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2008《中华人民共和国企业所得税法》及 《实施条例》税务优惠规定

Tax Incentive Provisions of the PRC Enterprises Income Tax Law and the Implementation Regulations

税务优惠有关规定

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税务优惠有关规定

TAX INCENTIVE PROVISIONS

[1] 减免税收入

Revenue Eligible for Tax Exemption and Reduction

企业的下列收入为免税收入（税法26条）：

- (一) 国债利息收入；
- (二) 符合条件的居民企业之间的股息、红利等权益性投资收益；
- (三) 在中国境内设立机构、场所的非居民企业从居民企业取得与该机构、场所有实际联系的股息、红利等权益性投资收益；
- (四) 符合条件的非营利组织的收入。

The following revenues of an enterprise shall be exempted from income tax (Article 26 of the EIT law) :

- (1) The interest income from the holding of treasury bonds;
- (2) Dividends, bonuses and other return on equity investment distributed between qualified resident enterprises;
- (3) Dividends, bonuses and other return on equity investment which a non-resident enterprise with establishments or place of business in China obtains from a resident enterprise and which is effectively connected with such establishments or place of business; and
- (4) Revenue of qualified non-profit making organizations.

符合条件的居民企业之间的股息、红利等权益性投资收益，是指居民企业直接投资于其他居民企业取得的投资收益。以上所称股息、红利等权益性投资收益，不包括连续持有居民企业公开发行并上市流通的股票不足12个月取得的投资收益。（条例83条）

The term "qualifying return from equity investment such as dividends and bonuses between resident enterprises" as used in Article 26 (2) of the EIT Law refers to the investment returns obtained by a resident enterprise from its direct investment in any other resident enterprises. The term "returns" from equity investment such as dividends and bonuses" as used in Article 26 (2) and (3) of the EIT Law shall not include the investment returns from stock publicly issued and traded on a stock exchange which is consecutively held by a resident enterprise for not more than 12 months. (Article 83, Implementation Regulations)

[2] 农、林、牧、渔业项目所得

Income from Agriculture, Forestry, Animal Husbandry and Fishery Projects

从事农、林、牧、渔业项目的所得，可以免征、减征企业所得税。

企业从事下列项目的所得，免征企业所得税（条例86条）：

- ① 蔬菜、谷物、薯类、油料、豆类、棉花、麻类、糖料、水果、坚果的种植；
- ② 农作物新品种的选育；
- ③ 中药材的种植；
- ④ 林木的培育和种植；
- ⑤ 牲畜、家禽的饲养；
- ⑥ 林产品的采集；
- ⑦ 灌溉、农产品初加工、兽医、农技推广、农机作业和维修等农、林、牧、渔服务业项目；
- ⑧ 远洋捕捞。

Income of an enterprise derived from projects of agriculture, forestry, animal husbandry, and fishery shall either be exempted from tax or subject to reduction in tax:

The enterprise's income derived from the following projects which shall be exempted from the EIT (Article 86, Implementation Regulations) :

- A The growing of vegetables, cereals, potatoes, oil plants, beans, cotton, hemsps, sugar plants, fruits, nuts, etc;
- B The selection and cultivation of new agricultural species;
- C The growing of traditional Chinese medicinal herbs;
- D Cultivation and growing of forests;
- E Raising of livestock and poultry;
- F Gathering of forestry products;
- G Other agricultural, forest, animal husbandry and fishing projects such as irrigation, preliminary processing of agricultural products, veterinary services, promotion of agricultural techniques, operations and maintenance of agricultural machines, etc;
- H Ocean fishing.

企业从事下列项目的所得，减半征收企业所得税（条例86条）：

- (1) 花卉、茶以及其他饮料作物和香料作物的种植；
- (2) 海水养殖、内陆养殖。

The enterprise's income derived from the following projects shall be subject to income tax at a 50% reduced rate (Article 86, Implementation Regulations) :

- a. The growing of flowers, tea plants, and other crops used for beverage and spices ;
- b. Maritime and inland aquaculture.

[3] 国家重点扶持的公共基础设施项目

Public Infrastructure Projects Receiving Key State Support

国家重点扶持的公共基础设施项目，是指《公共基础设施项目企业所得税优惠目录》规定的港口码头、机场、铁路、公路、城市公共交通、电力、水利等项目。

The term "public infrastructure projects with the key support of the state" as used in Article 27 (2) of the EIT Law refers to the ports, wharves, airports, railways, highways, municipal public transportation, electric power, water conservancy, etc. as listed in the Catalogue of Public Infrastructure Projects Eligible for Enterprise Income Tax Preferential Treatment.

企业从事前款规定的国家重点扶持的公共基础设施项目的投资经营的所得，自项目取得第一笔生产经营收入所属纳税年度起，第一年至第三年免征企业所得税，第四年至第六年减半征收企业所得税。（条例87条）

The income derived by an enterprise from investing in or operating any of the public infrastructure projects with the key support of the state as mentioned in the preceding paragraph shall be exempted from the EIT for the first three years as of the tax year when the first revenue transaction arising from production or operation is reported, and shall be taxed at a 50% reduced rate from the fourth to the sixth years. (Article 87, Implementation Regulations)

[4] 环境保护、节能节水项目

Environment Protection, Energy and Water Conservation Projects

符合条件的环境保护、节能节水项目，包括公共污水处理、公共垃圾处理、沼气综合利用、节能减排技术改造、海水淡化等。项目的具体条件和范围由国务院财政、税务主管部门商国务院有关部门制订，报国务院批准后公布施行。

The term "qualifying environmental protection, energy or water conservation projects" as used in Article 27 (3) of the EIT Law shall include the processing of public sewage, the processing of public garbage, the comprehensive exploitation and utilization of firedamp, the renovation of technologies of saving energy or discharging wastes, the desalination of sea water, etc. The specific conditions and scope of such projects shall be set down by the competent departments of the State Council in charge of finance and taxation in collaboration with other relevant department of the State Council, which shall come into effect after being ratified by the State Council.

