

国务院法制办、财政部、国家税务总局负责人

在 2007 年 12 月 13 日就《中华人民共和国企业所得税法实施条例》有关问题答记者问

The officials in charge of the Legislative Affairs Office of the PRC State Council, the Ministry of Finance and State Administration of Taxation responded to questions from newspaper reporters about “The Implementation Regulations of the PRC Enterprises Income Tax” on 13th December 2007

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日前，国务院公布了《中华人民共和国企业所得税法实施条例》（以下简称实施条例）。实施条例将于 2008 年 1 月 1 日正式施行。为便于大家理解实施条例有关内容，国务院法制办、财政部、国家税务总局负责人接受了记者的采访。

Two days ago, the State Council announced the Implementation Regulations of the PRC Enterprise Income Tax Law (referred to as “Implementation Regulations” hereafter), which will take effect on 1st January 2008. To facilitate better understanding of the Implementation Regulations, the officials in charge of the Legislative Affairs Office of the PRC State Council, the Ministry of Finance and State Administration of Taxation responded to questions from newspaper reporters on 13th December 2007

问：国务院制定实施条例的背景是什么？

Q: What are the backgrounds for the State Council to formulate the Implementation Regulations?

答：2007 年 3 月 16 日，十届全国人大五次会议审议通过《中华人民共和国企业所得税法》（以下简称企业所得税法），统一了内、外资企业所得税制度，并将于 2008 年 1 月 1 日起施行。为了确保企业所得税法的顺利施行，有必要制定实施条例，对企业所得税法的有关规定做进一步细化，并与企业所得税法同步施行。为此，财政部、国家税务总局起草了《中华人民共和国企业所得税法实施条例（送审稿）》（以下简称送审稿）报请国务院审议。国务院法制办就送审稿征求了全国人大相关部门和国务院有关部门，各省、自治区、直辖市和计划单列市人民政府，以及香港、澳门特别行政区政府的意见，并与财政部、国家税务总局共同召开座谈会听取了部分内、外资企业和专家的意见。在此基础上，国务院法制办、财政部、国家税务总局又对送审稿进行了反复研究、修改，形成了《中华人民共和国企业所得税法实施条例（草案）》，报请国务院常务会议审议通过后，以国务院令形式公布施行。

A: The Fifth Session of the National People’s Congress passed the PRC Enterprise Income Tax Law (referred to as the “EIT Law” hereafter) on 16th March 2007, which unified the income tax systems for domestically funded and foreign funded enterprises and will come into force on 1st January 2008. To ensure the smooth implementation of the EIT Law, it is necessary to formulate regulations to give details about and effectuate the EIT Law, and put the Implementation Regulations into force at the same time as the EIT Law. The draft Implementation Regulations, jointly prepared by the Ministry of Finance and the State

Administration of Taxation, were submitted to the State Council for Review. The Legislative Affairs Office of the State Council sent out the drafts to the relevant departments under the National People's Congress, the Ministries under the State Council, and the governments at the provincial level, the governments of the autonomous regions, the governments of the municipality directly under the State Council, and the governments of the Hong Kong and Macao Special Administrative Region in order to seek their views and opinions. The Legislative Affairs Office also held meetings with the Ministry of Finance and State Administration of Taxation, external experts and representatives of foreign investment enterprises to seek their views and opinions. Thereafter, the Legislative Affairs Office, together with the Ministry of Finance, the State Administration of Taxation, conducted in depth studies into the drafts and made modifications before it was finalized. The final drafts were announced as the Implementation Regulations under the Administrative Decree of the State Council after the Standing Committee of the State Council completed the reviews.

问：实施条例对企业所得税法规定的纳税人作了哪些细化规定？

Q: What details are given in the Implementation Regulations about the taxpayers in the EIT Law?

答：企业所得税法规定，企业和其他取得收入的组织为企业所得税的纳税人。为进一步增强企业所得税法的可操作性，明确企业所得税纳税人的范围，实施条例规定，企业、事业单位、社会团体以及其他取得收入的组织为企业所得税的纳税人。

A: The EIT Law provides that the taxpayers are the enterprises and other income earning organizations. To enhance operability of the EIT Law and define the scope for the income taxpayers, the Implementation Regulations provide that enterprises, institutions, community associations, and other income earning organizations are the payers of income tax.

