organization
- (2) Manufacturing of automobile engine, reused manufacture of engines and construction of engine research and development organization : gasoline motor with output per litre not lower than 50 kw, diesel motor with output per litre not lower than 40 kw and discharge capacity below 3 liters, diesel motor with output per litre not lower than 30 kw and discharge capacity above 3 liters, motor driven by such new resources as fuel cells and compound fuel
- (3) Manufacturing of key spare parts for automobiles as well as research and development of key technologies: complete disc brakes, complete driving rods, automatic gearboxes, fuel pumps of diesel engine, inhaled supercharger of engines, adhesive axial organ (used for four-wheel drive), hydraulic tappet, electronic cluster gauge, crankshaft and connecting bar (diesel motor above 8 liters), Anti - Lock Brake System (ABS, ECU, valve body, sensor), ESP, BBW, electronic braking distribution system (EBD), driving control system, gas generator for automobile airbags, electronic fuel injection system, sprays technology on fuel common rail technology (utmost spray pressure above 1600 pa), VGT, VNT, discharge control equipment of motor meeting

the pollutant discharge standard of the fourth phase of China, ITM and coupler assembly, Steer-by-Wire System, Diesel Particulate Filter(DPF), intelligent cylinder, special rubber automobile components

(4) Production as well as research and development of automobile electronic devices: engine and underchassis control system as well as key spare parts, in-vehicle electronic technology (automobile information system and navigation system), automobile electronic network technology (limited to equity joint ventures), components for the input (sensor and sampling system) and the output(actuator) of electronic control system, EPS electronic controller(limited to equity joint ventures), embedded electronic integration system(limited to equity joint ventures or contractual joint ventures), electronic-controlled air suspension, ECS, electronic valve system equipment, electronic throttle, power cell(NiH and Li-con) and control system(limited to equity joint ventures), integrated motor and control system(limited to equity joint ventures), wheelboss motor, multifunction controller(limited to equity joint ventures), fuel cell and spare parts thereof, hydrogen storing systems for automobiles, testing system for experiment and maintaining of automobile and motorcycle models

(5) Manufacturing of key parts for motorcycle: technology of electrical control fuel injection for motorcycle(limited to equity joint ventures or contractual joint ventures), engine discharging device which satisfy motorcycle discharging criteria stage III of China

(6) Equipment for railway transportation(limited to equity joint ventures or contractual joint ventures): research and development, design as well as manufacturing of complete train and key spare parts (drive system, control system, brake system) of rapid transit railway, railway of passenger special line, intercity railway, trunk railway and equipment for urban railway transportation; research and development, design as well as manufacturing of passenger service facilities and equipment for rapid transit railway, railway of passenger special line, intercity railway and urban railway transportation, design as well as research and development of related information system in the process of construction of information age; research and development, design as well as manufacturing of railway and bridge facilities and equipments for rapid transit railway, railway of passenger special line, intercity railway, manufacturing of equipment and fixtures for electrical railway, research and development of technologies for controlling railway noise and vibrating, manufacturing of discharging equipment for trains, manufacturing of safety monitoring equipment for railway transportation

(7) Design, manufacturing and maintaining of civil plane: those of trunk and branch lines(Chinese part shall hold the majority of shares), general ones(limited to equity joint ventures or contractual joint ventures)

(8) Production and maintaining of spares parts for civil planes

(9) Design and manufacturing of civil helicopters: those of three tons or more (Chinese part shall hold the majority of shares), those of less than three tons (limited to equity joint ventures or contractual joint ventures)

(10) Production of spares parts for civil helicopters

(11) Manufacturing of ground and water effect plane(Chinese part shall hold the majority of shares)

(12) Design and manufacturing of no-people plane and aerostat(Chinese part shall hold the majority of shares)

(13) Design, manufacturing and maintaining of plan engines and spare parts as well as air assistant power systems(limited to equity joint ventures or contractual joint ventures)

(14) Design and manufacturing of civil air-borne equipment(limited to equity joint ventures or contractual joint ventures)

(15) Design and manufacturing of civil rocket launcher(Chinese part shall hold the majority of shares)

(16) Manufacturing of flight ground equipments: civil airfield facilities, support equipment for civil airfield work, ground equipment for flight test, equipment for flight

simulation and practice, equipment for aeronautic testing and measuring, equipment for aeronautic ground testing, comprehensive testing equipment for machines, special equipment for aeronautic manufacturing, equipment for pilot manufacturing aeronautic materials, ground receiving and applying equipment for civil aircraft, ground testing equipment for rocket launcher, equipment for dynamic and environmental experience for rocket launcher

(17) Manufacturing of mechanical and electrical products for aircrafts, temperature control products for aircrafts, test equipment for planet products and structure and organization products for aircrafts

(18) Manufacturing of light gas-turbine engine

(19) Design of vessels and equipment for ocean project of high and new technologies(limited to equity joint ventures or contractual joint ventures)

(20) Maintaining, design and manufacturing of vessels (including stages) and equipment for ocean project(Chinese part shall hold the majority of shares)

(21) Design and manufacturing of diesel engine for vessel of low, mid and high speed(limited to equity joint ventures or contractual joint ventures)

(22) Design and manufacturing of spare parts for diesel engine for vessel(limited to equity joint ventures or contractual joint ventures)

(23) Design and manufacturing of crankshafts of low and mid speed for diesel engine for vessel(Chinese part shall hold the majority of shares)

(24) Design and manufacturing of stateroom machine and deck machine for vessels(Chinese part shall hold the relative majority of shares)

(25) Design and manufacturing of communication and directing systems for vessels : communication systems, electronic directing equipment, vessel radar, electric compass automatic pilot, public broadcasting systems inside vessels and so on

(26) Design and manufacturing of overseas fishing vessels and cabin cruiser (limited to equity joint ventures or contractual joint ventures)

#### 20. Electric Machinery and Equipment Industries

(1) Manufacture of the pivotal equipment of super-critical units of over 600,000 KW , and over 1,000, 000KW of fire and electricity station (limited to equity joint ventures and cooperative joint ventures): boiler-feedwater pump, circular water pump, valve of main steam loop high temperature and pressure which is over 400°Cwork temperature and 20Mpa of work pressure

(2) Manufacture of the equipment of Over million kilowatt Nuclear-power plant (limited to equity joint ventures and cooperative joint ventures) Pump and valve of Nucleus, Nucleus II

(3) Manufacture of the technic and equipment of Fire- electricity plant to decoke and saltpeter, hop-pocket dust catcher

(4) Design and manufacture of the equipment of nucleus-electricity and fire-electricity airproof

(5) Manufacture of the equipment of nuclear-power of great model casting-forge

(6) Power transmitting and transforming equipment (limited to equity joint ventures and cooperative joint ventures): non-brilliant form transformer, high voltage implement great bushing, high voltage on-off operation implement, and freedom integer arc contact, direct current transmit electricity dried reactor, 6 inch direct current convertor clique high-power grain-valve tube, electrical apparatus contact material, and non-Pb, non-Cd solder accorded with EU command of RoHS

(7) Manufacture of the equipment of New energy electricity-power (limited to equity joint ventures and cooperative joint ventures): photovoltaic power , geothermal power generation, tidal power generation, wave power generation, rubbish power generation, methane power generation, wind power generation over 1.5M

(8) Manufacture of stirling generating set

(9) Empolder and manufacture of straight line and plane motor and drive system

(10) Manufacture of solar air conditioning, heating system, solar dryer



- (11) Manufacture of biomass drying pyrolysis system, biomass, gasification unit
- (12) Manufacture of ac-fm voltage regulation drawbar
- (13) Manufacture of intelligent moulded case circuit ,( 3800V, 1000A), large project intelligent cabinet or drawer type circuit breaker, belt- type intelligent electronic control distribution device
- 21. communication equipment, computer and other electronic equipment manufacturing
  - (1) Digital video camera, digital sound-playing equipment and player equipment manufacturing
  - (2) Manufacture of flat panel display such as TFT-LCD, PDP, OLED, FED(including SED) and the material of flat panel display
  - (3) Manufacture of such parts as optical engine, light source, projection screen, high-resolution projection tube and LCOS module used in large screen color projection display
  - (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, digital television converter, digital television broadcasting Single Frequency Network(SFN), satellite digital TV up-linking station, front-end equipment manufacturing of SMATV
  - (5) Manufacture of high-performance single-lens reflex with more than 6 million pixels
  - (6) Design of integrate circuit, and manufacture of large digital integrate circuit with its wire width less than 0.18 micron, manufacture of simulated and digital analogy integrate circuit less than 0.8 micron and the encapsulation and test of such advanced equipment as BGA, PGA, CSP, MCM
  - (7) Large and medium-sized computer, high-performance computer with its operation more than 100 trillion times, portable micro computer, high-rank server with its operation more than 1 trillion times per second, large scale simulated system, large industrial controller and the manufacture of controller
  - (8) Manufacture of computer digital signal process system and board card
  - (9) Manufacture of figure and image recognition process system
  - (10) Development and manufacture of large-capability optical and disk driver
  - (11) Manufacture of high-speed storage system and intelligent storage equipment with its capability more than 100 TB
  - (12) Manufacture of large-breath( more than 900mm) high-definition colored printing equipment, high-definition colored printer head with its precision more than 2400dpi, and large-breath( more than 900mm) high-definition colored Xerox equipment
  - (13) Manufacture of Computer Assistance Design(three-dimensional CAD) , Computer Assisted Testing (CAT) , Computer Aided Manufacture(CAM) , Computer Aided Engineering(CAE) and other computer application system
  - (14) Development and manufacture of software product
  - (15) Development and manufacture of specialized electronic material( excluding the development and manufacture of optical fibre perform rod )
  - (16) Manufacture of specialized equipment, testing equipment, tools and moulds
  - (17) Manufacture of new type electronic components and parts :slice components, sensitive components and sensors, frequency monitoring and selecting components, mix integrated circuit, electrical and electronic components, photoelectric components, new type components for machinery and electronics, high-density interlinked build-up board, multilayer flexible board, flexible printing circuit board and packaging substrate
  - (18) High-tech green battery manufacture: dynamic zinc and nickel storage cell, zinc and silver storage cell, lithium-ion batteries, high-capability, air-proof and repair-free lead-acid battery, solar battery, fuel battery, column-shaped zinc-air battery and etc.
  - (19) High-brightness LBD with its luminous efficiency more than 50lm/W, epitaxial slice LBD(blue) with its luminous efficiency more than 50lm/W, white luminous tube with luminous efficiency more than 50lm/W and its power more than 200mW
  - (20) Development and manufacture of RFID chip
  - (21) Development and manufacture of key components and parts used in high-precision

digital CD drive

(22) Reproduction of read-only compact disk and manufacture of recordable compact disk

(23) Design and manufacture of civil satellites (Chinese partner shall hold the majority of shares)

(24) Manufacture of civil satellites effective payload (Chinese partner shall hold the majority of shares)

(25) Manufacture of spare parts for civil satellites

(26) Manufacture of telecommunication system equipment for satellites

(27) Manufacture of receiving equipment of satellite navigation and key components

(28) manufacture of optical communication measurement and instrument and light transceiver with its speed more than 10Gb/s

(29) Ultra Broad Band (UWB) communication equipment manufacture

(30) Manufacture of wireless Local Area Network(Wide Area Network)

(31) Manufacture of Optical Cross Connect(OXC) , Automatic Switch Optical Network(ASON) , optical fiber communication and transmission equipment more than 40G/sSDH and Coarse Wave Division Multiplexing(CWDM)

(32) Manufacture of Asynchronous Transfer Mode(ATM) and IP digital communication system

(33) Development and manufacture of third-generation and the following mobile communication system mobile phone, base station, core network equipment and network testing equipment

(34) Development and manufacture of high-end router, network switcher more than 1 kilomega

(35) Manufacture of air traffic control system equipment(limited to joint venture and cooperation)

22. Machinery Industries for Instrument and Meter, Culture and Office

(1) Manufacture of field-bus control system and its key components and parts

(2) Development and manufacture of large-scale sophisticated instruments: including electron microscope, laser scanning microscope, scanning tunneling microscope, laser with its power more than 2kw, industrial chromatograph, GC/MS, nuclear magnetic resonance spectrometer, energy dispersive analysis system, X-ray fluorescence spectrometer, diffraction analysis system, industrial CT, large-scale balance measuring machine, automatic testing system of on-line mechanical quality, ultra-speed centrifuge with its rotating speed more than 100000r/min, large-scale metallurgical microscope, three coordinate measuring machine, laser comparator, electrical prospecting instrument, airborne electrical prospecting and gamma-ray spectrometry measuring instrument more than 500 m, borehole gravimetry and 3-dimensional magnetograph, high-precision microgal and aviation gravity gradiometer, High-performance welding rare earth material with permanent magnetism, portable geological radar

(3) Manufacture of high-precision digital voltmeter, current meter(with measuring range of seven bit and a half and above)

(4) Wattless Power manufacture of automatic compensation equipment

(5) Manufacture of two-phase flowmeter and solid flowmeter

(6) Manufacture of automatic plating machine for electron gun

(7) Manufacture of industrial NDT X-ray equipment governing the volt more than 800 kv

(8) Manufacture of new technical equipment for safety production and environmental protection

(9) VXI bus automatic test system (in accordance with IEEE1155 international standards)

(10) Development and manufacture comprehensive management system for under-mine monitoring and disaster-forecasting apparatus and coal safety measurement

(11) Manufacture of the equipment for engineering measurement and global geographical

observation equipment: digital triangle surveying system, Digital programmed system for three-dimensional topography model (acreage>1000×1000mm, horizontal error<1mm, altitude error <0.5mm), ultra wideband seismograph( $\varphi < 5\text{cm}$ , frequency band 0.01-50HZ, equivalent quaking speed noise<10-9m/s), integrated earthquake data processing system, extensive under-well earthquake and auspice observation apparatus, sophisticated controllable epicenter system, engineering velocity measuring system, high-precision GPS receiver (precision 1mm + 1ppmm), INSAR graphics receiving and processing system, absolute gravimeter with the precision less than 1 microgal, satellite gravimeter, Doppler weather radar adopting coherent technology or double polarization technology, visibility measuring apparatus, meteorological sensor, (including temperature, pressure, humidity, wind, precipitation, cloud, visibility, radiation, frozen earth, depth of snow), anti lightning stroke system, multilevel soot and dust sampler, three-dimension supersonic anemoscope, high-precision intelligent total station machine, three-dimensinal laser scanner, high performance diamond bit used for drilling, laser rangefinder without cooperative target, wind profiler(affixed with RASS) , GPS electronic probe system, CO<sub>2</sub>/H<sub>2</sub>O general observation system, boundary layer laser doppler radar, granule chromatography, (3nm-20 $\mu\text{m}$ ) , high-performance data collector, under-water glider

(12) Manufacture of new-tech equipment of environmental-protection testing instrument: air quality testing, water quality testing, new-tech equipment of fume on-line detecting instrument, apparatus for emergency treatment and complete-set new differential coefficient analysis system, automatic calibration, composite, low-drift, on-line remote measurement and remote controlled apparatus and system and etc.

(13) Manufacture of air-pollution prevention and control equipment: high-temperature-proof and erosion-proof filtering material, wet desulfurization complete-set equipment in coal-fueling factory, low-NOX fueling equipment, catalysts for denitrification of fuel gas and complete set of denitrification equipment, purified equipment for the polluted organic gas, purified equipment for gas expelled from diesel-driven automobile

(14) Manufacture of equipment for water-pollution prevention and control: horizontal screw centrifugal dehydrator, membrane and its material, ozonizer more than 10kg/h, NO<sub>2</sub> generator with more than 10kg/h, ultraviolet disinfection device, small domestic sewage treatment device in the rural area

(15) Manufacture of the equipment for treating solid refuse: earth- leak-proof membrane in refuse burying factory, the device for treating dangerous solid waster, methane-for-electricity equipment in refuse burying factory, the equipment for comprehensively using the domestic animal and fowl waste in large scale

(16) Manufacture of environment motoring apparatus: SO<sub>2</sub> automatic sampler and calcimeter, NOX, NO<sub>2</sub> automatic sampler and calcimeter, O<sub>3</sub> automatic monitor, CO automatic monitor, automatic sampler and calcimeter for soot and dust, automatic sampler and calcimeter for soot, portable calcimeter for harmful and toxic gas, automatic analyzer for organic pollutants in the air, COD automatic online monitor, BOD automatic online monitor, automatic online monitor for turbidity, DO automatic online monitor, TOC automatic online monitor, Automatic online monitor for ammonia nitrogen, radiation dose monitor, ray analyzer

(17) Manufacture of instrument and equipment for hydrological data collecting, processing, transmitting and flood warning

(18) Manufacture of ocean exploring apparatus and equipment: deep-sea underwater video camera and underwater camera, multi-beam explorer, shallow and deeper subbottom profiler, navigation warm-salt profiler, fluxgate compass, hydraulic wire line winch, underwater airproof electronic connector, energy recycle device used in filtration-proof seawater desalination with its efficiency more than 90%, high-pressure pump used in filtration-proof seawater desalination with its efficiency more than 85%, filtration-proof seawater desalination membrane( desalination rate more than 99.7%), low-temperature multifunction distilled seawater desalination equipment with its daily

production more than 20, 000 tons, Marine ecosystem inspection buoy, section probing buoy, disposable measuring instrument of electrical conductivity, temperature and depth (XCTD), on-the-spot water quality measuring apparatus, intelligent chemical transducer for measuring the water quality of the ocean (continues work for 3-6 months), electromagnetic current meter sensor, navigating acoustic Doppler current profiler (self-contained, direct-read, used-in-ship), electricity conductivity rate deep-section profiler, acoustic responding emancipator (set deep into the ocean)

#### 23. Other manufacturing 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
- (3) Production of the all biodegradable material

#### IV. Production and Supply of Power, Gas and Water

1. Construction and operation of electricity power by employing the clean fuel technology of integral gasification combined circulation (IGCC), circulating fluidized bed more than 0.3 million kw, Pressurized Fluidized Bed Combustion Combined Cycle (PFBC) more than 0.1 million kw
2. Construction and operation of back pressure combined and heat power
3. Construction and management of hydropower stations with the main purpose of power generating
4. Construction and management of nuclear-power plants (Chinese partner shall hold the majority of shares)
5. Construction and management of new energy power plants (solar energy, wind energy, magnetic energy, geothermal energy, tide energy and biological mass energy, etc.)
6. Utilization of sea water (direct use of sea water, seawater desalination), using industrialization to recycle industrial sewage
7. Construction and operation of urban water-supply plant

#### V. 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 (limited to equity joint ventures or contractual joint ventures)
3. Comprehensive maintenance of infrastructure of high-speed railway, special railway line, intercity (Chinese partner shall hold the majority of shares)
4. Construction and management of highways, independent bridges and tunnels
5. Road freight transportation companies
6. Construction and management of public dock facilities of ports
7. Construction and management of civil airports (the Chinese party shall hold the relative majority of shares)
8. Air transportation companies (Chinese partner shall hold the majority of shares)
9. General aviation companies for agriculture, forest and fishery (limited to equity joint ventures or contractual joint ventures)
10. International liner and tramp maritime transportation business (the Chinese party shall hold the relative majority of shares)
11. International containers inter-model transportation
12. Construction and management of oil (gas) pipelines, oil (gas) depots and petroleum wharf
13. Construction and management of the facilities of coal delivery pipelines
14. Construction and management of storage facilities relating to transportation services

#### VI. Wholesale and Retail Trade Industry

1. Wholesale, retail and logistic distribution of general goods
2. Modern logistics

**VII. Rent and business service**

1. Accounting and auditing ((limited to equity joint ventures or contractual joint ventures)
2. Information consulting agencies of international economy, science and technology, environmental protection
3. Engaged in such information technology and business flow outsourcing services as system application management and maintenance, information technology supportive management, bank background service, financial settlement, human resource service, software development, call center, data processing by means of accepting service outsourcing

**VIII. Scientific research, technology service and geological exploration**

1. Biological engineering technique and bio-medical engineering technique
2. Isotope, irradiation and laser technique
3. Sea development and sea energy development technology, comprehensive technology of sea chemical resources, development of the relevant products and deep-processing technology, sea medicine and biochemical product development technology
4. Sea surveying technology( sea tidal wave, meteorology, environmental monitoring) sea bed probing, exploration and evaluation technology of ocean resource
5. Comprehensively use the high chemical additional value technology to distill chemical potassium, bromine, magnesium from dense sea water after desalination and its deep procession
6. Development of energy-saving technology
7. Technology for recycling and comprehensive utilization of resource, development and application of the recycling technology of the waste dispelled by enterprises
8. Technology for environment pollution treatment and monitoring
9. Energy-saving and consumption-reduction in chemical fiber production and the new technology to deal with polluted air, water and solid waste
10. Technology for preventing from desertification and desert improvement
11. Comprehensive management technology for balancing grass and domestic animal
12. Application technique of civil satellite
13. Research and development centers
14. Incubator for hi-tech, new products developing, and incubation of enterprises

**IX. Water, environment and public facility management industry**

1. Construction and management of key water control projects for comprehensive utilization (the Chinese party shall hold the relative majority of shares)
2. Construction and management of urban access-controlled roads
3. Construction and management of metro and city light rail (Chinese partner shall hold the majority of shares)
4. Construction and management of treatment plants for sewage, garbage, the dangerous wastes (incineration and landfill), and the facilities of environment pollution treatment

**X. Education**

1. Advanced educational institution (only limited to joint venture or cooperative)

**XI. Public health, social security and social welfare**

1. Service agencies for the elderly, the handicapped and children

**XII. Culture, sports and entertainment**

1. Operation of the performance site ((the Chinese party shall hold the relative majority of shares)
2. Operation of the gymnasium, body-fitting, competition performance, sports training and agency service

**Catalogue of Restricted Foreign Investment Industries****I. Farming, Forestry, Animal Husbandry and Fishery Industries**

1. Breeding and seeds developing production of new train crop breed (Chinese party shall hold the majority of shares)

2. Processing of the logs of precious varieties of trees (limited to equity joint ventures or contractual joint ventures)

3. Cotton (raw cotton) processing

## **II. Mining Industries**

1. Exploring and mining of special and scarce coals exploration (Chinese partner shall hold the majority of shares)

2. Exploring and mining of barite (limited to equity joint ventures or contractual joint ventures)

3. Exploring and mining of precious metals (gold, silver, platinum families)

4. Exploring and mining of precious non-metals such as diamond

5. Exploring and cradling of phosphorite

6. Mining of saibelyite and saibelyite iron ores

7. Mining of Celestine

8. Mining of Ocean Manganese Nodule (Chinese partner shall hold the majority of shares)

## **III. Manufacturing Industries**

1. Farming Subsidiary Foodstuff Industry

(1) Processing of soybean, rapeseed edible oil (Chinese partner shall hold the majority of shares), deep-processing of corn

(2) Manufacturing of biology liquid fuel

2. Beverage Manufacturing Industries

(1) Processing of green tea and special tea with China's traditional crafts

(2) Carbonic acid beverage manufacturing

3. Tobacco Industries

(1) Manufacturing of threshing and curl tobacco leaf

4. Printing and Copy of Recording Vehicle

(1) Print of publication (Chinese partner shall hold the majority of shares, except packing and presentation)

5. Petroleum Processing and Coking Industries

(1) Construction and management of refineries which annual produce less than 800 ten thousand tons

6. Chemical Raw Material Products Manufacturing Industry

(1) Sodium hydroxide and potash production

(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 fluorine-chlorocarbon, hydrogen- fluorine-chlorocarbon, tetrafluoroethylene, fluorination-aluminum and hydrofluoric acid

(6) Production of polybutadiene, emulsion polymerization buna S, thermoplastics buna S

(7) Production of sulfate process titanium dioxide, open hearth process permanganate

(8) Production of baron, magnesium, iron ores

(9) Barium salt production

7. Medical and Pharmaceutical Products Industry

(1) Production of chloramphenicol, penicillin G, lincomycin, gentamicin, dihydrostreptomycin, amikacin, tetracycline hydrochloride, oxytetracycline, medemycin, kiasamycin, ilotylin, 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 included in the State's Plan

(4) Production of material medicines for addiction narcotic and A class 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 rayon staple viscose fibre

#### 9. Rubber Products

(1) 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) Non-ferrous metal refining of tungsten, molybdenum, stannum (except tin compounds), antimony (including antimony oxide and antimony sulphide)

(2) Non-ferrous metal refining of electrolytic aluminium, copper, lead, zinc and another non-ferrous metal

(3) Smelting and separation of rare earth metal (limited to equity joint ventures or contractual joint ventures)

#### 11. Metal Manufacturing

(1) Manufacture of containers

#### 12. Common Purpose Equipment Manufacturing Industry

(1) Manufacture of all kinds of general (p0) axletree and accessory (steel ball, cage), rough

(2) Manufacture of wheeled model, crawler crane less than 300 tons

#### 13. 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, hydraulic excavator less than 30 tons, wheel loader less than 6tons, grader of less than 220 horsepower, road roller, fork-lift truck, non-calzada dumper truck, road surface milling rework machinery, garden machine and tools, production of commodity concrete machinery (pump, agitating lorry, pump vehical)

#### 14. Manufacturing of transport and communication facilities

(1) Repairing, design and manufacture of common ship (including subsection) (Chinese partner shall hold the majority of shares)

#### 15. Manufacturing of Communication Apparatus, Computers and another Electric Installation

(1) Production of satellite television receivers and key parts

(2) Manufacture of fiscal cash register

#### IV. Production and Supply of Power, Gas and Water

1. Construction and management of conventional coal-fired power of condensing steam plants whose unit installed capacity is less than 300,000kW, within the small power grid in Xizang, Xinjiang, Hainan province, and the coal-fired power of condensing-extraction steam plants with dual use unit cogeneration

2. Construction and management of power network

#### V. Communication and Transportation, Storage, Post and Telecommunication Services

1. Railway freight transportation companies

2. Railway passenger transportation companies (Chinese partner shall hold the majority of shares)

3. Corporate of highway passenger transport

4. Corporate of enter-leave country fleet operation

5. Corporate of water transportation (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. Tele communication companies: telecommunication increment service (the foreign capital less than 50 percent), motion tone and data service in basic telecom, interior business and international business (the foreign capital less than 35 percent, 49 percent

no later than 11th in December in 2007 is permitted )

**VI. Wholesale and Retail Trade Industries**

1. Commercial companies of commodity direct selling, mail order selling, Internet selling, franchising, commissioned operation, commercial management
2. Wholesale, retail and logistic distribution of grain, cotton, vegetable oil, sugar, medicines, tobaccos, automobiles, crude oil, capital goods for agricultural production (Chinese should hold the majority of shares of the multiple shops which have more than 30 branch stores and sale different kinds and brands of commodities from multi-suppliers)
3. Distributing and selling of audiovisual products (excluding movies) (joint venture or Chinese should hold the majority of shares)
4. Commodity auctions
5. Ship agent (Chinese should hold the majority of shares), tally for foreign vessels (limited to equity joint ventures or contractual joint ventures)
6. Wholesaling product oil and construction and operation of gasoline stations (Chinese should hold the majority of shares of the multiple shops which have more than 30 branch stores and sale different kinds and brands of commodities from multi-suppliers)

**VII. Banking and Insurance Industries**

1. Banks, financial leasing companies, finance companies, trust investment companies, currency brokerage companies
2. Insurance companies (the share of life-insurance companies is less than 50%)
3. Security companies (confined to A share consignment-in, B share, H share and government and company bonds consignment-in and transaction, the foreign-capital is less than one-third), security investment fund management companies (the foreign-capital is less than 49%)
4. Insurance brokerage companies
5. Futures companies (Chinese should hold the majority of shares)

**VIII. Real Estate Industry**

1. Development of pieces of land (limited to equity joint ventures or contractual joint ventures)
2. Construction and operation of high-ranking hotels, villas, high-class office buildings and international exhibition centers
3. Real estate transaction in second-grade market and medium and brokerage companies

**IX. Leasing and Commercial Service Industry**

1. Legal consulting
2. Market Research (limited to equity joint ventures or contractual joint ventures)
3. Status enquiry and grade service companies

**X. Scientific Research and technical Services Industries, Geological Prospecting**

1. Mapping companies (Chinese partner shall hold the majority of shares)
2. Inspection, verification and attestation companies for imported and exported goods
3. Photography service (including trick photography like airphotograph, except mapping aerial photography, limited to equity joint ventures)

**XI. Irrigation, environment and public utilities management**

1. Construction and management of fuel gas in big city, heating power and water supply and sewage net

**XII. Education**

1. Common high school education mechanism

**XIII. Public Health, Sports and Social Welfare Industries**

1. Medical treatment establishments (limited to equity joint ventures or contractual joint ventures)

**XIV. Art, Sports and Entertainment Industries**

1. Production and publication of broadcasting and TV programs and film-making (limited to contractual joint ventures)
2. Construction and operation of cinemas (Chinese partner shall hold the majority of



shares)

3. Construction and operation of large theme park

4. Brokering agency of stage performances

XV. Other industries restricted by the State or international treaties that China has concluded or taken part in

### **Catalogue of Prohibited Foreign Investment Industries**

#### **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 and mining of tungsten, molybdenum, tin, antimony, fluorite

2. Exploring, mining and dressing of radioactive mineral products

3. Exploring, mining and dressing of rare earth metal

#### **III. Manufacturing Industry**

##### **1. Beverage 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 Regulations on Conservation and Management of Wild Chinese Medicinal Material Resources and Rare and Endangered Plants in China

(2) Application of preparing technique of traditional Chinese medicines in small pieces ready for decoction, like steam, frying, moxibustion, calcining, 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. Special Equipment Manufacture Industry**

(1) Manufacture of Weapons and Ammunition

##### **5. Electric Machinery and Equipment Manufacture Industry**

(1) Manufacture of open-lead-acid cells, mercury Button Type Silver Oxide Cells, paste dioxide-zinc battery and nickel cadmium cells

##### **6. Industry Products and 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 management of conventional coal-fired power of condensing steam plants whose unit installed capacity is less than 300,000kW, within the small power grid in Xizang, Xinjiang, Hainan province, and the coal-fired power of condensing-extraction steam plants with dual use unit cogeneration

#### **V. Communication and Transportation, Storage, Post and Telecommunication Services**

1. Companies of air traffic control

2. Companies of postal services

#### **VI. Leasing and Commercial Service Industry**

1. Social investigation

#### **VII. Scientific Research and technical Services Industries, Geological Prospecting**

1. Development and application of human stem cells and gene diagnosis therapy technology
2. Geodetic survey, marine charting, mapping aerial photography, administrative region mapping, relief map of map compilation and navigation electronic map compilation of common map compilation

**VIII. Irrigation, environment and public utilities management**

1. Construction and management of nature reserve and international signify marshy
2. Development of resources about wild animals and plants be native to domestic protected by nation

**IX. Education**

1. Institution of compulsory education and special education, like military, policeman, politics and party school

**X. Art, Sports and Entertainment Industries**

1. News agencies
2. Business of publishing, producing, master issuing, and importing of books, newspaper and periodical
3. Business of publishing, producing, master issuing and importing of audio and visual products and electronic publications
4. 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)
5. Companies of publishing and playing of broadcast and TV programs
6. Companies of films making, issuing, business
7. News website, network audiovisual service, on line service location, internet art management
8. Video screening companies
9. Construction and management of golf course
10. Gambling industry (including gambling turf)
11. Eroticism

**XI. Other Industries**

1. Projects that endanger the safety and performance of military facilities

**XII. Other industries restricted by the State or international treaties that China has concluded or taken part in**

**State Development and Reform Commission, Ministry of Commerce 2007-10-31**

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## Provisions of the State Council on the Encouragement of

### Foreign Investment

to improve the investment environment, to better facilitate the absorption of foreign investment, to introduce advanced technology, to improve product quality, to expand in order to generate foreign exchange and to develop the national economy. Article 1: The State encourages foreign companies, enterprises and other economic entities or individuals (hereinafter referred to as "Foreign Investors") to establish Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and foreign-capital enterprises (hereinafter referred to as "Enterprises with Foreign Investment") within the territory of China. The State grants special preferences to the enterprises with foreign investment listed below: (1) Production-type enterprises whose products are mainly export, which have a foreign exchange surplus after deducting from their total annual foreign exchange revenues the annual foreign expenditures incurred in production and operation and the foreign exchange needed for the remittance abroad of the profits earned by foreign investors (hereinafter referred to as "Products Export Enterprises"); (2) Production-type enterprises possessing advanced technology supplied by foreign investors which are engaged in developing new products, and upgrading and replacing products in order to increase foreign exchange generated by exports or for import substitution (hereinafter referred to as "Technologically Advanced Enterprises"); (3) Products Export Enterprises and Technologically Advanced Enterprises shall be exempt from payment to the State of all subsidies to staff and workers, except for the payment or allocation of funds for labor insurance, welfare expenses and housing subsidies for Chinese staff and workers in accordance with the provisions of the State. Article 4: The site use fees for Products Export Enterprises and Technologically Advanced Enterprises, except for those located in busy urban sectors of large cities, shall be computed and charged according to the following standards: (1) Five to twenty RMB yuan per square meter per year in areas where the development fee and the site use fee are computed and charged together; (2) Not more than three RMB yuan per square meter per year in site areas where the development fee is computed and charged on a one-time basis or areas which are developed by above-mentioned enterprises themselves. Exemptions for specified periods of time from the fees provided in the foregoing provision may be granted at the discretion of local people's governments. Article 5: Products Export Enterprises and Technologically Advanced Enterprises shall be given priority in obtaining water, electricity and transportation services and communication facilities needed for their production and operation. These fees shall be computed and charged in accordance with the standards for local enterprises. Article 6: Products Export Enterprises and Technologically Advanced Enterprises, after examination by the Bank of China, shall be given priority in receiving loans for short-term working funds needed for production and distribution, as well as for other needed credit. Article 7: When Foreign Investors in Products Export Enterprises and Technologically Advanced Enterprises remit abroad profits distributed to them by such enterprises, the amount remitted shall be exempt from income tax. Article 8: After the expiration of the period for the reduction or exemption of enterprise income tax in accordance with the provisions of the State, Products Export Enterprises whose value of export products in that year amounts to 70% or more of the value of their products for that year, may pay enterprise income tax at one-half the rate of the present tax. Products Export Enterprises in the special economic zones and in the economic and technological development zones and other

Products Export Enterprises that have already paid enterprise income tax at a tax rate of 15% and that comply with the foregoing conditions, shall pay enterprise income tax at a rate of 10%. Article 9A After the expiration of the period of reduction or exemption of enterprise income tax in accordance with the provisions of the State, Technologically Advanced Enterprises may extend for three years the payment of enterprise income tax at a rate reduced by one half. Article 10 Foreign investors who reinvest the profits distributed to them by their enterprises in order to establish or expand Products Export Enterprises or Technologically Advanced Enterprises for a period of operation of not less than five years, after application to and approval by the tax authorities, shall be refunded the total amount of enterprise income tax already paid on the reinvested portion. If the investment is withdrawn before the period of operation reaches five years, the amount of enterprise income tax refunded shall be repaid. Article 11 Export products of enterprises with foreign investment, except crude oil, oil products and other products subject to special State provisions, shall be exempt from the consolidated industrial and commercial tax. Article 12 Enterprises with foreign investment may arrange the export of their products by themselves or may also export by consignment to agents in accordance with the State provisions. For products that require export licences, an application for export licences may be made every six months in accordance with the annual export plan of the enterprise. Article 13 Machinery and equipment, vehicles used in production, raw materials, fuel, bulk parts, spare parts and components, machine component parts and fittings (including imports restricted by the State), which enterprises with foreign investment need to import in order to carry out their export contracts, are not required to apply for examination and approval and are exempt from the requirement for import licences. The Customs shall exercise supervision and control, and shall inspect and release such imports on the strength of the enterprise contract or the import and export contract. The imported materials and items mentioned above are restricted to be used by the enterprise itself only and may not be sold on the domestic market. If they are used in products to be sold domestically, then they are required to go through the import procedures retroactively in accordance with the provisions and the taxes shall be made up according to the governing stipulations. Article 14 Under the supervision of the foreign exchange control departments, enterprises with foreign investment may mutually adjust their foreign exchange surpluses and deficiencies among themselves. The Bank of China and other banks designated by the People's Bank of China may provide cash security services and may grant loans in Renminbi to Enterprises with Foreign Investment. Article 15 The people's governments at all levels and relevant departments in charge shall guarantee the autonomy of Enterprises with Foreign Investment and shall support enterprises with foreign investment in managing their enterprises in accordance with international advanced scientific methods. Within the scope of their approved contracts, enterprises with foreign investment have the right by themselves to determine production and operation plans, to raise funds, to use funds, to determine by themselves the wage levels, the forms of wages and bonuses and the allowance system. Enterprises with foreign investment may, in accordance with their production and operation requirements, determine by themselves their organizational structure and personnel system, employ or dismiss senior management personnel, increase or dismiss staff and workers. They may recruit and employ technical personnel, managerial personnel and workers in their locality. The unit to which such employed personnel belong shall provide its support and shall permit their transfer. Staff and workers who violate the rules and regulations, and thereby cause certain bad consequences may, in accordance with the seriousness of the case, be given differing sanctions, up to that of

discharge. Enterprises with foreign investment that recruit, employ, dismiss or discharge staff and workers, shall file a report with the local labor and personnel department. Article 16 All districts and departments must implement the "Circular of the State Council Concerning Firmly Curbing the Indiscriminate Levy of Charges on Enterprises". The people's governments at the provincial level shall formulate specific methods and strengthen supervision and administration. Enterprises with Foreign Investment that encounter unreasonable charges may refuse to pay and may also appeal to the local economic committees up to the State Economic Commission. Article 17 The people's governments at all levels and relevant departments in charge shall strengthen the coordination of their work, improve efficiency in handling matters and shall promptly examine and approve matters reported by enterprises with foreign investment that require response and resolution. The agreement, contract and articles of association of an Enterprise with Foreign Investment shall be examined and approved by the departments in charge under the State Council. The examination and approval authority must, within three months from the date of receipt of all the documents, decide to approve or not to approve. Article 18 Products Export Enterprises and Technologically Advanced Enterprises mentioned in these Provisions shall be confirmed jointly as such by the foreign economic relations and trade departments where such enterprises are located and the relevant departments in accordance with the enterprise contract, and certification shall be issued. If the actual results of the annual exports of a products export enterprise are unable to realize the goal of surplus in the foreign exchange balance that is stipulated in the enterprise contract, the taxes and fees which have already been reduced or exempted in the previous year shall be made up in the following year. Article 19 Except where these Provisions expressly provide that they are to be applicable to Products Export Enterprises or Technologically Advanced Enterprises, other articles shall be applicable to all Enterprises with Foreign Investment. These Provisions apply from the date of implementation to all those Enterprises with Foreign Investment that have obtained approval for establishment before the date of the implementation of these Provisions and conform to the preferential terms of these Provisions. Article 20 For enterprises invested in and established by companies, enterprises and other economic organizations or individuals from Hongkong, Macao, or Taiwan, matters shall be handled by reference to these Provisions. Article 21 The Ministry of Foreign Economic Relations and Trade shall be responsible for interpreting these Provisions. Article 22 These Provisions shall enter into force as of the date of promulgation.

## **The Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises**

Article 1 Income tax shall be paid in accordance with the provisions of this Law by enterprises with foreign investment within the territory of the People's Republic of China on their income derived from production, business operations and other sources.

Income tax shall be paid in accordance with the provisions of this Law by foreign enterprises on their income derived from production, business operations and other sources within the territory of the People's Republic of China.

Article 2 "Enterprise with foreign investment" referred to in this Law means Chinese-foreign equity joint ventures, Chinese foreign contractual joint ventures and foreign-capital enterprises that are established in China.

"Foreign enterprises" referred to in this Law means foreign companies, enterprises and other economic organizations which have establishments or places in China and engage in production or business operations, or which, though without establishments or places in China, have income from sources within China.

Article 3 Any enterprise with foreign investment which establishes its head office in China shall pay income tax on its income derived from sources inside and outside China. Any foreign enterprise shall pay income tax on its income derived from sources within China.

Article 4 The taxable income of enterprises with foreign investment and establishments or places set up in China by foreign enterprises to engage in production or business operations shall be the amount remaining from gross income in a tax year after costs, expenses and losses have been deducted.

Article 5 The income tax on enterprises with foreign investment and the income tax which shall be paid by foreign enterprises on the income of their establishments or places set up in China to engage in production or business operations shall be computed on taxable income at the rate of 30%; local income taxes shall be computed on taxable income at the rate of 3%.

Article 6 The state shall, in accordance with the industrial policies, guide the orientation of foreign investment and encourage the establishment of enterprises with foreign investment which adopt advanced technology and equipment and export all or the greater part of their products.

Article 7 The income tax on enterprises with foreign investment established in special economic zones, foreign enterprises which have establishments or places in special economic zones engaged in production or business operations, and enterprises with foreign investment of a production nature in economic and technological development zones shall be levied at the reduced rate of 15%.

The income tax on enterprises with foreign investment of a production nature 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 24 %.

The income tax on enterprises with foreign investment in coastal economic open zones, old urban districts of cities where the special economic zones or the economic and technological development zones are located, or other regions defined by the State Council within the scope of energy, communications, harbour, wharf or other projects encouraged by the state, may be levied at the reduced rate of 15 %. The specific rules shall be regulated by the State Council.

Article 8 Any enterprise with foreign investment of a production nature scheduled to operate for a period of not less than 10 years shall, from the year in which it begins to make profits, be exempted from income tax in the first and second years and allowed a 50% reduction in the third to fifth years. However, the exemption from or reduction of income tax for 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. Enterprises with foreign investment which have actually operated for a period of less than 10 years shall repay the amount of income tax already exempted or reduced.

The relevant regulations promulgated by the State Council before the entry into force of this Law, which provide preferential treatment in the form of exemption from or reduction of income tax for enterprises engaged in energy, communications, harbour, wharf and other major projects of a production nature for a period longer than that specified in the preceding paragraph, or which provide preferential treatment in the form of exemption from or reduction of income tax for enterprises engaged in major projects of a non-production nature, shall remain applicable after this Law enters into force. Any enterprise with foreign investment which is engaged in agriculture, forestry or animal husbandry and any other enterprise with foreign investment which is established in remote underdeveloped areas may, upon approval by the competent department for tax affairs under the State Council of an application filed by the enterprise, 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 preceding two paragraphs.

After this Law enters into force, any modification to the provisions of the preceding three paragraphs of this Article on the exemption from or reduction of income tax on enterprises shall be submitted by the State Council to the Standing Committee of the National People's Congress for decision.

Article 9 The exemption from or reduction of local income tax for any enterprise with foreign investment which operates in an industry or undertakes a project encouraged by the state shall, in accordance with the actual situation, be at the discretion of the people's government of the relevant province, autonomous region or municipality directly under the Central Government.

Article 10 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 which uses the profit as capital investment to establish other enterprises with foreign investment to operate for a period of not less than 5 years shall, upon approval by the tax authorities of an application filed by the investor, be refunded 40% of the income tax already paid on the reinvested amount. Where regulation of the State Council provides otherwise in respect of preferential treatment, such provisions shall apply. If the investor withdraws its reinvestment before the expiration of a period of 5 years, it shall repay the refunded tax.

Article 11 Losses incurred in a tax year by an enterprise with foreign investment or by an establishment or place set up in China by a foreign enterprise to engage in production or business operations may be off-set against income of the following tax year. Should the income of the following tax year be insufficient to offset the said losses, the balance may be offset against income of the next subsequent year, and so on, over a period not exceeding 5 years.

Article 12 Any enterprise with foreign investment shall be allowed, when filing a consolidated income tax return, to deduct from the amount of tax payable the foreign income tax already paid abroad in respect of income derived from sources outside China. The deductible amount shall not, however, exceed the amount of income tax otherwise payable under this Law in respect of income derived from sources outside China.

Article 13 The payment or receipt of charges or fees in business transactions between an enterprise with foreign investment, or an establishment or place set up in China by a foreign enterprise to engage in production or business operations, and its associated enterprises shall be made in the same manner as the payment or receipt of charges or fees in business transactions between independent enterprises. Where the payment or receipt of charges or fees is not made in the same manner as in business transactions between independent enterprises and this results in a reduction of taxable income, the tax authorities shall have the right to make reasonable adjustments.

Article 14 Where an enterprise with foreign investment or an establishment or place set up in China by a foreign enterprise to engage in production or business operations is established, moves to a new site, merges with another enterprise, breaks up, winds up or makes a change in any of the main entries of registration, it shall present the relevant documents to and shall go through tax registration or a change or cancellation in registration with the local tax authorities, after the relevant event is registered or a change or cancellation in registration has been made with the administrative agency for industry and commerce.

Article 15 Income tax on enterprises and local income tax shall be computed on an annual basis and paid in advance in quarterly installments. Such payments shall be made within 15 days from the end of each quarter and the final settlement shall be made within 5 months from the end of each tax year. Any excess payment shall be refunded and any deficiency shall be repaid.

Article 16 Any enterprise with foreign investment and any establishment or place set up in



China by a foreign enterprise to engage in production or business operations shall file its quarterly provisional income tax returns in respect of advance payments with the local tax authorities within the period for each advance payment of tax and shall file an annual income tax return together with the final accounting statements within 4 months from the end of the tax year.

**Article 17** Any enterprise with foreign investment and any establishment or business operations shall report its financial and accounting systems to the local tax authorities for reference purposes. All accounting records must be complete and accurate, with legitimate vouchers as the basis for entries.

If the financial and accounting bases adopted by an enterprise with foreign investment or an establishment or place set up in China by a foreign enterprise to engage in production or business operations contradict the relevant tax provisions of the State Council, tax payment shall be computed in accordance with the relevant tax provisions of the State Council.

**Article 18** If any enterprise with foreign investment goes into liquidation, and if the balance of its net assets or the balance of its remaining property after deduction of the enterprise's undistributed profit, various funds and liquidation expenses exceeds the enterprise's paid-in capital, the excess portion shall be liquidation income on which income tax shall be paid in accordance with the provisions of this Law.

**Article 19** Any foreign enterprise which has no establishment or place in China but which derives profits, interest, rent, royalties or other income from sources in China, or which, though it has an establishment or place in China, derives such income and the income is not effectively connected with such establishment or place, shall pay an income tax of 20% on such income.

From the payment of income tax in accordance with the provisions of the preceding paragraph, the income beneficiary shall be the taxpayer and the payer shall be the withholding agent. The tax shall be withheld from the amount of each payment by the payer. The withholding agent shall, within 5 days, remit the amount of taxes withheld on each payment to the State Treasury and submit a withholding income tax return to the local tax authorities.

An exemption from or reduction of income tax shall apply to the following income: (1) profits derived by a foreign investor from an enterprise with foreign investment shall be exempted from income tax; (2) income from interest on loans made to the Chinese Government or Chinese state banks by international financial organizations shall be exempted from income tax; (3) income from interest on loans made at a preferential interest rate to Chinese state banks by foreign banks shall be exempted from income tax; and (4) income tax on royalties 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 10%, where the technology supplies is advanced or the terms are preferential; exemption from income tax may be allowed.

Apart from the aforesaid provisions of this article, if preferential treatment in the form of reduction or exemption from income tax on profits, interest, rent, royalties and other income is required, it shall be regulated by the State Council.

Article 20 The tax authorities shall have the right to inspect the financial, accounting and tax affairs of enterprises with foreign investment and establishments or places set up in China by foreign enterprises to engage in production or business operations, and shall have the right to inspect the tax withholding of the withholding agent and its payment of the withheld tax to the State Treasury.

The entities and withholding agents being inspected must report the facts and provide relevant information. They may not conceal or refuse to provide any facts.

