Enterprise Income Tax Law of the PRC

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Chapter I — General Provisions

Article 1 — Enterprises and other organizations that obtain income within the territory of the People's Republic of China (hereinafter referred to as "enterprises") are 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 are classified into resident enterprises and non-resident enterprises. For the purposes of this Law, a "resident enterprise" means an enterprise established within the territory of China in accordance with the law, or an enterprise established in accordance with the laws of a foreign country (region) but with its actual place of management located within the territory of China. For the purposes of this Law, a "non-resident enterprise" means an enterprise established in accordance with the laws of a foreign country (region) with its actual place of management not located within the territory of China, but with an office or establishment within the territory of China; or an enterprise that has no office or establishment within the territory of China but has income sourced within the territory of China.

Article 3 — Resident enterprises shall pay enterprise income tax on their income sourced from both within and outside the territory of China. Where a non-resident enterprise has an office or establishment within the territory of China, it shall pay enterprise income tax on the income sourced within the territory of China obtained by its office or establishment and on the income sourced outside the territory of China that is effectively connected with the office or establishment. Where a non-resident enterprise has no office or establishment within the territory of China, or the income it obtains has no effective connection with its office or establishment within the territory of China, it 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 income obtained by a non-resident enterprise as provided in the third paragraph of Article 3 of this Law shall be 20%.

Chapter II — Taxable Income

Section 1 — General Provisions

Article 5 — The taxable income of an enterprise shall be the remainder of its total income in each tax year minus the non-taxable income, tax-exempt income, various deductions, and the amount of losses in previous years that are allowed to be made up.

Article 6 — The total income of an enterprise includes income obtained in monetary and non-monetary forms from various sources, namely: (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 income from equity investments; (5) interest income; (6) rental income; (7) royalty income; (8) income from the acceptance of donations; and (9) other income.

Article 7 — The following income within the total income shall be non-taxable income: (1) financial appropriations; (2) administrative charges and government funds collected in accordance with the law and included in financial administration; and (3) other non-taxable income as prescribed by the State Council.

Article 8 — Reasonable expenditures actually incurred by an enterprise in connection with obtaining income, including costs, expenses, taxes, and losses, shall be allowed to be deducted in calculating the taxable income.

Article 9 — Expenditures incurred by an enterprise for public welfare donations, not exceeding 12% of the total annual profit, shall be allowed to be deducted in calculating the taxable income; the portion exceeding 12% of the total annual profit may be carried forward and deducted in the calculation of taxable income within the following three years.

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Article 10 — The following expenditures shall not be deducted in calculating the taxable income: (1) dividends, bonuses and other income from equity investments paid to investors; (2) enterprise income tax payments; (3) late tax payment surcharges; (4) fines, penalties and losses arising from the confiscation of property; (5) expenditures for donations other than those provided in Article 9 of this Law; (6) sponsorship expenditures; (7) unaudited reserve expenditures; (8) other expenditures unrelated to the obtaining of income.

Article 11 — When calculating the taxable income, depreciation of an enterprise's fixed assets calculated in accordance with the provisions shall be allowed to be deducted. The following fixed assets shall not be subject to depreciation deduction: (1) fixed assets other than houses and buildings that have not been put into use; (2) fixed assets rented from other parties under operating leases; (3) fixed assets rented to other parties under finance leases; (4) fixed assets for which depreciation has been fully provided and which continue to be in use; (5) fixed assets unrelated to business operations; (6) land separately valued and recorded as a fixed asset; and (7) other fixed assets for which depreciation shall not be calculated.

Article 12 — When calculating the taxable income, the amortization of an enterprise's intangible assets calculated in accordance with the provisions shall be allowed to be deducted. The following intangible assets shall not be subject to amortization deduction: (1) intangible assets arising from self-development where the expenditures have already been deducted in calculating the taxable income; (2) goodwill created by the enterprise itself; (3) intangible assets unrelated to business operations; and (4) other intangible assets for which amortization shall not be calculated.

Article 13 — The following expenditures incurred by an enterprise that shall be treated as long-term deferred expenses and amortized in accordance with the provisions shall be allowed to be deducted: (1) expenditures for reconstruction of fixed assets for which depreciation has been fully provided; (2) expenditures for reconstruction of rented fixed assets; (3) expenditures for major repair of fixed assets; and (4) other expenditures that shall be treated as long-term deferred expenses.

Article 14 — During the period of external investment by an enterprise, the cost of the investment assets shall not be deducted when calculating the taxable income.

Article 15 — When an enterprise uses or sells its inventory, the cost of the inventory calculated in accordance with the provisions shall be allowed to be deducted in calculating the taxable income.

Article 16 — When an enterprise transfers its assets, the net value of the assets shall be allowed to be deducted in calculating the taxable income.

Article 17 — Where an enterprise aggregates its income and losses, losses incurred in any tax year may be carried forward and made up in subsequent tax years, provided that the maximum carry-forward period shall not exceed five years.

