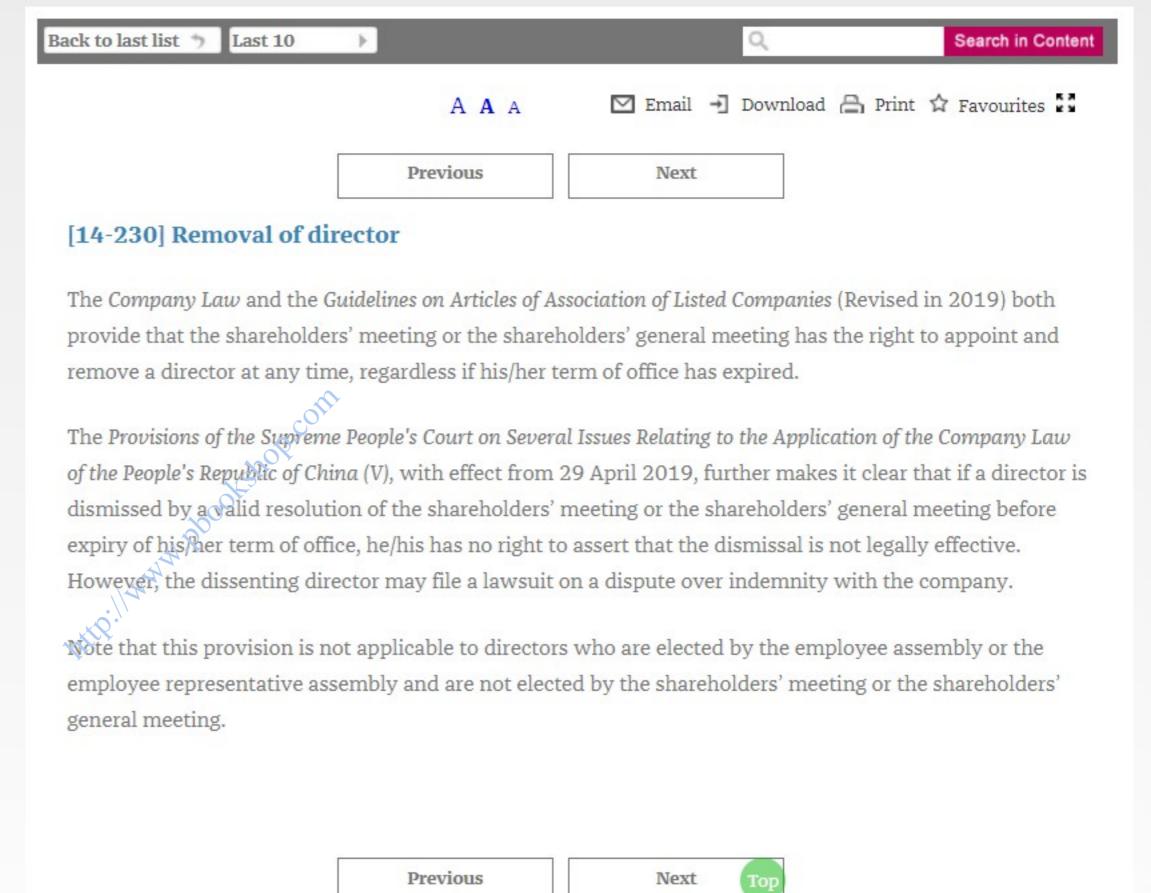
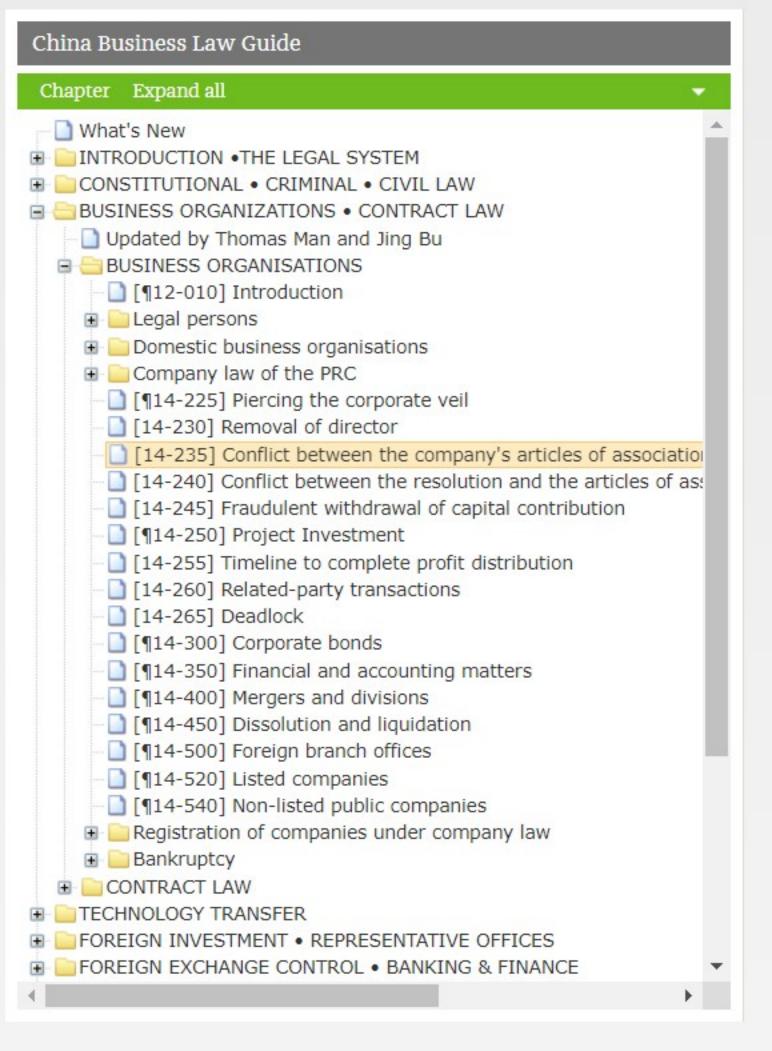
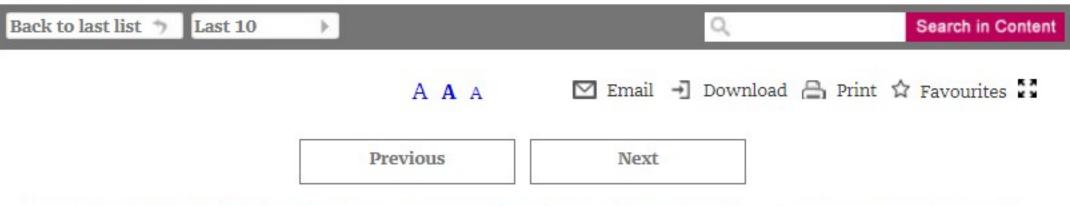
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[14-235] Conflict between the company's articles of association and the shareholders' agreement

