

## INVESTMENT TAX BENEFITS IN CHINA: SPECIAL FEATURES OF LEGAL REGULATION AND COMPARATIVE ANALYSIS WITH RUSSIAN PRACTICES\*\*

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The subject. The article discusses the legal regulation of investment tax incentives in China. The choice of the object of research is determined by the prospects of comparative legal studies of the experience of states bordering the territories of the Russian Far East, where numerous zones with special economic status have been created, within which preferential business regimes are applied.

Purpose of the study. Despite the diversity of special economic zones in the Russian Federation and the constant creation of new zones, preferential regimes do not always prove their effectiveness. Based on the above, it seems very relevant to analyze the best international and national practices in order to develop criteria for the effectiveness and efficiency of preferential tax regimes for zones with special economic status.

Thus, the specifics of the comparative legal method of research always consists in the fact that it is not necessary to borrow foreign experience, but it is also possible to find the best practices within domestic legislation. Therefore, it is necessary to look for ways to ensure that Russian tax legislation laying the foundation for supporting innovation in our country.

Methodology. The research was carried out with the application of the formally legal interpretation of legal acts as well as the comparative analysis of international and Chinese legal literature. Structural and systemic methods are also the basis of the research.

The main results. As China seeks to transform from a mass producer of inexpensive goods to a high-end producer, the national government is making significant efforts to encourage targeted investment in research and development (R&D) and technological innovations. This has led to the fact that China has awarded the technology sector the title of strategic, and its state support has increased significantly.

Conclusions. On the base of the analysis of the main tax incentives in China, the author comes to the conclusion that a significant part of them is aimed at enterprises engaged in research and development, as well as technological innovations. Also, a significant part of tax benefits is provided to enterprises based on the choice of the geographical area of the company's establishment. The conclusion is made about the possibility of applying the Chinese experience in Russia in reforming preferential tax regimes.

The support for companies in the technology sector in Russia is especially important due to the policy of recent years aimed at establishment of tax benefits for IT companies. Both Russia and China strive to promote the accelerated development of innovative industries, the implementation of priority investment projects, as well as the development of small business.

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## 1. Introduction

The issue of investment tax benefits is relevant for any state and for any period of its development. The concept of an investment tax benefit is not fixed in Russian legislation, although discussions have been going on for several years about the need to legalize this category<sup>1</sup>. In 2020, the President of the Russian Federation gave instructions on the inventory of existing tax benefits, as well as on determining the list of benefits of an investment nature. Since 2021, such benefits are provided only on the basis of a special agreement, under which the taxpayer undertakes to invest in the territory of the Russian Federation on the terms and within the time limits established by such an agreement.

As is known, tax benefits are an optional element of the legal composition of the tax [1, p. 146]. However, once established, the benefit becomes its integral element and is closely related to the object of taxation. In the context of this study, we will be interested mainly in income tax, less often in personal income tax and value added tax (hereinafter – VAT).

Thus, being established, tax benefits are also an element of the corresponding tax regime. The legal regime reflects not only regulatory restrictions or benefits, but also the state of the possibility or impossibility of using rights, which indicates the favorability of the legal regime [2, p. 21].

As noted by R.A. Shepenko, a number of essential conditions of taxation can be decisive and influence various aspects of other essential conditions of taxation. For example, preferential policies have a direct impact on the level of tax evasion, tax management powers, the procedure for conducting tax audits, etc. This influence is based on the restriction of the effect of regulatory prescriptions in space and in the circle of persons

that does not meet the requirements of the unified rules [3, p. 12-13]. At the same time, the competition of powers becomes the main engine of international tax policy: national governments are trying to modify their tax regimes to attract business through general measures (for example, lowering the corporate tax rate) or by granting preferences to specific enterprises or business sectors [4, p. 86]. Such measures "include legislation on CFC, deduction of tax on dividends, interest and royalties in the country of the recipient of income, etc. The instruments of attraction include patent taxation, privileges for holding companies and recognition of corporate equality" [5, p. 3].

The legislation of the People's Republic of China was chosen as the object of the study of foreign experience in regulating investment tax benefits. The choice of the object of research is determined by the prospects of comparative legal studies of the experience of states bordering the territories of the Russian Far East, where numerous zones with special economic status have been created, within which preferential business regimes are applied.

