Enterprise Income Tax Law of the PRC

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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, as well as enterprises and other organizations that derive income outside 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.

For the purposes of this Law, sole proprietorship enterprises and partnership enterprises shall not be subject to this Law.

Article 2 — Enterprises are divided into resident enterprises and non-resident enterprises.

For the purposes of this Law, a resident enterprise means an enterprise that is established within the territory of China in accordance with the law, or an enterprise that is established under the law of a foreign country (region) but has its place of effective management within the territory of China.

For the purposes of this Law, a non-resident enterprise means an enterprise that is established under the law of a foreign country (region) and has its place of effective management outside the territory of China, but has institutions or establishments within the territory of China, or has no institutions or establishments within the territory of China but derives income sourced within the territory of China.

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

A non-resident enterprise that has institutions or establishments within the territory of China shall pay enterprise income tax on the income derived by its institutions or establishments from within the territory of China, and on income that is derived from outside the territory of China but is effectively connected with the institutions or establishments within the territory of China.

A non-resident enterprise that has no institutions or establishments within the territory of China, or that has institutions or establishments within the territory of China but the income it derives has no effective connection with those institutions or establishments, shall pay enterprise income tax on its income sourced within the territory of China.

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

The applicable tax rate for the income payable by a non-resident enterprise as provided in the third paragraph of Article 3 shall be 20%.

Chapter II — Taxable Income

Article 5 — The amount of taxable income of an enterprise for each tax year shall be the balance of its total income of that tax year after deducting non-taxable income, tax-exempt income, various deductions, and the permitted carry-forward of prior-year losses.

Article 6 — The total income of an enterprise derived from various sources in monetary and non-monetary forms shall include:

(1) income from the sale of goods;

(2) income from the provision of labor services;

(3) income from the transfer of property;

(4) dividends, bonuses, and other returns on equity investments;

(5) interest income;

(6) rental income;

(7) royalty income;

(8) income from the receipt of donations;

(9) other income.

Article 7 — The following income included in the total income shall be non-taxable income:

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(1) fiscal appropriations;

(2) administrative fees and governmental funds lawfully collected and brought under fiscal administration;

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

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

Article 9 — The portion of an enterprise's expenditures for public welfare donations that is within 12% of the total annual profit may be deducted in the calculation of taxable income; any portion exceeding 12% of the total annual profit may not be deducted in the current year but may be carried forward for deduction within three subsequent years, as provided by the State Council.

Article 10 — The following expenditures may not be deducted in the calculation of taxable income:

(1) dividends, bonuses, and other returns on equity investments paid to investors;

(2) payments of enterprise income tax;

(3) tax late-payment surcharges;

(4) fines, penalties, and losses from confiscation of property;

(5) expenditures for donations other than those specified in Article 9;

(6) sponsorship expenditures;

(7) unverified reserve expenditures;

(8) other expenditures unrelated to the earning of income.

Article 11 — In the calculation of taxable income, depreciation of fixed assets calculated in accordance with the provisions shall be permitted as a deduction.

Depreciation may not be calculated and deducted for the following fixed assets:

(1) fixed assets other than houses and buildings that have not been put into use;

(2) fixed assets leased from others under operating leases;

(3) fixed assets leased to others under finance leases;

(4) fixed assets for which depreciation has been fully provided but which remain in use;

(5) fixed assets unrelated to business operations;

(6) land separately valued and entered as an item of fixed assets;

(7) other fixed assets for which depreciation may not be calculated and deducted.

Article 12 — In the calculation of taxable income, amortization of intangible assets calculated in accordance with the provisions shall be permitted as a deduction.

Amortization may not be calculated and deducted for the following intangible assets:

(1) intangible assets developed by the enterprise itself whose development expenditures have been deducted in the calculation of taxable income;

(2) goodwill created by the enterprise itself;

(3) intangible assets unrelated to business operations;

(4) other intangible assets for which amortization may not be calculated and deducted.

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Article 13 — The following expenditures incurred by an enterprise may be treated as long-term deferred expenses and amortized in accordance with the provisions, and deducted in the calculation of taxable income:

(1) reconstruction expenditures for fixed assets for which depreciation has been fully provided;

(2) expenditures for the reconstruction of rented fixed assets;

(3) major repair expenditures for fixed assets;

(4) other expenditures to be treated as long-term deferred expenses.

Article 14 — During the period of external investment by an enterprise, the cost of the investment assets may not be deducted in the calculation of taxable income.

Article 15 — In the calculation of taxable income, the cost of inventory used or sold by an enterprise calculated in accordance with the provisions shall be permitted as a deduction.

Article 16 — In the case of a transfer of assets by an enterprise, the net value of the assets may be deducted in the calculation of taxable income.

Article 17 — When an enterprise calculates enterprise income tax on a consolidated basis, it may not offset the losses of its overseas business institutions against the profits 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 offset against the income of those years, but the maximum carry-forward period shall not exceed 5 years.

