



## CHINA LEGAL BRIEFING 132

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### 1. National

#### Law of Immunity from Compulsory Judicial Measures on the Assets of Foreign Central Banks

外国中央银行财产司法强制措施豁免法

**【Issued by】** Standing Committee of the National People's Congress

**【Subject】** Litigation Law

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- TAX

Law of Immunity from Compulsory Judicial Measures on the Assets of Foreign Central Banks (hereinafter referred to as "Immunity Law") has been promulgated by the 18<sup>th</sup> Session of the Standing Committee of the Tenth National People's Congress. The main contents of the Immunity Law are as follows:

Except the renunciation by the foreign central bank or its host nation, the People's Republic of China grants to the assets of foreign central banks immunity from compulsory judicial measures of property preservation and enforcement.

The foreign central bank refers to the central bank or the financial administrative institution of a foreign country or an integrated regional economic organization.

The assets of foreign central banks refers to the cash, notes, bank deposits, negotiable instrument, foreign exchange reserve, gold reserve and real estate and other properties of the foreign central bank.

In case the foreign country fails to grant or grants less immunity to the properties of the central bank of the People's Republic of China or the financial administrative institution of the Special Administrative Region of PRC, the People's Republic of China shall deal with the matter on the principle of reciprocity.

### **Measures for the Determination of the Integrated Circuit Enterprises Encouraged by the State (For Trial Implementation)**

国家鼓励的集成电路企业认定管理办法（试行）

**【Issued by】** National Development and Reform Commission, Ministry of Information Industry, State Administration of Taxation, and General Administration of Customs

**【Subject】** Other Provisions

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With a view to ensuring that enterprises enjoy the Several Policies on Encouraging the Development of the Software Industry and the Integrated Circuit Industry issued by the State Council (No.18 [2000] of the State Council, hereinafter referred to as the Several Policies) and the supporting preferential policies thereof, and accelerating the development of the integrated circuit industry of China, the Measures for the Determination of the Integrated Circuit Enterprises Encouraged by the State (For Trial Implementation) (hereinafter referred to as the Measures) are formulated in accordance with Article 49 of the Several Policies and other relevant provi-

sions.

According to the Measures, the National Development and Reform Commission, Ministry of Information Industry, State Administration of Taxation, and General Administration of Customs shall be the competent departments for the determination of integrated circuit enterprises (hereinafter referred to as the competent departments), and shall be responsible for the determination of integrated circuit enterprises nationwide. The competent departments shall jointly entrust the China Semi-conductor Industrial Association as the determination organ of the integrated circuit enterprises, which shall be responsible for the determination and annual examination on the integrated circuit enterprises.

Any enterprise that applies for the determination of an integrated circuit enterprise shall satisfy the following conditions:

- It is a legally established legal person entity that undertakes the manufacture, seal and installation and testing of the chips of integrated circuit and the production of monocrystalline silicon of six inches or above;
- It has the required place of production and operation, facilities of software and hardware and personnel and other basic conditions accommodating to the production of integrated circuit products, and its production process shall comply with the basic workflow and management instrumentation for the production of integrated circuit products, and have the means and ability to ensure the product production;
- The sales revenue from the self-produced (including entrusted processing) integrated circuit products shall account for more than 60% of the total revenue of the enterprise of the current year (excluding any newly established enterprise); and
- The competent tax authority of the enterprise determines that the enterprise has no act of willful tax arrears or tax evasion and tax fraud and other illegal acts.

In addition, the state shall implement annual examination system on the integrated circuit enterprises that have been determined. The enterprises shall submit annual examination reports to the determination organ; the determination organ shall issue annual examination opinions and report to the competent departments for archival filing.

## **Reply of the State Administration of Taxation on Relevant Issues concerning the Tax Refund on Reinvestment by Foreign Investors**

关于外国投资者再投资退税有关问题的批复

**【 Issued by 】** State Administration of Taxation

**【 Subject 】** Tax Refund

**【 Promulgated on 】** October 20<sup>th</sup> 2005

**【 Effective from 】** October 20<sup>th</sup> 2005

**【 Source 】** <http://www.chinatax.gov.cn/>

The State Administration of Taxation replied to the Administration of State Taxation of Zhejiang Province on the relevant issues concerning tax refund on reinvestment enjoyed by foreign investors of foreign-funded enterprises.

According to the reply, the reinvestment as mentioned in Article 10 of the Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment and Foreign Enterprises (hereinafter referred to as the Tax Law) shall mean that any foreign investor who uses the profits obtained from any foreign-funded enterprise to reinvest directly in its own enterprise or any other foreign-funded enterprise, or increase the registered capital of its own enterprise or any other foreign-funded enterprise, or establish any other foreign-funded enterprise through investment.

If, according to the stipulations of any contract or agreement, these reinvestments need to be carried out by stages and step by step, the tax refund may be determined in light of the following conditions:

- Where any foreigner plans to make reinvestment by using the profit of any foreign-funded enterprise, and the application for the reinvestment is approved by the relevant state departments, if the profit for the reinvestment has been realized, the tax refund on reinvestment shall be granted as required at the time of actually making the reinvestment, no matter it makes the investment in a lump sum or by installments.

- Where any foreign investor plans to make any reinvestment by using the profit of any foreign-funded enterprise, and the application for the reinvestment is approved by the relevant departments of the state, if none or only part of the profit for the reinvestment has been realized, but the investor promises to make reinvestment on the profit realized in future years, the reinvestment shall be used to make up the registered capital of the enterprise, and shall not fall within the provisions of "increasing registered capital or establishing other foreign-funded enterprises as capital investment" in the Tax Law, and it shall not enjoy the treatment of tax refund on the reinvestment at the occurrence of the reinvestment.

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