企业从事前款规定的符合条件的环境保护、节能节水项目的所得，自项目取得第一笔生产经营收入所属纳税年度起，第一年至第三年免征企业所得税，第四年至第六年减半征收企业所得税。（条例88条）

The qualifying income derived by an enterprise from engaging in any of the environmental protection or energy or water conservation projects as described in the preceding paragraph shall be exempted from the EIT for the first three years from the tax year when the first revenue transaction arising from production or operation is reported, and shall be taxed at a 50% reduced rate for the fourth to the sixth years. (Article 88, Implementation Regulations)

[5] 技术转让所得

Technological Transfer

符合条件的技术转让所得免征、减征企业所得税，是指一个纳税年度内，居民企业技术转让所得不超过500万元的部分，免征企业所得税；超过500万元的部分，减半征收企业所得税。（条例第90条）

The "reduction and exemption of EIT for qualifying technological transfers" as defined in Article 27 (4) of the EIT Law refers to the exemption and reduction of taxable income in the tax year in which the transfer takes place. The portion of taxable income not exceeding 5 million yuan earned by a resident enterprise from technological transfer shall be exempted from EIT, and the portion in excess of the 5 million yuan shall be taxed at a 50% reduced rate. (Article 90, Implementation Regulations)

[6] 小型微利企业

Small and Low-Profit Enterprises

符合条件的小型微利企业，减按20%的税率征收企业所得税。符合条件的小型微利企业，是指从事国家非限制和禁止行业，并符合下列条件的企业（条例第92条）：

- (1) 工业企业，年度应纳税所得额不超过30万元，从业人数不超过100人，资产总额不超过3000万元；
- (2) 其他企业，年度应纳税所得额不超过30万元，从业人数不超过80人，资产总额不超过1000万元。

Qualifying small enterprises earning low profits as described in Article 28 (1) of the EIT Law are enterprises that are engaged in the industries not restricted or prohibited by the state. Qualified small enterprises earning low profits are taxed at 20% where they meet the following conditions (Article 92, Implementation Regulations):

- (1) An industrial enterprise shall have an annual taxable amount not exceeding RMB 300,000, have not more than 100 employees, and a total asset of more than RMB30 million;
- (2) Any other enterprise shall have an annual taxable amount of not more than RMB300,000, have not more than 80 employees, and a total asset of not more than RMB 10 million.

[7] 高新技术企业

Advance and New Technology Enterprise

国家需要重点扶持的高新技术企业，减按15%的税率征收企业所得税。国家需要重点扶持的高新技术企业，是指拥有核心自主知识产权，并同时符合下列条件的企业（条例第93条）：

- (一) 产品（服务）属于《国家重点支持的高新技术领域》规定的范围；
- (二) 研究开发费用占销售收入的比例不低于规定比例；
- (三) 高新技术产品（服务）收入占企业总收入的比例不低于规定比例；
- (四) 科技人员占企业职工总数的比例不低于规定比例；
- (五) 高新技术企业认定管理办法规定的其他条件。

Advance and new technology enterprise for which key state supported is required shall be taxed at a 15% reduced rate. The expression "advance and new-technology enterprises under the key support of the state" as used in Article 28 (2) of the EIT Law are enterprises that have their own independent and core intellectual property rights and at the same time meet the following conditions (Article 93, Implementation Regulations) :

- (1) The product (service) falls within the scope of the Advance and New Technology Areas Eligible for the Key Support of the State;
- (2) The proportion of research and development expenses in the sales revenues is not lower than the prescribed proportion;
- (3) The proportion of the income from high and new technology products (services) in the total income of the enterprise is not lower than the prescribed proportion.

- (4) The proportion of technicians in the total number of staff members of the enterprise is not lower than the prescribed proportion;
- (5) Other conditions as laid down in the administrative measures for the determination of high and new technology enterprises.

《国家重点支持的高新技术领域》和高新技术企业认定管理办法由国务院科技、财政、税务主管部门商国务院有关部门制订，报国务院批准后公布施行。

The Advance and New Technology Areas Eligible for the Key Support of the State and the administrative measures for the determination of advance and new technology enterprises shall be formulated by the competent departments of the State Council in charge of science and technology, finance, and taxation in collaboration with other relevant departments, and shall become effective after being ratified by the State Council.

[8] 研究开发费用支出

Deduction for Research and Development

企业的研究开发费用支出，可以在计算应纳税所得额时加计扣除。上述研究开发费用的加计扣除，是指企业为开发新技术、新产品、新工艺发生的研究开发费用，未形成无形资产计入当期损益的，在按照规定据实扣除的基础上，按照研究开发费用的50%加计扣除；形成无形资产的，按照无形资产成本的150%摊销。（条例第95条）

The term "additional deduction of research and development expenses" as used in Article 30 (1) of the EIT Law refers to an additional 50% deduction of the research and development expenses incurred from the research and development of new technologies, new products, and new technological processes on the basis of the actual deductions where no intangible asset has been capitalized. If intangible assets have been capitalized, they shall be amortized at 150% of the cost of the intangible assets. (Article 95, Implementation Regulations)