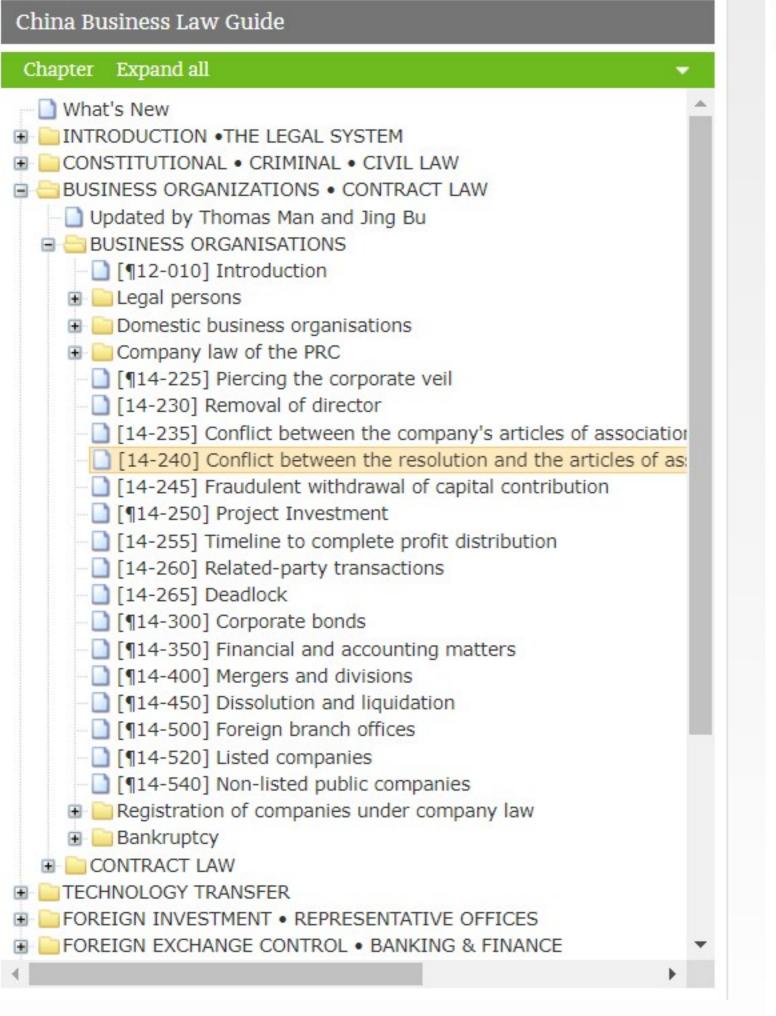
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The articles of association of a company, as a compulsory documents as required by the *Company Law*, set out clear and consistent administrative rules for the benefit of the company. It is formulated when the company is formed or at a later date if all the shareholders agree, and is binding on the company, shareholders, directors, supervisors and senior management.

While the shareholders' agreement is a private contract on additional obligations between shareholders, mainly for the benefit of all shareholders and subject to the regulation of the Contract Law; it supplements the articles of association and is binding on all shareholders.