When making an inspection, the tax officials shall produce their identity documents and shall be responsible for confidentiality.

Article 21 Income tax payable according to this Law shall be computed in terms of Renminbi (RMB). Income in foreign currency shall be converted into Renminbi according to the exchange rate quoted by the state exchange control authorities for purposes of tax payment.

Article 22 If any taxpayer fails to pay tax within the prescribed time limit, or if the withholding agent fails to remit the tax withheld within the prescribed time limit, the tax authorities shall, in addition to setting a new time limit for tax payment, impose a surcharge for overdue payment equal to 0.2% of the overdue tax for each day in arrears, starting from the first day the payment became overdue.

Article 23 The tax authorities shall set a new time limit for registration or submission of documents and may impose a fine of 5,000 yuan or less on any taxpayer or withholding agent which fails to register for tax purposes or to make a change or cancellation in registration with the tax authorities within the prescribed time limit; submit an income tax return, final accounting statements or withholding income tax return to the tax authorities within the prescribed time limit; or report its financial and accounting systems to the tax authorities for reference purposes.

Where the tax authorities have set a new time limit for registration for submission of documents, they shall impose a fine of 10,000 yuan or less on taxpayers or withholding agents which again fail to meet the time limit for registration or making a change in registration with the tax authorities, or for submitting an income tax return, final accounting statements or withholding income tax return to the tax authorities. Where the circumstances are serious, the legal representative and the person directly responsible shall be investigated for criminal responsibility by applying, mutatis mutandis, the provisions of Article 121 of the Criminal Law.

Article 24 Where the withholding agent fails to fulfil its obligation to withhold taxes as provided in this Law, and does not withhold or withholds an amount less than that which should have

been withheld, the tax authorities shall set a time limit for the payment of the amount of tax that should have been withheld, and may impose a fine up to but not exceeding 100% of the amount of tax that should have been withheld.

Where the withholding agent fails to remit the tax withheld to the State Treasury within the prescribed time limit, the tax authorities shall set a time limit for remitting the taxes and may impose a fine of 5,000 yuan or less on the withholding agent; if the withholding agent again fails to meet the time limit, the tax authorities shall pursue the taxes according to the law and may impose a fine of 10,000 yuan or less on the withholding agent. If the circumstances are serious, the legal representative and the person directly responsible shall be investigated for criminal responsibility by applying, mutatis mutandis, the provisions of Article 121 of the Criminal Law.

Article 25 Where any person evades tax by deception or concealment or fails to pay tax within the time limit prescribed by this Law and, after the tax authorities have pursued the payment of tax, again fails to pay it within the prescribed time limit, the tax authorities shall, in addition to recovering the tax which should have been paid, impose a fine up to but not exceeding 500% of the amount of tax which should have been paid. Where the circumstances are serious, the legal representative and the person directly responsible shall be investigated for criminal responsibility in accordance with the provisions of Article 121 of the Criminal Law.

Article 26 In case of a dispute with the tax authorities in respect of the payment of tax, any enterprise with foreign investment, foreign enterprise or withholding agent must first pay tax according to the relevant regulations. Thereafter, the taxpayer or withholding agent may, within 60 days from the date of receipt of the tax payment certificate issued by the tax authorities, apply to the tax authorities at the next highest level for reconsideration. The higher tax authorities shall make a decision within 60 days after receipt of the application for reconsideration. If the taxpayer or withholding agent is not satisfied with the decision, it may institute legal proceedings in the people's court within 15 days from the date of the notification on decision made after reconsideration.

If the party concerned is not satisfied with the decision on punishment by the tax authorities, it may, within 15 days from the date of receipt of the notification on punishment, apply for reconsideration to the tax authorities at the next highest level above that which made the decision on punishment. Where the party is not satisfied with the decision made after reconsideration, it may institute legal proceedings in the people's court within 15 days from the date of receipt of the decision made after reconsideration. The party concerned may, however, directly institute legal proceedings in the people's court within 15 days from the date of receipt of the decision made after reconsideration. The party concerned may, however, directly institute legal proceedings in the people's court within 15 days from the date of receipt of the notification on punishment. If the party concerned does not apply for reconsideration to the higher tax authorities or institute legal proceedings in the people's court within the time limit, and if the decision on punishment is not fulfilled, the tax authorities which made the decision on punishment may apply to the people's court for compulsory execution.

Article 27 Where any enterprise with foreign investment which was established before the

promulgation of this Law would otherwise, in accordance with the provisions of this Law, be subject to higher tax rates or enjoy less preferential treatment of tax exemption or reduction than before the entry into force of this Law, in respect of such enterprise, within its approved period of operation, the law and relevant regulations of the State Council in effect before the entry into force of this Law shall apply. If any such enterprise has no approved period of operation, the law and relevant regulations of the State Council in effect before the entry into force of this Law shall within the period prescribed by the State Council. Specific rules shall be regulated by the State Council.

**Article 28** Where the provisions of tax agreements concluded between the Government of the People's Republic of China and foreign governments are different from the provisions of this Law, the provisions of the respective agreements shall apply.

**Article 29** Rules for implementation shall be formulated by the State Council in accordance with this Law.

**Article 30** This Law shall enter into force on 1 July 1991. The Income Tax Law of the People's Republic of China for Chinese-Foreign Equity Joint ventures and the Income Tax Law of the People's Republic of China for Foreign Enterprises shall be annulled as of the same date.

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## Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises

10-27-2007

(Adopted at the 4th Session of the 7th National People's Congress on Apr. 9, 1991 and promulgated on the same day on Order No. 43 of the President of the People's Republic of China)

Article 1 Enterprises with foreign investment in the People's Republic of China shall pay income tax on their income from production, business operations and other sources in accordance with the provisions of this Law.

Foreign enterprises shall pay income tax on their income from production, business operations and other sources within the territory of the People's Republic of China in accordance with the provisions of this Law.

Article 2 "Enterprises with foreign investment" mentioned in this Law refer to Chinese-foreign equity joint ventures, Chinese-foreign cooperative enterprises and foreign-funded enterprises set up within the territory of China.

"Foreign enterprises" mentioned in this Law refer to those foreign companies, enterprises and other economic organizations which have set up establishments and sites engaged in production or business operations in China, and which, though without establishments and sites set up in China, have income from sources in China.

Article 3 Enterprises with foreign investment with head offices set up in China shall pay income tax on their income from sources in and outside China. Foreign enterprises shall pay income tax on income from sources in China.

Article 4 The taxable income of an enterprise with foreign investment or a foreign enterprise with establishments or sites set up and engaged in production or business operations in China shall be the remaining amount out of its gross income in a tax year after the costs, expenses and losses have been deducted.

Article 5 The enterprise income tax to be paid by an enterprise with foreign investment and the enterprise income tax to be paid by a foreign enterprise on the income of its establishments or sites set up and engaged in production or business operations in China shall be assessed on the taxable income at the rate of 30% and a local income tax shall be assessed on the taxable income at the rate of 3%.

Article 6 Pursuant to China's industrial policies, the State shall give guidance to foreign investors on their investment orientation and encourage foreign invested enterprises that adopt advanced technology and equipment and export all or the greater part of their products out of China.

Article 7 Those enterprises with foreign investment in special economic zones, those foreign enterprises with establishments and sites set up and engaged in production or business operations in special economic zones and those foreign-invested manufacturing enterprises in economic and technological development zones shall pay enterprise income tax at the reduced tax rate of 15%.

Those foreign-invested manufacturing enterprises set up in open coastal economic zones, and in the old urban districts of cities with special economic zones and cities with economic and technological development zones shall pay enterprise income tax at the reduced tax rate of 24%.

Those enterprises with foreign investment set up in open coastal economic zones, and in the old urban districts of cities with special economic zones and cities with economic and technological development zones or in other districts prescribed by the State Council and engaged in energy, transportation, ports, docks and other undertakings, which are encouraged by the State, shall pay enterprise income tax at the reduced tax rate of 15%, and the concrete procedure thereof shall be defined by the State Council.

Article 8 A foreign-invested manufacturing enterprise scheduled to operate for at least 10 years shall be exempted from income tax in the first two years beginning from the year when it begins making profit and shall pay income tax at a 50% discount in the third year through the fifth year, but for those exploiting petroleum, natural gas, rare metals, precious metals and other similar natural resources, the specific provisions on the collection of enterprise income tax shall be formulated by the State Council separately. If an enterprise with foreign investment fails to operate for a full 10 years, it shall repay the amount of income tax already reduced or exempted.

those regulations promulgated by the State Council prior to the implementation of this Law, tax provide preferential treatment of longer period of income tax reduction or exemption than the provisions in the previous paragraph of this Law to projects of energy, transportation, ports, docks and other important manufacturing projects or preferential treatment of enterprise income tax reduction or exemption to major non-manufacturing projects shall continue to be implemented after this Law comes into effect.

After the term for tax reduction or exemption provided in the previous two paragraphs has expired, those enterprises with foreign investment engaged in agriculture, forestry and animal husbandry and those set up in remote and economically underdeveloped regions may continue to enjoy a 15% to 30% reduction of the enterprise income tax in the succeeding 10 years provided that their applications are approved by competent tax authorities under the State Council.

In case any alteration of the provisions regarding reduction and exemption of enterprise income tax in the previous three paragraphs is required following the implementation of this Law, it shall be reported by the State Council to the Standing Committee of the National People's Congress to determine.

Article 9 The people's governments of the provinces, autonomous regions and municipalities directly under the State Council may decide in light of the local reality on reduction and exemption of local income tax on these industries and items in which foreign investors are encouraged to make investment.

Article 10 When a foreign investor of an enterprise with foreign investment makes direct reinvestment in the enterprise with the profit obtained from the enterprise, thereby increasing the registered capital thereof or use the profits from the enterprise to establish another enterprise with foreign investment with a scheduled operational period of no less than five years, the foreign investor may get a refund of 40% of the income tax already paid on the reinvested portion of income upon approval of application by the tax authorities, or enjoy preferential treatment otherwise prescribed by the State Council. If the reinvestment is withdrawn in less than five years, the refunded tax payment shall be paid back to the tax authorities.

Article 11 Losses sustained by enterprises with foreign investment or the establishments and other setups in China of foreign enterprises engaged in production or business operation may be made up for from the income of the next tax year; and if the income of the next tax year is insufficient to make up for the loss, it may continue year by year for no more than five years.

Article 12 When an enterprise with foreign investment is allowed to pay on a consolidated basis the tax on an income from a source outside China of which the income tax has been paid outside China, that income tax shall be allowed to be deducted from the tax amount, but the deduction shall not exceed the tax amount assessed on his income from an overseas source in accordance with the provisions of this Law.

Article 13 When an enterprise with foreign investment or an establishment or setup in China of a foreign enterprise engaged in production or business operations makes or collects payments for sales of goods and charges in business exchanges with its associated enterprises, it shall conduct these dealings as though among independent enterprises. If such payments and collections are not done as those among independent enterprises thus causing a decrease in the taxable income thereof, the tax authorities shall have the power to make appropriate adjustments.

Article 14 An enterprise with foreign investment or an establishment or setup in China of a foreign enterprise engaged in production or business operations shall apply to the Administration of Industry and Commerce for registration, or alteration or cancellation thereof on account of the establishment, movement, merger, separation, termination or alteration of the principal items in the registration and then bring the relevant documents to the local tax authorities for tax registration or alteration or cancellation thereof.

Article 15 The enterprise income tax and local income tax shall be assessed on an yearly basis and quarterly advances thereof shall be paid within 15 days after the end of each quarter and settlement of the income tax shall be made with surplus returned and deficit made up within five months after the year-end.

Article 16 An enterprise with foreign investment or an establishment or setup in China of a foreign enterprise engaged in production or business operations shall file tax returns with the local tax authorities within the prescribed time limit for advance tax payment and file year-end tax returns and accounting statements of final settlement within four months after the year-end.

Article 17 An enterprise with foreign investment or an establishment or setup in China of a foreign enterprise engaged in production or business operations shall report its financial system and accounting system to the local tax authorities for the record and examination. The accounting records it provides should be complete and accurate and bookkeeping should be based on legitimate vouchers.

If the financial and accounting basis of an enterprise with foreign investment or an establishment or setup in China of a foreign enterprise engaged in production or business operations is found at variance with the relevant taxation regulations of the State Council, income tax shall be assessed in accordance with the relevant taxation regulations of the State Council.

Article 18 If the net asset or the remnant asset of an enterprise with foreign investment remaining exceeds the actually contributed capital after undivided profits, funds and expenses are deducted at the time of liquidation, the balance shall be the liquidation gain liable to income tax in accordance with the provisions of this Law.

Article 19 If a foreign enterprise with an establishment or other setup in China has the following profits

Article 17 If a foreign enterprise, firm and organization or some entity at home and abroad has interests, rentals, royalties and other income from sources in China or it has establishments or other setups in China but has obtained the above cited income from sources without any connection with those establishments or setups, it shall pay an enterprise income tax at the rate of 20%.

With regard to the income tax payable in accordance with the provisions in the previous paragraph, the actual beneficiary shall be the taxpayer and the payer of those payments shall be the tax withholder(s). The payer shall withhold tax from every payment made. Each withholder shall hand to the state treasury each withholding within five days and file a tax withholding statement to the local tax authorities.

Tax reduction or exemption shall be applicable to the incomes listed below:

1. Profits a foreign investor obtains from an enterprise with foreign investment are free from income tax.
2. Interests an international financial organization obtains from loans to the Chinese government or to Chinese national banks are free from income tax.
3. Interests a foreign bank obtains from loans of preferential interest rates to the Chinese national banks are free from income tax, and
4. The royalties from technical know-how used in scientific research, exploitation of energy, development of transportation, production of agriculture, forestry or animal husbandry or the development of major technologies shall be eligible for the reduced rate of 10% of income tax upon approval by the competent tax authorities under the State Council, and royalties from advanced technology or are obtained with special favor shall be exempt from income tax.

Besides those cited above, any tax reduction or exemption to be granted to income from profits, interests, rentals, royalties and other sources shall be determined by the State Council.

Article 20 Chinese tax authorities have the right to inspect the financial state, accounting and performance of tax payment of an enterprise with foreign investment or an establishment or setup in China of a foreign enterprise engaged in production or business operations and to inspect the situation of tax withholdings by tax withholders. The institutions or individuals being inspected shall provide the necessary information and shall not refuse the inspection or conceal information.

Tax inspectors sent by the tax authorities shall display identification and shall be responsible for the confidentiality of the information they have come in touch of.

Article 21 Income tax shall be paid in RMB in accordance with the provisions of this Law. Payment of income tax on income in a foreign currency shall be converted into the local currency at the official exchange rate quoted by the state exchange control department.

Article 22 When a taxpayer fails to pay income tax in the prescribed time limit or a withholder fails to hand over to the state the withholding in the prescribed time limit, the tax authorities shall set a time limit for the payment thereof and levy a daily fine on the deferral at the rate of 2‰ from the day payment deferral begins.

Article 23 In the event of failure to make tax registration or alter or cancel tax registration with the tax authorities in the prescribed time limit, or failure to file tax returns, final accounting settlement statements or tax withholding statements to the tax authorities in the prescribed time limit, or failure to provide the tax authorities with the financial and accounting system of its enterprise for inspection, the tax authorities shall set a time limit to the procedure and impose a fine up to five thousand yuan.

Failure to make, alter or cancel tax registration with the tax authorities in the prescribed time limit, or to file tax returns, final accounting settlement statements or tax withholding statements to the tax authorities in the prescribed time limit despite the demand of the tax authorities for registration or submission of the documents within a prescribed time limit shall merit a fine up to 10,000 yuan imposed by the tax authorities, and if the case is grave, criminal responsibilities of the legal representative and the person with direct responsibility shall be sought with reference to Article 121 of the Criminal Law of China.

Article 24 In case a tax withholder fails to perform its obligation as provided in this Law and fails to withhold the tax payable or withholds only part of the tax payable, the tax authorities shall have it make up for the part of the tax not withheld within an imposed time limit and may in the meanwhile impose a fine no more than twice the amount of the tax not withheld.

In case a tax withholder fails to hand over the withheld tax payment to the state treasury in the prescribed time limit, the tax authorities shall make it hand over the withholding within the prescribed time limit and may in the meanwhile impose a fine of up to 5,000 yuan; in case the withholder still fails to hand in the money in time, the tax authorities shall pursue the tax payment and impose a fine of up to 10,000 yuan; and if the case is grave enough, the criminal responsibility of its legal representative and the person with direct responsibility shall be sought with reference to the provisions of Article 121 of the Criminal Law of China.

Article 25 In the case of tax evasion by concealment or deception, or failure of paying tax within the prescribed time limit as provided in this Law, and payment is still refused within the time limit despite the urge by the tax authorities, the tax authorities shall pursue the payment of the tax payable and impose a fine up to five times the tax amount unpaid; and in a grave case, the criminal responsibility of the legal representative and the person with direct responsibility shall be sought in accordance with the provisions of

regulations shall be the same as the provisions of the law. If the provisions of the law are inconsistent with the provisions of the regulations, the provisions of the law shall prevail.

Article 121 of the Criminal Law of China.

Article 26 In case of a dispute with the tax authorities over tax payment, an enterprise with foreign investment or a foreign enterprise or a tax withholder shall pay the tax in accordance with the relevant regulations before appealing to the higher tax authorities for reconsideration within 60 days after the reception of the tax invoice issued by the tax authorities. If the enterprise with foreign investment, foreign enterprise or tax withholder is not reconciled to the decision by the higher tax authorities, it may bring the case to a people's court within 15 days from the day the decision on reconsideration arrives.

If the party in question is not reconciled to the penalty imposed by the tax authorities, it may appeal to the higher tax authorities for reconsideration within 15 days on the day the notification of the penalty arrives. If the party concerned is still not reconciled to the decision of the reconsideration, it may bring the case to a people's court within 15 days from the day the notification of the decision of the reconsideration arrives. The party may directly bring the case to a people's court within 15 days from the day the decision on penalty is notified. If the party concerned fails to appeal for reconsideration or to bring the case to a people's court within the prescribed time limit and refuses to accept the penalty, the authorities that mete out the penalty shall request the people's court to enforce the penalty.

Article 27 Wherever an enterprise with foreign investment that has been founded before the promulgation of this Law finds the rate of income tax provided by this Law is higher or the preferential treatment to tax reduction or exemption poorer than that before the promulgation of this Law, the law and the relevant regulations of the State Council prior to the promulgation of this Law shall prevail in the term of operation already approved; if there is no approved term of operation, the law and the relevant regulations of the State Council prior to the promulgation of this Law shall prevail in the term prescribed by the State Council. The specific rules thereof shall be formulated by the State Council.

Article 28 Wherever the provisions of taxation agreements the government of the People's Republic of China has signed with foreign governments are found at variance with the provisions of this Law, the provisions of these agreements shall prevail.

Article 29 The State Council shall formulate the rules for the implementation of this Law.

Article 30 This Law shall come into force as of July 1, 1991. The "Income Tax Law of the People's Republic of China concerning Chinese-Foreign Equity Joint Ventures" and the "Income Tax Law of the People's Republic of China concerning Foreign Enterprises" shall be abrogated therefore.

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**Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and****Foreign Enterprises**

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**Chapter I General Provisions**

Article 1 These Rules are formulated in accordance with the provisions of Article 29 of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (hereinafter referred to as the "Tax Law").

Article 2 "Income from production and business operations" mentioned in Article 1, paragraph 1 and paragraph 2 of the Tax Law means income from production and business operations in manufacturing, mining, communications and transportation, construction and installation, agriculture, forestry, animal husbandry, fishery, water conservation, commerce, finance, service industries, exploration and exploitation, and in other trades.

"Income from other sources" mentioned in Article 1, paragraph 1 and paragraph 2 of the Tax Law means profits (dividends), interest, rents, income from the transfer of property, income from the provision or transfer of patents, proprietary technology, income from trademark rights and copyrights as well as other non-business income.

Article 3 "Enterprises with foreign investment" mentioned in Article 2, paragraph 1 of the Tax Law and "foreign companies, enterprises and other economic organizations which have establishments or places in China and engage in production or business operations" mentioned in Article 2, paragraph 2 of the Tax Law are, unless otherwise especially specified, generally all referred to as "enterprises" in these Rules.

"Establishments or places" mentioned in Article 2, paragraph 2 of the Tax Law refers to management organizations, business organizations, administrative organizations

and places for factories and the exploitation of natural resources, places for contracting of construction, installation, assembly, and exploration work, places for the provision of labor services, and business agents.

Article 4 "Business agents" mentioned in Article 3, paragraph 2 of these Rules means companies, enterprises and other economic organizations or individuals entrusted by foreign enterprises to engage as agents in any of the following:

- (1) representing principals on a regular basis in the arranging of purchases and signing of purchase contracts and the purchasing of commodities on commission;
- (2) entering into agency agreements or contracts with principals, storing on a regular basis products or commodities owned by principals, and delivering on behalf of principals such products or commodities to other parties; and
- (3) having authority to represent principals on a regular basis in signing of sales contracts or in accepting of purchase orders.

Article 5 "Head office" mentioned in Article 3 of the Tax Law refers to the central organization which is established in China by an enterprise with foreign investment as a legal person pursuant to the laws of China and which is responsible for the management, operations and control over such enterprise.

Income from production and business operations and other income derived by the branches within or outside China of an enterprise with foreign investment shall be consolidated by the head office for purposes of the payment of income tax.

Article 6 "Income derived from sources inside China" mentioned in Article 3 of the Tax Law refers to:

- (1) income from production and business operations derived by enterprises with foreign investment and foreign enterprises which have establishments or places in China, as well as profits (dividends), interest, rents, royalties and other income arising within or outside China actually connected with establishments or sites established in China by enterprises with foreign investment or foreign enterprises;
- (2) the following income received by foreign enterprises which have no establishments or sites in China:
  - (a) profits (dividends) earned by enterprises in China;

(b) interest derived within China such as on deposits or loans, interest on bonds, interest on payments made provisionally for others, and deferred payments;

(c) rentals on property leased to and used by lessees in China;

(d) royalties such as those received from the provision of patents, proprietary technology, trademarks and copyrights for use in China;

(e) gains from the transfer of property, such as houses, buildings, structures and attached facilities located in China and from the assignment of land-use rights within China;

(f) other income derived from China and stipulated by the Ministry of Finance to be subject to tax.

Article 7 In respect of Chinese-foreign contractual joint ventures that do not constitute legal persons, each partner thereto may separately compute and pay income tax in accordance with the relevant tax laws and regulations of the State; income tax may, upon approval by the local tax authorities of an application submitted by such enterprises, be computed and paid on a consolidated basis in accordance with the provisions of the Tax Law.

Article 8 "Tax year" mentioned in Article 4 of the Tax Law begins on January 1 and ends on December 31 under the Gregorian Calendar.

Foreign enterprises that have difficulty computing taxable income in accordance with the tax year stipulated in the Tax Law may, upon approval by the local tax authorities of an application submitted by such enterprises, use their own 12-month fiscal year as the tax year.

Enterprises commencing business operations in the middle of a tax year or actually operating for a period of less than 12 months in any tax year due to such factors as merger or shut-down shall use the actual period of operations as the tax year. Enterprises that undergo liquidation shall use the period of liquidation as the tax year.

Article 9 "The competent authority for tax affairs under the State Council" mentioned in Article 8, paragraph 3 and Article 19, paragraph 3, Item (4) of the Tax Law and

Article 72 of these Rules refers to the Ministry of Finance and the State Tax Bureau.

## Chapter II Computation of Taxable Income

Article 10 "The formula for the computation of taxable income" mentioned in Article 4 of the Tax Law is as follows:

### (1) Manufacturing:

(a) taxable income = (profit on sales) + (profit from other operations)

(b) profit on sales = (net sales) - (cost of products sold) - (taxes on sales) - [ (selling expenses) + (administrative expenses) + (finance expenses) ];

(c) net sales = (gross sales) - [ (sales returns) + (sales discounts and allowances) ];

(d) cost of products sold = (cost of products manufactured for the period)

(e) cost of products manufactured for the period = (manufacturing costs for the period) + (inventory of semi-finished products and products in process at the beginning of the period) - (inventory of semi-finished products and products in process at the end of the period);

(f) manufacturing costs for the period = (direct materials consumed in production for the period) + (direct labour) + (manufacturing expenses).

### (2) Commerce:

(a) taxable income = (profit on sales) + (profit from other operations)

(b) profit on sales = (net sales) - (cost of sales) - (taxes on sales) - [ (selling expenses) + (administrative expenses) + (finance expenses) ];

(c) net sales = (gross sales) - [ (sales returns) + (sales discounts and allowances) ];

(d) cost of sales = (inventory of merchandise at the beginning of the period) + { (purchase of merchandise during the period) - [ (purchase returns) + (purchase discounts and allowances) ] + (purchasing expenses) } - (inventory of merchandise at the end of the period).

### (3) Service trades:

(a) taxable income = (net business income) + (non-operating income) - (non-operating expenses);

(b) net business income = (gross business income) - [ (taxes on business income) + (operating expenses) + (administrative expenses) + (finance expenses) ].

(4) Other lines of business: Computations shall be made with reference to the above formulas.

Article 11 The computation of taxable income of an enterprise shall, in principle, be on an accrual basis.

The following income from business operations of an enterprise may be determined by stages and used as the basis for the computation of taxable income:

(1) Where products or commodities are sold by installment payment methods, income from sales may be recognized according to the invoice date of the products or commodities to be delivered; income from sales may also be recognized according to the date of payment to be made by the buyer as agreed upon in the contract;

(2) Where construction, installation and assembly projects, and provision of labour services extend beyond one year, income may be recognized according to the progress of the project or the amount of work completed;

(3) Where the processing or manufacturing of heavy machinery, equipments and ships for other enterprises extends beyond one year, income may be recognized according to the progress of the project or amount of work completed.

Article 12 Where Chinese-foreign contractual joint ventures operate on the basis of product-sharing, the partners thereto shall be deemed to receive income at the time of the division of the products; the amount of income shall be computed according to the price sold to third party or with reference to prevailing market prices.

Where foreign enterprises are engaged in the co-operative exploration of petroleum resources, the partners thereto shall be deemed to receive income at the time of the division of the crude oil; the amount of income shall be computed according to a price which is adjusted periodically with reference to the international market prices of crude oil of similar quality.

Article 13 In respect of income obtained by enterprises in the form of non-monetary assets or rights and interests, such income shall be computed or appraised with reference to prevailing market prices.

Article 14 "Exchange rate quoted by the State exchange control authorities" mentioned in Article 21 of the Tax Law refers to the buying rate quoted by the State Administration of Exchange Control.

Article 15 In respect of income obtained by enterprises in foreign currency, upon payment of income tax in quarterly instalments in accordance with the provisions of Article 15 of the Tax Law, taxable income shall be computed by converting the income into Renminbi according to the exchange rate quotation on the last day of the quarter. At the time of final settlement following the end of the year, no recomputation and reconversion need be made in respect of income in a foreign currency for which tax has already been paid on a quarterly basis; only that portion of the foreign currency income of the entire year for which tax has not been paid shall, in respect of the computation of taxable income, be converted into Renminbi according to the exchange rate quotation on the last day of the tax year.

Article 16 Where an enterprise is unable to provide complete and accurate certificates of costs and expenses and is unable to correctly compute taxable income, the local tax authorities shall determine the rate of profit and compute taxable income with reference to the profit level of other enterprises in the same or similar trade. Where an enterprise is unable to provide complete and accurate certificates of revenues and is unable to report income correctly, the local tax authorities shall appraise and determine taxable income by the use of such methods as cost (expense) plus reasonable profits.

When the tax authorities appraise and determine profit rates or revenues in accordance with the provisions of the preceding paragraph, and where other treatment is provided by the laws, regulations and rules, such other treatment shall be applicable.

Article 17 Foreign air transportation and ocean shipping enterprises engaged in international transport business shall use 5% of the gross revenues from passenger and cargo transport and shipping services arising within China as taxable income.

Article 18 Where an enterprise with foreign investment invests in another enterprise

within China, the profits (dividends) so obtained from the enterprise receiving such investment may be excluded from taxable income of the enterprise; however, expenses and losses incurred in such above-mentioned investments shall not be deducted from taxable income of the enterprise.

Article 19 Unless otherwise stipulated by the State, the following items shall not be itemized as costs, expenses or losses in the computation of taxable income:

- (1) expenses in connection with the acquisition or construction of fixed assets;
- (2) expenses in connection with the transfer or development of intangible assets;
- (3) interest on capital;
- (4) various income tax payments;
- (5) fines for illegal business operations and losses due to the confiscation of property;
- (6) surcharges and fines for overdue payment of taxes;
- (7) the portion of losses due to natural disasters or accidents for which there has been compensation;
- (8) donations and contributions other than those used in China for public welfare or relief purposes;
- (9) royalties paid to the head office;
- (10) other expenses not related to production or business operations.

Article 20 Reasonable administrative expenses paid by a foreign enterprise with an establishment or site in China to the head office in connection with production or business operations of the establishment or site shall be permitted to be itemized as expenses following agreement by the local tax authorities after an examination and verification of documents of proof issued by the head office in respect of the scope of the administrative expenses, total amounts, the basis and methods of allocation, which shall be provided together with an accompanying verification report of a certified public accountant.

Administrative expenses in connection with production and business operations shall be allocated reasonably between enterprises with foreign investment and their branches.

Article 21 Reasonable interest payments incurred on loans in connection with production and business operations shall be permitted to be itemized as expenses following agreement by the local tax authorities after an examination and verification of documents of proof, which shall be provided by the enterprises in respect of the loans and interest payments. Interest paid on loans used by enterprises for the purchase or construction of fixed assets or the transfer or development of intangible assets prior to the assets being put into use shall be included in the original value of the assets. "Reasonable interest" mentioned in the first paragraph of this Article refers to interest computed at a rate not higher than normal commercial lending rates.

Article 22 Entertainment expenses incurred by enterprises in connection with production and business operations shall, when supported by authentic records or invoices and vouchers, be permitted to be itemized as expenses subject to the following limits:

(1) Where annual net sales are 15 million yuan (RMB) or less, not to exceed 0.5% of net sales; for that portion of annual net sales that exceeds 15 million yuan (RMB), not to exceed 0.3% of that portion of net sales.

(2) Where annual gross business income is 5 million yuan (RMB) or less, not to exceed 1% of annual gross business income; for that portion of annual gross business income that exceeds 5 million yuan (RMB), not to exceed 0.5% of that portion of annual gross business income.

Article 23 Exchange gains or losses incurred by enterprises during preconstruction or during production and business operations shall, except as otherwise provided by the State, be appropriately itemized as gains or losses for that respective period.

Article 24 Salaries and wages, and benefits and allowances paid by enterprises to employees shall be permitted to be itemized as expenses following agreement by the local tax authorities after an examination and verification of the submission of wage scales and supporting documents and relevant materials.

Foreign social security premiums paid by enterprises to employees working in China



shall not be itemized as expenses.

Article 25 Enterprises engaged in such businesses as credit and leasing operations may, on the basis of actual requirements and following approval by the local tax authorities of a report thereon, provide year-by-year bad debt provisions, the amount of which shall not exceed 3% of the amount of the year-end loan balances (not including inter-bank loans) or the amount of accounts receivable, bills receivable and other such receivables, to be deducted from taxable income of that year.

The portion of the actual bad debt losses incurred by an enterprise which exceeds the bad debt provisions of the preceding year may be itemized as a loss in the current year; the portion less than the bad debt provisions of the previous year shall be included in taxable income of the current year.

Bad debt losses mentioned in the preceding paragraph shall be subject to approval after examination and verification by the local tax authorities.

Article 26 "Bad debt losses" mentioned in Article 25, paragraph 2 of these Rules refers to the following accounts receivable:

- (1) due to the bankruptcy of the debtor, collection is still not possible after the use of the bankruptcy assets for settlement;
- (2) due to the death of the debtor, collection is still not possible after the use of the estate for repayment;
- (3) due to the failure of the debtor to fulfil repayment obligations for over two years, collection is still not possible.

Article 27 Accounts receivable already itemized as bad debt losses which are recovered in full or in part by an enterprise in a subsequent year shall be included in taxable income of the year of recovery.

Article 28 Foreign enterprises with establishments or places in China may, except as otherwise provided by the State, deduct as expenses foreign income tax, which has been paid on profits (dividends), interest, rents, royalties and other income received from outside China and actually connected with such establishments or places.

Article 29 "Net assets or remaining property" mentioned in Article 18 of the Tax Law means the amount of all assets or property following deduction of various liabilities and losses upon the liquidation of an enterprise.

#### Chapter III Tax Treatment for Assets

Article 30 "Fixed assets of enterprises" means houses, buildings and structures, machinery, mechanical apparatus, means of transport and other such equipment, appliances and tools related to production and business operations with a useful life of one year or more. Items not in the nature of major equipment which are used for production or business operations and which have a unit value of 2,000 yuan (RMB) or less, or with a useful life of two years or less may be itemized as expenses on the basis of actual consumption.

Article 31 The valuation of fixed assets shall be based on original cost.

The original cost of purchased fixed assets shall be the purchase price plus transportation expenses, installation expenses and other related expenses incurred prior to the use of the assets.

The original cost of fixed assets manufactured or constructed by an enterprise itself shall be the actual expenses incurred in their manufacture or construction.

The original cost of fixed assets treated as investments shall, giving consideration to the degree of wear and tear of the fixed assets, be such reasonable price as is specified in the contract, or a price appraised with reference to the relevant market price plus the relevant expenses incurred prior to the use thereof.

Article 32 Depreciation of fixed assets of an enterprise shall be computed commencing with the month following the month in which they are first put into use. The computation of depreciation shall cease in the month following the month in which the fixed assets cease to be used.

All investments made during the development stage by enterprises engaged in the exploitation of oil resources shall, taking the oil (gas) field as a unit, be aggregated and treated as capital expenditures; the computation of depreciation shall begin in the month following the month in which the oil (gas) field commences commercial production.

Article 33 In respect of the computation of depreciation of fixed assets, the salvage value shall first be estimated and deducted from the original cost of the assets. The salvage value shall not be less than 10% of the original value; any request for retaining a lower salvage value or not salvage value must be approved by the local tax authorities.

Article 34 Depreciation of fixed assets shall be computed using the straight-line method. Where it is necessary to use any other method of depreciation, an application may be filed by an enterprise which, following examination and verification by the local tax authorities, shall be reported level-by-level to the State Tax Bureau for approval.

Article 35 The computation of the minimum useful life in respect of the depreciation of fixed assets is as follows:

- (1) for houses and buildings: 20 years;
- (2) for railway rolling stock, ships, machinery, mechanical apparatus, and other production equipment: 10 years;
- (3) for electronic equipment and means of transport other than railway rolling stock and ships, as well as as such fixtures, tools and furnishings related to production and business operations: 5 years.

Article 36 Depreciation of fixed assets in the nature of investments during the development stage and subsequent stages of an enterprise engaged in the exploitation of oil resources may be computed on a consolidated basis without retaining salvage value; the period of depreciation shall not be less than six years.

Article 37 "Houses and buildings" mentioned in Article 35, Item (1) of these Rules means houses, buildings and attached structures used for production and business

operations, and living quarters and welfare facilities for employees, the scope of which is as follows:

- houses, including factory buildings, business premises, office buildings, warehouses, residential buildings, canteens, and other such buildings;
- buildings, including towers, ponds, troughs, wells, racks, sheds (not including temporary, simply constructed structures such as work sheds and vehicle sheds), fields, roads, bridges, platforms, piers, docks, culverts, gas stations as well as pipes, smokestacks, and enclosing walls that are detached from buildings, machinery and equipment;

Facilities attached to buildings and structures mean auxiliary facilities that are inseparable from buildings and structures and for which no separate value is computed, including, for example, building and structure ventilation and drainage systems, oil pipelines, communication and power lines, elevators and sanitation equipment.

Article 38 The scope of railway rolling stock, ships, machinery, mechanical apparatus and other production equipment mentioned in Article 35, Item (2) of these Rules is as follows:

- "railway rolling stock" includes various types of locomotives, passenger coaches, freight cars, as well as auxiliary facilities on rolling stock for which no separate value is computed;
- "ships" includes various types of motor ships as well as auxiliary facilities on ships for which no separate value is computed;
- "machinery, mechanical apparatus and other production equipment" includes various types of machinery, mechanical apparatus, machinery units, production lines, as well as auxiliary equipment such as various types of power, transport and conduction equipment.

Article 39 The scope of electronic equipment, means of transport other than railway rolling stock and ships mentioned in Article 35, Item (3) of these Rules is as follows:

- "electronic equipment" means equipment comprising mainly integrated circuits, transistors, electron tubes and other electronic components whose primary functions are to bring into use the application of electronic technology (including

software), including computers as well as computer-controlled robots, and digital-control or program-control systems.

– "means of transport other than railway rolling stock and ships" includes airplanes, automobiles, trams, tractors, motor bikes (boats), motorized sailboats, sailboats, and other means of transport.

Article 40 Where, for special reasons, it is necessary to shorten the useful life of fixed assets, an application may be submitted by an enterprise to the local tax authorities which following examination and verification shall be reported level-by-level to the State Tax Bureau for approval.

Fixed assets which for special reasons as mentioned in the preceding paragraph require the useful life to be shortened 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.

Article 41 Enterprises which acquire used fixed assets having a remaining useful life shorter than the useful life specified in Article 35 of these Rules may, following agreement by the local tax authorities after examination and verification of certifying documents so submitted, compute depreciation according to the remaining useful life.

Article 42 Where expenditures incur during the course of the use of fixed assets due to increased value caused by expansion, replacement, reconstruction and technical innovation of fixed assets, the original value of fixed assets shall be increased; where the period of use of fixed assets can be extended, the useful life shall be appropriately extended and the computation of depreciation adjusted accordingly.

Article 43 No further depreciation shall be allowed in respect of fixed assets which

can be continued to be used after having been fully depreciated.

Article 44 The balance of proceeds from the transfer or disposal of fixed assets by an enterprise shall, after deduction of the under depreciated amount or the salvage value and handling fees, be entered into the profit and loss account for the current year.

Article 45 Depreciation of fixed assets received as gifts by enterprises may be computed on the basis of reasonable valuation.

Article 46 Patents, proprietary technology, trademarks, copyrights, land-use rights and other intangible assets of enterprises shall be appraised on the basis of the original value.

For alienated intangible assets, the original value shall be the actual amount paid based on a reasonable price. For self-developed intangible assets, the original value shall be the actual amount of expenditure incurred in the course of development. For intangible assets used as investment, the original value shall be such reasonable price as is stipulated in the agreement or contract.

Article 47 The amortization of intangible assets shall be computed using the straight-line method. Intangible assets transferred or assigned or used as investments, where the useful life is stipulated in the agreement or contract, may be amortized over the period of that useful life; the amortization period in respect of intangible assets for which no useful life has been stipulated or which have been developed internally shall not be less than ten years.

Article 48 Reasonable exploration expenses incurred by enterprises engaged in the exploitation of petroleum resources may be amortized against income from oil (gas) fields that have already commenced commercial production. The amortization period shall not be less than one year.

Where operation of a contract field owned by a foreign oil company is terminated due to failure to find commercially viable oil (gas), and where ownership of the contract for the exploitation of petroleum (gas) resources is not continued and management

organizations or offices for carrying on operations for the exploitation of petroleum (gas) resources are no longer maintained in China, reasonable exploration expenses already incurred in respect of the terminated contract field shall, upon examination and confirmation and the issuance of certification by the tax authorities, be permitted to be amortized against production income of a newly owned contract field when the new contract for cooperative exploitation of oil (gas) resources is signed within ten years from the date of the termination of the old contract.

Article 49 Expenses incurred by enterprises during the period of organization shall be amortized beginning with the month following the month in which production and business operations commence; the period of amortization shall not be less than five years. The period of organization mentioned in the preceding paragraph means the period from the date of approval of the organization of the enterprise to the date of commencement of production and business operations (including trial production and trial business operations).

Article 50 Inventories of merchandise, finished products, goods in process, semi-finished products, raw materials, and other such materials of enterprises shall be valued at cost.

Article 51 Enterprises may choose one of the following such methods: first-in, first-out; moving average; weighted average or last-in, first-out as the method of computing actual costs in respect of the delivery or receipt and use of goods in stock.

Once a method of valuation has been adopted for use, no change shall be made thereto. Where a change in the method of valuation is indeed necessary, the matter shall be reported to the local tax authorities for approval prior to the commencement of the next tax year.

#### Chapter IV Business Dealings Between Associated Enterprises

Article 52 "Associated enterprises" mentioned in Article 13 of the Tax Law refers to companies, enterprises and other economic units that have any of the following

relationships with other enterprises:

- (1) relationships in respect of existing direct or indirect ownership of or control over such matters as finances, business operations or purchases and sales;
- (2) direct or indirect ownership of or control over it and another by a third party;
- (3) any other relationship in respect of an association of reciprocal interests.

Article 53 "Business transactions between independent enterprises" mentioned in Article 13 of the Tax Law means business dealings carried out between unassociated and unrelated enterprises on the basis of arm's length prices and common business practices. Enterprises have a duty to provide to the local tax authorities relevant materials such as standard prices and charges in respect of business dealings with their associated enterprises.

Article 54 Where prices in respect of purchase and sales transactions between an enterprise and its associated enterprises are not based on independent business dealings, adjustments may be made thereto by the local tax authorities according to the following arrangements and methods of determination:

- (1) based on prices of the same or similar business activities between independent enterprises;
- (2) based on the level of profits obtained from resales in respect of unassociated and unrelated third party prices;
- (3) based on costs plus reasonable expenses and profit margin;
- (4) based on any other reasonable method.

Article 55 Where interest paid or received in respect of accommodating financing between an enterprise and an associated enterprise exceeds or is lower than the amount that would be agreed upon by unassociated and unrelated parties, or where the rate of interest exceeds or is lower than the normal rate of interest in respect of similar business, adjustments may be made thereto by the local tax authorities with reference to normal rates of interest.

Article 56 Where labour service fees paid or received in respect of the provision of labour services by an enterprise to an associated enterprise are not based on



business dealings between independent enterprises, adjustments may be made thereto by the local tax authorities with reference to the normal fee standards of similar labour activities.

Article 57 Where the valuation or the receipt or payment of usage fees in respect of such business dealings as the transfer of property or the granting of rights to the use of property between an enterprise and an associated enterprise is not based on business dealings between independent enterprises, adjustments may be made thereto by the local tax authorities with reference to amounts that would be agreed to by unassociated and unrelated parties.

Article 58 Management fees paid by an enterprise to an associated enterprise shall not be expensed.

#### Chapter V Withholding at Source

Article 59 "Taxable income on profits, interest, rents, royalties and other income" mentioned in Article 19, paragraph 1 of the Tax Law shall, except as otherwise stipulated by the State, be computed on the basis of gross income. Gross royalties obtained from the provision of patents and proprietary technology include fees for blueprint materials, technical services and personnel training, as well as other related fees.

Article 60 "Profits" mentioned in Article 19 of the Tax Law means income derived from the right to profits according to the proportion of investment, equity rights, stockholding, or other non-debt profit-sharing rights.

Article 61 "Other income" mentioned in Article 19 of the Tax Law includes gains from the transfer of property such as houses, buildings and structures and attached facilities within China and land-use rights. "Gains" mentioned in the preceding paragraph means the amount remaining from the receipt on transfer minus the original value of the property. Where foreign enterprises are unable to provide correct certification of the original value of the property, the original value of the property shall be determined by the local tax authorities according to the specific

circumstances thereof.

Article 62 "The amount of payment" mentioned in Article 19, paragraph 2 of the Tax Law means cash payments, payment by remittances, and amounts paid by account transfers, as well as amounts in equivalent cash value paid in non-cash assets or rights and interests.

Article 63 "Profits obtained from an enterprise with foreign investment" mentioned in Article 19, paragraph 3, Item (1) of the Tax Law means income obtained from profits of an enterprise with foreign investment following the payment or the reduction of or exemption from income tax in accordance with the provisions of the Tax Law.

Article 64 "International finance organizations" mentioned in Article 19, paragraph 3, Item (2) of the Tax Law means financial institutions such as the International Monetary Fund, the World Bank, the Asian Development Bank, the International Development Association, and the International Fund for Agricultural Development.

Article 65 "Chinese State banks" mentioned in Article 19, paragraph 3, Item (2) and Item (3) of the Tax Law means 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, the Bank of Communications of China, the Investment Bank of China, and other financial institutions authorized by the State Council to engage in credit businesses such as foreign exchange deposits and loans.

Article 66 The scope of the reduction of or exemption from income tax on royalties provided for in Article 19, paragraph 3, Item (4) of the Tax Law is as follows:

(1) royalties received in providing proprietary technology for the development of farming, forestry, animal husbandry and fisheries:

(a) technology provided to improve soil and grasslands, develop barren mountainous regions and make full use of natural conditions;

(b) technology provided for the supplying of new varieties of animals and plants and for the production of pesticides of high effectiveness and low toxicity;

(c) technology provided such as to advance scientific production management in

respect of farming, forestry, fisheries and animal husbandry, to preserve the ecological balance, and to strengthen resistance to natural calamities;

(2) royalties received in providing proprietary technology for scientific institutions, institutions of higher learning and other scientific research units to conduct or cooperate in carrying out scientific research or scientific experimentation;

(3) royalties received in providing proprietary technology for the development of energy resources and expansion of communications and transportation;

(4) royalties received in providing proprietary technology in respect of energy conservation and the prevention and control of environmental pollution;

(5) royalties received in providing the following proprietary technology in respect of the development of important fields of science and technology:

(a) production technology for major and advanced mechanical and electrical equipment:

(b) nuclear power technology;

(c) production technology for large-scale integrated circuits;

(d) production technology for photoelectric integrated circuits, microwave semi-conductors and microwave integrated circuits, and manufacturing technology for microwave electron tubes;

(e) manufacturing technology for ultra-high speed computers and microprocessors;

(f) optical telecommunications technology;

(g) technology for long-distance, ultra-high voltage direct current power transmission; and

(h) technology for the liquefaction, gasification and comprehensive utilization of coal.

Article 67 In respect of income of foreign enterprises engaged in China in construction, installation, assembly, and exploration contracting work, and provision of labour activities such as consulting, management and training, the tax authorities may designate the parties paying the contracted amounts and labour service fees as tax withholding agents.

## Chapter VI Tax Preferences

Article 68 Pursuant to the provisions of Article 6 of the Tax Law, the granting of any necessary preferential treatment in respect of enterprise income tax to enterprises with foreign investment that are encouraged by the State shall be implemented in accordance with the provisions of the relevant laws and administrative rules and regulations of the State.

Article 69 "Special economic zones" mentioned in Article 7, paragraph 1 of the Tax Law means the special economic zones of Shenzhen, Zhuhai, Shantou and Xiamen and the Hainan Special Economic Zone established by law or established upon approval of the State Council; "economic and technological development zones" mentioned therein means the economic and technological development zones in the coastal port cities established upon approval of the State Council.

Article 70 "Coastal economic open zones" mentioned in Article 7, paragraph 2 of the Tax Law means those cities, counties and districts established as coastal economic open zones upon approval of the State Council.

Article 71 "Imposition of enterprise income tax at the reduced rate of 15%" mentioned in Article 7, paragraph 1 of the Tax Law shall be limited to income obtained by enterprises from production and business operations in the respective areas so specified in Article 7, paragraph 1 of the Tax Law. "Imposition of enterprise income tax at the reduced rate of 24%" mentioned in Article 7, paragraph 2 of the Tax Law shall be limited to income obtained by enterprises from production and business operations in the respective areas so specified in Article 7, paragraph 2 of the Tax Law.

