
IMPLEMENTATION REGULATIONS FOR ENTERPRISE INCOME TAX LAW OF THE PEOPLE'S REPUBLIC OF CHINA

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Chapter I General Provisions

Article 1

The Regulations are formulated in accordance with Enterprise Income Tax Law of the People's Republic of China (hereinafter referred to as Enterprise Income Tax Law).

Article 2

Sole proprietorships and partnerships, mentioned in Article 1 of Enterprise Income Tax Law, refer to sole proprietorships and partnerships that are set up in accordance with laws and administrative regulations of China.

Article 3

An enterprise established in China in accordance with the law, mentioned in Article 2 of Enterprise Income Tax Law, includes enterprises, institutions, public organizations and other income-deriving organizations that are set up in China in accordance with laws and administrative regulations of China. An enterprise established in accordance with the law of a foreign country (region), mentioned in Article 2 of Enterprise Income Tax Law, includes enterprises and other income-deriving organizations that are set up in accordance with the law of a foreign country (region).

Article 4

Effective management, mentioned in Article 2 of Enterprise Income Tax Law, means where an enterprise exercises substantive and overall management and control of its production, business operations, personnel, accounting, property, etc.

Article 5

An establishment or a place, mentioned in the third paragraph of Article 2 of Enterprise Income Tax Law, refers to an establishment or a place that is engaged in production and business operations in China, including:

1. management establishments, business establishments and representative offices;
2. factories, farms, and places of extraction of natural resources;
3. places where services are provided;
4. places where engineering projects, such as construction, installation, assembly, repairs and exploration, are undertaken; and

5. other establishments or places that are engaged in production and business operations.

Where a non-resident enterprise commissions a business agent to carry out production and business operations in China, including commissioning a unit or individual to regularly sign contracts, or store and deliver goods, on its behalf, this business agent shall be deemed an establishment or a place of the non-resident enterprise in China.

Article 6

Income, mentioned in Article 3 of Enterprise Income Tax Law, includes income from sale of goods, income from provision of services, income from transfer of property, benefits from equity investment, such as dividends and profit distribution, interest income, rental income, income from royalties, income from donations, and income from other sources.

Article 7

Income sourced from both inside and outside China, mentioned in Article 3 of Enterprise Income Tax Law, shall be determined in accordance with the following principles:

1. for income from sale of goods, the source shall be determined in accordance with the place where the transaction takes place;
2. for income from provision of services, the source shall be determined in accordance with the place where the services are provided;
3. for income from transfer of property, the source of income from transfer of immovable property shall be determined in accordance with the place where the immovable property is located; the source of income from transfer of movable property shall be determined in accordance with the place where the enterprise, establishment or place that transfers the movable property is located; and the source of income from transfer of assets as equity investments shall be determined in accordance with the place where the enterprise in which the investment is made is located;
4. for benefits from equity investment, such as dividends and profit distribution, the source shall be determined in accordance with the place where the enterprise that distributes the income is located;
5. for interest income, rental income and income from royalties, the source shall be determined

in accordance with the place where the enterprise, establishment or place that provides or pays the income is located, or in accordance with the domicile of the individual who provides or pays the income; and

6. for income from other sources, the source shall be determined by the finance and taxation departments of the State Council.

Article 8

Effectively connected, mentioned in Article 3 of Enterprise Income Tax Law, refers to the situation in which an establishment or place of a non-resident enterprise in China owns the equities and creditor's rights from which the income is derived, and owns, manages and controls the property and other things from which the income is derived.

Chapter II The Amount of Taxable Income

Section 1 General Rules

Article 9

The taxable income of an enterprise shall be calculated on an accrual basis, namely, the income and expenses attributed to the current period shall be recognized as the current income and expenses, regardless of whether the money has been received or paid, and the income and expenses not attributed to the current period shall not be recognized as the current income and expenses, even if the money has been received or paid within the current period, unless otherwise specified by the Regulations or by the finance and taxation departments of the State Council.

