

RULES FOR THE IMPLEMENTATION OF THE INCOME TAX LAW OF THE PEOPLE'S
REPUBLIC OF CHINA FOR ENTERPRISES WITH FOREIGN INVESTMENT AND
FOREIGN ENTERPRISES

(Promulgated by Decree No. 85 of the State Council of the People's Republic of China on June 30,
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Chapter 1 General Provisions

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

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

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

Article 3 "Enterprises with foreign investment" mentioned in Article 2, paragraph 1 of the
Tax Law and "foreign companies, enterprises and other economic organizations which have
establishments or places in China and engage in production or business operations" mentioned in
Article 2, paragraph 2 of the Tax Law are, unless otherwise especially specified, generally all
referred to as "enterprises" in these Rules. "Establishments or places" mentioned in Article 2,
paragraph 2 of the Tax Law refers to management organizations, business organizations,
administrative organizations and places for factories and the exploitation of natural resources,
places for contracting of construction, installation, assembly, and exploration work, places for the
provision of labor services, and business agents.

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

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

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

control over such enterprise.

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

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

(1) income from production and business operations derived by enterprises with foreign investment and foreign enterprises which have establishments or places in China, as well as profits (dividends), interest, rents, royalties and other income arising within or outside China actually connected with establishments or sites established in China by enterprises with foreign investment or foreign enterprises;

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

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

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

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

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

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

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

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

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

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

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

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

Article 9 "The competent authority for tax affairs under the State Council" mentioned in Article 8, paragraph 3 and Article 19, paragraph 3, item (4) of the Tax Law and Article 72 of these Rules refers to the Ministry of Finance and the State Tax Bureau.

Chapter II Computation of Taxable Income

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

(1) Manufacturing:

- (a) taxable income = (profit on sales) + (profit from other operations)
 (b) profit on sales = (net sales) - (cost of products sold) - (taxes on sales) - [(selling expenses) - (administrative expenses) + (finance expenses)];
 (c) net sales = (gross sales) - [(sales returns) - (sales discounts and allowances)];
 (d) cost of products sold = (cost of products manufactured for the period)
 (e) cost of products manufactured for the period = (manufacturing costs for the period) + (inventory of semi-finished products and products in process at the beginning of the period) - (inventory of semi-finished products and products in process at the end of the period);
 (f) manufacturing costs for the period = (direct materials consumed in production for the period) - (direct labour) + (manufacturing expenses).

(2) Commerce:

- (a) taxable income = (profit on sales) + (profit from other operations)
 (b) profit on sales = (net sales) - (cost of sales) - (taxes on sales) - [(selling expenses) + (administrative expenses) + (finance expenses)];
 (c) net sales = (gross sales) - [(sales returns) + (sales discounts and allowances)];
 (d) cost of sales = (inventory of merchandise at the beginning of the period) + [(purchase of merchandise during the period) - [(purchase returns) + (purchase discounts and allowances)] + (purchasing expenses)] - (inventory of merchandise at the end of the period).

(3) Service trades:

- (a) taxable income = (net business income) + (non-operating income) - (non-operating expenses);
 (b) net business income = (gross business income) - [(taxes on business income) + (operating expenses) + (administrative expenses) + (finance expenses)].
 (4) Other lines of business: Computations shall be made with reference to the above formulas.

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

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

- (1) Where products or commodities are sold by installment payment methods, income from sales may be recognized according to the invoice date of the products or commodities to be delivered; income from sales may also be recognized according to the date of payment to be made by the buyer as agreed upon in the contract;
 (2) Where construction, installation and assembly projects, and provision of labour services extend beyond one year, income may be recognized according to the progress of the project or the amount of work completed;
 (3) Where the processing or manufacturing of heavy machinery, equipments and ships for other enterprises extends beyond one year, income may be recognized according to the progress of the project or amount of work completed.

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

Where foreign enterprises are engaged in the co-operative exploration of petroleum resources,

the partners thereto shall be deemed to receive income at the time of the division of the crude oil; the amount of income shall be computed according to a price which is adjusted periodically with reference to the international market prices of crude oil of similar quality.

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

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

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

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

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

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

Article 18 Where an enterprise with foreign investment invests in another enterprise within China, the profits (dividends) so obtained from the enterprise receiving such investment may be excluded from taxable income of the enterprise; however, expenses and losses incurred in such above-mentioned investments shall not be deducted from taxable income of the enterprise.

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

- (1) expenses in connection with the acquisition or construction of fixed assets;
- (2) expenses in connection with the transfer or development of intangible assets;
- (3) interest on capital;
- (4) various income tax payments;
- (5) fines for illegal business operations and losses due to the confiscation of property;
- (6) surcharges and fines for overdue payment of taxes;
- (7) the portion of losses due to natural disasters or accidents for which there has been

compensation:

(8) donations and contributions other than those used in China for public welfare or relief purposes:

(9) royalties paid to the head office;

(10) other expenses not related to production or business operations.

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

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

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

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

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

(2) Where annual gross business income is 5 million yuan (RMB) or less, not to exceed 1% of annual gross business income; for that portion of annual gross business income that exceeds 5 million yuan (RMB), not to exceed 0.3% of that portion of annual gross business income.

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

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

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

Article 25 Enterprises engaged in such businesses as credit and leasing operations may, on the basis of actual requirements and following approval by the local tax authorities of a report thereon, provide year-by-year bad debt provisions, the amount of which shall not exceed 3% of the

amount of the year-end loan balances (not including inter-bank loans) or the amount of accounts receivable, bills receivable and other such receivables, to be deducted from taxable income of that year.

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

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

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

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

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

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

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

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

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

Chapter III Tax Treatment for Assets

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

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

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

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

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

Article 32 Depreciation of fixed assets of an enterprise shall be computed commencing with

the month following the month in which they are first put into use. The computation of depreciation shall cease in the month following the month in which the fixed assets cease to be used.

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

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

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

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

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

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

Article 37 "Houses and buildings" mentioned in Article 35, Item (1) of these Rules means houses, buildings and attached structures used for production and business operations, and living quarters and welfare facilities for employees, the scope of which is as follows:

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

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

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

- "railway rolling stock" includes various types of locomotives, passenger coaches, freight cars, as well as auxiliary facilities on rolling stock for which no separate value is computed;

-- "ships" includes various types of motor ships as well as auxiliary facilities on ships for which no separate value is computed;

-- "machinery, mechanical apparatus and other production equipment" includes various types of machinery, mechanical apparatus, machinery units, production lines, as well as auxiliary equipment such as various types of power, transport and conduction equipment.

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

-- "electronic equipment" means equipment comprising mainly integrated circuits, transistors, electron tubes and other electronic components whose primary functions are to bring into use the application of electronic technology (including software), including computers as well as computer-controlled robots, and digital-control or program-control systems.

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

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

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

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

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

(3) fixed assets of a Chinese-foreign contractual joint venture having a period of cooperation shorter than the useful life specified in Article 35 of these Rules and which will be left with the Chinese party upon termination of the cooperation.

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

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

Article 43 No further depreciation shall be allowed in respect of fixed assets which can be continued to be used after having been fully depreciated.

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

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

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

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

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

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

Article 47 The amortization of intangible assets shall be computed using the straight-line method.