按照国际通行做法，企业所得税法将纳税人划分为“居民企业”和“非居民企业”，并分别规定其纳税义务，即居民企业就其境内外全部所得纳税；非居民企业就其来源于中国境内所得部分纳税。同时，为了防范企业避税，对依照外国（地区）法律成立但实际管理机构在中国境内的企业也认定为居民企业；非居民企业还应当就其取得的与其在中国境内设立的机构、场所有实际联系的境外所得纳税。为此，实施条例对“实际管理机构”的政策含义做了明确，即指对企业的生产经营、人员、账务、财产等实施实质性全面管理和控制的机构；对非居民企业所设立的“机构、场所”的政策含义也做了明确，即指在中国境内从事生产经营活动的机构、场所，包括管理机构、营业机构、办事机构、工厂、农场、提供劳务的场所、从事工程作业的场所等，并明确非居民企业委托营业代理人在中国境内从事生产经营活动的，包括委托单位和个人经常代其签订合同，或者储存、交付货物等，视为非居民企业在中国境内设立机构、场所。

The EIT Law follows the international practices of dividing taxpayers into resident enterprises and non-resident enterprises. Tax residents pay income tax on worldwide income. Non-tax residents pay income tax on PRC-source income. In order to prevent tax avoidance, the enterprises that are incorporated under the foreign law but the actual management of which is located in China, are classified as resident enterprises. Non-tax

residents shall pay tax on income that is effectively connected with the place of business they have set up in China. The Implementation Regulations clarify that the place of actual management refers to the organization that exercises substantial and overall management and control over the production, employees, books of accounts and property of the enterprise; and that establishment and place a non-resident enterprise set up inside China includes the management office, sales office, business office, factory, farms, place for delivering services and carrying on engineering projects. It also provides that non-residents who appoint agent to do business inside China including the signing of contracts, or storage and delivery of goods, are considered to have set up an establishment and place of business inside China.

问：实施条例对企业所得税法规定的收入作了哪些具体规定？

Q: What specific provisions for revenue in the EIT Law are given by the Implementation Regulations?

答：企业所得税法规定，企业以货币形式和非货币形式从各种来源取得的收入，为收入总额。实施条例进一步规定，企业取得收入的货币形式，包括现金、存款、应收账款、应收票据、准备持有至到期的债券投资以及债务的豁免等；企业取得收入的非货币形式，包括固定资产、生物资产、无形资产、股权投资、存货、不准备持有至到期的债券投资、劳务以及有关权益等，企业以非货币形式取得的收入，以公允价值确定收入额。同时，实施条例明确了企业取得的各种形式收入的概念，以及收入实现的确认方法。

A: The EIT Law provides that the gross revenue of the enterprises comprises the income the enterprise receives in monetary terms or non-monetary terms. Monetary income includes the receipt of cash, deposit, account receivables, bills receivable, securities held to maturity and waiver of debt obligations; non-monetary income includes the receipt of fixed assets, biological assets, intangible assets, equity interest, inventory, securities not held to maturity, services and related interest. The fair value should be adopted as a measurement for non-monetary income. In addition, the accrual principle should be followed in the recognition of sales revenue.

问：实施条例对企业支出扣除的原则、范围和标准作了哪些规定？

Q: What specific provisions for the principle, scope and criteria of deductions are given by the Implementation Regulations?

答：企业所发生的支出，是否准予在税前扣除，以及扣除范围和标准的大小，直接决定着企业应纳税所得额的计算，进而影响到企业应纳税额的大小。企业所得税法第八条规定，企业实际发生的与取得收入有关的、合理的支出，包括成本、费用、税金、损失和其他支出，准予在计算应纳税所得额时扣除。为进一步明确企业支出准予税前扣除的基本原则，实施条例规定，准予企业税前扣除的与取得收入有关的支出，是指与取得收入直接相关的支出；合理的支出，是指符合生产经营活动常规，应当计入当期损益或者有关资产成本的必要和正常的支出。在此基础上，实施条例对企业支出扣除的具体范围和标准，主要作了以下具体规定：