Thus, since the adoption of Federal Law No. 473-FZ of December 29, 2014 "On territories of advanced socio-economic development in the Russian Federation", more than 120 objects in various segments of the territorial and sectoral structure of the economy have been put into operation. Residents of territories with a special economic status of the Far East are provided with a wide range of preferences, while the provision of state support to residents carries certain risks for the state, for example, fiscal losses, inefficient spending on infrastructure construction, failure to achieve the main indicators of the program for the creation of these territories. Fiscal losses of the state may arise as a result of an increase in the share of lost income due to the provision of tax preferences, the migration of companies from other regions of the Russian Federation or the "fragmentation of business" in the territory with a special economic status [6, p. 90].

Territories with a special economic status, including territories of advanced socio-economic

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<sup>1</sup> [https://minfin.gov.ru/ru/press-center/?id\\_4=37820-denis\\_borisov\\_vse\\_lgoty\\_nosyashchie\\_investitsionnyi\\_k\\_harakter\\_nyeobkhodimo\\_analizirovat\\_na\\_sistemnoi\\_osno\\_ve](https://minfin.gov.ru/ru/press-center/?id_4=37820-denis_borisov_vse_lgoty_nosyashchie_investitsionnyi_k_harakter_nyeobkhodimo_analizirovat_na_sistemnoi_osno_ve) (accessed on 22.03.2022).

development, the Free Port of Vladivostok, special administrative districts, have certain features. The fact that the territory of Primorsky Krai was chosen for many of them is explained by the fact that this territory is located on the border with strategically important states with which cooperation is carried out [7, p. 96].

In addition, the proximity to the Asia-Pacific region, the presence of vast natural resources makes the location of such territories, for example, Russian Island unique and creates a number of opportunities for the development of various investment projects. An analysis of world practice shows that tax methods of stimulating innovation are one of the main directions of state support for R&D, along with direct financing of expenditures of the entrepreneurial sector from the budget and research conducted in state research centers and universities [8, p. 49]. In the context of this study, it is important that since 2005, the PRC's policy on stimulating innovation activity has become part of the strategic state policy [8, p. 57]. The widespread provision of tax benefits in the field of IT for Russian companies is a trend of Russian tax policy in recent years, so the study of foreign experience, which has shown its effectiveness, is especially important now.

Despite the diversity of special economic zones in the Russian Federation and the constant creation of new zones, preferential regimes do not always prove their effectiveness. According to the analysis of the Accounting Chamber, the effect on the types of preferential regimes is heterogeneous. Thus, the Accounting Chamber revealed the most stable and positive results in the territories of advanced socio-economic development (TOCER) in single-industry towns. This mode, although limited, but performs the function of an engine of regional growth. However, the methodology for assessing the effectiveness of the functioning of TOCER in single-industry towns has not been approved, and therefore their results have not been analyzed at either the federal or regional levels. As for the approved methods for evaluating the effectiveness of other preferential regimes, they, as a rule, do not allow us to assess the achievement of goals and target effects of their work. Moreover, for the regimes of the Arctic Zone and the Free Port of

Vladivostok, such an assessment is not provided for by law at all. The analysis also showed that the preferential regimes are not fully integrated into Russia's strategic planning system. Thus, the expected target effects are not defined for them, the relationship of their functioning goals with the strategic development goals of the country is not ensured.

In addition, in the process of creating and functioning preferential regimes, administrative barriers were identified that hinder the development of these territories. For example, residents of industrial-production and port-type SEZs cannot be individuals - individual entrepreneurs<sup>2</sup>.

Based on the above, it seems very relevant to analyze the best international and national practices in order to develop criteria for the effectiveness and efficiency of preferential tax regimes for zones with special economic status.

Interest in the law of the People's Republic of China is traditional in Russian legal science and practice. In 2021, a review of Russian scientific research in the field of public finance law of the People's Republic of China was published [9]. A significant contribution to the study of Chinese tax law was made by Professor R.A. Shepenko [10-15].