[9] 残疾人员工资支出

Salaries and Wages Paid to Disabled Employees

企业安置残疾人员所支付的工资的加计扣除，是指企业安置残疾人员的，在按照支付给残疾职工工资据实扣除的基础上，按照支付给残疾职工工资的100%加计扣除。残疾人员的范围适用《中华人民共和国残疾人保障法》的有关规定。（条例第96条）

The expression "addition deduction of salaries and wages paid to the disabled employees of the enterprise" as used in Article 30 of the EIT Law refers to an additional 100% deduction of the salaries and wages paid by the enterprise to the disabled employees thereof. The definition of disabled persons shall be that in the Law of the People's Republic of China on the Protection of Disabled People. (Article 96, Implementation Regulations)

[10] 创业投资额抵扣

Investment Credit for Venture Capital Enterprise

创业投资企业从事国家需要重点扶持和鼓励的创业投资，可以按投资额的一定比例

抵扣应纳税所得额。具体执行细节如下（条例第97条）：

- 主体：创业投资企业
 投资对象：未上市中小高新技术企业
 投资时限：2年以上

抵扣额：按投资额70%抵扣应纳税所得额；当年不足抵的，可以在以后年度延续抵扣。

A venture capital investment enterprise engaged in important startup investments which are necessary to be supported and encouraged by the state may deduct from the amount of taxable incomes a certain proportion of the amount of investment. (Article 31 of the EIT law)

The term "deductible amount from taxable income" as used in Article 31 of the EIT Law refers to that, where a startup investment enterprise invests, by means of equity investment, in an unlisted small or medium-sized advance and new technology enterprise for two or more years, it may set off 70% of its equity investment against the current taxable amount of the startup investment enterprise in the tax year its equity holding attains two full years. If the taxable amount is not enough for setoff, the balance may be carried forward to subsequent years for setoff. (Article 97, Implementation Regulations)

[11] 固定资产加速折旧

Accelerated Depreciation

企业的固定资产由于技术进步等原因，确需加速折旧的，可以缩短折旧年限或者采取加速折旧的方法。可以采取缩短折旧年限或者采取加速折旧的方法的固定资产，包括（条例第98条）：

- (一) 由于技术进步，产品更新换代较快的固定资产；
- (二) 常年处于强震动、高腐蚀状态的固定资产。

采取缩短折旧年限方法的，最低折旧年限不得低于实施条例第60条规定折旧年限的60%；采取加速折旧方法的，可以采取双倍余额递减法或者年数总和法。

The fixed assets for which the method of shortened depreciation or accelerated depreciation as mentioned in Article 32 of the EIT Law include (Article 98, Implementation Regulations) :

- (1) Fixed assets that are upgraded and replaced at fast rate due to advancement in technology ;
- (2) Fixed assets exposed to high level of vibration and corrosion.

Where the shortened depreciation method is used, the minimum number of years shall not be less than 60% of the number of years for depreciation as set forth in Article 60 of the Implementation Regulation. The enterprise may adopt the double-declining balance method or the sum-of-the-years-digits method as the accelerated depreciation method.

[12] 减计收入

Reduction in Revenue

企业综合利用资源，生产符合国家产业政策规定的产品所取得的收入，可以在计算应纳税所得额时减计收入。减计收入是指企业以《资源综合利用企业所得税优惠目录》规定的资源作为主要原材料，生产国家非限制和禁止并符合国家和行业相关标准的产品取得的收入，减按90%计入收入总额。

Article 33 of the EIT law provides that when computing its taxable income, an enterprise can take into account 90% of its revenue from products that fall under the policy of the state on synergistic utilization of resources. Reduction in revenue means the uses of the materials as listed in the Catalogue of Resources for Synergistic Utilization by Enterprises Eligible for Preferential Income Tax Treatment in the production of goods which are not restricted or prohibited by the state and which meet the national or relevant industry standards.

上述所称原材料占生产产品材料的比例不得低于《资源综合利用企业所得税优惠目录》规定的标准。（条例第99条）

The proportion of raw materials in the materials for the production of products as described in the preceding paragraph shall not be any lower than the standards described in the Catalogue of Resources for Comprehensive Utilization by Enterprises Entitled to Preferential Income Tax Treatment. (Article 99, Implementation Regulations)

[13] 购置专用设备投资额抵扣 Investment Credit for Special Equipment

企业购置用于环境保护、节能节水、安全生产等专用设备的投资额，可以按一定比例实行税额抵免。所称税额抵免，是指企业购置并实际使用《环境保护专用设备企业所得税优惠目录》、《节能节水专用设备企业所得税优惠目录》和《安全生产专用设备企业所得税优惠目录》规定的环境保护、节能节水、安全生产等专用设备的，该专用设备的投资额的10%可以从企业当年的应纳税额中抵免；当年不足抵免的，可以在以后5个纳税年度结转抵免。（条例100条）

Article 34 of the EIT Law provides that, where an enterprise purchases and actually uses any of the special equipments dedicated to environmental protection, conservation of energy and water, safety of work, etc. as described in the Catalogue of Preferential Income Tax Treatment for Special Equipments in Environmental Protection, the Catalogue of Preferential Income Tax Treatment for Special Equipments in Energy and Water Conservation, and the Catalogue of Preferential Income Tax Treatment for Special Work Safety Equipments, 10% of the investment amount of the special equipment may be credited to the enterprise's amount of tax payable of the current year. If the amount of tax payable for the year is not sufficient for credit, the un-credited amount may be carried forward for use in the following 5 tax years. (Article 100, Implementation Regulations)

享受上述规定的企业所得税优惠的企业，应当实际购置并自身实际投入使用前款规定的专用设备；企业购置上述专用设备在5年内转让、出租的，应当停止享受企业所得税优惠，并补缴已经抵免的企业所得税税款。（条例第100条）