According to the requirements of China's laws and regulations, the articles of association must be filed at the company registration authority and be announced to the public, while the shareholders' agreement does not need to do so.

In practice, after the formation of the company, there could be some conflicts between the articles of association and the shareholders' agreement, either on internal matters such as appointment and removal of the general manager; or on matters such as shareholders' capital contribution arrangements, profit distribution, shareholder rights exercise, share transfer and pre-emptive rights; or on the regulation on directors, supervisors or managers; or on external matters with a third party such as equity transfer, liability for breach of contract etc.



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[14-240] Conflict between the resolution and the articles of association

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According to the Company Law and the Supreme People's Court on the Application of Certain Issues in the Company Law of the People's Republic of China (IV), the conflict between the board resolution and the shareholders' agreement or articles of association may lead to four circumstances, ie., the resolution can be ruled valid, invalid, revocable, or unfounded.

According to the second paragraph of Art 22 of the *Company Law*, if the convening and voting method of the shareholders' meeting or the general meeting or the meeting of the board of directors violate the law, administrative regulations or the company's articles of association, or if the content of the resolution will attend to the company's articles of association, the shareholders may, within 60 days from the date of the resolution, petition to the people's court to withdraw the resolution.

Articles 37 and 42 of the *Company Law* clearly stipulate that the board of directors is the authority for formulating the company's profit distribution plan, while the authority for reviewing and approving the company's profit distribution plan is vested in the company's shareholder meeting. When the board resolution is not in line with the company's articles of association, the resolutions will be invalidated.

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[14-245] Fraudulent wit	hdrawal of capital c	ontribution			

In some cases, upon incorporation of a company, a shareholders withdraws the contributed capital but still retains his shareholder's identity and the equity corresponding to the original capital contribution. This fraudulent approach results in the inconsistency between the company's registered capital and the actual capital, thus harming the interests of the company and other shareholders, and increasing the commercial risk of the company's creditors.

The Provisions of the Supreme People's Court on Several Issues relating to Application of Company Law of the People's Republic of China (III) lists down four categories of fraudulent withdrawal of capital contribution:

- (1) shareholder prepares false accounting statements to inflate company profits for distribution;
- transfer capital contribution out through fictitious debts with the company;
- (3) transfer capital contribution out through related-party transactions; or

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(4) withdraw capital contribution in any other way, without authorisation by statutory procedures.

Generally, even if there is capital exchange between the company and the shareholders, as long as the company's book capital is not lower than the registered capital, it cannot simply be determined that there is fraudulent withdrawal of capital contribution between the company and the shareholders.

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[20-130] Qualified tech	nology transfer		

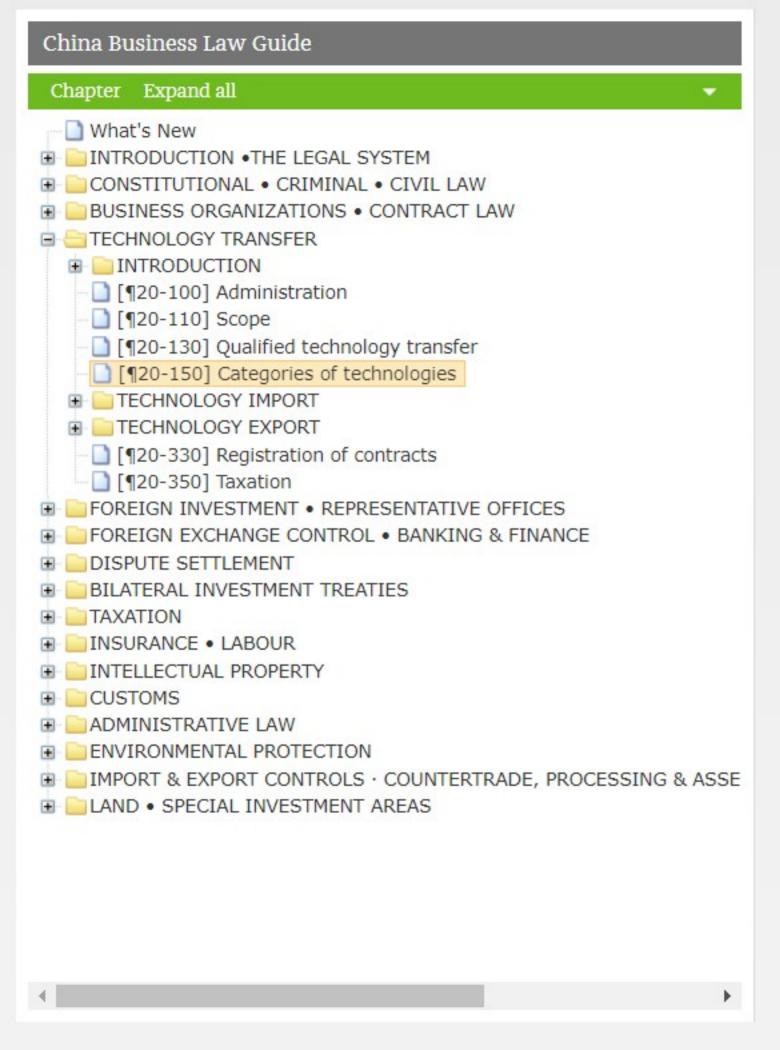
Though the Technology Transfer Regulations no longer require imported technology to be "advanced and appropriate" to China's needs, as under the old technology transfer regulatory regime, technology to be imported or exported still needs to meet certain criteria set down by the Technology Transfer Regulations, it must be:

- (1) in conformity with State industry policies;
- (2) in conformity with science and technology policies and social development policies;
- (3) beneficial for the promotion of China's scientific and technological advancement and the development of foreign economic and technological cooperation; and
- (4) beneficial for the safeguarding of China's economic and technological rights and interests.

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[20-150] Categories of technologies

For the purpose of import and export, technology is classified into three categories under the Technology Transfer Regulations: technologies which are prohibited from being imported and exported (ie prohibited technology), technologies which may be imported and exported that are subject to restrictions (ie restricted technology), and technologies which may be imported and exported without restriction (ie free import technology). No prohibited technology may be imported into, or exported out of, China. Import and export of restricted technology are subject to licence control. Free import technology may be imported or exported without licence but the import or export contract must be registered. As in many other countries, import of advanced and appropriate technology is encouraged.

The import or export of technology or goods may be prohibited or restricted for any of the following reasons as per Art 16 of the Foreign Trade Law:

- · in order to safeguard national security, the public interest or public morals;
- in order to protect human health and safety, to protect the lives and health of animals and plants, or to protect the environment;
- in order to implement gold and silver import/export measures;



 where there is a shortfall in the domestic supply of natural resources or in order to effectively protect natural resources that are now renewable;





[20-200] Import of free import technologies

According to the Technology Transfer Regulations and the Contract Registration Measures (see ¶20-030 above), a system of contract registration and administration is implemented for free import technology. Contracts relating to import of such technology come into effect when they are legally established. Although registration of contracts is no longer a precondition for the effectiveness of a contract as under the old registration system, the registration certificate is the official document to be used to carry out foreign exchange, banking, tax, customs and other procedures for the imports.

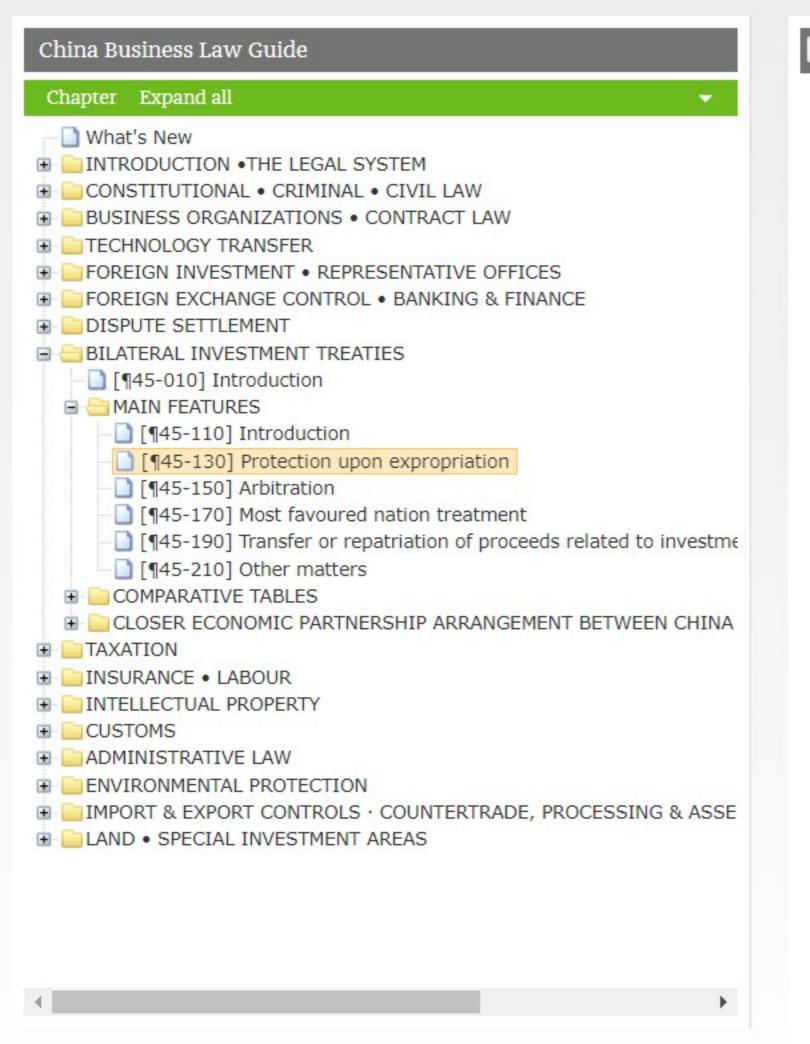
Registration authorities vary depending on the importance of the technology import project. MOFTEC is responsible for registering major projects (i.e. projects involving funds derived from the state budget, foreign government loans or foreign financial organization loans, or projects established and approved by the State Council). In such cases, the importer must first complete an on-line registration on the China International Electronic Commerce Network (website address: http://www.ec.com.cn), and then carry out formalities with MOFTEC for the registration of the contract by presenting the following documents:

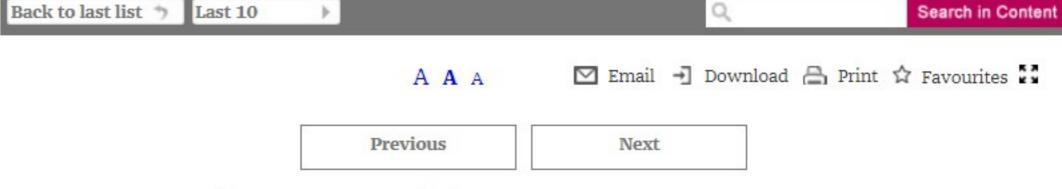
- an application for the registration of a technology import contract;
- (2) a copy of the technology import contract; and



(3) documentary evidence of the legal status of the signatories to the contract.

MOFTEC is required to complete the registration and issue a technology import contract registration certificate within three working days of receiving the submitted documentation.





[45-130] Protection upon expropriation

Chinese joint venture laws and regulations are silent on the issue of expropriation. All of the investment agreements deal with this issue in detail.

Many treaties determined the amount of compensation by the value of the investment immediately before such expropriation measures took effect, were announced or were executed. Treaties with Kuwait and Great Britain appear to be the most detailed. For example, they provide for interest compensation and a mechanism for market value determination of the value of an investment. In relation to the right of review of the expropriation decision, some agreements allow for a review to determine the legality of the expropriation decision while others do not.

Some treaties offer compensation for losses that are not limited to those caused by breach of contract. Chinese foreign investment laws and regulations make no mention of compensation for losses caused other than for breach of contract.

Lastly, many of the treaties provide that compensation payments are to be made without undue delay and that they be freely transferable.

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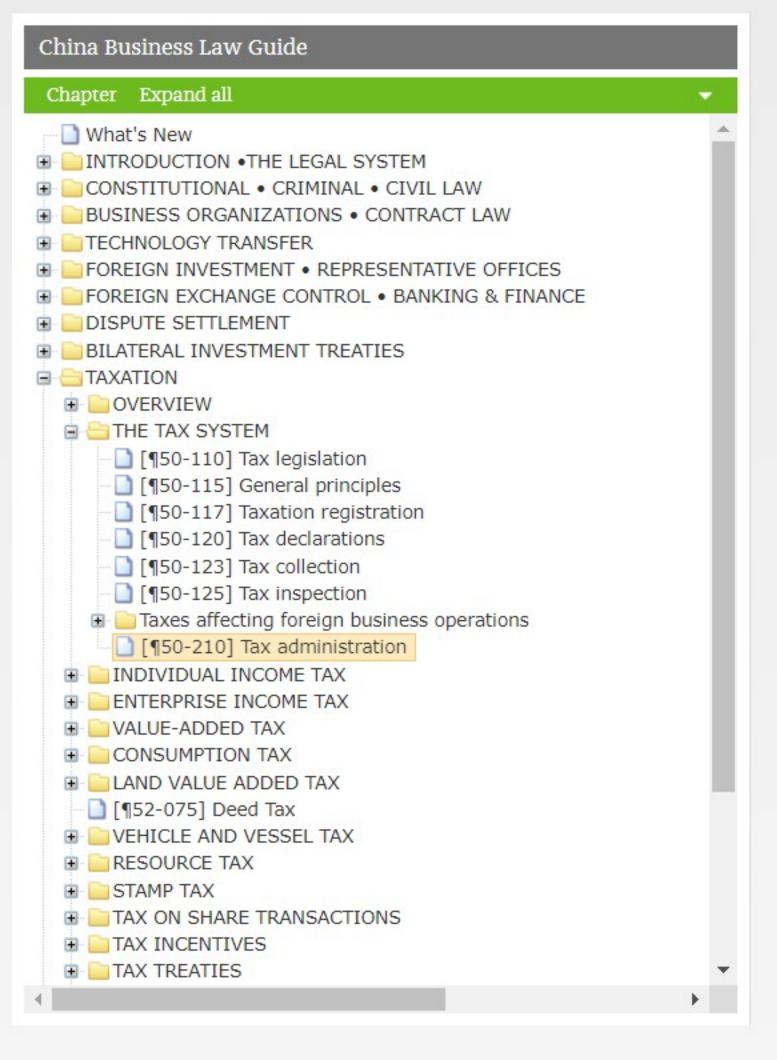
[45-190] Transfer or repatriation of proceeds related to investments

