

China - Rules for the Implementation of the Income Tax Law for Enterprises with Foreign Investment and Foreign Enterprises, 1991

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Rules for the Implementation of the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises 1
(Promulgated by Decree No. 85 of the State Council of the People's Republic of China on June 30, 1991, and effective as of July 1, 1991)

Chapter I - General Provisions 2

Article 1 3

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”). 4

Article 2 5

“ 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. 6

“ 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. 7

Article 3 8

“ 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. 9

“ 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. 10

Article 4

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“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:

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(1) representing principals on a regular basis in the arranging of purchase and signing of purchase contracts and the purchasing of commodities on commission;

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(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

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(3) having authority to represent principals on a regular basis in signing of sales contracts or in accepting of purchase orders.

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Article 5

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“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.

17

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.

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Article 6

19

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

20

(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;

21

(2) The following income received by foreign enterprises which have no establishments or sites in China:

22

(a) Profits (dividends) earned by enterprises in China;

23

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

24

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

25

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

26

(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; 27

(f) Other income derived from China and stipulated by the Ministry of Finance to be subject to tax. 28

Article 7 29

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 on a consolidated basis in accordance with the provisions of the Tax Law. 30

Article 8 31

“Tax year” mentioned in Article 4 of the Tax Law begins on January 1 and ends on December 31 under the Gregorian Calendar. 32

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 and application submitted by such enterprises, use their own 12-month fiscal year as the tax year. 33

Enterprises commencing business operations in the middle of a tax year or actually operation for a period or 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. 34

Enterprises that undergo liquidation shall use the period of liquidation as the tax year. 35

Article 9 36

“ 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 37

of these rules refers to the Ministry of Finance and the State Tax Bureau. 38

Chapter II - Computation of Taxable Income 39

Article 10 40

“The formula for the computation of taxable income” mentioned in Article 4 of the Tax Law is as follows: 41

(1) Manufacturing: 42

(a) Taxable income = (profit on sales) + (profit from other operations) + (non-business income)£-(non-business expenses); 43

(b) Profit on sales = (net sales)£-(cost of products sold)£-(taxes on sales)£-[(selling expenses) + (administrative expenses) + (finance expenses)]; 44

(c) Net sales = (gross sales)£-[(sales returns) + (sales discounts and allowances)]; 45

(d) Cost of products = (cost of products manufactured for the period) + (inventory of finished products at the beginning of the period)£-(inventory of finished products at the end of the period); 46

(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); 47

(f) Manufacturing costs for the period = (direct materials consumed in production for the period) + (direct labor) + (manufacturing expenses). 48

(2) Commerce: 49

(a) Taxable income = (profit on sales) + (profit from other operations) + (non-business income)£-(non-business expenses); 50

(b) Profit on sales = (net sales)£-(cost of sales)£-(taxes on sales)£-[(selling expenses) + (administrative expenses) + (finance expenses)]; 51

(c) Net sales = (gross sales)£-[(sales returns) + (sales discounts and allowances)]; 52

(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). 53

(3) Service trades: 54

(a) Taxable income = (net business income) + (non-operating income)£-(non-operating expenses); 55

(b) Net business income = (gross business income)£-[(taxes on business income) + (operating expenses) + (administrative expenses) + (finance expenses)]. 56

(4) Other lines of business: 57

Computations shall be made with reference to the above formulas. 58

Article 11 59

The computation of taxable income of an enterprise shall, in principle, be on an accrual basis. 60

The following income from business operations of an enterprise may be determined by 61

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; 62

(2) Where construction, installation and assembly projects, and provision of labor services extend beyond one year, income may be recognized according to the progress of the project or the amount of work completed; 63

(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 product or amount of work completed. 64

Article 12 65

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. 66

Where foreign enterprises are engaged in the co-operative exploration of petroleum resources, the partners there to 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. 67

Article 13 68

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. 69

Article 14 70

“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. 71

Article 15 72

In respect of income obtained by enterprises in foreign currency, upon payment of income tax in quarterly installments in accordance with the provisions of Article 15 73

of the Tax Law, taxable income shall be computed by converting the income into Ren- 74

minbi* 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

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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 of 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.

76

When the tax authorities appraise and determine profit rates of 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.

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Article 17

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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.

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Article 18

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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.

