

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

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Chapter I — General Provisions

Article 1 — Enterprises and other organizations that derive income within the territory of the People’s Republic of China shall be taxpayers of enterprise income tax and shall pay enterprise income tax in accordance with the provisions of this Law.

This Law shall not apply to sole proprietorship enterprises or partnership enterprises.

Article 2 — Enterprises shall be classified as resident enterprises and non-resident enterprises.

“Resident enterprise” as used in this Law means an enterprise established within the territory of China in accordance with the law, or an enterprise established in accordance with the law of a foreign country or region but having its actual management body within the territory of China.

“Non-resident enterprise” as used in this Law means an enterprise established in accordance with the law of a foreign country or region and having its actual management body not within the territory of China but having an establishment or place within the territory of China, or having no establishment or place within the territory of China but having income sourced within the territory of China.

Article 3 — Resident enterprises shall pay enterprise income tax on income derived from both within and outside the territory of China.

Non-resident enterprises that have an establishment or place within the territory of China shall pay enterprise income tax on income derived by such establishment or place from within the territory of China, as well as on income derived from outside the territory of China that is effectively connected with such establishment or place.

Non-resident enterprises that have no establishment or place within the territory of China, or that have an establishment or place but the income derived is not effectively connected with such establishment or place, shall pay enterprise income tax on income derived from within the territory of China.

Article 4 — The enterprise income tax rate shall be 25 percent.

The tax rate applicable to non-resident enterprises on income specified in the third paragraph of Article 3 of this Law shall be 20 percent.

Chapter II — Taxable Income

Article 5 — The total income of an enterprise in each tax year shall be the taxable income after deducting non-taxable income, tax-exempt income, various deductions, and allowable carry-forward losses from prior years.

Article 6 — The term “total income” of an enterprise means income in monetary and non-monetary forms derived by the enterprise from various sources, including:

(1) income from the sale of goods; (2) income from the provision of labor services; (3) income from the transfer of property; (4) income from dividends, bonuses and other equity investment gains; (5) income from interest; (6) income from rentals; (7) income from royalties; (8) income from donations; and (9) other income.

Article 7 — The following items of income from total income shall be non-taxable income:

(1) fiscal appropriations; (2) administrative fees and government funds collected in accordance with the law and charged into fiscal administration; (3) other non-taxable income specified by the State Council.

Article 8 — Reasonable expenditures incurred by an enterprise that are actually related to the derivation of income, including costs, expenses, taxes, and losses, may be deducted in calculating taxable income.

Article 9 — Expenditures incurred by an enterprise for public welfare donations that are within 12 percent of the total annual profit may be deducted in calculating taxable income. The portion exceeding 12 percent may be carried forward and deducted within the following three years.

Article 10 — The following expenditures shall not be deducted in calculating taxable income:

(1) dividends, bonuses and other equity investment gains distributed to investors; (2) enterprise income tax payments; (3) tax late payment surcharges; (4) fines, penalties and losses from confiscation of property; (5) donations other than those specified in Article 9; (6) sponsorship expenditures; (7) unaudited reserve expenditures; (8) other expenditures not related to the derivation of income.

Article 11 — In calculating taxable income, an enterprise may deduct depreciation of fixed assets calculated in accordance with the provisions.

However, depreciation of the following fixed assets shall not be deducted:

(1) fixed assets other than houses and buildings that have not been put into use; (2) fixed assets leased under operating leases; (3) fixed assets leased under finance leases; (4) fixed assets for which depreciation has been fully provided and which remain in use; (5) fixed assets not related to business operations; (6) land separately recorded and valued as a fixed asset; and (7) other fixed assets for which depreciation may not be deducted as specified.

Article 12 — In calculating taxable income, an enterprise may deduct amortization expenses of intangible assets calculated in accordance with the provisions.

However, amortization expenses of the following intangible assets shall not be deducted:

(1) intangible assets where the self-created goodwill component has already been deducted in the calculation of taxable income; and (2) intangible assets not related to business operations.

Article 13 — The following expenditures incurred by an enterprise may be deducted over a period in calculating taxable income when they are treated as long-term deferred expenses and amortized in accordance with the provisions:

(1) reconstruction expenses of fully depreciated fixed assets; (2) reconstruction expenses of leased fixed assets; (3) major repair expenses of fixed assets; and (4) other expenditures that shall be treated as long-term deferred expenses.

Article 14 — An enterprise shall not deduct the cost of an investment asset during the period of external investment.

Article 15 — When an enterprise transfers assets, the net value of the assets may be deducted in calculating taxable income.

Article 16 — Where an enterprise uses inventory not recorded at cost or the market value of inventory declines, the original recorded cost may not be adjusted unless otherwise provided by the finance and tax authorities of the State Council.

Article 17 — The income earned by an enterprise from overseas sources that has already been subject to enterprise income tax overseas may be credited against the enterprise income tax payable for the current period. The amount of credit shall not exceed the amount of enterprise income tax payable on such income calculated in accordance with the provisions of this Law.

Article 18 — Losses incurred by an enterprise in a tax year may be carried forward and deducted in subsequent tax years. The carry-forward period shall not exceed five years.

