

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

[2007]

(Adopted at the 4th Session of the 7th National People's Congress on Apr. 9, 1991 and promulgated on the same day on Order No. 45 of the President of the People's Republic of China)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 9 The people's governments of the provinces, autonomous regions and municipalities directly under the State Council may decide in light of the local reality on reduction and

exemption of local income tax on those industries and items in which foreign investors are encouraged to make investment.

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

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

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

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

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

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

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

and accounting statements of final settlement within four months after the year-end.

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

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

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

Article 19 If a foreign enterprise with no establishment or other setup in China and has obtained profits, interests, rentals, royalties and other income from sources in China or it has establishments or other setups in China but has obtained the above cited income from sources without any connection with those establishments or setups, it shall pay an enterprise income tax at the rate of 20%.

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

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

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

advanced technology or are obtained with special favor shall be exempt from income tax.

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

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

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

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

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

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

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

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

In case a tax withholder fails to hand over the withheld tax payment to the state treasury in the prescribed time limit, the tax authorities shall make it hand over the withholding within the prescribed time limit and may in the meanwhile impose a fine of up to 5,000 yuan; in case the

withholder still fails to hand in the money in time, the tax authorities shall pursue the tax payment and impose a fine of up to 10,000 yuan; and if the case is grave enough, the criminal responsibility of its legal representative and the person with direct responsibility shall be sought with reference to the provisions of Article 121 of the Criminal Law of China.

Article 25 In the case of tax evasion by concealment or deception, or failure of paying tax within the prescribed time limit as provided in this Law, and payment is still refused within the time limit despite the urge by the tax authorities, the tax authorities shall pursue the payment of the tax payable and impose a fine up to five times the tax amount unpaid; and in a grave case, the criminal responsibility of the legal representative and the person with direct responsibility shall be sought in accordance with the provisions of Article 121 of the Criminal Law of China.

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

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

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

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

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

Article 30 This Law shall come into force as of July 1, 1991. The "Income Tax Law of the

People's Republic of China concerning Chinese-Foreign Equity Joint Ventures" and the "Income Tax Law of the People's Republic of China concerning Foreign Enterprises" shall be abrogated therefrom.