Article 72 "Enterprises with foreign investment of a production nature" mentioned in Article 7, paragraph 1 and paragraph 2 and Article 8, paragraph 1 of the Tax Law means enterprises with foreign investment engaged in the following industries:

- (1) machine manufacturing and electronics industries;
- (2) energy resource industries (not including exploitation of oil and natural gas);
- (3) metallurgical, chemical and building material industries;
- (4) light industries, and textiles and packaging industries;
- (5) medical equipment and pharmaceutical industries;

- (6) agriculture, forestry, animal husbandry, fisheries and water conservation;
- (7) construction industries;
- (8) communications and transportation industries (not including passenger transport);
- (9) development of science and technology, geological survey and industrial information consultancy directly for services in respect of production and services in respect of repair and maintenance of production equipment and precision instruments;
- (10) other industries as specified by the tax authorities under the State Council.

Article 73 "Imposition of enterprise income tax at the reduced rate of 15%" mentioned in Article 7, paragraph 3 of the Tax Law applies to the following:

- (1) production-oriented enterprises with foreign investment established in the coastal economic open zones, special economic zones and in the old urban districts of municipalities where economic and technological development zones are located and which are engaged in the following projects:
  - (a) technology-intensive or knowledge-intensive projects;
  - (b) projects with foreign investments of over US \$ 30 million and having long periods for return on investment;
  - (c) energy resource, transportation and port construction projects;
- (2) Chinese-foreign equity joint ventures engaged in port and dock construction;
- (3) financial institutions such as foreign capital banks and Chinese- foreign banks established in the special economic zones and other areas approved by the State Council, where the capital contribution of the foreign investor or the funds for business activities allocated by the head office bank to the branch bank exceeds US \$ 10 million, and where the period of operations is ten years or more;
- (4) production-oriented enterprises with foreign investment established in the Pudong New Area of Shanghai, as well as enterprises with foreign investment engaged in energy resource and transport construction projects such as airports, ports, railways, highways and power stations;
- (5) enterprises with foreign investment recognized as high or new technology enterprises established in the State high or new technology industrial development zones designated by the State Council, as well as enterprises with foreign investment recognized as new technology enterprises established in the new technology

industrial development experimental zone of the municipality of Beijing;

(6) enterprises with foreign investment engaged in projects encouraged by the State and established in other areas stipulated by the State Council. Enterprises with foreign investment in projects listed in Item (1) of the preceding paragraph shall, following approval by the State Tax Bureau of an application submitted by such enterprises, be subject to enterprises income tax at the reduced tax rate of 15%.

Article 74 "The period of business operations" mentioned in Article 8, paragraph 1 of the Tax Law means the period commencing on the date an enterprise with foreign investment actually begins production or business operations (including trial production and trial business operations) and ending on the date the enterprise ceases production or business operations.

Enterprises with foreign investment that pursuant to the provisions of Article 8, paragraph 1 of the Tax Law may enjoy treatment in respect of reductions of or exemptions from enterprise income tax shall submit to the local tax authorities for examination and verification such circumstances as the lines of business in which engaged, names of major products, and the period of operations decided upon. No treatment in respect of reductions of or exemptions from enterprise income tax shall be enjoyed without examination and verification and agreement thereof.

Article 75 "The relevant provisions promulgated by the State Council before the entry into force of this Law" mentioned in Article 8, paragraph 2 of the Tax Law means the following provisions in respect of exemptions from or reductions of enterprise income tax promulgated or approved for promulgation by the State Council:

(1) Chinese-foreign equity joint ventures engaged in port and dock construction where the period of operations 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.

(2) Enterprises with foreign investment established in the Hainan Special

Economic Zone and engaged in infrastructure facility projects such as airports, harbours, docks, highways, railways, power stations, coal mines and water conservation, and enterprises with foreign investment engaged in the development of and operations in agriculture where the period of operations is 15 years or more shall, following application by the enterprise and approval thereof by the tax authorities of Hainan Province 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.

(3) Enterprises with foreign investment established in the Pudong New Area of Shanghai and engaged in construction projects such as airports, ports, railways, highways and power stations where the period of operations is 15 years or more shall, following application by the enterprise and approval thereof by the tax authorities of the municipality of Shanghai 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.

(4) Enterprises with foreign investment established in the special economic zones and engaged in service-oriented industries where the amount of the foreign investment exceeds US \$ 5 million and the period of operations is ten years or more shall, following application by the enterprise and approval thereof by the tax authorities of the special economic zone and commencing with the first profit-making year, be exempt from enterprise income tax in the first year and subject to enterprise income tax at a rate reduced by one half for the second and third years.

(5) Financial institutions such as foreign capital banks and Chinese- foreign banks established in the special economic zones and other areas approved by the State Council where the capital contribution of the foreign investor or the funds for business activities allocated by the head office bank to the branch bank exceeds US \$ 10 million and the period of operations is ten years or more shall, following application by the enterprise and approval thereof by the local tax authorities and commencing with the first profit-making year, be exempt from enterprise income tax in the first year and subject to enterprise income tax at a rate reduced by one half for the second and third years.

(6) Chinese-foreign equity joint ventures recognized as high or new technology

enterprises and established in the State high or new technology industrial development zones designated by the State Council where the period of operations is ten years or more shall, following application by the enterprise and approval thereof by the local tax authorities and commencing with the first profit-making year, be exempt from enterprise income tax in the first year and second year. Enterprises with foreign investment established in the special economic zones and the economic and technological development zones shall be governed by the preferential tax provisions of the special economic zones and the economic and technological development zones. Enterprises with foreign investment established in the new technology industrial development experimental zone of the municipality of Beijing shall be governed by the preferential tax provisions of the new technology industrial development experimental zone of the municipality of Beijing.

(7) Export-oriented enterprises invested in and operated by foreign businesses for which in any year the output value of all export products amounts to 70% or more of the output value of the products of the enterprise for that year may pay enterprise income tax at the tax rate specified in the Tax Law reduced by one half after the period of enterprise income tax exemptions or reductions has expired in accordance with the provisions of the Tax Law. 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%.

(8) 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 pay for an additional three years enterprise income tax at the tax rate specified in the Tax Law reduced by one half.

(9) Implementation of other provisions in respect of exemptions from or reductions of enterprise income tax promulgated or approved for promulgation by the State Council.

Enterprises with foreign investment shall, in applying for exemptions from or reductions of enterprise income tax in accordance with the provisions of Item (6), Item (7), or Item (8) of the preceding paragraph, submit relevant documents of proof issued by departments in respect of the examination, verification and confirmation,



the application shall be subjected to approval by the local tax authorities after examination and verification.

Article 76 "The first profit-making year" mentioned in Article 8, paragraph 1 of the Tax Law and in Article 75 of these Rules means the first tax year in which profits are obtained by an enterprise following commencement of production or business operations. Where an enterprise suffers losses during the early stages after establishment, such losses may be made up by the income of the following tax year in accordance with the provisions of Article 11 of the Tax Law. The first profit-making year shall be the year in which profits are obtained after such losses are made up. The period for exemptions from or reductions of enterprise income tax specified in the first paragraph of Article 8 of the Tax Law and Article 75 of these Rules shall be computed continuously commencing with the year in which the enterprise begins to make profits. The computation shall not be deferred because of losses incurred in any of the subsequent years.

Article 77 Enterprises with foreign investment which commence operations in the middle of a year and earn profits may, where the actual period of operations is less than six months, choose to use the following year as the period in which to begin the computation of tax exemptions or tax reductions; however, income tax shall be paid in accordance with the Tax Law on profits earned during the year.

Article 78 Unless otherwise provided by the State Council, the preferential tax provisions of Article 8, paragraph 1 of the Tax Law shall not apply to enterprises engaged in the exploitation of such natural resources as petroleum, natural gas, rare metals and precious metals.

Article 79 Enterprises with foreign investment that have received exemptions from or reductions of enterprise income tax pursuant to the provisions of Article 8, paragraph 1 of the Tax Law and Article 75 of these Rules shall, where the actual period of operations is less than the period stipulated therein, except in the case of major losses sustained due to natural disasters or unforeseen accidents, make up the amount of the exemptions from or reductions of enterprise income tax.

Article 80 "Direct reinvestment" mentioned in Article 10 of the Tax Law refers to profits received from an enterprise with foreign investment by foreign investor of that enterprise which prior to receipt are directly used to increase registered capital, or which following receipt are directly used to organize another enterprise with foreign investment. Foreign investors shall, in computing the amount of tax refundable in accordance with the provisions of Article 10 of the Tax Law, provide certificates confirming the use of the reinvested profits for the year; the local tax authorities shall adopt any reasonable method for the reckoning and determination thereof where certificates cannot be provided. Foreign investors shall, in respect of the application for a refund of tax, submit within one year of the date of the actual investment of the reinvested amount a record of the reinvested amount and a certificate for the investment period of the increased capital or contributed capital to the tax authorities in the place where the taxes were originally paid.

Article 81 "Other preferential provisions of the State Council" mentioned in Article 10 of the Tax Law refers to direct reinvestment in China by foreign investors for the organization and expansion of export-oriented enterprises or advanced technology enterprises, as well as profits of foreign investors earned from enterprises established in the Hainan Special Economic Zone that are directly reinvested in the Hainan Special Economic Zone in infrastructure projects and agriculture development enterprises and for which the entire portion of enterprise income tax that has already been paid on the reinvested amount may, in accordance with the provisions of the State Council, be refunded.

Foreign investors that apply for a refund of tax on reinvestments in accordance with the provisions of the preceding paragraph shall, in addition to completing the requirements pursuant to Article 80, paragraph 2 and paragraph 3 of these Rules, submit certificates issued by the examining, verifying and confirming departments confirming the organization and expansion of export-oriented enterprises or advanced technology enterprises. Enterprises in which foreign investors have reinvested in respect of the organization or expansion thereof which within three years of commencing production or operations have not achieved the standards in respect of export-oriented enterprises or have not continued to be confirmed as advanced technology enterprises shall repay 60% of the amount of tax refunded.

Article 82 "Tax refunds on reinvestments" mentioned in Article 10 of the Tax Law and Article 81, paragraph 1 of these Rules shall be computed according to the following formula:

Amount of tax refund = Reinvestment amount  $\times$  [1 - (originally applicable enterprise income tax rate + local income tax rate)]  $\times$  originally applicable enterprise income tax rate  $\times$  tax refund rate Chapter VII Tax Credits

Article 83 "Income tax already paid abroad" mentioned in Article 12 of the Tax Law means income tax actually paid abroad by an enterprise with foreign investment on income from sources outside China and does not include taxes paid for which compensation is later received or assumed by other parties.

Article 84 "The amount of tax payable computed on income from sources outside China in accordance with the provisions of this Law" mentioned in Article 12 of the Tax Law means the amount of tax payable computed on taxable income arising from income from abroad of enterprises with foreign investment, following the deduction of costs, expenses and losses allowable in accordance with the relevant provisions of the Tax Law and these Rules attributable to that income. The limit of the amount of tax payable that can be deducted shall be computed on a country-by-country basis; the method of computation is as follows: Limit on deduction Total amount of tax payable on = payable on domestic \* income from income from abroad income and foreign sources income from -----abroad computed Total domestic in accordance with income and the Tax Law income from abroad

Article 85 Where the amount of income tax actually paid abroad on income from sources from abroad by enterprises with foreign investment is less than the deductible limit resulting from computation based on the provisions of Article 84 of these Rules, the actual amount of income tax paid abroad may be deducted from the amount of tax payable; where the deductible limit is exceeded, the portion in excess shall not be deducted from tax and shall not be itemized as an expense, however, the portion not exceeding the limit thereof may be used as a deduction against following year's taxes; the time limit for such supplemental deductions shall not

exceed five years.

Article 86 The provisions of Article 83 to Article 85 of these Rules shall apply only to enterprises with foreign investment with head offices established within China. Enterprises with foreign investment that deduct taxes in accordance with the provisions of Article 12 of the Tax Law shall provide the original tax payment certificates signed and issued by the foreign tax authorities in respect of the same year; copies or tax payment certificates of different years shall not be used as tax deduction certificates.

#### Chapter VIII Tax Administration

Article 87 Enterprises shall, within 30 days of completing business registration, complete tax registration with the local tax authorities. Enterprises with foreign investment that establish or terminate branch offices outside China shall, within 30 days of the date of establishment or termination thereof, complete with the local tax authorities procedures in respect of tax registration, amendments to the registration, or cancellation of the registration. Enterprises that complete registrations in the preceding paragraph shall, in accordance with the provisions, present relevant documents, licenses and materials.

Article 88 Enterprises that undergo important registration changes such as changes of address, restructurings, mergers, spin-offs, terminations, as well as changes in the amount of capital and scope of business shall, within 30 days of the completion of the change in business registration or prior to the cancellation of registration, complete the change in registration or cancellation of registration with the local tax authorities with the relevant documents.

Article 89 Foreign enterprises which establish two or more business organizations in China may use one of the selected business organizations in respect of the consolidated filing and payment of income tax. However, the business organization so selected shall meet the following conditions:

(1) assumption of supervisory and management responsibility over the business operations of the other respective business organizations;

(2) maintenance of complete account records and certificates which accurately reflect the income, cost, expense and profit and loss situations of the respective business organizations.

Article 90 In respect of foreign enterprises which in accordance with the provisions of Article 89 of these Rules consolidate the filing and payment of income tax, the business organization so selected thereunder shall submit an application for approval according to the following provisions after examination and verification thereof by the local tax authorities:

(1) consolidated filing and payment of income tax in respect of business organizations located in the same province, autonomous region, or municipality directly under the Central Government shall be subject to approval by the tax authorities of the province, autonomous region or municipality directly under the Central Government;

(2) consolidated filing and payment of income tax in respect of business organizations located in two or more provinces, autonomous regions, or municipalities directly under the Central Government shall be subject to approval by the State Tax Bureau.

Following approval for the filing and payment of tax on a consolidated basis by foreign enterprises, such circumstances as the establishment of additional business organizations, mergers, change of address, termination of operations, or shutdowns shall, prior to such event, be reported to the local tax authorities by the business organization responsible for the filing and payment of tax on a consolidated basis. Any change in respect of the business organization filing and paying tax on a consolidated basis shall be dealt with in accordance with the provisions of the preceding paragraph.

Article 91 Where business organizations related to foreign enterprises that file and pay income tax on a consolidated basis apply different tax rates in respect of the payment of tax, the amount of taxable income of the respective business organizations shall be separately computed on a reasonable basis and income tax shall be paid on the basis of the different tax rates. Where the respective business organizations mentioned in the preceding paragraph have losses and profits, tax

shall be paid on the profit remaining after the offsetting of losses against profits according to the tax rate applicable to the profit-making business organization. A business organization which incurs losses shall offset losses using profits of the subsequent year of the business organization; tax shall be paid on the profit remaining after the offsetting of such losses according to the tax rate applicable to the business organization; tax paid on the offsetting amounts shall be based on the tax rate applicable to the business organization that offsets the losses incurred by the other business organization.

Article 92 Notwithstanding the provisions of Article 91 of these Rules, where a business organization responsible for filings and payment of tax on a consolidated basis is unable to compute separately and reasonably the taxable income of the respective business organizations, the local tax authorities may make a reasonable apportionment among the respective business organizations of the gross taxable income based on the proportion of business revenues, the proportion of cost and expenses, the proportion of capital assets, and the proportion of the number of staff or salaries and wages.

Article 93 Enterprises with foreign investment which establish branch offices in China shall complete consolidated filings and payment of income tax with reference to the provisions of Article 91 and Article 92 of these Rules.

Article 94 Enterprises that pay taxes in advance on a quarterly basis in accordance with the provisions of Article 15 of the Tax Law shall pay in advance on the basis of actual quarterly profits; where difficulty exists in paying in advance on the basis of actual quarterly profits, the advanced quarterly payment of tax may be made according to one-fourth of the taxable income of the previous year or any other method approved by the local tax authorities.

Article 95 Enterprises, whether realizing profits or losses in a tax years, shall file income tax returns and final statements of account with the local tax authorities within the time limit prescribed in Article 16 of the Tax Law, and unless otherwise provided by the State, shall include when filing the final accounting statement an audit statement of a certified public accountant registered in China. Where, for special

reasons, an enterprise cannot file an income tax return and final accounting statement within the period prescribed in the Tax Law, an application shall be submitted within the filing period and, upon approval of the local tax authorities, the filing period may be extended appropriately.

Article 96 Final accounting statements submitted by branches or business organizations to head offices or business organizations that file and pay income tax on a consolidated basis, shall be submitted at the same time to the local tax authorities.

Article 97 Enterprises that are merged, spun off, or terminated during the year shall, within 60 days of the termination of production or business operations, complete with the local tax authorities procedures for the settlement of any liability for and payment of income tax, with refunds for overpayments or supplementary payments for deficiencies.

Article 98 Enterprises which must complete procedures for tax refunds in the case of overpayments of tax may, where income in foreign currency has already been converted into Renminbi according to the foreign exchange rate, convert the amount of the tax in Renminbi to be refunded into foreign currency according to the exchange rate in effect when the tax was originally paid, and then reconvert this amount of foreign currency into Renminbi according to the foreign exchange rate at the date of issuance of the tax refund certificate. Where it is necessary to complete procedures for supplementary tax payments in the case of underpayments of tax, the amount of supplementary tax payments shall be converted into Renminbi according to the foreign exchange rate at the date of issuance of the certificate for supplementary tax payments.

Article 99 Enterprises with foreign investment that undergo liquidation shall, prior to the completion of the cancellation of business registration, complete the filing of income tax returns with the local tax authorities.

Article 100 Except as otherwise provided by the State, enterprises shall maintain in China accounting vouchers, books and statements that support the correct

computation of taxable income.

Accounting vouchers, books and statements, and reports of enterprises shall be completed in the Chinese language or completed in both the Chinese language and a foreign language. Enterprises that use electronic computers for purposes of book-keeping shall treat the accounting records in computer storage or in printed form as account books. All records on magnetic tape and diskette that have not been printed out shall be completely retained. Accounting vouchers, books and statements, and reports of enterprises shall be retained for at least 15 years.

Article 101 Invoices and certificates of receipts of enterprises shall be subjected to approval by the local tax authorities prior to printing and use.

Administrative measures in respect of the printing and use of invoices and certificates of receipts of enterprises shall be formulated by the State Tax Bureau.

Article 102 All enterprise income tax returns and certificates of tax payments shall be printed by the State Tax Bureau.

Article 103 If the final day of the period for payment of tax and the period for filing of a tax return falls on a Sunday or a legal holiday, the day following the holiday shall be used as the last day of the period.

Article 104 Tax authorities may pay withholding agents as specified in Article 19, paragraph 2 of the Tax Law and Article 67 of these Rules a handling fee based on a certain proportion of the amount of tax withheld; the specific methods shall be formulated by the State Tax Bureau.

Article 105 Local tax authorities may, according to the seriousness of the case, impose a fine of 5,000 yuan (RMB) or less on taxpayers or withholding agents that refuse to accept examination by the tax authorities in accordance with the relevant provisions or that refuse to pay late payment penalties within the time limit prescribed by the tax authorities.



Article 106 The tax authorities may, according to the seriousness of the case, impose a fine of 5,000 yuan (RMB) or less on an enterprise which violates the provisions of Article 87; Article 90, paragraph 2; Article 95; Article 96; Article 97; Article 99; Article 100 and Article 101 of these Rules.

Article 107 "Tax evasion" mentioned in Article 25 of the Tax Law means the illegal actions of a taxpayer who has intentionally violated the provisions of the Tax Law such as by: falsifying, altering or destroying account books, receipts or accounting vouchers; falsely itemizing or overstating costs and expenses; concealing or understating taxable income or receipts; or avoiding taxes or fraudulently recovering taxes already paid.

Article 108 The tax authorities shall, in punishing taxpayers or withholding agents in accordance with the provisions of the Tax Law and these Rules, serve notice of contravention.

Article 109 Any entity or individual shall have the right to report a failure to comply with the Tax Law and the violators thereof. The tax authorities shall maintain confidentiality for informants and award them in accordance with the relevant provisions herein.

#### Chapter IX Supplementary Provisions

Article 110 Enterprises with foreign investment which completed business registration prior to the promulgation of the Tax Law may, in respect of the payment of income tax in accordance with the provisions of the Tax Law and where the liability for tax is higher than that prior to the entry into force of the Tax Law, use the original applicable tax rate during the approved period of operations. Where there is no established period of operations, income tax may be paid using the original applicable tax rate for five years commencing on the date of the entry into force of the Tax Law. However, in respect of the above-mentioned period, if during a tax year the tax liability is higher than that stipulated in the Tax Law, income tax shall be paid commencing with that tax year according to the tax rate stipulated in the Tax Law.

Article 111 Preferential treatment in terms of exemptions from and reductions of enterprise income tax enjoyed pursuant to the laws and administrative rules and regulations prior to the entry into force of the Tax Law by enterprises with foreign investment which completed business registration prior to the promulgation of the Tax Law may continue to remain in effect until the termination of the period of exemptions and reductions.

Enterprises with foreign investment which completed business registration prior to the promulgation of the Tax Law but which have not earned profits or have earned profits for less than five years may, in accordance with the provisions of Article 8, paragraph 1 of the Tax Law, be granted a corresponding period of treatment in respect of exemptions from or reductions of enterprise income tax.

Article 112 Enterprises with foreign investment which completed business registration after the promulgation of the Tax Law but prior to the entry into force of the Tax Law may refer to the provisions of Article 110 and Article 111 of these Rules for implementation herein.

Article 113 The Ministry of Finance and the State Tax Bureau shall be responsible for the interpretation of these Rules.

Article 114 These Rules shall come into force on the effective date of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises. The Detailed Rules for the Implementation of the Income Tax Law of the People's Republic of China Concerning Chinese-Foreign Equity Joint Ventures and the Detailed Rules for the Implementation of the Income Tax Law of the People's Republic of China for Foreign Enterprises shall be abrogated at the same time.



## China alert

### Tax and regulatory developments

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TAX

## China issues updated Catalogue of incentives for foreign-invested projects located in central and western China

### In Brief

- Foreign-invested projects that gained approval before the effective date of the updated Catalogue can continue to enjoy the relevant incentives, such as reduced Corporate Income Tax (CIT) rate and customs duty-free importation of equipment. However, they will need to complete the relevant filing procedures with Customs before 31 December 2009.
- Foreign-invested projects that remain in the construction stage can also enjoy these incentives if they qualify under the updated Catalogue and obtain a Project Confirmation Letter from the relevant authorities.

### Relevant regulation discussed in this issue:

*Catalogue of Foreign Investment Advantageous Industries in Central and Western China (2008 version)*, jointly issued by the NDRC and MOFCOM on 23 December 2008, effective from 1 January 2009 onwards

### Main changes in the updated Catalogue

The updated Catalogue is based on the 2004 version, as well as on the Catalogue of Foreign Investment Advantageous Industries in Liaoning Province. It covers 411 favoured industries in the different provinces, cities and autonomous regions and broadens the scope of industries covered by supportive policies.

#### • Optimising industry structure and encouraging industry upgrade

Certain industries, such as those involved in producing electric gauges and spare digital machinery parts, have been removed from the updated Catalogue.

Medical services, education, advanced precision manufacturing, R&D and production of new energy equipment and production of new-type cement with daily productivity over 4,000 tons have been added to the updated Catalogue. In addition, manufacturing of auto parts and machinery have been further itemised in the updated Catalogue.

Value-added telecommunication services have been added to the updated Catalogue, but investment in that sector by foreign investors must strictly adhere to the framework laid down in China's commitments on its entry into the World Trade Organisation.

- **Protection and exploration of mineral resources**

To protect and explore mineral resources more efficiently, the production of barium salts and strontium salts, and the exploration and processing of certain minerals such as nickel, molybdenum, tungsten, titanium and borax have been removed. In contrast, synergistic utilisation and deep processing of silica, non-metal minerals and nonferrous metals have been added to the updated Catalogue.

**KPMG observation**

- **CIT incentives under West Development Policy**

According to the relevant regulations issued by the State Council and the relevant authorities, Foreign Investment Enterprises (FIEs) in western China can enjoy the reduced income tax rate of 15 percent from 2001 to 2010 provided they:

- fall within the industries listed in the Catalogue; and
- derive more than 70 percent of their revenue from their main business activities.

This incentive can be enjoyed until 2010 under the new CIT Law. Potential investors planning to invest in western China should consult the updated Catalogue to make the most of the incentive policies available.


As a transitional measure between the updated Catalogue and its previous version, projects under construction can adopt the updated Catalogue. In the previous update of the Catalogue, in 2004, the policy was to use the "updated catalogue for new enterprises, previous catalogue for old enterprises". The approval date of a feasibility study report (or a contract and Articles of Association) was used to determine which version of the Catalogue would apply. The same approach should also be applicable to this latest update.

- **Exemption of customs duty for imported equipment**

Qualified FIEs involved in the industries listed in the previous Catalogue and the Catalogue of Foreign Investment Advantageous Industries in Liaoning Province could enjoy exemption from customs duty and value-added tax (VAT) on the importation of equipment for self-use within their total investment.

According to newly revised Provisional VAT Rules (effective from 1 January 2009 onwards), input VAT associated with purchase of equipment can be offset against output VAT. Therefore, this implies that the above-mentioned VAT exemption for imported equipment has been abolished.

As mentioned in Announcement [2008] No. 43, jointly issued by the Ministry of Finance, Customs and the State Administration of Taxation, qualified FIEs approved before 1 January 2009 can still enjoy exemption from customs duty for imported equipment for self-use, including the corresponding technology, accessories and spare parts. According to

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the latest notice issued by Customs, these FIEs need to complete the relevant filing procedures with Customs before 31 December 2009.

Foreign-invested projects that remain in the construction stage and that did not qualify under the previous Catalogue and the Catalogue of Foreign Investment Advantageous Industries in Liaoning Province but fall within the updated Catalogue can enjoy the customs duty-free incentive. However, they need to obtain a Project Confirmation Letter from the relevant authorities. These companies should therefore apply for such a letter well in advance if they wish to import equipment free from customs duty.

**By Anthony Chau, Partner and Wayne Tan, Manager**

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## Focus: China adjusts foreign investment regime

14 May 2010

**In brief:** The State Council of the People's Republic of China has released *Opinions on Further Improving the Utilization of Foreign Investment* (No 9, 2010) which will have a significant impact on foreign investors. Partner Stuart Mengler and Senior Associate Frank Fan consider this release and its implications.

- [Background](#)
- [Amendments to the current rules](#)
- [New measures to benefit foreign investors](#)
- [General comments](#)

### How does it affect you?

- *Opinions on Further Improving the Utilization of Foreign Investment* (**Opinion No. 9**), provides high-level direction to reforming the current regulatory system in China relating to foreign investment
- Opinion No. 9 indicates proposed revisions at the policy level as well as detailed implementation rules. These changes are likely to have a significant impact on the current and future operations of foreign investors in China.
- Opinion No. 9 is likely to be followed by a new wave of regulatory system reforms.

### Background

On 13 April 2010, the State Council of China published Opinion No. 9, which sets out an adjusted framework for foreign investment in China, and should be seen as a three to five-year medium-term guideline to attract foreign investment into areas and industry sectors which facilitate the Chinese Government's development requirements. Opinion No. 9 also provides proposals to streamline central and local government regulatory systems in order to improve the efficiency of the approval procedure for foreign investment.

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### Amendments to the current rules

Opinion No. 9 sets out a target to reform the current implementing rules and guidance in connection with foreign investment in China. Guidance and regulatory rules that will be amended include:

#### Revising the Foreign Investment Industrial Guidance Catalogue

The main purpose of amending the *Foreign Investment Industrial Guidance Catalogue* (the **Foreign Investment Catalogue**), as stated in Opinion No. 9, is to identify areas to be opened up further to foreign investors, provide direction to foreign investment into areas that are encouraged by the Government – such as new technology, new energy and projects related to environmental protection – and at the same time set out areas where foreign investments are more tightly restricted, such as projects that are 'high-polluting, high-energy-consuming and resource-dependent'.

#### Revising Catalogue of Priority Industries for Foreign Investment in Central and Western China

The latest amended version of the *Catalogue of Priority Industries for Foreign Investment in Central and Western China* (the **Central and Western Catalogue**) was promulgated on 1 January 2009. The Central and Western Catalogue sets out specific industries in the central and western areas of China that want to attract investment by foreign investors. Such investors may enjoy favourable treatment in those locations. Labour-intensive projects may also be added into the Central and Western Catalogue in the future. Opinion No. 9 further confirms that income tax preferential treatment of qualified foreign invested enterprises (**FIEs**) in the western areas of China will continue after 2010.

#### **Reforming the determination procedure for new and high tech FIEs**

The current *Administrative Measures for Determination of High and New Tech Enterprises* was released by the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation in 2008. These measures provide a guideline for determining new and high technology enterprises (including FIEs) by the designated government departments. New and high technology FIEs, designated as priority industries, will enjoy a reduced income tax treatment of 15 per cent. Reform of the determination procedure for determining whether an FIE is a new and high technology FIE is considered a way of attracting more foreign investment in these sectors.

#### **Further opening of capital markets in China**

Opinion No. 9 sets out a number of actions to be taken by the Government to further strengthen the opening of the Chinese financial and capital markets, such as supporting A-share listing of qualified FIEs, and improving the exit route mechanism for foreign private equity investments.

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#### **New measures to benefit foreign investors**

Although Opinion No. 9 is issued by the State Council representing the Central Government and represents general guidance for the policy of foreign investment utilisation, it also sets out a number of detailed measures to attract foreign investors, such as:

- The threshold for foreign investment projects that need Central Government approval will be increased from US\$100 million to US\$300 million. Local government will be given more power to approve projects involving foreign investment, particularly in the service sector (excluding finance and telecom sectors), which will streamline the review process and improve investment efficiency. However, such allocation only applies to projects under the 'encouraged' or 'permitted' categories of the Foreign Investment Catalogue. The threshold for projects under the 'restricted' category will remain at US\$50 million, above which approval from the Central Government is required.
- National industrial adjustment and revitalisation plans (**NARPs**) will also apply to qualified FIEs. The Chinese Government has published a number of NARPs since 2009, in the wake of the global financial crisis. These applied to the electronics and information, iron and steel, shipbuilding, automobile, non-ferrous metal, equipment manufacturing, textile, petrochemical industry, and to light industries. Under these NARPs, the Government provides detailed support measures and incentive plans, such as preferential tax treatment for relevant industries. It was reported recently that a new NARP, relating to new energy and resources, will be published soon.

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- Incentive plans are provided for multinational companies to establish operational and management centres in China, such as regional headquarters, R&D centres and financial management centres. Qualified foreign invested R&D centres will be entitled to an exemption on tariffs, import VAT and service tax for importing related scientific and development goods.
- Reduced land prices rates (70 per cent of the minimum price required by law) may also apply to foreign investment projects under the 'encouraged' category of the Foreign Investment Catalogue.
- Considering the downturn in the world economy, foreign investors that commit capital into FIEs in China, but experience temporary financial difficulties, are permitted to extend their schedule of capital contributions.
- The procedure to settle the capital account funds for FIEs will be streamlined.

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### General comments

Opinion No. 9 seeks to emphasise the overall position of the Chinese Government of wanting to attract and support foreign investment. However, it delivers a clear message that the investment direction has been altered from a somewhat generalist and broad approach to a more focused model that aims to support China's development requirements and benefit China's global competitiveness.

The publication of Opinion No. 9 should lead to a new wave of regulatory system reform in China. Updated rules and amendments will be published following Opinion No.9, and detailed implementing rules or guidelines will be released to reflect the directions provided, such as the revised Foreign Investment Catalogue and Central and Western Catalogue. Those reforms will significantly impact the current operations and future investment plans of foreign companies in China.

Usually, before the official publication of new or amended rules, the Government will solicit opinions from relevant industry representatives. Of particular note, the proposed areas to be opened for wholly foreign investment, as unofficially released by the Ministry of Commerce, may include manufacture of civil craft, educational and medical institutions<sup>3</sup>, etc. The revised Foreign Investment Catalogue may be published in the next three to six months and will reflect those updates. Foreign investors who have an interest in those areas should take prior strategic action.

### Footnotes

1. From 2001 to 2010, the income tax rate that applies to qualified FIEs investing in western areas of China is 15 per cent compared with the typical rate of 25 per cent.
2. Approval by the National Development and Reform Commission and/or Ministry of Commerce, if applicable.
3. Currently, foreign investment in these areas is limited to joint venture arrangements.

**For further information, please contact:**

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## New State Council Opinion: Directions for Foreign Investment in China

by Michael Tan\* and Cara Meng\*\*

On April 6, 2010 the State Council issued the *Several Opinions of the State Council on Further Improving Foreign Investment Utilization Work* (Guofa No. 9, "Opinions"). The Opinions formulate political and strategic aims in relation to foreign investment in China and target at improving the legal framework for foreign investment. It is believed that the political aims of the Opinions will be implemented in the near future. The related future implementing legislation will have impact on foreign investment in China. This newsletter summarises some major issues relevant to foreign invested enterprises ("FIE").

### Intended Adjustment of Foreign Investment Industrial Guidance Catalogue

The *Foreign Investment Industrial Guidance Catalogue* was introduced in China in 1995. It classifies foreign investment into "encouraged", "restricted" and "prohibited" investment projects. Foreign investment projects in industries not listed in the catalogue are "permitted" projects. Since its creation, the catalogue was updated every two or three years. The amendments reflected the policy changes in relation to foreign investment over the years. The latest revision took effect in 2007.

According to the Opinions, the *Foreign Investment Industrial Guidance Catalogue* shall be amended again to further open-up and encourage foreign investment in the field of high-end manufacturing, high-tech, modern services, new energy, energy-saving and environmental protection. The Opinions also encourage multinational companies to set up regional headquarters, R&D centres, procurement centres, financing management centres, financial clearance centres, as well as costs and profits verification centres in China.

On the other hand, foreign investment in high-energy-consumption, heavy-pollution, natural resources exhausting, low-end and over-capacity industries shall be subject to stricter control.

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The Opinions further emphasises the "go West" policy. Foreign investment in labour intensive industries fulfilling environmental protection requirements shall be encouraged in Middle and Western China by revising the Advantageous Industrial Catalogue for Foreign Investment in the Middle and Western Regions. Foreign banks are also encouraged to set up establishments and open business in these regions.

#### **Tax Incentives**

In 2008 China's enterprise income tax system was reformed. China eliminated the previous preferential tax treatments for foreign investment production enterprises and gradually replaced them by a new generally applicable system of tax incentives for high and new technology enterprises, irrespective of the nationality of the investor. The Opinions reiterate these principles. But the Opinions do not contain any clear indication of whether the presently existing high thresholds for the recognition of high and new technology enterprises will be lowered in the future.

The Opinions also mention exemptions from import customs duties, VAT and consumption tax for products imported by foreign investment R&D centres for scientific research purposes. However these preferential tax treatments are already available under China's present tax regime.

#### **Cheaper Supply of Land**

Foreign investors have witnessed the increasingly tightened control over land supply in China. The central government attempted to curb the grant of land to all users by introduction of "tendering, auctioning and listing" procedures and by statutory minimum land grant prices. This increased the cost of land for all investors.

During the financial crisis in 2009, the Ministry of Land and Resources loosened the control in order to boost economy and provided for a discount of 30% on the statutory minimum land grant price for industrial projects which intensively use land and fall into certain industries to be developed with priority. Against this background the Opinions now extend the scope of the 30% discount to foreign investment projects falling into the category of projects encouraged by the State.

#### **More Room for M&A**

The Opinions signalise that the Chinese government encourages M&A deals by foreign investors targeting at Chinese enterprises. The Opinions further support foreign investors to acquire a stake in companies listed on the Chinese domestic stock market as "strategic investors". But they do not indicate any policy preference for acquisition of State-owned enterprises.

Legislation regarding M&A activities of foreign investors (including the anti-trust review system) shall be further improved. In this respect the establishment of a "national security" review mechanism applicable to cross-border M&A deals shall be sped up. Merger control has recently been discovered as a powerful regulatory tool. Therefore foreign investors will have to be prepared for certain political obstacles to M&A deals in sensitive areas.

#### **Financing and Capital Markets**

FIEs in China have limited domestic financing sources. Except for bank loans, direct financing via the capital market has always been difficult and there were only a few successful precedents of FIEs going public. The Opinions support qualified FIEs to broaden their financing means by issuing shares, enterprise bonds and middle-term instruments on the domestic capital market. Bank loans to FIEs shall also be further expanded.

The Opinions further address the feasibility of issuing RMB bonds in China by foreign entities. Such tool, if implemented, could create a significant breakthrough in opening the Chinese capital markets to foreign investors. On the other hand, listings of foreign companies on the Chinese stock market are not mentioned. The so-called "international board", according to some media reports, is expected to be set up by the end of 2010.

More foreign investment via venture capital and private equity is encouraged. This corresponds to the recent legislation permitting foreign companies to set up partnerships in China with simplified set-up procedures which only require business registration but no approval. New exit mechanisms required by such investment models are advocated.

The Opinions also mention an interesting possibility in relation to financing: Illiquid foreign investors may prolong deadlines for capital contributions to their FIEs if such FIEs have been operating legally. Administrative legislation has already turned this into an implementable procedure[1]. It manifests China's pragmatic approach in addressing the continuing global financial crisis.

#### **Delegation of Approval Competencies**

An issue of high practical significance is the further delegation of approval competency for foreign investments by the central government to the local level authorities:

- Encouraged and permitted projects up to USD 300 million (previously USD 100 million) are subject to local government approvals, unless the project touches upon sensitive areas requiring central level approval. This delegation of approval competency is already implemented in practice[2].
- National ministries are also encouraged to delegate their approval power to local level authorities, except for those reserved for central level approval as explicitly required by law.
- Foreign investment projects in service industries shall generally be approved at local level, except for those engaged in the financial and telecommunications services.

In addition, the Opinions recommend simplification of approval activities of the governments in order to increase transparency. This includes the possibility of on-line approval procedures.

#### **Outlook**

The Opinions show a commitment of the State Council to further attract foreign investment in China, in particular in certain industry sectors. They reflect China's pursuit of foreign investment in the field of innovative technology and environmental protection. This is in line with the Chinese government's general policy turn to have a cleaner and more sustainable economic development. But they do not provide for new tax incentives which used to be the most attractive part of China's "open door" policy in the past.

Although some statements sound very promising, the Opinions are only an indication of China's policy in relation to foreign investment activities. Except for a few measures which are already implemented

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by new administrative regulations, the major part of the political aims formulated in the Opinions have still to be realised by way of legislation and must then also be implemented by the governmental authorities.

Foreign investors should observe legal developments in order to be prepared for coming changes.

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[1] See *Several Opinions on Making Full Use of the Administrative Function of Industry and Commerce to Provide Service to the Development of Foreign Investment Enterprises*, issued by the State Administration of Industry and Commerce on May 7,

[2] See *Notice on Carrying out Properly the Delegation of Foreign Investment Projects Approval Power* issued by the National Development and Reform Commission on May 4, 2010 which repeats the delegation of a competency.

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Provinces, autonomous regions and municipalities, wagons, directly under the agency:

Foreign investment is China's basic national policy of opening up an important part. Since reform and opening, China attract foreign investment and promote industrial upgrading and technological progress, foreign-invested enterprises have become an important part of the national economy. At present, the advantages of foreign investment is still significant. To improve the quality and level of foreign investment, better play in the promotion of technological innovation and foreign investment, industrial upgrading, regional development and other positive role, is to make the following observations:

First, optimize the use of foreign investment

(A) According to China's economic development needs, combined with the national industrial restructuring and revitalization planning requirements, amendments, "Catalogue for the Guidance of Foreign Investment Industries", open more sectors to encourage foreign investors to invest in high-end manufacturing, high-tech industries, modern service industry, new energy and Energy-saving environmental protection industry. Strictly limit the "two high and one capital" and low surplus

production capacity expansion projects on.

(B) of the national industrial restructuring and revitalization of the policy measures applied equally to qualified foreign-invested enterprises.

(C) of the land intensive foreign investment projects encouraged by the state give priority to the supply of land, the land transfer in determining the upset can do no less than the relative location of land should be "the lowest standard of the national industrial land transfer," 70% of the execution.

(D) to encourage foreign investment in high-tech enterprises to develop, improve and perfect the work to identify the high-tech enterprises.

(E) to encourage foreign enterprises to strengthen R & D cooperation, support of eligible foreign-invested enterprises and domestic enterprises, state Ke Ji Yan Jiu institutions for development projects in cooperation, capacity-building projects Chuang Xin Deng, Zhong Xin identified for the establishment of National Technology.

(F) to encourage multinational companies to locate their regional headquarters, R & D centers, procurement centers, financial management center, settlement center, and the cost and profit center accounting and other functional agencies. In the December 31, 2010 before meeting the conditions of foreign R & D technology development center is really necessary imported goods exempted from import duty and import VAT and consumption tax.

(Vii) implement and improve support for policies to encourage foreign investment in service outsourcing industry, the introduction of advanced technology and management experience, to improve the international competitiveness of China's service outsourcing.

Second, to guide foreign investment to central and western regions and to increase investment

(8) According to the "Catalogue for the Guidance of Foreign Investment Industries," the revision, the revisions "Midwest Industrial Catalogue for Foreign Investment", increase the labor-intensive project entry, to encourage foreign investors in central and western areas of labor-intensive industries comply with environmental requirements.

(9) to meet the requirements of the western region to foreign enterprise income tax preferential policies to attract foreign investment in the western region to maintain a good momentum of development.

(10) foreign-funded enterprises in east to central and western regions, to increase the matching funds policy, opening up and technical support, while improving the administrative service, in the process of industry and commerce, taxation, foreign exchange, and social insurance, to facilitate clearance. Encourage and guide foreign banks to the central and western areas of the body and set up a business.

(11) in eastern and western regions to encourage market-oriented, by company management, investment cooperation and other means, in accordance with the complementary, industry linkage, the principle of shared interests build zone.

Third, promote the diversification of foreign investment

(12) to encourage foreign investment in shares, mergers and acquisitions, etc. involved in the reorganization and transformation of domestic enterprises, and mergers and acquisitions. Support the introduction of A-share listed companies and overseas strategic investors. Regulate foreign investment in domestic securities investment and mergers and acquisitions. Anti-monopoly law review, and accelerate the establishment of M & safety review system.

(13) make good use of foreign capital markets, continue to support eligible enterprises to national development strategies and their development needs to the overseas listing, the full use of the two markets and two resources, and constantly improve their competitiveness.

(14) and accelerating foreign investment guarantees for SMEs and corporate pilot. Encourage foreign investment venture capital company, active use of private equity funds, improving exit mechanisms.

(15) support eligible enterprises with foreign investment within the public offering, issuing corporate bonds and medium-term notes, expand financing channels, to guide financial institutions to continue to increase credit support to enterprises with foreign investment. Steadily expanding in the domestic issuance of RMB bonds outside the main range.

Fourth, deepen reform of foreign investment management

(16) "Foreign Investment Industrial Guidance Catalogue" in total investment (including capital increases) of 300 million U.S. dollars less encouraged and permitted projects, in addition to "government approved Investment Projects" required the approval by the relevant departments of the State Council, made up approved by the local government authorities. In addition to clearly defined laws and regulations approved by the relevant State Council departments, the premise of strengthening the supervision of the State Council departments may be responsible for the examination and approval departments for approval delegated local government in the service sector of the establishment of foreign invested enterprises (financial, telecommunications services excluded) accordance with relevant regulations by the local government for approval.

(17) approval to adjust the content, simplify approval procedures, minimizing approval, approval of scope to enhance the transparency of approval. Comprehensive clean-up issues related to foreign investment approval, to shorten the processing time. Improved processing methods, and lessons learned in the pilot based on the gradual implementation of foreign-invested enterprises in the national contract, articles of association approved format, and vigorously implement the administrative licensing online, standardize administrative actions.

Fifth, create a favorable investment environment

(18) regulating and promoting the development zone, play zone in the system of innovation, technology lead, industry concentration, land-intensive aspects of the role of the carrier and platform. Support eligible provincial level development zones in support of qualified national and

provincial development zones expanding area and adjust the location, development of border economic cooperation zones, to speed up the support of policy measures.

(19) to further improve the foreign investment foreign exchange management, simplify capital of enterprises with foreign investment foreign exchange settlement procedures. Operate according to law, on time and funding constraints can not be funded by temporary foreign-invested enterprises, to allow extension of the enterprise.

(20) to strengthen investment promotion, for the key countries and regions, promoting key industries attract investment to increase efforts to publicize China's foreign investment policy. Actively involved in many bilateral investment cooperation, "bringing in" and "going out", we promote the continuous improvement of cross-border investment policy environment.

State Council departments, local governments must work, persist in the principle of active and effective use of foreign capital, insisted we take the initiative, merit selection information, the promotion of "Investment" and "talent recruitment", we constantly improve the quality of using foreign capital. To sum up the experience of reform and opening, with the new situation and new requirements, and further increase innovation, improve the level of facilitation to create a more open and more optimized the investment environment, and comprehensively improve the level of utilization of foreign investment.

State Department

二〇一〇年四月六日

2010-04-13

## Guangzhou AutoMobile Industry

Source: INVEST GUANGZHOU

26/05/2010

### Automobile Industry

#### I. The Current Development

The automobile industry is one of Guangzhou's pillar industries. In 2009, the automobile output in the city exceeded one million units (reaching 1.1302 million units) for the first time, accounting for 8.2 percent of the national total. In the same year, the gross output value of the city's auto companies above the designated size reached RMB 228.06 billion yuan, taking up 30.4 percent of that of all same-sized industrial companies. The percentage raised from 15.91 percent in 2008 to 18.24 percent in 2009. In a word, Guangzhou automobile industry takes the lead in China in terms of composite economic indicators.

The Automobile industry clusters have been emerged. By the end of 2009, as many as 430 auto and auto parts projects had been introduced in Guangzhou, with the total investment value of USD 7.508 billion. The automobile industry clusters were established, with Guangzhou Honda in the east, Dongfeng Nissan and Guangqi Hino in the north, and Guangzhou Toyota Motor Co.,Ltd. (hereinafter referred as GTMC) and



Guangzhou Automobile self-developed brand in the south. Furthermore, six areas were approved as Guangzhou branches of the State Automobile and Auto Parts Export Base, including Huadu District, Nansha Development Zone, Guangzhou Development Zone, Panyu District, Zengcheng City and Conghua City, thus forming three automobile industry clusters.

Guangzhou's automobile industry turned out to be one of the best of China in export volume and it has gained a strong development momentum in import trade. In 2009, Guangzhou's exports of auto and auto parts ranked No.2 among all state-level auto and auto parts export bases. Some 27,900 whole vehicles were exported, making up one-thirteenth of the total 370,700 automobiles exported by the country. There were 343 enterprises which actually exported autos and auto parts.

The year of 2009 saw the imports of auto and auto parts reaping USD 2.581 billion, up by 10.36 percent year on year. Seven enterprises imported over one million US dollars of auto and auto parts. Self-developed brand automobiles produced by Auto Engineering Research Institute of Guangzhou Automobile Industry Group met the Euro IV Exhaust Emission Standards. They were unveiled in the 2009 China (Guangzhou) International Automobile Exhibition and put into market before the 2010 Asian Games. Moreover, the electric vehicle developed by Guangzhou Langqing Electric Vehicle Co., Ltd became the designated service vehicle of the 2008 Beijing Olympic Games. Purely electric-driven urban buses developed by Guangzhou Denway Bus Co., Ltd were chosen as the designated vehicles for the Guangzhou Asian Games. Guangzhou Honda Technology Research and Development Center and Dongfeng Nissan Passenger Vehicle Technology Center were also established during this period of time. South China Tire & Rubber Co., Ltd possesses the China well-known brand "Wanli Tier". And Guangzhou Anda Bearing Co., Ltd owns the independent intellectual property right over a national leading engine bearing. China National Electric Apparatus Research Institute could offer testing evaluation and technical support covering more than 300 standards of six major categories for various auto and auto parts. The institute also received recognition and authorization of over 20 domestic and foreign authoritative organizations or renowned auto enterprises like China Quality Certification Center, General Motor, Volkswagen and Nissan. Guangzhou Mechanical Engineering Research Institute established six project labs for projects like engine, cleaner and gear box inspections, providing preferential inspection services for automobile enterprises. The two institutes rank top among their domestic competitors in terms of technical capacity.

