

# The Law of the People's Republic of China on Enterprise Income Tax

Order of the President [2007] No.63

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## **Chapter One: General Provisions**

Article 1: Taxpayers of enterprise income tax shall be enterprises and other organizations that obtain income within the People's Republic of China (hereinafter referred to as "Enterprises") and shall pay enterprise income tax in accordance with the provisions of this Law.

This Law shall not apply to wholly individually-owned enterprises and partnership enterprises.

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

For the purposes of this Law, the term "resident enterprises" shall refer to Enterprises that are set up in China in accordance with the law, or that are set up in accordance with the law of the foreign country (region) whose actual administration institution is in China. For the purposes of this Law, the term "non-resident enterprises" shall refer to Enterprises that are set up in accordance with the law of the foreign country (region) whose actual administration institution is outside China, but they have set up institutions or establishments in China or they have income originating from China without setting up institutions or establishments in China.

Article 3: Resident enterprises shall pay enterprise income tax originating both within and outside China. Non-resident enterprises that have set up institutions or premises in China shall pay enterprise income tax in relation to the income originating from China obtained by their institutions or establishments, and the income incurred outside China but there is an actual relationship with the institutions or establishments set up by such enterprises.

Where non-resident enterprises that have not set up institutions or establishments in China, or where institutions or establishments are set up but there is no actual relationship with the income obtained by the institutions or establishments set up by such enterprises, they shall pay enterprise income tax in relation to the income originating from China.

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

Non-resident enterprises that have obtained income in accordance with the provisions of Paragraph Three of Article 3 hereof, the applicable tax rate shall be 20%.

## **Chapter Two: Taxable Income**

Article 5: The balance derived from the total income in each taxable year of Enterprises, after deduction of the non-taxable income, tax exempted income, other deductions and the making up of losses of previous years shall be the taxable income.

Article 6: Income obtained by Enterprises from various sources in monetary and non-monetary terms shall be the total income, including:

- 1.income from sale of goods;
- 2.income from provision of labour services;
- 3.income from transfer of property;
- 4.income from equity investment such as dividend and bonus;
- 5.interest income;
- 6.rental income;
- 7.income from royalties;
- 8.income from donations; and
- 9.other income.

Article 7: The following income from the total income shall not be taxable:

- 1.financial funding;
- 2.administrative fees and government funds obtained and included in financial management in accordance with the law; and
- 3.other non-taxable income prescribed by the State Council.

Article 8: Reasonable expenses that are relevant to the income actually incurred and obtained by Enterprises, including costs, fees, tax payments, losses and other fees may be deducted from the taxable income.

Article 9: In relation to the expenses from charitable donations incurred by Enterprises, the portion within 12% of the total annual profit may be deducted from the taxable income.

Article 10: The following expenses may not be deducted from the taxable income:

- 1.income from equity investment paid to investors such as dividend and bonus;
- 2.payment of enterprise income tax;
- 3.late payment fines;
- 4.penalties; fines and losses from confiscated property;
- 5.expenses from donations other than those prescribed in Article 9 hereof;
- 6.sponsorship fees;
- 7.expenses for non-verified provisions; and
- 8.other expenses irrelevant to the income obtained.

Article 11: Where Enterprises compute the taxable income, the depreciation of fixed assets calculated in accordance with provisions may be deducted.

No depreciation may be deducted for the following fixed assets:

- 1.fixed assets other than premises and buildings that have not yet been used;
- 2.fixed assets leased from other parties by means of business lease;
- 3.fixed assets leased to other parties by means of lease financing;
- 4.fixed assets that have been depreciated in full but are still in use;
- 5.fixed assets that are irrelevant to business activities;
- 6.land credited as fixed assets after independent price valuation;
- 7.other fixed assets whose depreciation may not be calculated.

Article 12: In Enterprises compute the taxable income, the amortization of intangible assets calculated in accordance with provisions may be deducted.

The amortization of the following intangible assets may not be deducted:

- 1.the fees for self development of intangible assets that have been deducted from the taxable income;
- 2.self-created goodwill;
- 3.intangible assets that are irrelevant to business activities; and
- 4.other intangible assets whose amortization fee may not be calculated.

