What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
Updated by Thomas Man and Jing Bu
BUSINESS ORGANISATIONS
[¶12-010] Introduction
Legal persons
Domestic business organisations
Company law of the PRC
[¶14-225] Piercing the corporate veil
[14-230] Removal of director
[14-235] Conflict between the company's articles of associatio
[14-240] Conflict between the resolution and the articles of as
[14-245] Fraudulent withdrawal of capital contribution
[¶14-250] Project Investment
[14-255] Timeline to complete profit distribution
[14-260] Related-party transactions
[14-265] Deadlock
[¶14-300] Corporate bonds
[¶14-350] Financial and accounting matters
[¶14-400] Mergers and divisions
[¶14-450] Dissolution and liquidation
[¶14-500] Foreign branch offices
[¶14-520] Listed companies
[¶14-540] Non-listed public companies
Registration of companies under company law
Bankruptcy
CONTRACT LAW
TECHNOLOGY TRANSFER
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE



## [14-230] Removal of director

The *Company Law* and the *Guidelines on Articles of Association of Listed Companies* (Revised in 2019) both provide that the shareholders' meeting or the shareholders' general meeting has the right to appoint and remove a director at any time, regardless if his/her term of office has expired.

The *Provisions of the Supreme People's Court on Several Issues Relating to the Application of the Company Law of the People's Republic of China (V)*, with effect from 29 April 2019, further makes it clear that if a director is dismissed by a valid resolution of the shareholders' meeting or the shareholders' general meeting before expiry of his/her term of office, he/his has no right to assert that the dismissal is not legally effective. However, the dissenting director may file a lawsuit on a dispute over indemnity with the company.

Note that this provision is not applicable to directors who are elected by the employee assembly or the employee representative assembly and are not elected by the shareholders' meeting or the shareholders' general meeting.

http://www.pbookshop.com

What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
Updated by Thomas Man and Jing Bu
BUSINESS ORGANISATIONS
[¶12-010] Introduction
Legal persons
Domestic business organisations
Company law of the PRC
[¶14-225] Piercing the corporate veil
[14-230] Removal of director
[14-235] Conflict between the company's articles of associatio
[14-240] Conflict between the resolution and the articles of as
[14-245] Fraudulent withdrawal of capital contribution
[¶14-250] Project Investment
[14-255] Timeline to complete profit distribution
[14-260] Related-party transactions
[14-265] Deadlock
[¶14-300] Corporate bonds
[¶14-350] Financial and accounting matters
[¶14-400] Mergers and divisions
[¶14-450] Dissolution and liquidation
[¶14-500] Foreign branch offices
[¶14-520] Listed companies
[¶14-540] Non-listed public companies
Registration of companies under company law
Bankruptcy
CONTRACT LAW
TECHNOLOGY TRANSFER
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE



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

Last Reviewed: 21 06 2019

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.

http://www.pbookshop.com

What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
Updated by Thomas Man and Jing Bu
BUSINESS ORGANISATIONS
[¶12-010] Introduction
Legal persons
Domestic business organisations
Company law of the PRC
[¶14-225] Piercing the corporate veil
[14-230] Removal of director
[14-235] Conflict between the company's articles of associatio
[14-240] Conflict between the resolution and the articles of as
[14-245] Fraudulent withdrawal of capital contribution
[¶14-250] Project Investment
[14-255] Timeline to complete profit distribution
[14-260] Related-party transactions
[14-265] Deadlock
[¶14-300] Corporate bonds
[¶14-350] Financial and accounting matters
[¶14-400] Mergers and divisions
[¶14-450] Dissolution and liquidation
[¶14-500] Foreign branch offices
[¶14-520] Listed companies
[¶14-540] Non-listed public companies
Registration of companies under company law
Bankruptcy
CONTRACT LAW
TECHNOLOGY TRANSFER
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE



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

Last Reviewed: 21 06 2019

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 violates 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.