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

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

Where operation of a contract field owned by a foreign oil company is terminated due to failure to find commercially viable oil (gas), and where ownership of the contract for the exploitation of petroleum (gas) resources is not continued and management organizations or offices for carrying on operations for the exploitation of petroleum (gas) resources are no longer maintained in China, reasonable exploration expenses already incurred in respect of the terminated contract field shall, upon examination and confirmation and the issuance of certification by the tax authorities, be permitted to be amortized against production income of a newly owned contract field when the new contract for cooperative exploitation of oil (gas) resources is signed within ten years from the date of the termination of the old contract.

Article 49 Expenses incurred by enterprises during the period of organization shall be amortized beginning with the month following the month in which production and business operations commence; the period of amortization shall not be less than five years.

The period of organization mentioned in the preceding paragraph means the period from the date of approval of the organization of the enterprise to the date of commencement of production and business operations (including trial production and trial business operations).

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

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

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

Chapter IV Business Dealings Between Associated Enterprises

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

- (1) relationships in respect of existing direct or indirect ownership of or control over such

matters as finances, business operations or purchases and sales;

- (2) direct or indirect ownership of or control over it and another by a third party;
- (3) any other relationship in respect of an association of reciprocal interests.

Article 53 "Business transactions between independent enterprises" mentioned in Article 13 of the Tax Law means business dealings carried out between unassociated and unrelated enterprises on the basis of arm's length prices and common business practices.

Enterprises have a duty to provide to the local tax authorities relevant materials such as standard prices and charges in respect of business dealings with their associated enterprises.

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

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

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

Article 56 Where labour service fees paid or received in respect of the provision of labour services by an enterprise to an associated enterprise are not based on business dealings between independent enterprises, adjustments may be made thereto by the local tax authorities with reference to the normal fee standards of similar labour activities.

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

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

Chapter V Withholding at Source

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

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

Article 61 "Other income" mentioned in Article 19 of the Tax Law includes gains from the

transfer of property such as houses, buildings and structures and attached facilities within China and land-use rights.

"Gains" mentioned in the preceding paragraph means the amount remaining from the receipt on transfer minus the original value of the property.

Where foreign enterprises are unable to provide correct certification of the original value of the property, the original value of the property shall be determined by the local tax authorities according to the specific circumstances thereof.

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

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

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

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

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

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

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

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

(c) technology provided such as to advance scientific production management in respect of farming, forestry, fisheries and animal husbandry, to preserve the ecological balance, and to strengthen resistance to natural calamities;

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

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

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

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

- (a) production technology for major and advanced mechanical and electrical equipment;
- (b) nuclear power technology;
- (c) production technology for large-scale integrated circuits;
- (d) production technology for photoelectric integrated circuits, microwave semi-conductors and microwave integrated circuits, and manufacturing technology for microwave electron tubes;
- (e) manufacturing technology for ultra-high speed computers and microprocessors;
- (f) optical telecommunications technology;
- (g) technology for long-distance, ultra-high voltage direct current power transmission; and
- (h) technology for the liquefaction, gasification and comprehensive utilization of coal.

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

Chapter VI Tax Preferences

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

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

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

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

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

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

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

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

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

(1) production-oriented enterprises with foreign investment established in the coastal economic open zones, special economic zones and in the old urban districts of municipalities where economic and technological development zones are located and which are engaged in the following projects:

(a) technology-intensive or knowledge-intensive projects;

(b) projects with foreign investments of over US \$ 30 million and having long periods for return on investment;

(c) energy resource, transportation and port construction projects;

(2) Chinese-foreign equity joint ventures engaged in port and dock construction;

(3) financial institutions such as foreign capital banks and Chinese-foreign banks established in the special economic zones and other areas approved by the State Council, where the capital contribution of the foreign investor or the funds for business activities allocated by the head office bank to the branch bank exceeds US \$ 10 million, and where the period of operations is ten years or more;

(4) production-oriented enterprises with foreign investment established in the Pudong New Area of Shanghai, as well as enterprises with foreign investment engaged in energy resource and transport construction projects such as airports, ports, railways, highways and power stations;

(5) enterprises with foreign investment recognized as high or new technology enterprises established in the State high or new technology industrial development zones designated by the State Council, as well as enterprises with foreign investment recognized as new technology enterprises established in the new technology industrial development experimental zone of the municipality of Beijing;

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

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

Enterprises with foreign investment that pursuant to the provisions of Article 8, paragraph 1 of the Tax Law may enjoy treatment in respect of reductions of or exemptions from enterprise income tax shall submit to the local tax authorities for examination and verification such circumstances as the lines of business in which engaged, names of major products, and the period of operations decided upon. No treatment in respect of reductions of or exemptions from

enterprise income tax shall be enjoyed without examination and verification and agreement thereof.

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

(1) Chinese-foreign equity joint ventures engaged in port and dock construction where the period of operations is 15 years or more shall, following application by the enterprise and approval thereof by the tax authorities of provinces, autonomous regions, or municipalities directly under the Central Government of the location and commencing with the first profit-making year, be exempt from enterprise income tax from the first year to the fifth year and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year.

(2) Enterprises with foreign investment established in the Hainan Special Economic Zone and engaged in infrastructure facility projects such as airports, harbours, docks, highways, railways, power stations, coal mines and water conservation, and enterprises with foreign investment engaged in the development of and operations in agriculture where the period of operations is 15 years or more shall, following application by the enterprise and approval thereof by the tax authorities of Hainan Province and commencing with the first profit-making year, be exempt from enterprise income tax from the first year to the fifth year and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year.

(3) Enterprises with foreign investment established in the Pudong New Area of Shanghai and engaged in construction projects such as airports, ports, railways, highways and power stations where the period of operations is 15 years or more shall, following application by the enterprise and approval thereof by the tax authorities of the municipality of Shanghai and commencing with the first profit-making year, be exempt from enterprise income tax from the first year to the fifth year and subject to enterprise income tax at a rate reduced by one half for the sixth year through the tenth year.

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

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

(6) Chinese-foreign equity joint ventures recognized as high or new technology enterprises and established in the State high or new technology industrial development zones designated by

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

(7) Export-oriented enterprises invested in and operated by foreign businesses for which in any year the output value of all export products amounts to 70% or more of the output value of the products of the enterprise for that year may pay enterprise income tax at the tax rate specified in the Tax Law reduced by one half after the period of enterprise income tax exemptions or reductions has expired in accordance with the provisions of the Tax Law. However, export-oriented enterprises in the special economic zones and economic and technological development zones and other such enterprises subject to enterprise income tax at the tax rate of 15% that qualify under the above-mentioned conditions shall pay enterprise income tax at the tax rate of 10%.

(8) Advanced technology enterprises invested in and operated by foreign businesses which remain advanced technology enterprises after the period of enterprise income tax exemptions or reductions has expired in accordance with the provisions of the Tax Law may continue to pay for an additional three years enterprise income tax at the tax rate specified in the Tax Law reduced by one half.

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

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

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

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

during the year.

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

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

Article 80 "Direct reinvestment" mentioned in Article 10 of the Tax Law refers to profits received from an enterprise with foreign investment by foreign investor of that enterprise which prior to receipt are directly used to increase registered capital, or which following receipt are directly used to organize another enterprise with foreign investment.