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Article 19

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

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(1) Expenses in connection with the acquisition or construction of fixed assets;

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(2) Expenses in connection with the transfer or development of intangible assets;

85

(3) Interest on capital;

86

- (4) Various income tax payments; 87
- (5) Fines for illegal business operations and losses due to the confiscation of property; 88
- (6) Surcharges and fines for overdue payment of taxes; 89
- (7) The portion of losses due to natural disasters or accidents for which there has been compensation; 90
- (8) Donations and contributions other those used in China for public welfare or relief purposes; 91
- (9) Royalties paid to the head office; 92
- (10) Other expenses not related to production or business operations. 93

Article 20 94

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. 95

Administrative expenses in connection with production and business operations shall be allocated reasonably between enterprises with foreign investment and their branches. 96

Article 21 97

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. 98

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. 99

Article 22 100

Entertainment expenses incurred by enterprises in connection with production and busi- 101

ness 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. 102

(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. 103

Article 23

Exchange gains or losses incurred by enterprises during pre-construction 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. 104

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 support* documents and relevant materials. 107

Foreign social security premiums paid by enterprises to employees working in China shall not be itemized as expenses. 108

Article 25

Enterprises engaged in such businesses as credit and leasing operations may, on the base 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. 110

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. 111

Bad debt losses mentioned in the preceding paragraph shall be subject to approval after examination and verification by the local tax authorities. 112

Article 26 113

“Bad debt losses” mentioned in Article 25, paragraph 2 of these Rules refers to the following accounts receivable: 114

(1) Due to the bankruptcy of the debtor, collection is still not possible after the use of the bankruptcy assets for settlement; 115

(2) Due to the death of the debtor, collection is still not possible after the use of the estate for repayment; 116

(3) Due to the failure of the debtor to fulfill repayment obligations for over two years, collection is still not possible. 117

Article 27 118

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 taxable income of the year of recovery. 119

Article 28 120

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. 121

Article 29 122

“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. 123

Chapter III - Tax Treatment for Assets 124

Article 30 125

“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 of two years or less may be itemized as expenses on the basis actual consumption. 126

Article 31 127

The valuation of fixed assets shall be based on original cost. 128

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. 129

The original cost of fixed assets manufactured or constructed by an enterprise itself shall be the actual expenses incurred in their manufacture or construction. 130

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. 131

Article 32 132

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. 133

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. 134

Article 33 135

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. 136

Article 34 137

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. 138

Article 35 139

The computation of the minimum useful life in respect of the depreciation of fixed assets is as follows: 140

- (1) For houses and buildings: 20 years; 141
- (2) For railway rolling stock, ships, machinery, mechanical apparatus, and other production equipment: 10 years; 142
- (3) For electronic equipment and means of transport other than railway rolling stock and ships, as well as such fixtures, tools and furnishings related to production and business operations: 5 years. 143

Article 36 144

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. 145

Article 37 146

“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: 147

Houses, including factory buildings, business premises, office buildings, warehouses, residential buildings, canteens, and other such buildings; 148

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; 149

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 equip. 150

Article 38 151

The scope of railway rolling stock, ships, machinery, mechanical apparatus and other production equipment mentioned in Article 53, Item (2) of these Rules is as follows: 152

“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; 153

“Ships” includes various types of motor ship as well as auxiliary facilities on ship for which no separate value is computed; 154

“Machinery, mechanical apparatus and other production equipment” includes various 155

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

156

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:

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“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.

158

“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.

159

Article 40

160

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.

161

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

162

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

163

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

164

(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.

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Article 41

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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.

167

Article 42 168

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 increase; 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. 169

Article 43 170

No further depreciation shall be allowed in respect of fixed assets which can be continued to be used after having been fully depreciated. 171

Article 44 172

The balance of proceeds from the transfer or disposal of fixed assets by an enterprise shall, after deduction of the undepreciated* amount or the salvage value and handling fees, be entered into the profit and loss account for the current year. 173

Article 45 174

Depreciation of fixed assets received as gifts be enterprises may be computed on the basis of reasonable valuation. 175

Article 46 176

Patents, proprietary technology, trademarks, copyrights, land-use rights and other intangible assets of enterprises shall be appraised on the basis of the original value. 177

For alienated intangible assets, the original value shall be the actual amount paid based on a reasonable price. 178

For self-developed intangible assets, the original value shall be the actual amount of expenditure incurred in the course of development. 179

For intangible assets used as investment, the original value shall be such reasonable price as is stipulated in the agreement or contract. 180

Article 47 181

The amortization of intangible assets shall be computed using the straight-line method. 182

Intangible assets transferred or used assigned or as investments, where the useful life is stipulated in the agreement of contract, may be amortized over the period of that useful life; the amortization period in respect of intangible assets for which no useful 183

life has been stipulated or which have been developed internally shall not be less than ten years.

Article 48

184

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.

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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 cooperation of oil (gas) resources is signed within ten years from the date of the termination of the old contract.

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Article 49

187

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.

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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).

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Article 50

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

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Article 51

192

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 or computing actual costs in respect of the delivery of receipt and use of goods in stock.

