

# 国际法资料

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中国国际法学会、外交学院国际法研究所 编辑

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主编 徐小冰

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# 国内立法

## 鼓励外商投资法规汇编(一)

### I. 国务院关于鼓励外商投资的规定

(1986年10月11日)

**第一条** 为了改善投资环境,更好地吸收外商投资,引进先进技术,提高产品质量,扩大出口创汇,发展国民经济,特制定本规定。

**第二条** 国家鼓励外国的公司、企业和其他经济组织或者个人(以下简称外国投资者),在中国境内举办中外合资经营企业、中外合作经营企业和外资企业(以下简称外商投资企业)。

国家对下列外商投资企业给予特别优惠:

一、产品主要用于出口,年度外汇总收入额减除年度生产经营外汇支出额和外国投资者汇出分得利润所需外汇额以后,外汇有结余的生产型企业(以下简称产品出口企业);

二、外国投资者提供先进技术,从事新产品开发,实现产品升级换代,以增加出口创汇或者替代进口的生产型企业(以下简称先进技术企业)。

**第三条** 产品出口企业和先进技术企业,除按照国家规定支付或者提取中方职工劳动保险、福利费用和住房补助基金外,免缴国家对职工的各项补贴。

**第四条** 产品出口企业和先进技术企业的场地使用费，除大城市市区繁华地段外，按下列标准计收：

一、开发费和使用费综合计收的地区，为每年每平方米五元至二十元；

二、开发费一次性计收或者上述企业自行开发场地的地区，使用费最高为每年每平方米三元。

前款规定的费用，地方人民政府可以酌情在一定期限内免收。

**第五条** 对产品出口企业和先进技术企业优先提供生产经营所需的水、电、运输条件和通信设施，按照当地国营企业收费标准计收费用。

**第六条** 产品出口企业和先进技术企业在生产和流通过程中需要借贷的短期周转资金，以及其他必需的信贷资金，经中国银行审核后，优先发放。

**第七条** 产品出口企业和先进技术企业的外国投资者，将其从企业分得的利润汇出境外时，免缴汇出额的所得税。

**第八条** 产品出口企业按照国家规定减免企业所得税期满后，凡当年企业出口产品产值达到当年企业产品产值70%以上的，可以按照现行税率减半缴纳企业所得税。

经济特区和经济技术开发区的以及其他已经按15%的税率缴纳企业所得税的产品出口企业，符合前款条件的，减按10%的税率缴纳企业所得税。

**第九条** 先进技术企业按照国家规定减免企业所得税期满后，可以延长三年减半缴纳企业所得税。

**第十条** 外国投资者将其从企业分得的利润，在中国境内再投资举办、扩建产品出口企业或者先进技术企业，经营期不少于五年的，经申请税务机关核准，全部退还其再投资部分已缴纳的企业所得税税款。经营期不足五年撤出该项投资的，应当缴回已退的企业所得税税款。

**第十一条** 对外商投资企业的出口产品，除原油、成品油和国

家另有规定的产品外,免征工商统一税。

**第十二条** 外商投资企业可以自行组织其产品出口,也可以按照国家规定委托代理出口。属于需要申领出口许可证的产品,按照企业年度出口计划,每半年申领一次许可证。

**第十三条** 外商投资企业为履行其产品出口合同,需要进口(包括国家限制进口)的机械设备、生产用的车辆、原材料、燃料、散件、零部件、元器件、配套件,不再报请审批,免领进口许可证,由海关实行监管,凭企业合同或者进出口合同验收。

前款所述进口料、件,只限于本企业自用,不得在国内市场出售;如用于内销产品,应当按照规定补办进口手续,并照章补税。

**第十四条** 外商投资企业之间,在外汇管理部门监管下,可以相互调剂外汇余缺。

中国银行以及经中国人民银行指定的其他银行,可以对外商投资企业开办现汇抵押业务,贷放人民币资金。

**第十五条** 各级人民政府和有关主管部门应当保障外商投资企业的自主权,支持外商投资企业按照国际上先进的科学方法管理企业。

外商投资企业有权在批准的合同范围内,自行制定生产经营计划,筹措、运用资金,采购生产资料,销售产品;自行确定工资标准、工资形式和奖励、津贴制度。

外商投资企业可以根据生产经营需要,自行确定其机构设置和人员编制,聘用或者辞退高级经营管理人员,增加或者辞退职工;可以在当地招聘和招收技术人员、管理人员和工人,被录用人员所在单位应当给予支持,允许流动;对违反规章制度,造成一定后果的职工,可以根据情节轻重,给予不同处分,直至开除。外商投资企业招聘、招收、辞退或者开除职工,应当向当地劳动人事部门备案。