The deductibility of the expenses, the scope and criteria of deductible expenses will have direct impact on the computation of taxable income and thus the amount of tax payable. Article 8 of the EIT Law provides that the payments that are reasonable and related to the earning of income including costs, expenses, taxes, losses and other payments are deductible in the computation of taxable income. The Implementation Regulations give the detailed scope of deduction and criteria as below:

(一) 明确了工资薪金支出的税前扣除。

老税法对内资企业的工资薪金支出扣除实行计税工资制度，对外资企业实行据实扣除制度，这是造成内、外资企业税负不均的重要原因之一。实施条例统一了企业的工资薪金支出税前扣除政策，规定企业发生的合理的工资薪金支出，准予扣除。对合理的判断，主要从雇员实际提供的服务与报酬总额在数量上是否配比合理进行，凡是符合企业生产经营活动常规而发生的工资薪金支出都可以在税前据实扣除。

(a) Deduction of wages and salaries before tax

The old income tax regulations for domestically funded enterprises imposed a limit on the taxpayer regarding the deduction of wages and salaries. Foreign invested enterprises do not have such restrictions under the old income tax law. The Implementation Regulations give a unified treatment for both types of enterprises regarding the deductions of wages and salaries from income. Where the wages and salaries incurred are reasonable, they are deductible.

(二) 具体规定了职工福利费、工会经费、职工教育经费的税前扣除。

(b) Deduction of staff welfare expenses, trade union operating fees, staff education expenses before tax

老税法规定，对企业的职工福利费、工会经费、职工教育经费支出分别按照计税工资总额的 14%、2%、1.5% 计算扣除。实施条例继续维持了职工福利费和工会经费的扣除标准，但由于计税工资已经放开，实施条例将“计税工资总额”调整为“工资薪金总额”，扣除额也就相应提高。为鼓励企业加强职工教育投入，实施条例规定，除国务院财政、税务主管部门另有规定外，企业发生的职工教育经费支出，不超过工资薪金总额 2.5% 的部分，准予扣除；超过部分，准予在以后纳税年度结转扣除。

The old income tax regulations provided that the payments for staff welfare expenses, trade union operating contributions, and staff education were set at 14%, 2% and 1.5% on the total amount of gross wages and salaries. The Implementation Regulations provide that the deduction for staff welfare expenses, trade union operating contributions, and staff education expenses shall not exceeding 14%, 2% and 2.5% on the total amount of wages and salaries respectively, except that there are different provisions made by the Ministry of Finance and the State Administration of Taxation. Where the payments have exceeded the prescribed ratio, the excess can be carried forward and deducted from income in future tax years.

(三) 调整了业务招待费的税前扣除。

(c) Deduction of entertainment expenses before tax

老税法对内、外资企业业务招待费支出实行按销售收入的一定比例限额扣除。考虑到商业招待和个人消费之间难以区分，为加强管理，同时借鉴国际经验，实施条例规定，企业发生的与生产经营活动有关的业务招待费支出，按照发生额的 60% 扣除，但最高不得超过当年销售（营业）收入的 5%。

The old tax law for domestically funded enterprises and that for foreign funded enterprises gave different deduction criteria. Since it is difficult to distinguish corporate and personal entertainment, the Implementation Regulations provide that deductible amount of entertainment expenses incurred in connection with business activities should be limited to 60% of the actual expended amount, but the maximum amount cannot exceed 0.5% of the sales (business) revenue for the current year.

（四）统一了广告费和业务宣传费的税前扣除。

(d) Unifying the deduction of advertising and marketing expenses before tax

关于企业发生的广告费和业务宣传费支出的税前扣除，老税法对内资企业实行的是根据不同行业采用不同的比例限制扣除的政策，对外资企业则没有限制。实施条例统一了企业的广告费和业务宣传费支出税前扣除政策，同时，考虑到部分行业和企业广告费和业务宣传费发生情况较为特殊，需要根据其实际情况作出具体规定，实施条例规定，除国务院财政、税务主管部门另有规定外，广告费和业务宣传费支出不超过当年销售（营业）收入 15% 的部分，准予扣除；超过部分，准予在以后纳税年度结转扣除。

The old tax regulations for domestically funded enterprises impose a limit on the deduction of advertising expenses while the old tax law for foreign investment enterprises does not impose such a limit. The new EIT Law unifies the treatment and set the limit to the deduction of the advertising expenses to 15% of the sales (business) revenue. The portion in excess of the 15% can be carried over for deduction in future tax years.