193

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

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reported to the local tax authorities for approval prior to the commencement of the next tax year.

Chapter IV - Business Dealings Between Associated Enterprises 195

Article 52 196

“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: 197

- (1) Relationships in respect of existing direct or indirect ownership of or control over such matters as finances, business operations or purchases and sales; 198
- (2) Direct or indirect ownership of or control over it and another by a third party; 199
- (3) Any other relationship in respect of an association of reciprocal interests. 200

Article 53 201

“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. 202

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. 204

Article 54 205

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 there to by the local tax authorities according to the following arrangements and methods of determination: 206

- (1) Based on prices of the same of similar business activities between independent enterprises; 207
- (2) Based on the level of profits obtained from resales in respect of unassociated and unrelated third party prices; 208
- (3) Based on costs plus reasonable expends* and profit margin; 209
- (4) Based on any other reasonable method. 210

Article 55 211

Where interest paid or received in respect of accommodating financing between an enterprise and an associated enterprise exceeds or is lower than the amount than 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. 212

Article 56 213

Where labor service fees paid or received in respect of the provision of labor 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 labor activities. 214

Article 57 215

Where the valuation or the receipt or payment of usage fees in respect of such business dealings as the transfer of property or the grantion* 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 be unassociated and unrelated parties.* 216

Article 58 217

Management fees paid by an enterprise to an associated enterprise shall not be expensed. 218

Chapter V - Withholding at Source 219

Article 59 220

“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. 221

Article 60 222

“Profits” mentioned in Article 19 of the Tax Law means income derived from the right 223

to profits according to the proportion of investment, equity rights, stockholding, or other non-debt profit-sharing rights.

Article 61

224

“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.

225

“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.

226

Article 62

227

“ The amount of payment” mentioned in Article 19, paragraph 2 of the Tax Law means cash payment, 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.

228

Article 63

229

“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.

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Article 64

231

“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.

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Article 65

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“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.

234

Article 66

235

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:

236

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

237

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

238

(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;

239

(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;

240

(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;

241

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

242

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

243

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

244

(a) Production technology for major and advanced mechanical and electrical equipment;

245

(b) Nuclear power technology;

246

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

247

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

248

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

249

(f) Optical telecommunications technology;

250

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

251

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

252

Article 67

253

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

254

Chapter VI - Tax Preferences

255

Article 68

256

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 enterprise 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.

257

Article 69

258

“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.

259

Article 70

260

“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.

261

Article 71

262

“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.

263

“Imposition of enterprises 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.

264

Article 72

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“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:

266

- (1) Machine manufacturing and electronics industries; 267
- (2) Energy resource industries (not including exploitation of oil and natural gas); 268
- (3) Metallurgical, chemical and building material industries; 269
- (4) Light industries, and textiles and packaging industries; 270
- (5) Medical equipment and pharmaceutical industries; 271
- (6) Agriculture, forestry, animal husbandry, fisheries and water conservation 272
- (7) Construction industries; 273
- (8) Communications and transportation industries (not including passenger transport); 274
- (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; 275
- (10) Other industries as specified by the tax authorities under the State Council. 276

Article 73

277

“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;

278

- (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; 279
 - (a) Technology-intensive or knowledge-intensive projects; 280
 - (b) Projects with foreign investments of over US\$ 30 million and having long periods for return on investment; 281
 - (c) Energy resource, transportation and port construction projects; 282
- (2) Chinese-foreign equity joint ventures engaged in port and dock construction; 283
- (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; 284
- (4) Production-oriented enterprises with foreign investment established in the Pudong 285

New Area of Shanghai, as well as enterprises with foreign investment engaged in energy resource and transport construction projects such as airports, ports, railways 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; 286

(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%. 287

Article 74 288

“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. 289

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. 290

Article 75 291

“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; 292

(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. 293

(2) Enterprises with foreign investment established in the Hainan Special Economic Zone and engaged in infrastructure facility projects such as airports, harbors, 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. 294

(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. 295

(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. 296

(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. 297

(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 in 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. 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. 298

(7) Export-oriented enterprises invested in and operated by foreign businesses for 299

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 the 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. 300

(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. 301

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. 302

Article 76 303

“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. 304

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. 305

Article 77 306

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, 307

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 Tax Law on profits earned during the year.

Article 78

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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.

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Article 79

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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.

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Article 80

312

“ 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.

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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.

314

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.

