



LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON INCOME TAX OF ENTERPRISES WITH FOREIGN INVESTMENT AND FOREIGN ENTERPRISES

(Adopted by the Fourth Session of the Seventh National People's Congress on April 9, 1991, promulgated by Order No.45 of the President of the People's Republic of China on April 9, 1991, and effective on July 1, 1991)

Article 1 The income originating in the production and business operations and other income of enterprises with foreign investment in the territory of the People's Republic of China shall be subject to income tax in accordance with the provisions of this Law.

Foreign enterprises shall pay income tax for their income arising in production and business operations and other income in the territory of the People's Republic of China in accordance with the provisions of this Law.

Article 2 The term "enterprises with foreign investment" as is used in this Law means Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and foreign-capital enterprises, which are established in China.

The term "foreign enterprises" as is used in this Law means foreign companies, enterprises and other economic organizations, which have set up organizations or sites dealing in production or business operations in China, and which have not set up organizations or sites but have income originating in China.

Article 3 The income originating both inside and outside China of enterprises with foreign investment with their head offices in China shall be subject to income tax. Foreign enterprises pay income tax for their income originating in China.

Article 4 For enterprises with foreign investment or organizations or sites dealing in production or business operation set up within the territory of China by foreign enterprises, their taxable income amount shall be the remaining amount by deducting the costs, expenses and losses from their gross income in one tax year.

Article 5 The enterprise income tax charged on enterprises with foreign investment and on foreign enterprises for the income of their organizations and sites dealing in production and business operations set up in the territory of China shall be calculated based on the taxable income amount and the tax rate is 30 per cent; and the local income tax shall be calculated based on the taxable income amount and the tax rate is 3 per cent.

Article 6 According to its industrial policies, the State gives the foreign investment direction and encourages to establish enterprises with foreign investment utilizing advanced technologies and equipment with their products being completely or mostly exported.

Article 7 Enterprises with foreign investment founded in special economic zones, organizations or sites dealing in production or business operations set up in the special economic zones by foreign enterprises or productive enterprises with foreign investment founded in the economic and technological development zones, shall be subject to the enterprise income tax at a reduced rate of 15 per cent.

Productive enterprises with foreign investment founded in the coastal economic open areas and in the old districts of the cities where the special economic zones or economic and technological development zones are located, shall be subject to the enterprise income tax at a reduced rate of 24 per cent.

Where enterprises with foreign investment founded in the coastal economic open areas, in the old districts of the cities where the special economic zones or economic and technological development zones are located, or in other regions designated by the State Council, fall under the categories of energy, communications, harbor, docks or other projects which are encouraged by the State, the enterprise income tax may be charged at a reduced rate of 15 per cent. The State Council shall lay down the concrete measures thereon.

Article 8 In case productive enterprises with foreign investment have an operating period of more than 10 years, its enterprise income tax is, commencing from the year in which it starts to profit, exempted from in the first and second year, and levied with a 50 per cent reduction from the third to the fifth year. The State Council is, however, separately to prescribe those for the projects in the exploration of resources such as petroleum, natural gas, rare metals and precious metals. If the actual operating period of an enterprise with foreign investment is less than 10 years, it shall make up the enterprise income tax which has been exempted or reduced.

The State Council's regulations, announced prior to the entry into force of this Law, which grant preferential treatment of a longer term of enterprise income tax exemption or reduction than those provided in the preceding paragraph for enterprises engaging in energy, communications, harbor, dock and other key productive projects, or grant

preferential treatment of enterprise income tax exemption or reduction for non-productive key projects, shall continue to be effective after the entry into force of this Law.

Enterprises with foreign investment engaging in agriculture, forestry or animal husbandry or enterprises with foreign investment established in remote and economically-underdeveloped areas, which have enjoyed the treatment on tax exemption and tax reduction as provided in the preceding two paragraphs, may, after the expiration of the period of treatment and upon the application of the enterprise and approval by the competent department of the State Council for taxation, continue to enjoy a 15 per cent to 30 per cent reduction of the amount of enterprise income tax payable for 10 more years.

If, after the entry into force of this Law, it is necessary to modify the provisions of the preceding three paragraphs on enterprise income tax exemption or reduction, the State Council shall submit such modifications to the Standing Committee of the National People's Congress for decisions.

Article 9 People's governments of provinces, autonomous regions and municipalities directly under the Central Government may, in light of the actual conditions, decide on the local income tax exemption or reduction for the sectors and items on which the foreign investment is encouraged.

Article 10 Where a foreign investor of an enterprise with foreign investment uses its profits earned from the enterprise directly to reinvest into the enterprise for increasing its registered capital, or uses its profits as capital to invest and establish other enterprises with foreign investment with the operating period not less than five years, 40 per cent of the income tax amount already charged on the reinvested portion shall, upon the application of the investor and approval by the tax authority, be refunded therefor, if

the State Council prescribes otherwise on the preference, the regulations of the State Council shall be observed; in case the reinvestment has been withdrawn before the expiration of five full years, the amount of refunded tax shall be paid back.