（五）明确公益性捐赠支出税前扣除的范围和条件。

(e) Condition and scope for the deduction of charitable donation

关于公益性捐赠支出扣除，老税法对内资企业采取在比例内扣除的办法（应纳税所得额的 3% 以内），对外资企业没有比例限制。为统一内、外资企业税负，企业所得税法第九条规定，企业发生的公益性捐赠支出，在年度利润总额 12% 以内的部分，准予在计算应纳税所得额时扣除。为增强企业所得税法的可操作性，实施条例对公益性捐赠作了界定：公益性捐赠是指企业通过公益性社会团体或者县级以上人民政府及其部门，用于《中华人民共和国公益事业捐赠法》规定的公益事业的捐赠。同时明确规定了公益性社会团体的范围和条件。

The old tax regulations for domestically funded enterprises limit the deductible amount to 3% of taxable income while there is no such restriction for foreign funded enterprises. The new EIT Law provides that the limit to deductible charitable donation is 12% on the

profits for the current year. Charitable donation is the donation to prescribed charitable activities, as approved by the PRC Law for Donation to Charities, through the charitable organizations or county level governments.

问：实施条例对税收优惠作了哪些具体规定？

Q: What detailed provisions on tax preferential treatments are given by the Implementation Regulations?

答：实施条例对企业所得税法规定的税收优惠的范围和办法作了进一步明确，主要内容包括：

A: The Implementation Regulations make elaborations on the scope and procedures of tax preferential treatments including:

（一）关于扶持农、林、牧、渔业发展的税收优惠。

(a) Tax preferential treatment to support the development of agriculture, forestry, animal husbandry and fishery industries

企业所得税法第二十七条规定，企业从事农、林、牧、渔业项目的所得可以免征、减征企业所得税。实施条例据此明确，（一）企业从事下列项目的所得，免征企业所得税：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。（二）企业从事下列项目的所得，减半征收企业所得税：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。

Article 27 of the EIT Law provides that the income derived from projects of agriculture, forestry, animal husbandry and fishery industries are qualified for tax exemption or reduction. The Implementation Regulations specify that income derived from the following business are exempted from tax: (1) the growing of vegetable, grains, edible tuberous roots, vegetable oil seeds, beans, cotton, jute (flax), sugar, fruit and nuts; (2) the cultivation of new species for agricultural produce; (3) the growing of Chinese herbs; (4) cultivation and plantation of forestry; (5) animal husbandry and bird breeding; (6) the collection of wooden products; (7) irrigation, processing of primary agricultural produce, veterinarian, promotion of agricultural technology, repair of machinery for use in farming, forestry, animal and fishery sectors; and (8) ocean fish catching. The enterprises that carry on the following activities shall get a reduction in tax by 50%. The Implementation Regulations also specify that income derived from (1) the growing of flowers, tea, plants of consumption as soft drinks, spicy drinks, and (2) sea and fresh water fish harvesting, are taxed at 50% of the full rate.

（二）关于鼓励基础设施建设的税收优惠。

(b) Tax preferential treatment to encourage construction of infrastructure facilities and projects

企业所得税法第二十七条规定，企业从事国家重点扶持的公共基础设施项目投资经营的所得可以免征、减征企业所得税。实施条例据此明确，企业从事港口码头、机场、铁路、公路、城市公共交通、电力、水利等项目投资经营所得，自项目取得第一笔生产经营收入所属纳税年度起，给予“三免三减半”的优惠。

The Implementation Regulations provide that enterprises that engaged in projects for ports, airports, railways, highways, public transportations, electricity supply, water supply, can receive tax concession of 3 years exemption plus 3 years taxation at 50% of the full tax rate, commencing from the tax year in which the first transaction of sales income is reported.

