

Enterprise Income Tax Law of the People's Republic of China

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The Enterprise Income Tax Law of the People's Republic of China, which was adopted at the 5th Session of the 10th National People's Congress of the People's Republic of China on March 16, 2007, is hereby promulgated and shall come into force as of January 1, 2008.

President of the People's Republic of China Hu Jintao

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Chapter I General Provisions

Article 1 Within the territory of the People's Republic of China, the enterprises and other organizations which have incomes (hereinafter referred to as the enterprises) shall be payers of the enterprise income tax and shall pay their enterprise income taxes in accordance with this Law.

This Law does not apply to the sole individual proprietorship enterprises and partnership enterprises.

Article 2 Enterprises are classified into resident and non-resident enterprises.

The term "resident enterprise" as mentioned in this Law refers to an enterprise which is established inside China, or which is established under the law of a foreign country (region) but whose actual institution of management is inside China.

The term "non-resident enterprise" as mentioned in this Law refers to an enterprise established under the law of a foreign country (region), whose actual institution of management is not inside China but which has institutions or establishments inside China; or which has not any institution or establishment inside China but which has incomes sourced in China.

Article 3 A resident enterprise shall pay the enterprise income tax on its incomes derived from both inside and outside China.

For a non-resident enterprise with an institution or establishment inside China, it shall pay enterprise income tax on its incomes derived from inside China as well as on incomes that it earns outside China but which has real connection with the said institution or establishment.

For a non-resident enterprise without any institution or establishment inside China, or for a non-resident enterprise whose incomes have no actual connection to its institution or establishment inside China, it shall pay enterprise income tax on the incomes derived from inside China.

Article 4 The enterprise income tax rate shall be 25%.

The tax rate which applies to a non-resident enterprise's incomes as mentioned in paragraph 3, Article 3 of this Law shall be 20%.

Chapter II Taxable Amount of Income

Article 5 The balance after deducting the tax-free incomes, tax-exempt incomes, all deduction items as well as the permitted remedies for losses of the previous year(s) from an enterprise's total amount of incomes of each tax year shall be the taxable amount of incomes.

Article 6 An enterprise's monetary and non-monetary incomes from various sources shall be the total amount of incomes, including:

- (1) income from the sale of goods;
- (2) income from the provision of labor services;
- (3) income from the assignment of property;
- (4) dividend, bonus and other equity investment proceeds;
- (5) income from interests;
- (6) income from rentals;
- (7) income from royalties;

(8) income from accepted donations; and

(9) other incomes.

Article 7 The following incomes included in the total amount of incomes shall be tax-free incomes:

(1) The appropriations from the treasury;

(2) The administrative fees and the governmental funds which are charged according to the law and fall under treasury administration; and

(3) Other tax-free incomes as prescribed by the State Council.

Article 8 The reasonable disbursements which are actually incurred and in which have actual connection with the business operations of an enterprise, including the costs, expenses, taxes, losses, etc., may be deducted in the calculation of the taxable amount of incomes.

Article 9 With regard to an enterprise's disbursements for public welfare donations, the portion which accounts for 12% of the total annual profits or less is allowed to be deducted.

Article 10 None of the following disbursements may be deducted in the calculation of the taxable amount of incomes:

(1) Dividend, bonus and other equity investment proceeds paid to the investors;

(2) Payment for enterprise income tax;

(3) Late fee for taxes;

(4) Pecuniary punishment, fines, and losses of properties confiscated;

(5) Disbursements for donations other than those provided for in Article 9;

(6) Sponsorship disbursements;

(7) Unverified reserve disbursements;

(8) Other disbursements that have nothing to do with the obtainment of revenues;

Article 11 When calculating the taxable amount of incomes, an enterprise is allowed to deduct the depreciations of fixed assets calculated under the relevant provisions.

No depreciation may be calculated for any of the following fixed assets:

(1) The fixed assets which have not yet been put into use, excluding houses and buildings;

(2) The fixed assets rented in by way of commercial lease;

- (3)The fixed assets rented out by way of finance leasing;
- (4)The fixed assets for which depreciation has been allocated in full amount but which remain in use;
- (5)The fixed assets which have nothing to do with the business operations;
- (6)The land which is separately appraised and entered into account as an item of fixed asset; and
- (7)Other fixed assets for which no depreciation may be calculated.

Article 12 When calculating the taxable amount of incomes, an enterprise is allowed to deduct the amortized expenses of intangible assets calculated according to the relevant provisions.

No amortized expense may be calculated for the following intangible assets:

- (1)The intangible assets, for which the self-development expenses have been deducted in the calculation of the taxable amount of incomes;
- (2)The self-created business reputation;
- (3)The intangible assets which have nothing to do with the business operations; and
- (4)Other intangible assets for which no amortized expense may be calculated.

