Subsidies with Export Share Requirements in China
Online Appendix — Not for Publication

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1 Subsidies with ESR in China: Laws and Regulations

Free Trade Zones

Corporate Income Tax Law of the People's Republic of China, 16 September 1991, Article 5 (GUO SHUI HAN [663] 1991.9.16)

"Income Tax shall be levied at the reduced tax rate of 10% if the output value of exported products manufactured by development zones enterprises is over 70% of the total output value upon the verification of the taxation authorities."

Source and translation: Kaisen Corporate Service Limited.

http://www.by-cpa.com/html/news/20079/1058.html

Circular of the state council concerning the approval of the national development zones for New and High Technology Industries and the relevant policies and provisions, March 6, 1991.

"Article 4 The income tax of development zone enterprises shall be levied at a reduced rate of 15% from the date of their acknowledgement and determination.

Article 5 When the output value of export of a development zone enterprise exceeds 70% of its total annual output value, the income tax shall be levied at a reduced rate of 10% after being verified by the taxation authorities."

Source and translation: Asian Legal Information Institute.

http://www.asianlii.org/cn/legis/cen/laws/cotscctaotndzfnahtiatrpap1530/

The "Provisional Measures Governing the Processing Trade in Export Processing Zones", Chapter I General Provisions, November 22, 2005.

Article 2: An export processing zone is a special area established upon the approval of the State Council and supervised by the customs in a closed way.

Article 3: "Processing trade in an export processing zone" shall refer to the production and business operation activities that the enterprises inside the zone purchase raw materials, parts and components, elements, packing materials, etc. from the outside or inside the territory of China, and transport the finished products processed or assembled to outside the territory of China.

Article 16: The goods carried between the enterprises in an export processing zone and the domestic enterprises outside the zone (including domestic sale of goods from the export processing zone), shall be handled in accordance with the relevant provisions on the import and export of goods. If the import and export permit administration is involved, the relevant certificates must be provided to the administrative department. The leftover pieces, defective products and wasters caused by the enterprises inside a zone during processing and production shall be treated in accordance with the relevant provisions. Source and translation: Asian Legal Information Institute.

http://www.asianlii.org/cn/legis/cen/laws/pmgtptiepz824/

Foreign-Invested Enterprises

Basic Regulations

Enforcement of the Provisions of the State Council on Encouraging Foreign Investment, January 1, 1987, Official Reply (Cai Shui Wai Zi [118] 1987)

"[A]n enterprise with foreign investment may not be recognized as export-oriented enterprises unless three conditions are simultaneously met. First, it must be an enterprise that produces products for export. Second, its products are mainly for export and the annual value of exported products

must constitute over 50% of its total production value in the same year. Third, foreign exchange income and expenses in the same year must be in balance or surplus."
Source and translation: Asian Legal Information Institute.
http://www.asianlii.org/cn/legis/cen/laws/orotmofatsaotctpiteotpotscoefi1887

Circular of the Ministry of Foreign Trade and Economic Cooperation on Submission of Import and Export Plans for Enterprises with Foreign Investment, October 25, 2000(Wai Jing Mao Zi Tong Jin Han Zi [2000] No.768).
"In order to ensure the continuity and stability of the production in foreign-invested enterprises [...] the authorities of foreign trade and economic co-operation shall formulate a complete plan according to the business scopes, production scales and the ratio between domestic sale and export in the contracts."
Source and translation: Asian Legal Information Institute.
http://www.asianlii.org/cn/legis/cen/laws/cotmoftaecosoiaepfewfii20011453/

Corporate Income Tax Law of the People's Republic of China, 30 June 1991, Article 8.4.4 (GUO WU YUAN LING [85] 1991.6.30)
"Where a newly established or expanded enterprise, in which a foreign investor makes reinvestment, fails to meet the standards of an export-oriented enterprise, or is no longer recognized as a technologically advanced enterprise within three years after it goes into production or operation, the foreign investor shall pay back 60% of the tax refunded."
Source and translation: Kaisen Corporate Service Limited.
http://www.by-cpa.com/html/news/20079/1058.html

Corporate Income Tax Law of the People's Republic of China, 9 April 1991, Basic Regulations. 8.1 (ZHU XI LING [45] 1991.4.9)
"The State shall, in accordance with its industrial policies, guide the orientation of foreign investment and encourage the establishment of enterprises with foreign investment which adopt advanced technology and equipment and export all or the greater part of their production."
Source and translation: Kaisen Corporate Service Limited.
http://www.by-cpa.com/html/news/20079/1058.html