Article 10

Losses, mentioned in Article 5 of Enterprise Income Tax Law, refer to the amount of the gross income derived by an enterprise in each tax year minus untaxed income, tax-exempt income and various deductions in accordance with the provisions of Enterprise Income Tax Law and the Regulations, which is less than zero.

Article 11

Income settled, mentioned in Article 55 of Enterprise Income Tax Law, refers to the balance of the realizable value or the transaction price of an enterprise's entire assets minus the net asset value, liquidation expenses, related taxes and fees, etc.

The portion of the remaining assets distributed by a liquidated enterprise to an investing enterprise, which is equivalent to the investing enterprise's share from the accumulated undistributed profits and accumulated surplus reserves of the liquidated enterprise, shall be recognized as dividend income; for the balance of the remaining assets minus the aforesaid dividend income, the portion that is above or below the investment cost shall be recognized as income or losses from transfer of investment assets.

Section 2 Income

Article 12

Monetary income, mentioned in Article 6 of Enterprise Income Tax Law, includes cash, deposits, accounts receivable, notes receivable, held-to-maturity bond investments, and debts forgiven.

Non-monetary income, mentioned in Article 6 of Enterprise Income Tax Law, includes fixed assets, biological assets, intangible assets, equity investments, inventory, bond investments not held to maturity, services, and relevant rights and interests.

Article 13

Non-monetary income, mentioned in Article 6 of Enterprise Income Tax Law, shall be measured at its fair value.

The term "fair value" in the preceding paragraph refers to the value that is determined on the basis of the market price.

Article 14

Income from sale of goods, mentioned in Subparagraph (1) of Article 6 of Enterprise Income Tax Law, refers to the income derived by an enterprise from the sale of merchandise, products, raw materials, packaging materials, low-value consumables, and other inventory.

Article 15

Income from provision of services, mentioned in Subparagraph (2) of Article 6 of Enterprise Income Tax Law, refers to the income derived by an enterprise from the business of construction and installation, repairs and overhaul, transportation, warehousing and leasing, financing and insurance, post and telecommunications, consultancy and brokerage, culture and sports, scientific research, techni-

cal services, education and training, catering and lodging, intermediation and agency, hygiene and healthcare, community services, tourism, entertainment, processing, and other services.

Article 16

Income from transfer of property, mentioned in Subparagraph (3) of Article 6 of Enterprise Income Tax Law, refers to the income derived by an enterprise from the transfer of fixed assets, biological assets, intangible assets, equities, creditor's rights, and other property.

Article 17

Benefits from equity investment, such as dividends and profit distribution, mentioned in Subparagraph (4) of Article 6 of Enterprise Income Tax Law, refer to the income derived by an enterprise from its investee through equity investments.

Benefits from equity investment, such as dividends and profit distribution shall be recognized as income realized on the date when the investee makes a decision on profit distribution, unless otherwise specified by the finance and taxation departments of the State Council.

Article 18

Interest income, mentioned in Subparagraph (5) of Article 6 of Enterprise Income Tax Law, refers to the income derived by an enterprise from the provision of funds to another entity for use, which does not constitute an equity investment, or from the use of its funds by another entity, including deposit interest, loan interest, bond interest, interest on arrears, etc. Interest income shall be recognized as income realized on the date when the interest becomes payable by the debtor as agreed in a contract.

Article 19

Rental income, mentioned in Subparagraph (6) of Article 6 of Enterprise Income Tax Law, refers to the income derived by an enterprise from the provision of the right to use fixed assets, packaging materials and other tangible assets.

Rental income shall be recognized as income realized on the date when the rental becomes payable by the lessee as agreed in a contract.

Article 20

Income from royalties, mentioned in Subparagraph (7) of Article 6 of Enterprise Income Tax Law, refers to the

income derived by an enterprise from the provision of the right to use its patent, non-patented technology, trademark, copyright and other licensed rights.

Income from royalties shall be recognized as income realized on the date when the royalties become payable by the licensee as agreed in a contract.