**第十六条** 各地区、各部门必须执行《国务院关于坚决制止向企业乱摊派的通知》,由省级人民政府制定具体办法,加强监督管



理。

外商投资企业遇有不合理收费的情况可以拒交；也可以向当地经济委员会直到国家经济委员会申诉。

**第十七条** 各级人民政府和有关主管部门，应当加强协调工作，提高办事效率，及时审批外商投资企业申报的需要批复和解决的事宜。由国务院主管部门审批的外商投资企业的协议、合同、章程，审批机关必须在收到全部文件之日起三个月以内决定批准或者不批准。

**第十八条** 本规定所指产品出口企业和先进技术企业，由该企业所在地的对外经济贸易部门会同有关部门根据企业合同确认，并出具证明。

产品出口企业的年度出口实绩，如果未能实现企业合同规定的外汇平衡有结余的目标，应当在下一年度内补缴上一年度已经减免的税、费。

**第十九条** 本规定除明确规定适用于产品出口企业或者先进技术企业的条款外，其他条款适用于所有外商投资企业。

本规定施行之日前获准举办的外商投资企业，凡符合本规定的优惠条件的，自施行之日起适用本规定。

**第二十条** 香港、澳门、台湾的公司、企业和其他经济组织或者个人投资举办的企业，参照本规定执行。

**第二十一条** 本规定由对外经济贸易部负责解释。

**第二十二条** 本规定自发布之日起施行。

(译文)

PROVISIONS OF THE STATE COUNCIL OF THE  
PEOPLE'S REPUBLIC OF CHINA FOR THE  
ENCOURAGEMENT OF FOREIGN  
INVESTMENT

*(Promulgated on October 11, 1986)*

**Article 1.** These provisions are hereby formulated in order to improve the investment environment, facilitate the absorption of foreign investment, introduce advanced technology, improve product quality, expand exports in order to generate foreign exchange and develop the national economy.

**Article 2.** The State encourages foreign companies, enterprises and other economic entities or individuals (hereinafter referred to as "foreign investors") to establish Chinese-foreign equity joint ventures, Chinese-foreign co-operative ventures and wholly foreign-owned enterprises (hereinafter referred to as "enterprises with foreign investment") within the territory of China.

The State grants special preferences to the enterprises with foreign investment listed below:

(1) Production enterprises whose products are mainly for export, which have a foreign exchange surplus after deducting from their total annual foreign exchange revenues the annual foreign exchange expenditures incurred in production and operation and the foreign exchange needed for the remittance abroad of the profits earned by foreign investors (hereinafter referred to as "export enterprises").

(2) Production enterprises possessing advanced technology supplied by foreign investors which are engaged in developing new products, and upgrading and replacing products in order to increase foreign exchange generated by exports or for import substitution

(hereinafter referred to as "technologically advanced enterprises").

**Article 3.** Export enterprises and technologically advanced enterprises shall be exempt from payment to the state of all subsidies to staff and workers, except for the payment of or allocation of funds for labor insurance, welfare costs and housing subsidies for Chinese staff and workers in accordance with the provisions of the state.

**Article 4.** The site use fees for export enterprises and technologically advanced enterprises, except for those located in busy urban sectors of large cities, shall be computed and charged according to the following standards:

(1) Five to twenty RMB yuan per square metre per year in areas where the development fee and the site use fee are computed and charged together;

(2) Not more than three RMB yuan per square metre per year in site areas where the development fee is computed and charged on a one-time basis or areas which are developed by the above-mentioned enterprises themselves.

Exemptions for specified periods of time from the fees provided in the foregoing provision may be granted at the discretion of local people's governments.