An enterprise entitled to the preferential income tax treatment as described in the preceding paragraph shall actually purchase and put into use the special equipments as described in the preceding paragraph. If the enterprise transfers or leases any of the aforesaid special equipment within 5 years after its purchase, its preferential treatment shall be terminated and the enterprise shall make up the already credited enterprise income taxes. (Article 100, Implementation Regulations)

[14] 非居民企业来源于中国境内的所得 PRC-source Income Derived by Non-resident Enterprises

非居民企业在中国境内未设立机构、场所的，或者虽设立机构、场所但取得的所得与其所设机构、场所没有实际联系的，应当就其来源于中国境内的所得缴纳企业所得税。上述规定的所得，减按10%的税率征收企业所得税。（条例第91条）

Article 27 of the EIT law provides that non-resident enterprises having not set up permanent establishment in China or those already having set up permanent establishment in China but earning income that is not connected with the above-mentioned permanent establishment are subject to tax on PRC-source income. The income, which a non-resident enterprise derives under Article 27 (5) of the EIT Law, shall be taxed at the 10% reduced rate. (Article 91, Implementation Regulations)

中国的知识产权海关保护制度 China's Legal Framework for Customs Protection of Intellectual Property Rights

第一部分 知识产权海关保护概述 Part One Brief introduction of customs protection for IPR

1.) 《中华人民共和国知识产权海关保护条例》是指海关对与进出口货物有关并受中华人民共和国法律、行政法规保护的商标专用权、著作权和与著作权有关权利、专利权实施的保护。知识产权海关保护制度作用在于：一是通过保护与进出口货物有关的知识产权来履行我国作为世贸组织成员国应尽的义务；二是通过保护与进出口货物有关的知识产权来规范进出口秩序。

1.) "The PRC Regulation for Customs Protection of Intellectual Property Rights" refers the implementation of the protection by the customs of the exclusive rights to use trademarks, copyrights and the rights related to copyrights, and patent rights that are related to import and export goods and that are protected by PRC laws and administrative regulations. The customs protection of IR rights serves two purposes: first to fulfill her obligation as a WTO member country by protecting the IP rights relating to the import and export goods, and second to regulate the orders of import and export by protecting the IP rights relating to the import and export goods.

2.) 我国法律规定，侵犯受法律、行政法规保护的知识产权的货物禁止进出口。

2.) The PRC law prohibits the import and export of goods that infringe upon the intellectual property rights (the IPR) under the protection of the law and administrative regulations.

3.) 中华人民共和国海关行政处罚实施条例第25条规定：“进出口侵犯中华人民共和国法律、行政法规保护的知识产权的货物的，没收侵权货物，并处货物价值30%以下罚款；构成犯罪的，依法追究刑事责任。需要向海关申报知识产权状况，进出口货物收发货人及其代理人未按照规定向海关如实申报有关知识产权状况，或者未提交合法使用有关知识产权的证明文件的，可以处5万元以下罚款。

3.) Article 25 of the PRC Implementation Regulation of Administrative Punishment by the Customs provides that "in case anyone imports or exports goods that have infringed upon the intellectual property rights subject to the protection of the laws and administrative regulations of the People's Republic of China, the infringing goods shall be confiscated, and a fine of less than 30% the value of the goods shall be imposed; if a crime is constituted, he shall be subject to criminal liabilities according to law. Where there is necessity to declare the status of the intellectual property rights to the customs house, the consignee and consignor of the import or export goods and their agents fail to declare to the customs house according to law the relevant status of intellectual property right, or fail to submit the lawfully used certificate of relevant intellectual property right, a fine of less than RMB 50,000 Yuan may be imposed upon them."

4.) 知识产权权利人在我国登记和注册了知识产权，还应该在海关作备案登记。我国法律在境内和进出口环节给予权利人两重保护，在海关备案已经登记的知识产权，能更加有效地保护知识产权权利人的利益。

4.) The IPR owner should file the record of the IPR at the customs in addition to obtaining the IPR registration with the relevant authority in China. The PRC law offers two layers of protection to the IPR owner within China and the entry-exit frontier ports. Record filing of the IPR at the Chinese customs better protects the interests of the IPR owner.

第二部分 知识产权海关保护的备案
Part Two The record filing of IPR protection at the customs

1.) 备案的申请人

1.1) 申请知识产权海关保护的备案的申请人应为知识产权权利人或者知识产权权利人委托的代理人。

1.) Applicants

1.1) The applicants for record filing at customs for IPR protection shall be the IPR owner or his appointed agent.

2.) 知识产权海关保护备案申请的文件及证据

2.1) 申请书及其内容包括：

- ① 知识产权权利人的名称或者姓名、注册地或者国籍等；
- ② 知识产权的名称、内容及其相关信息；
- ③ 知识产权许可行使状况；
- ④ 知识产权权利人合法行使知识产权的货物的名称、产地、进出境地海关、进出口商、主要特征、价格等；
- ⑤ 已知的侵犯知识产权货物的制造商、进出口商、进出境地海关、主要特征、价格等。

2.) Application documents for customs protection of IPR and evidence

2.1) The application form should include the following information:

- ① The name, place of incorporation or nationality of the owner of IP rights;
- ② The name and contents of the IP rights, and relevant information;
- ③ The status of the use of the IP rights;
- ④ The description, country of origin, entry-exit customs house, importer and exporters, main characteristics and price of the goods in respect of which the owner of the IP rights duly exercises its rights;
- ⑤ The manufacturer, importer and exporter, the entry-exit customs house of the goods of which the IP rights have been infringed upon, main characteristics, prices, etc.