Foreign investors shall, in computing the amount of tax refundable in accordance with the provisions of Article 10 of the Tax Law, provide certificates confirming the use of the reinvested profits for the year; the local tax authorities shall adopt any reasonable method for the reckoning and determination thereof where certificates cannot be provided. Foreign investors shall, in respect of the application for a refund of tax, submit within one year of the date of the actual investment of the reinvested amount a record of the reinvested amount and a certificate for the investment period of the increased capital or contributed capital to the tax authorities in the place where the taxes were originally paid.

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

Foreign investors that apply for a refund of tax on reinvestments in accordance with the provisions of the preceding paragraph shall, in addition to completing the requirements pursuant to Article 80, paragraph 2 and paragraph 3 of these Rules, submit certificates issued by the examining, verifying and confirming departments confirming the organization and expansion of export-oriented enterprises or advanced technology enterprises.

Enterprises in which foreign investors have reinvested in respect of the organization or expansion thereof which within three years of commencing production or operations have not achieved the standards in respect of export-oriented enterprises or have not continued to be confirmed as advanced technology enterprises shall repay 60% of the amount of tax refunded.

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

$$\text{Amount of tax refund} = \text{Reinvestment amount} \times [1 - (\text{originally applicable enterprise income tax rate} + \text{local income tax rate})] \times \text{originally applicable enterprise income tax rate} \times \text{tax refund rate}$$

Chapter VII Tax Credits

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

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

income from -----
abroad computed Total domestic
in accordance with income and
the Tax Law income from
abroad

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

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

Chapter VIII Tax Administration

Article 87 Enterprises shall, within 30 days of completing business registration, complete tax registration with the local tax authorities. Enterprises with foreign investment that establish or terminate branch offices outside China shall, within 30 days of the date of establishment or termination thereof, complete with the local tax authorities procedures in respect of tax registration, amendments to the registration, or cancellation of the registration.

Enterprises that complete registrations in the preceding paragraph shall, in accordance with the provisions, present relevant documents, licenses and materials.

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

registration with the local tax authorities with the relevant documents.

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

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

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

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

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

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

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

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

Where the respective business organizations mentioned in the preceding paragraph have losses and profits, tax shall be paid on the profit remaining after the offsetting of losses against profits according to the tax rate applicable to the profit-making business organization. A business organization which incurs losses shall offset losses using profits of the subsequent year of the business organization; tax shall be paid on the profit remaining after the offsetting of such losses according to the tax rate applicable to the business organization; tax paid on the offsetting amounts shall be based on the tax rate applicable to the business organization that offsets the losses incurred by the other business organization.

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

proportion of cost and expenses, the proportion of capital assets, and the proportion of the number of staff or salaries and wages.

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

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

Article 95 Enterprises, whether realizing profits or losses in a tax 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.

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

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

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

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

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

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

Accounting vouchers, books and statements, and reports of enterprises shall be completed in the Chinese language or completed in both the Chinese language and a foreign language.

Enterprises that use electronic computers for purposes of book-keeping shall treat the

accounting records in computer storage or in printed form as account books. All records on magnetic tape and diskette that have not been printed out shall be completely retained.

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

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

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

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

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

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

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

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

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

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

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

Chapter IX Supplementary Provisions

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

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

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

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

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

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

中华人民共和国外商投资企业和外国企业所得税法实施细则

(1991年6月30日国务院令85号发布)

第一章 总则

第一条 根据《中华人民共和国外商投资企业和外国企业所得税法》(以下简称税法)第二十九条的规定,制定本细则。

第二条 税法第一条第一款、第二款所说的生产、经营所得,是指从事制造业、采掘业、交通运输业、建筑安装业、农业、林业、畜牧业、渔业、水利业、商业、金融业、服务业、勘探开发作业,以及其他行业的生产、经营所得。

税法第一条第一款、第二款所说的其他所得,是指利润(股息)、利息、租金、转让财产收益、提供或者转让专利权、专有技术、商标权、著作权收益以及营业外收益等所得。

第三条 税法第二条第一款所说的外商投资企业和税法第二条第二款所说的在中国境内设立机构、场所,从事生产、经营的外国公司、企业和其他经营组织,在本细则中,除特别指明外,统称为企业。

税法第二条第二款所说的机构、场所,是指管理机构、营业机构、办事机构和工厂、开采自然资源的场所,承包建筑、安装、装配、勘探等工程作业的场所和提供劳务的场所以及营业代理人。

第四条 本细则第三条第二款所说的营业代理人,是指具有下列任何一种受外国企业委托代理,从事经营的公司、企业和其他经营组织或者个人:

(一)经常代表委托人接洽采购业务,并签订购货合同,代为采购商品;

(二)与委托人签订代理协议或者合同,经常储存属于委托人的产品或者商品,并代表委托人向他人交付其产品或者商品;

(三)有权经常代表委托人签订销货合同或者接受订货。

第五条 税法第三条所说的总机构,是指依照中国法律组成企业法人的外商投资企业,在中国境内设立的负责该企业经营管理与控制的中心机构。

外商投资企业在中国境内或者境外分支机构的生产、经营所得和其他所得,由总机构汇总缴纳所得税。

第六条 税法第三条所说来源于中国境内的所得,是指:

(一) 外商投资企业和外国企业在中国境内设立机构、场所,从事生产、经营的所得,以及发生在中国境内、境外与外商投资企业和外国企业在中国境内设立的机构、场所有实际联系的利润(股息)、利息、租金、特许权使用费和其他所得。

(二) 外国企业在中国境内未设立机构、场所取得的下列所得:

1. 从中国境内企业取得的利润(股息);

2. 从中国境内取得的存款或者贷款利息、债券利息、垫付款或者延期付款利息等;

- 3. 将财产租给中国境内租用者而取得的租金;
- 4. 提供在中国境内使用的专利权、专有技术、商标权、著作权等而取得的使用费;
- 5. 转让在中国境内的房屋、建筑物及其附属设施、土地使用权等财产而取得的收益;
- 6. 经财政部确定征税的从中国境内取得的其他所得。

第七条 不组成企业法人的中外合作经营企业,可以由合作各方依照国家有关税收法律、法规分别计算缴纳所得税,也可以由该企业申请,经当地税务机关批准,依照税法统一计算缴纳所得税。

第八条 税法第四条所说的纳税年度,自公历一月一日起至十二月三十一日止。

外国企业依照税法规定的纳税年度计算应纳税所得额有困难的,可以提出申请,报当地税务机关批准后,以本企业满十二个月的会计年度为纳税年度。

企业在一个纳税年度的中间开业,或者由于合作、关闭等原因,使该纳税年度的实际经营期不足十二个月的,应当以其实际经营期为一个纳税年度。

企业清算时,应当以清算期间作为一个纳税年度。

第九条 税法第八条第三款、第十九条第三款(四)项和本细则第七十二条所说的国务院主管部门,是指财政部、国家税务局。

第二章 应纳税所得额的计算

第十条 税法第四条所说的应纳税的所得额,其计算公式如下:

(一) 制造业:

- 1. 应纳税所得额=产品销售利润+其他业务利润+营业外收入-营业外支出
- 2. 产品销售利润=产品销售净额-产品销售成本-产品销售税金-(销售费用+管理费用+财务费用)
- 3. 产品销售净额=产品销售总额-(销货退回+销货折让)
- 4. 产品销售成本=本期产品成本+期初产品盘存-期末产品盘存
- 5. 本期产品成本=本期生产成本+期初半成品、在产品盘存-期末半成品、在产品盘存
- 6. 本期生产成本=本期生产耗用的直接材料+直接工资+制造费用