(三) 关于支持环境保护、节能节水、资源综合利用、安全生产的税收优惠。

(c) Tax preferential treatment to support environmental protection, conservation of energy and water, integrated utilization of resources, work safety

企业所得税法第二十七条规定，企业从事符合条件的环境保护、节能节水项目的所得可以免征、减征企业所得税。实施条例据此明确，企业从事公共污水处理、公共垃圾处理、沼气综合利用、节能减排技术改造、海水淡化等项目的所得，自项目取得第一笔生产经营收入所属纳税年度起，给予“三免三减半”的优惠，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 Implementation Regulations provide that enterprises that carry out the following projects can receive tax concession of 3 years exemption from tax and 3 years taxation at 50% of the normal rate: sewage treatment, refuse treatment, methane gas usage and development, energy conservation technology, emission levels reduction, and sea water desalination treatment. The tax concession commences from the tax year in which the first transaction of sales is reported. The Ministry of Finance and the State Administration of Taxation, other relevant ministries will formulate the detailed scope and conditions for the tax preferential policy.

企业所得税法第三十三条规定，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。实施条例据此明确，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并符合规定比例，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 PRC EIT Law provides that where the enterprises integrally utilize energy and resources to make products that meet the requirements under the national policies, the taxable income can be reduced. The Implementation Regulations provide that the reduction in taxable income is 10%, given that the main materials for the products should come from the prescribed resources under the “Catalog for the Preferential Tax Treatment on the Integrated Utilization of Resources” and that the products should meet the industry standards and do not fall under the restricted and prohibited categories.

企业所得税法第三十四条规定，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。实施条例据此明确，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。

Article 34 of the EIT Law provides that enterprises incur the expenditure on special equipment that protects the environment, conserves energy and water, gives work safety, can get tax exemption on a certain percentage. The Implementation Regulations provide that where the enterprise incurs actual expenditure on special equipment that is on the list of “Catalog of Equipment for the Exclusive Use in Environmental Protection that Receives Tax Preferences”, “Catalog of Equipment for the Exclusive Use in Energy and Water Conservation”, and “Catalog of Equipment for the Exclusive Use in Work safety that Receives Tax Preferences”, 10% of the actual expenditure can be credited against the tax payable for the current year. If the tax payable is not enough, the credits can be carried over for use in the next five tax years.

（四）关于促进技术创新和科技进步的税收优惠。

Tax concession to promote technology innovation and technical advancement

为了促进技术创新和科技进步，企业所得税法规定了四个方面的税收优惠，实施条例分别作了具体规定：

To promote technology innovation and technical advancement, the EIT Law lays down 4 areas where the tax preferences are available. The Implementation Regulations give the following specific provisions:

企业所得税法第二十七条规定，企业符合条件的技术转让所得可以免征、减征企业所得税。实施条例据此明确，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。

Article 27 of the EIT Law provides that enterprises that derived income from the transfer technology are either exempted from tax or receive tax reduction. The Implementation Regulations specifically provide that where the enterprise derives income the technology transfer, the first 5 million of the taxable income is exempted from income tax. The amount over the 5 million is subject to income tax at 50% of the full rate.

企业所得税法第三十条规定，企业开发新技术、新产品、新工艺发生的研究开发费用，可以在计算应纳税所得额时加计扣除。实施条例据此明确，企业的上述研究开发费用在据实扣除的基础上，再加计扣除 50%。

Article 30 of the EIT Law provides that enterprises that incur research and development expenses on new technology, new products, and new workmanship can claim additional deduction in the computation of taxable income. The Implementation Regulations specifically provide that where the enterprise derives the above-mentioned income, the enterprises can claim additional deduction equal to 50% of the actual expenses incurred.