2.2.) 随附文件、证据

2.2.) The attached documentation and the evidence for IP right infringement

3.) 知识产权海关保护备案申请的海关受理

3.1) 海关总署应当自收到申请人全部申请文件之日起30个工作日内作出是否准予备案的决定，并书面通知申请人。

3.2) 有下列情形海关总署不予受理：

- ① 申请文件不齐全或者无效的；
- ② 申请人不是知识产权权利人的；
- ③ 知识产权不再受法律、行政法规保护的。

3.) The customs acceptance of application for customs protection of IPR

3.1) The General Administration of Customs shall, within 30 working days of the date of receipt of all application documents, made a decision on whether to grant approval for record filing, and shall notify the applicant in writing. Where approval for record filing is not granted, the reasons for that shall be stated.

3.2) The General Administration of Customs shall not grant approval for record filing in any of the following circumstances :

- ① The application documents are incomplete or invalid ;

- ② The applicant is not the owner of the Intellectual Property Rights ; or
- ③ The Intellectual Property Rights are no longer protected by laws or administrative regulations.

4.) 知识产权海关保护备案的时效

4.1) 备案自海关总署核准备案之日起生效，有效期为10年。自备案生效之日起知识产权的有效期不足10年的，备案的有效期以知识产权的有效期为准。

4.2) 续展备案有效期：在知识产权有效的前提下，知识产权权利人可以在知识产权海关保护备案有效期届满前6个月内，向海关总署申请续展备案，每次续展备案的有效期为10年。

4.3) 知识产权海关保护备案有效期届满而不申请续展或者知识产权不再受法律、行政法规保护的，知识产权海关保护备案随即失效。

4.) Validity period for record filing at customs

4.1) A filed record for customs protection of Intellectual Property Rights shall be effective as of the date on which the General Administration of Customs grants approval for record filing, and shall be valid for 10 years. Where the valid period is less than 10 years from the date of record filing to the expiry date of the IP rights, the valid period for record filing shall commence from the date of record filing to the expiry date.

4.2) Where the Intellectual Property Rights are valid, the owner of the Intellectual Property Rights may, within six months prior to the expiration of the term of validity of the filed record for customs protection of Intellectual Property Rights, apply to the General Administration of Customs for an extension of the filed record. The term of validity of each extension of a filed record shall be 10 years.

4.3) Where no application for extension has been made upon the expiration of the term of validity of a filed record for customs protection of Intellectual Property Rights, or the Intellectual Property Rights are no longer protected by laws or administrative regulations, the filed record for customs protection of Intellectual Property Rights shall immediately become void.

5.) 知识产权海关保护备案的变更和撤销

5.1) 备案知识产权的情况发生改变的，知识产权权利人应当自发生改变之日起30个工作日内，向海关总署办理备案变更手续。

- ① 知识产权权利人的名称；
- ② 注册商标核定使用商品；
- ③ 许可使用注册商标、作品或者实施专利的情况；
- ④ 知识产权权利人的通讯地址、联系人、联系电话等；
- ⑤ 《条例》第七条规定的其他情况。

5.) The amendment and revocation of the record filing of the IPR protection at the customs

5.1) Where there is a change in the details of a filed record of Intellectual Property Rights, the owner of the Intellectual Property Rights shall, within 30 working days of the date on which the change occurs, carry out the amendment with the General Administration of Customs.

- ① The name of the IPR owner;
- ② The goods for which the registered trademark is allowed to be used;
- ③ The situations under which licenses are granted for use of trademark, copyrights, and patents;
- ④ The corresponding address, contact person, and phone number of the IPR owner;
- ⑤ The change in particulars as provided under article 7 of the PRC Regulations for Customs Protection of Intellectual Property Rights.

5.2) 有下列情形之一的，知识产权权利人应当自备案的知识产权发生改变之日起30个工作日内向海关总署提出

- ① 注销知识产权海关保护备案的申请并随附有关文件；
 - ② 知识产权在备案有效期届满前不再受法律、行政法规保护的；
- 备案的知识产权发生转让的。

5.2) Where one of the situations as set out below occurs, the owner of the Intellectual Property Rights shall,

within 30 working days of the date on which the change occurs, submit application to cancel the record filing at the General Administration of Customs, and provide the relevant documentation :

- ① The IPR is no longer under the protection of the Chinese law or administrative regulations before its expiry day;
 - ② There has been a transfer of the legal ownership of the IPR.
- 5.3) 对属于前款规定情形的, 海关总署可以主动或者根据有关利害关系人的申请注销有关知识产权的备案。知识产权权利人在备案有效期内放弃备案的, 可以向海关总署申请注销备案。海关总署注销备案, 应当书面通知有关知识产权权利人。备案自海关总署注销之日起失效。
- 5.3) For matters as set out above, the General Administration of Customs can cancel the record filing on its own or upon the application of the IPR owner. The IPR owner can apply for the cancellation of the record filing at the customs within the validity period of the record filing where the owner of the IPR waives its right to record filing. The GAC should notify the IPR owner of the cancellation in writing. The cancellation of record filing shall take effect upon the cancellation date.
- 5.4) 海关发现知识产权权利人申请知识产权备案未如实提供有关情况或者文件的, 海关总署可以撤销其备案。
- 5.4) Where the customs discovers that the owner of the IP rights have submitted incorrect information or provided false information for purpose of record filing at the customs, the General Administration of Customs may revoke the relevant record filings.