http://www.pbookshop.com

What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
Updated by Thomas Man and Jing Bu
BUSINESS ORGANISATIONS
[¶12-010] Introduction
Legal persons
Domestic business organisations
Company law of the PRC
[¶14-225] Piercing the corporate veil
[14-230] Removal of director
[14-235] Conflict between the company's articles of associatio
[14-240] Conflict between the resolution and the articles of as:
[14-245] Fraudulent withdrawal of capital contribution
[¶14-250] Project Investment
[14-255] Timeline to complete profit distribution
[14-260] Related-party transactions
[14-265] Deadlock
[¶14-300] Corporate bonds
[¶14-350] Financial and accounting matters
[¶14-400] Mergers and divisions
[¶14-450] Dissolution and liquidation
[¶14-500] Foreign branch offices
[¶14-520] Listed companies
[¶14-540] Non-listed public companies
Registration of companies under company law
Bankruptcy
CONTRACT LAW
TECHNOLOGY TRANSFER
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE



# [14-245] Fraudulent withdrawal of capital contribution

Last Reviewed: 21 06 2019

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;

(2) transfer capital contribution out through fictitious debts with the company;

(3) transfer capital contribution out through related-party transactions; or

(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.

http://www.pbookshop.com

What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
TECHNOLOGY TRANSFER
INTRODUCTION
[¶20-100] Administration
[¶20-110] Scope
[¶20-130] Qualified technology transfer
[¶20-150] Categories of technologies
TECHNOLOGY IMPORT
TECHNOLOGY EXPORT
[¶20-330] Registration of contracts
[¶20-350] Taxation
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE
DISPUTE SETTLEMENT
BILATERAL INVESTMENT TREATIES
TAXATION
INSURANCE • LABOUR
INTELLECTUAL PROPERTY
CUSTOMS
ADMINISTRATIVE LAW
ENVIRONMENTAL PROTECTION
IMPORT & EXPORT CONTROLS · COUNTERTRADE, PROCESSING & ASSE
LAND • SPECIAL INVESTMENT AREAS



## [20-130] Qualified technology 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.

(Art 4)

http://www.pbookshop.com

What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
TECHNOLOGY TRANSFER
INTRODUCTION
[¶20-100] Administration
[¶20-110] Scope
[¶20-130] Qualified technology transfer
[¶20-150] Categories of technologies
TECHNOLOGY IMPORT
TECHNOLOGY EXPORT
[¶20-330] Registration of contracts
[¶20-350] Taxation
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE
DISPUTE SETTLEMENT
BILATERAL INVESTMENT TREATIES
TAXATION
INSURANCE • LABOUR
INTELLECTUAL PROPERTY
CUSTOMS
ADMINISTRATIVE LAW
ENVIRONMENTAL PROTECTION
IMPORT & EXPORT CONTROLS · COUNTERTRADE, PROCESSING & ASSE
LAND • SPECIAL INVESTMENT AREAS



## [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.

http://www.pbookshop.com

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;

What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
TECHNOLOGY TRANSFER
INTRODUCTION
[¶20-100] Administration
[¶20-110] Scope
[¶20-130] Qualified technology transfer
[¶20-150] Categories of technologies
TECHNOLOGY IMPORT
[¶20-160] General provisions
[¶20-170] Import of restricted technologies
[¶20-200] Import of free import technologies
TECHNOLOGY EXPORT
[¶20-330] Registration of contracts
[¶20-350] Taxation
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE
DISPUTE SETTLEMENT
BILATERAL INVESTMENT TREATIES
TAXATION
INSURANCE • LABOUR
INTELLECTUAL PROPERTY
CUSTOMS
ADMINISTRATIVE LAW
ENVIRONMENTAL PROTECTION
IMPORT & EXPORT CONTROLS · COUNTERTRADE, PROCESSING & ASSE
LAND • SPECIAL INVESTMENT AREAS



# [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:

(1) 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.