Article 21

Income from donations, mentioned in Subparagraph (8) of Article 6 of Enterprise Income Tax Law, refers to the monetary or non-monetary assets accepted by an enterprise free of charge from other enterprises, organizations or individuals.

Income from donations shall be recognized as income realized on the date when the donated assets are actually received.

Article 22

Income from other sources, mentioned in Subparagraph (9) of Article 6 of Enterprise Income Tax Law, refers to the income derived by an enterprise other than those incomes prescribed in Subparagraphs (1) through (8) of Article 6 of Enterprise Income Tax Law, including income from enterprise asset surplus, income from overdue deposits on packaging materials, accounts payable that cannot be settled, accounts receivable recovered after being written off as bad debts, income from debt restructuring, income from subsidies, income from penalties for breach of contract, exchange gains, etc.

Article 23

Income from the following production and business operations of an enterprise may be recognized in installments:

1. where the goods are sold in installments, the income shall be recognized in accordance with the date of receipt of the payment as agreed in a contract; and
2. where an enterprise, consecutively for more than 12 months, is commissioned to process or manufacture large machinery equipment, vessels and aircraft, or is engaged in construction, installation, assembly engineering projects, or provides other services, the income shall be recognized in accordance with the progress of the project achieved or the amount of work done within the tax year.

Article 24

Where income is derived through the sharing of

products, the income shall be recognized in accordance with the date when the enterprise gets its share of the products; and the amount of income shall be determined on the basis of the fair value of the products.

Article 25

Where an enterprise exchanges its non-monetary assets with another entity, or uses its goods, property or services for purposes of donation, repayment of debts, sponsorship, fundraising, advertisement, provision of samples, improvement of its employees' welfare, profit distribution, etc., the matter shall be deemed to be the sale of goods, the transfer of property or the provision of services, unless otherwise specified by the finance and taxation departments of the State Council.

Article 26

Government appropriations, mentioned in Subparagraph (1) of Article 7 of Enterprise Income Tax Law, refer to fiscal funds appropriated by the governments at various levels to organizations such as institutions and public organizations that are under the budgetary management, unless otherwise specified by the State Council or the finance and taxation departments of the State Council.

Administrative fees, mentioned in Subparagraph (2) of Article 7 of Enterprise Income Tax Law, refer to the fees that are, in accordance with relevant provisions of laws and regulations and upon approval granted in accordance with the procedures specified by the State Council, collected from specific entities in the course of exercising public administration or in the course of providing specific public services to citizens, legal persons or other organizations and that are placed under fiscal management.

Government funds, mentioned in Subparagraph (2) of Article 7 of Enterprise Income Tax Law, refer to fiscal funds that, in accordance with relevant provisions of laws and administrative regulations, are collected by an enterprise on behalf of the government for special purposes of use.

Other untaxed income specified by the State Council, mentioned in Subparagraph (3) of Article 7 of Enterprise Income Tax Law, means fiscal funds that are received by an enterprise and are earmarked for special purposes specified by the finance and taxation departments of the State Council upon approval by the State Council.

Section 3 Deductions

Article 27

Related expenses, mentioned in Article 8 of Enterprise Income Tax Law, refer to the expenses that are directly related to the income derived.

Reasonable expenses, mentioned in Article 8 of Enterprise Income Tax Law, refer to the necessary and regular expenses that are incurred in the normal production and business operations and that are to be included in the current profits and losses or the cost of relevant assets.

Article 28

Expenses incurred by an enterprise shall be divided into revenue expenses and capital expenses. Revenue expenses shall be directly deducted in the period in which they are incurred; capital expenses shall be deducted in installments or included in the cost of relevant assets, but shall not be directly deducted in the period in which they are incurred.

The expenses or property formed through the use of untaxed income of an enterprise as the expense shall not be deducted, or deducted through depreciation or amortization.

Unless otherwise prescribed by Enterprise Income Tax Law and the Regulations, the costs, expenses, taxes, losses and other expenses actually incurred by an enterprise shall not be repeatedly deducted.