The impact of tax incentives on the investment activity of Chinese companies is widely covered in foreign scientific sources [16-19]. Since most of the analyzed works are works in the field of economics, they formed an empirical base that needed to be investigated using legal methodology.

## **2. General characteristics of tax benefits and stages of creation of special economic zones in China**

The creation of preferential conditions for attracting investments in research, development and production of know-how, the strengthening of tax incentives for the development of the innovation sector goes hand in hand with the reduction of direct state funding.

The tax incentive for the modernization of the Chinese economy is based on the idea of moving

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<sup>2</sup> Счетная палата оценила влияние преференциальных режимов на социально-экономическое развитие страны и регионов // <https://ach.gov.ru/checks/prefregime> (accessed on 01.03.2022).

from a catch-up model of innovative development to leadership in a wide range of areas. Tax benefits in China affect high-tech companies and products, research and development costs, import of high-tech equipment for investment projects, re-equipment of production, technological transfer, high-tech services, salary costs of scientific and technical personnel, and much more. It is also necessary to note the variety of special economic zones that provide different tax regimes, taking into account the geographical location of the zone and the resulting specifics of companies.

At the same time, in China, tax benefits are applied in combination with other benefits, which makes it possible to achieve a synergistic effect of their use.

In general, tax incentives in the People's Republic of China widely cover the sphere of innovative development and affect high-tech companies and products, R&D expenses, accelerated depreciation of fixed assets, import of high-tech equipment, technology transfer, salaries of scientific and technical personnel, modernization of production, etc. But the main method of implementing the policy of tax benefits of the Government of the People's Republic of China is to reduce the corporate income tax rate.

The high rates of development and stability of the Chinese economy are largely due to the active spread of free economic zones (FEZ) and their constant modernization.

There are 7 types of special economic zones in China:

- 1) Special Economic Zones (5 zones – Shenzhen, Zhuhai, Shantou, Xiamen, Hainan);
- 2) Zones of technical and economic development (90 zones);
- 3) Zones of new and high technologies (114 zones);
- 4) Free customs zones (15 zones);
- 5) Cross-border economic cooperation zones (15 zones);
- 6) Free trade zones (15 zones according to the cited source. According to IBFD data, 18 free trade zones have been established in China in 2022);
- 7) Export processing zones (15 zones) [20, pp. 228-229].

The following stages of the development of FEZ in China are distinguished [21, p. 86].

1. 1978-1982: the legislative and organizational basis for attracting foreign capital was formed: laws were adopted that regulate taxation, technology transfer, labor relations, currency and customs regime, credit and financial security.

Since 1979, new free economic zones have been introduced in China.

In 1980, 4 special economic zones were established – Shenzhen, Zhuhai, Shantou and Xiamen – in the southern coastal provinces of Guangdong and Fujian. The creation of the fifth FEZ Hainan served as the first step towards China's openness to the world community [21, pp. 84-85].

2. 1983-1989: expansion of the territories of the People's Republic of China open to foreign capital, improvement of the legal framework for cooperation with foreign investors and further liberalization of state policy in the field of attracting foreign capital.

In the mid-1980s, new types of FEZ began to appear – areas of technical and economic development (RTER) and zones of technical and economic development (ZTER), created for the development of modern high-tech industries. From 1984 to 1988, 14 free economic zones were established.

Since 1985, open economic zones have been created in the deltas of the Yangtze, Zhujiang, Fujian, Shandong and Liaodong peninsulas, Hebei Province and Guangxi Zhuang Region. In addition, during this period, the first technoparks began to open in China – in Shenzhen and Beijing.

In 1988, the national scientific and technical program "Torch" was adopted, as a result of which high-tech development zones opened on the basis of research campuses of leading universities in China began to develop rapidly [22].

3. From 1989 to the present: improvement of the investment process.

In 1990, a new Pudong district was opened in Shanghai and a program for the economic development of territories passing through the Yangtze River was adopted. This region was called the "economic dragon", whose head was the Pudong district in Shanghai, the middle part was the city of

Wuhan, and the tail was Chongqing, opened in 1997 [21, p. 85].

In the period from 1992 to 1993, it was decided to open 18 zones of technical and economic development. The creation of new zones was moved from the southern provinces of Guangdong and Fujian, the most economically developed, to the area of eastern China in the Yangtze River Delta.