http://www.pbookshop.com

What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
TECHNOLOGY TRANSFER
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE
DISPUTE SETTLEMENT
BILATERAL INVESTMENT TREATIES
[¶45-010] Introduction
MAIN FEATURES
[¶45-110] Introduction
[¶45-130] Protection upon expropriation
[¶45-150] Arbitration
[¶45-170] Most favoured nation treatment
[¶45-190] Transfer or repatriation of proceeds related to investme
[¶45-210] Other matters
COMPARATIVE TABLES
CLOSER ECONOMIC PARTNERSHIP ARRANGEMENT BETWEEN CHINA
TAXATION
INSURANCE • LABOUR
INTELLECTUAL PROPERTY
CUSTOMS
ADMINISTRATIVE LAW
ENVIRONMENTAL PROTECTION
IMPORT & EXPORT CONTROLS · COUNTERTRADE, PROCESSING & ASSE
LAND • SPECIAL INVESTMENT AREAS



## [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.

http://www.pbookshop.com

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.

What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
TECHNOLOGY TRANSFER
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE
DISPUTE SETTLEMENT
BILATERAL INVESTMENT TREATIES
[¶45-010] Introduction
MAIN FEATURES
[¶45-110] Introduction
[¶45-130] Protection upon expropriation
[¶45-150] Arbitration
[¶45-170] Most favoured nation treatment
[¶45-190] Transfer or repatriation of proceeds related to investme
[¶45-210] Other matters
COMPARATIVE TABLES
CLOSER ECONOMIC PARTNERSHIP ARRANGEMENT BETWEEN CHINA
TAXATION
INSURANCE • LABOUR
INTELLECTUAL PROPERTY
CUSTOMS
ADMINISTRATIVE LAW
ENVIRONMENTAL PROTECTION
IMPORT & EXPORT CONTROLS · COUNTERTRADE, PROCESSING & ASSE
LAND • SPECIAL INVESTMENT AREAS


# [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 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.

http://www.pbookshop.com

What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
TECHNOLOGY TRANSFER
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE
DISPUTE SETTLEMENT
BILATERAL INVESTMENT TREATIES
TAXATION
OVERVIEW
THE TAX SYSTEM
[¶50-110] Tax legislation
[¶50-115] General principles
[¶50-117] Taxation registration
[¶50-120] Tax declarations
[¶50-123] Tax collection
[¶50-125] Tax inspection
Taxes affecting foreign business operations
[¶50-210] Tax administration
INDIVIDUAL INCOME TAX
ENTERPRISE INCOME TAX
VALUE-ADDED TAX
CONSUMPTION TAX
LAND VALUE ADDED TAX
[¶52-075] Deed Tax
VEHICLE AND VESSEL TAX
RESOURCE TAX
STAMP TAX
TAX ON SHARE TRANSACTIONS
TAX INCENTIVES
TAX TREATIES



## [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.

http://www.pbookshop.com

What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
TECHNOLOGY TRANSFER
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE
DISPUTE SETTLEMENT
BILATERAL INVESTMENT TREATIES
TAXATION
OVERVIEW
THE TAX SYSTEM
INDIVIDUAL INCOME TAX
ENTERPRISE INCOME TAX
[¶50-510] Introduction
[¶50-520] Scope of application
[¶50-530] Tax rates
[¶50-540] Taxable income
[¶50-545] Tax assessment by taxation office
[¶50-550] Preferential tax treatment
[¶50-551] Tax reductions
[¶50-552] Tax exemption
[¶50-554] Tax offsets
[¶50-556] Asset depreciation
[¶50-558] Special tax treatments
[¶50-559] Tax incentives in transitional period
[¶50-560] Tax withholding
[¶50-570] Tax deduction
[¶50-571] Asset losses
[¶50-580] Transfer pricing
[¶50-582] Advanced pricing arrangements
[¶50-584] Cost-sharing agreements