Article 29

Costs, mentioned in Article 8 of Enterprise Income Tax Law, refer to cost of sales, cost of goods sold, business expenses and other expenses incurred by an enterprise in the course of production and business operations.

Article 30

Expenses, mentioned in Article 8 of Enterprise Income Tax Law, refer to selling expenses, administrative expenses and financial expenses incurred by an enterprise in the course of production and business operations, exclusive of the expenses that have been included in the costs.

Article 31

Taxes, mentioned in Article 8 of Enterprise Income Tax Law, refer to taxes and surcharges incurred by an enterprise, except for enterprise income tax and creditable value added tax.

Article 32

Losses, mentioned in Article 8 of Enterprise Income Tax Law, refer to losses caused by the shortage, destruction, damage and scrapping of fixed assets and inventory, losses caused by property transfers, losses on doubtful accounts, losses on bad debts, losses caused by force majeure such as natural disasters, as well as other losses incurred by an enterprise in the course of production and business operations.

The balance of the losses incurred by an enterprise minus the compensation made by the party liable and the insurance indemnities shall be deducted as prescribed by the finance and taxation departments of the State Council.

The assets of an enterprise that have been written off as losses and that are entirely or partially recovered in the following tax years shall be included in income for the current period.

Article 33

Other expenses, mentioned in Article 8 of Enterprise Income Tax Law, refer to reasonable expenses that are incurred by an enterprise in the course of production and business operations and that are related to the production and business operations, exclusive of costs, fees, taxes and losses.

Article 34

Reasonable expenses on salary and wages incurred by an enterprise shall be deductible.

The term "salary and wages" in the preceding paragraph refers to all the cash or non-cash remunerations paid by an enterprise during each tax year to the employees who are appointed or employed to work in the enterprise, including regular pay, bonuses, allowances, subsidies, year-end bonuses, overtime pay, and other expenses related to the appointment or employment of the employees.

Article 35

It is allowed to deduct the basic pension insurance contributions, basic medical insurance contributions, unemployment insurance contributions, work injury insurance contributions, maternity insurance contributions, and other basic social insurance contributions and housing provident fund, which an enterprise pays for its employees within the range and rates prescribed by the relevant departments of the State Council or the people's governments at the provincial level.

The supplementary pension insurance contributions and supplementary medical insurance contributions paid by an enterprise for its investors or employees shall be deductible within the range and rates prescribed by the finance and taxation departments of the State Council.

Article 36

Except for the personal safety insurance premiums paid by an enterprise in accordance with relevant provisions of the State for its employees in special job positions, and other commercial insurance premiums that are deductible as prescribed by the finance and taxation departments of the State Council, commercial insurance premiums paid by an enterprise for its investors or employees shall not be deducted.

Article 37

Reasonable borrowing costs incurred by an enterprise in the course of production and business operations, which are not required to be capitalized, shall be deductible.

Where borrowings of an enterprise are to be used for the acquisition and construction of fixed assets, intangible assets, or inventory that may be in saleable conditions as anticipated after at least 12 months' construction, the reasonable borrowing costs incurred during the period of the acquisition and construction of the relevant assets shall be included in the costs of the relevant assets as capital expenditure and deducted in accordance with the provisions of the Regulations.

Article 38

The following interest expenses incurred by an enterprise in the course of production and business operations shall be deductible:

1. interest expenses incurred by a non-financial enterprise on loans from a financial enterprise, interest expenses incurred by a financial enterprise on various deposits and inter-bank borrowings, and interest expenses incurred by an enterprise on bonds issued upon approval; and
2. the portion of the interest expenses incurred by a non-financial enterprise on borrowings from another non-financial enterprise, which does not exceed the amount calculated at the interest rate of loans of the same type for the same period of time as provided by financial enterprises.

Article 39

Exchange losses incurred by an enterprise in the course of monetary transactions and when non-Renminbi denominated monetary assets and liabilities are converted to Renminbi at the year-end spot Renminbi central parity at the end of a tax year shall be deductible, except for the portion that has been included in the cost of relevant assets, or that is related to profit distributions to owners.