Article 13: Where Enterprises calculate taxable income, the following expenses incurred by Enterprises as long-term fees to be amortized and that are amortized in accordance with provisions may be deducted:

- 1.reconstruction expenses for fixed assets that have been depreciated in full;
- 2.reconstruction expenses for fixed assets leased from other parties;
- 3.heavy repair expenses of fixed assets; and
- 4.other expenses that shall be treated as long-term amortization fees.

Article 14: During the period when Enterprises invest outside the territory, the cost of investment in assets may not be deducted from the taxable income.

Article 15: The inventory used or sold by Enterprises whose cost is calculated in accordance with provisions may be deducted from the taxable income.

Article 16: Where Enterprises transfer assets, the net value thereof may be deducted from the taxable income.

Article 17: Where Enterprises compute the consolidated enterprise income tax, the losses of business institutions outside the territory may not be offset by the profits of business institutions inside the territory.

Article 18: Where there is a loss in a taxable year of Enterprises, it may be brought forward to the succeeding years and made up by the income of succeeding years, but the limit of bringing forward may not exceed five years.

Article 19: Where non-resident enterprises obtain income provided in Paragraph Three of Article 3 hereof, the taxable income shall be calculated in accordance with the following methods:

- 1.income from equity investment such as dividend and bonus and interest income, rental income and royalties, the total income shall be the taxable income;
- 2.income from property transfer, the balance derived from the deduction of net asset value from the total income shall be the taxable income;

3.other income whose taxable income shall be calculated with reference to the previous two methods.

Article 20: The income, specific scope and standard of deduction and the specific method of taxation treatment of assets prescribed in this Chapter shall be provided by the departments in charge of finance and taxation under the State Council.

Article 21: In computing the taxable income, where financial and accounting treatment methods of Enterprises are inconsistent with tax laws and administrative regulations, such taxable income shall be computed in accordance with tax laws and administrative regulations.

### **Chapter Three: Payable Tax**

Article 22: The taxable income of Enterprises shall be the balance derived from the taxable income of Enterprises multiplies the applicable rate and minus the tax amount of tax reduction and exemption pursuant to the preferential tax treatment hereof.

Article 23: The income tax that has been paid outside the territory for the following income obtained by Enterprises may be offset from the payable tax of the current period. The offset limit is the payable tax calculated in accordance with provisions hereof in respect of the income of such item, the portion in excess of the offset limit may be made up by the balance of the offset amount of the current year out of the annual offset limit within the next five years:

- 1.The taxable income originating outside China by resident enterprises;
- 2.The taxable income incurred outside China that is obtained by institutions or establishments of non-resident enterprises set up in China with an actual relationship with such institution or establishment.

Article 24: Where income from equity investment such as dividend and bonus originating outside the territory of China is shared by foreign enterprises directly or indirectly controlled by resident enterprises, the portion undertaken by foreign enterprises in the actual income tax actually paid outside the territory by foreign enterprises may be offset in the offset limit prescribed in Article 23 hereof as the income tax that may be offset outside the territory by such resident enterprises.

### **Chapter Four: Preferential Tax Treatment**

Article 25: The industries and projects with key support and under encouraged development by the State

may be given preferential enterprise income tax treatment.

Article 26: The following income of Enterprises shall be tax-exempted income:

- 1.income from interests on government bonds;
- 2.income from equity investment income such as dividend and bonus between qualified resident enterprises;
- 3.income from equity investment such as dividend and bonus obtained from resident enterprises by non-resident enterprises that have set up institutions or establishments in China with an actual relationship with such institutions or establishments;
- 4.income of qualified non-profit organizations.

Article 27: The following income may be subject to exempted or reduced enterprise income tax:

- 1.income from engaging in projects of agriculture, forestry, animal husbandry and fisheries by Enterprises;
- 2.income from investment and operation of infrastructure projects with key state support such as harbour, pier, airport, railway, highway, electricity and hydroelectricity by Enterprises;
- 3.income from engaging in qualified projects of environmental protection and energy and water conservation;
- 4.income from qualified transfer of technology by Enterprises; and
- 5.income prescribed by Paragraph Three of Article 3 hereof.

Article 28: Small-scale Enterprises with minimal profits that are qualified are subject to the applicable enterprise income tax rate with a reduction of 20%.

High and new technology Enterprises that require key state support are subject to the applicable enterprise income tax rate with a reduction of 15%.