Article 18 — Where an enterprise obtains income sourced outside the territory of China in a tax year, the amount of enterprise income tax paid outside the territory of China may be credited against the tax payable for the current period, provided that the amount of tax credited shall not exceed the amount of tax payable under the provisions of this Law on such income.

Article 19 — For income obtained by a non-resident enterprise as provided in the third paragraph of Article 3 of this Law, the taxable income shall be calculated according to the following methods: (1) for dividends, bonuses and other income from equity investments, and interest, rental and royalty income, the taxable income shall be the total amount of income; (2) for income from the transfer of property, the taxable income shall be the total amount of income minus the net value of the property; and (3) for other income, the taxable income shall be calculated with reference to the methods provided in the preceding two items.

Article 20 — The specific scope and standard of revenues and deductions as provided in this Chapter, and the specific measures for the treatment of assets, shall be prescribed by the finance and taxation

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departments under the State Council.

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

Chapter III — Tax Payable

Article 22 — The amount of enterprise income tax payable shall be the taxable income multiplied by the applicable tax rate minus the amount of tax reductions and credits under the preferential tax provisions of this Law.

Article 23 — For the following income tax paid outside the territory of China by an enterprise, the amount of tax may be credited against the tax payable for the current period. The amount of tax credited shall not exceed the amount of tax payable under the provisions of this Law on such income: (1) enterprise income tax paid by a resident enterprise on its income sourced outside the territory of China; and (2) income tax paid by a non-resident enterprise with an office or establishment within the territory of China on income sourced outside the territory of China that is effectively connected with its office or establishment.

Article 24 — Where a resident enterprise obtains dividends, bonuses and other income from equity investments from a foreign enterprise in which it directly or indirectly holds a controlling interest, the portion of enterprise income tax paid outside the territory of China by such foreign enterprise that is attributable to such income may be treated as the creditable overseas income tax of the resident enterprise and credited within the crediting limit provided in Article 23 of this Law.

Chapter IV — Tax Preferences

Article 25 — The State shall provide 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 state bonds; (2) dividends, bonuses and other income from equity investments between qualified resident enterprises; (3) dividends, bonuses and other income from equity investments obtained by a non-resident enterprise with an office or establishment within the territory of China from a resident enterprise, where such income is effectively connected with the office or establishment; and (4) income of qualified non-profit organizations.

Article 27 — The enterprise income tax on the following income may be exempted or reduced: (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 saving that meet the relevant conditions; (4) income from technology transfer that meets the relevant conditions; and (5) income provided in the third paragraph of Article 3 of this Law.

Article 28 — The enterprise income tax on qualified small-scale enterprises with thin profits shall be levied at a reduced tax rate of 20%. The enterprise income tax on high-tech enterprises that require key support from the State shall be levied at a reduced tax rate of 15%.

Article 29 — The autonomous authorities of ethnic autonomous regions may decide to grant reductions or exemptions of the portion of enterprise income tax that belongs to the local share. Where an autonomous prefecture or autonomous county decides to grant reductions or exemptions, it shall report 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 when calculating the taxable income: (1) research and development expenses incurred for developing new technologies, new

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products and new techniques; and (2) wages paid to disabled persons and other employees for whom the State encourages employment.

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 the taxable income.

Article 32 — Where the fixed assets of an enterprise actually need to be subject to accelerated depreciation due to technological progress or other reasons, the depreciation period may be shortened or the method of accelerated depreciation may be adopted.

Article 33 — Income obtained by an enterprise from comprehensive utilization of resources in the production of products that are in conformity with the industrial policies of the State may be subject to a reduction when calculating the taxable income.

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

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

Article 36 — Where the State Council formulates special preferential policies for enterprise income tax based on the needs of national economic and social development, or due to the significant impact of emergencies and other circumstances on enterprise production and business operations, it shall report to the Standing Committee of the National People's Congress for filing.

Chapter V — Withholding at Source

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

Article 38 — For enterprise income tax payable on the following income obtained by a non-resident enterprise within the territory of China, the tax shall be withheld at source, with the payer serving as the withholding agent: (1) income from the transfer of property as provided in the third paragraph of Article 19 of this Law; and (2) other income as provided in the third paragraph of Article 3 of this Law.

Article 39 — Where the withholding agent fails to withhold or is unable to perform the withholding obligation under the provisions of Articles 37 and 38 of this Law, the taxpayer shall pay the tax at the place where the income is generated. Where the taxpayer fails to pay the tax in accordance with the law, the tax authorities may recover the tax from other payments due from other payers within the territory of China to the taxpayer.

Article 40 — A withholding agent shall, within seven days from the date of each withholding, turn over the tax withheld to the State Treasury, and submit to the 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 party does not comply with the arm's length principle, thereby reducing the taxable income of the enterprise or its related party, the tax authorities shall have the right to make adjustments using reasonable methods. Where the costs of an enterprise and its related party in jointly developing or transferring intangible assets, or jointly providing or accepting labor services, are required to be shared in calculating the taxable income, such costs shall be shared in accordance with the arm's length principle.