If an enterprise with new- and high-technology enterprise status or a small and medium-sized technology enterprise incurs losses that have not been fully carried forward within the five-year period, the carry-forward period may be extended to ten years, commencing from the year in which the loss was incurred.

Article 19 — For non-resident enterprises deriving income specified in the third paragraph of Article 3 of this Law, taxable income shall be calculated using the following methods:

(1) for income from dividends, bonuses and other equity investment gains, and income from interest, rentals and royalties, the taxable income shall be the full amount of the income; (2) for income from the transfer of property, the taxable income shall be the balance of the total income less the net value of the property; and (3) for other income, the taxable income shall be calculated with reference to the methods specified in the preceding two subparagraphs.

Article 20 — The specific scope and standards for income and deductions in this Chapter, as well as the specific measures for the tax treatment of assets, shall be formulated by the finance and tax authorities of the State Council.

Article 21 — Where the financial and accounting treatment of an enterprise is inconsistent with the provisions of tax laws and administrative regulations in calculating taxable income, the calculation shall be made in accordance with the provisions of tax laws and administrative regulations.

Chapter III — Tax Payable

Article 22 — The tax payable by an enterprise shall be the taxable income multiplied by the applicable tax rate, less the amount of tax already credited or reduced in accordance with the provisions of this Law on tax preferences.

Article 23 — Where a resident enterprise has paid enterprise income tax overseas, the overseas tax already paid may be credited against the tax payable for the current period. The amount of credit shall not exceed the amount of enterprise income tax payable on such income calculated in accordance with the provisions of this Law.

Article 24 — Where a resident enterprise receives dividends, bonuses and other equity investment gains from an enterprise that it directly or indirectly controls outside the territory of China, the portion of enterprise income tax already paid by the foreign enterprise overseas on such income may be credited against the enterprise income tax payable by the resident enterprise overseas, provided the amount of credit shall not exceed the amount of tax payable on such income calculated under this Law.

Chapter IV — Tax Preferences

Article 25 — The state shall provide preferential enterprise income tax treatment for key industries and projects whose development is supported and encouraged by the state.

Article 26 — The following income of enterprises shall be tax-exempt:

(1) income from treasury bond interest; (2) dividends, bonuses and other equity investment gains distributed between qualified resident enterprises; and (3) dividends, bonuses and other equity investment gains received by a non-resident enterprise that has an establishment or place within the territory of China from a resident enterprise, where such income is effectively connected with such establishment or place.

Article 27 — Enterprise income tax on the following income may be reduced or exempted:

(1) income from projects of agriculture, forestry, animal husbandry and fishery; (2) income from investment in and operation of public infrastructure projects supported by the state; (3) income from projects of environmental protection, energy and water conservation that satisfy the relevant conditions; (4) income from technology transfer that satisfies the relevant conditions; and (5) income specified in the third paragraph of Article 3 of this Law.

Article 28 — Qualified small-scale low-profit enterprises shall be subject to enterprise income tax at a reduced rate of 20 percent.

New- and high-technology enterprises that require key state support shall be subject to enterprise income tax at a reduced rate of 15 percent.

Article 29 — The autonomous authorities of ethnic autonomous regions may decide to reduce or exempt the portion of enterprise income tax shared by the local finance for enterprises located within their region. The matter shall be reported to the standing committee of the people's congress of the province, autonomous region or municipality directly under the central government for filing.

Article 30 — The following expenditures of an enterprise may be additionally deducted in calculating taxable income:

(1) research and development expenses incurred for the development of new technologies, new products and new techniques; (2) wages paid to disabled persons and other personnel encouraged by the state for employment.

Article 31 — Venture capital enterprises engaged in venture capital investment supported and encouraged by the state may deduct a certain proportion of their investment amount from taxable income.

Article 32 — Where an enterprise needs to accelerate depreciation of fixed assets due to technological advancement or other reasons, it may shorten the depreciation period or adopt an accelerated depreciation method.

Article 33 — Where an enterprise derives income from comprehensive utilization of resources or the manufacture of products in conformity with the state industrial policies, the income may be included in the total income at a reduced amount.

Article 34 — Where an enterprise purchases special equipment for environmental protection, energy and water conservation, or production safety, a certain proportion of the investment amount in such equipment may be credited against the tax payable.

Article 35 — The specific measures for the tax preferences specified in this Law shall be formulated by the State Council.

Article 36 — The State Council may formulate special preferential enterprise income tax policies based on the needs of national economic and social development, or due to the impact of emergencies and other events on the production and business operations of enterprises, and report them to the Standing Committee of the National People's Congress for filing.

Chapter V — Withholding at Source

Article 37 — For enterprise income tax payable by a non-resident enterprise on income specified in the third paragraph of Article 3 of this Law, tax shall be withheld at source. The payer shall be the withholding agent. The withholding agent shall withhold the tax from the amount of each payment or from the amount due for payment.

Article 38 — For enterprise income tax payable by a non-resident enterprise that derives income from engineering operations or labor service provision within the territory of China, the tax authority may designate the payer of the project price or labor service fee as the withholding agent.