Corporate Income Tax

Corporate Income Tax Law of the People's Republic of China, 30 June 1991, Article 8.3.5 (GUO WU YUAN LING [85] 1991.6.30)
"Export-oriented enterprises with foreign investment may, upon the expiration of the tax exemption and reduction period as provided for in the Tax Law, enjoy a further 50% reduction in Enterprise Income Tax based on the rate stipulated by the Tax Law, if the value of their exported products of the year exceeds 70% of the total value of their products of the year. But for the Special Economic Zones and the Economic and Technological Development Zones and other export-oriented enterprises where Enterprise Income Tax has already been reduced to 15% and the above requirements are met, the Enterprise Income Tax shall be levied at 10%."
Source and translation: Kaisen Corporate Service Limited.
http://www.by-cpa.com/html/news/20079/1058.html

Project types

1995 law relative to the Foreign investment project types:

"Regulations for Guiding the Direction of Foreign Investment" Approved by the State Council on June 7, 1995, Article 11.
"Restricted foreign investment projects (Group A) within the category provided in subparagraph 1 of Article 6, may be deemed as permitted foreign investment projects, and not subject to the restriction of Article 9 of these provisions with approval, if the export sales of products amount to over 70% of the total sales of products."
Source and translation: Asian Legal Information Institute.
http://www.asianlii.org/cn/legis/cen/laws/ipogfid604/

The Asian Legal Information Institute also provides the full list of restricted products. The first 10 products listed (in order of appearance) are: Machinery, assemblage of movements of digital watches and finished watches, bikes, knitting machines, Electric appliances: washing machines, refrigerators, freezers, Tins.
Source and translation: Asian Legal Information Institute.
http://www.asianlii.org/cn/legis/cen/laws/ipogfid604/
Change of the 1995 law relative to the Foreign investment project types:

Regulations for Guiding the Direction of Foreign Investment, Approved by the State Council on February 11, 2002
"Article 9: [Encouraged projects] enjoy the preferential treatments according to the provisions of the relevant laws and administrative regulations[...]
Article 10: The permitted projects with foreign investment of which the products are all directly exported shall be regarded as the encouraged project with foreign investment; the restricted projects with foreign investment of which the export sales accounts for more than 70% of their total amount of sales may be regarded as the permitted projects with foreign investment [...]."
Source and translation: Asian Legal Information Institute.
http://www.asianlii.org/cn/legis/cen/laws/pogtoofi613/

General Administration of Customs and State Administration of Taxation on 4 September 2002
"Implementation procedures for the adjustment of polices applicable to the Permitted Category of Foreign Investment Projects that Directly Export all its Products (hereafter, the All-for-export Project) as defined in the Foreign Investment Industrial Guidance Catalogue.
All equipment imported under an All-for-Export Project that is approved as of the implementation date of the policy adjustment shall invariably be subject to the levy of import duty and import-stage value-added tax in accordance with the regulations. [...] If exports are proven to be true after the verification, 20% of paid taxes shall be refunded each year, i.e., all paid taxes shall be refunded within five years; and, if exports are proven to be untrue, the taxes paid in the relevant year shall not be refunded and tax payments already refunded for the project shall be recovered together with legally-prescribed penalties."
Source and translation: en8848.com.cn.
http://www.en8848.com.cn/e/DoPrint/?classid=9687&id=93235

Processing Trade Enterprises

?, 'Guide to Doing Business in China', Chapter on 'Processing-Trade'
"Domestic Sale of Materials, Parts and Finished Products Materials and parts imported in bond must be re-exported after processing, and enterprises may not sell their bonded materials and parts or finished products in China. If such goods have to be sold on the domestic market for special reasons, approval must be obtained from the commerce authorities in charge of processing trade at provincial level as well as from Customs. Business enterprises and processing enterprises must promptly pay the tariffs and VAT exempted on the imported materials and parts if these goods are sold domestically, whether the import settlement is in renminbi or in foreign currency. [...] If an enterprise is unable to submit the import licence issued by the relevant import administration organ, the commerce authorities in charge of processing trade at provincial level may still issue the Domestic Sale Approval Certificate with Customs verifying and cancelling the processing trade handbook after levying on the enterprise duties and interest thereon and a penalty ranging from 30% to 100% of the declared value of the imported materials and parts."
Source: 'Guide to Doing Business in China', Chapter on 'Import and Export Administration', Section on 'Processing-Trade', 'Domestic Sale of Materials, Parts and Finished Products'.
http://www.hktdc.com/info/mi/bgcn/en/