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Article 81

316

“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 of advanced technology enterprises, as well

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as profits of foreign investors earned from enterprises established in the Hainan Special Economic Zone they are directly reinvested in the Hainan Special Economic Zone in infrastructure projects and agriculture development enterprises and for which the entire portion of enterprises income tax that has already been paid on the reinvested amount may, in accordance with the provision 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. 318

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. 319

Article 82 320

“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: 321

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 322

Chapter VII - Tax Credits 323

Article 83 324

“Income tax already paid abroad” mentioned on 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. 325

Article 84 326

“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 327

deducted shall be computed on a country-by-country basis; the method of computation is as follows:

Total amount of tax Amount of 328
payable on domestic income from 329
Limit on deduction income and foreign sources 330
of tax payable on = income from ¡Á Total domestic 331
income from abroad computed income and 332
in accordance with income from 333
the Tax Law abroad 334

Article 85 335

Where the amount of income tax actually paid abroad on income from sources from 336
abroad by enterprises with foreign investment is less than the deductible limit result-
ing from computation based on the provisions of Article 84 of these Rules, the actual
amount of income tax paid abroad may be deducted of 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 86 337

The provisions of Article 83 to Article 85 of these Rules shall apply only to enterprises 338
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 339

Article 87 340

Enterprises shall. within 30 days of completing business registration. complete tax 341
registration with the local tax authorities. Enterprises with foreign investment that es-
tablish or terminate branch offices outside China shall, within 30 days of the date of es-
tablishment 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, present relevant documents, licenses and materials. 342

Article 88 343

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. 344

Article 89 345

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: 346

(1) Assumption of supervisory and management responsibility over the business operations of the other respective business. organizations; 347

(2) Maintenance of complete account accords and certificates which accurately reflect the income, cost, expenses and profit and loss situations of the respitiue* business organizations. 348

Article 90 349

In respect of foreign enterprises which in accordance with the provisions of Article 89 350

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 by the local tax authorities: 351

(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; 352

(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. 353

Following approval for the filing and payment of tax on a consolidated basis by foreign enterprise, such circumstances as the establishment of additional business organizations, mergers, change of address, termination of operations, or shutdowns shall, prior 354

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

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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.

356

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.

357

Article 92

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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 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.

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Article 93

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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.

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Article 94

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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

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the taxable income of the previous year or any other method approved by the local tax authorities.

Article 95

364

Enterprises, whether realizing profits or losses in a tax year, 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.

365

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.

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Article 96

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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.

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Article 97

369

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.

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Article 98

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Enterprises which must complete procedures for tax refunds in the case of overpayments of tax may, where income on 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.

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Article 99 373

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. 374

Article 100 375

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. 376

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. 377

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. 378

Accounting vouchers, books and statements, and reports of enterprises shall be retained for at least 15 years. 379

Article 101 380

Invoices and certificates of receipts of enterprises shall be subjected to approval by the local tax authorities prior to printing and use. 381

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. 382

Article 102 383

All enterprise income tax returns and certificates of tax payments shall be printed by the State Tax Bureau. 384

Article 103 385

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. 386

Article 104

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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.

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Article 105

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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.

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Article 106

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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.

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Article 107

393

“ 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.

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Article 108

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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.

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Article 109

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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.

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Chapter IX - Supplementary Provisions

399

Article 110

400

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.

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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.

402

Article 111

403

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 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.

404

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.

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Article 112

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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.

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Article 113

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

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Article 114

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These Rules shall come into force on the effective date of the Income Tax Law of the

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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.

Metadata

SiSU Metadata, document information

Document Manifest @:

`<http://www.jus.uio.no/lm/china.income.tax.law.for.enterprises.with.foreign.investment.and.foreign.enterprises.1991/sisu_manifest.html>`

Title: China - Rules for the Implementation of the Income Tax Law for Enterprises with Foreign Investment and Foreign Enterprises, 1991

Creator: MOFTEC

Rights: Copyright (C) 1991 MOFTEC

Publisher: SiSU `<http://www.jus.uio.no/sisu>` (this copy)

Date: 1991-06-30

Topics Registered: statute:China;foreign investment:China;income tax law:China

Version Information

Sourcefile: china.income.tax.law.for.enterprises.with.foreign.investment.and.foreign.enterprises.1991.sst

Filetype: SiSU text 2.0

Source Digest: SHA256(china.income.tax.law.for.enterprises.with.foreign.investment.and.foreign.enterprises.-1991.sst)=ee20c7d124f6bf94b1cf630999c1c5182533f15d25dd342b3bee4ffc91495ecd

Skin Digest: SHA256(skin_lm.rb)=5acda64a9532f9ef6b71693da2b471d4efac2f23a8499e68de066eec8ea9b8e9

Generated

Document (dal) last generated: Tue Sep 21 16:22:02 -0400 2010

Generated by: SiSU 2.6.3 of 2010w30/3 (2010-07-28)

Ruby version: ruby 1.8.7 (2010-08-16 patchlevel 302) [i486-linux]