Article 11 Where an enterprise with foreign investment or an organization or site of a foreign enterprise set up in the territory of China dealing in production and business operations sustains losses in a tax year, it may make up such losses by using the income of the following tax year; if the income of the following tax year is not sufficient to make up for the losses, the losses may be made up in the continuing and consecutive tax years, however, the maximum term may not exceed five years.

Article 12 The income tax already paid abroad by an enterprise with foreign investment for its income originating outside China may, in filing its consolidated income tax return, be deducted from its total tax amount payable, however, the amount deducted may not exceed the tax amount payable calculated in accordance with the provisions of this Law for its income abroad.

Article 13 When an enterprise with foreign investment or an organization or site of a foreign enterprise set up in the territory of China dealing in production and business operations conducts business transactions with its associated enterprises, the costs or fees shall be paid or received in the same way as that for business transactions among independent enterprises. If such payment or receipt of costs or fees is not made in the same way as that for business transactions among independent enterprises for the purpose of reducing its taxable income amount, the tax authority has the power to make necessary adjustment.

Article 14 Enterprises with foreign investment and organizations or sites of foreign enterprises set up in

the territory of China dealing in production or business operations shall, for the important items of registration such as their establishment, move, merger, split, termination or modification, go through the registration or the registration of modification and cancellation with the administrative management departments for industry and commerce, and shall, on the strength of relevant documents, go through the taxation registration or the registration of modification and cancellation with the local tax authority.

Article 15 The enterprise income tax and local income tax are calculated annually and advance payment shall be made quarterly. The advance payment shall be made within 15 days after the end of each quarter; the final settlement shall be made within five months after the end of each tax year, and any payment in excess shall be refunded and any deficiency shall be made up.

Article 16 Enterprises with foreign investment and organizations and sites of foreign enterprises set up in the territory of China dealing in production or business operations shall, within each period of time for the advance payment of income tax, submit the income tax declaration forms for the advance payment to local tax organs; and shall, within four months after the end of a tax year, submit the annual income tax declaration forms and final accounting statements.

Article 17 The financial and accounting systems of enterprises with foreign investment and organizations and sites of foreign enterprises set up in the territory of China dealing in production or business operations shall be submitted to the local tax authority for reference. Every accounting record must be complete and accurate, and has lawful vouchers as accounting certificate.

Where the financial or accounting treatment procedures of an enterprise with foreign investment or an organization or site of a foreign enterprise set up in the territory of China dealing in production or business operations are not in conformity with the relevant regulations of the State Council on taxation, the tax shall be calculated and paid by applying the relevant regulations of the State Council on taxation.

Article 18 If the amount in surplus after the deduction of enterprise's undistributed profits, various funds and liquidation expenses from the net amount of assets or the remaining property of a foreign investment enterprise that is under liquidation exceeds the actual amount of contributed capital, the portion in excess shall be the liquidation income on which the income tax shall be charged in accordance with the provisions of this Law.

Article 19 In case a foreign enterprise does not have an organization or site in the territory of China but has profits, interests, rental, royalty and other income originating in China, or has an organization or a site in the territory of China but the above-said income does not have any actual connection with its organization or site, a 20 per cent income tax shall be charged on all above-said income.

In regard to the income tax charged in accordance with the provisions of the preceding paragraph, the actual beneficial owner shall be the taxpayer and the payer shall be the withholding agent. The tax payable shall be withheld from the amount paid by the payer each time. The withholding agent shall, within five days, turn over the tax amount withheld each time to the state treasury, and submit a report on the income tax withheld to the local tax authority.

The following income is exempted from, or reduced of, the income tax:

1. profits earned by a foreign investor from an enterprise with foreign investment are exempted from the income tax;
2. interest income from loans lent to the Chinese Government and state banks of China by international financial organizations is exempted from the income tax;
3. interest income from loans lent to state banks of China by foreign banks at preferential interest rates is exempted from the income tax; and
4. on the royalty received from the supply of proprietary technologies for scientific research, energy resources exploration, development of the communications industry, agricultural, forestry and animal husbandry production, and the development of important technologies, the income tax may be charged at the reduced rate of 10 per cent upon approval by the competent department of the State Council for taxation, and if the technology supplied is advanced or the terms are preferential, the income tax may be exempted from.

Where, apart from those provided by this Article, it is necessary to grant preferential treatment of income tax reduction or exemption for the profits, interests, rental, royalty and other income, the State Council shall make regulations thereon.

Article 20 Tax authorities have the power to conduct inspections into the financial, accounting and tax payment affairs of enterprises with foreign investment and organizations or sites of foreign enterprises set up in the territory of China dealing in production or business operations; and have the power to conduct inspections into the withholding agents on the condition on tax withheld. The units and the withholding agents being inspected must report thereto true to fact and provide relevant

materials, and may not refuse or make any concealment.

When the tax officials dispatched by the tax authorities carry out inspections, they shall show and present their certificates and shall be responsible for keeping confidential therefor.