第三部分 扣留侵权嫌疑货物的申请

Part Three Application for seizure of suspected goods that infringed the IP rights

- 1.) 知识产权权利人发现侵权嫌疑货物(已备案或尚未备案)即将进出口, 或者接到海关就实际监管中发现进出口货物涉嫌侵犯在海关总署备案的知识产权而发出的书面通知的, 可以向货物进出境地海关提出扣留侵权嫌疑货物的申请, 并按规定提供相应的担保。
- 1.) Where an owner of intellectual property rights discovers that goods suspected of infringing rights, (whether or not record having been filed) are about to be imported or exported, or the owner of the IP rights receives the notification from the customs of the suspected infringing goods in the course of exercising its supervision over import and export goods, the owner may submit an application for impoundment of goods suspected of infringing rights to the customs of the place where the goods are to enter into or exit from China. The owner is required to provide security for the seizure of the suspected infringing goods in accordance with the legal rules.
- 2.) 知识产权权利人发现侵权嫌疑货物的扣留申请
- 2.1) 扣留侵权嫌疑货物的申请书及相关的证明文件
- ① 知识产权权利人的名称或者姓名、注册地或者国籍等;

- ② 知识产权的名称、内容及其相关信息;
 - ③ 侵权嫌疑货物收发货人的名称;
 - ④ 侵权嫌疑货物名称、规格等;
 - ⑤ 侵权嫌疑货物可能进出境的口岸、时间、运输工具等;
 - ⑥ 侵权嫌疑货物涉嫌侵犯备案知识产权的, 申请书还应包括海关备案号。
- 2.) IPR owner requests customs to seize the suspected infringing goods
- 2.1) Where an owner of Intellectual Property Rights requests customs to impound goods suspected of infringing upon rights, he should submit an application form and the relevant supporting documents. The application form for seizing the suspected infringing goods and relevant documentary proof :
- ① The name or personal name, place of registration or nationality, etc. of the owner of the Intellectual Property Rights;
 - ② The name, details and the relevant information of the Intellectual Property Rights;
 - ③ The names of the consignees and consignors of the goods suspected of infringing upon rights;
 - ④ The name and specifications, etc. of the goods suspected of infringing upon rights;
 - ⑤ The port by which, the time at which and the means of transportation by which, the goods suspected of infringing upon rights may enter into or exit from China; and
 - ⑥ Where the goods suspected of infringing upon rights are suspected of infringing upon Intellectual Property Rights that are filed for record, the application form shall also include the customs record number.
- 2.2) 申请扣留侵权嫌疑货物的证据
除申请书外还应提供足以证明侵权事实明显存在的证据, 所提交的证据应当能够证明以下事实:
- ① 请求海关扣留的货物即将进出口;
 - ② 在货物上未经许可使用了侵犯其商品专用权的商标标识、作品或者实施了其专利。
- 2.2) The evidence of suspected infringing goods in support of the application
In addition to the application form, the owner of the IPR shall provide evidence that is sufficient to prove that the infringement clearly exists:
- ① The goods for which customs seizure is requested are about to be shipped into or out of China;
 - ② The goods have used the trademark, copyright or patent that have infringed upon the IPR without obtaining the consent from the owner of the IP rights.
- 2.3) 申请扣留侵权嫌疑货物的担保
申请人应当在海关规定的期限内向海关提供相当于货物价值的担保。
- 2.3) Guarantee for application for seizure of infringing goods.
The applicant should provide security equal to the value of the goods within the time period prescribed.
- 3.) 知识产权权利人接到海关发现侵权嫌疑货物通知的扣留申请
海关发现侵权嫌疑货物以书面通知知识产权权利人, 知识产权权利人的回复及其扣留申请, 及扣留货物担保。
- ① 知识产权权利人在接到海关书面通知送达之日起3个工作日内应予以回复
 - ② 认为该货物侵犯其在海关总署备案的知识产权并要求海关扣留的, 向海关提出扣留申请。(办法与知识产权权利人发现侵权嫌疑的扣留申请相同)
 - ③ 认为该货物未侵犯其在海关总署备案的知识产权或者不要求海关扣留的, 向海关书面说明情况。(经海关同意, 知识产权权利人可以查看货物)
- 3.) Upon receipt of notification from the customs of the suspected infringing goods, the IP right owner submits the application to the customs for the impoundment of the suspected infringing goods.
The customs that discover the goods suspected of infringing the IPR shall notify the IPR owner. The IPR owner

shall reply to customs, make request for seizing the suspected infringing goods and provide security for the seizure.

- ① The IPR owner shall reply to the customs within 3 working days of receiving the notification from the customs.
- ② The owner considers that the goods have infringed upon the IP rights that have been record filed at the General Administration of Customs, and applies to the customs for the impoundment of the suspected infringing goods. (the same procedure shall be followed as the application by the owner who discover the infringement of the IP rights)
- ③ The owner consider that the goods have not infringed upon the IP rights that have been record filed at the General Administration of Customs, or the owner does not request the customs to impound the goods and explains the situation to the customs. (Upon obtaining the consent from the customs, the IPR owner may inspect the suspected infringing goods)

3.1) 要求海关扣留侵权嫌疑货物的，应当按照以下规定向海关提供担保：

- ① 货物价值不足人民币2万元的，提供相当于货物价值的担保；
- ② 货物价值为人民币2万元至20万元的，提供相当于货物价值的50%的担保，但担保金额不得少于人民币2万元；
- ③ 货物价值超过人民币20万元的，提供人民币10万元的担保；
- ④ 经海关同意，知识产权权利人可以向海关提供总担保。总担保金额不得低于人民币20万元。
- ⑤ 知识产权权利人未提出申请或者未提供担保的，海关应当放行货物。

3.1) Where the IP right owner requests the customs to seize the suspected infringing goods, the owner should provide security equal to the value of the goods within the time period prescribed.

