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

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Chapter I 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:

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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

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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