**Article 5.** Export enterprises and technologically advanced enterprises shall be given priority in obtaining water, electricity and transportation services, and communication facilities needed for their production and operation. Fees shall be computed and charged in accordance with the standards for local state enterprises.

**Article 6.** Export enterprises and technologically advanced enterprises, after examination by the Bank of China, shall be given priority in receiving loans for short-term revolving funds needed for production and distribution, as well as for other needed credit.

**Article 7.** When foreign investors in export enterprises and technologically advanced enterprises remit abroad profits distributed to them by such enterprises, the amount remitted shall be exempt from income tax.

**Article 8.** After the expiration of the period for the reduction

or exemption of enterprise income tax in accordance with the provisions of the state, export enterprises whose value of export products in that year amounts to 70 per cent or more of the value of their products for that year, may pay enterprise income tax at one-half the rate of the present tax.

Export enterprises in the special economic zones and in the economic and technological development zones and other export enterprises that already pay enterprise income tax at a tax rate of 15 per cent and that comply with the foregoing conditions, shall pay enterprise income tax at a rate of 10 per cent.

**Article 9.** After the expiration of the period of reduction or exemption of enterprise income tax in accordance with the provisions of the state, technologically advanced enterprises may extend for three years the payment of enterprise income tax at a rate reduced by one half.

**Article 10.** Foreign investors who reinvest the profits distributed to them by their enterprises in order to establish or expand export enterprises or technologically advanced enterprises for a period of operation of not less than five years, after application to and approval by the tax authorities, shall be refunded the total amount of enterprise income tax already paid on the reinvested portion. If the investment is withdrawn before the period of operation reaches five years, the amount of enterprise income tax refunded shall be repaid.

**Article 11.** Export products of enterprises with foreign investment, except crude oil, finished oil and other products subject to special state provisions, shall be exempt from the consolidated industrial and commercial tax.

**Article 12.** Enterprises with foreign investment may arrange the export of their products directly or may also export by consignment to agents in accordance with state provisions. For products that require an export license, with the annual export plan of the enterprise, an application for an export license may be made every six months.

**Article 13.** Machinery and equipment, vehicles used in production, raw materials, fuel, bulk parts, spare parts, machine component

parts and fittings (including imports restricted by the state), which enterprises with foreign investment need to import in order to carry out their export contracts do not require further applications for examination and approval and are exempt from the requirement for import licenses. The customs department shall exercise supervision and control and shall inspect and release such imports on the basis of the enterprise contract or the export contract.

The imported materials and items mentioned above are restricted to use by the enterprise and may not be sold on the domestic market. If they are used in products to be sold domestically, import procedures shall be handled in accordance with provisions and the taxes shall be made up according to the governing sections.

**Article 14.** Under the supervision of the foreign exchange control departments, enterprises with foreign investment may mutually adjust their foreign exchange surpluses and deficiencies among each other.

The Bank of China and other banks designated by the People's Bank of China may provide cash security services and may grant loans in Renminbi to enterprises with foreign investment.

**Article 15.** The people's governments at all levels and relevant departments in charge shall guarantee the right of autonomy of enterprises with foreign investment and shall support enterprises with foreign investment in managing themselves in accordance with internationally advanced scientific methods.

Within the scope of their approved contracts, enterprises with foreign investment have the right to determine within production and operation plans, to raise funds, to use funds, to purchase production materials and to sell products; and to determine by themselves the wage levels, the forms of wages and bonuses and the allowance system.

Enterprises with foreign investment may, in accordance with their production and operation requirements, determine by themselves their organizational structure and personnel system, employ or dismiss senior management personnel, increase or dismiss staff and workers. They may recruit and employ technical personnel, managerial personnel and

workers in their locality. The unit to which such employed personnel belong shall provide its support and shall permit their transfer. Staff and workers who violate the rules and regulations, and thereby cause certain bad consequences may, in accordance with the seriousness of the case, be given differing sanctions, up to that of discharge. Enterprises with foreign investment that recruit, employ, dismiss or discharge staff and workers, shall file a report with the local labour and personnel department.