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Article 42 — An enterprise may submit to the tax authorities its pricing principles and calculation methods for transactions with related parties. The tax authorities and the enterprise may reach an advance pricing arrangement through negotiation.

Article 43 — When an enterprise submits its annual enterprise income tax return to the tax authorities, it shall attach a statement of its annual business transactions with related parties. When the tax authorities conduct an investigation of related-party transactions, the enterprise and its related parties, as well as other enterprises related to the investigation, shall provide the relevant materials in accordance with the provisions.

Article 44 — Where an enterprise fails to provide materials relating to its business transactions with related parties, or provides materials that are false or incomplete and fail to reflect the true circumstances of the related-party transactions, the tax authorities shall have the right to determine the taxable income in accordance with the law.

Article 45 — Where an enterprise, other than one that actually pays tax, is established in a country (region) with an effective tax rate significantly lower than the rate provided in the first paragraph of Article 4 of this Law and is controlled by a resident enterprise, or is controlled by both a resident enterprise and a resident individual of China, and the profits are not distributed or distributed less than reasonably required due to business operation needs, the portion of the above profits attributable to the resident enterprise shall be included in the current period 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 party that exceeds the prescribed limit shall not be deducted in calculating the taxable income.

Article 47 — Where an enterprise carries out any other arrangement with no reasonable commercial purpose, thereby reducing its taxable income or its revenue, the tax authorities shall have the right to make adjustments using reasonable methods.

Article 48 — Where the tax authorities make a tax adjustment under the provisions of this Chapter and require the enterprise to pay the additional tax, the enterprise shall pay the additional tax plus interest calculated on a daily basis.

Chapter VII — Tax Collection Administration

Article 49 — The administration of the collection 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 enterprise registration; where the place of registration is located outside the territory of China, tax shall be paid at the place of the actual place of management. Where a non-resident enterprise has an office or establishment within the territory of China as provided in the second paragraph of Article 3 of this Law, tax shall be paid at the place where the office or establishment is located.

Article 51 — Where a non-resident enterprise obtains income as provided in the third paragraph of Article 3 of this Law, tax shall be paid at the place where the withholding agent is located.

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

Article 53 — Enterprise income tax shall be calculated on the basis of a tax year. A tax year shall start on January 1 and end on December 31 of the Gregorian calendar year. Where an enterprise commences or terminates its business operations in the middle of a tax year, such that its actual business operation period in the tax year is less than twelve months, the actual business operation period shall be treated as one tax

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

Article 54 — Enterprise income tax shall be prepaid on a monthly or quarterly basis. An enterprise shall, within fifteen days after the end of a month or quarter, submit to the tax authorities an enterprise income tax prepayment return and prepay the tax. An enterprise shall, within five months after the end of each year, submit to the tax authorities an annual enterprise income tax return and make a final settlement of the tax payable, with any overpayment refunded or any deficiency supplemented. When submitting an enterprise income tax return, an enterprise shall attach the financial accounting report and other relevant materials in accordance with the provisions.

Article 55 — Where an enterprise terminates its business operations in the middle of a tax year, it shall, within sixty days from the date of actual termination of business operations, complete the final settlement of enterprise income tax with the tax authorities for the current period. An enterprise undergoing liquidation shall, prior to the cancellation of registration, submit to the tax authorities the enterprise income tax return for the liquidation, complete the final settlement of the tax payable, and pay the tax in accordance with the law.

Article 56 — Enterprise income tax payable in accordance with this Law shall be calculated in RMB. Where an enterprise obtains income in a currency other than RMB, the income shall be converted into RMB at the RMB exchange rate on the last day of the month or quarter when the prepaid tax is calculated; when the final settlement of the annual tax payable is made at the end of the year, the income that has been prepaid on a monthly or quarterly basis shall not be recalculated, and only the income obtained in a currency other than RMB in the tax year for which prepaid tax has not been calculated shall be converted into RMB at the RMB exchange rate on the last day of the tax year.

Chapter VIII — Supplementary Provisions

Article 57 — Enterprises that were already approved for registration prior to the promulgation of this Law and enjoyed preferential tax treatment with a low tax rate may, within five years after the implementation of this Law, gradually transition to the tax rate provided in this Law; enterprises that enjoyed tax holidays on a regular basis may continue to enjoy such treatment until the expiration of the holiday period after the implementation of this Law. High-tech enterprises that require key support from the State, newly established in special economic zones and the Pudong New Area of Shanghai set up by law, and enterprises engaged in key infrastructure projects may be subject to the transitional preferential tax treatment as prescribed by the State Council. Other enterprises that are already encouraged to develop and have enjoyed preferential tax treatment shall be subject to the transitional preferential tax treatment as prescribed by the State Council. The specific measures shall be prescribed by the State Council.

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

Article 59 — The State Council shall formulate regulations for the implementation of this Law.

Article 60 — This Law shall come into force on January 1, 2008. The Income Tax Law of the People's Republic of China on Enterprises with Foreign Investment 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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