Article 29: The autonomous authority of ethnic autonomous locality may decide on the reduction or exemption of the portion of enterprise income tax shared by the locality that shall be paid by Enterprises of the ethnic autonomous locality. Where an autonomous prefecture or autonomous county decides on the reduction or exemption, they must report to the people's government of province, autonomous region or municipality directly under the central government for approval.

Article 30: Weighted deduction may be computed in taxable income for the following expenses of Enterprises:

- 1.research and development fees incurred by Enterprises in the development of new technology, new products and new skills; and
- 2.the wages paid by Enterprises for job placement of the disabled and of other personnel encouraged by the State.

Article 31: Venture investment enterprises that engage in venture investment requiring key state support and encouragement may offset the taxable income at a certain ratio of the investment amount.

Article 32: Where the fixed assets of Enterprises actually require accelerated depreciation due to technology advancement, the years of depreciation may be shortened or the accelerated depreciation method may be adopted.

Article 33: The income obtained by Enterprises from the production of products in line with state industrial policies through comprehensive use of resources may be deducted from the taxable income.

Article 34: The investment by Enterprises on procurement of special facilities for environmental protection, energy and water conservation and safe production may be subject to an offset tax amount at a certain ratio.

Article 35: The specific measures of preferential tax treatment prescribed by this Law shall be formulated by the State Council.

Article 36: Where there is a significant impact on the business activities of Enterprises pursuant to the needs of national economy and social development, or due to unexpected public incidents, the State Council may formulate the special preferential policy of enterprise income tax and report to the Standing Committee of the National People's Congress for the record.

#### **Chapter Five: Tax Withheld at Source**

Article 37: The payable income tax from income obtained by non-resident enterprises in accordance with Paragraph Three of Article 3 hereof shall be subject to tax withheld at source, with the payer as the withholding agent. The tax payment shall be withheld from the amount paid or the payable amount due from each tax payment and payable amount of the withholding agent.

Article 38: In respect of the payable income tax from income obtained by non-resident enterprises from project works and labour services in China, the tax authority may designate the payer of project price or labour fee as withholding agent.

Article 39: In respect of the income tax that shall be withheld in accordance with Articles 37 and 38 hereof, where the withholding agent has not withheld or fails to perform the withholding obligation in accordance with the law, the taxpayer shall pay in the place where the tax is incurred. Where the taxpayer does not pay in

accordance with the law, the tax authority may pursue the payable tax amount of such taxpayer from the amount payable by the payer of other income projects in China of such taxpayer.

Article 40: The withholding agent shall turn the tax payment withheld to the treasury within 7 days from the day of withholding, and submit a statement of withholding enterprise income tax to the tax authority of the place where it is located.

## **Chapter Six: Special Tax Payment Adjustment**

Article 41: The business transactions between Enterprises and their affiliates that reduce the taxable income or income of such Enterprises and their affiliates not in compliance with independent transaction principle, the taxation authority has the right to make an adjustment in accordance with reasonable methods.

The cost incurred in joint development and transfer of intangible assets, or joint provision and acceptance of labour services by Enterprises and their affiliates shall be shared under the independent transaction principle in computing the taxable income.

Article 42: Enterprises may report to the tax authority the pricing principle and calculation method of the transactions between their affiliates. Upon negotiation and confirmation with the Enterprises, the tax authority may reach the advance pricing arrangement.

Article 43: Where Enterprises submit to the tax authority the annual enterprise income tax return, they shall enclose a statement of the annual business transactions between affiliates in respect of the business transactions of the Enterprises and their affiliates.

Where the tax authority conducts affiliated business investigation, Enterprises and their affiliates, and other enterprises relevant to the affiliated business investigation shall provide the relevant information in accordance with provisions.

Article 44: Where Enterprises fail to provide the information of business transactions of affiliates, or provide false and incomplete information that cannot faithfully reflect the actual affiliated business transaction, the tax authority has the right to verify its taxable income.

Article 45: Where Enterprises controlled by resident enterprises or resident enterprises and Chinese residents in the country (region) where the actual tax burden is obviously lower than the tax rate prescribed by Paragraph One of Article 4 hereof, and profits are not distributed or distributed at a reduced rate due to

reasons other than reasonable business needs, the portion of the above profits belonged to such resident enterprises shall be included in the income of such resident enterprises of the current period.

Article 46: The interest fee incurred in excess of the prescribed standard obtained by Enterprises from the loan investment and equity investment of their affiliates may not be deducted from the taxable income.