Circular of the MOFTEC and the general administration of customs on relevant issues in imported equipment for processing trade, March 16, 1998 (Wai Jing Mao Zheng Fa No.383).
"Imports exempted from taxes and use of non-price setting equipment provided by foreign businessmen must conform to one of the following conditions:
- Having independent factories or workshops exclusively for processing trade (i.e, not producing products processed for home sale) and that the non-price setting equipment shall be used only within the factories or workshops;
- For those processing trade enterprises which have no such factories or workshops and engage in processing trade based on their existing production capacity and use of non-price setting equipment for processing production, in the terms of their processing trade contract (agreement), over 70% of their yearly produced processing products must be exported."
Source and translation: Asian Legal Information Institute.
http://www.asianlii.org/cn/legis/cen/laws/cotmatgaocoriiiefpt1177/

2 Subsidies with ESR in Developing Countries

We only consider policy measures for which an ESR threshold is explicitly specified. Information which is not directly taken from the Investment Climate Statements is indicated as *Complementary information*.

Bangladesh
ESR outside Free Trade Zones
ESR of 100%: "Fully export-oriented enterprises outside the EPZs are treated as if they were established in a EPZ and enjoy the same advantages." (*Complementary information from "Bangladesh - Recent Economic Developments", p.37, International Monetary Fund, 2000*)
ESR of 80%: "Enterprises in the leather industry exporting at least 80% of their production are treated as fully export-oriented as are other industries exporting at least 80% of their production"(*Complementary information from "Bangladesh - Recent Economic Developments", p.37, International Monetary Fund, 2000*)
ESR within Free Trade Zones
ESR of 100%: The Bangladesh Export Processing Zones Authority Act of 1980 [...]. Legislation offers incentives for investors, including: 100% foreign ownership in most sectors; tax holidays; reduced import duties on capital machinery and spare parts; duty-free imports for 100% exporters of ready-made garments; and tax exemptions. (ICS, 2012)
ESR specific to Foreign-Invested Enterprises
None

Brazil
ESR outside Free Trade Zones
ESR of 70% and 60%: To be exempt from paying the 9.25% PIS-COFINS tax on these purchases, companies must prove they derive at least 70% of their revenues from exports. This benchmark was lowered to 60% for companies in the sectors covered by the legislation. (ICS, 2009)
ESR within Free Trade Zones
None
ESR specific to Foreign-Invested Enterprises
None

Egypt
ESR outside Free Trade Zones
None
ESR within Free Trade Zones
ESR of 80%: Companies producing largely for export (normally 80% or more of total production) may be established in free zones and operate in foreign currency. Free zones are open to investment in any sector, by foreign or domestic investors. Companies operating in free zones are exempted from customs duties, sales taxes or taxes and fees on capital assets and intermediate goods. (ICS, 2009)
ESR specific to Foreign-Invested Enterprises
None

Ethiopia
ESR outside Free Trade Zones
ESR of 50% and 75%: New investors engaged in manufacturing, agro-processing activities or the

production of certain agricultural products and who export at least 50% of their products or supply at least 75% of their product to an exporter as production inputs are exempt from income tax for five years.[...] Investors who expand or upgrade existing enterprises and export at least 50% of their output or increase production by 25% are eligible for income tax exemption for two years. (ICS, 2012)

ESR within Free Trade Zones

None

ESR specific to Foreign-Invested Enterprises

ESR of 75%: A foreign investor reinvesting profits/dividends or exporting at least 75% of the output will not be required to meet minimum capital requirements or the 27% equity requirement of local partners in joint ventures. (ICS, 2012)

India

ESR outside Free Trade Zones

ESR of 95%: India allows an individual firm to be designated an Export Oriented Unit (EOU). All of these schemes are governed by separate rules and granted different benefits. EOUs may sell up to 5% of "seconds" on the domestic market after paying appropriate taxes. (ICS, 2009)

ESR within Free Trade Zones

ESR of 50%: EPZ/STP units may sell up to 50% of their level of exports on the domestic market after payment of taxes, with the exception of motor cars, alcoholic beverages, tea, books, and refrigeration units. (ICS, 2009)

ESR specific to Foreign-Invested Enterprises

ESR of 50%: A higher percentage of foreign equity may also be approved if the company obtains a license and undertakes to export 50% or more of its product. (ICS, 2009)

ESR of 100%: FDI at 100% is allowed through automatic route, for activities like exports (ICS, 2009)

Indonesia

ESR outside Free Trade Zones

None

ESR within Free Trade Zones

ESR of 50% and 75%: A recent Ministry of Finance Regulation No. 147/2011 stipulates that the delivery of products outside of bonded zones into the domestic market is set at a maximum of 25% (down from 50%) of export realization value of the previous year. If a bonded zone company exceeds the 25% limitation, its domestic quota for the next year will be reduced. (ICS, 2012)

