



九州豐澤律師事務所  
J & F P R C L A W Y E R S

CHINA  
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UPDATE  
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## Enterprise Income Tax

### ◆ Implementing Rules of the Enterprise Income Tax

企业所得税法实施条例

Issuing Authority: the State Council

Date of Issuance: December 11, 2007

Effective date: January 1, 2008

On December 11, 2007 the State Council issued the Implementing Rules of the Enterprise Income Tax Law ("Implementing Rules"). On January 1, 2008, the Implementing Rules together with the Enterprise Income Tax Law ("EIT Law") have come into effect. The Implementing Rules have made mainly following clarifications implementing to the EIT Law:

#### Resident Enterprises and Effective Management

Resident enterprises will be subject to PRC enterprise income tax on their worldwide income. A foreign enterprise with effective management in China will be considered as a resident enterprise. The Implementing Rules clarify the definition of "Effective Management" as "substantial management and control over the production and operation, personnel, finance, properties and so forth of a certain enterprise".

#### Withholding Tax on Dividends

A 10% withholding tax on dividends distributed to foreign investors is now levied as of January 1, 2008. In order to reduce the normal withholding tax rate on dividends from 10% to 5%, foreign investors may choose to locate or relocate their offshore investment holding vehicles to jurisdictions which have favorable tax treaties with China. Examples of such jurisdictions are Hong Kong, Singapore, Mauritius and Barbados. It needs to be noted that the 5% rate is only applicable if the foreign investor owns 25% or more of the onshore PRC entity.

#### High and New Technology Enterprise

The new EIT Law has uniformed the tax rate applicable to both foreign and domestic enterprises to be 25%. Notwithstanding that, according to the new EIT Law, a qualified High and New Technology Enterprise can still enjoy a favorable tax rate of 15%. According to the Implementing Rules, the qualifications and standards for the recognition of High and New Technology Enterprises will be set forth in circulars later jointly promulgated by the Ministry of Science and Technology, Ministry of Finance and State Administration of Tax.



## Anti-avoidance Tax Adjustments

For the first time the EIT Law and the Implementing Rules have introduced the Anti-avoidance Tax Adjustments into China's enterprise income tax system. According to the Implementing Rules, any arrangement lacking reasonable commercial purposes which results in a reduction of taxable revenue or income may be subject to special tax adjustment made by tax authorities; unpaid tax resulting from tax adjustments will be subject to an interest levy; and tax adjustments are subject to a time limit of 10 years.

## Tariffs

### ◆ Notice regarding the Tariff Implementing Methods for Year 2008

关于2008年关税实施方案的通知

Issuing Authority: Custom Tariff Commission of the State Council

Date of Issuance: December 14, 2007

Effective Date: January 1, 2008

According to the Tariff Implementing Methods of Year 2008 (the "Methods") which were promulgated by the Custom Tariff Commission of the State Council on December 14, 2007, the import tariffs will generally see a greater downward adjustment, manifesting the Chinese government's firm and positive attitude toward import business.

As the Methods provide, tariff rates for most of the processed oil products, including gasoline and diesel oil will be lowered from the original level ranged from 2% to 6%, to a uniformed level of 1%. The tariff for the importation of crude oil will remain at zero. This indicates the Chinese government's intention to encourage the import of products made from scarce resources.

On the contrary to the lowering of the import tariffs, the export tariff rates will see further elevation. For instance, the export tariff for steel will be lifted up to a rate of 25% from the previous 15%. In addition export tariff rate for coking coals, which is mainly adopted for the production of the steels, will also be elevated to a much higher level.





## Human Resources

### ◆ **Supplementary Rules to the Interim Administrative Rules on Sino-Foreign Human Resources Agencies**

关于《中外合资人才中介机构管理暂行规定》的补充规定

Issuing Authority: Ministry of Personnel, Ministry of Commerce, State Administration of Industry and Commerce

Date of Issuance: November 16, 2007,

Effective Date: January 1, 2008

To further the implementation of CEPA and encourage service providers from Hong Kong and Macau to establish human resources agencies in the Mainland China, the Ministry of Personnel, Ministry of Commerce and the State Administration of Industry and Commerce have jointly promulgated Supplementary Rules to the Interim Administrative Rules on Sino-Foreign Human Resources Agencies (the "Rules"). Major changes brought by the Rules are as follows:

1. As to the human resources agencies established by the Hong Kong and Macau service providers in the form of joint venture, the Rules have cancelled the restrictions imposed with respect to equity holding.
2. Wholly owned human resources agencies established by the Hong Kong and Macau service providers are permitted by the Rules.
3. Service providers shall satisfy the relevant definitions set forth in CEPA documents.

## Civil Aviation Industry

### ◆ **Supplementary Rules to the Rules on Foreign Investment to Civil Aviation Industry**

《外商投资民用航空业规定》的补充规定 (三)

Issuing Authority: General Bureau of Civil Aviation, Ministry of Commerce, and National Development and Reform Commission

Date of Issuance: October 12, 2007,

Effective Date: January 1, 2008

Supplementary Rules to the Rules on Foreign Investment to Civil Aviation Industry (the "Rules") were published to further implement the CEPA. The Rules set forth that the qualified service providers from Hong Kong and Macau are allowed to establish joint ventures engaged in the business of CRS (Computer Reservation System) ("JV").



The Rules also provide that mainland shareholders shall hold majority shares in the JVs and the grant of the license to such JVs shall subject to a test of economic demand.

## Commerce

### ◆ Supplementary Rules to the Administrative Rules on Foreign Invested Commercial Sectors

外商投资商业领域管理办法补充规定 (三)

Issuing Authority: Ministry of Commerce

Date of Issuance: November 5, 2007

Effective Date: November 5, 2007

The Supplementary Rules to the Administrative Rules on Foreign Invested Commercial Sectors (the "Rules") are promulgated to regulate the investment made by Hong Kong and Macau service providers in the commercial sectors in the Mainland China. According to the Rules, if the same service provider from Hong Kong or Macau has opened over 50 shops in the Mainland China and if the commodities provided by such service provider include pharmaceuticals, pesticides, agricultural plastic films, fertilizer, vegetable oil, sugar and cottons, which are of various brands and from different suppliers, such service provider is allowed to hold majority shares in a joint venture with Mainland partners, and such majority shareholding is subject to a maximum rate of 65%.

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