企业所得税法第三十一条规定，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。实施条例据此明确，这一优惠是指创业投资企业采取股权投资方式投资于未上市的中小高新技术企业 2 年以上的，可以按照其投资额的 70% 在股权持有满 2 年的当年抵扣该创业投资企业的应纳税所得额；当年不足抵扣的，可以在以后纳税年度结转抵扣。

Article 31 of the EIT Law provides that venture capital enterprises that invest in projects that receive prime support from and that are encouraged by the State, can claim deduction from the taxable income with references to a percentage on the investment amount. The Implementation Regulations expressly provide that the tax concession for VC enterprises that make equity investment in unlisted small and medium size high-tech enterprises for a period of over 2 years, 70% of the investment amount can be credited against the taxable income of the invested enterprises in the year in which the investment holding has lasted for 2 years. If the taxable income is not enough for the investment credit, the credits can be carried over for use in future years.

企业所得税法第三十二条规定，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。实施条例据此明确，可以享受这一优惠的固定资产包括：（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。

Article 32 of the EIT Law provides that enterprises can receive accelerated depreciation allowance where the fixed assets become obsolete due to technology advancement. The Implementation Regulations specifically provide that fixed assets qualified for accelerated depreciation allowance include: (1) fixed assets quickly becoming obsolete; and (2) fixed assets in a state of vibration and being exposed to high degree of erosion.

（五）关于符合条件的非营利组织的收入的税收优惠。

Tax concession to income earned by eligible not-for-profit organization

企业所得税法第二十六条规定，符合条件的非营利组织的收入，为免税收入。实施条例据此从登记程序、活动范围、财产的用途与分配等方面，界定了享受税收优惠的“非营利组织”的条件。同时，考虑到目前按相关管理规定，我国的非营利组织一般不能从事营利性活动，为规范此类组织的活动，防止从事营利性活动可能带来的税收漏洞，实施条例规定，对非营利组织的营利性活动取得的收入，不予免税。

Article 26 of the EIT Law provides that the income derived by eligible not-for-profit organization is exempted income. The Implementation Regulations set out the conditions for being met to be “non-profit making organizations” in the areas of registration procedures, scope of activities, the use and distribution of properties. In addition, the Implementation Regulations provide that the non-for-profit organization cannot carry out profit-making activities. Where the not-for-profit organization earns any income from profit-making activities, the income is taxable.

（六）关于非居民企业的预提税所得的税收优惠。

Tax concession on withholding income tax

企业所得税法第四条规定，未在中国境内设立机构、场所的非居民企业取得的来源于中国境内的所得，以及非居民企业取得的来源于中国境内但与其在中国境内所设机构、场所没有实际联系的所得，适用税率为 20%。企业所得税法第二十七条规定，对上述所得，可以免征、减征企业所得税。实施条例据此明确，对上述所得，减按 10% 的税率征收企业所得税。对外国政府向中国政府提供贷款取得的利息所得、国际金融组织向中国政府 and 居民企业提供优惠贷款取得的利息所得，以及经国务院批准的其他所得，可以免征企业所得税。

The EIT Law provides that non-resident (foreign) enterprises that have not set up permanent establishments in China, and that non-resident enterprises deriving PRC-source income that is not connected with the PE that have already been set up in China, shall pay income tax at 20%. Article 27 of the EIT Law provides that the above-mentioned income can be entitled to tax exemption and reduction. The Implementation Regulations provide that the above-mentioned income shall be taxed at 10%. The interest income in connection with the loans advanced by foreign government to the PRC government, interest income in connection with loans advanced on preferential terms by the International Finance Corporation to the PRC government and residents, and the income as determined by the PRC State Council shall be exempted from income tax.

问：实施条例是如何界定小型微利企业和高新技术企业的？

Q: How do the Implementation Regulations determine the small profit-making and hi-tech enterprises?

答：企业所得税法第二十八条第一款规定，符合条件的小型微利企业，减按 20% 的税率征收企业所得税。借鉴国际通行做法，按照便于征管的原则，实施条例规定了小型微利企业的标准：（一）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；（二）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。与现行优惠政策（内资企业年应纳税所得额 3 万元以下的减按 18% 的税率征税，3 万元至 10 万元的减按 27% 的税率征税）相比，优惠范围扩大，优惠力度有较大幅度提高。

A: Article 28(1) of the PRC EIT Law provides that enterprises that satisfy the conditions for small profit making shall be taxed at 20%. By reference to international practices and for the sake of easy administration, the Implementation Regulations specify that (1) in respect of production enterprises, the annual taxable income shall not exceed RMB300,000, total number of employees shall not exceed 100, and the total asset amount shall not exceed RMB 30 million; (2) In respect of non-production enterprises, the annual taxable income shall not exceed RMB300,000, the no. of employees shall not exceed 80, and the total amount of assets shall not exceed RMB 10 million. The scope of the tax concession is larger than that as given under the old tax law for domestically funded enterprises. [Translator's note: the new concession shall apply to all types of enterprises in 2008].