In 1992, 6 cities located along the Yangtze River – Wuhu, Jiujiang, Yueyang, Wuhan, Huangshi and Chongqing – as well as the administrative centers of Hefei, Nanchang, Changsha and Chengdu opened to the outside world. An open strip along the banks of the Yangtze River stretches from Pudong in Shanghai to Chongqing in Sichuan Province. 13 duty-free zones were established in the main coastal cities [23].

In 2013, the State Council of the People's Republic of China approved the creation of a free trade zone in Shanghai. In April 2015, 3 free trade zones were established in Guangdong, Tianjin, Fujian. And in 2017, 7 free trade zones were created in Liaoning, Zhejiang, Henan, Hubei, Chongqing, Sichuan, Shaanxi.

On April 13, 2018, General Secretary of the Central Committee of the Communist Party of China Xi Jinping announced that the Central Committee of the Party decided to support the construction of a free trade zone on Hainan Island.

### **3. General characteristics of the PRC's investment legislation<sup>3</sup>**

#### **3.1. Forms of business organization for foreign investors**

Foreign investors can conduct business in China in the following forms, which are known as enterprises with foreign investments (hereinafter – FIE):

- limited liability company;
- joint stock company with limited liability;
- partnership with foreign investments;

<sup>3</sup> IBFD Tax Research Platform. China (People's Rep.) - Business and Investment - Country Tax Guides - 7. Investment Incentives // [https://research.ibfd.org/#/doc?url=/linkresolver/static/gthc\\_cn\\_s\\_7](https://research.ibfd.org/#/doc?url=/linkresolver/static/gthc_cn_s_7). (accessed on: 21.03.2022).

branch;  
representation.

#### **3.2. Regulation of foreign investments**

According to Article 2 of the Foreign Investment Law (hereinafter – FIL)<sup>4</sup>, foreign investments mean direct or indirect investments made by foreign individuals, legal entities or other organizations (collectively referred to as foreign investors). Foreign investments can be made in the following cases:

a foreign investor independently or jointly with other investors creates FIE in China;

a foreign investor acquires shares or stakes in enterprises in China;

a foreign investor independently or jointly with other investors invests in a new project, i.e. without creating FIE in China or acquiring shares or equity in a Chinese enterprise, in other words, includes investments in a new project in China through a branch;

other forms of investment provided for by laws, administrative regulations or the State Council.

Since January 1, 2020, the regulations on enterprises wholly owned by foreigners and on Chinese-foreign enterprises, which have regulated foreign investment in China for more than three decades, have been abolished. Currently, foreign investments are regulated by the Law on Foreign Investments and the Regulation on the Implementation of the Foreign Investment Law (hereinafter – the Regulation)<sup>5</sup>.

The Law and Regulation also apply by analogy to Hong Kong, Macau and Taiwan. There is a transition period of 5 years, starting from January 1, 2020, for existing FIE to adapt their business in accordance with the FIL and the Regulation.

Other laws and regulations applicable to

<sup>4</sup> Foreign Investment Law of the People's Republic of China (Adopted at the Second Session of the 13th National People's Congress on March 15, 2019) // [https://en.ndrc.gov.cn/policies/202105/t20210527\\_1281403.html](https://en.ndrc.gov.cn/policies/202105/t20210527_1281403.html) (accessed on 21.03.2022).

<sup>5</sup> The Regulation on the Implementation of the Foreign Investment Law of the Peoples Republic of China, as adopted at the 74th executive meeting of the State Council on December 12, 2019 // [https://www.shanghai.gov.cn/nw48709/20200826/0001-48709\\_127901.html](https://www.shanghai.gov.cn/nw48709/20200826/0001-48709_127901.html) (accessed on 21.03.2022).

Chinese domestic enterprises are equally applicable to FIE.

### 3.3. Restrictions on foreign investments

Special Measures for Foreign Investment Access (Negative Lists) and Special Measures for Foreign Investment Access to Free Trade Zones (Negative FTZ List), collectively known as the 2020 Negative Lists<sup>6</sup>, were issued and entered into force on July 23, 2020, replacing the 2019 Negative Lists. Compared to the 2019 version, the 2020 Negative Lists have relaxed restrictions on foreign investment in sensitive or strategic sectors such as finance, automotive, utilities and air traffic control, as well as reduced the number of prohibited goods. For example, foreign investors are now allowed to set up enterprises wholly owned by foreigners to provide financial services in the field of life insurance, securities, investments in fund management and futures.