**Article 16.** All districts and departments must implement the "Circular of the State Council Concerning Firmly Curbing the Indiscriminate Levy of Charges on Enterprises". The people's governments at the provincial level shall formulate specific methods and strengthen supervision and administration.

Enterprises with foreign investment that encounter unreasonable charges may refuse to pay and may also appeal to the local economic committees up to the State Economic Commission.

**Article 17.** The people's governments at all levels and relevant departments in charge shall strengthen the co-ordination of their work, improve efficiency in handling matters and shall promptly examine and approve matters reported by enterprises with foreign investment that require response and resolution. The agreement, contract and articles of association of an enterprise with foreign investment shall be examined and approved by the departments in charge under the State Council. The examination and approval authority must within three months from the date of receipt of all documents decide to approve or not to approve them.

**Article 18.** Export enterprises and technologically advanced enterprises mentioned in these provisions shall be confirmed jointly as such by the foreign economic relations and trade departments where such enterprises are located and the relevant departments in accordance with the enterprise contract, and certification shall be issued.

If the actual results of the annual exports of an export enterprise are unable to realize the goal of the surplus in the foreign exchange balance that is stipulated in the enterprise contract, the taxes and fees

which have already been reduced or exempted in the previous year shall be made up in the following year.

**Article 19.** Except where these provisions expressly provide that they are to be applicable to export enterprises or technologically advanced enterprises, other articles shall be applicable to all enterprises with foreign investment.

These provisions apply from the date of implementation to those enterprises with foreign investment that have obtained approval for establishment before the date of implementation of these provisions and that qualify for the preferential terms of these provisions.

**Article 20.** For enterprises invested in and established by companies, enterprises and other economic organizations or individuals from Hong Kong, Macao, or Taiwan, matters shall be handled by reference to those provisions.

**Article 21.** The Ministry of Foreign Economic Relations and Trade shall be responsible for interpreting these provisions.

**Article 22.** These provisions shall go into effect on the date of issue.

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## II. 劳动人事部关于外商投资企业 用人自主权和职工工资、保险 福利费用的规定

(1986 年 11 月 10 日)

为了贯彻《国务院关于鼓励外商投资的规定》，保障外商投资企业的用人自主权，适当确定中方职工的工资、保险福利费用，特作如下规定：

### 一、关于外商投资企业用人自主权

(一) 外商投资企业可根据生产经营的需要，自行确定机构设置和人员编制，在所在地区劳动人事部门的协助下，自行招收、招聘职工，通过考核，择优录用。

外商投资企业所需要的工程技术人员和经营管理人员，在当地无法解决的，经所在省、自治区、直辖市劳动人事部门商得有关地区劳动人事部门同意，可到外地招聘。

(二) 外商投资企业经过考核，决定录用的在职工程技术人员、经营管理人员和技术工人，原单位应积极支持，允许流动。如有争议，由所在地区劳动人事部门裁决。

(三) 中方委派到外商投资企业工作的高级管理人员，应当是能够掌握政策、懂技术、会管理、勇于开拓，并能与外商合作共事的人员。有关部门对他们的工作应给予支持，在任期内，一般不得调动他们的工作；必须调动的，应征得董事会的同意。

(四) 外商投资企业对于经过试用或者培训而不合格的人员，



因企业生产技术条件发生变化而富余的人员,可以辞退;对于违反企业规章制度,造成一定后果的职工,可以根据情节轻重,给予不同的处分,直至开除。

## 二、关于职工工资、保险福利费用

(一) 外商投资企业职工的工资水平,由董事会按照不低于所在地区同行业条件相近的国营企业平均工资的百分之一百二十的原则加以确定,并根据企业经济效益好坏逐步加以调整。经济效益好的,工资可以多增;经济效益差的,可以少增或不增。

(二) 外商投资企业按照所在地区人民政府的规定,缴纳中方职工退休养老基金和待业保险基金。职工在职期间的保险福利待遇,按照中国政府对国营企业的有关规定执行;所需费用,从企业成本费用中如实列支。

(三) 外商投资企业按照所在地区人民政府的规定,支付住房补助基金,由企业中方用于补贴建造、购置职工住房费用。