# [50-551] Tax reductions

Last Reviewed: 28 01 2019

**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.

http://www.pbookshop.com

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,

What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
TECHNOLOGY TRANSFER
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE
DISPUTE SETTLEMENT
BILATERAL INVESTMENT TREATIES
TAXATION
OVERVIEW
THE TAX SYSTEM
INDIVIDUAL INCOME TAX
ENTERPRISE INCOME TAX
[¶50-510] Introduction
[¶50-520] Scope of application
[¶50-530] Tax rates
[¶50-540] Taxable income
[¶50-545] Tax assessment by taxation office
[¶50-550] Preferential tax treatment
[¶50-551] Tax reductions
[¶50-552] Tax exemption
[¶50-554] Tax offsets
[¶50-556] Asset depreciation
[¶50-558] Special tax treatments
[¶50-559] Tax incentives in transitional period
[¶50-560] Tax withholding
[¶50-570] Tax deduction
[¶50-571] Asset losses
[¶50-580] Transfer pricing
[¶50-582] Advanced pricing arrangements
[¶50-584] Cost-sharing agreements



# [50-558] Special tax treatments

Last Reviewed: 18 05 2020

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.

http://www.pbookshop.com

**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

What's New
INTRODUCTION •THE LEGAL SYSTEM
CONSTITUTIONAL • CRIMINAL • CIVIL LAW
BUSINESS ORGANIZATIONS • CONTRACT LAW
TECHNOLOGY TRANSFER
FOREIGN INVESTMENT • REPRESENTATIVE OFFICES
FOREIGN EXCHANGE CONTROL • BANKING & FINANCE
DISPUTE SETTLEMENT
BILATERAL INVESTMENT TREATIES
TAXATION
OVERVIEW
THE TAX SYSTEM
INDIVIDUAL INCOME TAX
ENTERPRISE INCOME TAX
[¶50-510] Introduction
[¶50-520] Scope of application
[¶50-530] Tax rates
[¶50-540] Taxable income
[¶50-545] Tax assessment by taxation office
[¶50-550] Preferential tax treatment
[¶50-551] Tax reductions
[¶50-552] Tax exemption
[¶50-554] Tax offsets
[¶50-556] Asset depreciation
[¶50-558] Special tax treatments
[¶50-559] Tax incentives in transitional period
[¶50-560] Tax withholding
[¶50-570] Tax deduction
[¶50-571] Asset losses
[¶50-580] Transfer pricing
[¶50-582] Advanced pricing arrangements
[¶50-584] Cost-sharing agreements



# [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).

http://www.pbookshop.com

- 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 fully 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

FOREIGN EXCHANGE CONTROL • BANKING & FINANCE
DISPUTE SETTLEMENT
BILATERAL INVESTMENT TREATIES
TAXATION
OVERVIEW
THE TAX SYSTEM
INDIVIDUAL INCOME TAX
ENTERPRISE INCOME TAX
[¶50-510] Introduction
[¶50-520] Scope of application
[¶50-530] Tax rates
[¶50-540] Taxable income
[¶50-545] Tax assessment by taxation office
[¶50-550] Preferential tax treatment
[¶50-551] Tax reductions
[¶50-552] Tax exemption
[¶50-554] Tax offsets
[¶50-556] Asset depreciation
[¶50-558] Special tax treatments
[¶50-559] Tax incentives in transitional period
[¶50-560] Tax withholding
[¶50-570] Tax deduction
[¶50-571] Asset losses
[¶50-580] Transfer pricing
[¶50-582] Advanced pricing arrangements
[¶50-584] Cost-sharing agreements
[¶50-586] Tax avoidance investigation
[¶50-590] Reinvestment of profits
[¶50-595] Disposal of financial assets
[¶50-610] Tax deduction and calculation
[¶50-620] Tax declarations and payment
[¶50-650] Penalties



## [50-590] Reinvestment of profits

Last Reviewed: 28 01 2019

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.

http://www.pbookshop.com

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 or 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*.