Article 47: Where Enterprises implement other arrangement without reasonable business objectives to reduce the payable income or income, the tax authority has the right to adjust in accordance with reasonable methods.

Article 48: Where tax payment requires to be levied additionally by tax authority in respect of the tax payment adjustment made in accordance with the provisions of this Chapter, such tax payment shall be levied additionally and interest shall be levied in accordance with the provisions of the State Council.

#### **Chapter Seven: Administration of Tax Levying and Collection**

Article 49: The administration of levy and collection of enterprise income tax shall follow the provisions hereof in addition to the Law of the People's Republic of China on the Administration of Levying and Collection of Tax.

Article 50: Unless otherwise specified by tax laws and administrative regulations, resident enterprises whose place of tax payment is the place of registration of the Enterprise but the place of registration is outside the territory, the place of tax payment shall be the place where the actual administration institution is located.

Where resident enterprises establish business institutions in China without legal person qualification, it shall consolidate the calculation and payment of enterprise income tax.

Article 51: In respect of non-resident enterprises that obtain the income prescribed in Paragraph Two of Article 3 hereof, the place of tax payment shall be the place where the institution or the establishment is located. Non-resident enterprises that set up two or more institutions or establishments in China may, upon the examination and approval of the tax authority, select its main institution or establishment to pay the consolidated enterprise income tax.

Where non-resident enterprises obtain the income prescribed in Paragraph Three of Article 3 hereof, the place of tax payment shall be the place where the withholding agent is located.

Article 52: Enterprises may not pay consolidated enterprise income tax unless otherwise prescribed by the State Council.

Article 53: Enterprise income tax shall be calculated in accordance with the taxable year which starts from 1 January to 31 December of a calendar year.

If an Enterprise commences business or terminates its business activities during the taxable year and the actual business period of such taxable year is less than 12 months, the actual business period shall be treated as a taxable year.

Where the Enterprise is liquidated in accordance with the law, the liquidation period shall be a taxable year.

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

Enterprises shall submit a prepaid enterprise income tax return to the tax authority within 15 days of the completion of the month or the quarter to make tax prepayment.

Enterprises shall submit an annual enterprise income tax return to the tax authority within five months of the completion of the year and make the settlement of the payable and refundable tax payment.

Enterprises that submit the enterprise income tax return shall enclose a financial report and other relevant information in accordance with provisions.

Article 55: Where Enterprises terminate business activities in the interim of the year, they shall handle with the tax authority the settlement and payment of enterprise income tax of the current period within 60 days from the actual termination of business.

Enterprises shall, prior to handling registration cancellation, file a return of the income settled and pay enterprise income tax in accordance with the law.

Article 56: Enterprise income tax paid in accordance with this Law shall be calculated in Renminbi. Where the income is calculated in a currency other than Renminbi, it shall be converted into Renminbi for tax payment.

#### Chapter Eight: Supplementary Provisions

Article 57: Enterprises set up with approval prior to the promulgation of this Law that enjoy low preferential tax rate in accordance with the tax laws and administrative regulations at the current period may, pursuant to the provisions of the State Council, gradually transit to the tax rate provided herein within five years of the implementation of this Law. Where such enterprises enjoy regular tax exemption and reduction, the treatment continues to apply until expiry after the implementation of this Law. However, those that fail to be

entitled to this treatment by reason of not making any profits, the preferential period shall be calculated from the year this Law is implemented. High and new technology enterprises that are set up in a specific zone in accordance with the law for the purpose of external economic cooperation and technology exchange and that are newly set up and require key state support in the region of special policy of such region specified by the State Council may eligible for transitional treatment and the specific measures shall be provided by the State Council. Other enterprises under the encouraged category confirmed by the state may eligible for tax exemption and reduction in accordance with the provisions of the State Council.

Article 58: Where agreements on taxation concluded by the People's Republic of China and foreign governments contain different provisions, such agreements shall prevail.

Article 59: The implementing regulations shall be formulated by the State Council on the basis of this Law.

Article 60: This Law shall come into effect as of 1 January 2008. The Law of the People's Republic of China on the Enterprise Income Tax of Foreign-invested Enterprises and Foreign Enterprises adopted at the 4th session of the 7th National People's Congress on 9 April 1991 and the Tentative Regulations of the People's Republic of China on Enterprise Income Tax promulgated by the State Council on 13 December 1993 shall be repealed simultaneously.

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