The Negative Lists explicitly state that foreign investors are not allowed to invest in areas that are designated as “prohibited zones” and that investments in these zones are subject to government approval. Unless otherwise provided, the approval procedure should be the same as for domestic investors (Article 30 of FIL). Where equity participation is required, a partnership with foreign investments cannot be created. In addition, foreign individual entrepreneurs, individual investors and participants in agricultural cooperation cannot carry out investment operations as a foreign investor.

On December 27, 2021, the National Development and Reform Commission and the Ministry of Commerce jointly published updated versions of the two Negative Lists, which entered into force on January 1, 2022. These are The Special Administrative Measures (Negative List) for Foreign Investment Access (2021 Edition) (“2021 National Negative List”)<sup>7</sup> and The Special Administrative Measures (Negative List) for Foreign Investment

Access in Pilot Free Trade Zones (2021 Edition) (“2021 FTZ Negative list”)<sup>8</sup>, which replace the corresponding versions of 2020.

This is a step towards further opening up China's markets to foreign investors. The new negative lists further liberalize restrictions on foreign ownership in the automotive industry. The provisions on restrictions on the share of foreign investment in the production of passenger cars and the provision according to which one foreign investor cannot create more than two joint ventures for the production of the same types of vehicles in China have been weakened.

The new negative lists also equalize the conditions for foreign and domestic investors working in the field of radio and television equipment production, removing restrictions on foreign investment in ground-based satellite television reception facilities and the production of key components.

In addition, restrictions on foreign investment in manufacturing industries in Pilot Free Trade Zones are being eliminated.<sup>9</sup>

## 4. Investment tax benefits in China<sup>10</sup>

### 4.1. General characteristics of tax benefits in China.

Tax benefits in China are provided in accordance with Chapter 4 of the The Law of the People's Republic of China on Enterprise Income Tax<sup>11</sup>. As a rule, tax benefits can only be granted by

<sup>6</sup> The Market Access Negative List (2020)

[https://www.ndrc.gov.cn/xxgk/zcfb/ghxwj/202012/t20201216\\_1252897\\_ext.html](https://www.ndrc.gov.cn/xxgk/zcfb/ghxwj/202012/t20201216_1252897_ext.html) (accessed on 21.03.2022).

<sup>7</sup> The Special Administrative Measures (Negative List) for Foreign Investment Access (2021 Edition) (“2021 National Negative List”)

<https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202112/P020211227540591870254.pdf> (accessed on 21.03.2022).

<sup>8</sup> The Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones (2021 Edition) (“2021 FTZ Negative list”) //

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<https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202112/P020211227540591870254.pdf> (accessed on 21.03.2022).

<sup>9</sup> China's Negative Lists Widen Market Access For Foreign Investment // <https://www.china-briefing.com/news/2021-china-negative-lists-update-widen-market-access-for-foreign-investment/>

<sup>10</sup> IBFD Tax Research Platform. China (People's Rep.) - Corporate Taxation - Country Tax Guides - 1. Corporate Income Tax // (accessed on 21.03.2022).

[https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha\\_cn\\_s\\_1.7.%23gtha\\_cn\\_s\\_1.7.](https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha_cn_s_1.7.%23gtha_cn_s_1.7.) (accessed on 21.03.2022).

<sup>11</sup> The Law of the People's Republic of China on Enterprise Income Tax, adopted at the Fifth Session of the

law or by the State Council of the People's Republic of China. According to the Decree of the State Council [2015] No. 25 on the general policy in the field of tax benefits, which emphasizes the uniformity of the tax benefits regime, the State Council is authorized to declare tax benefits to meet the needs of economic and social development.

Taxpayers can apply tax benefits based on their own judgment as to whether they are eligible for the relevant benefits, and, as a rule, prior approval is not required. However, a taxpayer applying for a tax benefit must submit an application and other necessary documents to the tax authorities together with an annual corporate income tax return and keep the relevant documents for 10 years.