企业所得税法第二十八条第二款规定，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。实施条例将高新技术企业的界定范围，由现行按高新

技术产品划分改为按高新技术领域划分，规定产品（服务）应属于《国家重点支持的高新技术领域》的范围，以解决现行政策执行中产品列举不全、覆盖面偏窄、前瞻性欠缺等问题。具体领域范围和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。同时，实施条例还规定了高新技术企业的认定指标：拥有核心自主知识产权；产品（服务）属于《国家重点支持的高新技术领域》规定的范围；研究开发费用占销售收入的比例、高新技术产品（服务）收入占企业总收入的比例、科技人员占企业职工总数的比例，均不低于规定标准。这样规定，强化以研发比例为核心，税收优惠重点向自主创新型企业倾斜。

Article 28(2) of the PRC EIT Law provides that new and high-tech enterprises in respect of which primary State supports are required shall be taxed at 15% on income. The Implementation Regulations reclassify the new and high-tech enterprises from designated products to sectors of new and high technology, drawing a line for products (and services) that fall under the new and high technology sectors that receive primary supports from the State. The detailed scope and recognition procedures are to be formulated by the Ministry of Science and Technology, the Ministry of Finance, and the State Administration of Taxation together with other relevant ministries. The new policies shall be released after obtaining approval from the State Council. In addition, the Implementation Regulations give certain benchmarks for the recognition of new and hi-tech enterprises: possessing core IP rights; the products (or services) falling under the scope of the “new and high technology sectors that receive primary supports from the State”; the amount of research and development as a percentage to sales, the sales revenue of new and hi-tech products (or services) as a percentage of total revenue, the ratio of employees that possess technical qualifications to the total number of employees in the company. The new and hi-tech enterprises shall achieve the benchmarks. The tax preferential policy aims to strengthen the proportion of core R&D and is biased to new and innovative enterprises.

问：实施条例在特别纳税调整方面作了哪些具体规定？

Q: What specific provisions for the adjustments to tax accounting are given by the Implementation Regulations?

答：根据企业所得税法有关特别纳税调整的规定，借鉴国际反避税经验，实施条例对关联交易中的关联方、关联业务的调整方法、独立交易原则、预约定价安排、提供资料义务、核定征收、防范受控外国企业避税、防范资本弱化、一般反避税条款，以及对补征税款加收利息等方面作了明确规定。其中，对进行特别纳税调整需要补征税款的，规定按照税款所属纳税年度与补税期间同期的人民币贷款基准利率加 5 个百分点计算加收利息；对企业按照企业所得税法和实施条例的规定提供有关资料的，可以只按照税款所属纳税年度与补税期间同期的人民币贷款基准利率计算加收利息。

With reference to the provisions of the PRC EIT Law on special tax adjustments and international experiences about anti-tax avoidances, the Implementation Regulations expressly make provisions on the following issues: related parties, the adjustments to related party transactions, the principle of arm's length transaction, advanced pricing arrangement, the obligation to furnish information, collection of tax under deeming provisions, controlled foreign corporations (CFC), thin capitalization, general provision of

anti-avoidance, and the payment of additional interest on overdue taxes. Among others, where the taxpayer does not provide the required information and the tax authorities make the adjustments, the interest payable is computed by reference to the RMB base lending rate plus 5% in the same tax period in which the additional interests are payable. Where the taxpayer provides that required information in accordance with the Implementation Regulations, interest is payable by reference to the RMB base lending rate but additional interest on overdue tax will not be collected.

问：为什么实施条例没有对汇总纳税和合并纳税的具体办法作出规定？

Q: What detailed provisions for the finalization of income tax and the filing of consolidated income tax returns are given by the Implementation Regulations?