ESR specific to Foreign-Invested Enterprises

None

Morocco

ESR outside Free Trade Zones

None

ESR within Free Trade Zones

ESR of 100%: The Tangier Free Zone (TFZ) launched in 1999 and began operations in 2000. 300 hectares of the zone are dedicated to an industrial zone under customs. TFZ is reserved for companies whose business is export oriented. (ICS, 2013)

Complementary information: The level of ESR to enter the EPZ is not explicitly stated by the Investment Climate Statements. The question by the European Communities at the WTO indicates a ESR at 100% (G/SCM/Q2/MAR/1, 20 January 2004) specify that the ESR level is at 100%:

In the context of the last TPRM (document WT/TPR/S/116), it was stated in item 112 that, in order to benefit from ZFE status, companies must export all their production.

ESR specific to Foreign-Invested Enterprises

None

Pakistan

ESR outside Free Trade Zones

ESR of 100%: The GOP offers incentives for other categories of export manufacturing. An Export-Oriented Unit (EOU) is a stand-alone industrial concern that exports 100% of its production; it is allowed to operate anywhere in the country. EOU incentives include duty and tax exemptions for imported machinery and raw materials. (ICS, 2009)

ESR within Free Trade Zones

ESR of 80% and 100%: The 2007-08 trade policy duplicated export processing zone (EPZ) incentives. Existing enterprises exporting at least 80% of their production are eligible for incentives under this program, but new enterprises are required to export 100% of their production in order to be eligible. (ICS, 2009)

ESR specific to Foreign-Invested Enterprises

None

Philippines

ESR outside Free Trade Zones

ESR of 50%: Firms that earn at least 50% of their revenues from exports may register for incentives under the Export Development Act. [] Incentives under the Act include a tax credit that ranges from 2.5% to 10 % of annual incremental export revenue. (ICS, 2009)

ESR within Free Trade Zones

ESR of 70%: Incentives for firms in export processing and free trade zones include: income tax holiday or exemption from corporate income tax for four years, [] domestic sales allowance equivalent to 30% of total export sales; (ICS, 2009)

ESR specific to Foreign-Invested Enterprises

ESR of 70%: The [Board of Investments] is flexible with the enforcement of individual export targets, provided that exports as a percentage of total production do not fall below the minimum requirement ([]70% for foreign firms). (ICS, 2012)

ESR of 100%: [Board of Investments]-registered foreign controlled firms that qualify for export incentives are subject to a 30-year divestment period, at the end of which at least 60% of equity must be Filipino-controlled. Foreign firms that export 100% of production are exempt from this divestment requirement. (ICS, 2012)

Thailand

ESR outside Free Trade Zones

None

ESR within Free Trade Zones

ESR of 100%: Free Zones (renamed from export processing zones or free trade zones), reserved for the location of industries manufacturing for export only, to which businesses may import raw materials and export finished products free of duty (including value added tax). (ICS, 2009)

ESR specific to Foreign-Invested Enterprises

none

Turkey

ESR outside Free Trade Zones

None

ESR within Free Trade Zones

ESR of 85%: The tax immunity of the wage and salary income earned by persons employed in the zones by taxpayers possessing an operating license expired on December 31, 2008, except for producers that export more than 85% of their products. (ICS, 2009)

ESR specific to Foreign-Invested Enterprises

None

Vietnam

ESR outside Free Trade Zones

ESR at 80%: Vietnam retained the right to require that an investment project export at least 80% of its production for seven years in the following sectors: cement; paint; bathroom tiles and ceramics; PVC and other plastics; footwear; clothing; construction steel; detergent powder; tires and inner tubes for cars and motorbikes; NPK fertilizer; alcoholic products; tobacco; and paper. (ICS, 2006)

ESR within Free Trade Zones

ESR at 100%: Companies may choose to produce within an export-processing zone (EPZ) to take advantage of exemptions from customs duties for equipment, raw materials, and commodities imported into the zones, and for finished goods and products exported from the zones, subject to specific provisions regulating EPZs. All of the production within an EPZ must be exported. (ICS, 2006)

ESR specific to Foreign-Invested Enterprises

ESR at 80%: In the early 1990's, all foreign investment projects required approval by the Prime Minister. Overtime, in an effort to reduce obstacles to foreign investment, this list of projects subject to approval at the highest levels was reduced. [...] Projects must satisfy one of the following alternative conditions: (a) exporting 80% of products (reduced from 100%); or (b). investing in an encouraged or specially encouraged project located in an industrial zone (as opposed to the previous requirement of investing in an industrial zone and satisfying export ratio criteria); (ICS, 2006)