(二) 商业:

- 1. 应纳税所得额=销货利润+其他业务利润+营业外收入-营业外支出
- 2. 销货利润=销货净额-销货成本-销货税金-(销货费用+管理费用+财务费用)
- 3. 销货净额=销货总额-(销货退回+销货折让)
- 4. 销货成本=期初商品盘存+[本期进货-(进货退出+进货折让)+进货费用]-期末商品盘存

(三) 服务业:

1. 应纳税所得额=业务收入净额+营业外收入-营业外支出

2. 业务收入净额=业务收入总额-(业务收入税金+业务支出+管理费用+财务费用)

(四) 其他行业: 参照以上公式计算。

第十一条 企业应纳税所得额的计算, 以权责发生制为原则。

企业下列经营业务的收入可以分期确定, 并据以计算应纳税所得额:

(一) 以分期收款方式销售产品或者商品的, 可以按交付产品或者商品开出发货票的日期确定销售收入的实现, 也可以按合同约定的购买人应付价款的日期确定销售收入的实现;

(二) 建筑、安装、装配工程和提供劳务, 持续时间超过一年的, 可以按完工进度或者完成的工作量确定收入的实现;

(三) 为其他企业加工、制造大型机械设备、船舶等, 持续时间超过一年的, 可以按完工进度或者完成的工作量确定收入的实现。

第十二条 中外合作经营企业采取产品分成方式的, 合作者分得产品时, 即为取得收入, 其收入额应当按照卖给第三方的销售价格或者参照当时的市场价格计算。

外国企业从事合作开采石油资源的, 合作者在分得原油时, 即为取得收入, 其收入额应当参照国际市场同类品质的原油价进行定期调整的价格计算。

第十三条 企业取得的收入为非货币资产或者权益的, 其收入额应当参照当时的市场价格计算或者估定。

第十四条 税法第二十一条所说的国家外汇管理机关公布的外汇牌价, 是指国家外汇管理局公布的外汇买入价。

第十五条 企业所得为外国货币的, 在依照税法第十五条规定分季预缴所得税时, 应当按照季度最后一日的外汇牌价折合成人民币计算应纳税所得额; 年度终了后汇算清缴时, 对已按季度预缴税款的外国货币所得, 不再重新折合计算, 只就全年未纳税的外国货币所得部分, 按照年度最后一日的外汇牌价, 折合成人民币计算应纳税所得额。

第十六条 企业不能提供完整、准确的成本、费用凭证, 不能正确计算应纳税所得额的, 由当地税务机关参照同行业或者类似行业的利润水平核定利润率, 计算其应纳税所得额; 企业不能提供完整、准确的收入凭证, 不能正确申报收入额的, 由当地税务机关采用成本(费用)加合理的利润等方法予以核定, 确定其应纳税所得额。

税务机关依照前款规定核定利润率或者收入额时, 法律、法规、规章另有规定的, 依照其规定执行。

第十七条 外国航空、海运企业从事国际运输业务, 以其在中国境内起运客货收入总额的百分之五为应纳税所得额。

第十八条 外商投资企业在中国境内投资于其他企业, 从接受投资的企业取得的利润(股息), 可以不计入本企业应纳税所得额; 但其上述投资所发生的费用和损失, 不得冲减本企业应纳税所得额。

第十九条 在计算应纳税所得额时，除国家另有规定外，下列各项不得列为成本、费用和损失：

- (一) 固定资产的购置、建造支出；
- (二) 无形资产的受让、开发支出；
- (三) 资本的利息；
- (四) 各项所得税税款；
- (五) 违法经营的罚款和被没收财物的损失；
- (六) 各项税收的滞纳金和罚款；
- (七) 自然灾害或者意外事故损失有赔偿的部分；
- (八) 用于中国境内公益、救济性质以外的捐赠；
- (九) 支付给总机构的特许权使用费；
- (十) 与生产、经营业务无关的其他支出。

第二十条 外国企业在中国境内设立的机构、场所，向其总机构支付的同本机构、场所生产、经营有关的合理的管理费，应当提供总机构出具的管理费汇集范围、总额、分摊依据和方法的证明文件，并附有注册会计师的查证报告，经当地税务机关审核同意后，准予列支。

外商投资企业应当向其分支机构合理分摊与其生产、经营有关的管理费。

第二十一条 企业发生与生产、经营有关的合理的借款利息，应当提供借款付息的证明文件，经当地税务机关审核同意后，准予列支。

企业借款用于固定资产的购置、建造或者无形资产的受让、开发，在该项资产投入使用前发生的利息，应当计入固定资产的原价。

本条第一款所说的合理的借款利息，是指按不高于一般商业贷款利率计算的利息。

第二十二条 企业发生与生产、经营有关的交际应酬费，应当有确实的记录或者单据，分别在下列限度内准予作为费用列支：

(一) 全年销货净额在一千五百万元以下的，不得超过销货净额的千分之五；全年销货净额超过一千五百万元的部分，不得超过该部分销货净额的千分之三。

(二) 全年业务收入总额在五百万元以下的，不得超过业务收入总额的千分之十；全年业务收入总额超过五百万元的部分，不得超过该部分业务收入总额的千分之五。

第二十三条 企业在筹建和生产、经营中发生的汇兑损益，除国家另有规定外，应当合理列为各所属期间的损益。

第二十四条 企业支付给职工的工资和福利费，应当报送其支付标准和所依据的文件及有关资料，经当地税务机关审核同意后，准予列支。

企业不得列支其在中国境内工作的职工的境外社会保险费。

第二十五条 从事信贷、租赁等业务的企业，可以根据实际需要，报经当地税务机关批准，逐年按年末放款余额（不包括银行间拆借），或者年末应收帐款、应收票据等应收款项的余额，计提不超过百分之三的坏帐准备，从该年度应纳税所得额中扣除。

企业实际发生的坏帐损失，超过上一年度计提的坏帐准备部分，可列为当期的损失；少于上一年度计提的坏帐准备部分，应当计入本年度的应纳税所得额。

前款所说的坏帐损失，须经当地税务机关审核认可。

第二十六条 本细则第二十五条第二款所说的坏帐损失，是指下列应收款项：

- (一) 因债务人破产，在以其破产财产清偿后，仍然不能收回的；
- (二) 因债务人死亡，在以其遗产偿还后，仍然不能收回的；
- (三) 因债务人逾期未履行偿债义务，已超过两年，仍然不能收回的。

第二十七条 企业已列为坏帐损失的应收款项，在以后年度全部或者部分收回时，应当计入收回年度的应纳税所得额。

第二十八条 外国企业在中国境内设立的机构、场所取得发生在中国境外的与该机构、场所实际联系的利润（股息）、利息、租金、特许权使用费和其他所得已在境外缴纳的所得税款，除国家另有规定外，可以作为费用扣除。

第二十九条 税法第十八条所说的资产净额或者剩余财产，是指企业清算时的全部资产或者财产扣除各项负债及损失后的余额。

第三章 资产的税务处理

第三十条 企业的固定资产，是指使用年限在一年以上的房屋、建筑物、机器、机械、运输工具和其他与生产、经营有关的设备、器具、工具，不属于生产、经营主要设备的物品，单位价值在二千元以下或者使用年限不超过两年的，可按实际使用数列为费用。