答：企业所得税法第五十条和第五十一条分别规定，居民企业在中国境内设立不具有法人资格的营业机构，应当汇总纳税；非居民企业在中国境内设立两个或者两个以上机构、场所的，经税务机关审核批准，可以选择由其管理机构、场所汇总纳税。由此，可能出现地区间税源转移问题，各界都非常关注。

由于税源转移处理属于地方财政分配问题，实施条例不宜规定得过细，授权汇总纳税的具体办法由国务院财政、税务主管部门另行制定。实施条例施行后，将根据“统一计算、分级管理、就地预缴、汇总清算、财政分配”的原则，合理确定总分机构所在地政府的分享比例和办法，妥善解决实行企业所得税法后引起的税源转移问题，处理好地区间利益关系。

Articles 50 and 51 of the PRC EIT Law provide that where the resident enterprises set up different branches, the taxpayer shall file a consolidated income tax return; where the non-resident has set up two or more branches, the non-resident taxpayer can choose to file the consolidated tax return at its principle branch, subject to the approval from the tax authorities. Accordingly, the issue of shifting tax revenue from one area to another may arise and everyone is concerned about this. Since shifting tax revenue among different areas is a matter of allocating tax revenue among local governments. It is not proper for the Implementation Regulations to give details about the allocation. After the Implementation Regulations coming into force, the Central government shall formulate policies to determine in a reasonable manner the percentage of sharing tax revenue among local governments where the head quarters of the taxpayers are located, and handle the issue of shifting tax revenue that arises from the EIT Law, and balance the interests of local governments in accordance with the principles of consolidated compilation, decentralized administration, collecting at source, finalization and fiscal allocation. (Translator's note: the local governments at city levels may compete among themselves and use non-fiscal means or waive the local fiscal revenue to woo the profit-making taxpayers to headquarter in the city under their respective jurisdictions, in the absence of Central government's intervention).

企业所得税法第五十二条规定，除国务院另有规定外，企业之间不得合并缴纳企业所得税。考虑到企业所得税法实行了法人税制，企业集团内部的母子公司原则上应独立纳税，合并纳税应从严掌握，这样也有利于减缓地区间税源转移问题。因此，没有在实施条例中规定合并纳税的范围和条件，对个别确需合并纳税的，由国务院今后根据实际情况再作具体规定。

Article 52 of the EIT Law provides that enterprises cannot declare group tax returns except that the State Council makes orders to the contrary. The holding company and the subsidiaries within the same group of companies should declare and pay income tax separately and that will help ease the migration of taxpayers and shift of tax revenues among different regions and cities. The State Council will formulate policies for the filing of group tax returns in accordance with the actual situations.

问：为什么实施条例没有对过渡性税收优惠政策作出规定？

Q: Why the provisions for tax preferential policies during the transitional period are not given by the implementation Regulations?

答：为了保持税收优惠政策的连续性，企业所得税法第五十七条规定了对原依法享受低税率和定期减免税优惠的老企业，法律设置的发展对外经济合作和技术交流的特定地区内，以及国务院已规定执行上述地区特殊政策的地区内新设立的国家需要重点扶持的高新技术企业、国家已确定的其他鼓励类企业，实行过渡性税收优惠政策。考虑到这些过渡性税收优惠政策内容较多，而且属于过渡性措施，为保证实施条例的稳定性，由国务院根据企业所得税法的有关规定另行规定比较妥当，因此实施条例没有对此作具体规定。

A: To implement the tax preferential policies in a consistent way, article 57 of the EIT Law provides that the following taxpayers shall receive the tax preferential treatment during the transitional period: the taxpayers that are entitled to low tax rate and tax exemption or tax reduction; the taxpayers that are set up in the special zones to promote the development of foreign economic cooperation and technology exchange, the new and hi-tech enterprises that are created in the special zones and receiving the primary support from the State, and other enterprises which the State have confirmed to be falling under the encouraged category. In view of the fact that the scope of the tax preferential policies is quite wide and that the policies are transitional measures, the Implementation Regulations do not set out the specific provisions for this.