Article 13 The following expenses incurred by an enterprise shall, in the calculation of the taxable amount of incomes, be treated as long-term deferred expenses. Those amortized under the relevant provisions are allowed to be deducted:

- (1)The expenses for the rebuilding of a fixed asset, for which depreciation has been prepared in full amount;
- (2)The expenses for the rebuilding of a rented fixed asset;
- (3)The expenses for the heavy repair of a fixed asset; and
- (4)Other expenses that shall be treated as long-term deferred expenses.

Article 14 During the period of external investment, an enterprise shall not deduct the costs of the investment assets when it calculates the taxable amount of incomes.

Article 15 Where an enterprise uses or sells its inventories, it is allowed to deduct the costs of the inventories calculated according to the relevant provisions in the calculation of the taxable amount of incomes.

Article 16 Where an enterprise transfers an asset, it is allowed to deduct the net value of the asset in the calculation of the taxable amount of incomes.

Article 17 When an enterprise calculates its enterprise income taxes on a consolidated basis, it shall not offset the losses of its overseas business institutions against the profits of its domestic business institutions.

Article 18 The losses incurred by an enterprise during a tax year may be carried forward and subtracted from the incomes during subsequent years for a maximum carry-forward period of 5 years.

Article 19 Where a non-resident enterprise obtains incomes as described in paragraph 3, Article 3 of this Law, it shall calculate the taxable amount of income through following approaches:

(1)The taxable amount of incomes from dividends, bonuses and other equity investment proceeds, interests, rentals and royalties shall be based on the total amount of incomes;

(2)The taxable amount of incomes from the assignment of property shall be the balance of the total amount of incomes less the net value of the property; and

(3)The taxable amount of any other income shall be calculated by reference to the approaches as mentioned in the preceding items.

Article 20 The specific measures for the scope and criteria of revenues and deductions, as well as the tax treatment of assets as provided for in the present Chapter shall be formulated by the treasury and tax administrative departments of the State Council.

Article 21 When calculating the taxable amount of incomes, if the enterprise's financial or accounting treatment method does not conform to any tax law or administrative regulation, the taxable amount shall be calculated in accordance with the tax law or administrative regulation.

Chapter III Amount of Payable Taxes

Article 22 The amount of payable taxes shall be the balance of the taxable amount multiplied by the applicable tax rate minus the tax amounts deducted and exempted as provided for in the present Law .

Article 23 An enterprise may deduct from the taxable amount of incomes of the current period the amount of income tax it has already paid overseas for the following incomes. The limit of tax credit shall be the payable amount of taxes on such incomes computed according to this Law. The part exceeding the limit of tax credit may, during the five subsequent years, be offset by way of deducting the limit of tax credit of each year from the balance after the deduction of the limit of tax credit of the current year:

(1)A resident enterprise's taxable incomes derived from outside China; and

(2)Taxable incomes earned outside China by a non-resident enterprise with institutions or establishments in China, but which have no actual connection with the said institutions or establishments.

Article 24 For the dividends, bonuses and other equity investment proceeds derived from outside China that a resident enterprise obtains from a foreign enterprise that it controls directly or indirectly, the portion of income tax on this income paid by the foreign enterprise outside China may be treated as the allowable tax credit of overseas income tax amount of the resident enterprise and be deducted within the limit of tax credit as prescribed in Article 23 of this Law.

Chapter IV Preferential Tax Treatments

Article 25 Preferential in enterprise income tax treatments are granted to the important industries and projects whose development is supported and encouraged by the state.

Article 26 The following incomes of an enterprise shall be tax-free incomes:

- (1)The income from treasury bonds;
- (2)Dividends, bonuses and other equity investment proceeds distributed between qualified resident enterprises;
- (3)Dividends, bonuses and other equity investment proceeds which a non-resident enterprise with institutions or establishments in China obtains from a resident enterprise and which have actual connection with such institutions or establishments; and
- (4)Incomes of qualified not-for-profit organizations.

Article 27 The enterprise income tax on the following incomes may be exempted or reduced:

- (1)The incomes incurred from projects of agriculture, forestry, husbandry and fishery;
- (2)The incomes incurred from business operations of the important public infrastructure investment projects supported by the state;
- (3)The income incurred from the projects of environmental protection, energy and water saving, which meet the relevant requirements;
- (4)The incomes incurred from the transfer of technologies, which meets the relevant requirements; and
- (5)The income as prescribed in paragraph 3, Article 3 of this Law.

Article 28 The enterprise income tax on a small meagre-profit enterprise which meets the prescribed conditions shall be levied at a reduced tax rate of 20%.