Article 39 — Where a withholding agent fails to withhold in accordance with the law or is unable to perform the withholding obligation, the taxpayer shall pay the tax at the place where the income is derived. Where the taxpayer fails to pay in accordance with the law, the tax authority may recover the tax from other payments due to the taxpayer from other items within the territory of China.

Article 40 — A withholding agent shall credit the amount of tax withheld to the state treasury within seven days from the date of withholding, and submit the enterprise income tax withholding return and relevant materials to the local tax authority.

Chapter VI — Special Tax Adjustments

Article 41 — Where a business transaction between an enterprise and its related parties does not conform to the arm's length principle, and the taxable income of the enterprise or its related parties is thereby reduced, the tax authority shall have the right to make adjustments using reasonable methods.

The cost of a business transaction between an enterprise and its related parties in connection with the joint development or transfer of intangible assets, or the joint provision or acceptance of labor services, shall be allocated in accordance with the arm's length principle.

Article 42 — Where an enterprise proposes its annual related-party business transaction reporting to the tax authority, it may also submit its contemporaneous documentation. The tax authority shall have the right to investigate the related-party business transactions of the enterprise.

Article 43 — Where an enterprise fails to provide contemporaneous documentation related to its related-party business transactions, or provides false or incomplete documentation and fails to reflect the true circumstances of its related-party business transactions, the tax authority shall have the right to assess its taxable income in accordance with the law.

Article 44 — Where an enterprise has a controlled foreign enterprise established in a country or region where the actual tax burden is significantly lower than the tax rate specified in the first paragraph of Article 4 of this Law, and such enterprise does not distribute profits or reduces the distribution of profits without reasonable commercial purposes, the portion of profits attributable to the resident enterprise shall be included in the current period income of the resident enterprise.

Article 45 — Where an enterprise borrows funds from related parties, and the ratio of the related-party debt investment to equity investment exceeds the prescribed standard, the interest expense on the excess portion shall not be deducted in calculating taxable income.

Article 46 — Where an enterprise carries out an arrangement without a reasonable commercial purpose, and the arrangement results in a reduction of its taxable income or tax payable, the tax authority shall have the right to make adjustments using reasonable methods.

Article 47 — The tax authority shall have the right to make tax adjustments under this Chapter in accordance with the provisions of this Law and administrative regulations formulated by the State Council.

Article 48 — Where the tax authority makes a tax adjustment under this Chapter and requires the enterprise to pay back taxes, additional tax shall be imposed on the back taxes, and interest shall be calculated and levied at the interest rate for loans of the same period as published by the People's Bank of China.

Chapter VII — Tax Collection Administration

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

Article 50 — Unless otherwise provided by tax laws or administrative regulations, a resident enterprise shall pay enterprise income tax at the place of its registration. Where the registration place of a resident enterprise is outside the territory of China, the enterprise shall pay tax at the place where its actual management body is located.

Where a non-resident enterprise has an establishment or place within the territory of China, the enterprise shall declare and pay tax at the place where the establishment or place is located.

Article 51 — Where a resident enterprise establishes a business organization without the status of a legal person within the territory of China, the enterprise shall calculate and pay enterprise income tax on a consolidated basis.

Article 52 — Unless otherwise provided by the State Council, enterprises shall not consolidate the payment of enterprise income tax among enterprise groups.

Article 53 — Enterprise income tax shall be calculated on the basis of the tax year, which shall commence on January 1 and end on December 31 of the Gregorian calendar.

Where an enterprise commences or terminates its business operations in the middle of a tax year, the period during which it actually operates shall be deemed as one tax year. Where an enterprise is liquidated in accordance with the law, the liquidation period shall be deemed as one tax year.

Article 54 — An enterprise shall submit its preliminary enterprise income tax return to the tax authority within five months after the end of each year, implement final settlement, and settle the tax refund or payment.

When submitting the enterprise income tax return, the enterprise shall attach its financial and accounting reports and other relevant materials.

Article 55 — Where an enterprise terminates its business operations in the middle of a year, it shall complete the settlement of enterprise income tax with the tax authority within 60 days from the date of actual termination of business operations.

Article 56 — Enterprise income tax paid by an enterprise shall be calculated in Renminbi. Where income is derived in a currency other than Renminbi, it shall be converted into Renminbi for tax calculation purposes in accordance with the exchange rate published by the People's Bank of China.

Chapter VIII — Supplementary Provisions

Article 57 — Preferential tax policies previously in effect shall continue to apply by way of transition measures as prescribed by the State Council.

Article 58 — The tax agreements or arrangements concluded between the government of the People's Republic of China and foreign governments and international organizations shall prevail if they contain provisions different from those of this Law.

Article 59 — The State Council shall formulate implementation regulations in accordance with this Law.

Article 60 — This Law shall take effect as of January 1, 2008. The Income Tax Law of the People's Republic of China on Foreign-Invested Enterprises and Foreign Enterprises adopted at the Fourth Session of the Seventh National People's Congress on April 9, 1991, and the Interim Regulations of the People's Republic of China on Enterprise Income Tax promulgated by the State Council on December 13, 1993, shall be repealed simultaneously.

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