Article 19 — For a non-resident enterprise that derives income specified in the third paragraph of Article 3, its taxable income shall be calculated according to the following methods:

(1) for dividends, bonuses, and other returns on equity investments, and for interest, rental income, and royalty income: the total amount of income shall be the taxable income;

(2) for income from the transfer of property: the balance of the total income less the net value of the property shall be the taxable income;

(3) for other income: the taxable income shall be calculated with reference to the methods prescribed in the preceding two subparagraphs.

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

Article 21 — Where the financial or accounting treatment adopted by an enterprise is 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 — The amount of tax payable by an enterprise shall be the taxable income multiplied by the applicable tax rate, less the tax credits and exemptions granted under the provisions of this Law on tax preferences.

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

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

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

Article 24 — For dividends, bonuses, and other returns on equity investments received by a resident enterprise from a foreign enterprise that is directly or indirectly controlled by the resident enterprise, the portion of the enterprise income tax actually paid abroad by the foreign enterprise that is attributable to such income may be credited against the foreign tax creditable amount of the resident enterprise.

Chapter IV — Tax Preferences

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

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

(1) interest income from government bonds;

(2) dividends, bonuses, and other returns on equity investments between qualified resident enterprises;

(3) dividends, bonuses, and other returns on equity investments received by a non-resident enterprise that has institutions or establishments within the territory of China from a resident enterprise, where such income is effectively connected with the institutions or establishments within the territory of China;

(4) income of qualified non-profit organizations.

Article 27 — Enterprise income tax may be reduced or exempted for the following income of an enterprise:

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

(2) income derived from the operation of public infrastructure projects supported by the state;

(3) income derived from qualified environmental protection, energy conservation, and water conservation projects;

(4) income derived from qualified technology transfer;

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

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

High-tech enterprises that require key support from the state shall be subject to enterprise income tax at a reduced rate of 15%.

Article 29 — The autonomous authorities of ethnic autonomous regions may decide on the reduction or exemption of the local share of enterprise income tax payable by enterprises within their autonomous regions. The decision of an autonomous prefecture or autonomous county on reduction or exemption 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 expenditures 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 processes;

(2) wages paid to disabled persons employed by the enterprise and other expenses incurred for the placement of such persons as encouraged by the state.

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

Article 32 — Where the fixed assets of an enterprise actually need to be depreciated on an accelerated basis due to technological progress or other reasons, the useful life of the fixed assets may be shortened or accelerated depreciation may be applied.

Article 33 — Income derived by an enterprise from comprehensive utilization of resources in 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 certain proportion of the amount invested by an enterprise in the acquisition of special equipment for environmental protection, energy conservation, water conservation, production safety, or other purposes may be credited against the amount of tax payable.

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

Article 36 — Where, in light of the needs of national economic and social development, or due to the impact of emergencies or other factors that cause a significant impact on the business activities of enterprises, the State Council may formulate special preferential policies for enterprise income tax and submit them to the Standing Committee of the National People's Congress for record.

Chapter V — Withholding at Source

Article 37 — For the enterprise income tax payable on income derived by a non-resident enterprise as specified in the third paragraph of Article 3, withholding at source shall be applied, with the payer acting as the withholding agent. The tax shall be withheld by the withholding agent from each payment or from payments due.

Article 38 — For the enterprise income tax payable on income derived by a non-resident enterprise that has no institutions or establishments within the territory of China, or that has institutions or establishments within the territory of China but the income derived has no effective connection with those institutions or establishments, the withholding agent shall be the payer of such income and shall withhold the tax from each payment or from payments due.

Article 39 — Where a withholding agent fails to withhold or is unable to perform its withholding obligation with respect to the tax payable as provided in Articles 37 and 38, 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 provisions, the tax authorities may recover the tax payable from other income derived by the taxpayer within the territory of China that is payable by other payers in China.

Article 40 — A withholding agent shall, within seven days from the date of withholding, turn over the tax withheld to the state treasury and submit to the tax authorities a return on the enterprise income tax withheld, together with 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 and results in a reduction of the taxable income of the enterprise or its related parties, the tax authorities shall have the authority to make adjustments using reasonable methods.

The costs incurred by an enterprise and jointly borne by the enterprise and its related parties in connection with their joint development or transfer of intangible assets, or the provision or receipt of labor services, shall be allocated between the enterprise and its related parties in accordance with the arm's length principle in

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the calculation of taxable income.

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

Article 43 — When an enterprise submits its annual enterprise income tax return to the tax authorities, it shall enclose an annual report on its related-party transactions with the return.

When conducting a tax investigation of related-party transactions, the tax authorities may require the enterprise, its related parties, and other enterprises related to the investigation to provide relevant information.