- ① Where the value of the goods is less than RMB20,000, the owner shall provide the security equal to the value of the goods;
- ② Where the goods are valued between RMB20,000 and RMB200,000, the owner shall provide security equal to 50% of the value of the goods, subject to the condition that the amount should not be less than RMB20,000;
- ③ Where the goods are valued more than RMB200,000, the owner shall provide a security for RMB100,000;
- ④ Upon obtaining the consent from the customs, the owner of the IPR shall provide a blanket security, with the total amount being no less than RMB200,000;
- ⑤ Where the IPR owner does not submit application for an impoundment order, or has submitted the application but cannot provide the security, the customs shall release the suspected infringing goods.

3.2) 请求扣留货物的总担保

- ① 总担保适用范围只限于知识产权权利人在一定时间内因接到海关发现侵权嫌疑货物通知，根据《知识产权海关保护条例》第16条规定，多次向海关提出扣留涉嫌侵权其在海关总署备案商标专用权的进出口货物申请的情事。
- ② 总担保的申请及随附材料
- ③ 总担保的金额应相当于知识产权权利人上一年度向海关申请扣留侵权嫌疑货物后发生的仓储、保管和处置等费用之和；知识产权权利人上一年度未向海关申请扣留侵权嫌疑货物或者仓储处置费不足人民币20万元的，总担保金额为人民币20万元。

- ④ 总担保保函的有效期是指作为保人的银行承担履行担保责任的期间，即总担保保函签发之日起至第二年6月30日。
- ⑤ 担保事项发生期间知识产权权利人在向海关提出采取保护措施申请时无需另行提供担保的期间，即自海关总署核准之日起至当年12月31日。

3.2) Request for seizure of goods under a general security

- ① Scope for the application of general security shall apply in situations under which the IP right owner, upon receiving the notifications from the customs of suspected infringing goods within a certain time period, has, in accordance with article 16 of the " Regulations for the Customs Protection of Intellectual Property Rights", made many requests to the customs to seize the goods suspected of infringing the trademark rights that have recorded at the General Administration of Customs;
- ② The application for a general security and the information attached;
- ③ The amount of a general security should be equal to the sum of the storage, warehousing, and disposal expenses incurred in the previous year following the request made to the customs to seize the goods; where the sum as mentioned above is less than RMB200,000, the amount of general security shall be RMB200,000;
- ④ The validity period of the guarantee given by the bank as the guarantor refer to the period of guarantee, which shall commence from the day of signing the letter of guarantee to the 30th day of June in the following year;
- ⑤ To request the customs to take protection measure, the IPR owner need not provide security during the guarantee period, which runs from the date customs grants the approval to the 31st day of December in the current year.

第四部分 海关对侵权嫌疑货物的调查处理

Part Four The investigation by the customs of the suspected infringing goods

1.) 海关扣留侵权嫌疑的货物，前提是知识产权权利人申请扣留侵权嫌疑货物并提供担保。海关制发通知和扣留凭证给收发货人。权利人或收发货人可以申请查看货物。收发货人认为其进出口货物未侵犯专利权的，应向海关提出书面说明并附送相关证据，可以在向海关提交放行货物的申请和货物等值担保金后，请求海关放行货物。知识产权人未能在合理期限内向人民法院起诉的，海关退还收发货人担保金；海关对扣留侵权嫌疑货物的调查。海关应当自扣留之日起30个工作日内对被扣留的货物是否构成侵犯知识产权进行调查、认定。

1.) Given that the IPR owner has requested the customs to seize the goods suspected of infringing the IP rights, and provided the security for the seizure, the customs shall impound the goods in question and issue an impoundment notification to the consignor or consignee. An IPR owner and the consignee or consignor may inspect the relevant goods upon the approval of customs. Where the consignee or consignor considers that his goods have not infringed upon the patent rights of the owner, he shall submit a written explanation to customs and attach the relevant evidence, and request the customs to release the goods upon the provision to the customs of a security deposit equal to the value of the goods. Where the owner of the IPR has not institute legal actions in the people's court within a reasonable time period, the customs shall return the security deposit to the consignor or consignee. The customs shall conduct an investigation into the alleged infringement and draw a conclusion to the case within 30 days of the impoundment of the goods suspected of infringing the IP rights.

2.) 放行被扣留货物

- ① 有下列情形海关可以放行货物：
- ② 海关根据知识产权权利人申请扣留的侵权嫌疑货物，自扣留之日起20个工作日内未收到人民法院协助执行通知的；海关依职权扣留的侵权嫌疑货物，自扣留之日起50个工作日内未收到人民法院协助执行通知，并且经调查不能认定被扣留的侵权嫌疑货物侵犯知识产权的；
- ③ 涉嫌侵犯专利权货物的收发货人在向海关提供与货物等值的担保金后，请求海关放行的，但海关在调查期间认定侵犯有关专利权的除外（以上担保只适用涉嫌侵犯专利权货物，不适用涉嫌侵犯商标权或者著作权的货物）；
- ④ 海关认为收发货人有充分的证据证明其货物未侵犯知识产权权利人的知识产权的。