The enterprise income tax on important high- and new-tech enterprises which are necessary to be supported by the state shall be levied at the reduced tax rate of 15%.

Article 29 The autonomous organ of an autonomous region of ethnic minorities may decide the reduction or exemption of the local portion of the enterprise income tax to be paid by enterprises within the said autonomous region. The decisions of deduction or exemption made an autonomous prefecture or county shall be submitted to the people's government of the

province, autonomous region, or municipality directly under the Central Government for approval.

Article 30 The following expenses of an enterprise may be additionally calculated and deducted:

(1)The expenses for the research and development of new technologies, new products and new techniques; and

(2)The wages paid to the disabled employees or other employees whom the state encourages to hire.

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

Article 32 Where it is surely necessary to accelerate the depreciation of any fixed asset of an enterprise because of technological progress or due to any other cause, it may shorten the term of depreciation or adopt an approach to accelerate the depreciation.

Article 33 The incomes generated by an enterprise from producing products conforming to the industrial policies of the state by way of comprehensive utilization of resources may be downsized in the calculation of the amount of taxable incomes.

Article 34 The amount of an enterprise's investment in the purchase of special equipment for environmental protection, energy and water saving, work safety, etc. may be deducted from the tax amount at a certain rate.

Article 35 The specific measures for the preferential tax treatments as mentioned in this Law shall be formulated by the State Council.

Article 36 Where the national economic and social development so requires, or the business operations of enterprises have been seriously affected by emergencies and other factors, the State Council may formulate special preferential policies concerning the enterprise income tax and submitted them to the Standing Committee of the National People's Congress for archival purposes.

Chapter V Withholding by Sources

Article 37 The payable income taxes on the incomes as described in paragraph 3, Article 3 of this Law which a non-resident enterprise earns shall be withheld by sources, with the payer acting as the obligatory withholder. The tax amount shall be withheld by the obligatory withholder from each payment or payment due.

Article 38 For the payable income taxes on the incomes which a non-resident enterprise obtains from undertaking an engineering project or providing labor services inside China, the tax organ may designate the payer of the project price or remuneration as the obligatory withholder.

Article 39 For the income tax that shall be withheld under Articles 37 and 38 of this Law but which the obligatory withholder has failed to withhold or is unable to perform the withholding

obligation, the taxpayer shall pay them at the place where the income has occurred. If the taxpayer fails to do so, the tax organ may recover the payable tax of the enterprise from its other income items inside China for which the payer should pay.

Article 40 A obligatory withholder shall turn over the tax payments which it withholds every time to the state treasury within 7 days after the date of withholding and submit to the local tax organ a form of report on the withheld enterprise income taxes.

Chapter VI Special Adjustments to Tax Payments

Article 41 With regard to a transaction between an enterprise and its affiliate, if the taxable revenue or income of the enterprise or its affiliate decreases due to inconformity with the arms length principle, the tax organ may make an adjustment through a reasonable method.

The costs of an enterprise and its affiliate for joint development or accepting the assignment of intangible assets, or jointly providing or accepting labor services shall, according to the arms length principle, be apportioned in the calculation of the taxable amount of incomes.

Article 42 An enterprise may file with the tax organ the pricing principles and computation approaches for the transactions between it and its affiliates, the tax organ and the enterprise shall enter into an advance pricing arrangement upon negotiations and confirmation.

Article 43 When an enterprise submits to the tax organ its annual enterprise income tax returns, it shall enclose an annual report on the affiliated transactions between it and its affiliates.

When the tax organ investigates into the affiliated transactions, the enterprise and its affiliates, as well as other enterprises relating to the affiliated transactions under investigation, shall provide the pertinent materials according to the relevant provisions.

Article 44 Where any enterprise refuses to provide the materials of transactions between it and its affiliates, or provides any false or incomplete materials which cannot reflect the true information about the affiliated transactions, the tax organ may decide its taxable amount of income upon check.

Article 45 With regard to an enterprise which is established by a resident enterprise or controlled by an resident enterprise or by a Chinese resident and which is located in a country (region) where the actual tax burden is obviously lower than the tax rate as prescribed in paragraph 1 of Article 4 of this Law, if the profits are not distributed or if less profits are distributed for a cause not attributable to reasonable business operations, the portion of the aforesaid profits attributable to this resident enterprise shall be included in its incomes of the current period.

Article 46 The interest disbursement for any credit investments and equity investments, which an enterprise accepts from its affiliates, in excess of the prescribed criterion shall not be deducted in the calculation of the taxable amount of income.

Article 47 Where an enterprise makes any other arrangement not for any reasonable business purpose, if its taxable revenue or income decreases, the tax organ has the power to make an adjustment through a reasonable method.