The Enterprise Tax Law provides that certain sectors, industries or regions are eligible for tax exemption or reduction.

Let's look at the main areas in which tax benefits are provided in more detail.

1. Agriculture, forestry, animal husbandry and fishing. As a rule, enterprises engaged in agriculture, forestry, animal husbandry and marine fishing are exempt from income tax, and enterprises engaged in floriculture, tea, spices, aquaculture are subject to income tax in the amount of 50% of taxable income.

2. Key state infrastructure projects supported by the state: starting from the year in which the first business income is received, such key public infrastructure projects as the construction of ports, airports, highways, power plants or water conservation projects are exempt from corporate income tax for the first 3 years and are taxed in the amount of 50% of taxable income in the next 3 years.

3. Projects related to environmental protection, energy conservation or water conservation: starting from the year in which the first amount of business income is generated, projects related to environmental protection, energy conservation or water conservation are exempt from income tax for the first 3 years and are taxed at the rate of 50% of taxable income

during the next 3 years.

4. Enterprises operating and servicing equipment used for environmental protection are subject to income tax at a reduced rate of 15% until December 31, 2023. Tax benefits, including income tax and VAT benefits, are provided to an enterprise providing energy saving services, implementing a project under an energy efficiency improvement contract.

5. Small low-profit enterprises: the tax rate is 20%. A small low-profit enterprise is an enterprise that satisfies all of the following three conditions:

the company's annual taxable income is less than 3 million yuan;

the company employs less than 300 employees;

the total value of the company's assets is less than 50 million yuan.

From January 1, 2021 to December 31, 2022, a small low-profit enterprise is subject to corporate income tax in the amount of 12.5% of its annual taxable income of up to 1 million yuan at a reduced rate of 20%<sup>12</sup>. For a portion of the annual taxable income from 1 to 3 million yuan, only 50% of the income is taxed at a reduced rate of 20%<sup>13</sup>. As a result, the effective tax rate for taxable income of up to 1 million yuan and from 1 to 3 million yuan is 2.5% and 10%, respectively. Reduced rates do not apply to non-resident enterprises.

6. Technology transfer. Income from technology transfer by a Chinese resident enterprise in the amount of up to 5 million yuan is exempt from income tax, while the amount above this threshold is taxed at 50% of taxable income, resulting in an effective tax rate of 12.5%. Income from technical advice, services and training that are necessary for the conversion of the transferred technology into production and practical use is considered income from technology transfer and can be exempted or taxed at a preferential rate if technical advice, services and training related to technology transfer are agreed in the transfer agreement, and the aggregate payment for technology transfer includes the amounts paid for these consultations, services and training.

7. A high-tech enterprise is taxed at a

Tenth National People's Congress of the People's Republic of China on March 16, 2007.

<sup>12</sup> Circular [2021] 12.

<sup>13</sup> Circular [2019] 13.

reduced rate of 15%, subject to certain conditions. Since January 1, 2016, the Recommendations for the Qualification of enterprises with high new technologies<sup>14</sup>, jointly published by the Ministry of Science and Technology, the Ministry of Finance and the State Tax Administration, have been applied. The Guidelines establish rules regarding the authorities that are involved in the qualification of enterprises, procedures, conditions and administrative aspects of tax benefits.

8. Enterprises engaged in the maintenance of advanced technologies are subject to income tax at a rate of 15%. The services covered by the benefit include computer and information services, technical services in the field of research and development, cultural and technical services and medical services practiced in accordance with the standards of traditional Chinese medicine.

Transfer income and dividends received as a result of ownership of assets of innovative enterprises are temporarily exempt from income tax if the income is transferred or dividends are received by closed and open investment funds with public placement of securities<sup>15</sup>.

Special (additional) deductions are allowed for research and development (R&D) expenses for the development of new technologies, new products and new processes. Until December 31, 2023, an additional deduction is 75% of R&D expenses in addition to actual expenses and expenses, if the R&D activity did not lead to the creation of an intangible asset. If an intangible asset was created as a result of R&D, the depreciation base of this intangible asset will be 175% of the costs<sup>16</sup>.