第三十一条 固定资产的计价，应当以原价为准。

购进的固定资产，以进价加运费、安装费和使用前所发生的其他有关费用为原价。

自制、自建的固定资产，以制造、建造过程中所发生的实际支出为原价。

作为投资的固定资产，应当按照该资产新旧程度，以合同确定的合理价格或者参照有关的市场价格估定的价格加使用前发生的有关费用为原价。

第三十二条 企业的固定资产，应当从投入使用月份的次月起计算折旧；停止使用的固定资产，应当从停止使用月份的次月起，停止计算折旧。

从事开采石油资源的企业，在开发阶段的投资，应当以油（气）田为单位，全部累计作为资本支出，从本油（气）田开始商业性生产月份的次月起计算折旧。

第三十三条 固定资产在计算折旧前，应当估计残值，从固定资产原价中减除。残值应当不低于原价的百分之十；需要少留或者不留残值的，须经当地税务机关批准。

第三十四条 固定资产的折旧，应当采用直线法计算；需要采用其他折旧方法的，可以由企业提出申请，经当地税务机关审核后，逐级上报国家税务局批准。

第三十五条 固定资产计算折旧的最短年限如下：

- (一) 房屋、建筑物，为二十年；

(二) 火车、轮船、机器、机械和其他生产设备，为十年；

(三) 电子设备和火车、轮船以外的运输工具以及与生产、经营业务有关的器具、工具、家具等，为五年。

第三十六条 从事开采石油资源的企业，在开发阶段及其以后的投资所形成的固定资产，可以综合计算折旧，不留残值，折旧的年限不得少于六年。

第三十七条 本细则第三十五条第(一)项所说的房屋、建筑物，是指供生产、经营使用和为职工生活、福利服务的房屋、建筑物及其附属设施，范围如下：

房屋，包括厂房、营业用房、办公用房、库房、住宿用房、食堂及其他房屋等；

建筑物，包括塔、池、槽、井、架、棚(不包括临时工棚、车棚等简易设施)、场、路、桥、平台、码头、船坞、涵洞、加油站以及独立于房屋和机器设备之外的管道、烟囱、围墙等；

房屋、建筑物的附属设施，是指同房屋、建筑物不可分割的、不单独计算价值的配套设施，包括房屋、建筑物内的通气、通水、通油管道，通讯、输电线路，电梯，卫生设备等。

第三十八条 本细则第三十五条第(二)项所说的火车、轮船、机器、机械和其他生产设备，范围如下：

火车，包括各种机车、客车、货车以及不单独计算价值的车上配套设施；

轮船，包括各种机动船舶以及不单独计算价值的船上配套设施；

机器、机械和其他生产设备，包括各种机器、机械、机组、生产线及其配套设备，各种动力、输送、传导设备等。

第三十九条 本细则第三十五条第(三)项所说的电子设备和火车、轮船以外的运输工具，范围如下：

电子设备，是指由集成电路、晶体等、电子管等电子元件组成，应用电子技术(包括软件)发挥作用的设备，包括电子计算机以及由电子计算机控制的机器人、数控或者程控系统；

火车、轮船以外的运输工具，包括飞机、汽车、电车、拖拉机、摩托车(艇)、机帆船、帆船以及其他运输工具。

第四十条 固定资产由于特殊原因需要缩短折旧年限的，可以由企业提出申请，经当地税务机关审核后，逐级上报国家税务局批准。

前款所说的由于特殊原因需要缩短折旧年限的固定资产，包括：

(一) 受酸、碱等强烈腐蚀的机器设备和常年处于震撼、颤动状态的厂房和建筑物；

(二) 由于提高使用率，加强使用强度，而常年处于日夜运转状态的机器、设备；

(三) 中外合作经营企业的合作期比本细则第三十五条规定的折旧年限短，并在合作期满后归中方合作者所有的固定资产。

第四十一条 企业取得已经使用过的固定资产,其尚可使用年限比本细则第三十五条规定的折旧年限短的,可以提出证明依据,经当地税务机关审核同意后,按其尚可使用年限计算折旧。

第四十二条 固定资产在使用过程中,因扩充、更换、翻修和技术改造而增加价值所发生的支出,应当增加该固定资产原价,其中,可以延长使用年限的,还应当适当延长折旧年限,并相应调整计算折旧。

第四十三条 固定资产折旧足额后,可以继续使用的,不再计算折旧。

第四十四条 企业转让或者变价处理固定资产的收入,减除未折旧的净额或者残值及处理费用后的差额,列为当年度的损益。

第四十五条 企业接受赠与的固定资产,可以合理估价,计算折旧。

第四十六条 企业的专利权、专有技术、商标权、著作权、场地使用权等无形资产的计价,应当以原价为准。

受让的无形资产,以按照合理的价格实际支付的金额为原价。

自行开发的无形资产,以开发过程中发生的实际支出额为原价。

作为投资的无形资产,以协议、合同规定的合理价格为原价。

第四十七条 无形资产的摊销,应当采用直线法计算。

作为投资或者受让的无形资产,在协议、合同中规定使用年限的,可以按照该使用年限分期摊销;没有规定使用年限的,或者是自行开发的无形资产,摊销期限不得少于十年。

第四十八条 从事开采石油资源的企业所发生的合理的勘探费用,可以在已经开始商业性生产的油(气)田收入中分期摊销;摊销期限不得少于一年。

外国石油公司拥有的合同区,由于未发现商业性油(气)田而终止作业,如果其不连续拥有开采油(气)资源合同,也不在中国境内保留开采油(气)资源的经营管理机构或者办事机构,其已投入终止合同区的合理的勘探费用,经税务机关审查确认并出具证明后,从终止合同之日起十年内又签订新的合作开采油(气)资源合同的,准予在其新拥有合同区的生产收入中摊销。

第四十九条 企业在筹办期发生的费用,应当从开始生产、经营月份的次月起,分期摊销;摊销期限不得少于五年。

前款所说的筹办期,是指从企业被批准筹办之日起至开始生产、经营(包括试生产、试营业)之日止的期间。

第五十条 企业的商品、产成品、在产品、半成品和原料、材料等存货的计价,应当以成本价为准。

第五十一条 各项存货的发出或者领用,其实际成本价的计算方法,可以在先进先出、移动平均、加权平均和后进先出等方法中,由企业选用一种。

计价方法一经选用,不得随意改变;确实需要改变计价方法的,应当在下一纳税年度开始前报当地税务机关批准。

第四章 关联企业业务往来

第五十二条 税法第十三条所说的关联企业，是指与企业有以下之一关系的公司、企业和其他经济组织：

- (一) 在资金、经营、购销等方面，存在直接或者间接的拥有或者控制关系；
- (二) 直接或者间接地同为第三者所拥有或者控制；
- (三) 其他在利益上相关联的关系。

第五十三条 税法第十三条所说的独立企业之间的业务往来，是指没有关联关系的企业之间，按照公平成交价格 and 营业常规所进行的业务往来。

企业有义务就其与关联企业之间的业务往来，向当地税务机关提供有关的价格、费用标准等资料。

第五十四条 企业与关联企业之间的购销业务，不按独立企业之间的业务往来作价的，当地税务机关可以依照下列顺序和确定的方法进行调整：

- (一) 按独立企业之间进行相同或者类似业务活动的价格；
- (二) 按再销售给无关联关系的第三者价格所应取得的利润水平；
- (三) 按成本加合理的费用和利润；
- (四) 按其他合理的方法。