Article 44 — Where an enterprise fails to provide information on its related-party transactions, or provides false or incomplete information that fails to truthfully reflect the circumstances of the related-party transactions, the tax authorities shall have the authority to assess and determine its taxable income in accordance with the law.

Article 45 — Where an enterprise incorporated by a resident enterprise, or a resident enterprise and a Chinese resident individually, in a country (region) where the effective tax burden is significantly lower than the tax rate prescribed in the first paragraph of Article 4 of this Law does not distribute its profits or distributes them at a reduced rate for reasons other than reasonable business needs, the portion of such profits attributable to the resident enterprise shall be included in the current income of the resident enterprise.

Article 46 — The portion of interest expenses incurred by an enterprise in connection with debt investments received from its related parties that exceeds the prescribed standard may not be deducted in the calculation of taxable income.

Article 47 — Where an enterprise carries out other arrangements that have no reasonable commercial purpose and the result is a reduction of its taxable income or the income of the payer, the tax authorities shall have the authority to make adjustments using reasonable methods.

Article 48 — Where the tax authorities make a tax adjustment in accordance with the provisions of this Chapter and additional tax is required to be paid, interest shall be charged on the additional tax payable, in addition to the recovery of such additional tax.

Chapter VII — Tax Collection Administration

Article 49 — The collection administration of enterprise income tax shall be governed by the provisions of 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, resident enterprises shall pay tax at the place of their registration; where the place of registration is outside the territory of China, tax shall be paid at the place where the place of effective management is located.

Where a resident enterprise establishes business institutions within the territory of China that do not have the status of a legal person, it shall calculate and pay enterprise income tax on a consolidated basis.

Article 51 — A non-resident enterprise that derives income specified in the second paragraph of Article 3 shall pay tax at the place where its institutions or establishments are located. Where a non-resident enterprise establishes two or more institutions or establishments within the territory of China, the tax authorities may approve the consolidated calculation and payment of enterprise income tax by its principal institution or establishment upon examination.

For a non-resident enterprise that derives income specified in the third paragraph of Article 3, tax shall be paid at the place where the withholding agent is located.

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

Article 53 — Enterprise income tax shall be calculated on the basis of a tax year, which shall be the calendar year from January 1 to December 31.

Where an enterprise commences or terminates its business operations in the middle of a tax year, causing its actual business period in that tax year to be less than 12 months, the actual business period shall be deemed to be one tax year.

Where an enterprise undergoes liquidation in accordance with the law, the liquidation period shall be deemed to be one tax year.

Article 54 — Enterprise income tax shall be prepaid on a monthly or quarterly basis.

An enterprise shall, within 15 days after the end of a month or quarter, submit a prepaid enterprise income tax return to the tax authorities and prepay the tax.

An enterprise shall, within five months after the end of a year, submit an annual enterprise income tax return to the tax authorities, settle the amount of tax payable and refundable, and make the final settlement payment.

When an enterprise submits an enterprise income tax return, it shall enclose its financial accounting statements and other relevant materials in accordance with the provisions.

Article 55 — Where an enterprise ceases its business operations in the middle of a tax year, it shall, within 60 days from the date of actual cessation of operations, make the final settlement of enterprise income tax with the tax authorities for the current period.

Before deregistration, an enterprise shall make the final settlement of enterprise income tax with the tax authorities for the liquidation income.

Article 56 — Enterprise income tax payable in accordance with this Law shall be calculated in Renminbi. Where income is derived in a currency other than Renminbi, the tax shall be calculated after conversion into Renminbi in accordance with the provisions.

Chapter VIII — Supplementary Provisions

Article 57 — Enterprises that were already approved for registration before the promulgation of this Law and that enjoyed a low tax rate under the tax laws and administrative regulations then in force may, in accordance with the provisions of the State Council, gradually transition to the tax rate prescribed in this Law within five years after the implementation of this Law. Enterprises that enjoyed the regular tax reduction or exemption treatment may, after the implementation of this Law, continue to enjoy such treatment for the unexpired period in accordance with the provisions of the State Council. However, if such enterprises have not yet begun to enjoy the preferential treatment because they have not yet made profits, the preferential period shall be calculated from the year of implementation of this Law.

High-tech enterprises that require key support from the state and that were established in special economic zones and the Pudong New Area of Shanghai before the promulgation of this Law shall enjoy transitional preferential tax treatment, as specifically provided by the State Council.

Other enterprises that have been encouraged to develop and are entitled to enterprise income tax preferences in accordance with the provisions of the State Council may continue to enjoy such preferences in accordance with the provisions of the State Council for a certain period after the implementation of this Law.

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Article 58 — The tax treatment of tax agreements concluded between the government of the People's Republic of China and the governments of foreign countries shall be implemented in accordance with the provisions of the relevant agreements.

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

Article 60 — This Law shall come into effect as of January 1, 2008. The Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment 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 simultaneously repealed.

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