Enterprise Income Tax Law of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Table of Contents 1

Chapter I — General Provisions 1

Chapter II — Taxable Income 2

Chapter III — Tax Payable 4

Chapter IV — Tax Preferences 4

Chapter V — Withholding at Source 5

Chapter VI — Special Tax Adjustments 6

Chapter VII — Collection and Administration 6

Chapter VIII — Supplementary Provisions 7

Table of Contents

- Chapter I — General Provisions
- Chapter II — Taxable Income
- Chapter III — Tax Payable
- Chapter IV — Tax Preferences
- Chapter V — Withholding at Source
- Chapter VI — Special Tax Adjustments
- Chapter VII — Collection and Administration
- Chapter VIII — Supplementary Provisions

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 and partnership enterprises.

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

Resident enterprises as mentioned in this Law shall refer to enterprises that are established within the territory of China in accordance with the law, or enterprises that are established under the laws of a foreign country (region) but whose actual management institution is located within the territory of China.

Non-resident enterprises as mentioned in this Law shall refer to enterprises that are established under the laws of a foreign country (region) and whose actual management institution is not located within the territory of China, but that have institutions or establishments within the territory of China, or that do not have institutions or establishments within the territory of China but derive income sourced within the territory of China.

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

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

Non-resident enterprises that do not have institutions or establishments within the territory of China, or that have institutions or establishments but the income is not effectively connected with such institutions or establishments, shall pay enterprise income tax on their income sourced from within the territory of China.

Article 4 — The enterprise income tax rate shall be 25%. The tax rate applicable to non-resident enterprises under the circumstances specified in the third paragraph of Article 3 of this Law shall be 20%.

Chapter II — Taxable Income

Article 5 — The taxable income of an enterprise shall be the total income of each tax year, less the non-taxable income, tax-exempt income, various deductions, and the allowable losses of previous years to be made up.

Article 6 — The total income of an enterprise shall be the income in monetary and non-monetary forms derived 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 the receipt of donations;

(9) Other income.

Article 7 — The following income shall be non-taxable income:

(1) Fiscal appropriations;

(2) Administrative charges and government funds collected in accordance with the law and included in the fiscal administration;

(3) Other non-taxable income prescribed by the State Council.

Article 8 — Reasonable expenses that are actually incurred in connection with the earning of income by the enterprise, including costs, expenses, taxes, and losses, may be deducted in the calculation of taxable income.

Source: https://www.danyoungcpa.com/prc-enterprise-income-tax-law-2018-english/

Article 9 — The portion of the enterprise's public welfare donation expenses that is within 12% of the total annual profit may be deducted in the calculation of taxable income. The portion exceeding 12% may be carried forward and deducted within three subsequent years.

Article 10 — The following expenses shall not be deducted in the calculation of taxable income:

(1) Dividends, bonuses and other equity investment gains distributed to investors;

(2) Enterprise income tax payments;

(3) Late tax payment surcharges;

(4) Fines, penalties and confiscated property losses;

(5) Donation expenses other than those specified in Article 9;

(6) Sponsorship expenses;

(7) Unapproved reserve expenses;

(8) Other expenses not related to the earning of income.

Article 11 — Depreciation of fixed assets calculated in accordance with the provisions may be deducted in the calculation of taxable income.

Article 12 — Amortization of intangible assets calculated in accordance with the provisions may be deducted in the calculation of taxable income.

Article 13 — The following long-term deferred expenses shall be amortized and deducted in the calculation of taxable income in accordance with the provisions:

(1) Reconstruction expenses of fixed assets for which the depreciation has been fully drawn;

(2) Reconstruction expenses of rented fixed assets;

(3) Major repair expenses of fixed assets;

(4) Other expenses that shall be treated as long-term deferred expenses.

Article 14 — Where an enterprise invests outside the enterprise, the cost of the investment assets shall not be deducted in the calculation of taxable income during the period of the investment.

Article 15 — The cost of inventories used or sold by an enterprise shall be deducted in the calculation of taxable income in accordance with the provisions.

Article 16 — Where an enterprise transfers assets, the net value of such assets may be deducted in the calculation of taxable income.

Article 17 — Where an enterprise aggregates its income and losses in the calculation of enterprise income tax, it shall not offset the profits of its overseas business institutions with the losses of its domestic business institutions.

Article 18 — Losses incurred by an enterprise in a tax year may be carried forward to subsequent tax years and made up. The maximum carry-forward period shall be five years, unless otherwise provided for by the finance and tax authorities under the State Council, in which case the carry-forward period may be extended to ten years for enterprises in high-tech and technology-advanced service industries.