第五十五条 企业与关联企业之间融通资金所支付或者收取的利息，超过或者低于没有关联关系所能同意的数额，或者其利率超过或者低于同类业务的正常利率的，当地税务机关可以参照正常利率进行调整。

第五十六条 企业与关联企业之间提供劳务，不按独立企业之间业务往来收取和支付劳务费用的，当地税务机关可以参照类似劳务活动的正常收费标准进行调整。

第五十七条 企业与关联企业之间转让财产、提供财产使用权等业务往来，不按独立企业之间业务往来作价或者收取、支付使用费的，当地税务机关可以参照没有关联关系所能同意的数额进行调整。

第五十八条 企业不得列支向其关联企业支付的管理费。

第五章 源泉扣缴

第五十九条 税法第十九条第一款所说的利润、利息、租金、特许权使用费和其他所得，除国家另有规定外，应当按照收入全额计算应纳税额。

提供专利权、专有技术所收取的使用费全额，包括与其有关的图纸资料费、技术服务费和人员培训费，以及其他有关费用。

第六十条 税法第十九条所说的利润，是指根据投资比例、股权、股份或者其他非债权关系分享利润的权利取得的所得。

第六十一条 税法第十九条所说的其他所得，包括转让在中国境内的房屋、建筑物及其附属设施、土地使用权等财产而取得的收益。

前款所说的收益，是指转让收入减除该财产原值后的余额。外国企业不能提供财产原值的正确凭证的，由当地税务机关根据具体情况估定其财产的原值。

第六十二条 税法第十九条第二款所说的支付的款项，是指现金支付、汇兑支付、转帐支付的金额，以及用非货币资产或者权益折价支付的金额。

第六十三条 税法第十九条第三款第（一）项所说的从外商投资企业取得的利润，是指从外商投资企业依照税法规定缴纳或者减免所得税后的利润中取得的所得。

第六十四条 税法第十九条第三款第（二）项所说的国际金融组织，是指国际货币基金组织、世界银行、亚洲开发银行、国际开发协会、国际农业发展基金组织等国际金融组织。

第六十五条 税法第十九条第三款第（二）项、第（三）项所说的中国国家银行，是指中国人民银行、中国工商银行、中国农业银行、中国银行、中国人民建设银行、交通银行、中国投资银行和其他经国务院批准的对外经营外汇存放款等信贷业务的金融机构。

第六十六条 税法第十九条第三款第（四）项所规定的特许权使用费减征、免征所得税的范围如下：

- （一）在发展农、林、牧、渔业生产方面提供下列专有技术所收取的使用费：
 1. 改良土壤、草地，开发荒山，以及充分利用自然资源的技术；
 2. 培育动植物新品种和生产高效低毒农药的技术；
 3. 对农、林、牧、渔业进行科学生产管理，保持生态平衡，增强抗御自然灾害能力等方面的技术。
- （二）为科学院、高等院校以及其他科研机构进行或者合作进行科学研究、科学实验，提供专有技术所收取的使用费。
- （三）在开发能源、发展交通运输方面提供专有技术所收取的使用费。
- （四）在节约能源和防治环境污染方面提供的专有技术所收取的使用费。
- （五）在开发重要科技领域方面提供下列专有技术所收取的使用费：
 1. 重大的先进的机电设备生产技术；
 2. 核能技术；
 3. 大规模集成电路生产技术；
 4. 光集成、微波半导体和微波集成电路生产技术及微波电子管制造技术；
 5. 超高速电子计算机和微处理机制造技术；
 6. 光导通讯技术；
 7. 远距离超高压直流输电技术；
 8. 煤的液化、气化及综合利用技术。

第六十七条 对外国企业在中国境内从事建筑、安装、装配、勘探等工程作业和提供咨询、管理、培训等劳务活动的所得，税务机关可以指定工程价款或者劳务费的支付人为所得税的扣缴义务人。

第六章 税收优惠

第六十八条 根据税法第六条规定，对国家鼓励的外商投资企业，需要在企业所得税方面给予税收优惠的，依照国家有关法律、行政法规的规定执行。

第六十九条 税法第七条第一款所说的经济特区，是指依法设立或者经国务院批准设立的深圳、珠海、汕头、厦门和海南经济特区，所说的经济技术开发区，是指经国务院批准在沿港口城市设立的经济技术开发区。

第七十条 税法第七条第二款所说的沿海经济开放区，是指经国务院批准为沿海经济开放区的市、县、区。

第七十一条 税法第七条第一款所说的减按百分之十五的税率征收企业所得税，仅限于税法第七条第一款所规定的企业在相应地区内从事生产、经营取得的所得。

税法第七条第二款所说的减按百分之二十四的税率征收企业所得税，仅限于税法第七条第二款所规定的企业在相应地区内从事生产、经营取得的所得。

第七十二条 税法第七条第一款、第二款和第八条第一款所说的生产性外商投资企业，是指从事下列行业的外商投资企业：

- (一) 机械制造、电子工业；
- (二) 能源工业（不含开采石油、天然气）；
- (三) 冶金、化学、建材工业；
- (四) 轻工、纺织、包装工业；
- (五) 医疗器械、制药工业；
- (六) 农业、林业、畜牧业、渔业和水利业；
- (七) 建筑业；
- (八) 交通运输业（不含客运）；
- (九) 直接为生产服务的科技开发、地质普查、产业信息咨询和生产设备、精密仪器维修服务业；
- (十) 经国务院税务主管部门确定的其他行业。

第七十三条 税法第七条第三款所说的可以减按百分之十五的税率征收企业所得税，适用于：

(一) 在沿海经济开放区和经济特区、经济技术开发区所在城市的老市区设立的从事下列项目的生产性外商投资企业：

1. 技术密集、知识密集的项目；

2. 外商投资在三千万美元以上,回收投资时间长的项目;

3. 能源、交通、港口建设的项目。

(二) 从事港口码头建设的中外合资经营企业。

(三) 在经济特区和国务院批准的其他地区设立的外资银行、中外合资银行等金融机构,但以外国投资者投入资本或者分行由总行拨入营运资金超过一千万美元,经营期在十年以上的为限。

(四) 在上海浦东新区设立的生产性外商投资企业,以及从事机场、港口、铁路、公路、电站等能源、交通建设项目的外商投资企业。

(五) 在国务院确定的国家高新技术产业开发区设立的被认定为高新技术企业的外商投资企业,以及在北京市新技术产业开发实验区设立的被认定为高新技术企业的外商投资企业。

(六) 在国务院规定的其他地区设立的从事国家鼓励项目的外商投资企业。

属于前款第(一)项所列项目的外商投资企业,应当在报国家税务局批准后,减按百分之十五的税率征收企业所得税。

第七十四条 税法第八条第一款所说的经营期,是指从外商投资企业实际开始生产、经营(包括试生产、试营业)之日起至企业终止生产、经营之日止的期间。

按照税法第八条第一款规定可以享受免征、减征企业所得税待遇的外商投资企业,应当将其从事的行业、主要产品名称和确定的经营期等情况报当地税务机关审核;未经审核同意的,不得享受免征、减征企业所得税待遇。

第七十五条 税法第八条第二款所说的本法施行前国务院公布的规定,是指国务院发布或者批准发布的下列免征、减征企业所得税的规定:

(一) 从事港口码头建设的中外合资经营企业,经营期在十五年以上的,经企业申请,所在地的省、自治区、直辖市税务机关批准,从开始获利的年度起,第一年至第五年免征企业所得税,第六年至第十年减半征收企业所得税。

(二) 在海南经济特区设立的从事机场、港口、码头、铁路、公路、电站、煤矿、水利等基础设施项目的外商投资企业和从事农业开发经营的外商投资企业,经营期在十五年以上的,经企业申请,海南省税务机关批准,从开始获利的年度起,第一年至第五年免征企业所得税,第六年至第十年减半征收企业所得税。

(三) 在上海浦东新区设立的从事机场、港口、铁路、公路、电站等能源、交通建设项目的投资性外商投资企业,经营期在十五年以上的,经企业申请,上海市税务机关批准,从开始获利的年度起,第一年至第五年免征企业所得税,第六年至第十年减半征收企业所得税。

(四) 在经济特区设立的从事服务性行业的外商投资企业,外商投资超过五百万美元,经营期在十年以上的,经企业申请,经济特区税务机关批准,从开始获利的年度起,第一年免征企业所得税,第二年和第三年减半征收企业所得税。

(五) 在经济特区和国务院批准的其他地区设立的外资银行、中外合资银行等金融机构,外国投资者投入资本或者分行由总行拨入营运资金超过一千万美元,经营期在十年以上的,

经企业申请，当地税务机关批准，从开始获利的年度起，第一年免征企业所得税，第二年和第三年减半征收企业所得税。

(六) 在国务院确定的国家高新技术产业开发区设立的被认定为高新技术企业的中外合资经营企业，经营期在十年以上的，经企业申请，当地税务机关批准，从开始获利的年度起，第一年和第二年免征企业所得税。设在经济特区和经济技术开发区的外商投资企业，依照经济特区和经济技术开发区的税收优惠规定执行。设在北京市新技术产业开发实验区的外商投资企业，依照北京市新技术产业开发实验区的税收优惠规定执行。

(七) 外商投资举办的产品出口企业，在依照税法规定免征、减征企业所得税期满后，凡当年出口产品产值达到当年企业产品产值百分之七十以上的，可以按照税法规定的税率减半征收企业所得税。但经济特区和经济技术开发区以及其他已经按百分之十五的税率缴纳企业所得税的产品出口企业，符合上述条件的，按百分之十的税率征收企业所得税。

(八) 外商投资举办的先进技术企业，依照税法规定免征、减征企业所得税期满后仍为先进技术企业的，可以按照税法规定的税率延长三年减半征收企业所得税。

(九) 在国务院已经发布或者批准发布的其他规定中有关免征、减征企业所得税的规定。

外商投资企业依照前款第(六)项、第(七)项或者第(八)项规定申请免征、减征企业所得税时，应当提交审核确认部门出具的有关证明文件，由当地税务机关审核批准。

第七十六条 税法第八条第一款和本细则第七十五条所说的开始获利的年度，是指企业开始生产经营后，第一个获得利润的纳税年度。企业开办初期有亏损的，可以依照税法第十一条的规定逐年结转弥补，以弥补后有利润的纳税年度为开始获利年度。

税法第八条第一款和本细则第七十五条规定的免征、减征企业所得税的期限，应当从企业获利年度起连续计算，不得因中间发生亏损而推延。

第七十七条 外商投资企业于年度中间开业，当年获得利润而实际生产经营期不足六个月的，可以选择从下一年度起计算免征、减征企业所得税的期限；但企业当年所获得的利润，应当依照税法规定缴纳所得税。

第七十八条 从事开采石油、天然气、稀有金属、贵重金属等资源的企业，除国务院另有规定外，不适用于税法第八条第一款的税收优惠规定。

第七十九条 依照税法第八条第一款和本细则第七十五条规定，已经得到免征、减征企业所得税的外商投资企业，其实际经营期不满规定年限的，除因遭受自然灾害和意外事故造成重大损失的以外，应当补缴已免征、减征的企业所得税税款。

第八十条 税法第十条所说的直接再投资，是指外商投资企业的外国投资者将其从该企业取得的利润在提取前直接用于增加注册资本，或者在提取后直接用于投资举办其他外商投资企业。

在依照税法第十条规定计算退税时，外国投资者应当提供能够确认其用于再投资利润所属年度的证明；不能提供证明的，由当地税务机关采用合理的方法予以推算确定。

外国投资者应当自其再投资资金实际投入之日起一年内,持载明其投资金额、投资期限的增资或者出资证明,向原纳税地的税务机关申请退税。

第八十一条 税法第十条所说的国务院另有优惠规定,是指外国投资者在中国境内直接再投资举办、扩建产品出口企业或者先进技术企业,以及外国投资者将从海南经济特区内的企业获得的利润直接再投资海南经济特区内的基础设施建设项目和农业开发企业,可以依照国务院的有关规定,全部退还其再投资部分以缴纳的企业所得税税款。

外国投资者依照前款规定申请再投资退税时,除依照本细则第八十条第二款、第三款的规定办理时,应当提供审核确认部门出具的确认举办、扩建的企业为产品出口企业或者先进技术企业的证明。

外国投资者直接再投资举办、扩建的企业,自开始生产、经营起三年内没有达到产品出口企业标准的,或者没有被继续确认为先进技术企业的,应当缴回已退税款的百分之六十。

第八十二条 税法第十条和本细则第八十一条第一款规定的再投资退税,其退税额按下列公式计算:

退税额=再投资额×(1-原实际适用的企业所得税税率与地方所得税税率之和)×原实际适用的企业所得税税率×退税率

第七章 税额扣除

第八十三条 税法第十二条所说的已在境外缴纳的所得税税款,是指外商投资企业就来源于中国境外的所得在境外实际缴纳的所得税税款,不包括纳税后又得到补偿或者由他人代为承担的税款。

第八十四条 税法第十二条所说的境外所得依照本法规定计算的应纳税额,是指外商投资企业的境外所得,依照税法和本细则的有关规定扣除为取得该项所得所应摊计的成本、费用以及损失,得出应纳税所得额后计算的应纳税额。该应纳税额即为扣除限额,应当分国不分项计算,其计算公式如下:

境外所得税税款扣除限额=境内、境外所得按税法计算的应纳税总额×来源于某外国的所得额÷境内、境外所得总额

第八十五条 外商投资企业就来源于境外所得在境外实际缴纳的所得税税款,低于依照本细则第八十四条规定计算出的扣除限额的,可以从应纳税额中扣除其在境外实际缴纳的所得税税款;超过扣除限额的,其超过部分不得作为税额扣除,也不得列为费用支出,但可以用以后年度税额扣除不超过限额的余额补扣,补扣期限最长不得超过五年。

第八十六条 本细则第八十三条至第八十五条的规定,仅适用于总机构设在中国境内的外商投资企业。外商投资企业在依照税法第十二条的规定扣除税额时,应当提供境外税务机关填发的同一年度纳税凭证原件,不得用复印件或者不同年度的纳税凭证作为扣除税额的凭据。

第八章 税收征管

第八十七条 企业在办理工商登记后三十日内,应个向当地税务机关办理税务登记。外商投资企业在我国境外设立或者撤销分支机构时,应当在设立或者撤销之日起三十日内,向当地税务机关办理税务登记、变更登记或者注销登记。