Article 21 Income tax charged in accordance with this Law shall use Renminbi as the calculating unit. Where the income is in foreign currency, it shall be converted into Renminbi according to the exchange rate quoted by the state exchange control organ for paying the tax.

Article 22 In case a taxpayer fails to pay the tax within the set period of time, or in case a withholding agent fails to turn over the tax withheld within the set period of time, the tax authority shall, in addition to ordering to make payment within a set period of time, impose a fine for overdue payment of 0.2 per cent of the overdue tax amount for each day, starting from the day on which the payment becomes overdue.

Article 23 Whoever fails to complete the taxation registration or registration on modifications or cancellation with the tax authority within a set period of time, fails to submit the income tax declaration form, final accounting statements or declaration form on income tax withheld to the tax authority within a set period of time, or fails to report and submit its financial and accounting systems to the tax authority for reference, is ordered by the tax authority to complete the registration or to submit the said documents within a set period of time, and may be imposed a fine not exceeding 5,000 yuan.

Whoever, after being ordered to make the registration and submission of the documents by the tax authority within a set period of time, fails again to complete the taxation registration or registration on modification, or fails again to submit the income tax

declaration form, final accounting statements or the declaration form on income tax withheld to the tax organ after the expiration of the set period of time, is imposed a fine not exceeding 10,000 yuan; if the circumstances are serious, the criminal responsibility of the legal representative and the person directly responsible shall be investigated by applying mutatis mutandis the provisions of Article 121 of the Criminal Law.

Article 24 A withholding agent that fails to execute its obligation to withhold as provided by this Law and fails to withhold or withhold an amount less than the amount that should be withheld is ordered by the tax organ to pay the amount that should be withheld but not withheld within a set period of time and may be imposed a fine not exceeding 100 per cent of the tax amount that should be withheld.

A withholding agent that fails to turn over the tax withheld into the state treasury within the set period of time is ordered by the tax authority to turn over the tax within the set period of time and may be imposed a fine not exceeding 5,000 yuan; if the withholding agent fails again to turn over the tax withheld after the expiration of the set period of time, the tax authority shall pursue for the tax payment according to law and concurrently impose a fine not exceeding 10,000 yuan; if the circumstances are serious, the criminal responsibility of the legal representative and the person directly responsible shall be investigated by applying mutatis mutandis the provisions of Article 121 of the Criminal Law.

Article 25 Whoever evades the tax by resorting to deception or concealment or fails to pay the tax within the specified time as provided by this Law and after the tax authority presses for the payment of the tax, fails again to make the tax payment within the specified time, is ordered by the tax authority to pay the tax payable therefrom and concurrently imposed

a fine not exceeding five times the tax amount which should be paid; if the circumstances are serious, the criminal responsibility of the legal representative and the person directly responsible shall be investigated in accordance with the provisions of Article 121 of the Criminal Law.

Article 26 In case an enterprise with foreign investment, foreign enterprise or withholding agent has a dispute over the tax with the tax authority, it must pay the tax first in accordance with the provisions and then may, within 60 days after receiving the certificate of tax payment issued by the tax organ, apply to the tax authority at the next higher level for reconsideration. The tax authority at the next higher level shall, within 60 days after receiving the application for reconsideration, make a reconsideration decision. Whoever does not agree with the reconsideration decision may, within 15 days after receiving the reconsideration decision, file a suit in a people's court.

A party concerned who does not agree with a penalty decision made by the tax authority may, within 15 days after receiving the notice of penalty, apply for reconsideration to the next higher tax authority of the tax authority which makes the penalty decision; if the party does still not agree with the reconsideration decision, it may, within 15 days after receiving the reconsideration decision, file a suit in a people's court. A party concerned also may, within 15 days after receiving a notice of penalty, directly file a suit in a people's court. In the event of a party concerned failing both to apply for a reconsideration or to file a suit in a people's court within a specified time and to comply with a penalty decision, the tax authority which makes the penalty decision may apply to a people's court for enforcement.

Article 27 Where an enterprise with foreign investment established prior to the promulgation of

this Law would, if applying the provisions of this Law, have to pay income tax at a higher tax rate or enjoy less preferential treatment of tax exemption or reduction than that prior to the implementation of this Law, the laws and relevant regulations of the State Council issued prior to the implementation of this Law shall, within its approved operating period, continue to apply thereto; in absence of the operating period, the laws and relevant regulations of the State Council issued prior to the implementation of this Law shall continue to apply thereto for the period of time as prescribed by the State Council. The State Council shall lay down the concrete measures therefore.

Article 28 In case an agreement pertaining taxation concluded between the government of the People's Republic of China and a foreign government contains the different provisions with this Law, the provisions of the agreement shall apply.

Article 29 The State Council shall formulate the detailed rules for implementation in accordance with this Law.

Article 30 This Law shall enter into force on July 1, 1991. The Income Tax Law of the People's Republic of China for Chinese-Foreign Equity Joint Ventures and the Income Tax Law of the People's Republic of China for Foreign Enterprises shall be repealed on the