Article 19 — For non-resident enterprises under the circumstances specified in the third paragraph of Article 3 of this Law, their taxable income shall be calculated according to the following methods:

(1) Income from dividends, bonuses and other equity investment gains, interest, rentals, and royalties shall be the total income amount as taxable income;

(2) Income from the transfer of property shall be the balance of the total income amount after deducting the net value of the property as taxable income;

(3) Other income shall be calculated with reference to the methods of the preceding two items.

Article 20 — The specific scope and standards of the income and deductions under this Chapter shall be prescribed by the finance and tax authorities under the State Council.

Article 21 — Where the financial and accounting treatment methods adopted by an enterprise are inconsistent with the provisions of tax laws and administrative regulations, the enterprise income tax shall be calculated in accordance with the provisions of tax laws and administrative regulations.

Chapter III — Tax Payable

Article 22 — Tax payable shall be the taxable income multiplied by the applicable tax rate, less the tax amounts deducted and exempted in accordance with the tax preferences provided for in this Law.

Article 23 — The enterprise income tax paid by an enterprise abroad on the following incomes may be credited against the tax payable for the current period. The credit amount shall not exceed the tax payable on such income calculated in accordance with the provisions of this Law:

(1) Income derived by a resident enterprise from sources outside the territory of China;

(2) Income derived by a non-resident enterprise that has institutions or establishments within the territory of China, sourced from outside the territory of China but effectively connected with such institutions or establishments.

Article 24 — Where a resident enterprise derives dividends, bonuses and other equity investment gains from a foreign enterprise in which it directly or indirectly controls 20% or more of the shares, the portion of the foreign income tax paid by the foreign enterprise that is attributable to such income may be credited as part of the overseas income tax credit of the resident enterprise.

Chapter IV — Tax Preferences

Article 25 — The State shall provide enterprise income tax preferences for key industries and projects supported and encouraged by the State.

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

(1) Income from investment in government bonds;

(2) Dividends, bonuses and other equity investment gains derived between qualified resident enterprises;

(3) Dividends, bonuses and other equity investment gains derived by a non-resident enterprise that has an institution or establishment within the territory of China from a resident enterprise, where such income is effectively connected with such institution or establishment;

(4) Income of qualified non-profit organizations.

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

(1) Income derived from projects of agriculture, forestry, animal husbandry, and fishery;

(2) Income derived from the operation of public infrastructure projects supported by the State;

(3) Income derived from projects of environmental protection, energy and water conservation that satisfy the relevant conditions;

(4) Income derived from the transfer of technology that satisfies the relevant conditions;

(5) Income specified in the third paragraph of Article 3 of this Law.

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

High and new technology enterprises that require key support from the State shall be subject to enterprise income tax at a reduced tax rate of 15%.

Article 29 — The autonomous authorities of ethnic autonomous regions may decide on the reduction or exemption of the local share of the enterprise income tax payable by enterprises within their autonomous regions. Where a decision on reduction or exemption is made by an autonomous prefecture or autonomous county, it 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 deducted in the calculation of taxable income:

(1) Research and development expenses incurred for the development of new technologies, new products, and new techniques;

(2) Wages paid to disabled employees and other employees encouraged for employment by the State.

Article 31 — Venture capital enterprises engaged in venture capital investment that require key support from the State may deduct a certain percentage of their investment amount from their taxable income.

Article 32 — Where the fixed assets of an enterprise need to be depreciated on an accelerated basis due to technological advancement or other reasons, the depreciation period may be shortened or the accelerated depreciation method may be adopted.

Article 33 — Income derived by an enterprise from the comprehensive utilization of resources and the manufacture of products conforming to the State's industrial policies may be included in the total income at a reduced amount.

Article 34 — A portion of the amount invested by an enterprise in purchasing special equipment for environmental protection, energy and water conservation, production safety and other purposes may be credited against the tax payable.

Article 35 — The specific measures for the tax preferences provided for in this Law shall be prescribed 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 in response to significant events such as emergencies that have a material impact on the business operations of enterprises, and shall submit such policies to the Standing Committee of the National People's Congress for filing.

Chapter V — Withholding at Source

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

Article 38 — For the 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 authorities may designate the payer of the project price or labor service remuneration as the withholding agent.

Article 39 — Where the withholding agent fails to withhold or is unable to perform the withholding obligation in accordance with the provisions of Articles 37 and 38 of this Law, the taxpayer shall pay the tax at the place where the income is derived. Where the taxpayer fails to pay the tax in accordance with the law, the tax

authorities may recover the tax payable from other payments receivable by the taxpayer within the territory of China from other payers in China.