China (Guangzhou) International Automobile Exhibition has enhanced its brand reputation. The Seventh China (Guangzhou) International Automobile Exhibition of 2009 covered an area of 150,000 square meters, up by 20 percent as compared to the last session. Exhibitors, including nearly 70 whole vehicle manufacturers and more than 600 auto parts and accessories producers, displayed over 720 auto models, attracting nearly 500,000 visitors. The exhibition has grown into one of the three major auto shows in the country.

## II Automobile Industry Bases

Guangzhou Automobile Industry Base, with a planned area of 135 square kilometers, comprises three main parts, namely, eastern, southern and northern automobile industry clusters. In September 2007, the city of Guangzhou was entitled of "State Auto and Auto Parts Export Base" by the Ministry of Commerce and the National Development and Reform Commission. In March 2008, Guangzhou Municipal Government identified Huadu District, Nansha Development District, Guangzhou Development District, Panyu District, Zengcheng County-level City and Conghua County-level City with "Guangzhou Sub-base of State Auto and Auto Parts Export Base".

### i. Eastern Automobile Industry Cluster

The cluster is composed of the The Automobile Industry Base of Guangzhou Development District, Huangpu Automobile Industry Park and Zengcheng Automobile Industry Base. Priority is given in the cluster to the production of sedans and business vehicles sidelined with the development of supporting industries such as manufacturing and trade of auto parts and logistics. It is planned to build functional zones including the production zone of whole vehicles and auto parts, the zone of auto research and development, the zone of auto logistics, the zone of auto testing and the zone of auto exhibition.

#### (i) Automobile Industry Base of Guangzhou Development District

The base has been built with an investment of RMB 3.5 billion yuan. Nowadays it boasts of over 120 auto and auto parts enterprises as well as an auto parts supply chain serving three Japan-related auto giants (Guangqi Honda, Dongfeng Nissan and GTMC), General Motor, Ford, Volkswagen, Opel and Mazda from

Europe and the US, as well as Hyundai from South Korea. In 2009, the base seized a gross value of auto industrial output of RMB 17.7 billion yuan. The value is expected to reach RMB 19 billion yuan in 2010.

(ii) Huangpu Automobile Industry Park

Covering a total area of five square kilometers, the park is home to Guangqi Honda No.1 Plant and Dongfeng Honda Engine Plant. In 2009, it reaped the gross value of auto industrial output of RMB 66.4 billion yuan. The number is estimated to reach RMB 70.2 billion yuan in 2010. An automobile industry base incorporating manufacturing, sales and distribution of various auto parts to serve for auto production and logistics is planned to be built here.

(iii) Zengcheng Automobile Industry Base

With a planned area of 22 square kilometers, the base owns more than 80 auto and auto parts enterprises. Guangqi Honda No.2 Plant possesses the annual production capacity of 120,000 sedans in its Phase I project and the number will reach 240,000 in the Phase II project. Nearly 20 famous enterprises like Fuyao Group, Denso and Guangqi Honda (Zengcheng), SP Logistics Center have settled down in the base. The base gained the gross value of auto industrial output of RMB 25.553 billion yuan in 2009. The number is estimated to reach RMB 28 billion yuan in 2010.

ii. Southern Automobile Industry Cluster

The Southern Automobile Industry Cluster consists of Nansha Development Zone Automobile Industry Base and Panyu Automobile Industry Base. The former, headed by GTMC, gives priority to research, development and production of whole vehicles and auto parts, sidelined with related service industries like auto logistics and trade. The latter lays emphasis on supporting the development of self-developed brand vehicles and auto related products in the Auto Production Base of Guangzhou Automobile Group Co.,Ltd (hereinafter refers to GAGC) in Panyu.

(i) Nansha Development Zone Automobile Industry Base

The base is divided into Section A and B. Section A, led by GTMC projects, including GTMC complete vehicle and engine projects as well as Denso projects, will boast of the annual production capacity of 700,000 auto engines and 400,000 sedans in 2010. Section B is a high standard auto parts industrial park. Enterprises who are to settle down inside the park may either purchase lands and build plants by their own, or make investments by renting the existing plants. The base achieved the gross value of auto industrial output of RMB 56.394 billion yuan in 2009. The number is estimated to reach RMB 70 billion yuan in 2010. Furthermore, the base sets up Nansha Automobile Dock of Guangzhou Port, the first dock especially for automobiles in the country, with an area of 420,000 square meters. The dock is equipped with a container yard of 370,000 square meters, 48 container loading terminals and a parking lot with the capacity of 3,600 vehicles, which has made it the largest marine auto logistics hub in Asia.

(ii) Panyu Automobile Industry Base

Covering 4.55 square kilometers, the base is made up of Auto Base of Panyu Modern Industrial Park and Wanzhou Auto Parts Industrial Park. Projects introduced in the area were worth of RMB 6.8 billion yuan in total, including GAGC's auto research and development project in Panyu. In the project, the land for research and development occupies 0.3 square kilometers with the investment of RMB 3 billion yuan; the whole vehicle plant takes up 1.2 square kilometers, with the production capacity of 100,000 vehicles per year in the phase one project and 200,000 vehicles per year in the phase two project; the engine plant can turn out 100,000 units per year in the phase one period and 250,000 units per year in the phase two period; the first product of the project is a safe, eco-friendly and energy-saving sedan of medium and high grade, which will come on the market before the 2010 Guangzhou Asian Games. Wanzhou Auto Parts Industrial Park, located in southern Panyu, will accommodate internationally renowned enterprises like Guangzhou Koito Automotive Lamp Co.,Ltd and Guangzhou JFE Steel Sheet Company Ltd. The year of 2009 witnessed the total auto industrial gross value of roughly RMB 10 billion yuan in the park. The number is estimated to reach RMB 10.8 billion yuan in 2010.

iii. Northern Automobile Industry Cluster

The Northern Automobile Industry Cluster comprises Huadu Automobile Industry Base (hereinafter referred as Huadu Auto City) and Conghua Vehicle and Auto Parts Industry Base. Huadu Auto City, led by Passenger Vehicle Company of Dongfeng Motor Co.,Ltd will top its priority to research, development and production of auto parts and related services. Consequently, the whole vehicle production zone, the auto parts industry

park, the auto trade service zone, the auto logistics center, the auto institute, the auto research and development zone, the motorcycle and parts production base and the corresponding supporting facilities are mainly built here. Conghua Auto and Auto Parts Industry Base will build itself into a modernized industry base focused on research, development and manufacturing of business cars, trucks and parts by accelerating the construction of business vehicle projects with emphasis on the production of high-grade heavy truck, tractors, radial tires, car seats, air conditioners, interior accessories, stamping parts and car lamps.

(i) Huadu Automobile Industry Base

The base has introduced 116 auto-related projects from Fortune Global 500 Enterprises including Nissan, Alpha Automotive parts, Unipres, Hitachi Unisia Automotive and Calsonic Kansei. It achieved the gross value of auto industrial output of RMB 78.893 billion yuan in 2009 and the number is expected to hit RMB100 billion yuan in 2010. Purely electric-driven vehicles will be put on the market in 2011. By 2012, Passenger Vehicle Company of Dongfeng Motor Co., Ltd will increase its production capacity to 600,000 vehicles and its output of engines will rise to 600,000 units from current 360,000 units.

(ii) Conghua Vehicle and Auto Parts Industry Base

The production project of Guangqi Hino and 23 auto parts manufacturers have set their feet here. The gross value of auto industrial output amounted to RMB 2.3 billion yuan in 2009 and the number is predicted to increase to RMB 4 billion yuan in 2010.

### III Development Priorities

#### i Development Objectives

By 2010, the annual auto output will reach 1.3 million units with the gross value of auto industrial output totaling RMB 300 billion yuan. By 2020, the annual auto output will achieve 3 million units and Guangzhou will be built into an innovation center for the automobile industry, a stage for international exchanges and cooperation, as well as an international auto manufacturing base and logistics center.

#### ii. Proposed Projects for Investment

##### (i) New Energy Auto Projects

Projects proposed mainly cover the fields of purely electric-driven cars, plug-in hybrid cars, ordinary hybrid cars, fuel cell electric cars, hydrogen engine cars, other new energy cars, design optimization technologies, mass production technologies and cost-control technologies for auto-specific engines and power control module, and design and development of special parts for hybrid cars and new fuel cars.

##### (ii) The Catalogue of Encouraged Auto Industries

The catalogue will be as follows: the design and the development of systems for whole vehicles, engines and key parts, the automatic transmission production, the auto light weight technology of automobiles, the production of eco-friendly new materials, the precision forging of key auto parts, multi-stage molding and casting, the development and manufacturing of detecting systems for automobile testing and maintenance, the development and manufacturing of diesel motors for vehicle use, the development and manufacturing of urban low-floor buses, the development and manufacturing of fully unitized passenger cars, the development and manufacturing of passenger car chassis and key parts, the development and manufacturing of chassis especially for high-performance vehicles, the design and manufacturing of vehicle body molds, the development and manufacturing of hi-tech automobile electronic products, and the high-performance anti-theft products.

**Investment Promotion Focus:** The introduction of projects from Japan, South Korea and West Europe should be strengthened. The investment promotion emphasis shall be laid on whole vehicle projects of Guangqi Honda, Dongfeng Nissan, GTMC, Guangqi Hino, Guangqi Changfeng and independent GAGC brands. New energy car-related projects shall be actively introduced and investment increase and production expansion of passenger car project, be supported. Guangzhou auto and auto parts enterprises shall be encouraged to launch joint ventures and cooperation and the auto parts industry chain shall be extended to meet whole vehicle manufacturers' demands. The investment promotion for supporting industries will mainly cover the fields of electronic parts like electronic chips, control system, driving system, information system, sensing system, operation system, design system, key technologies for automobile mold production and whole vehicle design, engine parts, chassis parts, vehicle body and accessories, general parts, parts meeting the demands for safety, environmental protection and energy conservation during the modern automobile production process, and the products related to automobile petrochemical.

Non-confidential attachment C-1.2.7

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# WORLD TRADE ORGANIZATION

G/SCM/N/123/CHN  
13 April 2006

(06-1762)

Committee on Subsidies and  
Countervailing Measures

Original: English

## SUBSIDIES

New and Full Notification Pursuant to Article XVI:1  
of the GATT 1994 and Article 25 of the SCM Agreement

### PEOPLE'S REPUBLIC OF CHINA

The following communication, dated 11 April 2006, is being circulated at the request of the Delegation of the People's Republic of China.

The following notification constitutes the People's Republic of China's new and full notification of information on programmes granted or maintained at the central government level in China. In general, the period to which the following information applies is 2001 to 2004.

Insofar as the notification obligation is a transparency-orientated provision that, pursuant to Article 25.7 of the Agreement, carries no legal weight as to the actual identification or measurement of a subsidy, its action ability status, or its trade effects, China has included certain activities in this notification which arguably are not (or are not always) "specific subsidies" within the meaning of the Agreement.

## I.

1. Title of the subsidy programme

Preferential tax policies for foreign-invested enterprises

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment

4. Background and authority for the subsidy

Ministry of Finance (MOF), State Administration of Taxation (SAT), Ministry of Commerce (MOFCOM)

5. Legislation under which it is granted

*Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (the Tax Law);*

*Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise;*

State Council Circular Guo Fa No. 37 of 2000

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) Any enterprise with foreign investment of a production nature 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 per cent reduction in the third to fifth years ("two years of exemption and three years fifty per cent reduction"). (2) 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 capital investment to establish other enterprises with foreign investment to operate for a period of not less than five years, may be refunded forty per cent of the income tax already paid on the reinvested amount. (3) For direct reinvestment in China by foreign investors for the organization and expansion of export-oriented enterprises or advanced technology enterprises, the entire portion of enterprises income tax that has been paid on the reinvested amount may be refunded. (4) Any foreign enterprise which has no establishment or place in China but derives profit, interest, rental, royalty and other income from sources in China, or though it has an establishment or a place in China, the said income is not effectively connected with such establishment or place, may, since January 1 2000, be levied at the

reduced income tax rate of ten per cent, but the income tax of the profit that the foreign investors made out of the foreign invested enterprises are exempted. (5) Income tax of the royalty received for the supply of technical know-how in scientific research, exploitation of energy resources, development of the communications and transportations industries, agricultural, forestry and animal husbandry production, and the development of important technologies may be levied at the reduced rate of ten per cent. Where the technology supplied is advanced or the terms are preferential, exemption from income tax may be allowed.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1991-present, while item (4) 2000-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

II.

1. Title of the subsidy programme

Preferential tax policies for foreign-invested export enterprises

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

*Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises;*

*Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Export-oriented enterprises invested in and operated by foreign businesses for which in any year the output value of all export products amounts to seventy per cent or more of the output value of the products of the enterprise for that year may pay enterprise income tax at the tax rate specified in the Tax Law reduced by one half after the period of enterprise income tax exemption or reduction has expired in accordance with the provisions of the Tax Law. 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 fifteen per cent that qualify under the above-mentioned conditions shall pay enterprise income tax at the tax rate of ten per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**III.**1. Title of the subsidy programme

Preferential tax policies for foreign-invested enterprises engaged in agriculture, forestry or animal husbandry and foreign-invested enterprises established in remote underdeveloped areas

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment into agriculture, forestry or animal husbandry, and into remote underdeveloped areas

4. Background and authority for the subsidy

MOF, SAT, MOFCOM



5. Legislation under which it is granted

*Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Any foreign-invested enterprises engaged in agriculture, forestry or animal husbandry and foreign-invested enterprises established in remote underdeveloped areas may be allowed a fifteen to thirty per cent 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.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

IV.

1. Title of the subsidy programme

Preferential tax policies for foreign-invested enterprises engaged in energy, transportation infrastructure projects

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment into infrastructure construction

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

*Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises,*

*Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises,*

State Council Circular Guo Fa No.13 of 1999

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax of foreign-invested enterprises engaged in energy and transportation infrastructure projects such as harbour and wharf projects may be levied at the reduced rate of fifteen per cent. The implementing scope of the policy stipulated in Art.73.1.1.3 of *Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* is enlarged to nationwide.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## V.

1. Title of the subsidy programme

Preferential tax policies for Chinese-foreign equity joint ventures engaged in port and dock construction

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment into infrastructure construction

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

*Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Chinese-foreign equity joint ventures engaged in port and dock construction may be imposed of enterprise income tax at the reduced rate of fifteen per cent, and where the period of operations is 15 years or more may be exempt from enterprise income tax from the first year to the fifth year starting from the year beginning to make profit and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

VI.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment which are technology-intensive and knowledge-intensive

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment

4. Background and authority for the subsidy

MOF, SAT, MOFCOM, Ministry of Science and Technology (MOST)

5. Legislation under which it is granted

SAT Circular Guo Shui Fa No.139 of 1995, SAT Circular Guo Shui Fa No.135 of 2003

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Enterprises with foreign investment which are technology-intensive and knowledge-intensive and whose major products are enlisted in the "Catalogue of High and New Technology Products of China" promulgated by MOST and the sales revenue of these products of that year accounts for over fifty per cent of the total annual sales revenue of the enterprise, may be imposed a reduced enterprises income tax rate of fifteen per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

**VII.**1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment in the border cities

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage foreign investment into border cities and expand the open-up policy and enhance the development of the border areas

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

SAT Circular Guo Shui Han Fa No.1412 of 1992

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The enterprise income tax of the foreign-invested enterprises of a production nature established in 12 border cities, counties or towns (note 1) may be levied at a reduced rate of twenty-four per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1992-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

VIII.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment recognized as high or new technology enterprises established in the State high or new technology industrial development zones, and for advanced technology enterprises invested in and operated by foreign businesses

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage high and new technology industrial development and enhance the technology progress.

4. Background and authority for the subsidy

MOF, SAT, MOFCOM, MOST

5. Legislation under which it is granted

*Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) The enterprise income tax of the enterprises with foreign investment recognized as high or new technology enterprises established in the State high or new technology industrial development zones may be levied at a reduced rate of fifteen per cent. The Chinese-foreign equity joint ventures recognized as high or new technology enterprises and established in the State high or new technology industrial development zones of which the operation period is ten years or more may be exempt from the enterprise income tax in the first and second years from the year beginning to make profit. Foreign-invested enterprises established in the high or new technology industrial development zones which are located in the special economic zones and the economic and technological development zones shall be governed by the preferential tax provisions of the special economic zones and the economic and technological development zones. (2) Advanced technology enterprises invested in and operated by foreign businesses which remain advanced technology enterprises after the period of enterprise income tax exemption or reduction has expired in accordance with the provisions of the Tax Law may continue to pay enterprise income tax for an additional three years at the tax rate specified in the Tax Law reduced by one half.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

IX.

1. Title of the subsidy programme

Preferential tax policies for enterprises recognized as high or new technology enterprises established in the State high or new technology industrial development zones

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage high and new technology industrial development and enhance the technology progress

4. Background and authority for the subsidy

MOF, SAT, MOST

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) The enterprise income tax of the enterprises recognized as high or new technology enterprises established in the State high or new technology industrial development zones may be levied at a reduced rate of fifteen per cent, and may be exempt from the enterprises income tax in the first and second years from the year beginning production.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## X.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area)

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To absorb foreign investment and expand the open-up policy and enhance development of the areas

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

*Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises,*

*Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) The income tax on enterprises with foreign investment established in Shenzhen, Zhuhai, Shantou, Xiamen and Hainan special economic zones and foreign enterprises which have establishments or places in these special economic zones engaged in production or business operations shall be levied at the reduced rate of fifteen per cent. (2) The income tax on enterprises with foreign investment of a production nature established in the old urban districts of cities where the above-mentioned zones are located shall be levied at the reduced rate of twenty-four per cent.



(3) The income tax on the production-oriented enterprises with foreign investment established in the old urban districts of cities where the above-mentioned zones are located and which are engaged in the following projects: (a) technology-intensive or knowledge-intensive projects, (b) projects with foreign investments of over US\$30 million and having long periods for return on investment, (c) energy resources, transportation and port construction projects, shall be levied at the reduced rate of fifteen per cent. (4) Enterprises with foreign investment established in the Hainan special economic zones and engaged in infrastructure projects such as airports, harbours, docks, highways, railways, power stations, coal mines and water conservation, and enterprises with foreign investment engaged in the development of and operations in agriculture where the period of operations is fifteen years or more, shall be exempt from enterprise income tax from the first year to the fifth years starting from the year beginning to make profit and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year. (5) The foreign investors who reinvest the profit made from the enterprises established in Hainan special economic zones into the infrastructure construction projects of, or agricultural development enterprises in, the Hainan special economic zones may be refunded the entire portion of the enterprise income tax that has been paid on the reinvested amount.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1984-present, while item (5) 1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

#### XI.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and in the economic and technological development zones

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To absorb foreign investment and expand the open-up policy and enhance development of the areas

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

*Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises,*

*Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises*

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) The income tax on enterprises with foreign investment of a production nature established in the economic and technological development zones shall be levied at the reduced rate of fifteen per cent. (2) The income tax on enterprises with foreign investment of a production nature established in the coastal economic open areas (note 2) and in the old urban districts of cities where the economic and technological development zones are located shall be levied at the reduced rate of twenty-four per cent. (3) The income tax on the enterprises with foreign investment of a production nature established in the coastal economic open areas and in the old urban districts of cities where the economic and technological development zones are located and which are engaged in the following projects: (a) technology-intensive or knowledge-intensive projects, (b) projects with foreign investments of over US\$30 million and having long periods for return on investment, (c) energy resource, transportation and port construction projects, shall be levied at the reduced rate of fifteen per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1984- present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## XII.

1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment established in Pudong area of Shanghai

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To absorb foreign investment and expand the open-up policy and enhance development of the area

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

*Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises;*

*Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises.*

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax on enterprises with foreign investment of a production nature established in Pudong area of Shanghai as well as enterprises with foreign investment engaged in energy resources and transport construction projects such as airport, ports, railways, highways and power stations shall be levied at the reduced rate of fifteen per cent. Enterprises with foreign investment engaged in energy resources and transport construction projects such as airport, ports, railways, highways and power stations where the period of operations is fifteen years or more may be exempt from enterprise income tax from the first year to the fifth year starting from the year beginning to make profit and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1991-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XIII.**1. Title of the subsidy programme

Preferential tax policies for enterprises with foreign investment established in the Three Gorges of Yangtze River Economic Zone

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To absorb foreign investment and expand the open-up policy and enhance development of the areas

4. Background and authority for the subsidy

MOF, SAT, MOFCOM

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.034 of 1995

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) The income tax on enterprises with foreign investment of a production nature established in the Three Gorges of Yangtze River Economic Zone (note 3) shall be levied at the reduced rate of twenty-four per cent. (2) The income tax on enterprises with foreign investment established in the Three Gorges of Yangtze River Economic Zone which are engaged in energy resources, transportation, harbour and wharf projects or other projects encouraged by the State, shall be levied at the reduced rate of fifteen per cent. (3) The income tax on the enterprises with foreign investment of a production nature established in the old urban districts of the open cities along the Yangtze River such as Yichang, Wanxian and Fuling and etc., shall be levied at the reduced rate of twenty-four per cent. (4) Among the enterprises mentioned in item (3), those engaged in technology-intensive or

knowledge-intensive projects, or projects with foreign investments of over US\$30 million and having long periods for return on investment, or energy resources, transportation and port construction projects shall be levied at the reduced rate of fifteen per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1995-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

#### XIV.

1. Title of the subsidy programme

Preferential tax policies in the western regions

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To accelerate the development of the western regions, expand the opening up, lessen the imbalance of economic development among different areas and accelerate the development of the regions

4. Background and authority for the subsidy

MOF, SAT, MOFCOM and other relevant authorities under the State Council

5. Legislation under which it is granted

State Council Circular Guo Fa No. 33 of 2000;  
General Office of State Council Circular Guo Ban Fa No. 73 of 2001;  
MOF Circular Cai Shui No. 202 of 2001;  
SAT Circular Guo Shui Fa No. 172 of 1999.

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) The income tax on enterprises, domestic and foreign-invested, established in the western regions (note 4) which are engaged in industries encouraged by the State shall be levied at the reduced rate of fifteen per cent from the year 2001 to 2010. For domestic enterprises, industries encouraged by the State refer to those listed in the "Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State", and the enterprises must have the items included in the Catalogue as its major business which should account for over seventy per cent of total revenue. For foreign-invested enterprises, industries encouraged by the State refer to those listed as encouraged in the "Catalogue for the Guidance of the Foreign Investment Industries" and listed in the "Catalogue for the Guidance of the Advantageous Industries in Central and Western Regions for Foreign Investment", and the enterprises must have the items as listed in the two Catalogues as its major business which should account for over seventy per cent of total revenue. (2) The enterprises, domestic and foreign-invested, which are newly established in the western regions and engaged in business such as transportation, electricity, water conservation and etc., of which the revenue accounts for over seventy per cent of total revenue, shall be, from the year beginning production or operation for domestic enterprises and from the year beginning to make profit for foreign-invested enterprises with the period of operations of ten years or more, exempt from the income tax for the first and second years and subject to enterprise income tax at a rate reduced by one half for the third year through the fifth year. (3) Income from production of agricultural specialty products which is a result of returning cultivated land to forests and returning grazing land to grassland for the sake of environmental protection shall be exempt from the agricultural specialty tax for 10 years from the year beginning to generate revenue. (4) The land taken to construct highways in western regions is exempt from the farmland occupation tax. (5) The domestic and the foreign-invested enterprises established in the western regions and engaged in the encouraged industries respectively as mentioned above in item 1) are exempt from the tariff and import VAT for the imported equipments for self uses within the total amount of the capital invested, except for those listed in "Catalogue for the imported products not subject to tax exemption in foreign invested projects" or in the "Catalogue for the imported products not subject to tax exemption in domestic invested projects". (6) Since January 1 2000, the foreign-invested enterprises established in nineteen provinces, autonomous regions and municipalities directly under the Central Government in central and western regions, namely Shanxi Province, Jilin Province, Heilongjiang Province, Anhui Province, Jiangxi Province, Henan Province, Hubei Province, Hunan Province, Chongqing Municipality, Sichuan Province, Guizhou Province, Yunnan Province, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, Inner Mongolia Autonomous Region, Guangxi Zhuang Autonomous Region, which are engaged in the industries encouraged by the State as enlisted in the "Catalogue for the Guidance of Foreign Investment Industries" as well as engaged in the advantageous industries and projects approved by the State Council, shall be imposed the income tax at a reduced rate of fifteen per cent for another three year following the expiration of the period for "two years exemption and three years of fifty per cent reduction".

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2001-2010

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XV.

1. Title of the subsidy programme

Preferential tax policies for enterprises established in the poverty stricken areas

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the alleviation of poverty and accelerate the economic development of the poverty stricken areas

4. Background and authority for the subsidy

MOF, SAT, Office of Poverty Alleviation under the State Council, and National Development and Reform Committee (NDRC)

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax of the enterprises newly established in the old revolution base areas during the revolution era, areas with ethnic groups residence, remote areas and poverty stricken areas may be exempt or reduced for three years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XVI.**1. Title of the subsidy programme

Fiscal funds to alleviate poverty

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To improve the production and living conditions and increase the income of the poverty stricken population, and to enhance the economic and social development of the poverty stricken areas.

4. Background and authority for the subsidy

MOF, Office of Poverty Alleviation under the State Council, NDRC

5. Legislation under which it is granted

MOF Circular Cai Nong No.18 of 2000

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The funds are allocated by MOF to local governments according to the allocation programmes which are approved by the State Council Leading Group of Poverty Alleviation. The funds are used by local governments to provide subsidies to individuals and organizations for individual subsidization, infrastructure construction and training programmes in the poverty stricken areas.



8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
9,090	9,590	10,390	11,177	40,247

9. Duration of the subsidy and/or any other time-limits attached to it

1980-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## XVII.

1. Title of the subsidy programme

Specific subsidy on agricultural production and construction in the poverty stricken areas of Hexi and Dingxi of Gansu Province and Xihaiyu of Ningxia Hui Autonomous Region

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To accelerate economic and social development of the poverty stricken areas of Gansu Province and Ningxia Hui Autonomous Region

4. Background and authority for the subsidy

MOF, Office of Poverty Alleviation under the State Council, NDRC

5. Legislation under which it is granted

MOF Circular Cai Nong No.67 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The funds are allocated by MOF to the local governments of Gansu Province and Ningxia Hui Autonomous Region to provide subsidies to individuals and organizations for individual

subsidization, infrastructure construction, training programmes and transmigration and resettlement programmes in the poverty stricken areas. Prior to 2004, the two provincial governments would submit programmes applying for the subsidy first. The funds would be allocated after the programmes were jointly approved by MOF, Office of Poverty Alleviation under the State Council and NDRC. From 2004 on, funds are allocated first to the two provincial governments which are required to submit programme later for record only instead of for approval.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
200	200	200	200	800

9. Duration of the subsidy and/or any other time-limits attached to it

1983-2008

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

#### XVIII.

1. Title of the subsidy programme

Interests discount of poverty alleviation loans

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To improve the production and living conditions and increase the income of the poverty stricken population, and to enhance the economic and social development of the poverty stricken areas

4. Background and authority for the subsidy

MOF, Office of Poverty Alleviation under the State Council, People's Bank of China

5. Legislation under which it is granted

People's Bank of China Circular Yin Fa No.185 of 2001

6. Form of the subsidy

Interests discount

7. To whom and how the subsidy is provided

Agricultural Bank of China collects and submits the information on loans provided to individuals and organizations in the poverty stricken areas on programmes of infrastructure construction and development of planting, breeding and processing, etc. After local financial authorities and local Offices of Poverty Alleviation jointly review and approve the programmes, MOF settles the interests discount with the headquarter of Agricultural Bank of China. Since 2004, the funds of this interests discount are partially appropriated to the governments of the poverty stricken counties which will independently choose the financial institutions to provide poverty alleviation loans and negotiate on the terms of interests discount settlement.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
524.50	530	530	613.29	2197.79

9. Duration of the subsidy and/or any other time-limits attached to it

1986-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XIX.**

1. Title of the subsidy programme

Preferential tax policies for enterprises which utilize the waste materials

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To protect the environment and encourage the recycling of resources

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax of the enterprises which use the waste materials such as waste water, waster residue and waste gas as major materials for production may be exempt or reduced within five years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XX.

1. Title of the subsidy programme

Preferential tax policies for enterprises suffering from natural disasters

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To reduce the losses due to natural disasters

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax of the enterprises suffering from natural disasters such as floods, fire or earthquakes etc. may be exempt or reduced for one year.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XXI.**

1. Title of the subsidy programme

Preferential tax policies for welfare enterprises

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage increase of job opportunities and help the employment of the disabled people

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

SAT Circular Guo Shui Fa No.155 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) The income tax paid by the enterprises in which employees with disabilities such as blindness, deafness, dumbness and physical deformities are over 50% of total employees may be one hundred per cent refunded. (2) The income tax paid by the enterprises in which employees with disabilities such as blindness, deafness, dumbness and physical deformities are over 35% but less than 50% of total employees, if at a loss, may be partially or totally refunded to the extent to compensate the loss.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XXII.**1. Title of the subsidy programme

Preferential tax policies for enterprises making little profits

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To reduce the burden of the enterprises making little profits to maintain job opportunities

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.009 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) The income tax enterprises whose annual taxable income is less than RMB 30,000 may be levied at a reduced rate of eighteen per cent. (2) The income tax of enterprises whose annual taxable income is less than RMB 100,000 but more than RMB 30,000 may be levied at a reduced rate of twenty-seven per cent.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XXIII.**

1. Title of the subsidy programme

Preferential tax policies for township enterprises

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To reduce the burden of township enterprises due to the imperfect social security system and to encourage the township enterprise to improve the living and working conditions of their employees.

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Ten per cent of the income tax payable by the township enterprise may be exempted to subsidize the social security expenses.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## XXIV.

1. Title of the subsidy programme

Preferential tax policies for enterprises which provide employment for unemployed people

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To increase and encourage employment

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994



6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) The income tax of the newly established urban enterprises which employ unemployed people over sixty per cent of total employees within the year may be exempted for three years.  
(2) The income tax of the above mentioned enterprises which newly employ unemployed people over thirty per cent of original total employees within the year may be reduced by one half for an additional two years after the three years period of income tax exemption has expired.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXV.

1. Title of the subsidy programme

Preferential tax policies for scientific research institutions under transformation

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To push forward the scientific research institutions to reform under the conditions of market economy

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No.137 of 2003

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax of the 242 scientific research institutions subordinate to the former 10 National Bureaus administrated by the former State Economic and Trade Commission (SETC) and the 134 scientific research institutions subordinate to 11 Ministries such as Ministry of Construction which transformed into enterprises or be integrated into enterprises, as well as the scientific research institutions subordinate to the organizations under the State Council which transformed into enterprises or be integrated into enterprises after reviewed and approved by MOST and MOF, shall be exempted for five years since the day of the transformation registration.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2003-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XXVI.**1. Title of the subsidy programme

Preferential tax policies for the research and development of enterprises

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To encourage the research and development of enterprises

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No.244 of 2003

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The actual expenses of domestic industrial enterprises, regardless of the ownership, on research and development of new products, new technologies and new crafts which has increased ten per cent or more from the previous year, may be offset by 150% from the taxable income of the year.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2003-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXVII.

1. Title of the subsidy programme

Preferential tax policies for the research and development of foreign-invested enterprises

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the research and development of enterprises

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

SAT Circular Guo Shui Fa No.173 of 1999

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The actual expenses of foreign-invested enterprises on research and development conducted in China, which has increased ten per cent or more from the previous year, may be offset by 150% from the taxable income of the year.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XXVIII.**1. Title of the subsidy programme

Preferential tax policies for enterprises transferring technology

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the transfers of technology

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOA Circular Nong Jing Fa No.8 of 2000;  
MOA Circular Nong Jing Fa No.10 of 2000;  
SAT Circular Guo Shui Fa No. 124 of 2001.

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income of the key leading enterprises, and of their holding subsidiary companies, obtained from planting, animal and fish farming, and preliminary processing of agricultural and forest products may be exempt from income tax.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXX.

1. Title of the subsidy programme

Preferential tax policies for the enterprises engaged in forestry

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the development of forestry

4. Background and authority for the subsidy

MOF, SAT, State Forestry Administration (SFA)

5. Legislation under which it is granted

MOF Circular Cai Shui No.171 of 2001,  
MOF Circular Cai Shui No.49 of 1997

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income of the enterprises and institutions obtained from production of forestry, forestry seeds as well as from preliminary processing of forestry products may be exempt from income tax since January 1 2001.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XXXI.**1. Title of the subsidy programme

Funds for supporting technological innovation for the technological small and medium-sized enterprises (SMEs)

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To support the SMEs in technology innovation and encourage the industrialization of the science and technology achievements

4. Background and authority for the subsidy

MOF, MOST

5. Legislation under which it is granted

General Office of State Council Circular Guo Ban Fa No. 47 of 1999

6. Form of the subsidy

Financial appropriations or loan interests discount

7. To whom and how the subsidy is provided

In the projects of financial appropriations, the SMEs of science and technology nature receive firstly seventy per cent of the total assisting amount approved to be granted to the enterprises. In the projects of interest discount, the SMEs of science and technology nature receive firstly eighty per cent of the assisting fund for interest discount in accordance with the interest settlement document provided by the enterprises. The rest of the grant or assisting fund for interest discount shall be paid after the projects being completed as well as checked and accepted. Each project shall receive no more than RMB 1 million and in particular cases no more than RMB 2 million.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
800	500	500	500	2300

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## XXXII.

1. Title of the subsidy programme

Development funds for SMEs

2. Period covered by the notification

2004

3. Policy objective and/or purpose of the subsidy

To support the SMEs development

4. Background and authority for the subsidy

MOF, NDRC

5. Legislation under which it is granted

*Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises*

6. Form of the subsidy

Financial appropriations or loan interests discount

7. To whom and how the subsidy is provided

For the enterprises who invest into the project mainly with self-owned capital, the aid is given in the form of grant of no more than RMB 2 million or within the limit of the self-owned capital investment. For the enterprises who invest into the project mainly with loans, the aid is given in the form of interest discount with a rate decided by the amount of loans and the interest rate in the same term published by People's Bank of China. The period of each project enjoying the interest discount should be no more than two years and the total amount each project receives in the form of interest discount should be no more than RMB 1.5 million.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2004	Total
100	100

9. Duration of the subsidy and/or any other time-limits attached to it

2004-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XXXXIII.**

1. Title of the subsidy programme

Fund for international market exploration by SMEs

2. Period covered by the notification

2001-2004



3. Policy objective and/or purpose of the subsidy

To assist SMEs to explore the international market

4. Background and authority for the subsidy

MOF, MOFCOM

5. Legislation under which it is granted

MOF Circular Cai Qi No.467 of 2000,  
MOFTEC (MOFCOM) Circular Ji Cai Fa No.270 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to SMEs or enterprises and organizations which provide services to SMEs for the purpose of: (1) holding or participating in overseas exhibitions, (2) accreditation fee for quality management system, environment management system or for the product, (3) promotion in the international market, (4) exploring a new market, (5) holding trainings and symposiums, (6) overseas bidding. The enterprises receive partial support to its international market exploration fees and the grant is allocated on the basis of the approved application for fund after market exploration activities are completed.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
560	480	400	1000	2440

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XXXIV.

1. Title of the subsidy programme

Special fund for establishment of service system for SMEs

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To assist entities to provide better services to SMEs

4. Background and authority for the subsidy

MOF

5. Legislation under which it is granted

*Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises*  
MOF Circular Cai Jian No.124 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided as grant to entities which provide services to SMEs. For those who provide training services to the SMEs, rent charges of training venue, payments to the lecturer and expenses on teaching materials may be fully subsidized by the fund, and accommodations incurred by the training services may be subsidized at a maximum of RMB 150 person/day. For those who provide credit services to the SMEs, the actual expenses may be subsidized as appropriate. For those who provide services for SMEs to start business, the actual expenses may be subsidized as appropriate. For those who provide management consulting services for SMEs, the actual expenses may be subsidized as appropriate.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2003	2004	Total
50	50	100

7. To whom and how the subsidy is provided

The fund is provided to youngster farmers of rural areas. MOF and MOA jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
30	30	50	50	160

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## XXXVII.

1. Title of the subsidy programme

Fund for specialized cooperatives of farmers

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To support and facilitate the development of specialized cooperatives of farmers

4. Background and authority for the subsidy

MOF

5. Legislation under which it is granted

MOF Circular Cai Nong No.87 of 2004

9. Duration of the subsidy and/or any other time-limits attached to it

2003-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## XXXV.

1. Title of the subsidy programme

Fund for subsidizing the training of the rural migrant labour force

2. Period covered by the notification

2004

3. Policy objective and/or purpose of the subsidy

To improve the quality and the employment capabilities of the rural migrant workers, to facilitate the migration of the rural labour force and increase rural incomes

4. Background and authority for the subsidy

MOF, MOA

5. Legislation under which it is granted

MOF Circular Cai Nong No.38 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individuals, training institutions or other organizations chosen through bidding procedures to provide training services to farmers. MOF and MOA jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.001 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The income tax of enterprises profiting from technology transfers as well as from providing technology consultation, technology services and technology training in the transfer, may be exempt where the annual net income of the enterprises is less than RMB 300,000, and where the annual net income is more than RMB 300,000, the exceeding part shall be levied at the regular rate.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## XXIX.

1. Title of the subsidy programme

Preferential tax policies for the key leading enterprises engaged in agricultural industrialization

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the agricultural industrialization

4. Background and authority for the subsidy

MOF, SAT, Ministry of Agriculture (MOA)

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2004	total
250	250

9. Duration of the subsidy and/or any other time-limits attached to it

2004-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

#### XXXVI.

1. Title of the subsidy programme

Outlay for training of youngster farmers on science and technology

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To assist the youngster farmers to obtain the knowledge on science and technology and to improve their management capacity

4. Background and authority for the subsidy

MOF, MOA

5. Legislation under which it is granted

MOA Circular Nong Ke Jiao Fa No.8 of 1999

6. Form of the subsidy

Financial appropriations

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to qualified specialized cooperatives of farmers. MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2003	2004	Total
20	50	70

9. Duration of the subsidy and/or any other time-limits attached to it

2003-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XXXVIII.**

1. Title of the subsidy programme

Subsidy for popularization of agricultural technologies

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To popularize advanced and practical agricultural technologies

4. Background and authority for the subsidy

MOF

5. Legislation under which it is granted

MOF Circular Cai Nong No.81 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to projects which embody geographic advantages and can serve as a model to other areas. MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
135	175	175	200	685

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## XXXIX.

1. Title of the subsidy programme

Subsidy for growing superior grain cultivars

2. Period covered by the notification

2002-2004

3. Policy objective and/or purpose of the subsidy

To accelerate the upgrade of grains and crops, increase the output of agricultural products, improve the quality of agricultural products and guarantee food security.

4. Background and authority for the subsidy

MOF, MOA



5. Legislation under which it is granted

MOF Circular Cai Nong No.16 and17 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to grain cultivars supply enterprises in major crop-producing provinces chosen through bidding procedures. MOF and MOA jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2002	2003	2004	Total
100	300	2852	3252

9. Duration of the subsidy and/or any other time-limits attached to it

2002-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XL.**1. Title of the subsidy programme

Subsidy for purchasing agricultural machinery and tools

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To enhance the contribution of agricultural science and technology, and push forward the development of agriculture and rural economies

4. Background and authority for the subsidy

MOA, MOF

5. Legislation under which it is granted

MOA Circular Nong Cai Fa No.6 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individual farmers or services providers on agricultural machinery and tools that purchase agricultural machinery and tools through bidding procedures. MOF and MOA jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
20	20	40	70	150

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## XLI.

1. Title of the subsidy programme

Subsidy for actualizing agricultural technology

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To accelerate the actualization of agricultural technological achievements in agriculture, forestry, water conservation and irrigation, and improve the capacity of agricultural innovation

4. Background and authority for the subsidy

MOF, MOST

5. Legislation under which it is granted

MOST Circular Guo Ke Ban Cai Zi No.417 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individuals or enterprises that are the right-holders for new agricultural technology. MOF and MOST jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
400	200	200	250	1050

9. Duration of the subsidy and/or any other time-limits attached to it

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XLII.**

1. Title of the subsidy programme

Fund provided for agricultural industrialization

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To increase rural income, increase the scale and modernization of agricultural operation, and to improve the efficiency of agriculture in general

4. Background and authority for the subsidy

MOF

5. Legislation under which it is granted

MOF Circular Cai Nong No.88 of 2004

6. Form of the subsidy

Financial appropriation

7. To whom and how the subsidy is provided

The fund is provided to qualified enterprises. The MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
70	100	100	100	370

9. Duration of the subsidy and/or any other time-limits attached to it

1998-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XLIII.

1. Title of the subsidy programme

Fund for agricultural disaster relief

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To prevent and control agricultural disasters as well as provide disaster relief

4. Background and authority for the subsidy

MOF, MOA

5. Legislation under which it is granted

MOF Circular Cai Nong No.232 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individuals or organizations that fight against disasters and resume production afterwards. MOF and MOA jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
942	635	735	905	3217

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## XLIV.

1. Title of the subsidy programme

Fund provided to exempt from or reduce agriculture tax on farmers suffering from poor harvest after disasters

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To relieve tax burden of farmers who suffered from disasters

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

*Regulation of the People's Republic of China on Agricultural Tax.*  
MOF Circular Cai Nong No.132 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to farmers who suffered from poor harvest due to natural disasters. MOF and SAT jointly review the application for fund submitted by local governments and grant the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
4,000	1,000	2,000	1,500	8,500

9. Duration of the subsidy and/or any other time-limits attached to it

Period when agriculture tax exists

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XLV.**

1. Title of the subsidy programme

Subsidy for major flood control and drought resistance

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To assist areas that suffer from major floods or drought, to prevent or fight against the disasters, and to assist the flood control of major rivers and lakes directly supervised by the central government.

4. Background and authority for the subsidy

MOF, Ministry of Water Resources (MOWR)

5. Legislation under which it is granted

MOF Circular Cai Nong No.30 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to enterprises or related organizations. MOF and MOWR jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
950	1364	1342	931	4587

9. Duration of the subsidy and/or any other time-limits attached to it

1953-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

XLVI.

1. Title of the subsidy programme

Fund for construction of small irrigation facilities in rural areas

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To support the projects which are closely related to working and living conditions of rural population such as rural water supply, rural energy supply, small forestry, small projects on water and soil conservation and small irrigation facilities.

4. Background and authority for the subsidy

MOF, MOWR

5. Legislation under which it is granted

MOF Circular Cai Ban Nong No.74 of 2001

6. Form of the subsidy

Financial appropriations



7. To whom and how the subsidy is provided

The fund is provided to individuals, enterprises or related organizations. MOF and MOWR jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
100	100	100	100	400

9. Duration of the subsidy and/or any other time-limits attached to it

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XLVII.**

1. Title of the subsidy programme

Fund for construction of small ecological facilities in rural areas

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To support the projects which are closely related to working and living conditions of rural population such as rural water supply, rural energy supply, small forestry, small project on water and soil conservation and small irrigation facilities.

4. Background and authority for the subsidy

MOF, SFA

5. Legislation under which it is granted

MOF Circular Cai Ban Nong No.74 of 2001

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to rural forestry areas. The MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
100	100	100	100	400

9. Duration of the subsidy and/or any other time-limits attached to it

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## XLVIII.

1. Title of the subsidy programme

Fund for projects on collection, reservation and utilization of rainfall

2. Period covered by the notification

2004

3. Policy objective and/or purpose of the subsidy

To support construction of rural irrigation infrastructure, improve rural living conditions and rural productivity

4. Background and authority for the subsidy

MOF, MOWR

5. Legislation under which it is granted

MOF Circular Cai Nong No.138 of 2004

140

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individuals, enterprises or related organizations. MOF and the MOWR jointly review the application for fund submitted by the local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2004	Total
100	100

9. Duration of the subsidy and/or any other time-limits attached to it

2004-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**XLIX.**

1. Title of the subsidy programme

Fund for interest discount of loans for the purpose of agricultural water-saving irrigation

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To support water-saving irrigation technology and the construction of areas using water-saving irrigation

4. Background and authority for the subsidy

MOF, MOWR

5. Legislation under which it is granted

MOF Circular Cai Yu No.388 of 2001

6. Form of the subsidy

Interest discount

7. To whom and how the subsidy is provided

The fund is provided to individuals, enterprises or related organizations. MOF and MOWR jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
46.5	46.5	46.5	46.5	186

9. Duration of the subsidy and/or any other time-limits attached to it

1997-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**L.**1. Title of the subsidy programme

Subsidies for national key construction projects on water and soil conservation

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To assist small scale farmland irrigation and water and soil conservation projects in rural areas

4. Background and authority for the subsidy

MOF, MOWR

5. Legislation under which it is granted

MOF Circular Cai Nong No.402 of 1987

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to enterprises or related organizations. MOF and MOWR jointly review the application for fund submitted by local governments. After approval of the application, fund is granted by the MOF.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
50	50	50	50	200

9. Duration of the subsidy and/or any other time-limits attached to it

1983-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## LI.

1. Title of the subsidy programme

Special fund for projects on protection of natural forestry

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To protect natural forestry resources and improve eco-environment

4. Background and authority for the subsidy

MOF, SFA

5. Legislation under which it is granted

MOF Circular Cai Nong No.151 of 2000

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to state owned forestry enterprises which are subject to timber production reduction or lumbering ban to transfer and settle down the laid-off workers. MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
7146.95	7663.22	4966.52	4675.4	24452.09

9. Duration of the subsidy and/or any other time-limits attached to it

1998-2010

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LII.**

1. Title of the subsidy programme

Cash subsidy for returning cultivated land to forests

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To improve the ecological environment, and to subsidize the farmers who return cultivated land to forests for their necessary expenses such as medical care, education and daily expenses.

4. Background and authority for the subsidy

MOF, SFA

5. Legislation under which it is granted

State Council Circular Guo Fa No.10 of 2002

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to farmers who complete the returning of cultivated land to forests and are examined as qualified. MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
361.82	1155.82	2165.82	2365.82	6049.28

9. Duration of the subsidy and/or any other time-limits attached to it

2000-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LIII.**

1. Title of the subsidy programme

Compensation fund for forestry ecological benefits

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To protect key forestry resources and ensure ecological security

4. Background and authority for the subsidy

MOF, SFA

5. Legislation under which it is granted

MOF Circular Cai Nong No.7 of 2001 (abolished);  
MOF Circular Cai Nong No.169 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to entities that manage the key national commonweal forests. MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
1000	1000	1000	2000	5000

9. Duration of the subsidy and/or any other time-limits attached to it

2001-2003 as pilot project  
2004-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available



## LIV.

1. Title of the subsidy programme

Interest discount for loans for the purpose of desertification prevention in forestry

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage investment into the construction of forestry ecological environment, to facilitate the implementation of key forestry projects such as protection of natural forest resources, the returning cultivated land to forests etc.