Article 40

The portion of the expenses incurred by an enterprise on employees' welfare benefits which does not exceed 14 percent of the total amount of salary and wages shall be deductible.

Article 41

The portion of funds appropriated and paid by an enterprise to the trade union which does not exceed two percent of the total amount of salary and wages shall be deductible.

Article 42

The portion of the expenses incurred by an enterprise on employees' education which does not exceed two-and-a-half percent of the total amount of salary and wages shall be deductible, unless otherwise prescribed by the finance and taxation departments of the State Council; and the portion that exceeds such percentage is allowed to be carried forward and deducted in the following tax years.

Article 43

The expenses incurred by an enterprise on business entertainment which are related to its production and business operations shall be deductible by 60 percent of the amount of the expenses; however, the deduction shall not exceed zero point five percent of the sales (business) income of the current year.

Article 44

The portion of the expenses incurred by an enterprise on advertisement and business promotion in compliance with requirements which does not exceed 15 percent of the sales (business) income of the current year shall be deductible, unless otherwise prescribed by the finance and taxation departments of the State Council; and the portion that exceeds such percentage is allowed to be carried forward and deducted in the following tax years.

Article 45

Special funds earmarked by an enterprise for environmental protection, ecological restoration, etc., in accordance with provisions of relevant laws and administrative regulations shall be deductible. Where the aforesaid funds are diverted for other purposes, the deduction shall not be allowed.

Article 46

Where an enterprise buys property insurance, the premiums paid by it in accordance with relevant regulations shall be deductible.

Article 47

The rental paid by an enterprise for leasing fixed assets to meet the needs of production and business operations shall be deductible in accordance with the following methods:

1. rental paid for the leasing of fixed assets in the form of an operating lease shall evenly be deducted over the period of the lease; and
2. for rental paid for the leasing of fixed assets in the form of a finance lease, the portion of such rentals which constitutes the value of the fixed assets under such a finance lease in accordance with relevant regulations shall be depreciated and deducted in installments.

Article 48

Reasonable expenses incurred by an enterprise on occupational protection shall be deductible.

Article 49

Management fees paid between enterprises, rental and royalties paid between business establishments of an enterprise, and interest paid between business establishments of a non-bank enterprise shall not be deducted.

Article 50

For an establishment or a place set up by a non-resident enterprise in China, the expenses that are incurred by its head office outside China and that are related to production and business operations of the establishment or place shall be deductible, provided that the documents issued by its head office can be provided certifying the overall scope of the expenses, the amount involved, and the basis and methods of allocation, etc., and that the allocation is reasonable.

Article 51

Donations for public welfare, mentioned in Article 9 of Enterprise Income Tax Law, refer to the donations that are made by an enterprise and, through social public welfare organizations or the governments and their departments at or above the county level, used for charitable activities and public welfare in accordance with the law.

Article 52

The term “social public welfare organization” in Article 51 of the Regulations refers to a charitable organization or other types of social organizations that meet all of the following conditions:

1. it is registered in accordance with the law and has the status of a legal person;
2. it aims to develop public welfare, not to make a profit;
3. its entire assets and the appreciation therein are owned by the said legal person;
4. its earnings and surplus from business operations are mainly used for the undertakings that conform to the legal person’s purpose of establishment;
5. upon termination, its remaining assets do not belong to any individual or profit-making organization;
6. it is not engaged in any business that is irrelevant to its purpose of establishment;
7. it has a sound and complete financial and accounting system;
8. its donors are not involved, in any form, in the distribution of the property of the said legal person; and
9. it meets other conditions specified by the finance and taxation departments of the State Council jointly with the civil affairs department and other registration departments of the State Council.

Article 53

The portion of the expenses incurred in the current year and carried forward from preceding years by an enterprise on donations for public welfare which does not exceed 12 percent of its total annual profits shall be deductible.