Article 40 — Withholding agents shall turn over the withheld tax to the State Treasury within seven days from the date of withholding, and shall submit to the local tax authorities the enterprise income tax withholding return and relevant materials.

Chapter VI — Special Tax Adjustments

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

Article 42 — An enterprise may submit to the tax authorities the pricing principles and calculation methods for its transactions with related parties. After negotiation and confirmation with the enterprise, the tax authorities may enter into an advance pricing arrangement.

Article 43 — When submitting the annual enterprise income tax return, an enterprise shall attach the annual report on its related party transactions. When conducting tax investigations on related party transactions, the tax authorities may require the enterprise, its related parties and other enterprises involved in the investigation to provide relevant materials.

Article 44 — Where an enterprise fails to provide materials related to its related party transactions, or provides false or incomplete materials that fail to reflect the true circumstances of the related party transactions, the tax authorities shall have the right to make tax adjustments on the basis of lawfully verified information.

Article 45 — Where an enterprise controlled by a resident enterprise, or by a resident enterprise and a Chinese resident individual, is established in a country (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 it does not distribute or reduces the distribution of its profits without reasonable business needs, the portion of such profits attributable to the resident enterprise shall be included in the current-period income of the resident enterprise.

Article 46 — Where an enterprise makes an interest payment to a related party on a debt investment, the portion of the debt investment to equity investment ratio exceeding the prescribed standard may not be deducted in the calculation of taxable income.

Article 47 — Where an enterprise has other arrangements without reasonable commercial purposes, thereby reducing its taxable income, the tax authorities shall have the right to make adjustments using reasonable methods.

Article 48 — Where the tax authorities make tax adjustments in accordance with the provisions of this Chapter and require the enterprise to make up the tax payment, the enterprise shall pay the tax plus interest calculated at the same rate as the People's Bank of China benchmark lending rate for the same period on the underpaid tax.

Chapter VII — Collection and 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 and the provisions of this Law.

Article 50 — Unless otherwise provided for by tax laws and administrative regulations, resident enterprises shall pay enterprise income tax at the place of their registration. Where the place of registration of a resident enterprise is outside the territory of China, the tax shall be paid at the place where its actual management institution is located.

Source: https://www.danyoungcpa.com/prc-enterprise-income-tax-law-2018-english/

Article 51 — Non-resident enterprises that have institutions or establishments within the territory of China shall pay tax at the place where such institutions or establishments are located.

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

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

Article 54 — Enterprise income tax shall be paid in advance on a monthly or quarterly basis. An enterprise shall submit the prepayment of enterprise income tax return to the tax authorities and make the prepayment within 15 days after the end of each month or quarter. An enterprise shall submit the annual enterprise income tax return to the tax authorities and settle the tax payable and refundable within five months after the end of each year.

Article 55 — Where an enterprise terminates its business operations during a tax year, it shall submit the enterprise income tax return to the tax authorities and settle the tax payable within 60 days from the date of actual termination of operations.

Chapter VIII — Supplementary Provisions

Article 56 — The enterprise income tax provided for in this Law shall be calculated in Renminbi. Where income is derived in a currency other than Renminbi, the amount shall be converted into Renminbi for tax calculation.

Article 57 — Enterprises that were already entitled to tax preferences such as tax exemption or reduced tax rates in accordance with the tax laws and administrative regulations then in effect before the promulgation of this Law may, within five years after the implementation of this Law, gradually transition to the tax rates provided for in this Law. Enterprises that were entitled to regular tax exemption or reduction may continue to enjoy such treatment until the expiration of the period in accordance with the provisions of the then applicable tax laws and administrative regulations and the State Council.

Article 58 — The provisions of the agreements or arrangements on the avoidance of double taxation concluded between the government of the People’s Republic of China and the governments of foreign countries shall prevail where such provisions are inconsistent with this Law.

Article 59 — The State Council shall formulate implementing regulations for this Law.

Article 60 — This Law shall come into effect on January 1, 2008. The Enterprise Income Tax Law of the People’s Republic of China on Foreign-Invested Enterprises and Foreign Enterprises adopted at the 4th Session of the 7th 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.

Disclaimer: This English translation is provided for reference and informational purposes only. While every effort has been made to ensure accuracy, this translation is not an official version and has no legal force. In the event of any discrepancy, the original Chinese text shall prevail. Dan Young Business Consultancy makes no warranty, express or implied, as to the accuracy, completeness, or fitness for any particular purpose of this translation. Users should consult qualified legal professionals for advice on specific legal matters. For the official Chinese text, please refer to the website of the National People’s Congress of the People’s Republic of China.