

China - Income Tax Law for Enterprises with Foreign Investment and Foreign Enterprises, 1991

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**Income Tax Law of the People's Republic of China for Enterprises
with Foreign Investment and Foreign Enterprises** 1
**(Adopted at the Forth Session of the National People's Congress
and promulgated by Order No. 45 of the President of the People's
Republic of China on April 9, 1991)**

Article 1 2

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. 3

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. 4

Article 2 5

“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. 6

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. 7

Article 3 8

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. 9

Article 4 10

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. 11

Article 5 12

The income tax on enterprises with foreign investment and the income tax which shall 13

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

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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.

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Article 7

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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%.

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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%.

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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.

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Article 8

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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 exploration 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.

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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

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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 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. 23

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. 24

Article 9 25

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. 26

Article 10 27

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 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. 28

Article 11 29

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 30

may be offset against income of the next subsequent year, and so on, over a period not exceeding 5 years.

Article 12

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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.

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Article 13

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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.

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Article 14

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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.

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Article 15

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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.

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Article 16

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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.

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Article 17

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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.

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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.

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Article 18

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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.

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Article 19

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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.

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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 withholding income tax return to the local tax authorities.

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An exemption from or reduction of income tax shall apply to the following income: 49

(1) profits derived by a foreign investor from an enterprise with foreign investment shall be exempted from income tax; 50

(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; 51

(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 52

(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 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. 53

Apart from the aforesaid provisions of this article, if preferential treatment in the form of reduction of or exemption from income tax on profits, interest, rent, royalties and other income, is required, it shall be regulated by the State Council. 54

Article 20 55

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. 56

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. 57

When making an inspection, the tax officials shall produce their identity documents and shall be responsible for confidentiality. 58

Article 21 59

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. 60

Article 22 61

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, 62

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

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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.

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Where 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 tax payers 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.

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Article 24

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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.

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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 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.

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Article 25

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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

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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

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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 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 receipt of the notification on decision made after reconsideration.

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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 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.

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Article 27

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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 apply within the period prescribed by the State Council. Specific rules shall be regulated by the State Council.

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Article 28

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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.

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Article 29

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

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Article 30

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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.

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