4. Background and authority for the subsidy

MOF, SFA

5. Legislation under which it is granted

MOF Circular Cai Nong No.137 of 2002

6. Form of the subsidy

Interest discount

7. To whom and how the subsidy is provided

The subsidy is provided to qualified forestry loans granted to individuals, enterprises and other organizations. MOF reviews the application for fund submitted by central and local authorities administering forestry and grants the fund after approving the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
56	192.10	213.67	114.697	576.467

9. Duration of the subsidy and/or any other time-limits attached to it

1986-2004

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LV.

1. Title of the subsidy programme

Subsidy for prevention from and control of pest and disease in forestry

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To strengthen the disease, pest and rat prevention and control in forests, woods, seedling and bamboo forest.

4. Background and authority for the subsidy

MOF, SFA

5. Legislation under which it is granted

MOF Circular Cai Nong No.69 of 2002

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to individual, enterprises and organizations engaged in forestry for the purpose of hazardous creature control. An application for fund is submitted by local government. MOF and SFA jointly review the application and determine the amount of the subsidy. After approval of the application, the MOF grants the fund.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
75	80	91	92	338

9. Duration of the subsidy and/or any other time-limits attached to it

1980-2004

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LVI.**

1. Title of the subsidy programme

Subsidy for grass seed sowing by airplanes

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To support the airplane sowing of grass seed in major grassland areas

4. Background and authority for the subsidy

MOF, MOA

5. Legislation under which it is granted

MOF Circular Cai Nong No.139 of 2004

6. Form of the subsidy

Financial appropriations

7. To whom and how the subsidy is provided

The fund is provided to organizations which carry out airplane sowing of grass seeds. MOF reviews the application for fund submitted by local governments and grants the fund after approval of the application.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: million RMB

2001	2002	2003	2004	Total
9	9	9	9	36

9. Duration of the subsidy and/or any other time-limits attached to it

1984-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LVII.**

1. Title of the subsidy programme

Preferential tax policies for integrated circuit industry

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the development of integrated circuit industry

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai shui No.25 of 2000,  
MOF Circular Cai shui No.70 of 2002,  
MOF Circular Cai shui No.136 of 2002,  
MOF Circular Cai shui No.140 of 2002,  
MOF Circular Cai shui No.174 of 2004,  
MOF Circular Cai shui No.40 of 2004

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) Investor of integrated circuit producing or packaging enterprise who reinvests its share of profit obtained from the enterprise, after paying income tax, directly into that enterprise by increasing its registered capital, or uses the profit as capital investment to establish other integrated circuit producing or packaging enterprises to operate for a period of not less than five years, shall be refunded forty per cent of the income tax already paid on the reinvested amount.

(2) Domestic or foreign economic organizations investing its share of profit obtained inside China, after paying the income tax, into integrated circuit producing or packaging enterprises located in the western regions as capital investment to operate for a period of not less than five years, shall be refunded eighty per cent of the income tax already paid on the reinvested amount.

(3) Integrated circuit producing enterprises with investment more than RMB 8 billion or producing integrated circuit with a line width lesser than 0.25 um shall enjoy the same preferential tax treatment as to encourage the foreign investors who invest into energy and transportation sectors.

(4) Accredited integrated circuit producing enterprises producing integrated circuit with a line width of 0.8 micron or less shall, from the year beginning to make profit, be exempted from income tax in the first and second years and allowed a fifty per cent reduction in the third to fifth years.

(5) The VAT of enterprises as normal taxpayers selling independently designed integrated circuit products shall be refunded the portion over six per cent from June 2000 till the end of year 2001, and be refunded the portion over three per cent from year 2002. This policy ceased on April 1 2005.

(6) The import VAT of domestically designed integrated circuit with self-owned intellectual property rights when processed overseas, shall be refunded the portion over six per cent from July 1 2000 till 1 October 2004.

(7) The imported raw materials for self production and expendables of the integrated circuit producing enterprises established in China with investment more than RMB 8 billion or producing integrated circuit with a line width lesser than 0.25 um shall be exempted from tariff and import VAT.

(8) The imported integrated circuit producing technology and whole set of producing equipment, and the separately imported special equipment and apparatus to produce integrated circuit by the accredited integrated circuit producing enterprises shall be exempt from tariff and import VAT. The above mentioned equipment and technologies shall excluded those listed in the "Catalogue for the imported products not subject to tax exemption in foreign invested projects" or in the "Catalogue for the imported products not subject to tax exemption in domestic invested projects".

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

(1) 2002-2010; (2) 2002-2010; (3) 1 July 2000-present; (4) 2002-present;  
(5) 24 June 2000-1 April 2005; (6) 1 July 2000-1 October 2004; (7) 1 July 2000-present;  
(8) 1 July 2000-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LVIII.**

1. Title of the subsidy programme

Preferential tax policies for foreign invested enterprises and foreign enterprises which have establishments or place in China and are engaged in production or business operations purchasing domestically produced equipments .

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To attract foreign investment and support technology renovation.

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No.49 of 2000, SAT Circular Guo Shui Fa No.90 of 2000

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

For the investment projects listed as encouraged category in the "Catalogue for the Guidance of the Foreign Investment Industries" of foreign invested enterprises and foreign enterprises which have establishments or place in China engaged in production or business operations, forty per cent of the expenses on purchasing domestically produced equipments within the total investment of the project, or beyond the total investment of the project but for the purpose of upgrading the existing equipments and crafts, shall be deducted from the increment of income tax of that year compared to the previous year. Herein the "domestically produced equipments" do not include those imported directly by other enterprises or those produced by processing trade and compensatory trade. The

deducted portion shall not exceed that year's total increment of income tax, and in the case where the total increment of income tax is less than forty per cent of such expenses, the exceeding part of the deductible expenses can be deducted from the next year's increment of income tax. Such postponement of deductibility shall not last for more than five years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1 July 1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

#### LIX.

1. Title of the subsidy programme

Preferential tax policies for domestic enterprises purchasing domestically produced equipments for technology upgrading purpose

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage domestic investment and support the technology upgrading of enterprises

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No.290 of 1999

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

For the technology upgrading projects which are consistent with the state industrial policies of the domestic enterprises, forty per cent of the expenses on purchasing domestically produced equipments shall be deducted from the increment of income tax of that year compared to the previous

year. In the case where the total increment of income tax is less than forty per cent of such expenses, the exceeding part of the deductible expenses can be deducted from the next year's increment of income tax. Such postponement of deductibility shall not last for more than five years.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1 July 1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LX.**

1. Title of the subsidy programme

Exemption of tariff and import VAT for the imported technologies and equipments

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To reduce the investment cost of importing technologies or equipments, and to attract foreign investment and to encourage domestic investment

4. Background and authority for the subsidy

MOF, SAT, MOFCOM, General Administration of Customs (GCA)

5. Legislation under which it is granted

State Council Circular Guo Fa No.37 of 1997

6. Form of the subsidy

Preferential tax treatment



7. To whom and how the subsidy is provided

For the foreign invested projects listed as encouraged category in the "Catalogue for the Guidance of the Foreign Investment Industries", the equipments purchased for self-use within the total investment of the project, excluding those listed in the "Catalogue for the imported products not subject to tax exemption in foreign invested projects", shall be exempted from tariff and import VAT. For the domestic invested projects listed in the "Catalogue of the Industries, Products and Technologies Particularly Encouraged by the State", the equipments purchased for self-use within the total investment of the project, and the technologies, accessories and spare parts imported with the equipments as provided in the contract, excluding those listed in the "Catalogue for the imported products not subject to tax exemption in domestic invested projects", shall be exempted from tariff and import VAT. For the projects using the loans provided by foreign governments or by international financial organizations, the equipments purchased for self-use within the total investment of the projects, excluding those listed in the "Catalogue for the imported products not subject to tax exemption in foreign invested projects", shall be exempted from tariff and import VAT.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1997-present

10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available

LXI.

1. Title of the subsidy programme

Preferential tax policies for enterprises of grain or oil reserves

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To ensure food security

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No.198 of 1999

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The sales of grain and edible oil by the state-owned enterprises which carry reserves of grain and oils for food security purposes are exempted from VAT.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXII.**1. Title of the subsidy programme

Preferential tax policies for the imports of China Grain Reserves Corporation for the purpose of rotation of grain reserves

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To secure food safety

4. Background and authority for the subsidy

MOF, SAT, GCA

5. Legislation under which it is granted

MOF Circular Cai Shui No. 13 of 2001,  
MOF Circular Cai Shui No. 74 of 2004

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The collected import VAT on imported grain and oils imported by China Grain Reserves Corporation for the purpose of alternation or rotation of reserves shall be fully refunded.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2001-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXIII.**

1. Title of the subsidy programme

Preferential tax policies for the relief grain and disaster relief grain, compensation grain for returning cultivated land to forests and to grass land, and the grain rations for the migrants from the reservoir areas.

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To ensure the functioning of special social responsibilities such as disasters relief and to realize social development objectives such as environmental protection

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No. 198 of 1999,  
SAT Circular Guo Shui Fa No. 131 of 2001

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

VAT on the relief grain and disaster relief grain, compensation grain for returning cultivated land to forests and to grassland, and the grain rations for the migrants from the reservoir areas operated by grain enterprises shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1999-present, and for compensation grain for returning cultivated land to forests and to grassland 2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXIV.**1. Title of the subsidy programme

Preferential tax treatment for tea sold in the border areas

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To ensure the supply to the border areas with minority ethnic groups residence.

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No. 60 of 1994, MOF Circular Cai Shui No. 71 of 2001

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The VAT on tea sold in the border areas produced by designated enterprises and distributed by designated distribution entities shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1994-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXV.**1. Title of the subsidy programme

Preferential tax treatment for imported products for the purpose of replacing the planting of poppies

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To support the replacement of the planting of poppies

4. Background and authority for the subsidy

MOF, SAT, GCA

5. Legislation under which it is granted

MOF Circular Cai Shui No. 63 of 2000

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Tariffs and import VAT on imported products within the approved scope for the purpose of replacing the planting of poppies in the border areas in Yunnan province shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2000-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

## LXVI.

1. Title of the subsidy programme

Preferential tax policies on imports of seeds (seedlings), breeding stock (fowl), fish fries (breeds) and non profit-making wild animals and plants kept as breeds during the period of the "Tenth Five-Year Plan"

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To introduce and promote improved breeds, to strengthen the protection of species resources, and to develop high-quality, productive and efficient agriculture and forestry industries.

4. Background and authority for the subsidy

MOF, SAT, MOA, SFA

5. Legislation under which it is granted

MOF Circular Cai Shui No. 130 of 2001

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The import VAT for imported seeds (seedlings), breeding stock (fowl), fish fries (breeds) and non profit-making wild animals and plants kept as breeds which are listed in the approved list of tax-free items within the approved quantity shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2001-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXVII.**1. Title of the subsidy programme

Preferential tax treatment for specimens of endangered wild animals and plants returned by the government of Hong Kong, China to the Office of the Administration of Import and Export of Endangered Species.

2. Period covered by the notification

September 2000

3. Policy objective and/or purpose of the subsidy

To facilitate the implementation of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* and to protect specimens of wild animals and plants.

4. Background and authority for the subsidy

MOF, GCA, SFA

5. Legislation under which it is granted

MOF Circular Cai Shui No. 120 of 2000

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Tariff and import VAT on specimens of endangered wild animals and plants of the approved species and approved quantity which are returned by the Agriculture, Fisheries and Conservation Department under the government of Hong Kong, China to Office of the Administration of Import and Export of Endangered Species under the SFA shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

September 2000

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXVIII.**

1. Title of the subsidy programme

Preferential tax treatment for endangered wild animals and plants as well as their products returned by foreign governments, by the government of Hong Kong, China or the government of Macao, China to the Office of the Administration of Import and Export of Endangered Species

2. Period covered by the notification

2002-2004

3. Policy objective and/or purpose of the subsidy

To facilitate the implementation of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* and to protect wild animals and plants as well as their products.



4. Background and authority for the subsidy

MOF, GCA, SFA

5. Legislation under which it is granted

MOF Circular Cai Shui No. 8 of 2003

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Tariff and import VAT on the endangered wild animals and plants as well as their products which are listed in the appendix to the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, returned by foreign governments, by the government of Hong Kong, China, or by the government of Macao, China to the Office of the Administration of Import and Export of Endangered Species under the SFA shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2002-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXIX.**

1. Title of the subsidy programme

Preferential tax treatment for building material products produced with integrated utilization of resources

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage the integrated utilization of resources and protect the environment

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No. 44 of 1995, MOF Circular Cai Shui Zi No. 20 of 1996

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The VAT on building material products made from waste residues shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1995-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXX.**

1. Title of the subsidy programme

Preferential tax treatment for other products produced with integrated utilization of resources

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage integrated utilization of resources and protect the environment

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No. 198 of 2001, MOF Circular Cai Shui No. 25 of 2004

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) The VAT on products produced with integrated utilization of resources such as electric power produced from urban waste shall be refunded. (2) The VAT on electric power produced with wind power and some of the new-type wall-building materials produced from coal gangue, slush, oil shale shall be levied at a rate reduced by one half.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2001-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXXI.

1. Title of the subsidy programme

Preferential tax treatment for imported products for scientific and educational purposes

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To promote the development of scientific research and educational causes

4. Background and authority for the subsidy

MOF, GCA

5. Legislation under which it is granted

State Council Circular Guo Han No. 3 of 1997

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The tariff, import VAT and excise tax of products directly used in scientific research and education which are imported by scientific research institutions and schools for non profit-making purposes shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1997-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXXII.**1. Title of the subsidy programme

Preferential tax treatment for imported products exclusively used by the disabled people

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To facilitate the recovery of the disabled people

4. Background and authority for the subsidy

MOF, GCA

5. Legislation under which it is granted

State Council Circular Guo Han No. 3 of 1997

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The tariff, import VAT and excise tax on imported products exclusively used by the disabled people within the stipulated scope shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1997-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXXIII.**

1. Title of the subsidy programme

Preferential tax treatment for products for the disabled people

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To facilitate the recovery of the disabled people

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui Zi No. 60 of 1994

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

The VAT on artificial limbs, wheelchairs, orthopaedic appliances including those for upper limbs, lower limbs and spinal bend and lean etc. shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1994-present

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

LXXIV.

1. Title of the subsidy programme

Preferential tax treatment to anti-HIV-AIDS medicine

2. Period covered by the notification

2002/2003-2004

3. Policy objective and/or purpose of the subsidy

To push forward the prevention and cure of HIV-AIDS

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No. 181 of 2003, MOF Circular Cai Shui No. 160 of 2002

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

(1) From 1 January 2002 to 31 December 2006, tariffs and import VAT and VAT in domestic circulation stages on imported anti-HIV-AIDS medicine shall be exempted. (2) From 1 July 2003 to 31 December 2006, VAT in production and circulation stages on domestically produced anti-HIV-AIDS medicine produced by designated domestic producers shall be exempted.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2002/2003-2006

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXXV.**

1. Title of the subsidy programme

Refund of import VAT of raw copper materials

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To promote technology upgrading of enterprises

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No. 81 of 2003, MOF Circular Cai Guan Shui No. 12 of 2005

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

Thirty per cent of import VAT on copper concentrate, waste copper and unrefined copper imported within the approved quantitative scope by copper refineries with production or refining capacity of electrolytic copper over 30,000 tons and which meet the criteria of environmental protection shall be refunded after collection.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2003-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXXVI.**1. Title of the subsidy programme

Preferential tax treatment for casting and forging products

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To encourage the technology upgrading of enterprises and the research and development of the casting and forging products

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No. 96 of 2003



6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

From 1 January 2003 to 31 December 2005, the VAT on the casting and forging products which are used in producing machinery, manufactured and sold by the 284 specialized casting and forging enterprises listed in the annex to the *Circular* shall be collected according to stipulations at first, and then thirty-five per cent of the actually collected VAT shall be refunded.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2003-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXXVII.**

1. Title of the subsidy programme

Preferential tax treatment to dies products

2. Period covered by the notification

2003-2004

3. Policy objective and/or purpose of the subsidy

To encourage the technology upgrading of enterprises and research and development of dies products

4. Background and authority for the subsidy  
MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No. 139 of 1998, MOF Circular Cai Shui No. 95 of 2003

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

From 1 January 2003 to 31 December 2005, the VAT on the dies products manufactured and sold by the 160 specialized dies manufacturing enterprises listed in the annex to the *Circular* shall be collected according to stipulations at first, and then seventy per cent of the actually collected VAT shall be refunded.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

2003-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

**LXXVIII.**1. Title of the subsidy programme

Preferential tax treatment to numerically controlled machine tool products

2. Period covered by the notification

2001-2004

3. Policy objective and/or purpose of the subsidy

To encourage enterprises to conduct research and development of numerically controlled machine tool products

4. Background and authority for the subsidy

MOF, SAT

5. Legislation under which it is granted

MOF Circular Cai Shui No. 47 of 2000,  
MOF Circular Cai Shui No. 119 of 2001,  
MOF Circular Cai Shui No. 97 of 2003

6. Form of the subsidy

Preferential tax treatment

7. To whom and how the subsidy is provided

From 1 January 1999 to 31 December 2005, the VAT on numerically controlled machine tool products produced and sold by certain numerically controlled machine tool manufacturing enterprises shall be refunded after collection.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Not available

9. Duration of the subsidy and/or any other time-limits attached to it

1999-2005

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available

Note:

1. The 12 border cities, counties or towns refer to Heihe, Suifenhe in Heilongjiang Province, Hunchun in Jilin Province, Manzhouli in Inner Mongolia Autonomous Region, Yining, Bole, Tacheng in Xinjiang Uygur Autonomous Region, Pingxiang, Dongxing in Guangxi Zhuang Autonomous Region, Wanting, Ruili and Hekou in Yunnan Province.

2. The costal economic open areas firstly refer to the 14 coastal open cities of Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Lianyungang, Nantong, Shanghai, Ningbo, Wenzhou, Fuzhou, Guangzhou, Zhanjiang, Beihai. In 1985 the Yangtze River Delta, the Pearl River Delta and the triangle area in south Fujian Province of Xiamen, Zhangzhou and Quanzhou were open to be included in the costal economic open areas. In 1988 the area was further expanded to the Liaodong Peninsula, Shandong Peninsular and etc. to include 153 cities and counties in Tianjin Municipality, Hebei Province, Liaoning Province, Jiangsu Province, Zhejiang Province, Fujian Province, Shandong Province and Guangxi Zhuang Autonomous Region. In 1990 the city of Jinan was open. In 1992 5 cities along the Yangtze river namely Chongqing, Yueyang, Wuhan, Jiujiang, Wuhu, 6 provincial capital cities in border and coastal provinces and autonomous regions namely Harbin, Changchun, Hohhot, Shijiazhuang, Nanning and Kunming and 11 provincial capital cities of inland provinces and autonomous regions namely Taiyuan, Hefei, Nanchang, Zhengzhou, Changsha, Chengdu, Guiyang, Xi'an, Lanzhou, Xining and Yinchuan began to implement the policies of the costal economic open areas. In 1993 the city of Huangshi along the Yangtze River also began to implement the policies of the costal economic open areas.

3. The Three Gorges of Yangtze River Economic Zone refers to Yichang County, Zigui County and Xingshan County under the Yichang City of the Hubei Province, Badong County of the Enshi Tujia and Miao Autonomous Prefecture of the Hubei Province, Wushan County, Wuxi County, Fengjie County, Yunyang

County, Kai County and Zhong County under the Wanxian City of Sichuan Province, Shizhu County under the Qianjiang Prefecture and Fengdu County, Wulong County under the Fuling Prefecture of the Sichuan Province, and Changshou County, Jiangbei County, Ba County and Jiangjin City under Chongqing Municipality.

4. The western regions refer to Chongqing Municipality, Sichuan Province, Guizhou Province, Yunnan Province, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, Inner Mongolia Autonomous Region, Guangxi Zhuang Autonomous Region.

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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 Shui Fa [2010] 157

Written: 2010-04-21

Font: [Big] [Small] [Medium]

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 Shui [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 Shui 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

### Tax circulars

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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 analyses of tax and business developments in China.

- ▶ **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 Guoshuifa [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 Guoshuifa [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/n480902/7634899.html>

#### The launch of tax special inspection in 2010 (Guoshuifa [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 Guoshuifa [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.

#### 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.

#### c. 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.

#### d. The SAT would specify the enterprises for tax inspections

Details regarding items c and d above will be announced in the future.

#### e. 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.

#### f. 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 (Guoshulhan [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 Guoshulhan [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/n8136506/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.

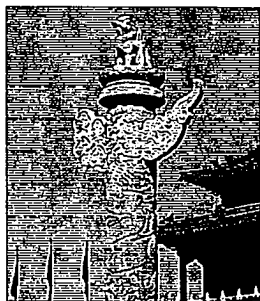
You may click this link to access the full content of the circular 28:

[http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201005/120100512\\_291588.html](http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201005/120100512_291588.html)

# News Flash

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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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State Administration of Taxation General Administration of Customs Ministry of Finance on preferential tax policies for Western Development Issues

Tax [2001] 202

Cai Shui No 202 of 2001

Provinces, autonomous regions, municipalities, separately listed cities (bureaus), state and local taxation bureaus of Customs Guangdong Branch, directly under the Customs:

To reflect the focus of state support for the western region, fully implement the "State Council on the implementation of a number of western development policy measures of the notice" (Guo Fa [2000] 33) and the "State Council forwarded the State Council Western Development Office on a number of western development policy measures to implement the views of the notice" (Guo Ban Fa [2001] 73) spirit, now the Western Development to notify the preferential tax policies are as follows:

First, the scope

The scope of this policy, including Chongqing, Sichuan, Guizhou, Yunnan, Tibet Autonomous Region, Shaanxi Province, Gansu Province, Ningxia Hui Autonomous Region, Qinghai Province, Xinjiang Uygur Autonomous Region, the Xinjiang Production and Construction Corps, the Inner Mongolia Autonomous Region and Guangxi Zhuang Autonomous Region (these areas collectively, the "West"). Tujia and Miao Autonomous Prefecture in Hunan Province, Enshi Tujia and Miao Autonomous Prefecture, Jilin Province, Yanbian Korean Autonomous Prefecture, can, according to the implementation of preferential tax policies for the western region.

Second, the specific content

1. On the western countries in industries encouraged domestic enterprises and foreign invested enterprises in the 2001-2010 period, the rate of 15% enterprise income tax.

Encouraged by the state-owned enterprises within the industry refers to "the current national focus on encouraging the development of industries, products and technologies catalog (2000 Amendment)" in the provisions of the industrial projects as the main business, its main business income accounted for 70% of total income over the enterprise. (**This provision has been repealed**)

Encouraged by the state enterprises with foreign investment refers to the "Catalogue for the Guidance of Foreign Investment Industries" in the project and encouraged provided by the State Economic and Trade Commission, State Development Planning Commission and the Ministry of Foreign Trade and Economic Cooperation jointly issued the "Foreign Investment in Central and Western Regions Industry Directory" (Decree 18) in industrial projects under the main business, its main business income accounted for 70% of

total income over the enterprise.

2. Approved by the provincial government, domestic enterprises in national autonomous areas can be regularly reduced or exempted enterprise income tax, foreign investment enterprises can be reduced or exempted from local income tax. Corporate income tax relief for the central approval authority and procedures under the existing relevant regulations.

3. For in the western region in transport, power, water conservancy, postal services, radio and television enterprises, business income accounted for these projects over 70% of total income, can enjoy preferential corporate income tax as follows: domestic enterprises from the date of the operation starts the first year to second year exemption from corporate income tax, the third to fifth year corporate income tax; foreign-invested enterprises operating period of 10 years or more, since the profitable year, the first year to second year exempted from corporate income tax, the third to fifth year corporate income tax.

Transport enterprises newly established office of its investment in new roads, railways, aviation, ports, terminal operators and pipeline transportation business. Electricity is the newly established Office of investment in new businesses operating in power. Water is the newly established investment company in the newly established comprehensive management of lakes and rivers, flood control waterlogging control, irrigation, water supply, water conservation, hydroelectric power, soil conservation, river dredging, levee construction and other development Hohai water, prevention of water damage business. New Post Office to do business is the investment in new enterprises in the postal operators. New radio and television companies do is invest in new office in radio and television operations of the enterprise.

4. For the protection of ecological environment, returning farmland to forest (ecological forest should be above 80%), the grass output of the agricultural product revenue, revenue from the year within 10 years made special agricultural product tax exemption.

5. On the western area of national, provincial construction land, mutatis mutandis, railways, civil aviation construction land shall be exempted from land occupation tax. Arable land occupation tax exempt from the construction site is limited to specific road routes, road lines on both sides of ditches occupied by arable land, yard heap along the road, road maintenance road classes, checkpoints, project teams, car wash and other land not occupied by duty-free list.

Western area of national, provincial highway other than construction sites are exempt from land use tax, the provinces, autonomous regions and municipalities decide.

The tax-free land, where the change of use, no longer belong to the scope of tax exemption, it shall repay the date change the use of land occupation tax.

6. On the western region encouraged domestic industry, encouraged foreign investment industries and competitive industries within the total investment projects imported self-use equipment, in addition to "domestic investment projects are not duty-free import catalogs (2000 Revision)" and "foreign not duty-free imports of investment goods directory "listed in the commodities, customs duties and import VAT. Foreign competitive industries by State Economic and Trade Commission, State Development Planning Commission and the Ministry of Foreign Trade and Economic Cooperation jointly issued the "Midwest Industrial Catalogue for Foreign Investment" (Decree 18) implementation.

The tax-free policy in accordance with "the State Council on Adjustment of Imported Equipment Taxation Policies" ( Guo Fa [1997] No. 37 ) of the relevant regulations.



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Third, the specific implementation measures by the State Administration of Taxation, Customs General Administration.

Fourth, this notice from January 1, 2001 implementation date.

Ministry of State Administration of Taxation General Administration of Customs

December 30, 2001

Related links: Ministry of Finance State Administration of Taxation on tax incentives for western development issues notice directory changes ( Cai Shui [2006] No. 165 )

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# INCOME TAX LAW OF THE PEOPLE'S REPUBLIC OF CHINA FOR ENTERPRISES WITH FOREIGN INVESTMENT AND FOREIGN ENTERPRISES

(Adopted at the Fourth Session of the Seventh National People's Congress  
and promulgated by Order No. 45 of the President of the  
People's Republic of China on April 9, 1991)

SUBJECT: TAXATION

ISSUING-DEPT: NATIONAL PEOPLE'S CONGRESS

ISSUE-DATE: 03/09/1991

IMPLEMENT-DATE: 03/09/1991

LENGTH: 3108 words

TEXT:

Article 1: Income tax shall be paid in accordance with the provisions of this Law by enterprises with foreign investment within the territory of the People's Republic of China on their income derived from production, business operations and other sources.

Income tax shall be paid in accordance with the provisions of this Law by foreign enterprises on their income derived from production, business operations and other sources within the territory of the People's Republic of China.

Article 2: "Enterprises with foreign investment" referred to in this Law means Chinese-foreign equity joint ventures, Chinese foreign contractual joint ventures and foreign capital enterprises that are established in China.

"Foreign enterprises" referred to in this Law means foreign companies, enterprises and other economic organizations which have establishments or places in China and engage in production or business operations, or which, though without establishments or places in China, have income from sources within China.

Article 3: Any enterprise with foreign investment which establishes its head office in China shall pay income tax on its income derived from sources inside and outside China. Any foreign enterprise shall pay income tax on its income derived from sources within China.

Article 4: The taxable income of enterprises with foreign investment and establishments or places set up in China by foreign enterprises to engage in production or business operations shall be the amount remaining from gross income in a tax year after costs, expenses and losses have been deducted.

Article 5: The income tax on enterprises with foreign investment and the income tax which shall be paid by foreign enterprises on the income of their establishments or places set up in China to engage in production or business operations shall be computed on taxable income at the rate of 30%; local income tax shall be computed on taxable income at the rate of 3%.

Article 6: The state shall, in accordance with the industrial policies, guide the orientation of foreign investment and encourage the establishment of enterprises with foreign investment which adopt advanced technology and equipment and export all or the greater part of their products.

Article 7: The income tax on enterprises with foreign investment established in special economic zones, foreign enterprises which have establishments or places in special economic zones engaged in production or business operations, and enterprises with foreign investment of a production nature in economic and technological development zones shall be levied at the reduced rate of 15%.

The income tax on enterprises with foreign investment of a production nature 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 24%.

The income tax on enterprises with foreign investment in coastal economic open zones, old urban districts of cities where the special economic zones or the economic and technological development zones are located, or other regions defined by the State Council within the scope of energy, communications harbor, wharf or other projects encouraged by the state, may be levied at the reduced rate of 15%. The specific rules shall be regulated by the State Council.

Article 8: Any enterprise with foreign investment of a production nature scheduled to operate for a period of not less than 10 years shall, from the year in which it begins to make profits, be exempted from income tax in the first and second years and allowed a 50% reduction in the third to fifth years. However, the exemption from or reduction of income tax for enterprises with foreign investment engaged in the exploitation of resources such as oil, natural gas, rare metals, noble metals, etc., shall be regulated separately by the State Council. Enterprises with foreign investment have actually operated for a period of less than 10 years shall repay the amount of income tax already exempted or reduced.

The relevant regulations promulgated by the State Council before the entry into force of this Law, which provide preferential treatment in the form of exemption from or reduction of income tax for enterprises engaged in energy, communications, harbor, wharf and other major projects of a production nature for a period longer than that specified in the preceding paragraph, or which provide preferential treatment in the form of exemption from or reduction of income tax for enterprises engaged in major projects of a non-production nature, shall remain applicable after this Law enters into force.

Any enterprise with foreign investment which is engaged in agriculture, forestry or animal husbandry and any other enterprise with foreign investment which is established in more undeveloped areas may, upon approval by the competent department for tax affairs under the State Council of an application filed by the enterprise, 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 preceding two paragraphs.

After this Law enters into force, any modification to the provisions of the preceding three paragraphs of this Article on the exemption from or reduction of income tax on enterprises shall be submitted by the State Council to the Standing Committee of the National People's Congress for decision.

Article 9: The exemption from or reduction of local income tax for any enterprise with foreign investment which operates in an industry or undertakes a project encouraged by the state shall, in accordance with the actual situation, be at the discretion of the people's government of the relevant province, autonomous region or municipality directly under the central government.

Article 10: Any foreign investor of an enterprise with foreign investment which reinvests its share of profit obtained from the enterprise directly into the enterprise by increasing its registered capital, or which uses the profit as capital investment to establish other enterprises with foreign investment to operate for a period of not less than 5 years shall, upon approval by the tax authorities of an application filed by the investor, be refunded 40% of it in respect of preferential treatment, such provisions shall apply. If the investor withdraws its investment before the expiration of a period of 5 years, it shall repay the refunded tax.

Article 11: Losses incurred in a tax year by an enterprise with foreign investment or by an establishment or place set up in China by a foreign enterprise to engage in production or business operations may be offset against income of the following tax year. Should the income of the following tax year be insufficient to offset the said losses, the balance may be offset against income of the next subsequent year, and so on, over a period not exceeding 5 years.

Article 12: Any enterprise with foreign investment shall be allowed, when filing a consolidated income tax return, to deduct from the amount of tax payable the foreign

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Income tax already paid abroad in respect to income derived from sources outside China. The deductible amount shall not, however, exceed the amount of income tax otherwise payable under this Law in respect to income derived from sources outside China.

Article 13 The payment or receipt of charges or fees in business transactions between an enterprise with foreign investment, or an establishment or place set up in China by a foreign enterprise to engage in production or business operations, and its associated enterprises shall be made in the same manner as the payment or receipt of charges or fees in business transactions between independent enterprises. Where the payment or receipt of charges or fees in fact made in the same manner as in business transactions between independent enterprises and this results in a reduction of taxable income, the tax authorities shall have the right to make reasonable adjustments.

Article 14 Where an enterprise with foreign investment or an establishment or place set up in China by a foreign enterprise to engage in production or business operations is established, moves to a new site, merges with another enterprise, branches up, or makes a change in any of the main entries of registration, it shall present the relevant documents to and shall go through tax registration or a change or cancellation in registration with the local tax authorities after the relevant event is registered or a change or cancellation in registration has been made with the administrative agency for industry and commerce.

Article 15 Income tax on enterprises and local income tax shall be computed on an annual basis and paid in advance in quarterly installments. Such payments shall be made within 15 days from the end of each quarter and the final settlement shall be made within 5 months from the end of each tax year. Any excess payment shall be refunded and any deficiency shall be repaid.

Article 16 Any enterprise with foreign investment and any establishment or place set up in China by a foreign enterprise to engage in production or business operations shall file its quarterly provisional income tax returns in respect to advance payments with the local tax authorities within the period for each advance payment of tax and shall file an annual income tax return together with the final accounting statements within 4 months from the end of the tax year.

Article 17 Any enterprise with foreign investment and any establishment or place set up in China by a foreign enterprise to engage in production or business operations shall report its financial and accounting systems to the local tax authorities for reference purposes. All accounting records must be complete and accurate, with legitimate vouchers as the basis for entries.

If the financial and accounting bases adopted by an enterprise with foreign investment or an establishment or place set up in China by a foreign enterprise to engage in production or business operations conform to the relevant tax provisions of the State Council, tax payment shall be computed in accordance with the relevant tax provisions of the State Council.

Article 18 If any enterprise with foreign investment goes into liquidation, and if the balance of its net assets or the balance of its remaining property after deduction of the enterprises undistributed profit, various funds and liquidation expenses exceeds the enterprises paid-in capital, the excess portion shall be liquidation income on which income tax shall be paid in accordance with the provisions of this Law.

Article 19 Any foreign enterprise which has no establishment or place in China but which derives profits, interest, rent, royalties or other income from sources in China, or which, though it has an establishment or place in China, derives such income and the income is not effectively connected with the establishment or place, shall pay an income tax of 20% on such income.

From the payment of income tax in accordance with the provisions of the preceding paragraph, the income beneficiary shall be the taxpayer and the payer shall be the withholding agent. The tax shall be withheld from the amount of each payment by the payer. The withholding agent shall, within 5 days of withholding income tax to the government and return income tax report to the local tax authorities.

An exemption from or reduction of income tax shall apply to the following income:

- (1) profits derived by a foreign investor from an enterprise with foreign investment shall be exempted from income tax;
- (2) income from interest on loans made to the Chinese Government or Chinese state banks by international financial organizations shall be exempted from income tax;
- (3) income from interest on loans made at a preferential interest rate to Chinese state banks by foreign banks shall be exempted from income tax; and
- (4) income tax on royalties 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 relevant department for tax affairs under the State Council, be levied at the reduced rate of 10%. Where the technology applies is advanced or the terms are preferential, exemption from income tax may be allowed.

Apart from the aforesaid provisions of this article, if preferential treatment in the form of reduction or exemption from income tax on profits, interest, rent, royalties and other income, is required, it shall be regulated by the State Council.

Article 20 The tax authorities shall have the right to inspect the financial and accounting and tax affairs of enterprises with foreign investment and establishments or places set up in China by foreign enterprises to engage in production or business operations, and shall have the right to inspect the tax withholding of the withholding agent and its payment of the withheld tax to the State Treasury. The entities and withholding agents being inspected must report the facts and provide relevant information. They may not conceal or refuse to report any facts.

When making an inspection, the tax officials shall produce their identity documents and shall be responsible for confidentiality.

Article 21 Income tax payable according to this Law shall be computed in terms of Renminbi (RMB). Income in foreign currency shall be converted into Renminbi according to the exchange rate quoted by the state exchange control authorities for purposes of tax payment.

Article 22 If any taxpayer fails to pay tax within the prescribed time limit, or if the withholding agent fails to remit the tax withheld within the prescribed time limit, the tax authorities shall, in addition to making a new time limit for tax payment, impose a surcharge for overdue payment equal to 0.2% of the overdue tax for each day in arrears, starting from the first day the payment became overdue.

Article 23 The tax authorities shall set a new time limit for registration or submission of documents and may impose a fine of 5,000 yuan or less on any taxpayer or withholding agent which fails to register for tax purposes or to make a change or cancellation in registration with the tax authorities within the prescribed time limit, submit an income tax return, final accounting

statements or withholding income tax return to the tax authorities within the prescribed time limit, or report its financial and accounting systems to the tax authorities for reference purposes.

When the tax authorities have set a new time limit for registration or submission of documents, they shall impose a fine of 10,000 yuan or less on taxpayers or withholding agents which again fail to meet the time limit for registration or making a change in registration with the tax authorities, or submitting an income tax return, final accounting statements or withholding income tax return to the tax authorities. Where the circumstances are serious, the legal representative and the person directly responsible shall be investigated for criminal responsibility by applying, mutatis mutandis, the provisions of Article 121 of the Criminal Law.

Article 24 Where the withholding agent fails to fulfill its obligation to withhold tax as provided in this Law, and does not withhold or withholds an amount less than that which should have been withheld, the tax authorities shall set a time limit for the payment of the amount of tax that should have been withheld, and may impose a fine up to but not exceeding 100% of the amount of tax that should have been withheld.

When the withholding agent fails to remit the tax withheld to the State Treasury within the prescribed time limit, the tax authorities shall set a time limit for remitting the taxes and may impose a fine of 3,000 yuan or less on the withholding agent. If the withholding agent again fails to meet the time limit, the tax authorities shall pursue the taxes according to the law and may impose a fine of 10,000 yuan or less on the withholding agent. If the circumstances are serious, the legal representative and the person directly responsible shall be investigated for criminal responsibility by applying, mutatis mutandis, the provisions of Article 121 of the Criminal Law.

Article 25 Where any person evades tax by deception or concealment or fails to pay tax within the time limit prescribed by this Law and, after the tax authorities have pursued the payment of tax, again fails to pay within the prescribed time limit, the tax authorities shall, in addition to recovering the tax which should have been paid, impose a fine up to but not exceeding 500% of the amount of tax which should have been paid. Where the circumstances are serious, the legal representative and the person directly responsible shall be investigated for criminal responsibility in accordance with the provisions of Article 121 of the Criminal Law.

Article 26 In case of a dispute with the tax authorities in respect to the payment of tax, any enterprise with foreign investment, foreign enterprise or withholding agent must first pay tax according to the relevant regulations. Thereafter, the taxpayer or withholding agent may, within 60 days from the date of receipt of the tax payment certificate issued by the tax authorities, apply to the tax authorities after receipt of the application for reconsideration. If the taxpayer or withholding agent is not satisfied with the decision, it may institute legal proceedings in the people's court within 15 days from the date of receipt of the notification on decision made after reconsideration.

If the party concerned is not satisfied with the decision on punishment by the tax authorities, it may, within 15 days from the date of receipt of the notification on punishment, apply for reconsideration to the tax authorities at the next highest level above the which made the decision on punishment. Where the party is not satisfied with the decision made after reconsideration, it may institute legal proceedings in the people's court within 15 days from the date of receipt of the decision made after reconsideration. The party concerned may, however, directly institute legal proceedings in the people's court within 15 days from the date of receipt of the notification on punishment. If the party concerned does not apply for reconsideration to the higher tax authorities or institute legal proceedings in the people's court within the time limit, and if the decision on punishment is not fulfilled, the tax authorities which made the decision on punishment may apply to the people's court for compulsory execution.

Article 27 Where any enterprise with foreign investment which was established before the promulgation of this Law would otherwise, in accordance with the provisions of this Law, be subject to higher tax rates or enjoy less preferential treatment or tax exemption or reduction than before the entry into force of this Law, in respect to such enterprise, within its approved period of operation, the law and relevant regulations of the State Council in effect before the entry into force of this Law shall apply. If any such enterprise

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has no approved period of operation, the law and relevant regulations of the State Council in effect before the entry into force of this Law shall apply within the period prescribed by the State Council. Specific rules shall be regulated by the State Council.

Article 28: Where the provisions of tax agreements concluded between the government of the People's Republic of China and foreign governments are different from the provisions of this Law, the provisions of the respective agreements shall apply.

Article 29: Rules for implementation shall be formulated by the State Council in accordance with this Law.

Article 30: This Law shall enter into force on 1 July 1991. The Income Tax of the People's Republic of China for Chinese Foreign Equity Joint Ventures and the Income Tax Law of the People's Republic of China for Foreign Enterprises shall be annulled as of the same date.

Appendix Relevant Article in Criminal Law

Article 121: In the serious case of violating, evading or resisting the tax law, the offender will be sentenced to 3 years or less imprisonment or detention in custody for labor service.

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General Administration of Customs of the PRC, National Development and Reform Commission of the PRC 2009-07-07

## **Circular on Some Issues Concerning Execution of Preferential Policies on Enterprise Income Tax**

Cai Shui [2009] No.69

Financial departments (bureaus), state tax bureaus and local tax bureaus of provinces, autonomous regions, municipalities directly under the Central Government and separately planning cities and the Bureau of Finance of Xinjiang Production & Construction Corp.,

According to the relevant provisions of the *Enterprise Income Tax Law of the People's Republic of China* (hereinafter referred to as the *Enterprise Income Tax Law*) and the *Implementing Regulations of the Enterprise Income Tax Law of the People's Republic of China* (No. 512 Decree of the State Council, hereinafter referred to as the *Implementing Regulations*), the issues concerning execution of preferential policies on enterprise income tax are hereby notified as follows:

**Article 1** The enterprises that enjoy the transitional preferential policies as provided in the *Circular of the State Council on Implementation of the Transitional Preferential Policies on Enterprise Income Tax* (Guo Fa [2007] No.39) and the preferential policies concerning the western development, may pay half of the tax payable calculated according to the applicable tax rate of the enterprises within the half-reduction period of regular tax reduction and exemption. In other circumstances of regular tax reduction and exemption, enterprises shall pay half of tax payable calculated according to the statutory tax rate for enterprise income tax, namely, 25%.

**Article 2** The tax preferential circumstances where enterprises shall not receive duplicate preferences, for which no change is allowed after the enterprise has made the choice as provided for in Paragraph 3 of the *Circular of the State Council on the Implementation of the Transitional Preferential Policies on Enterprise Income Tax* (Guo Fa [2007] No. 39) shall be limited to the tax preferences under the categories of regular tax reduction and exemption and reduction of tax rates as provided for in the *Transitional Preferential Policies on Enterprise Income Tax* and the *Enterprise Income Tax Law* as well as *Implementing Regulations* thereof.

For tax preferences provided for in the *Enterprise Income Tax Law* and the *Implementing Regulations* thereof, enterprises meet the conditions provided may enjoy them at the same time.

**Article 3** Where an enterprise is in any circumstance of consolidation, division or restructuring when enjoying the transitional tax preferences, it shall be handled according to the provisions of the *Circular of the Ministry of Finance and the State Administration of Taxation on Some Issues concerning Handling of Enterprise Income Tax for Enterprises Reconstructing Businesses* (Cai Shui [2009] No.59).

**Article 4** After January 1, 2008, the distribution of the equity investment gains such as dividend and bonus from the accumulative undistributed profits in 2007 and previous years among

resident enterprises shall be handled according to Article 26 of the *Enterprise Income Tax Law* and Article 17 and 83 of the *Implementing Regulations*.

**Article 5** With respect to the branch of an enterprise, which was established before Mar. 16, 2007, and has separately enjoyed relevant tax preferences according to the preference provisions provided in the formal income tax laws for domestic and foreign enterprises, if it satisfies the policy conditions listed in the *Circular of the State Council on Implementation of Transitional Preferential Policies on Enterprise Income Tax* (Guo Fa [2007] No. 39), the branch may separately enjoy the transitional preferential policies on enterprise income tax provided in the aforesaid Circular.

**Article 6** The international financial institutions prescribed in Item (2) of Article 91 of the *Implementing Regulations* include the International Monetary Fund, the World Bank, the Asian Development Bank, the International Development Association, the International Fund for Agricultural Development, the European Investment Bank and other international financial institutions specified by the Ministry of Finance and the State Administration of Taxation. The preferential loans refer to loans with interest rates lower than the interest rates in the corresponding periods for the same kind of loans.

**Article 7** The number of employees referred in Item (1) and (2) of Article 92 of the *Implementing Regulations* refers to the sum of the number of employees who have established labor relationship with the enterprise and the number of persons under labor dispatch received by the enterprise. The indicator for the number of employees and total assets shall be determined according to the average value of monthly average values of the enterprise in a year. The specific calculation formula is as follows:

Monthly average value = (value at the beginning of the month + value at the end of the month) ÷ 2

Average value of monthly average values of the year = sum of the monthly average values of the year ÷ 12

For an enterprise opens or terminates its business activities in the middle of a year, its actual business period shall be taken as the taxable year to determine the above-mentioned indicators.

**Article 8** The treatments for small-scale enterprises with meager profits as prescribed in Article 28 of the *Enterprise Income Tax Law* shall be applicable to the enterprises with conditions for establishing and accounting its taxable incomes. The enterprises that pay their enterprise income tax according to the *Measures for Deciding and Collecting Enterprise Income Tax* (Guo Shui Fa [2008] No. 30) shall temporarily be inapplicable to the applicable tax rates for small-scale enterprises with meager profits before they obtain the conditions for accurately accounting their taxable incomes.

**Article 9** The software and IC production enterprises established before the end of 2007 may enjoy the preferential policies on reduction and exemption of enterprise income tax within a specified period according to the *Circular of the Ministry of Finance and the State Administration of Taxation on Some Preferential Policies on Enterprise Income Tax* (Cai Shui [2008] No. 1) after recognition. The enterprises that have obtained profits and started to enjoy the

preferential policies on reduction and exemption of tax within a specified period in 2007 or previous years may continue to enjoy the policies since 2008 until expiration.

**Article 10** The special equipment for environmental protection, energy and water conservation and safe production that purchased and actually used as prescribed in Article 100 of the *Implementing Regulations* includes the above-mentioned special equipment which is leased by enterprises as the lessee by means of financing lease and the ownership of which will be transferred to the enterprises as the lessee after expiration of the lease period as agreed in financing lease contracts, and which satisfies prescribed provisions. If the ownership of the rented equipment is failed to be transferred to the enterprises as the lessee after expiration of financing lease period, the enterprises as the lessee shall stop to enjoy the preferences of deduction of enterprise income tax and pay the deducted enterprise income tax.

**Article 11** The over-two-year investments in unlisted medium and small-scale hi-tech enterprises as prescribed in Article 97 of the *Implementing Regulations* include the investments that have reached two years before Jan. 1, 2008. The medium and small-scale hi-tech enterprises refer to the enterprises with annual sales and total assets less than RMB200mn respectively and employees less than 500, which have acquired the qualifications for hi-tech enterprises according to the *Measures for Administration on Recognition of Hi-tech Enterprises* (Guo Ke Fa Huo [2008] No. 172). Among them, the enterprises that have obtained the qualifications for hi-tech enterprises before the end of 2007 do not need to go through re-recognition within the prescribed validity period.

**Article 12** This Circular shall be executed from January 1, 2008.

Ministry of Finance  
State Administration of Taxation  
April 24, 2009

## **Circular of the State Administration of Taxation on the Issues Concerning Implementation of the Preferential Income Tax for Hi-Tech Enterprises**

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Guo Shui Han [2009] No. 203

The state tax bureaus and local tax bureaus of provinces, autonomous regions, municipalities directly under the Central Government and separately planning cities,

For the purpose of implementing the preferential income tax of hi-tech enterprises and transitionally preferential policies, in accordance with the *Enterprise Income Tax Law of the People's Republic of China* (hereinafter referred to as Enterprise Income Tax Law) and the *Implementation Regulations of the Enterprise Income Tax Law of the People's Republic of China* (hereinafter referred to as Implementation Regulations) and related taxation provisions, the related issues are hereby notified as follows:

**Article 1** In case of any hi-tech enterprise whose enterprise income tax may be levied at the reduced tax rate of 15% in a year or which enjoys the transitional taxation preference in accordance with the *Circular of the State*

Council on Implementing Transitional Preferential Taxation for Hi-Tech Enterprises in Special Economic Zones and Shanghai Pudong New Area (Guo Fa [2007] No. 40) and whose requirements for tax reduction or exemption change in the same year when the relevant preferential taxation is actually implemented, tax treatment shall be done in accordance to Paragraph 2 of Article 9 of the Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Printing and Distributing Measures for the Administration of Identification of Hi-Tech Enterprises (Guo Ke Fa Huo [2008] No. 172).