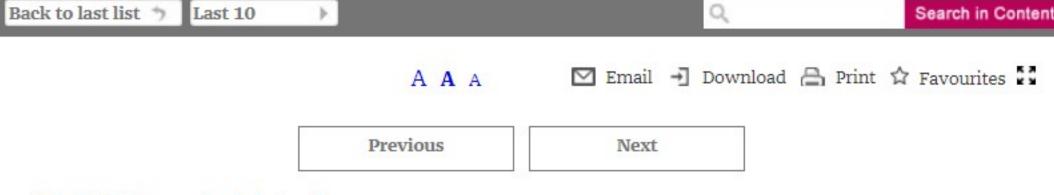
Under Chinese investment laws and regulations, repatriation in a foreign currency of profit, principal and interest payments, capital gains, dividends and fees is subject to the provisions of China's regulations on foreign exchange control and external debt registration rules. Under the regulations, repatriation of foreign

Under Chinese investment laws and regulations, repatriation in a foreign currency of profit, principal and interest payments, capital gains, dividends and fees is subject to the provisions of China's regulations on foreign exchange control and external debt registration rules. Under the regulations, repatriation of foreign currency investments, profit and other funds is usually subject to the restrictions that the foreign exchange must come from the foreign exchange account of the foreign investment enterprise and that the repatriation be subject to the approval of the bank with which the enterprise maintains an account. In all cases, repatriation is also made subject to the approval of the state foreign exchange control authorities.

Provisions in the treaties allowing for free transfer or repatriation of proceeds related to investment are, therefore, noteworthy. Note also, however, that when China does not have sufficient foreign exchange for the transfer it may or may not be obligated to permit the conversion of local currency into convertible currency, depending on the specific treaty and the nature of the investment.

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[50-210] Tax administration

Tax authorities

Responsibility for tax administration is vested in the State Administration of Taxation and local bureaus of state tax established at the provincial and municipal levels.

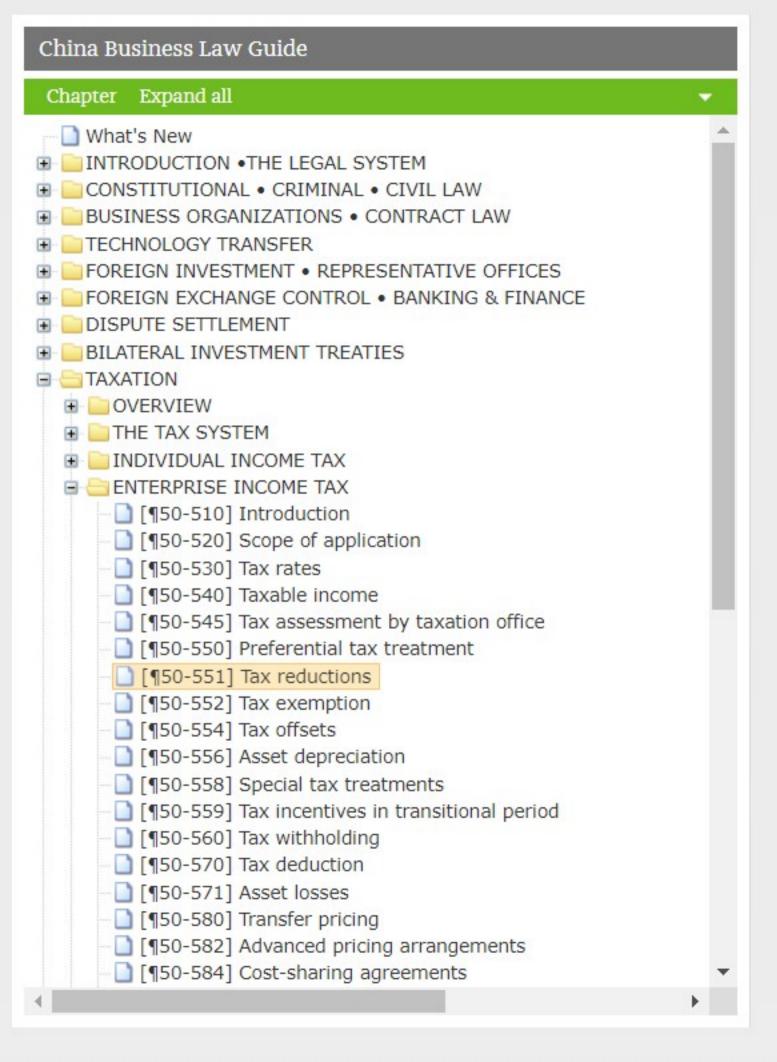
The State Administration of Taxation was formerly a division of the Ministry of Finance. Since 1988, however, it has operated as a super-agency directly under the State Council. The State Administration of Taxation is responsible for formulating and coordinating tax policies and for supervising the work of local tax bureaus.