企业办理前款登记,应当按规定提交有关文件、证照、资料。

第八十八条 企业遇有迁移、改组、合并、分工、终止以及变更资本额、经营范围等主要登记事项时,应当在办理工商变更登记后三十日内或者注销登记前,持有关证件向当地税务机关办理变更登记或者注销登记。

第八十九条 外国企业在中国境内设立两个或者两个以上营业机构的,可以由其选定其中的一个营业机构合并申报缴纳所得税。但该营业机构应当具备以下条件:

- (一) 对其他各营业机构的经营业务负有监督管理责任;
- (二) 设有完整的帐簿、凭证,能够正确反映各营业机构的收入、成本、费用和盈亏情况。

第九十条 外国企业依照本细则第八十九条的规定,合并申报缴纳所得税的,应当由其选定的营业机构提出申请,经当地税务机关审核后,依照下列规定报批:

- (一) 合并申报纳税所涉及的各营业机构设在同一省、自治区、直辖市的,由省、自治区、直辖市税务机关批准;
- (二) 合并申报纳税所涉及的各营业机构设在两个或者两个以上省、自治区、直辖市的,由国家税务局批准。

外国企业经批准合并申报纳税后,遇有营业机构增设、合并、迁移、停业、关闭等情况时,应当在事前由负责合并申报纳税的营业机构向当地税务机关报告。需要变更合并申报纳税营业机构的,依照前款规定办理。

第九十一条 外国企业合并申报缴纳所得税,所涉及的营业机构适用不同税率纳税的,应当合理地分别计算各营业机构的应纳税所得额,按照不同的税率缴纳所得税。

前款所说的各营业机构,有盈有亏,盈亏相抵后仍有利润的,应当按有盈利的营业机构所适用的税率纳税。发生亏损的营业机构,应当以该营业机构以后年度的盈利弥补其亏损,弥补亏损后仍有利润的,再按该营业机构所适用的税率纳税;其弥补额应当按为该亏损营业机构抵亏的营业机构所适用的税率纳税。

第九十二条 虽有本细则第九十一条的规定,当负责合并申报缴纳所得税的营业机构不能合理地分别计算各营业机构的应纳税所得额时,当地税务机关可以对其应纳税的所得总额,按照营业收入比例、成本和费用比例、资产比例、职工人数或者工资数额的比例,在各营业机构之间合理分配。

第九十三条 外商投资企业在中国境内设立分支机构的,在汇总申报缴纳所得税时,比照本细则第九十一条和第九十二条的规定办理。

第九十四条 企业根据税法第十五条的规定分季预缴所得税时,应当按季度的实际利润额预缴;按季度实际利润额预缴有困难的,可以按上一年度应纳税所得额的四分之一或者经当地税务机关认可的其他方法分季预缴所得税。

第九十五条 企业在纳税年度内无论盈利或者亏损,应当依照税法第十六条规定的期限,向当地税务机关报送所得税申报表和会计决算报表。在报送会计决算报表时,除国家另有规定外,应当付送中国注册会计师的查帐报告。

企业遇特殊原因,不能按照税法规定期限报送所得税申报表和会计决算报表的,应当在报送期限内提出申请,经当地税务机关批准,可以适当延长。

第九十六条 分支机构或者营业机构在向总机构或者向合并申报缴纳所得税的营业机构报送会计决算报表时,应当同时报送当地税务机关。

第九十七条 企业在年度中间合并、分立、终止时,应当在停止生产、经营之日起六十日内,向当地税务机关办理当期所得税汇算清缴,多退少补。

第九十八条 企业所得为外国货币并已按照外汇牌价折合成人民币缴纳税款的,发生多缴税款需要办理退税时,可以将应退的人民币税款,按照原缴纳税款时的外汇牌价折合成外国货币,再将该外国货币数额按照填开退税凭证当日的外汇牌价折合成人民币退还税款;发生少缴税款需要办理补税时,应当按照填开补税凭证当日的外汇牌价折合成人民币补缴税款。

第九十九条 外商投资企业进行清算时,应当在办理工商注销登记之前,向当地税务机关办理所得税申报。

第一百条 除国家另有规定外,企业应当在中国境内设置能够正确计算应纳税所得额的会计凭证、帐簿。

企业的会计凭证、帐簿和报表,应当使用中国文字填写,也可以使用中、外两种文字填写。

采用电子计算机记帐的企业,其由电子计算机储存和输出的会计记录,视同会计帐簿;凡未打印成书面记录的磁带、磁盘应当完整保留。

企业的会计凭证、帐簿和报表,至少保存十五年。

第一百零一条 企业的发票和收款凭证,须经当地税务机关批准,方可印制、使用。

企业的发票和收款凭证的印制和使用管理办法,由国家税务局制定。

第一百零二条 企业所得税申报表和纳税凭证,由国家税务局统一印制。

第一百零三条 企业缴纳税款期限和报送报表期限的最后一天是星期日或者其他法定休假日的,以休假日的次日为期限的最后一天。

第一百零四条 对税法第十九条第二款和本细则第六十七条规定的扣缴义务人,税务机关可以按照其扣缴税额的一的比例付给扣缴手续费,具体办法由国家税务局制定。

第一百零五条 纳税义务人或者扣缴义务人未按规定接受税务机关检查的,或者未按照税务机关规定的期限缴纳滞纳金的,当地税务机关可以根据情节轻重,处以五千元以下的罚款。

第一百零六条 企业违反本细则第八十七条、第九十条第二款、第九十五条、第九十六条、第九十七条、第一百条、第一百零一条规定的，税务机关可以根据情节轻重，处以五千元以下的罚款。

第一百零七条 税法第二十五条所说的偷税，是指纳税义务人有意违反税法规定，涂改、伪造、销毁票据、记帐凭证或者帐簿，虚列、多报成本、费用，隐瞒、少报应纳税所得额或者收入额，逃避纳税或者编回已纳税款等违法行为。

第一百零八条 税务机关根据税法和本细则规定对纳税义务人或者扣缴义务人处罚时，应当制作处罚决定书。

第一百零九条 任何单位和个人对违反税法的行为和当事人都有权举报，税务机关应当为举报者保密，并按照规定给予奖励。

第九章 附则

第一百一十条 税法公布前已经办理工商登记的外商投资企业，在按照税法规定的税率缴纳所得税时，其税收负担高于税法施行前的，可以在批准的经营期内按其原适用税率缴纳所得税；未约定经营期的，可以在税法施行之日其五年内，按照其原适用的税率缴纳所得税，但在上述期间，发生年度的税收负担高于税法规定的，应当自该纳税年度起改按税法规定的税率缴纳所得税。

第一百一十一条 税法公布前已经办理工商登记的外商投资企业，凡是依照税法施行前的法律、行政法规享有免征、减征企业所得税优惠待遇的，可以继续执行，直至免征、减征期满为止。

税法公布前已经办理工商登记的外商投资企业，尚未获利或者获利未满五年的，可以依照税法第八条第一款的规定，给予相应期限的免征、减征企业所得税待遇。

第一百一十二条 税法公布后，施行前办理工商登记的外商投资企业，可以参照本细则第一百一十条、第一百一十一条的规定执行。

第一百一十三条 本细则由财政部、国家税务总局负责解释。

第一百一十四条 本细则自《中华人民共和国外商投资企业和外国企业所得税法》施行之日起施行。《中华人民共和国中外合资经营企业所得税法施行细则》和《中华人民共和国外国企业所得税法施行细则》同时废止。