**Article 2** The hi-tech enterprises that originally enjoy the regular deduction or exemption of enterprise income tax within the prescribed period according to law and simultaneously conforms to the qualifications of Article 1 of this Circular may, in accordance with the Measures for the Administration of Identification of Hi-Tech Enterprises and related provisions of the Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Printing and Distributing the Guidance on Identification of High-New Technology Enterprises (Guo Ke Fa Huo [2008] No. 362), enjoy the transitional policies on implementing the regular tax deduction or exemption that are not mature till the expiration thereof as of January 1, 2008 after acquiring the hi-tech enterprise qualification certificates issued by accrediting agencies based on new standards.

**Article 3** For the hi-tech enterprise that was established in the period from January 1, 2006 to March 16, 2007 but still failed to make profits (the amount of taxable income is zero after making up for the loss of previous years) by the end of 2007, after it has acquired the hi-tech enterprise certificate issued by accrediting agencies based on new standards in accordance with the related provisions of the Measures for the Administration of Identification of Hi-Tech Enterprises and the Guidance on Identification of High-New Technology Enterprises, the period for its tax exemption shall be computed as of January 1, 2008 according to the provisions of Article 57 of the Enterprise Income Tax Law.

**Article 4** Any qualified hi-tech enterprise after identification (re-examination) may apply for preferential enterprise income tax from the year when the approval of identification (re-examination) is valid. After acquiring the hi-tech enterprise certificate issued by hi-tech enterprise identification administration agencies of provinces, autonomous regions, municipalities directly under the Central Government and separately planning cities, a hi-tech enterprise may hold the "hi-tech enterprise certificate" and its copies and relevant materials to apply to the competent tax authority for handling the formalities of reduction or exemption of tax. Consequently, the hi-tech enterprise may make pre-declaration of enterprise income tax payment or enjoy transitional preferential taxation at the tax rate of 15%.

**Article 5** During the period from the expiration of tax year to the time when the annual tax return is submitted, the hi-tech enterprise that has gone through the formalities of deduction or exemption of tax shall go to the competent tax authority for recordal of the following materials:

- (I) Statement on the scope of products (service) belonging to High and New Technology Fields under Key Support of the State;
- (II) List of annual enterprise research and development expenses (see the attachment);
- (III) Statement on the proportion of the revenues of hi-tech products (service) of the current year among the gross revenues of enterprise; and



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# China: A Summary Of China's Corporate Income Tax Incentives

15 July 2008

Article by Full Cao

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Prior to 2008, China had two Corporate Income Tax ("CIT") systems. One applied to foreign enterprises and Chinese enterprises with foreign investment of 25 percent or more; the other applied to all other enterprises. Different tax incentives were provided under the two systems. On March 16, 2007, China passed the Corporate Income Tax Law (the "CIT Law"), which came into effect on January 1, 2008. The CIT Law has unified the two CIT systems, reduced the CIT rate from 33 percent to 25 percent, and provided unified tax incentives to both domestic and foreign-invested enterprises. The Detailed Rules for the Implementation of Corporate Income Tax Law (the "CIT Rules") and various tax circulars were issued to clarify the tax incentives offered by the CIT Law.

Enterprises established prior to March 16, 2007, are eligible for certain types of relief during a transition period, including:

- If an enterprise enjoyed a 15 percent CIT rate under the old tax laws and regulations, the applicable rates will be 18 percent, 20 percent, 22 percent, 24 percent, and 25 percent for 2008, 2009, 2010, 2011, and 2012 respectively.
- If an enterprise was granted a tax holiday or reduced rate for a fixed period under the old laws and regulations, it can continue the tax holiday or reduced rate during the fixed period. However, if the enterprise did not start the tax holiday in 2007 due to a lack of profits, 2008 will be deemed to be the first profit-making year.

What CIT incentives other than the transitional relief are available? What CIT incentives are available to Chinese resident enterprises established today? The table below summarizes the major CIT incentives provided by the CIT Law, the CIT Rules, and tax circulars published through June 30, 2008.

Area	Incentive	Criteria	Authority
Interest from state treasury debts	Tax exemption	Interest derived from the state treasury debts issued by the finance department of the State Council.	CIT Law Art. 26 (1) CIT Rules Art. 82
Dividends paid between resident enterprises	Tax exemption	Dividends, profit distributions, and other returns on equity investments derived by a resident enterprise from its direct investment in another resident enterprise, except dividends derived from publicly issued and traded shares of a resident enterprise that are held for less than 12 consecutive months.	CIT Law Art. 26 (2) CIT Rules Art. 83
Agriculture, forestry, animal husbandry,	Tax exemption	Income derived from the following projects: <ul style="list-style-type: none"> <li>• Growing of vegetables, grains, tuber</li> </ul>	CIT Law Art. 27 (1)

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fishery		<p>crops, oil plants, beans, cotton, hems, sugar crops, fruits, and nuts</p> <ul style="list-style-type: none"> <li>• The selection and cultivation of new agricultural species</li> <li>• The growing of Chinese medicinal herbs</li> <li>• The cultivation and growing of forests</li> <li>• The rearing of livestock and poultry</li> <li>• The harvesting of forestry products</li> <li>• Irrigation, preliminary processing of agricultural products, veterinary services, promotion of agricultural technologies, operation and maintenance of agricultural machineries, and similar agricultural, forestry, animal husbandry, fishery services projects</li> <li>• Fishing on the high seas.</li> </ul>	CIT Rules Art. 86 (1)
	50% reduction in CIT rate	<p>Income derived from the following projects:</p> <ul style="list-style-type: none"> <li>• The growing of flowers, tea plants, and other crops used for beverages and spices;</li> <li>• Sea and inland water aquaculture.</li> </ul>	<p>CIT Law Art. 27 (1)</p> <p>CIT Rules Art. 86 (2)</p>
Public infrastructure	3-year exemption and 3-year 50% reduction, starting from the year in which the project first generates operating income	Ports and wharfs, airports, railways, highways, urban public transportation, electric power, water suppliers, etc. as prescribed in the Catalog of Public Infrastructure Projects Eligible For Preferential Corporate Income Tax Treatment.	<p>CIT Law Art. 27 (2)</p> <p>CIT Rules Art. 87</p>
Synergistic utilization of resources	10% revenue exclusion in computing taxable income	Revenue derived from the use of the resources prescribed in Catalogue of Preferential Corporate Income Tax Treatments for Synergistic Utilization of Resources as the raw materials in the production of goods. The proportion of the amount of raw materials used in production shall not be lower than the	<p>CIT Law Art. 33</p> <p>CIT Rules Art. 99</p>

		criteria prescribed in the catalogue.	
Security investment funds	Temporary tax exemption	<p>Income derived by securities funds from securities market, including stock and bond trading, dividends, interest, and other income.</p> <p>Income derived by investors from securities funds.</p> <p>Gain derived by investment securities fund managers from trading stocks and bonds using the funds.</p>	Cai Shui (2008) No. 1 Art. 2
Environmental protection and energy or water conservation	3-year exemption and 3-year 50% reduction, starting from the year in which the project first generates operating income	Includes public sewerage treatment, public refuse treatment, synergistic development and utilization of methane, technological innovation in energy conservation and emission reduction, sea water desalination, and similar projects. The qualification criteria and the scope shall be formulated by the departments of the State Council in charge of finance and taxation in conjunction with relevant departments of the State Council, and shall be promulgated and implemented with the approval of the State Council.	CIT Law Art. 27 (3) CIT Rules Art. 88
	10% of the amount invested in specialized equipment may be credited against tax payable for the current year; the excess credit may be carried forward for 5 years	Purchase and actual usage of specialized equipment for environmental protection, energy or water conservation, and safe production as prescribed in Catalogue of Preferential Corporate Income Tax Treatments for Specialized Equipment in Environmental Protection, Catalogue of Preferential Corporate Income Tax Treatments for Specialized Equipment in Energy or Water Conservation, and Catalogue of Preferential Corporate Income Tax Treatments for Specialized Equipment in Safe Production. Tax benefits will be clawed back if the enterprise subsequently transfers or leases the equipment within 5 years.	CIT Law Art. 34 CIT Rules Art. 100
Small-scale enterprises with low profitability	Reduced rate of 20%	<p>For industrial enterprises, the taxable income for the year shall not exceed RMB300,000, total number of employees shall not exceed 100, and total assets shall not exceed RMB30 million.</p> <p>For all other enterprises, the taxable income for the year shall not exceed RMB300,000, total number of employees shall not exceed 80, and total assets shall not exceed RMB10 million.</p>	CIT Law Art. 28 CIT Rules Art. 92

Employment of disabled employees	Additional deduction of 100% of salaries paid to disabled employees	The relevant rules of the Law on Safeguard of Disabled Persons shall apply with respect to the determination of the qualifications of the disabled personnel.	CIT Law Art. 30 (2) CIT Rules Art. 96
Venture capital	70% of qualified investments may be set off against the taxable income; the excess amount can be carried forward	A venture capital enterprise has invested, in the form of equity investment, in a medium-to small-sized high and new technology enterprise that has not been listed on a stock exchange for more than 2 years.	CIT Law Art. 31 CIT Rules Art. 97
Western Region (Chongqing, Sichuan, Guizhou, Yunnan, Tibet, Shanxi, Gansu, Ningxia, Qinghai, Xinjiang, Inner Mongolian, and the Guangxi; also applies to Xiangxi Tujia-Miao Autonomous Prefecture in Hunan Province, Enshi Tujia-Miao Autonomous Prefecture in Hubei Province, and Yanbian Korean Autonomous Prefecture in Jilin Province)	Reduced rate of 15% through December 31, 2010	An enterprise set up in the Western Region with main business in encouraged industries according to relevant investment catalogues. For a domestic enterprise, 70% or more of its revenue should be derived from the business listed in The Catalogue of Industries, Products, and Technologies Whose Development Are Currently Encouraged by the State (revised in 2000); for a foreign-invested enterprise, 70% or more of its revenue should be derived from the business listed in The Catalogue of Industries for Guiding Foreign Investment and the Catalogue of Preferred Industries for Foreign Investment in Central and Western Region.	Guo Fa (2007) No.39 Art. 2 Cai Shui (2001) No.202
	2-year exemption and 3-year 50% reduction from the first profit-making year for foreign-invested enterprises and from the first operating year for domestic enterprises	An enterprise set up in the Western Region for which at least 70% of its total revenue is derived from the transportation, electricity, water conservancy, post, broadcasting, and television industries.	
Ethnic autonomous regions	Reduction or exemption for the part of CIT as retained by the ethnic autonomous regions	Determined by autonomous prefectures and counties subject to approval of the government at the provincial level.	CIT Law Art. 29 CIT Rules Art. 94
Technology transfer	Tax exemption	Income from technology transfer that does not exceed RMB5 million in a year.	CIT Law Art. 27

	50% reduction	Income from technology transfer that exceeds RMB5 million in a year.	(4) CIT Rules Art. 90
High and new technology enterprise	Reduced rate of 15%	<ul style="list-style-type: none"> <li>• Must meet all of the following qualifications:</li> <li>• Registered in China for at least one year.</li> <li>• Owns IP right or exclusive right to use the IP of core technology in connection with the main products (services) of the enterprise.</li> <li>• Products or services must be within the scope of the Catalogue of High and New Technology Areas Specifically Supported by the State. These areas are electronic information technology, biological and medical technology, aviation and space technology, new materials technology, high-tech services, new energy and energy conservation technology, resources and environmental technology, and the transformation of traditional sectors through new high-tech.</li> <li>• At least 30% of the enterprise's employees should be college graduates (three-year program or above); among the qualified staff, at least 10% of the total number of employees should be engaged in R&amp;D activities.</li> <li>• R&amp;D expenditures for the last three accounting years should at least 6%, 4%, and 3% of total revenue if prior-year revenue is below RMB50 million, RMB50 million to 200 million, and more than RMB 200 million, respectively. At least 60% of the minimum R&amp;D expenditure must be incurred in China.</li> <li>• Current-year income from high and new technology products (services) is at least 60% of total revenue.</li> <li>• Meets all requirements respecting the</li> </ul>	CIT Law Art. 28 (2) CIT Rules Art. 93 Guo Ke Fa Huo (2008) No.172

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		rating of R&D management, the capacity to convert R&D outcomes, the number of IP rights, and the growth of sales and total assets as provided in Administrative Working Guidelines of Assessment of High and New Technology Enterprises.	
	2-year exemption, 3-year 12.5% reduction, and then 15%, starting from the year in which the project first generates operating income	High and New Technology Enterprises established in Shenzhen, Xiamen, Zhuhai, Shantou, Hainan, and Shanghai Pudong New Area on or after January 1, 2008.	Guo Fa (2007) No.40
R&D expenditures	150% deduction or amortization based on 150% of capitalized expenses	R&D expenditure for development of new technologies, new products, and new technological process.	CIT Law Art. 30 (1) CIT Rules Art. 95
Fixed assets depreciation	Shorten depreciable period by 40% or accelerated depreciation	Fixed assets that are upgraded and replaced frequently due to advancement in technologies or are exposed to constantly high levels of vibration or corrosion.	CIT Law Art. 32 CIT Rules Art. 98
	2-year depreciation or amortization	Acquired software and Approval of tax authority.	Cai Shui (2008) No.1 Art. 1 (5)
	Shorten depreciable period to minimum 3 years	Manufacturing equipment for integrated circuit production enterprises and Approval of tax authority.	Cai Shui (2008) No.1 Art. 1 (7)
Software; Integrated circuit design	CIT exclusion of VAT refund	Software enterprises and integrated circuit design enterprises;  VAT refund is in connection with the sale of self-developed software products; and  The refund is used for software R&D and the expansion of production.	Cai Shui (2008) No.1 Art. 1 (1) & (6)
	2-year exemption and 3-year 50% reduction from	Newly established software enterprises or newly established integrated design enterprises.	Cai Shui (2008) No.1 Art. 1 (2) & (6)

	the first profit-making year		
	Reduced rate of 10%	Key software/integrated circuit design enterprises included in the State plan, if not otherwise eligible for CIT exemption that year.	Cai Shui (2008) No.1 Art. 1 (3) & (6)
	Employee training expenses can be deducted as incurred	Software enterprises and integrated circuit design enterprises (staff education expenses for other enterprises are limited to 2.5% of total salary).	Cai Shui (2008) No.1 Art. 1 (4) & (6)
Integrated circuit production	Reduced rate of 15%	Integrated circuit production enterprise with a total investment exceeding RMB8 billion or whose integrated circuit width is less than 0.25um	Cai Shui (2008) No.1 Art. 1 (8)
	5-year exemption and 5-year 50% rate reduction from the first profit-making year and then reduced rate of 15%	Integrated circuit production enterprise with a total investment exceeding RMB8 billion or whose integrated circuit width is less than 0.25um, with an operating period of no less than 15 years.	Cai Shui (2008) No.1 Art. 1 (8)
	2-year exemption and 3-year 50% reduction from first profit-making year	Integrated circuit production enterprise whose circuits are less than 0.8um.	Cai Shui (2008) No.1 Art. 1 (9)
	Refund of 40% of tax paid on profit reinvested from January 1, 2008, to December 31, 2010	An investor in integrated circuit production or packaging enterprise reinvests after-tax profits in 1) the same enterprise by increasing registered capital or 2) other integrated circuit production or packaging enterprises by establishing new enterprises; the reinvestment period shall not be less than 5 years.	Cai Shui (2008) No.1 Art. 1 (10)
	Refund of 80% of tax paid on profit reinvested from January 1, 2008, to December 31, 2010	Investors that are economic organizations use the after-tax profits from domestic enterprises as capital to establish integrated circuit production enterprises, integrated circuit packaging enterprises, or software production enterprises in the Western Region; the reinvestment period shall not be less than 5 years.	

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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at the provincial level, except for those that are subject to the approval of the relevant departments of the State Council as prescribed in the *Catalogue of Investment Projects Authorized by the Government*.

② Strict administration of projects. After delegating power to approval, the issues concerning project application report and the contents, conditions and procedures of approval shall be still subject to the *Interim Measures for Administration of Foreign-invested Projects* (No.22 Decree of the National Development and Reform Commission). The power to approve the projects under the category of restriction in the *Catalogue for the Guidance of Foreign Investment Industries* is not delegated temporarily. If there are special provisions on project approval in state laws and regulations and the documents of the State Council, those provisions shall prevail.

③ Improvement of utilization of foreign capital. Development and reform commissions at various levels shall encourage foreign investments in high-end manufacturing, hi-tech industries, modern service industry and new energy and energy-saving and environmental protection industries, and promote foreign investment in application of new technologies, processes, materials and equipment, hence restructuring and upgrading traditional industries. The projects featuring by "high energy and resource consumption and serious pollution" and those at low level with overcapacity or repeated construction shall be strictly restricted.

④ Simplification of the procedures for approval of projects. Development and reform commissions at various levels shall, when regulating the approval of foreign-invested projects according to approval conditions, proactively simplify the procedures for approval, shorten the period for approval and increase the transparency of approval. The approved projects, in principle, shall be open to the public by different means.

⑤ Creation of a good investment environment. Development and reform commissions at various levels shall seize this opportunity of power delegation to guide and regulate sound development of development zones. Those commissions shall, according to the requirements on concentrated layout and use of land and industry cluster, promote foreign-invested projects to concentrate in development zones, provide more conveniences to investment, enhance efforts on publicizing and influencing public opinions on positive role of foreign investment in fostering structural upgrading of industries; and continue to improve investment environment.

⑥ Enhancing of the supervision and examination of projects. Development and reform commission at various levels together with the relevant departments shall strengthen analysis on situation and tendency of foreign investment, focus on major issues, timely help foreign investors to solve difficulties and report main issues to the National Development and Reform Commission in a timely manner.

Development and reform commissions at various levels shall, by taking into consideration of local reality, publicize and carry out the *Some Opinions of the State Council on Doing a Good Job in Utilization of Foreign Investment* (Guo Fa [2010] No.9). Those commissions shall adhere to the principle of proactive and effective utilization of foreign capital and enhance efforts on reform and innovation to create a more open and optimal investment environment and comprehensively improve the level of utilization of foreign capital.

National Development and Reform Commission  
May 4, 2010

## Reply of the State Administration of Taxation on Issues concerning Applicable Catalogues to the Enterprise Income Tax Preference Policies for the Western Development



Guo Shui Han [2009] No.399

Gansu Provincial Office of SAT,

Your Request for Instructions on Taxation Issues concerning the Catalogue for Guiding Foreign Investment in Industries (Gan Guo Shui Fa [2009] No. 97) has been received. According to the Circular of the State Council on Implementation of Interim Enterprise Income Tax Preference Policies (Guo Fa [2007] No.39), the enterprise income tax preference policies for the Western Development as provided in the Circular of the Ministry of Finance, the State Administration of Taxation and the General Administration of Customs on Issues concerning Tax Preference Policies for the Western Development (Cai Shui [2001] No.202) shall continue to be executed until expiration. The reply to the issues concerning applicable catalogue to the enterprise income tax preference policies for the Western Development after implementation of the Enterprise Income Tax Law of the People's Republic of China are herein given as follows:

1. Issues concerning applicable catalogue and linkup for domestic enterprises engaged in industries under state encouragement that share enterprise income tax preference policies for the Western Development shall continue to be subject to the provisions prescribed in the Circular of the Ministry of Finance and the State Administration of Taxation on Issues concerning Modification of the Applicable Catalogue to Tax Preference Policies for the Western Development (Cai Shui [2006] No.165).

2. Issues concerning applicable catalogue and linkup for foreign-invested enterprises engaged in industries under state encouragement that share enterprise income tax preference policies for the Western Development shall conform to the following principles:

- (1) Since Jan. 1, 2008, the Catalogue for Guiding Foreign Investment in Industries in the No. 202 document of the Ministry of Finance in 2001 shall be subject to the Catalogue for Guiding Foreign Investment in Industries (revised in 2007) promulgated by the National Development and Reform Commission. Since Jan. 1, 2009, the Superior Industry Catalogue for Foreign Investment in the Central and Western Areas in the No.202 document of the Ministry of Finance in 2001 (No. 18 Decree) shall be subject to the Catalogue of Superior Industries in the Central and Western Areas (revised in 2008) promulgated by the National Development and Reform Commission and the Ministry of Commerce.
- (2) A foreign-invested enterprise enjoying enterprise income tax preference policies according to the catalogues as provided in the No.202 document of the Ministry of Finance in 2001 before modification of the relevant catalogues may continue to enjoy the preference until expiration, unless the enterprise engaged in any industry under the categories of restriction or prohibition of foreign investment according to the Catalogue for Guiding Foreign Investment in Industries (revised in 2007). For any enterprise engaged in industries under categories of restriction or prohibition of foreign investment as provided in the Catalogue for Guiding Foreign Investment in Industries (revised in 2007), the enterprise income tax preference policies for the Western Development shall be stopped to be executed as of the date of implementation of the new Catalogue.

As for any enterprise that does not satisfy the standards for category under encouragement according to the original Catalogue yet satisfies that according to the new one, it may enjoy tax preferences for the rest of the period for tax preference calculated according to the enterprise income tax preference policies for the Western Development since the implementation of the new Catalogue.

State Administration of Taxation

## National Tax Center

# China Tax & Investment Express

### Tax circulars

- **Notice regarding the applicable industry catalogues for the Corporate Income Tax preferential policies concerning Western Region development (Guoshuihan [2009] No. 399)**

#### Synopsis:

As part of the "Go West" strategy, qualifying domestic enterprises ("DEs") and foreign invested enterprises ("FIEs") located in the Western Region within the encouraged industry catalogues may enjoy a reduced Corporate Income Tax (CIT) rate of 15% during the period from 2001 to 2010, according to a previous tax circular, namely, Caishui [2001] No. 202 ("Circular 202"). As a result of revisions to the various industry catalogues, the State Administration of Taxation (SAT) issued Circular Guoshuihan [2009] No. 399 ("Circular 399") on 27 July 2009 to clarify the applicable catalogues for such tax incentives.

- For DEs engaged in encouraged industries, the provisions set out in Caishui [2006] No. 165 should continue to apply in the determination of the applicable encouraged industry catalogue.
- For FIEs engaged in encouraged industries:
  1. Starting from 1 January 2008, the Industry Catalogue for the Guidance of Foreign Investment ("ICGFI") mentioned in Circular 202 means the 2007 revised version. Starting from 1 January 2009, the Priority Industries Catalogue for Foreign Investments in the Central-Western Region ("PICCW") mentioned in Circular 202 means the 2008 revised version.
  2. If FIEs had been granted tax incentives under the old catalogues prior to the revisions, such FIEs may continue to enjoy the tax incentives, except for those falling into the prohibited and restricted industries in the 2007 version of the ICGFI.

Circular 399 also clarifies that for companies qualifying as encouraged industries according to the new catalogues, but not so according to the old catalogues, the tax preferential treatment should apply in the remaining period from the year in which the updated version was implemented.

China Tax & Investment Express (CTIE) brings you the latest tax and business announcements on a weekly basis. CTIE provides a synopsis of each announcement, including a weblink that leads you to the full content of the announcement (in Chinese). Please feel free to contact your Ernst & Young client service professionals for further assistance if you find the announcements have an impact on your business operations.

This CTIE does not replace our China Tax & Investment News which will continue to be prepared and distributed to provide more in-depth analyses of tax and business developments in China.

You may click this link to access the full content of Circular 399:  
<http://www.chinatax.gov.cn/n8136506/n8136593/n8137537/n8138502/9224817.html>

You may click this link to access the full content of Circular 202:  
<http://www.js-n-tax.gov.cn/Page/StatuteDetail.aspx?StatuteID=5040>

You may click this link to access the full content of Caishui [2006] No. 165:  
<http://www.whqss.gov.cn/cms/whqss03/laws/05/030205/2006111601.html>

You may click this link to access the full content of the 2007 version of the ICGFI:  
[http://www.ndrc.gov.cn/zcbl/zcbl/2007ling/20071107\\_171058.htm](http://www.ndrc.gov.cn/zcbl/zcbl/2007ling/20071107_171058.htm)

You may click this link to access the full content of the 2008 version of the PICCW:  
[http://www.ndrc.gov.cn/zcbl/zcbl/2008ling/20081224\\_253113.htm](http://www.ndrc.gov.cn/zcbl/zcbl/2008ling/20081224_253113.htm)

**Notice regarding the detailed measures on the further reinforcement of tax collection and administration (Guoshuifa [2009] No. 114)**

**Synopsis:**

To enhance tax revenue collection and meeting the fiscal budget, the State Administration of Taxation (SAT) has issued a notice on 29 April 2009, namely Guoshuifa [2009] No. 85, to reinforce the administration of various taxes (please refer to our China Tax & Investment Express issue number CTIE2009006 dated 18 May 2009). On 27 July 2009, the SAT issued Guoshuifa [2009] No. 114 to provide detailed guidance and specific instructions to its subordinate bureaus. According to this notice, tax authorities at all levels should focus on the following areas to collect tax revenue, including:

- ▶ **Corporate Income Tax (CIT) administration on consolidated filing by cross-region branches and headquarters**  
The SAT reiterates that the second-tier branches which have stand-alone manufacturing and/or business capacities shall submit the Tax Payment Allocation Return Form. Otherwise, penalties may be imposed.
- ▶ **CIT administration on tax deductible items and taxable revenue**  
Local tax authorities are required to scrutinize non-monetary revenue and unreasonable costs which clearly deviate from the industry average.
- ▶ **Tax administration on service agencies, including accounting firms and real estate appraisal firms**  
The SAT points out that CIT on a deemed basis should not be levied on these types of taxpayers.
- ▶ **Non-profit organizations**  
The recognition and assessment process should be expedited.
- ▶ **Tax administration on share transactions**  
The SAT instructs local tax authorities to obtain relevant transaction information by focusing on reviewing application for changes in resident companies' tax registrations, and emphasizes the need to investigate the substance of a transaction to avoid treaty shopping.
- ▶ **Tax administration on overseas-listed companies which are recognized as Chinese resident companies ("Overseas Chinese Resident Companies")**  
The SAT reiterates that tax bureaus should strengthen the tax administration on Overseas Chinese Resident Companies in accordance with the effective management criteria set out in Guoshuifa [2009] No. 82 (please refer to our China Tax & Investment Express issue number CTIE2009003 dated 4 May 2009).
- ▶ **Anti tax-avoidance investigations**  
The SAT provides a detailed list of target companies and situations including, but not limited to, fast expanding companies with losses or marginal profits, highly-leveraged highway construction companies, intangible asset valuations of pharmaceutical manufacturers, outbound inter-company charges of chain hotels and single function loss-making entities, etc.
- ▶ **Tax administration on real estate and construction/installation industries**  
The tax administration on these industries should be strengthened.
- ▶ **Tax administration on non-residents ("NRs")**  
The SAT emphasizes the need to step up the investigation of services, including management, design, certification and consultation services performed by employees sent by NRs into China. Furthermore, special tax audits on certain business activities carried out by NRs, including of key engineering projects, dividends and interest distributed or paid to NRs, and equity transfers of NR companies.

China Law Update March 19, 2009 If there is anything what I can do for you, please feel free to contact me. Thank you for your kind attention

### **Foreign Investment Catalogues and Investment Environment in China**

On 23 December 2008, the National Development and Reform Commission ("NDRC") and Ministry of Commerce ("MOFCOM") of People's Republic of China jointly issued "*Catalogue of Foreign Investment Advantageous Industries in Central and Western China*" ("**Central and Western Catalogue**"), which became effective on 1 January 2009. This marks the second revision to the Central and Western Catalogue since its first promulgation in 2000 (the previous revision occurred in 2004). The Central and Western Catalogue was issued to supplement the *Foreign Investment Industrial Guidance Catalogue* ("**Guidance Catalogue**") which was jointly revised by NDRC and MOFCOM on 31 October 2007 and became effective on 1 December 2007. Guidance Catalogue was first promulgated in 1995 with updating in 1997, 2002, 2004 and most recently in 2007.

Guidance Catalogue and Central and Western Catalogue are the basic blueprint for foreign investment in China. Sectors falling within different categories have different investment policies for foreign-invested enterprises. There are three basic categories in the Guidance Catalogue: "encouraged", "restricted", "prohibited". Industries not listed in Guidance Catalogue are deemed to be "permitted", all industries listed in Central and Western Catalogue shall be deemed as encouraged categories. In addition, the aforementioned two catalogues have different application scope, Guidance Catalogue is applicable in full China, Central and Western Catalogue is only applicable in 21 provinces, autonomous regions and municipalities located in central and western China.

### **Catalogues Consequences**

The two catalogues affect the tax incentives, approval requirements and market entries for foreign investors dramatically by classifying the sectors in which foreign investors intend to invest.

#### **1. Tax Incentives**

Foreign-invested enterprises in the sectors falling into encouraged categories can enjoy certain tax preferences. Foreign-invested enterprises engaged in the industries falling into the encouraged categories of Guidance Catalogue or listed in Central and Western Catalogue can enjoy exemption from customs duty for imported equipment for self-use, including the corresponding technology, accessories and spare parts. Moreover, foreign-invested enterprises in central and western China belonging to the industries listed in the Central and Western Catalogue can enjoy the reduced income tax rate of 15% from 2001 to 2010, provided that their major business income at least account for 70% of their total income.

#### **2. Approval Requirements**

Current foreign investment approval procedure in China mainly based on two indispensable approval procedures of NDRC or its local counterparts and MOFCOM or its local counterparts. If foreign investment involves any other industrial competent authority, it is necessary for foreign-invested enterprises to obtain the approval from the competent authority. For example, foreign investors intending to invest in education sector in China need to apply for the approval from Ministry of Education or its local

1 Email: liangtaorwx@163.com Blog: <http://lawrwx.fyfx.cn/blog/lawrwx/China Law Update March 19, 2009> If there is anything what I can do for you, please feel free to contact me. Thank you for your kind attention.

counterparts besides NDRC and MOFCOM, foreign investors intending to invest in listed company also need to obtain the additional approval from China Security Regulatory Commission.

It is subject to a simpler approval procedure to set up foreign-invested enterprises in the sectors falling into encouraged or permitted categories than restricted categories. For foreign-invested enterprises in encouraged or permitted industries, if the total investment is US\$ 500 million or more the approval from National Council is required, if the total investment is US\$ 100 million or more the approval from NDRC and MOFCOM is required, if the total investment is below US\$ 100 million only the approval from local counterparts of NDRC and MOFCOM is required. By contrast, for foreign-invested enterprises in restricted industries, approval from National Council is required when the total investment is US\$ 100 million or more, approval from NDRC and MOFCOM is required when total investment is US\$ 50 million or more, and the approval from the local counterparts of NDRC and MOFCOM is required when total investment is below US\$ 50 million. The approval procedure is simpler and more time saving to obtain the approval from lower level government than higher.

### 3. Market Entries

According to the two catalogues, in some of the sectors falling within encouraged or restricted categories, foreign-invested enterprises are subject to certain restrictions regarding market entries. For example, in the foreign-invested enterprises engaged in the sector of special and scarce coal exploration and mining, Chinese party must take a majority stake. Foreign-invested enterprises engaged in accounting and audit shall only be made in form of co-operative joint venture or partnership with Chinese party. Moreover, it is worthy to note that foreign investors cannot invest in any sectors falling within the prohibited categories.

### Catalogues Changes

#### 1. Guidance Catalogue

There are 478 sectors in sum listed in Guidance Catalogue including 351 encouraged sectors, 87 restricted sectors and 40 prohibited sectors. Compared with its 2004 counterparts, 94 encouraged sectors, 9 restricted sectors and 5 prohibited sectors have been added in the Guidance Catalogue.

In order to update China's industry structure, Guidance Catalogue paid more attention on high-end technology and value added industries. For example, "manufacturing of the coloured metal materials with new and high technology" has been added into the encouraged categories. In contrast, certain manufacturing industries in which Chinese enterprise have obtained strong capacity would no longer be encouraged or permitted for foreign investors, e.g., the sector of "repairing, designing and manufacturing of the common ship" has been downgraded into restricted categories from encouraged categories.

China had taken certain measures to impulse its service industry, the revised Guidance Catalogue was one of them. "Information technology outsourcing and business process

2 Email: liangliuorwx@163.com Blog: <http://lawrxw.fyfc.cn/blog/liangliuorwx/China Law Update March 19, 2009> If there is anything what I can do for you, please feel free to contact me. Thank you for your kind attention.

outsourcing" and "modern logistics" has been listed in the encouraged categories to improve China's service industry, create more high quality job positions and conform to China's WTO commitments. In addition, "future company" and "construction and management of grid" was first opened to foreign investors through upgrading from prohibited categories to restricted categories.

Energy saving and environmental protection is one of the most important objectives embodied in the Guidance Catalogue. "Use of sea water, treatment and recycling of industrial wastewater" and "development technology of bio-energy" had been listed into encouraged categories. On the other hand, some scarce non-renewable minerals were no longer encouraged, e.g., "development of the coal and its accompanying resource" had been downgraded from encouraged to permitted.

The Guidance Catalogue heavily affected real estate industry. To calm down the overheated real estate market in 2007, the Guidance Catalogue generally downgraded the real estate related industries for foreign investors. The sector of "development and construction of the ordinary residential" had been downgraded from encouraged categories to permitted categories. Foreign-invested enterprises in secondary real estate market and firms engaged in real estate intermediates and brokerages would be restricted instead of permitted. To tighten the real estate foreign investment policy, "construction and operation of the golf course" is downgraded to prohibited categories from restricted categories.

## 2. Central and Western Catalogue

In the Central and Western Catalogue, 411 encouraged sectors were listed with an increase of 126 sectors comparing with its 2004 counterparts. Besides the 2004 version of the Central and Western Catalogue, *Catalogue of Foreign Investment Advantageous Industries in Liaoning Province* was also integrated into the new revised Central and Western Catalogue. It is worthy to note that the particular catalogue for each province, autonomous region and municipality had been set forth in the Central and Western Catalogue. There is no unified catalogue for the 21 provinces, autonomous regions and municipalities located in central and western China.

To promote industries updating, certain industries in which Chinese enterprises had matured were removed from the Central and Western Catalogue, e.g., "manufacturing of electric instruments", "manufacturing of films for electrical purposes" and "producing of numerical control cutting tools". Meanwhile, many industries had been added into the Central and Western Catalogue, such as, "manufacturing of the high performance tire", "automobile financial service", "vocational education institutions" and "medical institutions".

"Deep processing of tungsten and molybdenum", "producing of barium salt" and "deep processing of manganese" was removed from the Central and Western Catalogue to protect the environment in central and western China. On the other hand, "restoring of the ecosystem in the mined-out and subsidence area of mining" was listed in the Central and Western Catalogue. It is clear that environmental protection is a key concern when China's government guides the direction of foreign investments.

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### Conclusion

It is no doubt that China's market will continue to boom in a long-term look. Foreign investors who want to share the benefit of China's growth shall select their investment area carefully. The foregoing two catalogues will be the fundamental legal documents controlling foreign investment in China at least several years in future until next revising. Foreign investors intending to enter China market should better conduct a comprehensive check on the foregoing catalogues and relevant updated provisions regarding foreign investment incentives and restrictions. Existing foreign investors also need to check the foregoing catalogues and provisions to ensure regulatory compliance while they are seeking for additional investment.

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## China alert

Tax and regulatory developments

Issue 13, February 2009

### China issues updated Catalogue of incentives for foreign-invested projects located in central and western China

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#### In Brief

- Foreign-invested projects that gained approval before the effective date of the updated Catalogue can continue to enjoy the relevant incentives, such as reduced Corporate Income Tax (CIT) rate and customs duty-free importation of equipment. However, they will need to complete the relevant filing procedures with Customs before 31 December 2009.
- Foreign-invested projects that remain in the construction stage can also enjoy these incentives if they qualify under the updated Catalogue and obtain a Project Confirmation Letter from the relevant authorities.

#### Relevant regulation discussed in this issue

Catalogue of Encouraged Foreign-invested Advantageous Industries in Central and Western China (2004 version) jointly issued by the NDRC and MOFCOM on 23 December 2008, effective from 1 January 2009 onwards.

#### Main changes in the updated Catalogue

The updated Catalogue is based on the 2004 version, as well as on the Catalogue of Foreign Investment Advantageous Industries in Liaoning Province. It covers 411 favoured industries in the different provinces, cities and autonomous regions and broadens the scope of industries covered by supportive policies.

#### • Optimising industry structure and encouraging industry upgrade

Certain industries, such as those involved in producing electric gauges and spare digital machinery parts, have been removed from the updated Catalogue.

Medical services, education, advanced precision manufacturing, R&D and production of new energy equipment and production of new-type cement with daily productivity over 4,000 tons have been added to the updated Catalogue. In addition, manufacturing of auto parts and machinery have been further itemised in the updated Catalogue.

Valued-added telecommunication services have been added to the updated Catalogue, but investment in that sector by foreign investors must strictly adhere to the framework laid down in China's commitments on its entry into the World Trade Organisation.



- **Protection and exploration of mineral resources**

To protect and explore mineral resources more efficiently, the production of barium salts and strontium salts, and the exploration and processing of certain minerals such as nickel, molybdenum, tungsten, titanium and borax have been removed. In contrast, synergistic utilisation and deep processing of silica, non-metal minerals and nonferrous metals have been added to the updated Catalogue.

**KPMG observation**

- **CIT incentives under West Development Policy**

According to the relevant regulations issued by the State Council and the relevant authorities, Foreign Investment Enterprises (FIEs) in western China can enjoy the reduced income tax rate of 15 percent from 2001 to 2010 provided they:

- fall within the industries listed in the Catalogue; and
- derive more than 70 percent of their revenue from their main business activities.

This incentive can be enjoyed until 2010 under the new CIT Law. Potential investors planning to invest in western China should consult the updated Catalogue to make the most of the incentive policies available.

As a transitional measure between the updated Catalogue and its previous version, projects under construction can adopt the updated Catalogue. In the previous update of the Catalogue, in 2004, the policy was to use the "updated catalogue for new enterprises, previous catalogue for old enterprises". The approval date of a feasibility study report (or a contract and Articles of Association) was used to determine which version of the Catalogue would apply. The same approach should also be applicable to this latest update.

- **Exemption of customs duty for imported equipment**

Qualified FIEs involved in the industries listed in the previous Catalogue and the Catalogue of Foreign Investment Advantageous Industries in Liaoning Province could enjoy exemption from customs duty and value-added tax (VAT) on the importation of equipment for self-use within their total investment.

According to newly revised Provisional VAT Rules (effective from 1 January 2009 onwards), input VAT associated with purchase of equipment can be offset against output VAT. Therefore, this implies that the above-mentioned VAT exemption for imported equipment has been abolished.

As mentioned in Announcement (2008) No. 43, jointly issued by the Ministry of Finance, Customs and the State Administration of Taxation, qualified FIEs approved before 1 January 2009 can still enjoy exemption from customs duty for imported equipment for self-use, including the corresponding technology, accessories and spare parts. According to

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the latest notice issued by Customs, these FIEs need to complete the relevant filing procedures with Customs before 31 December 2009.

Foreign-invested projects that remain in the construction stage and that did not qualify under the previous Catalogue and the Catalogue of Foreign Investment Advantageous Industries in Liaoning Province but fall within the updated Catalogue can enjoy the customs duty-free incentive. However, they need to obtain a Project Confirmation Letter from the relevant authorities. These companies should therefore apply for such a letter well in advance if they wish to import equipment free from customs duty.

**By Anthony Chau, Partner and Wayne Tan, Manager**

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## Order of the President of the People's Republic of China

No. 63

The Enterprise Income Tax Law of the People's Republic of China has been adopted at the 5th Session of the 10th National People's Congress of the People's Republic of China on March 16, 2007. It is hereby promulgated and shall go into effect as of January 1, 2008.

President of the People's Republic of China Hu Jintao  
March 16, 2007

# Enterprise Income Tax Law of the People's Republic of China

(Adopted at the 5th Session of the 10th National People's Congress of the People's Republic of China on March 16, 2007)

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## Chapter I General Rules

Article 1 The enterprises and other organizations which have incomes (hereinafter referred to as the enterprises) within the territory of the People's Republic of China shall be payers of the enterprise income tax and shall pay their enterprise income taxes according to the present Law.

The sole individual proprietorship enterprises and partnership enterprises are not governed by the present law.

Article 2 Enterprises are classified into resident and non-resident enterprises.

The term "resident enterprise" as mentioned in the present Law means an enterprise which is set up under Chinese law within the territory of China, or set up under the law of a foreign country (region) but whose actual management organ is within the territory of China.

The term "non-resident enterprise" as mentioned in the present Law means an enterprise which is set up under the law of a foreign country (region) and whose actual management organ is not within the territory of China but who has organs or establishments within the territory of China, or who does not have any organ or establishment within the territory of China but who has incomes sourced in China.

Article 3 For its incomes sourced from both inside and outside the territory of China, a resident enterprise shall pay the enterprise income tax.

In case a non-resident enterprise sets up an organ or establishment within the territory of China, it shall pay enterprise income tax on its incomes sourced inside the territory of China and incomes sourced outside the territory of China but actually connected with the said organ or establishment.

In case a non-resident enterprise has no organ or establishment within the territory of China, or its incomes have no actual connection to its organ or establishment inside the territory of China, it shall pay enterprise income tax on the incomes sourced inside the territory of China.

Article 4 The enterprise income tax shall be levied at the rate of 25%.

In case a non-resident enterprise obtains incomes as mentioned in Paragraph 3, Article 3 of the present Law,

the tax rate shall be 20%.

## Chapter II Taxable Income Amount

**Article 5** The balance after the tax-free and tax-exempt incomes, each deduction item as well as the permitted remedies for losses of the previous year(s) being deducted from an enterprise's total income, amount of each tax year shall be the taxable income amount.

**Article 6** An enterprise's total income amount refers to the monetary and non-monetary incomes from various sources and includes:

- (1) income from selling goods;
- (2) income from providing labor services;
- (3) income from transferring property;
- (4) equity investment gains, such as dividend, bonus;
- (5) interest incomes;
- (6) rental income;
- (7) royalty income;
- (8) income from accepting donations; and
- (9) other incomes.

**Article 7** The tax-free income refers to the following incomes which are included in the total income amount:

- (1) The treasury appropriations;
- (2) The administrative fees and the governmental funds which are levied in accordance with the law and fall under the treasury administration; and
- (3) Other tax-free incomes as prescribed by the State Council.

**Article 8** When calculating the taxable income amount, the reasonable expenditures which actually happened and have actual connection with the business operations of an enterprise, including the costs, expenditures, taxes, losses, etc. may be deducted.

**Article 9** As regards an enterprise's expenditures for public welfare donations, the portion within 12% of the total annual profits is permitted to be deducted.

**Article 10** When calculating the taxable income amount, none of the following expenditures may be deducted:

- (1) Such equity investment gains as dividend, bonus paid to the investors;
- (2) Payment for enterprise income tax;
- (3) Late fee for taxes;
- (4) Pecuniary punishment fines, and losses of confiscated properties;
- (5) Expenditures for donations other than those prescribed in Article 9;
- (6) Sponsorship expenditures;
- (7) Unverified reserve expenditures;
- (8) Other expenditures in no relation to the obtainment of revenues;

**Article 11** An enterprise's depreciations of fixed assets, which are calculated pursuant to the related provisions, are permitted to be deducted in the calculation of the taxable income amount.

As regards any of the following fixed assets, no depreciation may be calculated for deduction:

- (1) The fixed assets which have not yet been put into use, among which houses and buildings are not included;

- (2) The fixed assets which are rented in through commercial lease;
- (3) The fixed assets which are rented out through finance leasing;
- (4) The fixed assets for which depreciation has been fully allocated but which are still in use;
- (5) The fixed assets in no relation to the business operations;
- (6) The land which is separately evaluated and entered into account as an item of fixed asset; and
- (7) Other fixed assets for which no depreciation may be calculated for deduction;

Article 12 An enterprise is allowed to deduct the amortized expenditures of intangible assets calculated under the related provisions when calculating the taxable amount of incomes.

For the following intangible assets, no amortized expense may be calculated:

- (1) The intangible assets, which are developed by the enterprise itself and the expenditures have been deducted when calculating the taxable income amount;
- (2) The self-created business reputation;
- (3) The intangible assets in no relation to the business operations; and
- (4) Other intangible assets for which no amortized expense may be calculated for deduction.

Article 13 The following expenditures incurred by an enterprise shall be deemed as long-term deferred expenditures when calculating the taxable income amount. Those amortized pursuant to the related provisions are permitted to be deducted:

- (1) The expenditures for rebuilding a fixed asset, for which depreciation has been fully allocated;
- (2) The expenditures for rebuilding a rented fixed asset;
- (3) The expenditures for heavily repairing a fixed asset; and
- (4) Other expenditures which shall be deemed as long-term deferred expenditures.

Article 14 When calculating the taxable income amount, an enterprise may not deduct the costs of the investment assets during the period of external investment.

Article 15 In case an enterprise uses or sells its inventories, it is permitted to deduct the costs of the inventories calculated pursuant to the related provisions when calculating the taxable income amount.

Article 16 In case an enterprise transfers an asset, it is permitted to deduct the net value of the asset when calculating the taxable income amount.

Article 17 An enterprise may not offset the losses of its overseas business organs against the profits of its domestic business organs in the consolidated calculation of its enterprise income taxes.

Article 18 The losses suffered by an enterprise during a tax year may be carried forward and made up by the incomes during subsequent years; however, the carry-forward period may not exceed 5 years.

Article 19 In case a non-resident enterprise obtains incomes as prescribed in Paragraph 3, Article 3 of the present Law, the following approaches shall be adopted in calculation of its taxable income amount:

- (1) As regards dividends, bonuses and other equity investment gains, interests, rentals and royalties, the taxable income amount shall be the total income amount;
- (2) As regards incomes from assigning property, the taxable income amount shall be the balance of the total income amount less the net value of the property; and
- (3) As regards other incomes, the taxable income amount shall be calculated according to the approaches as mentioned in the preceding two items by analogy.

Article 20 The specific scope and standards of revenues and deductions, as well as the concrete tax treatment methods of assets as prescribed in this Chapter shall be constituted by the treasury and tax administrative departments under the State Council.

Article 21 If the enterprise's financial or accounting treatment method does not comply with any tax law or administrative regulation when calculating the taxable income amount, the tax law or administrative regulation shall prevail.

### Chapter III Payable Tax Amount

Article 22 The payable tax amount shall be the balance of the taxable amount multiplied by the applicable tax rate minus the tax amounts deducted and exempted as prescribed in the present Law.

Article 23 In case an enterprise has already paid overseas the enterprise tax for the following incomes, it may deduct it from the payable tax amount of the current period. The limit of tax credit shall be the payable tax amount on such incomes calculated under the present Law. The part exceeding the limit of tax credit may, during the five subsequent years, be offset from the balance of the limit of tax credit of each year minus the tax amount which ought to be offset in the current year:

- (1) A resident enterprise's taxable incomes sourced from outside the territory of China; and
- (2) Taxable incomes obtained outside the territory of China by a non-resident enterprise having organs or establishments inside the territory of China, but having actual connection with such organs or establishments.