A manufacturing enterprise is allowed to claim a special deduction in the amount of 100% of R&D expenses if the R&D activity did not lead to the creation of an intangible asset. If an intangible asset was created as a result of R&D, the depreciation base of this intangible asset will be 200% of the costs incurred<sup>17</sup>. For the purposes of the Circular, a manufacturing enterprise is an enterprise whose main activity is manufacturing

activity, and more than 50% of its total income is derived from this core business.

On December 11, 2020, the Ministry of Finance, the State Tax Administration, the National Development and Reform Commission and the Ministry of Industry and Information jointly issued Circular [2020] No. 45, which contains the same tax benefits as above, with one exception. The circular provides that enterprises or projects encouraged by the state that are engaged in the production of microchips with a line width of no more than 28 nanometers are also entitled to exemption from corporate income tax for 10 years if the period of operation lasts more than 15 years.

Tax benefits are applied starting from the first year of profit by the enterprise or, in the case of projects, from the first year of income from the project.

The following benefits are provided for indirect taxes:

The preferential VAT policy applies to IT enterprises, according to which they can claim a refund of a part of VAT exceeding 3% of the total amount of VAT (after VAT offset);

enterprises are exempt from import duties on certain goods, and key projects can be provided with VAT installments when importing new equipment.

Accelerated depreciation or amortization is available for software and machines used to produce integrated circuits for 2 and 3 years, respectively.

9. A venture company that invests in an unlisted small and medium-sized enterprise with high/new technologies or a technology startup for more than 2 years can deduct up to 70% of its investments from taxable income. The unused benefit can be transferred to subsequent years.

10. Underdeveloped regions: From January 1, 2011 to December 31, 2020, enterprises newly established in underdeveloped regions of Xinjiang are exempt from corporate income tax for the first 2 years, starting from the first year of profit, and subsequently the tax will be reduced by 50% over the next 3 years (i.e. effective the rate is 12.5%). Enterprises eligible for benefits must maintain at least 70% of the enterprises listed in the state catalog.

A preferential tax rate of 15% is applied to

<sup>14</sup> Circular [2016] 195.

<sup>15</sup> Circular [2019] 52.

<sup>16</sup> Circulars [2018] 99 and [2021] 6.

<sup>17</sup> Circular [2021] 13.



enterprises in the Western Regions until December 31, 2030<sup>18</sup>. The rate is applied if the main business of the enterprise is included in the list of encouraged industries in the Western regions (the 2020 version was published on January 18, 2021 by the National Development and Reform Commission and comes into force on March 1, 2021), and the income from the main business is more than 70% of the total income. Core business means 60% of the business carried out by the enterprise.

Deferred payment of tax on dividends/profits reinvested by foreign investors

If certain conditions are met, a deferral may be applied to the tax on dividends/profits received by a foreign investor (non-resident enterprise) if the dividends or profits are reinvested in foreign investment projects that are not prohibited by Chinese law<sup>19</sup>.

The main condition is that investments made using distributed dividends/profits must be direct investments. Forms of investment include an increase in the capital or capital reserve of an existing resident company, the creation of a new enterprise and the acquisition of a Chinese enterprise, but an increase in the authorized capital, the conversion of profits into equity and the acquisition of a registered company are excluded.

Cross-border e-commerce enterprises

From January 1, 2020, e-commerce enterprises engaged in cross-border business located in the pilot zone of cross-border e-commerce will be taxed based on an estimated profit of 4% of revenue.

Thus, in China, "the main emphasis is placed on the fact that the largest amounts of tax benefits are provided to high-tech enterprises (for example, the income tax rate is 15%) in accordance with the course "two exceptions and three cuts by half", which creates the basis for the development of high-tech enterprises" [8, p. 59].

#### **4.2. Tax benefits on the example of the Shanghai Free Trade Zone**

The Shanghai Free Trade Zone, which became the first in China, includes the Shanghai Waigaoqiao Free Trade Zone, the Waigaoqiao Free

Trade Park, the Yangshan Free Trade Port Zone and the Pudong Airport Free Trade Zone<sup>20</sup>.