- 2.) Customs release of the goods impounded
Customs shall release the impounded goods suspected of infringing upon rights in any of the following circumstances :
- ❶ The customs impounds goods suspected of infringing upon rights following the application by the IPR owner, and has not received the notice to assist in execution from the people's court within 20 working days from the date of impoundment ;
 - ❷ The customs impounds goods suspected of infringing upon rights in the course of its daily business, and has not received the notice to assist in execution from the people's court within 50 working days from the date of impoundment, and the customs cannot confirm that the impounded goods suspected of infringing upon rights has infringed upon Intellectual Property Rights after investigation ;
 - ❸ The consignee or consignor of the goods suspected of infringing upon patent rights requests customs to release his goods after providing a security deposit equal to the value of the goods (the provision of security deposit shall apply to goods suspected of infringing patent rights, not to goods suspected of infringing trademarks or copyrights); or
 - ❹ The customs considers that the consignee or consignor has sufficient evidence to prove that his goods have not infringed upon the Intellectual Property Rights of the owner of Intellectual Property rights.
- 3.) 没收被扣留的侵权货物
- 3.1) 被扣留的侵权嫌疑货物，经海关调查后认定侵犯知识产权的，予以没收，并应当将侵犯知识产权货物的有关情况书面通知知识产权权利人。
- 3.) Confiscation of the impounded goods
- 3.1) After investigation, the customs comes to a conclusion that the goods have infringed the IPR. The customs shall confiscate the goods and inform the same to the IPR owner in writing.
- 3.2) 侵权货物没收后的处理
- ❶ 被没收的侵犯知识产权货物可以用于社会公益事业的，海关应当转交给有关公益机构用于公益事业；
 - ❷ 知识产权权利人有收购意愿的，海关可以将没收的侵权货物有偿转让给知识产权权利人；
 - ❸ 被没收的侵犯知识产权货物无法用于公益事业且知识产权权利人无收购意愿的，海关可以在消除侵权特征后依法拍卖；
 - ❹ 没收货物侵权特征无法消除的，海关应当予以销毁。
- 3.2) Disposal of the goods confiscated
- ❶ Where confiscated goods that have infringed upon Intellectual Property Rights can be used for public welfare, the customs shall transfer the goods to the relevant public welfare organizations to be used for public welfare.
 - ❷ Where the owner of the Intellectual Property Rights wishes to purchase the goods, customs may transfer the goods to the owner of the Intellectual Property Rights at a consideration.
 - ❸ Where confiscated goods that has infringed upon IP Rights cannot be used for public welfare and the owner of the IPR does not wish to acquire the goods, customs may auction the goods according to law after removing the infringing characteristics.
 - ❹ Where the infringing characteristics of the infringing goods cannot be removed, customs shall destroy the goods.

第五部分 其他有关事项

Part Five Other relevant matters

1.) 知识产权权利人应当承担的责任

- ❶ 海关依法扣留侵权嫌疑货物，知识产权权利人应当支付有关仓储、保管和处置费用。未支付有关费用的，海关可以从其向海关提供的担保金中扣除或者要求担保人履行有关担保责任。
- ❷ 海关接受知识产权保护备案和采取知识产权保护措施的申请后，因知识产权权利人未提供确切情况而未能发现侵权货物的，未能及时采取保护措施或者采取保护措施不力的，由知识产权权利人自行承担责任。
- ❸ 知识产权权利人请求海关扣留侵权嫌疑货物后，海关不能认定被扣留的侵权嫌疑货物侵犯知识产权权利人的知识产权，或者人民法院判定不侵犯知识产权权利人的知识产权的，知识产权权利人应当依法承担赔偿责任。

1.) The legal responsibility of the IP right owner

- ❶ Where customs impounds goods suspected of infringing upon rights according to the provisions hereof, the owner of the Intellectual Property Rights shall pay the relevant fees for storage, custody and disposal, etc. Where the owner of the Intellectual Property Rights has not paid the relevant fees, customs may deduct such fees from the guarantee he provides to customs, or request the guarantor to perform the relevant guarantee liability.
- ❷ Where, after customs has accepted an application for record filing of protection of Intellectual Property Rights and for adoption of protective measures for Intellectual Property Rights, an owner of Intellectual Property Rights cannot provide precise details and as a result, the goods infringing upon rights are not discovered, or the protective measures are not adopted in a timely manner or effectively, the owner of the Intellectual Property Rights shall bear the liability himself.
- ❸ Where, after an owner of Intellectual Property Rights has requested customs to impound goods suspected of infringing upon rights, customs cannot confirm whether the impounded goods suspected of infringing upon rights has infringed upon the Intellectual Property Rights of the owner of Intellectual Property Rights, or the people's court rules that the goods have not infringed upon the Intellectual Property Rights of the owner of Intellectual Property Rights, the owner of Intellectual Property Rights shall be liable for compensation according to law.

2.) 在海关备案的优点

- ❶ 将知识产权在海关总署备案可以有效地阻嚇有意侵权的单位和个人；
- ❷ 如果将知识产权在海关备案，要求海关扣押嫌疑侵权货物的最高抵押金是10万元人民币；如果事前没有在海关备案，要求海关扣押嫌疑侵权货物的抵押金是嫌疑侵权货物价值的一半，该金额可以高于事前有备案的要求金额。
- ❸ 如果将知识产权在海关备案，海关会主动通知备案人嫌疑进出口的侵权货物。

2.) Advantages of IPR record filing at the customs

- ❶ The record filing of IPR at the customs can act as effective deterrent to those who are going to infringe the IPR;
- ❷ Where the IPR is filed at the customs for record, the amount of security provided for seizure of infringing goods is limited to RMB100,000 only . In the absence of filing the IPR at the customs, to make a seizure request to the customs, the IPR owner should provide a security equal to the value of the suspected infringing goods, which could be much bigger.
- ❸ The customs will inform the IPR owner of any import and export goods suspected of infringing his IP rights.