Article 24 As regards the dividends, bonuses and other equity investment gains earned outside the territory of China by a resident enterprise from a foreign enterprise which it controls directly or indirectly, the portion of income tax on this income paid outside the territory of China by the foreign enterprise in the territory of China may be treated as the allowable tax credit of the resident enterprise's overseas income tax amount and be deducted within the limit of tax credit as provided for in Article 23 of the present Law.

### Chapter IV Preferential Tax Treatments

Article 25 The important industries and projects whose development is supported and encouraged by the state shall enjoy the preferential treatments in enterprise income tax.

Article 26 An enterprise's following incomes shall be tax-free ones:

- (1) The interest incomes from treasury bonds;
- (2) Dividends, bonuses and other equity investment gains generated between qualified resident enterprises;
- (3) Dividends, bonuses and other equity investment gains which are obtained from a resident enterprise by a non-resident enterprise with organs or establishments inside the territory of China and have actual connection with such organs or establishments; and
- (4) Incomes of qualified not-for-profit organizations.

Article 27 As regards the following incomes, the enterprise income tax may be exempted or reduced:

- (1) The incomes generated from the engagement in agriculture, forestry, husbandry and fishery;
- (2) The incomes generated from investment in and business operations of the important public infrastructure projects supported by the state;
- (3) The income generated from the projects of environmental protection, energy and water saving and satisfying the related requirements;
- (4) The incomes generated from transferring technologies and satisfying the related requirements; and
- (5) The income as provided for in Paragraph 3, Article 3 of the present Law.

Article 28 As regards a small meagre-profit enterprise satisfying the prescribed conditions, the enterprise income tax shall be levied at a reduced tax rate of 20%.

As regards important high-tech enterprises necessary to be supported by the state, the enterprise income tax

shall be levied at the reduced tax rate of 15%.

**Article 29** The autonomous organ of an autonomous region of ethnic minorities may determine to reduce or exempt the enterprise income tax by enterprises within the said autonomous region. In case the decision on deduction or exemption is made by an autonomous prefecture or county, it shall be reported to the people's government of the province, autonomous region, or municipality directly under the Central Government for approval.

**Article 30** An enterprise may additionally calculate and deduct the following expenditures in the calculation of the taxable income amount:

- (1) The expenditures for researching and developing new technologies, new products and new techniques; and
- (2) The wages paid to the disabled employees or other employees encouraged to hire by the State.

**Article 31** In case a startup investment enterprise engages in important startup investments necessary to be supported and encouraged by the state, it may deduct a certain proportion of the investment amount from the taxable income amount.

**Article 32** In case an enterprise surely needs to accelerate the depreciation of any fixed asset by virtue of technological progress or for any other reason, it may curtail the term of depreciation or adopt a method for accelerated depreciation.

**Article 33** As regards the incomes earned by an enterprise from producing products complying with the industrial policies of the state by comprehensively utilizing resources, the income may be downsized in the calculation of the amount of taxable incomes.

**Article 34** As regards the amount of an enterprise's investment in purchasing special equipment for protecting environment, saving energy and water, work safety, etc., the tax amount may be deducted at a certain rate.

**Article 35** The specific measures for the preferential tax treatments as referred to in the present Law shall be constituted by the State Council.

**Article 36** The State Council may constitute special preferential policies on the enterprise income tax in case the national economic and social development so requires, or the business operations of enterprises have been seriously affected by emergencies and other factors, and submit them to the Standing Committee of the National People's Congress for archival filing.

## Chapter V Withholding by Sources

**Article 37** The payable income taxes on the incomes obtained by a non-resident enterprise as prescribed in Paragraph 3, Article 3 of the present Law shall be withheld by sources with the payer acting as the obligatory withholder, who shall withhold the tax amount from each payment or payment due.

**Article 38** As regards the payable income taxes on the incomes obtained by a non-resident enterprise within the territory of China from undertaking engineering projects or providing labor services, the payer of the project price or remuneration may be designated as the obligatory withholder by the tax organ.

**Article 39** In case the obligatory withholder has failed to withhold the income tax which ought to be withheld according to Articles 37 and 38 of the present Law or is unable to perform the withholding obligation, the taxpayer shall pay them at the place where the income has occurred. In case the taxpayer fails to do so, the tax organ may recover the payable tax of the enterprise from its other income items within the territory of China which ought to be paid by the payer.

**Article 40** A obligatory withholder shall, within 7 days after the date of withholding, turn over to the state treasury the tax payments which it withholds every time and submit a form of report on the withheld

enterprise income taxes to the local tax organ.

## Chapter VI Special Adjustments to Tax Payments

Article 41 As regards a transaction between an enterprise and its affiliated parties, in case the taxable revenue or income of the enterprise or its affiliated parties reduces by virtue of the failure to conform to the arms length principle, the tax organ may, through a reasonable method, make an adjustment.

As regards the costs of an enterprise and its affiliated parties for jointly developing or accepting intangible assets, or jointly providing or accepting labor services, they shall, when calculating the taxable income amount, apportion them according to the arms length principle.

Article 42 An enterprise may propose the pricing principles and calculation methods for the transactions between it and its affiliated parties to the tax organ, the tax organ and the enterprise shall, upon negotiations and confirmation, achieve an advance pricing arrangement.

Article 43 When an enterprise submits its annual enterprise income tax returns to the tax organ, an annual report on the affiliated transactions between it and its affiliated parties shall be attached.

When the tax organ investigates into the affiliated transactions, the enterprise and its affiliated parties, as well as other enterprises in relation to the affiliated transactions under investigation, shall according to the related provisions, provide the related materials.

Article 44 In case any enterprise refuses to submit the materials on transactions which happened between it and its affiliated parties, or provides any false or incomplete material, on the basis of which the true information about the affiliated transactions cannot be reflected, the tax organ may determine upon check its taxable income amount.

Article 45 As regards an enterprise which is set up in a country (region) where the actual tax burden is apparently lower than the tax rate as prescribed in Paragraph 1 of Article 4 of the present Law by a resident enterprise or controlled by a resident enterprise or by a Chinese resident, in case it fails to distribute the profits or decreases the distribution not by virtue of reasonable business operations, the portion of the aforesaid profits attributable to this resident enterprise shall be included in its incomes of the current period.

Article 46 As regards an enterprise's interest expenditures for any credit investments and equity investments accepted from its affiliated parties, in excess of the prescribed criterion, the enterprise may not deduct them when calculating the taxable income amount.

Article 47 In case an enterprise makes any other arrangement not for any reasonable commercial purpose, which causes the decrease of its taxable revenue or income, the tax organ may, through a reasonable method, make an adjustment.

Article 48 In case the tax organ makes an adjustment to a tax payment pursuant to the provisions in this Chapter so that it is necessary to recover the tax payment in arrears, it shall do so and charge an additional interest according to the provisions of the State Council.

## Chapter VII Administration of Tax Levy

Article 49 The administration for levying enterprise income taxes shall be subject to the Law of the People's Republic of China on Administering Tax Levy in addition to the present Law.

Article 50 The tax payment place of a resident enterprise shall be its registration place unless it is otherwise provided for in any tax law or administrative regulation. But in case its registration place is outside the territory of China, the tax payment place shall be the place at the locality of its actual management organ.



As regards a resident enterprise which has set up operational organs without legal person status inside the territory of China, it shall, on a consolidated basis, calculate and pay its enterprise income taxes.

**Article 51** In case a non-resident enterprise earns any income as prescribed in Paragraph 2, Article 3 of the present Law, the tax payment place shall be the place at the locality of the organ or establishment. In case a non-resident enterprise has set up two or more organs or establishments within the territory of China, it may choose to have its main organ or establishment make a consolidated payment of the enterprise income tax upon the examination and approval of the tax organ.

As regards a non-resident enterprise which earns any income as prescribed in Paragraph 3, Article 3 of the present Law, the place at the locality of the obligatory withholder shall be the tax payment place.

**Article 52** Enterprises may not pay their enterprise income taxes on a consolidated basis unless it is otherwise prescribed by the State Council.

**Article 53** Enterprise income taxes shall be calculated on the basis of a tax year, which is from January 1 to December 31 of the Gregorian calendar year.

In case an enterprise's business operations are started or terminated in the middle of a tax year, which leads to its actual business operation period in this tax year being shorter than 12 months, its actual business operation period shall constitute a tax year.

When an enterprise is under liquidation according to law, the liquidation period shall be a tax year.

**Article 54** Enterprise income taxes shall, on the monthly or quarterly basis, be paid in advance.

An enterprise shall submit an enterprise income tax return for advance payment to the tax organ and pay the tax in advance within 15 days after the end of a month or quarter.

An enterprise shall submit an annual enterprise income tax return for the settlement of tax payments to the tax organ and settle the payable or refundable amount of taxes within 9 months after the end of each year.

When an enterprise submits an enterprise income tax return, the financial statements and other related materials shall be attached in accordance with the related provisions.

**Article 55** In case an enterprise terminates its business operation in the middle of a year, it shall apply to the tax organ for calculating and paying the enterprise income taxes of the current period within 60 days after the actual date for terminating its business operations.

Before the deregistration formalities are handled, an enterprise shall make a declaration to the tax organ and pay the enterprise income taxes on the basis of the income of the liquidation.

**Article 56** Enterprise income taxes to be paid pursuant to the present law shall be calculated on the basis of RMB. In case any income is calculated on the basis of a currency other than RMB, the taxes shall, after such income converted into RMB, be calculated and paid.

## Chapter VIII Supplementary Rules

**Article 57** In case an enterprise has already been set up before the promulgation of the present Law and enjoys low tax rates in accordance with the provisions of the tax laws and administrative regulations in force at that time, it may, in accordance with the provisions of the State Council, continue to enjoy the preferential treatments within five years as of the promulgation of the present Law and gradually transfer to the tax rate as prescribed in the present Law. In case an enterprise enjoys the preferential treatment of tax exemption for a fixed term, it may, after the promulgation of this Law, continue to enjoy such treatment in accordance with the provisions of the State Council until the fixed term expires. However, if an enterprise has failed to enjoy the preferential treatment by virtue of failure to make profits, the term of preferential treatment may be counted as

of the year when the present Law is promulgated.

As regards high-tech enterprises which are newly established with the key support of the State within the particular areas set up by law for developing foreign economic cooperation and technological exchanges or the areas enjoying the abovementioned special policies as provided for by the State Council, they may enjoy transitional preferential tax treatments. The specific measures thereof shall be constituted by the State Council.

As regards other enterprises falling within the encouraged category as already determined by the State Council, they may, according to the provisions of the State Council, enjoy the preferential treatment of tax reduction or exemption.

Article 58 In case any provision in a tax treaty concluded between the government of the People's Republic of China and a foreign government is different from the provisions in the present Law, the provision in the said treaty shall prevail.

Article 59 The State Council shall constitute a regulation for implementing the present Law.

Article 60 The present law shall go into effect as of January 1, 2008. The Income Tax Law of the People's Republic of China Concerning Foreign-funded Enterprises and Foreign Enterprises as adopted on April 9, 1991 at the 4th Session of the Standing Committee of the 7th National People's Congress and the Interim Regulation of the People's Republic of China Concerning Enterprise Income Taxes promulgated on December 13, 1993 by the State Council shall be concurrently abolished.

# BKD 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 Practice, USA, 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 involvement 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/units 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/units 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 basic 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**

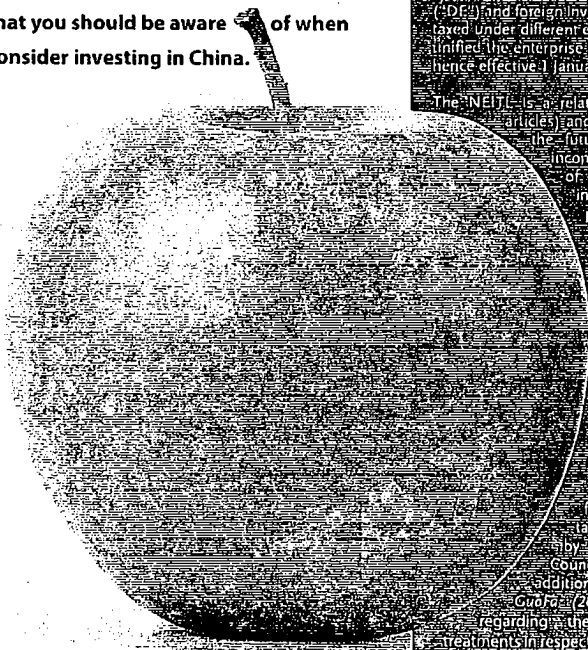
Type of expense	Treatment
Entertainment expenses	60% of expenses are tax deductible, subject to a cap of 0.5% of annual turnover
Goodwill acquired	Not deductible until disposal or liquidation
Advertising and promotion expenses	Capped at 15% of annual turnover and remained portion can be carried forward 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



## 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

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The issuance of the NEITL marked a milestone for China's enterprise income tax reform and brought China's corporate tax regime in line with other developed countries.

Prior to 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, 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 evolution of China enterprise income tax regime. It introduces a number of significant rules (e.g., types of tax incentives, available tax avoidance provisions etc.) without providing much detail.

On 6 December 2007, the State Council approved the so-called "Enterprise Income Tax Law Implementation Rules" (EITLIR), and it was publicly released on 6 December 2007. The EITLIR contains 139 articles and further elaborates some of the terms and rules mentioned in the NEITL.

As 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. 29* and *Guofa (2007) No. 40* on 26 December 2007 regarding the transitional and grandfathering treatments in respect of tax incentives granted under the old tax laws.

## 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 1 January 2008 are as follows:

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Small scale / low profit enterprises	20%
High / new technology enterprises	15%

#### IMPORTANT

Although the NEITL provides the definition of high / new technology enterprises, it does not specify the criteria for their qualification. Investors should consider the policies and measures of the local government which may have formulated qualification criteria for high / new technology enterprises.

### 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

Although the NEITL provides the definition of high / new technology enterprises, it does not specify the criteria for their qualification. Investors should consider the policies and measures of the local government which may have formulated qualification criteria for high / new technology enterprises.

### 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

Dividends, interest, royalties and other income from FIEs in China are subject to withholding tax at 10% (reduced from 20% prior to 1 January 2008). The EITLIR also provides that the withholding tax rate for dividends remitted to foreign investors from FIEs in China is 10% (reduced from 20% prior to 1 January 2008).

### 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

Although the NEITL provides the definition of high / new technology enterprises, it does not specify the criteria for their qualification. Investors should consider the policies and measures of the local government which may have formulated qualification criteria for high / new technology enterprises.

### 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 followings:

Type 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> </ul>	3 years exemption from EIT plus 3 years half tax reduction period
<ul style="list-style-type: none"> <li>▪ Environmental protection, energy and water conservation projects</li> </ul>	

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 making an investment decision in China, investors should consider the impact and collection period of the company's income and capital gains tax on their business. In addition, foreign investors should ensure that any transactions are properly supported by documents and are in compliance with local requirements.

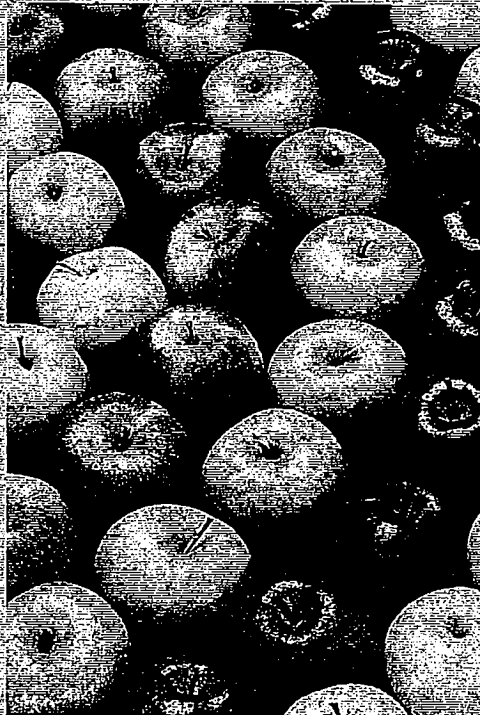


**NEW ENTERPRISE  
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## 7. Deductions

According to the NEITL and EITLIR, deductibility of some expenses are limited to certain levels or restricted to certain conditions:

Type of expense	Restrictions
■ 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 various 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 alert Tax and regulatory developments

Issue 1, January 2008

TAX

T6, 53

### 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

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

(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

www.kpmg.com.cn  
www.kpmg.com.hk

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For more information on these new regulations and how they may affect your company, please contact:

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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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## **Circular of the State Council on Implementing transitional preferential policy on enterprise income tax**

Guofa (2007) No. 39

To people's governments of various provinces, autonomous regions and municipalities, various ministries and commissions of the State Council and various departments directly under the State Council.

The Enterprise Income Tax Law of the People's Republic of China (PRC) and the Implementation Regulations on the Enterprise Income Tax Law of the PRC will enter into force as of January 1, 2008 spontaneously. Following is the circular on the transitional preferential policy on enterprise income tax which is formulated in line with the provision of article 57 of the new tax law.

### **1. Transitional methods of tax concession for enterprises approved and founded before the publication of the new tax law**

Enterprises enjoying enterprise income tax (EIT) preferential treatment according to the old taxation law, administrative regulations and documents with administrative law shall follow the following transition methods:

Starting from January 1, 2008, enterprises which have enjoyed preferential tax treatment at a low tax rate shall gradually transfer to implementation of the statutory tax rate in five years. Of this, enterprises enjoying a 15% rate of EIT shall implement an 18% tax rate in 2008, 20% in 2009, 22% in 2010, 24% in 2011 and 25% in 2012; and enterprises enjoying a 24% tax rate shall implement the 25% rate as of 2008.

Starting from January 1, 2008, enterprises which have enjoyed fixed-term preferential tax treatment of two years of tax exemption and three years of 50% tax reduction, and five years of tax exemption and five years of 50% tax reduction shall continue to enjoy the preferential tax treatment until the term is due according to the former law, administrative regulations and relevant documents on taxation, but for those which have not started enjoying the preferential tax policy because no profits have been made, the preferential treatment shall be counted as of 2008.

Enterprises enjoying the abovementioned preferential policies refer to enterprises which are founded and registered with the administration department of industry of commerce before March 16, 2007; and the projects and scope of implementation of the transition preferential tax policies shall follow the Table on Implementation of the Transition Preferential Policy on Enterprise Income Tax (see attachment).

### **2. Continuing to implement the preferential tax policy on western development**

In line with the spirit of the documents on development of western China, the preferential tax policy on EIT for western development stipulated in the Circular on Preferential Tax Policy for Western Development jointly issued by the Ministry of Finance, the National Administration of Taxation and the General Administration of Customs (Document code: Caishui (2001) No. 202) shall continue.

### **3. Other policies on implementing the transition preferential tax policy**

Enterprises enjoying the transition preferential policy on EIT shall compute the taxable income amounts according to provisions on income and deduction of the new EIT Law and the implementation regulations, and enjoy the tax concession in accordance with the computing methods in the first part of this circular.

When there are crossed contents of the preferential tax policy between the transitional methods of tax concession and the new EIT Law and the implementation regulations, the enterprises can choose the best preferential policy in implementation, not allowing for duplicated preferential treatment. Once the enterprises make the choice, they shall not change.

State Council

December 26, 2007

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Attached: Document names and relevant policies on implementation of the transition preferential tax policy:

1. The first provision of article 7 of the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of the PRC: Foreign-invested enterprises in special economic zones, foreign enterprises founding establishment and places for production and sales in special economic zones, and production-type foreign-invested enterprises in economic and technological development zones enjoy reduction of enterprise income tax (EIT) at a rate of 15%.

2. The third provision of article 7 of the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of the PRC: foreign-invested enterprises founded in old towns of cities where coastal economic open zones, special economic zones and economic and technological development zones are located, or other areas stipulated by the State Council can enjoy reduction of EIT at a rate of 15% for their projects of energy, transport, harbours or others encouraged by the state.

3. The first part of the first provision of article 73 of the Detailed Implementation Rules for the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of the PRC: Foreign-invested production-type enterprises established in old towns of cities where coastal economic open zones, special economic zones and economic and technological development zones are located can enjoy reduction of EIT at a rate of 15% in launching the following projects: Technology- and intellectual-intensive project; projects with foreign investment of more than US\$30 million and a long period of recovering investment; and energy, transport and harbour construction projects.

4. The second part of the first provision of article 73 of the Detailed Implementation Rules for the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of the PRC: Sino-foreign joint venture enterprises engaging in port and harbour construction can enjoy reduction of EIT at a rate of 15%.

5. The fourth part of the first provision of article 73 of the Detailed Implementation Rules for the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of PRC: production-type enterprises founded in the Shanghai Pudong New Zone, and foreign-invested enterprises engaging in energy and transport construction projects such as airport, harbour, railway, highway and power station can enjoy reduction of EIT at a rate of 15%.

6. Approval documents of the State Council on Shanghai Wai Gaoqiao, Tianjin Port, Shenzhen Futian, Shenzhen Shatoujiao, Dalian, Guangzhou, Xiamen Xiangyu, Zhangjiagang, Haikou, Qingdao, Ningbo, Fuzhou, Shantou, Zhuhai and Shenzhen Yantian Bonded Zone (Document code: Guohan (1991) No. 26, Guohan (1991) No. 32, Guohan (1992) No. 43, Guohan (1992) No. 44, Guohan (1992) No. 148, Guohan (1992) No. 150, Guohan (1992) No. 159, Guohan (1992) No. 179, Guohan (1992) No. 180, Guohan (1992) No.181, and Guohan (1993) No. 3): Production-type foreign-invested enterprises can enjoy reduction of EIT at a rate of 15%.

7. Approval of the State Council on Establishment of Taiwan Investment Zone in Coastal Areas of Fujian Province: Taiwan-funded enterprises in the Xiamen Taiwan Investment Zone enjoy reduction of EIT at a rate of 15%; Taiwan-funded enterprises in the Fuzhou Taiwan Investment Zone enjoy reduction of EIT at a rate of 15%, and non-production-type Taiwan-funded enterprises enjoy reduction of EIT at a rate of 24%.

8. Circular of the State Council on the Further Opening up of Nanning, Chongqing, Huangshi and Yangtze River Three Gorges Economic Open Zones and Beijing (Guohan (1992) No. 62, Guohan (1992) No. 93, Guohan (1993) No. 19, Guohan (1994) No. 92, and Guohan (1995) No. 16): Foreign-invested production-type enterprises in cities (capital cities) of provinces and open cities along the Yangtze River enjoy reduction of EIT at a rate of 15% when engaging in the following projects: Technology- and intellectual-intensive projects; projects with foreign investment of more than US\$30 million and a long period of recovering investment; and energy, transport and harbour construction projects.

9. Approval of the State Council on Development and Construction of Suzhou Industry Park (Guohan (1994) No. 9): Foreign-invested production-type enterprises in the Suzhou Industry Park enjoy reduction of EIT at a rate of 15%.

10. Circular of the State Council on Expansion of Applicable Scope of Preferential Tax Policy for Foreign-Invested Enterprises Engaging in Energy, Transport Facilities Projects (Guofa (1999) No.13): Starting from January 1, 1999, the policy on reduction of EIT at a rate of 15% for foreign-invested production-type enterprises engaging in construction of energy and transport facilities stipulated in 3 item of (1) of article 73 of the detailed rules on the tax law of foreign-funded enterprises will expand to the whole country.

11. Special Economic Zone Regulations of Guangdong Province (adopted for implementation at the 15th session



of the Standing Committee of the 5th National People's Congress (NPC) on August 26, 1980: The ETI rate in Shenzhen, Zhuhai and Shantou special economic zones of Guangdong Province is set at 15%.

12. Approval of Fujian Province on Founding Xiamen Special Economic Zone (Guohan (80) No. 88): The ETI rate in the Xiamen Special Economic Zone is set at 15%.

13. Regulations on Encouraging Investment in the Development of Hainan Islands issued by the State Council (Guofa (1988) No. 26): The income of enterprises launched in Hainan Islands (excluding state banks and insurance companies) from production, sales and other business enjoy an EIT rate of 15%.

14. The second provision of article 7 of the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of the PRC: Foreign-invested production-type enterprises established in old towns of cities where coastal economic open zones, special economic zones and economic and technological development zones are located enjoy a reduction of EIT at a rate of 24%.

15. Circular of the State Council on Founding National Tourism and Holiday Zones for Trial Operation (Guofa (1992) No. 46): Foreign-funded enterprises in national tourism and holiday zones enjoy a reduction of EIT at a rate of 24%.

16. Circular of the State Council on Further Opening up of Border Cities including Heihe, Yining, Pingxiang and Erenhot (Guohan (1992) No. 21, Guohan (1992) No. 61, Guohan (1992) No. 62 and Guohan (1992) No. 94): Foreign-invested production-type enterprises enjoy a reduction of EIT at a rate of 24%.

17. Circular of the State Council on the Further Opening up of Five Border Cities including Nanning, Kunming and Pingxiang (Guohan (1992) No.62): Pingxiang, Dongxing, Wanding, Ruili and Hekou cities (county and town) are permitted to found border economic cooperation zones in eligible cities (county and town), and domestic production-type enterprises mainly engaging in export-based production in the border economic cooperation zones enjoy reduction of EIT at a rate of 24%.

18. Circular of the State Council on Further Opening up of Nanning, Chongqing, Huangshi and the Yangtze River Three Gorges Economic Open Zones and Beijing (Guohan (1992) No. 62, Guohan (1992) No. 93, Guohan (1993) No. 19, Guohan (1994) No. 92, and Guohan (1995) No. 16): Foreign-funded production-type enterprises in capital cities (capital) of provinces and open cities along the Yangtze River enjoy reduction of EIT at a rate of 24%.

19. The first provision of article 8 of the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of the PRC: Production-type foreign-invested enterprises which have an operation term of more than 10 years enjoy EIT exemption for the first and second years starting from the profit-making year, and 50% reduction of EIT for the following three years.

20. The fourth part of the first provision of article 75 of the Detailed Implementation Rules for the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of the PRC: Sino-foreign joint venture enterprises engaging in construction of port and harbour with an operation term of more than 15 years, with approval from the taxation department of local provinces, autonomous regions and municipalities enjoy EIT exemption for the first five years starting from the profit-making year, and 50% EIT reduction for the following five years.

21. The second part of the first provision of article 75 of the Detailed Implementation Rules for the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of the PRC: Foreign-invested enterprises in Hainan Special Economic Zone engaging in infrastructure facilities projects such as airport, port, harbour, railway, highway, power station, coalmine and water conservancy and enterprises engaging in agricultural development with operation term of more than 15 years, with approval from the taxation department of Hainan province, enjoy EIT exemption for the first five years starting from the profit-making year, and 50% EIT reduction for the following five years.

22. The third part of the first provision of article 75 of the Detailed Implementation Rules for the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of the PRC: Foreign-invested enterprises in Shanghai Pudong New Area engaging in energy and transport construction projects such as airport, port, harbour, railway, highway and power station with operation term of more than 15 years, with approval from the taxation department of Shanghai, enjoy EIT exemption for the first five years starting from the profit-making year, and 50% EIT reduction for the following five years.

23. The fourth part of the first provision of article 75 of the Detailed Implementation Rules for the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of the PRC: Foreign-invested enterprises in special

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economic zones engaging in service trade with foreign investment of more than US\$5 million and operation term of more than 10 years, and with approval from the taxation department of special economic zones, enjoy EIT exemption for the first year starting from the profit-making year, and 50% EIT reduction for the following two years.

24. The sixth part of the first provision of article 75 of the Detailed Implementation Rules for the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of the PRC: Sino-foreign joint venture enterprises which have been recognized as high and new technology enterprises and founded in state high-tech industry development zones fixed by the State Council, with operation term of more than 10 years, and with approval from the local taxation department, enjoy EIT exemption for the first two years starting from the profit-making year.

25. The sixth part of the first provision of article 75 of the Detailed Implementation Rules for the Law on Income Tax of Foreign-Invested Enterprises and Foreign Enterprises of the PRC, and Approval of the State Council on provisional Rules on the New-Technology Development Experiment Zone of Beijing Municipality (Guohan (1988) No. 74): Foreign-invested enterprises founded in the Beijing New-Technology Development Experiment Zone shall carry out the preferential tax policy for the experiment zone.

New technology enterprises in the experiment zone enjoy EIT exemption for three years starting from the date of founding. Those gaining approval from the designated department by the Beijing Municipal Government can enjoy 50% EIT reduction on the basis of 15% or 10% for the following three years.

26. The first provision of article 8 of the Provisional Regulations on Enterprise Income Tax of the PRC: Enterprises in autonomous regions needing support and encouragement enjoy fixed-term tax reduction or exemption as approved by the people's government of province level, but the transition preferential treatment shall not exceed five years.

27. Regulations of the State Council on Encouraging Investment in the Development of Hainan Islands (Guofa (1988) No.26): Enterprises launched in Hainan Islands (excluding state banks and insurance companies) engaging in development and operation of infrastructure facilities such as port, harbour, airport, highway, railway, power station, coalmine and water conservancy, and enterprises engaging in agricultural development and operation, with operation term of more than 15 years enjoy EIT exemption for the first five years starting from the profit-making year, and 50% EIT reduction in the following five years.

28. Regulations of the State Council on Encouraging Investment in Development of Hainan Islands (Guofa (1988) No.26): Production-type enterprises launched in Hainan Islands (excluding state banks and insurance companies) engaging in industrial production and transport, with operation term of more than 10 years, enjoy EIT exemption for the first two years starting from the profit-making year, and 50% EIT reduction in the following three years.

29. Regulations of the State Council on Encouraging Investment in the Development of Hainan Islands (Guofa (1988) No.26): Enterprises launched in Hainan Islands (excluding state banks and insurance companies) engaging in service trade, with total investment exceeding US\$5 million or RMB 20 million and operation term of more than 10 years, enjoy EIT exemption for the first year starting from the profit-making year, and 50% EIT reduction for the following two years.

30. Circular of the State Council on the Supporting Policy on Implementation of the National Medium- and Long-Term Outline on Development of Science and Technology (2006-2020) (Guofa (2006) No.6): After strict verification, newly-founded high and new technology enterprises in the state high and new technology development zones enjoy EIT exemption for the first two years as starting from the profit-making year.

URL : [http://info.hktdc.com/report/reg/reg\\_080402.htm](http://info.hktdc.com/report/reg/reg_080402.htm)

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## China alert Tax and regulatory developments

Issue 1, January 2008

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### 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 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

(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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Issue M11/2008 – 12 March 2008

## PRC Tax

### China Enterprise Tax Reform Series

#### Tax Incentive Developments

Guidance in this Chinese post-tax reform period has been coming in fits and starts. While some of the developments have represented unexpectedly good news for many investors, many would have appreciated earlier announcement of these developments.

So what's new?

- Exemption from 10% dividend withholding tax when pre-2008 earnings are distributed
- Refunds for reinvestment of profits
- Prior incentives allowed "grandfathering" transition benefits
- Final phase-in "grandfathered" tax rates and adjusted phase-in tax rates for companies qualified for "grandfathering" of both a "2+3-type" Incentive and the prior 15% incentive rate
- 2008 tax rate to be used by companies that held high and new-tech status in 2007
- 2007 Tax Returns and Settlement Arrangements
- Continued application of certain interest and royalty withholding exemptions
- Effect of post-2007 disqualification on certain pre-2008 tax incentives
- New location-specific Incentive for companies holding high and new-tech status
- New software and integrated circuit ("IC") design incentives
- New IC production industry incentives
- New security investment fund Incentives

In connection with the 1 January 2008 implementation of China's new Unified Enterprise Income Tax Law (the "New Law"), the State Council, both directly and through the State Administration of Taxation ("SAT") and Ministry of Finance ("MOF"), has been Issuing guidance on issues of immediate importance. This Tax Analysis covers the more important of these issues.

Those interested in China should expect continued guidance and some surprises as the government slowly deals with each open issue and publishes its decisions.

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### **Dividend Withholding Tax Exemption**

Caishui [2008] No. 1 announced at the end of February the much anticipated confirmation that China's new 10% withholding tax on dividends would not be imposed in certain situations. In brief, where a foreign invested enterprise ("FIE") pays a dividend from pre-2008 earnings to any non-resident shareholder, that dividend is exempt from Chinese withholding tax.

This circular does not provide any guidance regarding how the year(s) of the earnings from which the dividend is paid will be determined. Dividends declared during 2008, as a practical matter, will only be out of 2007 and prior years' earnings. As such, for such dividends, this will not be an issue. (While not common in China, it is of course possible that a company could declare in 2008 an interim dividend out of the current year's earnings. Such a dividend would be subject to withholding tax.)

From 2009, designating the years' retained earnings from which a dividend is paid will become a significant issue. In the absence of any "ordering rules" or other guidance that might be issued by the authorities in the future, we suggest that each FIE (or former FIE if that status has been lost) that plans to declare a dividend initiate from 2009 a procedure to identify within the resolution that declares the dividend the years' earnings out of which the dividend will be paid.

From solely a Chinese perspective it will always be best to choose the pre-2008 retained earnings first, which we believe should be acceptable, since that would defer the payment of withholding tax. However, it is possible that an investor's home country foreign tax credit rules might sometimes suggest otherwise. As such, some home country analysis should be conducted before dividends are actually declared.

### **Refunds for Reinvestment of Profits**

An important feature of the pre-tax reform tax incentives system was the ability of foreign investors to receive refunds of taxes paid by the companies in which they invested by reinvesting the profits either in those companies paying the dividends or in other companies.

Although the New Law has eliminated this tax refund procedure for the future, Guoshuifa [2008] No. 23 issued on 27 February 2008 provides transition rules for claiming refunds related to 2007 reinvestments. (See below under the heading "New IC Production Incentives" for a limited continuing reinvestment refund procedure.)

In brief, foreign investors that have completed their reinvestment transactions and relevant registration procedures with the State Administration for Industry and Commerce (or its local branches) prior to the end of 2007 may apply for their tax refund in accordance with the old tax law. Interestingly, this circular makes clear that no tax refund will be granted for any reinvestment that is made from a 2007 interim dividend.

While there is no stated time limit in the circular for making the tax refund application, we suggest that investors initiate their applications soon.

### **Prior Incentives Allowed "Grandfathering" Transition Benefits**

Guofa [2007] No.39 ("Circular 39"), issued at the end of December 2007, listed 30 incentives available under the old tax regime that would receive transition benefits. What is interesting is not what was included, but rather what was missing from this list that arguably should have been included, given the broad mandate for transition relief found in the New Law.

These missing items included, for example, certain foreign banks, Sino-foreign joint banks and other financial institutions established in Special Economic Zones or other districts approved by the State Council and FIEs qualifying as high and new-tech companies located in high-tech parks. Caishui [2008] No. 1 eliminates any hope that these types of missing items will receive any transition benefit. As a result, they will pay enterprise income tax ("EIT") from 1 January 2008 at a 25% rate and will not be allowed the transition phase-in rates.

Also not expressly included in the transition benefits listing were certain old law holidays and benefits

granted to software and IC companies. Because of technical legal drafting considerations, it is not perfectly clear that either or both of these had to be "expressly" included in the listing to arguably be covered by Circular 39. As a result, there has been considerable controversy.

Interestingly, as covered in more detail below, Caishui [2008] No. 1 announced very favorable incentives for these two industries. This circular, though, was silent on this controversial issue of whether these two industries would receive transition benefits. This therefore remains an open issue.

Certain preferences allowed by Caishui [2001] No. 202 focused on development of China's Western Region will continue to be implemented.

It may happen that a company qualifying for transition benefits under Circular 39 also qualifies for some new benefit granted under the New Law and implementation rules. For example, say that a company involved in harvesting forestry products sees that it will be exempt from tax from 2008 under the New Law. It is also listed in Circular 39 as qualifying for transition benefits.

Circular 39 provides that if any transitional benefit overlaps with New Law/implementation rule incentives, a company may choose the more favorable policy, but cannot enjoy both. Further, once a decision is made, the chosen policy cannot be changed. In the example of the forestry company, it would logically choose the new exemption rather than the less beneficial transition relief.

#### Final Phase-In Tax Rates and Adjusted Phase-In Tax Rates

After considerable internal governmental discussion, Circular 39 finalized the transition phase-in tax rates for qualifying companies previously paying tax at a 15% rate as follows:

2008	18%
2009	20%
2010	22%
2011	24%
2012 & thereafter	25%

For those that had paid tax at a 24% rate, they move immediately to a 25% tax rate in 2008.

An issue of some controversy was what tax rates would apply to companies qualified for "grandfathering" of both a tax holiday/50% reduction-in-rate incentive (e.g. the "2+3" incentive) and the prior 15% incentive rate. This issue was recently resolved by Caishui [2008] No. 21.

Under this new circular, the tax rate within the half-rate reduction period shall be calculated as 50% of the transition phase-in rates stipulated in Circular 39. This means that the following rates will apply if the indicated year is a half-rate year for a particular company.

2008	9%
2009	10%
2010	11%
2011	12%
2012	12.5%

For companies previously eligible for both the 24% tax rate and a half-rate reduction, the tax rate for each half-rate year is 12.5%, calculated as 50% of 25%.

#### Former High and New-Tech Status Companies

The New Law provides that companies qualifying for high-new technology status from 2008 will pay tax at a beneficial 15% rate.

In Guoshulifa [2008] No. 17, the SAT clarified that companies holding this high-new technology status prior to 1 January 2008 must use the normal 25% tax rate in their quarterly tax filing in 2008. They may not use the beneficial 15% until they have received a new 2008 qualification.

Due to the considerably higher 2008 requirements for this status, it is expected that many companies



qualifying in prior years will be unable to continue this status in 2008 and beyond. For many FIEs that only license technology from abroad and that do not either legally or economically own their own technology, qualification will be very unlikely due to the 2008 requirement of ownership of "core intellectual property".

**2007 Tax Returns and Settlement Arrangements**

Under Guoshuihan [2008] No. 85, the SAT requires that old tax laws and regulations apply for both domestic companies and FIEs regarding their final settlement of EIT and the filing of their 2007 tax returns. However, the tax return filing deadline will be as set under the New Law at five months after the end of the tax year. This represents a one-month later filing deadline.

**Certain Interest and Royalty Withholding Tax Exemptions**

Guoshuifa [2008] No. 23 provides transition guidance for certain royalties and interest that had exemptions from withholding tax under the old tax law. In brief, any applicable tax exemption shall continue to apply during the contract period as long as the contract was signed prior to the end of 2007. For any period of extension of the original contract, the exemption will be lost.

**Post-2007 Disqualification on Pre-2008 Tax Incentives**

Under Guoshuifa [2008] No. 23, if an FIE enjoying an exemption/reduction (e.g. "2+3" tax holiday incentive), under the old tax law is disqualified for the incentives due to changes occurring in 2008 or later (say, due to changes in its business nature or operational period), the FIE must repay to the government the amount of tax that would have been paid previously had the incentive not been granted. The refund will include any benefits realized during the transition period.

**Location-Specific Incentive for Companies Holding High and New-Tech Status**

Although termed a "transition tax incentive", in Guofa [2007] No. 40, the State Council has unexpectedly continued to a limited extent the prior geographic focus of tax incentives. Applicable only to Pudong and five Special Economic Zones ("SEZs" and including Shenzhen, Zhuhai, Shantou, Xiamen and Hainan), this new incentive applies only to companies newly established from 1 January 2008. Where such companies also hold high and new-tech status, they are granted a "2+3" tax holiday. As a result, they will pay tax at the following rates from their first year of revenue:

Year 1	0.0%
Year 2	0.0%
Year 3	12.5%
Year 4	12.5%
Year 5	12.5%
Year 6	15.0%

Pudong: Shanghai Mingqi  
Xiamen: Min Shien Industrial Co

To achieve and continue these tax rates, a company will have to re-qualify each year as being high and new-tech status.

**New Software and IC-Design Incentives**

Consistent with the innovation/high-tech goals of the government generally and its long-term 15-year innovation-focused plan (2006-2020), Caishui [2008] No. 1 provides a comprehensive approach to strongly encouraging the software production industry in China. Under this circular, this approach is also applied to IC-design companies.

In particular, this circular includes:

- "2+3" incentive for newly established approved software production companies ("SPCs") beginning from the first profit-making year (i.e., two years of tax holiday followed by three years of 50% reduction-in-rate)

It should be noted that the initiation of this tax holiday (as well as that below for IC production companies) in the first profit-making year is more favorable than the general rule as found for other tax holidays included in the New Law's implementation rules issued in December 2007. There, the holiday period begins in the first year of revenue, even if net taxable losses are being incurred.

- 10% tax rate for key SPCs listed in government plans in any taxable year not otherwise eligible for tax exemption
- Certain value added tax refunds received by SPCs exempt from EIT
- Full deduction for employee training expenses (in contrast to the 2.5% of total employees' salary and remuneration limitation that otherwise would apply)
- Two year depreciable life for approved capitalized purchased software (this benefits the SPCs' customers)
- Western region 80% reinvestment incentive for investment in SPCs (see under "New IC Production Incentives" below)

#### **New IC Production Incentives**

Caishui [2008] No. 1 provides a comprehensive approach to strongly encouraging the IC production industry in China.

In particular, this circular includes:

- "2+3" incentive for approved IC production companies beginning from the first profit-making year when ICs have a width of less than 0.8 $\mu$ m (i.e., two years of tax holiday followed by three years of 50% reduction-in-rate)

This incentive is not applicable for any company that has previously used a "2+3" tax holiday. In contrast to the above described software production and IC-design incentive that requires a newly formed company, this indicates that an existing IC production company that has not previously benefited from a "2+3" tax holiday under old law can qualify under the New Law.

An approved IC production company could potentially qualify as a high and new tech status company, thereby having a 15% tax rate. It is as yet not clear if, in such a case, the three 50% reduction-in-rate years will be taxed at 7.5% or 12.5%.

- "5+5" incentive for IC production companies with a 15-year or more operation period beginning from the first profit-making year when total investment exceeds RMB 8 billion or where produced ICs have a width of less than 0.25 $\mu$ m (i.e., five years of tax holiday followed by five years of 50% reduction-in-rate)

Interestingly, the circular does not include for this "5+5" incentive a similar prohibition against benefiting from two or more series of tax holidays as is mentioned above for the "2+3" incentive. As such, it is perhaps possible that an existing IC production company that qualified for, and benefited from, a tax holiday previously could again benefit from this new "5+5" incentive under the New Law.

Where such a company does not qualify for the special "5+5" holiday (say due to a less than 15 year operation period) or in years not covered by a holiday, a 15% rate will apply. This 15% rate raises the issue of whether a 7.5% rate or a 12.5% rate will apply in the five 50% reduction-in-rate years. At present, there is no guidance on this issue.

- For the three calendar years from 2008 through 2010, refund of 40% of the tax paid by an IC production or assembly company that relates to any profit distributions (i.e. dividends) paid to an investor in that company that reinvests its after-tax share of profits (i) directly back into that company by increasing registered capital or (ii) as capital investment into a newly established IC production or assembly company. A five year operating period is a requirement for both alternatives.

This and the following reinvestment benefits apply to both domestic and foreign investors. The

former receive dividends from other resident companies free of any EIT. The latter, though, are subject to the 10% dividend withholding tax to the extent the profits distributed were earned in 2008 or later years. As covered earlier in this Tax Analysis, any dividends paid out of earlier years' earnings are paid free of this 10% withholding tax. Interestingly, the circular does not include for foreign investors for this reinvestment benefit or for the following one any exemption from this 10% withholding tax. That presumably is still payable.

Note also that if an investor sells all or a portion of its investment or withdraws all or a portion of its reinvested amounts prior to the end of five years for this or the following reinvestment incentive, any tax benefits relating to the sold or withdrawn portion must be repaid to the government. This treatment is based on old law that we do not expect will change.

- For the three calendar years from 2008 through 2010, refund of 80% of the tax paid by any Chinese company that relates to any profit distributions (i.e. dividends) paid to an investor in that company that reinvests its after-tax share of profits as capital investment into a newly established company in China's western region that will operate for five years or more and that is engaged in IC production or assembly or that qualifies as an SPC
- Appropriately reduced depreciation periods as short as three years for approved IC production equipment

### Security Investment Fund Incentives

In addition to the above new "hi-tech" focused incentives, the government has chosen to encourage the continued growth of Chinese security investment funds. As a result, Caishui [2008] No. 1 includes "temporary" exemptions from EIT for security investment funds and their investors.

In China, in addition to pure domestic security investment funds, there are also several special categories. These include:

- Qualified foreign institutional investors ("QFIIs")—Mechanism for foreign investors to invest in the Chinese domestic markets
- Qualified domestic institutional investors ("QDIIIs")—Mechanism for Chinese investors to access foreign securities markets

To date, there have been no clear tax rules for the taxation of foreign investors investing through QFIIs or Chinese investors investing through QDIIIs. Due to the general language of Caishui [2008] No. 1, it is unknown whether its temporary exemptions cover QFIIs, QDIIIs and their investors.

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**Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and**

**Foreign Enterprises**

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**Chapter I General Provisions**

Article 1 These Rules are formulated in accordance with the provisions of Article 29 of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises (hereinafter referred to as the "Tax Law").

Article 2 "Income from production and business operations" mentioned in Article 1, paragraph 1 and paragraph 2 of the Tax Law means income from production and business operations in manufacturing, mining, communications and transportation, construction and installation, agriculture, forestry, animal husbandry, fishery, water conservation, commerce, finance, service industries, exploration and exploitation, and in other trades.

"Income from other sources" mentioned in Article 1, paragraph 1 and paragraph 2 of the Tax Law means profits (dividends), interest, rents, income from the transfer of property, income from the provision or transfer of patents, proprietary technology, income from trademark rights and copyrights as well as other non-business income.

Article 3 "Enterprises with foreign investment" mentioned in Article 2, paragraph 1 of the Tax Law and "foreign companies, enterprises and other economic organizations which have establishments or places in China and engage in production or business operations" mentioned in Article 2, paragraph 2 of the Tax Law are, unless otherwise especially specified, generally all referred to as "enterprises" in these Rules.

"Establishments or places" mentioned in Article 2, paragraph 2 of the Tax Law refers to management organizations, business organizations, administrative organizations and places for factories and the exploitation of natural resources, places for

contracting of construction, installation, assembly, and exploration work, places for the provision of labor services, and business agents.

Article 4 "Business agents" mentioned in Article 3, paragraph 2 of these Rules means companies, enterprises and other economic organizations or individuals entrusted by foreign enterprises to engage as agents in any of the following:

- (1) representing principals on a regular basis in the arranging of purchases and signing of purchase contracts and the purchasing of commodities on commission;
- (2) entering into agency agreements or contracts with principals, storing on a regular basis products or commodities owned by principals, and delivering on behalf of principals such products or commodities to other parties; and
- (3) having authority to represent principals on a regular basis in signing of sales contracts or in accepting of purchase orders.

Article 5 "Head office" mentioned in Article 3 of the Tax Law refers to the central organization which is established in China by an enterprise with foreign investment as a legal person pursuant to the laws of China and which is responsible for the management, operations and control over such enterprise.

Income from production and business operations and other income derived by the branches within or outside China of an enterprise with foreign investment shall be consolidated by the head office for purposes of the payment of income tax.

Article 6 "Income derived from sources inside China" mentioned in Article 3 of the Tax Law refers to:

- (1) income from production and business operations derived by enterprises with foreign investment and foreign enterprises which have establishments or places in China, as well as profits (dividends), interest, rents, royalties and other income arising within or outside China actually connected with establishments or sites established in China by enterprises with foreign investment or foreign enterprises;
- (2) the following income received by foreign enterprises which have no establishments or sites in China:
  - (a) profits (dividends) earned by enterprises in China;
  - (b) interest derived within China such as on deposits or loans, interest on bonds,

interest on payments made provisionally for others, and deferred payments;

(c) rentals on property leased to and used by lessees in China;

(d) royalties such as those received from the provision of patents, proprietary technology, trademarks and copyrights for use in China;

(e) gains from the transfer of property, such as houses, buildings, structures and attached facilities located in China and from the assignment of land-use rights within China;

(f) other income derived from China and stipulated by the Ministry of Finance to be subject to tax.