Local bureaus of state tax are in charge of the day-to-day administration of state tax matters. Specialized departments within such bureaus handle matters relating to foreign tax collection and enforcement. These departments are further divided into sections, each in charge of specified tax matters such as individual income tax, joint venture income tax, etc.

The Offshore Oil Taxation Bureau handles tax enforcement and collection for businesses engaged in offshore oil exploitation. This Bureau functions under the State Administration of Taxation, and has sub-offices in various municipalities where there is offshore oil exploration and development. These sub-offices operate independently of local tax bureaus.

Local taxes are handled by various bureaus of local tax in the relevant locations.

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[50-551] Tax reductions

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New and hi-tech enterprises

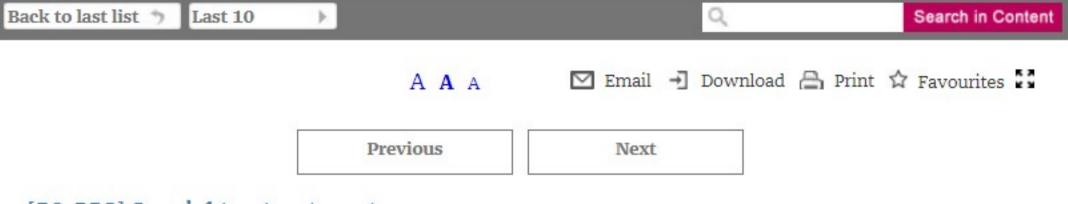
In accordance with Art 28 of the Enterprise Income Tax Law, Art 93 of the Enterprise Income Tax Law Implementation Regulations and Art 10 of the Administrative Measures on Accreditation of High-tech Enterprises, qualified new and hi-tech enterprises that meet the stipulated conditions may enjoy a reduced income tax rate of 15% and other preferential tax treatments provided by these laws and regulations.

In order to qualified as a hi-tech enterprise, the enterprise must be one that has been registered in China (excluding Hong Kong, Macau and Taiwan) for more than one year and is continuously engaging in research and development and technology commercialisation, and at the same time satisfies the following conditions:

- The enterprise has obtained independent intellectual property for the core technology of its key products
 or services through independent research and development, or by assignment, acceptance of gift, merger
 and acquisition, etc, during the past three years, or via exclusive licensing for a period of more than five
 years.
- The products (and/or services) fall within the categories supported and recognised by the State as 'New
 and Hi-tech Industries'. These industries include the following: electronic information technology,
 biomedical and new medical technology, aviation and aerospace technology, new materials technology,

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[¶50-584] Cost-sharing agreements