The FTA is designed to create equal conditions for all investors. A new administration system will be launched to stimulate outgoing investments from Chinese enterprises. Chinese enterprises investing abroad within the framework of the FTA must register and submit an application for investment to the relevant authorities, while preliminary government approval is not required.

The following tax measures are available to investors:

- capital gains tax as a result of the restructuring of intangible assets can be paid within 5 years;

- special taxation of employee stock options;

- VAT and consumption tax benefits for the import of listed machinery or equipment, as well as a new tax regime in favor of foreign investments in equity;

- subsidiaries of financial leasing companies are included in the scope of VAT refund on export.

In accordance with the additional established requirements and conditions under the FTA, it is allowed to establish or carry out the following activities:

- foreign banks established by foreign financial institutions or banks in the private sector of China;

- offshore banking business of Chinese banks;

- foreign healthcare/medical insurance institutions;

- subsidiaries of financial leasing companies (without minimum capital requirements);

- commercial factoring business of financial leasing companies;

- joint ventures with foreign capital in China or joint ventures of international shipping companies with a less strict ratio of foreign participation;

- ownership and participation in vessels of foreign nationality (vessels that are not vessels under the five-star flag) and conducting certain business transactions in national ports with such vessels;

- managing companies of international courts;

- telecommunications business (in limited areas) by foreign enterprises, provided that China's Internet security is not harmed;

<sup>18</sup> Circular [2020] 23.

<sup>19</sup> Circular [2018] 102.

<sup>20</sup> General Plan for the Shanghai Free Trade Zone (FTZ) on 18 September 2013 (Guo Fa [2013] No. 38).

production and sale of games and entertainment equipment by foreign enterprises (the content of games is still subject to government approval);

some forms of cooperation between Chinese and foreign law firms;

companies engaged in due diligence;

travel agencies in the form of Chinese–foreign joint ventures organizing foreign trips (except Taiwan);

recruitment agencies (foreign shareholding is limited to 70%, while investors from Hong Kong and Macau can create agencies wholly owned by foreigners);

holding companies with foreign investments;

providing engineering project design services in Shanghai;

conclusion of contracts for Chinese-foreign construction projects in Shanghai by completely foreign construction companies without limiting the participation of both parties in the project;

fully foreign impresario companies for performances in Shanghai (restriction on foreign participation in equity will be lifted);

entertainment establishments fully owned by foreigners, providing services within the framework of the FTZ (disco, karaoke, etc.);

Chinese–foreign educational and educational institutions;

Chinese–foreign professional educational institutions;

completely foreign medical institutes (hospitals and clinical institutes).

On January 13, 2015, the Ministry of Industry and Information Technology issued a statement on the lifting of restrictions on foreign participation in online data processing and transaction processing companies in the Shanghai Free Trade Zone. Previously, foreign participation in such enterprises was limited to 55%. A foreign enterprise is allowed to create its own wholly owned e-commerce website, whose business is data processing and transaction processing, in the Shanghai Free Trade Zone.

significant tools, the use of which contributes to the creation of a favorable investment climate [24, p. 85]. The relevance of the study of the experience of legal regulation of investment tax benefits is related to the possibility of taking into account the Chinese experience in carrying out tax reforms in Russia, as well as for the possible harmonization of the legislation of the BRICS countries. The experience where the emphasis is on tax support for companies in the technology sector is especially important for Russia. Both Russia and China "strive to promote the accelerated development of innovative industries, the implementation of priority investment projects, as well as the development of small entrepreneurship" [25, p. 31].

As China strives to transform from a mass producer of inexpensive goods to a high-end producer, the national government is making significant efforts to encourage targeted investment in research and development (R&D) and technological innovations. This has led to the fact that China has awarded the technology sector the title of strategic, and its state support has increased significantly.

In addition, the review makes up for the lack of legal studies of Chinese tax law in recent years. Despite the large number of publications on taxation in China, they mostly relate to the sphere of economics [26-30]. The peculiarity of the comparative legal research method is always that it is not necessary to borrow foreign experience, but it is also possible to find the best practices within domestic legislation. Therefore, it is necessary to look for ways to ensure that Russian tax legislation lays the foundation for supporting innovation in our country.

## 5. Conclusions.

The tax system is one of the most

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