Article 48 If the tax organ makes an adjustment to a tax payment under the provisions of this Chapter and if it is necessary to recover the tax payment in arrears, it shall do so and charge an additional interest under the provisions of the State Council.

Chapter VII Administration of Tax Collection

Article 49 The administration of the collection of enterprise income taxes shall be governed by the Law of the People's Republic of China on the Administration of Tax Collection in addition to this Law.

Article 50 Unless it is otherwise provided for in any tax law or administrative regulation, the tax payment place of a resident enterprise shall be the registration place of the said enterprise. But if its registration place is without China, the tax payment place shall be the place where its institution of actual management is located.

A resident enterprise which has established operational institutions without legal person status in China shall calculate and pay its enterprise income taxes on a consolidated basis.

Article 51 Where a non-resident enterprise obtains any income as described in paragraph 2, Article 3 of this Law, the tax payment place shall be the place where the institution or establishment is located. Where a non-resident enterprise has established two or more institutions or establishments within China, it may, subject to the examination and approval of the tax organ, choose to have its main institution or establishment pay the enterprise income tax on a consolidated basis.

For a non-resident enterprise which obtains any income as described in paragraph 3, Article 3 of this Law, the place where the obligatory withholder is located shall be the place for the payment of enterprise income taxes.

Article 52 Unless it is otherwise provided for by the State Council, enterprises shall not pay their enterprise income taxes on a consolidated basis.

Article 53 Enterprise income taxes shall be calculated on the basis of a tax year. A tax year commences on January 1 and ends on December 31 of the Gregorian calendar year.

Where an enterprise starts or terminates its business operations in the middle of a tax year so that its actual business operation period in this tax year is shorter than 12 months, its actual business operation period shall constitute a tax year.

At the time of liquidation of an enterprise, the liquidation period shall be a tax year.

Article 54 Enterprise income taxes shall be paid in advance on the monthly or quarterly basis.

An enterprise shall, within 15 days after the end of a month or quarter, submit to the tax organ an enterprise income tax return for advance payment and pay the tax in advance.

An enterprise shall, within 5 months after the end of each year, submit to the tax organ an annual enterprise income tax return for the settlement of tax payments and settle the payable or refundable amount of taxes.

When an enterprise submits an enterprise income tax return, it shall attach to it the financial statements and other relevant materials according to the relevant provisions.

Article 55 When an enterprise terminates its business operation in the middle of a year, it shall, within 60 days after the actual date of termination of its business operations, apply to the tax organ for calculating and paying the enterprise income taxes of the current period.

Before an enterprise goes through the deregistration formalities, it shall make a declaration to the tax organ on the liquidation and shall pay the enterprise income taxes.

Article 56 Enterprise income taxes to be paid under this law shall be calculated on the basis of RMB. For any income calculated on the basis of a currency other than RMB, the amount of taxes shall be calculated and paid after this income is converted into RMB.

Chapter VIII Supplementary Provisions

Article 57 The enterprises which have already been established prior to the promulgation of the present Law and enjoyed low tax rates according to the provisions of the tax laws and administrative regulations in force at that time may, according to the provisions of the State Council, continue to enjoy the preferential treatments within five years after the present Law is promulgated and gradually transfer to the tax rate as provided for in the present Law. Those which enjoy the preferential treatment of tax exemption for a fixed term may, according to the provisions of the State Council, continue to enjoy such treatment after the promulgation of the present Law until the fix term expires. However, for those that have failed to enjoy the preferential treatment due to failure to make profits, the term of preferential treatment may be counted as of the year when the present Law is promulgated.

Within the particular areas established by law for developing foreign economic cooperation and technological exchanges and the high- and new-tech enterprises that need the key support of the state newly established within the areas where the State Council has provided for the implementation of the abovementioned special policies may continue to enjoy transitional preferential tax treatments, with the specific measures thereof to be formulated by the State Council.

Other enterprises falling in the encouraged category as already determined by the State Council may enjoy the preferential treatment of tax reduction or exemption according to the provisions of the State Council.

Article 58 Where any provision in a tax treaty concluded between the government of the People's Republic of China and a foreign government is different from the provisions in this Law, the provision in the said treaty shall prevail.

Article 59 The State Council shall formulate a regulation on the implementation of this Law.

Article 60 This law shall come into force as of January 1, 2008. The Income Tax Law of the People's Republic of China on Foreign-funded Enterprises and Foreign Enterprises as adopted at the 4th Session of the Standing Committee of the 7th National People's Congress on April 9, 1991 and the Interim Regulation of the People's Republic of China on Enterprise Income Tax as promulgated by the State Council on December 13, 1993 shall be repealed simultaneously.