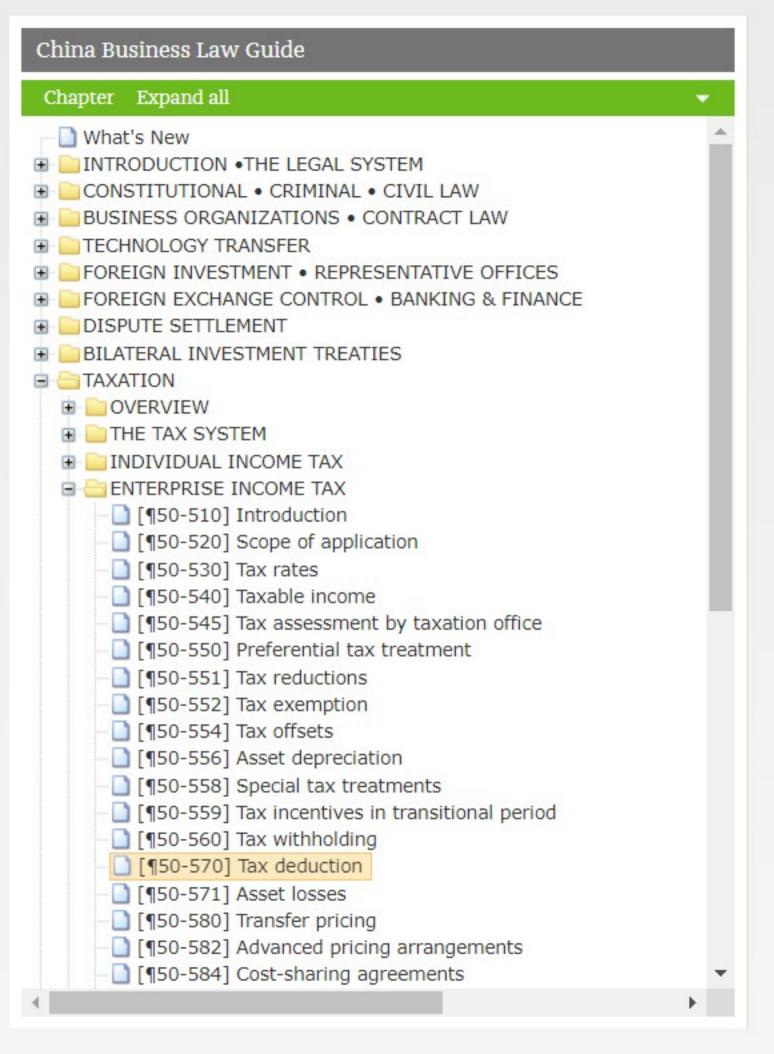
[50-558] Special tax treatments

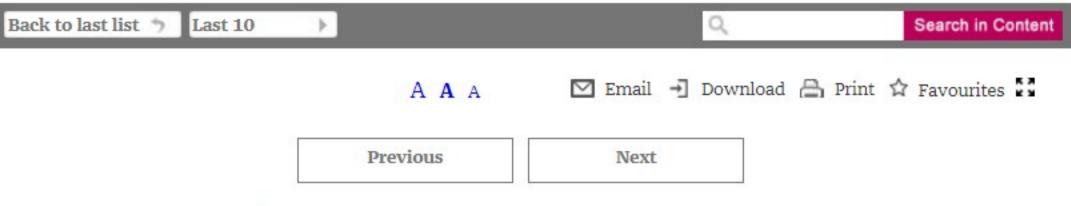
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Article 36 of the Enterprise Income Tax Law authorises the State Council to design special tax incentive policies pursuant to the needs of the national economy and social development or in response to unexpected events which bring major effects on enterprise business activity. On 22 February 2008, with the approval of the State Council, the Ministry of Finance and the State Administration of Taxation issued the Notice on Several Enterprise Income Tax Incentive Policies (Caishui [2008] No 1) to give certain special tax treatments to specified businesses and investment. These treatments are summarised below.

Software industry and integrated circuit industry

- Tax refund made to a software manufacturing enterprise under the policy of "immediate-refund-upon-levy" of value-added tax will not be treated as the enterprise's taxable income and is exempted from income tax. The same applies to integrated circuit design enterprises.
- Starting from the first profit-making year, software manufacturing enterprises newly established within China will, upon the confirmation of status, be exempted from enterprise income tax for the first and second years, and enjoy a 50% reduction of enterprise income tax from the third to fifth years. The same applies to integrated circuit design enterprises.
- A key software manufacturing enterprise under the State planning, which has not enjoyed tax exemption previously is subject to 10% enterprise income tax. The same applies to an integrated circuit design





[50-570] Tax deduction

Enterprises must meet all the above conditions in order to be entitled to the transitional tax incentives. If the enterprise is disqualified as a new and hi-tech enterprise during the transitional period as a result of a review or random inspection, it will loosen its entitlement for the tax incentives perpetually, even if it subsequently re-accredited as a new and hi-tech enterprise (Guofa (2007) No 40).

- charitable donations and gifts, but only for an amount within 12% of the gross annual profit of the enterprise;
- fixed asset depreciation, but not for fixed assets other than houses and buildings not yet used, fixed
 assets that are rented under leasing operations or rented out under financial leasing, fixed assets that are
 folly depreciated but still in use, fixed assets unrelated to the business operation, and land that is valued
 separately and entered under the fixed asset account;
- expenses incurred in the amortisation of intangible assets, but not for self-developed intangible assets
 that have already been deducted, self-created goodwill, intangible assets unrelated to the business
 operation, and other intangible assets for which deduction of amortisation expenses is not allowed;
- net value of a transferred asset;
- · inventory costs; and
- · expenses for the reconstruction of fixed assets that have already been fully depreciated, renovation of

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[50-590] Reinvestment of profits

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Prior to 2008, foreign investors were entitled to a 40% refund of income tax previously paid on profits which are reinvested in the registered capital of the same enterprise. This entitlement was revoked since the new Enterprise Income Tax Law (which favours equal treatment for domestic and foreign investment enterprises) took effect on 1 January 2008.

Pursuant to the relevant requirements of the Notice of the State Council on Several Measures Relating to Promoting Foreign Investment Growth (Guofa [2017] No 39), to further actively utilise foreign funds, promote foreign investment growth, improve foreign investment quality, and encourage continued and increased investments in China by overseas investors, the five ministries, namely the Ministry of Finance, the State Administration of Taxation, the National Development and Reform Commission, and the Ministry of Commerce jointly issued the Notice on Issues Relating to the Temporary Waiver for Withholding Income Tax for Overseas Investors Using Distributed Profits for Direct Investments (Caisui [2018] No 102;see CCH, China Laws for Foreign Business – Taxation & Customs, ¶39-395) on 29 September 2018. This Notice takes effect from 1 January 2018, repealing the previous Caisui [2017] No 88. It applies to equity investment gains such as dividends, bonus issues etc. derived by an overseas investor on on after 1 January 2018. To tie in with the execution of Caisui [2018] No 102, the Announcement of the State Administration of Taxation on Issues Relating to Widening the Applicable Scope of Temporary Waiver for Withholding Income Tax for Overseas Investors Using Distributed Profits for Direct Investments was issued on 29 October 2018 (SAT Announcement [2018] No 53), replacing SAT Announcement [2018] No 3.