Article 7 In respect of Chinese-foreign contractual joint ventures that do not constitute legal persons, each partner thereto may separately compute and pay income tax in accordance with the relevant tax laws and regulations of the State; income tax may, upon approval by the local tax authorities of an application submitted by such enterprises, be computed and paid on a consolidated basis in accordance with the provisions of the Tax Law.

Article 8 "Tax year" mentioned in Article 4 of the Tax Law begins on January 1 and ends on December 31 under the Gregorian Calendar.

Foreign enterprises that have difficulty computing taxable income in accordance with the tax year stipulated in the Tax Law may, upon approval by the local tax authorities of an application submitted by such enterprises, use their own 12-month fiscal year as the tax year.

Enterprises commencing business operations in the middle of a tax year or actually operating for a period of less than 12 months in any tax year due to such factors as merger or shut-down shall use the actual period of operations as the tax year. Enterprises that undergo liquidation shall use the period of liquidation as the tax year.

Article 9 "The competent authority for tax affairs under the State Council" mentioned in Article 8, paragraph 3 and Article 19, paragraph 3, Item (4) of the Tax Law and Article 72 of these Rules refers to the Ministry of Finance and the State Tax Bureau.

## Chapter II Computation of Taxable Income

Article 10 "The formula for the computation of taxable income" mentioned in Article 4 of the Tax Law is as follows:

(1) Manufacturing:

(a) taxable income = (profit on sales) + (profit from other operations)

(b) profit on sales = (net sales) - (cost of products sold) - (taxes on sales) - [ (selling expenses) + (administrative expenses) + (finance expenses) ];

(c) net sales = (gross sales) - [ (sales returns) + (sales discounts and allowances) ];

(d) cost of products sold = (cost of products manufactured for the period)

(e) cost of products manufactured for the period = (manufacturing costs for the period) + (inventory of semi-finished products and products in process at the beginning of the period) - (inventory of semi-finished products and products in process at the end of the period);

(f) manufacturing costs for the period = (direct materials consumed in production for the period) + (direct labour) + (manufacturing expenses).

(2) Commerce:

(a) taxable income = (profit on sales) + (profit from other operations)

(b) profit on sales = (net sales) - (cost of sales) - (taxes on sales) - [ (selling expenses) + (administrative expenses) + (finance expenses) ];

(c) net sales = (gross sales) - [ (sales returns) + (sales discounts and allowances) ];

(d) cost of sales = (inventory of merchandise at the beginning of the period) + { (purchase of merchandise during the period) - [ (purchase returns) + (purchase discounts and allowances) ] + (purchasing expenses) } - (Inventory of merchandise at the end of the period).

(3) Service trades:

(a) taxable income = (net business income) + (non-operating income) - (non-operating expenses);

(b) net business income = (gross business income) - [ (taxes on business income) + (operating expenses) + (administrative expenses) + (finance expenses) ].

(4) Other lines of business: Computations shall be made with reference to the



above formulas.

Article 11 The computation of taxable income of an enterprise shall, in principle, be on an accrual basis.

The following income from business operations of an enterprise may be determined by stages and used as the basis for the computation of taxable income:

(1) Where products or commodities are sold by installment payment methods, income from sales may be recognized according to the invoice date of the products or commodities to be delivered; income from sales may also be recognized according to the date of payment to be made by the buyer as agreed upon in the contract;

(2) Where construction, installation and assembly projects, and provision of labour services extend beyond one year, income may be recognized according to the progress of the project or the amount of work completed;

(3) Where the processing or manufacturing of heavy machinery, equipments and ships for other enterprises extends beyond one year, income may be recognized according to the progress of the project or amount of work completed.

Article 12 Where Chinese-foreign contractual joint ventures operate on the basis of product-sharing, the partners thereto shall be deemed to receive income at the time of the division of the products; the amount of income shall be computed according to the price sold to third party or with reference to prevailing market prices.

Where foreign enterprises are engaged in the co-operative exploration of petroleum resources, the partners thereto shall be deemed to receive income at the time of the division of the crude oil; the amount of income shall be computed according to a price which is adjusted periodically with reference to the international market prices of crude oil of similar quality.

Article 13 In respect of income obtained by enterprises in the form of non-monetary assets or rights and interests, such income shall be computed or appraised with reference to prevailing market prices.

Article 14 "Exchange rate quoted by the State exchange control authorities"

mentioned in Article 21 of the Tax Law refers to the buying rate quoted by the State Administration of Exchange Control.

Article 15 In respect of income obtained by enterprises in foreign currency, upon payment of income tax in quarterly instalments in accordance with the provisions of Article 15 of the Tax Law, taxable income shall be computed by converting the income into Renminbi according to the exchange rate quotation on the last day of the quarter. At the time of final settlement following the end of the year, no recomputation and reconversion need be made in respect of income in a foreign currency for which tax has already been paid on a quarterly basis; only that portion of the foreign currency income of the entire year for which tax has not been paid shall, in respect of the computation of taxable income, be converted into Renminbi according to the exchange rate quotation on the last day of the tax year.

Article 16 Where an enterprise is unable to provide complete and accurate certificates of costs and expenses and is unable to correctly compute taxable income, the local tax authorities shall determine the rate of profit and compute taxable income with reference to the profit level of other enterprises in the same or similar trade. Where an enterprise is unable to provide complete and accurate certificates of revenues and is unable to report income correctly, the local tax authorities shall appraise and determine taxable income by the use of such methods as cost (expense) plus reasonable profits.

When the tax authorities appraise and determine profit rates or revenues in accordance with the provisions of the preceding paragraph, and where other treatment is provided by the laws, regulations and rules, such other treatment shall be applicable.

Article 17 Foreign air transportation and ocean shipping enterprises engaged in international transport business shall use 5% of the gross revenues from passenger and cargo transport and shipping services arising within China as taxable income.

Article 18 Where an enterprise with foreign investment invests in another enterprise within China, the profits (dividends) so obtained from the enterprise receiving such

investment may be excluded from taxable income of the enterprise; however, expenses and losses incurred in such above-mentioned investments shall not be deducted from taxable income of the enterprise.

Article 19 Unless otherwise stipulated by the State, the following items shall not be itemized as costs, expenses or losses in the computation of taxable income:

- (1) expenses in connection with the acquisition or construction of fixed assets;
- (2) expenses in connection with the transfer or development of intangible assets;
- (3) interest on capital;
- (4) various income tax payments;
- (5) fines for illegal business operations and losses due to the confiscation of property;
- (6) surcharges and fines for overdue payment of taxes;
- (7) the portion of losses due to natural disasters or accidents for which there has been compensation;
- (8) donations and contributions other than those used in China for public welfare or relief purposes;
- (9) royalties paid to the head office;
- (10) other expenses not related to production or business operations.

Article 20 Reasonable administrative expenses paid by a foreign enterprise with an establishment or site in China to the head office in connection with production or business operations of the establishment or site shall be permitted to be itemized as expenses following agreement by the local tax authorities after an examination and verification of documents of proof issued by the head office in respect of the scope of the administrative expenses, total amounts, the basis and methods of allocation, which shall be provided together with an accompanying verification report of a certified public accountant.

Administrative expenses in connection with production and business operations shall be allocated reasonably between enterprises with foreign investment and their branches.

Article 21 Reasonable interest payments incurred on loans in connection with production and business operations shall be permitted to be itemized as expenses following agreement by the local tax authorities after an examination and verification of documents of proof, which shall be provided by the enterprises in respect of the loans and interest payments. Interest paid on loans used by enterprises for the purchase or construction of fixed assets or the transfer or development of intangible assets prior to the assets being put into use shall be included in the original value of the assets. "Reasonable interest" mentioned in the first paragraph of this Article refers to interest computed at a rate not higher than normal commercial lending rates.

Article 22 Entertainment expenses incurred by enterprises in connection with production and business operations shall, when supported by authentic records or invoices and vouchers, be permitted to be itemized as expenses subject to the following limits:

(1) Where annual net sales are 15 million yuan (RMB) or less, not to exceed 0.5% of net sales; for that portion of annual net sales that exceeds 15 million yuan (RMB), not to exceed 0.3% of that portion of net sales.

(2) Where annual gross business income is 5 million yuan (RMB) or less, not to exceed 1% of annual gross business income; for that portion of annual gross business income that exceeds 5 million yuan (RMB), not to exceed 0.5% of that portion of annual gross business income.

Article 23 Exchange gains or losses incurred by enterprises during preconstruction or during production and business operations shall, except as otherwise provided by the State, be appropriately itemized as gains or losses for that respective period.

Article 24 Salaries and wages, and benefits and allowances paid by enterprises to employees shall be permitted to be itemized as expenses following agreement by the local tax authorities after an examination and verification of the submission of wage scales and supporting documents and relevant materials.

Foreign social security premiums paid by enterprises to employees working in China shall not be itemized as expenses.

Article 25 Enterprises engaged in such businesses as credit and leasing operations may, on the basis of actual requirements and following approval by the local tax authorities of a report thereon, provide year-by-year bad debt provisions, the amount of which shall not exceed 3% of the amount of the year-end loan balances (not including inter-bank loans) or the amount of accounts receivable, bills receivable and other such receivables, to be deducted from taxable income of that year.

The portion of the actual bad debt losses incurred by an enterprise which exceeds the bad debt provisions of the preceding year may be itemized as a loss in the current year; the portion less than the bad debt provisions of the previous year shall be included in taxable income of the current year.

Bad debt losses mentioned in the preceding paragraph shall be subject to approval after examination and verification by the local tax authorities.

Article 26 "Bad debt losses" mentioned in Article 25, paragraph 2 of these Rules refers to the following accounts receivable:

- (1) due to the bankruptcy of the debtor, collection is still not possible after the use of the bankruptcy assets for settlement;
- (2) due to the death of the debtor, collection is still not possible after the use of the estate for repayment;
- (3) due to the failure of the debtor to fulfil repayment obligations for over two years, collection is still not possible.

Article 27 Accounts receivable already itemized as bad debt losses which are recovered in full or in part by an enterprise in a subsequent year shall be included in taxable income of the year of recovery.

Article 28 Foreign enterprises with establishments or places in China may, except as otherwise provided by the State, deduct as expenses foreign income tax, which has been paid on profits (dividends), interest, rents, royalties and other income received from outside China and actually connected with such establishments or places.

Article 29 "Net assets or remaining property" mentioned in Article 18 of the Tax Law means the amount of all assets or property following deduction of various liabilities and losses upon the liquidation of an enterprise.

### Chapter III Tax Treatment for Assets

Article 30 "Fixed assets of enterprises" means houses, buildings and structures, machinery, mechanical apparatus, means of transport and other such equipment, appliances and tools related to production and business operations with a useful life of one year or more. Items not in the nature of major equipment which are used for production or business operations and which have a unit value of 2,000 yuan (RMB) or less, or with a useful life of two years or less may be itemized as expenses on the basis of actual consumption.

Article 31 The valuation of fixed assets shall be based on original cost.

The original cost of purchased fixed assets shall be the purchase price plus transportation expenses, installation expenses and other related expenses incurred prior to the use of the assets.

The original cost of fixed assets manufactured or constructed by an enterprise itself shall be the actual expenses incurred in their manufacture or construction.

The original cost of fixed assets treated as investments shall, giving consideration to the degree of wear and tear of the fixed assets, be such reasonable price as is specified in the contract, or a price appraised with reference to the relevant market price plus the relevant expenses incurred prior to the use thereof.

Article 32 Depreciation of fixed assets of an enterprise shall be computed commencing with the month following the month in which they are first put into use. The computation of depreciation shall cease in the month following the month in which the fixed assets cease to be used.

All investments made during the development stage by enterprises engaged in the

exploitation of oil resources shall, taking the oil (gas) field as a unit, be aggregated and treated as capital expenditures; the computation of depreciation shall begin in the month following the month in which the oil (gas) field commences commercial production.

Article 33 In respect of the computation of depreciation of fixed assets, the salvage value shall first be estimated and deducted from the original cost of the assets. The salvage value shall not be less than 10% of the original value; any request for retaining a lower salvage value or not salvage value must be approved by the local tax authorities.

Article 34 Depreciation of fixed assets shall be computed using the straight-line method. Where it is necessary to use any other method of depreciation, an application may be filed by an enterprise which, following examination and verification by the local tax authorities, shall be reported level-by-level to the State Tax Bureau for approval.

Article 35 The computation of the minimum useful life in respect of the depreciation of fixed assets is as follows:

- (1) for houses and buildings: 20 years;
- (2) for railway rolling stock, ships, machinery, mechanical apparatus, and other production equipment: 10 years;
- (3) for electronic equipment and means of transport other than railway rolling stock and ships, as well as as such fixtures, tools and furnishings related to production and business operations: 5 years.

Article 36 Depreciation of fixed assets in the nature of investments during the development stage and subsequent stages of an enterprise engaged in the exploitation of oil resources may be computed on a consolidated basis without retaining salvage value; the period of depreciation shall not be less than six years.

Article 37 "Houses and buildings" mentioned in Article 35, Item (1) of these Rules means houses, buildings and attached structures used for production and business operations, and living quarters and welfare facilities for employees, the scope of

which is as follows:

- houses, including factory buildings, business premises, office buildings, warehouses, residential buildings, canteens, and other such buildings;
- buildings, including towers, ponds, troughs, wells, racks, sheds (not including temporary, simply constructed structures such as work sheds and vehicle sheds), fields, roads, bridges, platforms, piers, docks, culverts, gas stations as well as pipes, smokestacks, and enclosing walls that are detached from buildings, machinery and equipment;

Facilities attached to buildings and structures mean auxiliary facilities that are inseparable from buildings and structures and for which no separate value is computed, including, for example, building and structure ventilation and drainage systems, oil pipelines, communication and power lines, elevators and sanitation equipment.

Article 38 The scope of railway rolling stock, ships, machinery, mechanical apparatus and other production equipment mentioned in Article 35, Item (2) of these Rules is as follows:

- "railway rolling stock" includes various types of locomotives, passenger coaches, freight cars, as well as auxiliary facilities on rolling stock for which no separate value is computed;
- "ships" includes various types of motor ships as well as auxiliary facilities on ships for which no separate value is computed;
- "machinery, mechanical apparatus and other production equipment" includes various types of machinery, mechanical apparatus, machinery units, production lines, as well as auxiliary equipment such as various types of power, transport and conduction equipment.

Article 39 The scope of electronic equipment, means of transport other than railway rolling stock and ships mentioned in Article 35, Item (3) of these Rules is as follows:

- "electronic equipment" means equipment comprising mainly integrated circuits, transistors, electron tubes and other electronic components whose primary functions are to bring into use the application of electronic technology (including software), including computers as well as computer-controlled robots, and digital-



control or program-control systems.

-- "means of transport other than railway rolling stock and ships" includes airplanes, automobiles, trams, tractors, motor bikes (boats), motorized sailboats, sailboats, and other means of transport.

Article 40 Where, for special reasons, it is necessary to shorten the useful life of fixed assets, an application may be submitted by an enterprise to the local tax authorities which following examination and verification shall be reported level-by-level to the State Tax Bureau for approval.

Fixed assets which for special reasons as mentioned in the preceding paragraph require the useful life to be shortened 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.

Article 41 Enterprises which acquire used fixed assets having a remaining useful life shorter than the useful life specified in Article 35 of these Rules may, following agreement by the local tax authorities after examination and verification of certifying documents so submitted, compute depreciation according to the remaining useful life.

Article 42 Where expenditures incur during the course of the use of fixed assets due to increased value caused by expansion, replacement, reconstruction and technical innovation of fixed assets, the original value of fixed assets shall be increased; where the period of use of fixed assets can be extended, the useful life shall be appropriately extended and the computation of depreciation adjusted accordingly.

Article 43 No further depreciation shall be allowed in respect of fixed assets which can be continued to be used after having been fully depreciated.

Article 44 The balance of proceeds from the transfer or disposal of fixed assets by an enterprise shall, after deduction of the under depreciated amount or the salvage value and handling fees, be entered into the profit and loss account for the current year.

Article 45 Depreciation of fixed assets received as gifts by enterprises may be computed on the basis of reasonable valuation.

Article 46 Patents, proprietary technology, trademarks, copyrights, land-use rights and other intangible assets of enterprises shall be appraised on the basis of the original value.

For alienated intangible assets, the original value shall be the actual amount paid based on a reasonable price. For self-developed intangible assets, the original value shall be the actual amount of expenditure incurred in the course of development. For intangible assets used as investment, the original value shall be such reasonable price as is stipulated in the agreement or contract.

Article 47 The amortization of intangible assets shall be computed using the straight-line method. Intangible assets transferred or assigned or used as investments, where the useful life is stipulated in the agreement or contract, may be amortized over the period of that useful life; the amortization period in respect of intangible assets for which no useful life has been stipulated or which have been developed internally shall not be less than ten years.

Article 48 Reasonable exploration expenses incurred by enterprises engaged in the exploitation of petroleum resources may be amortized against income from oil (gas) fields that have already commenced commercial production. The amortization period shall not be less than one year.

Where operation of a contract field owned by a foreign oil company is terminated due to failure to find commercially viable oil (gas), and where ownership of the contract for the exploitation of petroleum (gas) resources is not continued and management organizations or offices for carrying on operations for the exploitation of petroleum

(gas) resources are no longer maintained in China, reasonable exploration expenses already incurred in respect of the terminated contract field shall, upon examination and confirmation and the issuance of certification by the tax authorities, be permitted to be amortized against production income of a newly owned contract field when the new contract for cooperative exploitation of oil (gas) resources is signed within ten years from the date of the termination of the old contract.

Article 49 Expenses incurred by enterprises during the period of organization shall be amortized beginning with the month following the month in which production and business operations commence; the period of amortization shall not be less than five years. The period of organization mentioned in the preceding paragraph means the period from the date of approval of the organization of the enterprise to the date of commencement of production and business operations (including trial production and trial business operations).

Article 50 Inventories of merchandise, finished products, goods in process, semi-finished products, raw materials, and other such materials of enterprises shall be valued at cost.

Article 51 Enterprises may choose one of the following such methods: first-in, first-out; moving average; weighted average or last-in, first-out as the method of computing actual costs in respect of the delivery or receipt and use of goods in stock.

Once a method of valuation has been adopted for use, no change shall be made thereto. Where a change in the method of valuation is indeed necessary, the matter shall be reported to the local tax authorities for approval prior to the commencement of the next tax year.

#### Chapter IV Business Dealings Between Associated Enterprises

Article 52 "Associated enterprises" mentioned in Article 13 of the Tax Law refers to companies, enterprises and other economic units that have any of the following relationships with other enterprises:

- (1) relationships in respect of existing direct or indirect ownership of or control over such matters as finances, business operations or purchases and sales;
- (2) direct or indirect ownership of or control over it and another by a third party;
- (3) any other relationship in respect of an association of reciprocal interests.

Article 53 "Business transactions between independent enterprises" mentioned in Article 13 of the Tax Law means business dealings carried out between unassociated and unrelated enterprises on the basis of arm's length prices and common business practices. Enterprises have a duty to provide to the local tax authorities relevant materials such as standard prices and charges in respect of business dealings with their associated enterprises.

Article 54 Where prices in respect of purchase and sales transactions between an enterprise and its associated enterprises are not based on independent business dealings, adjustments may be made thereto by the local tax authorities according to the following arrangements and methods of determination:

- (1) based on prices of the same or similar business activities between independent enterprises;
- (2) based on the level of profits obtained from resales in respect of unassociated and unrelated third party prices;
- (3) based on costs plus reasonable expenses and profit margin;
- (4) based on any other reasonable method.

Article 55 Where interest paid or received in respect of accommodating financing between an enterprise and an associated enterprise exceeds or is lower than the amount that would be agreed upon by unassociated and unrelated parties, or where the rate of interest exceeds or is lower than the normal rate of interest in respect of similar business, adjustments may be made thereto by the local tax authorities with reference to normal rates of interest.

Article 56 Where labour service fees paid or received in respect of the provision of labour services by an enterprise to an associated enterprise are not based on business dealings between independent enterprises, adjustments may be made

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thereto by the local tax authorities with reference to the normal fee standards of similar labour activities.

Article 57 Where the valuation or the receipt or payment of usage fees in respect of such business dealings as the transfer of property or the granting of rights to the use of property between an enterprise and an associated enterprise is not based on business dealings between independent enterprises, adjustments may be made thereto by the local tax authorities with reference to amounts that would be agreed to by unassociated and unrelated parties.

Article 58 Management fees paid by an enterprise to an associated enterprise shall not be expensed.

#### Chapter V Withholding at Source

Article 59 "Taxable income on profits, interest, rents, royalties and other income" mentioned in Article 19, paragraph 1 of the Tax Law shall, except as otherwise stipulated by the State, be computed on the basis of gross income. Gross royalties obtained from the provision of patents and proprietary technology include fees for blueprint materials, technical services and personnel training, as well as other related fees.

Article 60 "Profits" mentioned in Article 19 of the Tax Law means income derived from the right to profits according to the proportion of investment, equity rights, stockholding, or other non-debt profit-sharing rights.

Article 61 "Other income" mentioned in Article 19 of the Tax Law includes gains from the transfer of property such as houses, buildings and structures and attached facilities within China and land-use rights. "Gains" mentioned in the preceding paragraph means the amount remaining from the receipt on transfer minus the original value of the property. Where foreign enterprises are unable to provide correct certification of the original value of the property, the original value of the property shall be determined by the local tax authorities according to the specific circumstances thereof.

Article 62 "The amount of payment" mentioned in Article 19, paragraph 2 of the Tax Law means cash payments, payment by remittances, and amounts paid by account transfers, as well as amounts in equivalent cash value paid in non-cash assets or rights and interests.

Article 63 "Profits obtained from an enterprise with foreign investment" mentioned in Article 19, paragraph 3, Item (1) of the Tax Law means income obtained from profits of an enterprise with foreign investment following the payment or the reduction of or exemption from income tax in accordance with the provisions of the Tax Law.

Article 64 "International finance organizations" mentioned in Article 19, paragraph 3, Item (2) of the Tax Law means financial institutions such as the International Monetary Fund, the World Bank, the Asian Development Bank, the International Development Association, and the International Fund for Agricultural Development.

Article 65 "Chinese State banks" mentioned in Article 19, paragraph 3, Item (2) and Item (3) of the Tax Law means 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, the Bank of Communications of China, the Investment Bank of China, and other financial institutions authorized by the State Council to engage in credit businesses such as foreign exchange deposits and loans.

Article 66 The scope of the reduction of or exemption from income tax on royalties provided for in Article 19, paragraph 3, Item (4) of the Tax Law is as follows:

(1) royalties received in providing proprietary technology for the development of farming, forestry, animal husbandry and fisheries:

(a) technology provided to improve soil and grasslands, develop barren mountainous regions and make full use of natural conditions;

(b) technology provided for the supplying of new varieties of animals and plants and for the production of pesticides of high effectiveness and low toxicity;

(c) technology provided such as to advance scientific production management in respect of farming, forestry, fisheries and animal husbandry, to preserve the

ecological balance, and to strengthen resistance to natural calamities;

(2) royalties received in providing proprietary technology for scientific institutions, institutions of higher learning and other scientific research units to conduct or cooperate in carrying out scientific research or scientific experimentation;

(3) royalties received in providing proprietary technology for the development of energy resources and expansion of communications and transportation;

(4) royalties received in providing proprietary technology in respect of energy conservation and the prevention and control of environmental pollution;

(5) royalties received in providing the following proprietary technology in respect of the development of important fields of science and technology:

(a) production technology for major and advanced mechanical and electrical equipment;

(b) nuclear power technology;

(c) production technology for large-scale integrated circuits;

(d) production technology for photoelectric integrated circuits, microwave semiconductors and microwave integrated circuits, and manufacturing technology for microwave electron tubes;

(e) manufacturing technology for ultra-high speed computers and microprocessors;

(f) optical telecommunications technology;

(g) technology for long-distance, ultra-high voltage direct current power transmission; and

(h) technology for the liquefaction, gasification and comprehensive utilization of coal.

Article 67 In respect of income of foreign enterprises engaged in China in construction, installation, assembly, and exploration contracting work, and provision of labour activities such as consulting, management and training, the tax authorities may designate the parties paying the contracted amounts and labour service fees as tax withholding agents.

#### Chapter VI Tax Preferences

Article 68 Pursuant to the provisions of Article 6 of the Tax Law, the granting of any

necessary preferential treatment in respect of enterprise income tax to enterprises with foreign investment that are encouraged by the State shall be implemented in accordance with the provisions of the relevant laws and administrative rules and regulations of the State.

Article 69 "Special economic zones" mentioned in Article 7, paragraph 1 of the Tax Law means the special economic zones of Shenzhen, Zhuhai, Shantou and Xiamen and the Hainan Special Economic Zone established by law or established upon approval of the State Council; "economic and technological development zones" mentioned therein means the economic and technological development zones in the coastal port cities established upon approval of the State Council.

Article 70 "Coastal economic open zones" mentioned in Article 7, paragraph 2 of the Tax Law means those cities, counties and districts established as coastal economic open zones upon approval of the State Council.

Article 71 "Imposition of enterprise income tax at the reduced rate of 15%" mentioned in Article 7, paragraph 1 of the Tax Law shall be limited to income obtained by enterprises from production and business operations in the respective areas so specified in Article 7, paragraph 1 of the Tax Law. "Imposition of enterprise income tax at the reduced rate of 24%" mentioned in Article 7, paragraph 2 of the Tax Law shall be limited to income obtained by enterprises from production and business operations in the respective areas so specified in Article 7, paragraph 2 of the Tax Law.

Article 72 "Enterprises with foreign investment of a production nature" mentioned in Article 7, paragraph 1 and paragraph 2 and Article 8, paragraph 1 of the Tax Law means enterprises with foreign investment engaged in the following industries:

- (1) machine manufacturing and electronics industries;
- (2) energy resource industries (not including exploitation of oil and natural gas);
- (3) metallurgical, chemical and building material industries;
- (4) light industries, and textiles and packaging industries;
- (5) medical equipment and pharmaceutical industries;
- (6) agriculture, forestry, animal husbandry, fisheries and water conservation;



- (7) construction industries;
- (8) communications and transportation industries (not including passenger transport);
- (9) development of science and technology, geological survey and industrial information consultancy directly for services in respect of production and services in respect of repair and maintenance of production equipment and precision instruments;
- (10) other industries as specified by the tax authorities under the State Council.

Article 73 "Imposition of enterprise income tax at the reduced rate of 15%" mentioned in Article 7, paragraph 3 of the Tax Law applies to the following:

(1) production-oriented enterprises with foreign investment established in the coastal economic open zones, special economic zones and in the old urban districts of municipalities where economic and technological development zones are located and which are engaged in the following projects:

- (a) technology-intensive or knowledge-intensive projects;
- (b) projects with foreign investments of over US \$ 30 million and having long periods for return on investment;
- (c) energy resource, transportation and port construction projects;
- (2) Chinese-foreign equity joint ventures engaged in port and dock construction;
- (3) financial institutions such as foreign capital banks and Chinese- foreign banks established in the special economic zones and other areas approved by the State Council, where the capital contribution of the foreign investor or the funds for business activities allocated by the head office bank to the branch bank exceeds US \$ 10 million, and where the period of operations is ten years or more;

(4) production-oriented enterprises with foreign investment established in the Pudong New Area of Shanghai, as well as enterprises with foreign investment engaged in energy resource and transport construction projects such as airports, ports, railways, highways and power stations;

(5) enterprises with foreign investment recognized as high or new technology enterprises established in the State high or new technology industrial development zones designated by the State Council, as well as enterprises with foreign investment recognized as new technology enterprises established in the new technology industrial development experimental zone of the municipality of Beijing;

(6) enterprises with foreign investment engaged in projects encouraged by the State and established in other areas stipulated by the State Council. Enterprises with foreign investment in projects listed in Item (1) of the preceding paragraph shall, following approval by the State Tax Bureau of an application submitted by such enterprises, be subject to enterprises income tax at the reduced tax rate of 15%.

Article 74 "The period of business operations" mentioned in Article 8, paragraph 1 of the Tax Law means the period commencing on the date an enterprise with foreign investment actually begins production or business operations (including trial production and trial business operations) and ending on the date the enterprise ceases production or business operations.

Enterprises with foreign investment that pursuant to the provisions of Article 8, paragraph 1 of the Tax Law may enjoy treatment in respect of reductions of or exemptions from enterprise income tax shall submit to the local tax authorities for examination and verification such circumstances as the lines of business in which engaged, names of major products, and the period of operations decided upon. No treatment in respect of reductions of or exemptions from enterprise income tax shall be enjoyed without examination and verification and agreement thereof.

Article 75 "The relevant provisions promulgated by the State Council before the entry into force of this Law" mentioned in Article 8, paragraph 2 of the Tax Law means the following provisions in respect of exemptions from or reductions of enterprise income tax promulgated or approved for promulgation by the State Council:

(1) Chinese-foreign equity joint ventures engaged in port and dock construction where the period of operations 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.

(2) Enterprises with foreign investment established in the Hainan Special Economic Zone and engaged in infrastructure facility projects such as airports,

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harbours, docks, highways, railways, power stations, coal mines and water conservation, and enterprises with foreign investment engaged in the development of and operations in agriculture where the period of operations is 15 years or more shall, following application by the enterprise and approval thereof by the tax authorities of Hainan Province 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.

(3) Enterprises with foreign investment established in the Pudong New Area of Shanghai and engaged in construction projects such as airports, ports, railways, highways and power stations where the period of operations is 15 years or more shall, following application by the enterprise and approval thereof by the tax authorities of the municipality of Shanghai 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.

(4) Enterprises with foreign investment established in the special economic zones and engaged in service-oriented industries where the amount of the foreign investment exceeds US \$ 5 million and the period of operations is ten years or more shall, following application by the enterprise and approval thereof by the tax authorities of the special economic zone and commencing with the first profit-making year, be exempt from enterprise income tax in the first year and subject to enterprise income tax at a rate reduced by one half for the second and third years.

(5) Financial institutions such as foreign capital banks and Chinese-foreign banks established in the special economic zones and other areas approved by the State Council where the capital contribution of the foreign investor or the funds for business activities allocated by the head office bank to the branch bank exceeds US \$ 10 million and the period of operations is ten years or more shall, following application by the enterprise and approval thereof by the local tax authorities and commencing with the first profit-making year, be exempt from enterprise income tax in the first year and subject to enterprise income tax at a rate reduced by one half for the second and third years.

(6) Chinese-foreign equity joint ventures recognized as high or new technology enterprises and established in the State high or new technology industrial

development zones designated by the State Council where the period of operations is ten years or more shall, following application by the enterprise and approval thereof by the local tax authorities and commencing with the first profit-making year, be exempt from enterprise income tax in the first year and second year. Enterprises with foreign investment established in the special economic zones and the economic and technological development zones shall be governed by the preferential tax provisions of the special economic zones and the economic and technological development zones. Enterprises with foreign investment established in the new technology industrial development experimental zone of the municipality of Beijing shall be governed by the preferential tax provisions of the new technology industrial development experimental zone of the municipality of Beijing.

(7) Export-oriented enterprises invested in and operated by foreign businesses for which in any year the output value of all export products amounts to 70% or more of the output value of the products of the enterprise for that year may pay enterprise income tax at the tax rate specified in the Tax Law reduced by one half after the period of enterprise income tax exemptions or reductions has expired in accordance with the provisions of the Tax Law. 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%.

(8) 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 pay for an additional three years enterprise income tax at the tax rate specified in the Tax Law reduced by one half.

(9) Implementation of other provisions in respect of exemptions from or reductions of enterprise income tax promulgated or approved for promulgation by the State Council.

Enterprises with foreign investment shall, in applying for exemptions from or reductions of enterprise income tax in accordance with the provisions of Item (6), Item (7), or Item (8) of the preceding paragraph, submit relevant documents of proof issued by departments in respect of the examination, verification and confirmation, the application shall be subjected to approval by the local tax authorities after

examination and verification.

Article 76 "The first profit-making year" mentioned in Article 8, paragraph 1 of the Tax Law and in Article 75 of these Rules means the first tax year in which profits are obtained by an enterprise following commencement of production or business operations. Where an enterprise suffers losses during the early stages after establishment, such losses may be made up by the income of the following tax year in accordance with the provisions of Article 11 of the Tax Law. The first profit-making year shall be the year in which profits are obtained after such losses are made up. The period for exemptions from or reductions of enterprise income tax specified in the first paragraph of Article 8 of the Tax Law and Article 75 of these Rules shall be computed continuously commencing with the year in which the enterprise begins to make profits. The computation shall not be deferred because of losses incurred in any of the subsequent years.

Article 77 Enterprises with foreign investment which commence operations in the middle of a year and earn profits may, where the actual period of operations is less than six months, choose to use the following year as the period in which to begin the computation of tax exemptions or tax reductions; however, income tax shall be paid in accordance with the Tax Law on profits earned during the year.

Article 78 Unless otherwise provided by the State Council, the preferential tax provisions of Article 8, paragraph 1 of the Tax Law shall not apply to enterprises engaged in the exploitation of such natural resources as petroleum, natural gas, rare metals and precious metals.

Article 79 Enterprises with foreign investment that have received exemptions from or reductions of enterprise income tax pursuant to the provisions of Article 8, paragraph 1 of the Tax Law and Article 75 of these Rules shall, where the actual period of operations is less than the period stipulated therein, except in the case of major losses sustained due to natural disasters or unforeseen accidents, make up the amount of the exemptions from or reductions of enterprise income tax.

Article 80 "Direct reinvestment" mentioned in Article 10 of the Tax Law refers to

profits received from an enterprise with foreign investment by foreign investor of that enterprise which prior to receipt are directly used to increase registered capital, or which following receipt are directly used to organize another enterprise with foreign investment. Foreign investors shall, in computing the amount of tax refundable in accordance with the provisions of Article 10 of the Tax Law, provide certificates confirming the use of the reinvested profits for the year; the local tax authorities shall adopt any reasonable method for the reckoning and determination thereof where certificates cannot be provided. Foreign investors shall, in respect of the application for a refund of tax, submit within one year of the date of the actual investment of the reinvested amount a record of the reinvested amount and a certificate for the investment period of the increased capital or contributed capital to the tax authorities in the place where the taxes were originally paid.

Article 81 "Other preferential provisions of the State Council" mentioned in Article 10 of the Tax Law refers to direct reinvestment in China by foreign investors for the organization and expansion of export-oriented enterprises or advanced technology enterprises, as well as profits of foreign investors earned from enterprises established in the Hainan Special Economic Zone that are directly reinvested in the Hainan Special Economic Zone in infrastructure projects and agriculture development enterprises and for which the entire portion of enterprise income tax that has already been paid on the reinvested amount may, in accordance with the provisions of the State Council, be refunded.

Foreign investors that apply for a refund of tax on reinvestments in accordance with the provisions of the preceding paragraph shall, in addition to completing the requirements pursuant to Article 80, paragraph 2 and paragraph 3 of these Rules, submit certificates issued by the examining, verifying and confirming departments confirming the organization and expansion of export-oriented enterprises or advanced technology enterprises. Enterprises in which foreign investors have reinvested in respect of the organization or expansion thereof which within three years of commencing production or operations have not achieved the standards in respect of export-oriented enterprises or have not continued to be confirmed as advanced technology enterprises shall repay 60% of the amount of tax refunded.

Article 82 "Tax refunds on reinvestments" mentioned in Article 10 of the Tax Law and Article 81, paragraph 1 of these Rules shall be computed according to the following formula:

Amount of tax refund = Reinvestment amount  $\times$  [1 - (originally applicable enterprise income tax rate + local income tax rate)]  $\times$  originally applicable enterprise income tax rate  $\times$  tax refund rate Chapter VII Tax Credits

Article 83 "Income tax already paid abroad" mentioned in Article 12 of the Tax Law means income tax actually paid abroad by an enterprise with foreign investment on income from sources outside China and does not include taxes paid for which compensation is later received or assumed by other parties.

Article 84 "The amount of tax payable computed on income from sources outside China in accordance with the provisions of this Law" mentioned in Article 12 of the Tax Law means the amount of tax payable computed on taxable income arising from income from abroad of enterprises with foreign investment, following the deduction of costs, expenses and losses allowable in accordance with the relevant provisions of the Tax Law and these Rules attributable to that income. The limit of the amount of tax payable that can be deducted shall be computed on a country-by-country basis; the method of computation is as follows: Limit on deduction Total amount of tax payable on = payable on domestic \* income from income from abroad income and foreign sources  
income from ———— abroad computed Total domestic in accordance with income and the Tax Law income from abroad

Article 85 Where the amount of income tax actually paid abroad on income from sources from abroad by enterprises with foreign investment is less than the deductible limit resulting from computation based on the provisions of Article 84 of these Rules, the actual amount of Income tax paid abroad may be deducted from the amount of tax payable; where the deductible limit is exceeded, the portion in excess shall not be deducted from tax and shall not be itemized as an expense, however, the portion not exceeding the limit thereof may be used as a deduction against following year's taxes; the time limit for such supplemental deductions shall not exceed five years.

Article 86 The provisions of Article 83 to Article 85 of these Rules shall apply only to enterprises with foreign investment with head offices established within China. Enterprises with foreign investment that deduct taxes in accordance with the provisions of Article 12 of the Tax Law shall provide the original tax payment certificates signed and issued by the foreign tax authorities in respect of the same year; copies or tax payment certificates of different years shall not be used as tax deduction certificates.

#### Chapter VIII Tax Administration

Article 87 Enterprises shall, within 30 days of completing business registration, complete tax registration with the local tax authorities. Enterprises with foreign investment that establish or terminate branch offices outside China shall, within 30 days of the date of establishment or termination thereof, complete with the local tax authorities procedures in respect of tax registration, amendments to the registration, or cancellation of the registration. Enterprises that complete registrations in the preceding paragraph shall, in accordance with the provisions, present relevant documents, licenses and materials.

Article 88 Enterprises that undergo important registration changes such as changes of address, restructurings, mergers, spin-offs, terminations, as well as changes in the amount of capital and scope of business shall, within 30 days of the completion of the change in business registration or prior to the cancellation of registration, complete the change in registration or cancellation of registration with the local tax authorities with the relevant documents.

Article 89 Foreign enterprises which establish two or more business organizations in China may use one of the selected business organizations in respect of the consolidated filing and payment of income tax. However, the business organization so selected shall meet the following conditions:

- (1) assumption of supervisory and management responsibility over the business operations of the other respective business organizations;
- (2) maintenance of complete account records and certificates which accurately



reflect the income, cost, expense and profit and loss situations of the respective business organizations.

Article 90 In respect of foreign enterprises which in accordance with the provisions of Article 89 of these Rules consolidate the filing and payment of Income tax, the business organization so selected thereunder shall submit an application for approval according to the following provisions after examination and verification thereof by the local tax authorities:

(1) consolidated filing and payment of income tax in respect of business organizations located in the same province, autonomous region, or municipality directly under the Central Government shall be subject to approval by the tax authorities of the province, autonomous region or municipality directly under the Central Government;

(2) consolidated filing and payment of income tax in respect of business organizations located in two or more provinces, autonomous regions, or municipalities directly under the Central Government shall be subject to approval by the State Tax Bureau.

Following approval for the filing and payment of tax on a consolidated basis by foreign enterprises, such circumstances as the establishment of additional business organizations, mergers, change of address, termination of operations, or shutdowns shall, prior to such event, be reported to the local tax authorities by the business organization responsible for the filing and payment of tax on a consolidated basis. Any change in respect of the business organization filing and paying tax on a consolidated basis shall be dealt with in accordance with the provisions of the preceding paragraph.

Article 91 Where business organizations related to foreign enterprises that file and pay income tax on a consolidated basis apply different tax rates in respect of the payment of tax, the amount of taxable income of the respective business organizations shall be separately computed on a reasonable basis and income tax shall be paid on the basis of the different tax rates. Where the respective business organizations mentioned in the preceding paragraph have losses and profits, tax shall be paid on the profit remaining after the offsetting of losses against profits

according to the tax rate applicable to the profit-making business organization. A business organization which incurs losses shall offset losses using profits of the subsequent year of the business organization; tax shall be paid on the profit remaining after the offsetting of such losses according to the tax rate applicable to the business organization; tax paid on the offsetting amounts shall be based on the tax rate applicable to the business organization that offsets the losses incurred by the other business organization.

Article 92 Notwithstanding the provisions of Article 91 of these Rules, where a business organization responsible for filings and payment of tax on a consolidated basis is unable to compute separately and reasonably the taxable income of the respective business organizations, the local tax authorities may make a reasonable apportionment among the respective business organizations of the gross taxable income based on the proportion of business revenues, the proportion of cost and expenses, the proportion of capital assets, and the proportion of the number of staff or salaries and wages.

Article 93 Enterprises with foreign investment which establish branch offices in China shall complete consolidated filings and payment of income tax with reference to the provisions of Article 91 and Article 92 of these Rules.

Article 94 Enterprises that pay taxes in advance on a quarterly basis in accordance with the provisions of Article 15 of the Tax Law shall pay in advance on the basis of actual quarterly profits; where difficulty exists in paying in advance on the basis of actual quarterly profits, the advanced quarterly payment of tax may be made according to one-fourth of the taxable income of the previous year or any other method approved by the local tax authorities.

Article 95 Enterprises, whether realizing profits or losses in a tax years, shall file income tax returns and final statements of account with the local tax authorities within the time limit prescribed in Article 16 of the Tax Law, and unless otherwise provided by the State, shall include when filing the final accounting statement an audit statement of a certified public accountant registered in China. Where, for special reasons, an enterprise cannot file an income tax return and final accounting

statement within the period prescribed in the Tax Law, an application shall be submitted within the filing period and, upon approval of the local tax authorities, the filing period may be extended appropriately.

Article 96 Final accounting statements submitted by branches or business organizations to head offices or business organizations that file and pay income tax on a consolidated basis, shall be submitted at the same time to the local tax authorities.

Article 97 Enterprises that are merged, spun off, or terminated during the year shall, within 60 days of the termination of production or business operations, complete with the local tax authorities procedures for the settlement of any liability for and payment of income tax, with refunds for overpayments or supplementary payments for deficiencies.

Article 98 Enterprises which must complete procedures for tax refunds in the case of overpayments of tax may, where income in foreign currency has already been converted into Renminbi according to the foreign exchange rate, convert the amount of the tax in Renminbi to be refunded into foreign currency according to the exchange rate in effect when the tax was originally paid, and then reconvert this amount of foreign currency into Renminbi according to the foreign exchange rate at the date of issuance of the tax refund certificate. Where it is necessary to complete procedures for supplementary tax payments in the case of underpayments of tax, the amount of supplementary tax payments shall be converted into Renminbi according to the foreign exchange rate at the date of issuance of the certificate for supplementary tax payments.

Article 99 Enterprises with foreign investment that undergo liquidation shall, prior to the completion of the cancellation of business registration, complete the filing of income tax returns with the local tax authorities.

Article 100 Except as otherwise provided by the State, enterprises shall maintain in China accounting vouchers, books and statements that support the correct computation of taxable income.

Accounting vouchers, books and statements, and reports of enterprises shall be completed in the Chinese language or completed in both the Chinese language and a foreign language. Enterprises that use electronic computers for purposes of book-keeping shall treat the accounting records in computer storage or in printed form as account books. All records on magnetic tape and diskette that have not been printed out shall be completely retained. Accounting vouchers, books and statements, and reports of enterprises shall be retained for at least 15 years.

Article 101 Invoices and certificates of receipts of enterprises shall be subjected to approval by the local tax authorities prior to printing and use.

Administrative measures in respect of the printing and use of invoices and certificates of receipts of enterprises shall be formulated by the State Tax Bureau.

Article 102 All enterprise income tax returns and certificates of tax payments shall be printed by the State Tax Bureau.

Article 103 If the final day of the period for payment of tax and the period for filing of a tax return falls on a Sunday or a legal holiday, the day following the holiday shall be used as the last day of the period.

Article 104 Tax authorities may pay withholding agents as specified in Article 19, paragraph 2 of the Tax Law and Article 67 of these Rules a handling fee based on a certain proportion of the amount of tax withheld; the specific methods shall be formulated by the State Tax Bureau.

Article 105 Local tax authorities may, according to the seriousness of the case, impose a fine of 5,000 yuan (RMB) or less on taxpayers or withholding agents that refuse to accept examination by the tax authorities in accordance with the relevant provisions or that refuse to pay late payment penalties within the time limit prescribed by the tax authorities.

Article 106 The tax authorities may, according to the seriousness of the case, impose

a fine of 5,000 yuan (RMB) or less on an enterprise which violates the provisions of Article 87; Article 90, paragraph 2; Article 95; Article 96; Article 97; Article 99; Article 100 and Article 101 of these Rules.

Article 107 "Tax evasion" mentioned in Article 25 of the Tax Law means the illegal actions of a taxpayer who has intentionally violated the provisions of the Tax Law such as by: falsifying, altering or destroying account books, receipts or accounting vouchers; falsely itemizing or overstating costs and expenses; concealing or understating taxable income or receipts; or avoiding taxes or fraudulently recovering taxes already paid.

Article 108 The tax authorities shall, in punishing taxpayers or withholding agents in accordance with the provisions of the Tax Law and these Rules, serve notice of contravention.

Article 109 Any entity or individual shall have the right to report a failure to comply with the Tax Law and the violators thereof. The tax authorities shall maintain confidentiality for informants and award them in accordance with the relevant provisions herein.

#### Chapter IX Supplementary Provisions

Article 110 Enterprises with foreign investment which completed business registration prior to the promulgation of the Tax Law may, in respect of the payment of income tax in accordance with the provisions of the Tax Law and where the liability for tax is higher than that prior to the entry into force of the Tax Law, use the original applicable tax rate during the approved period of operations. Where there is no established period of operations, income tax may be paid using the original applicable tax rate for five years commencing on the date of the entry into force of the Tax Law. However, in respect of the above-mentioned period, if during a tax year the tax liability is higher than that stipulated in the Tax Law, income tax shall be paid commencing with that tax year according to the tax rate stipulated in the Tax Law.

Article 111 Preferential treatment in terms of exemptions from and reductions of

enterprise income tax enjoyed pursuant to the laws and administrative rules and regulations prior to the entry into force of the Tax Law by enterprises with foreign investment which completed business registration prior to the promulgation of the Tax Law may continue to remain in effect until the termination of the period of exemptions and reductions.

Enterprises with foreign investment which completed business registration prior to the promulgation of the Tax Law but which have not earned profits or have earned profits for less than five years may, in accordance with the provisions of Article 8, paragraph 1 of the Tax Law, be granted a corresponding period of treatment in respect of exemptions from or reductions of enterprise income tax.

Article 112 Enterprises with foreign investment which completed business registration after the promulgation of the Tax Law but prior to the entry into force of the Tax Law may refer to the provisions of Article 110 and Article 111 of these Rules for implementation herein.

Article 113 The Ministry of Finance and the State Tax Bureau shall be responsible for the interpretation of these Rules.

Article 114 These Rules shall come into force on the effective date of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises. The Detailed Rules for the Implementation of the Income Tax Law of the People's Republic of China Concerning Chinese-Foreign Equity Joint Ventures and the Detailed Rules for the Implementation of the Income Tax Law of the People's Republic of China for Foreign Enterprises shall be abrogated at the same time.