The term “total annual profits” refers to the annual accounting profits calculated by an enterprise in accordance with the unified accounting system of the State.

Article 54

Sponsorship expenses, mentioned in Subparagraph (6) of Article 10 of Enterprise Income Tax Law, refer to the various expenses incurred by an enterprise which are non-advertising in nature and irrelevant to its production and business operations.

Article 55

Unverified provisions, mentioned in Subparagraph (7) of Article 10 of Enterprise Income Tax Law, refer to expenses for such provisions as the various asset impairment provisions and risk provisions that do not conform to the regulations of the finance and taxation departments of the State Council.

Section 4 Tax Treatment of Assets

Article 56

Taxation on the various assets of an enterprise, including fixed assets, biological assets, intangible assets, long-term deferred expenses, investment assets and inventory, shall be calculated on the basis of their historical costs.

The term “historical costs” in the preceding paragraph refers to the expenses actually incurred by an enterprise when acquiring the specific assets.

During the period when an enterprise holds various assets, if the value of the assets increases or decreases, the tax basis of the assets shall not be adjusted, except that losses or gains may be recognized as prescribed by the finance and taxation departments of the State Council.

Article 57

Fixed assets, mentioned in Article 11 of Enterprise Income Tax Law, refer to non-monetary assets that are held by an enterprise for the purpose of manufacturing products, providing services, leasing, or business operation and management, and that are used for a period of more than 12 months, including houses, structures, machines, machinery, means of transport as well as other equipment, apparatus and tools that are related to its production and business operations.

Article 58

The basis for calculation of taxes on fixed assets shall be determined in accordance with the following methods:

1. the basis for calculation of taxes on the fixed assets purchased outside shall consist of the purchase price and the relevant taxes and fees paid, as well as other expenses incurred that directly contribute to achieving the intended purpose of use of the assets;
2. the basis for calculation of taxes on the self-constructed fixed assets shall consist of the expenses incurred prior to the settlement upon completion of the construction;
3. the basis for calculation of taxes on the fixed assets leased through financing shall consist of the total payment as agreed in a lease contract and the relevant expenses incurred by the lessee in the course of concluding the lease contract. Where the total payment is not agreed in a lease contract, the basis shall consist of the fair value of the assets and relevant expenses incurred by the lessee in the course of concluding the lease contract;
4. the basis for calculation of taxes on the fixed assets inventory surplus shall consist of the full replacement value of fixed assets of the same type;
5. the basis for calculation of taxes on the fixed assets that are acquired through donation, investment, exchange of non-monetary assets, debt restructuring, etc., shall consist of the fair value of the assets and relevant taxes and fees paid; and
6. the basis for calculation of taxes on the reconstructed fixed assets shall be increased in accordance with the expenses incurred in the course of reconstruction, except for the expenses specified in Subparagraphs (1) and (2) of Article 13 of Enterprise Income Tax Law.

Article 59

Depreciation of fixed assets calculated in accordance with the straight-line method shall be deductible.

An enterprise shall begin to calculate the depreciation of a fixed asset from the month next to the one in which the fixed asset is put to use. Where a fixed asset ceases to be used, calculation of its depreciation shall be discontinued from the month next to the one in which it goes out of use.

An enterprise shall reasonably determine the estimated net residual value of a fixed asset in light of its nature and usage. Once the estimated net residual value is determined, it shall not be changed.

Article 60

Unless otherwise prescribed by the finance and taxation departments of the State Council, the minimum period for calculation of depreciation of fixed assets shall be as follows:

1. 20 years for houses and structures;
2. 10 years for aircraft, trains, vessels, machines, machinery and other production equipment;
3. five years for apparatus, tools, furniture, etc., that are related to production and business operations;
4. four years for means of transport other than aircraft, trains and vessels; and
5. three years for electronic equipment.

Article 61

For enterprises engaged in extraction of mineral resources such as petroleum and natural gas, calculation of the expenses incurred before the commencement of commercial production and the depletion and depreciation methods for the related fixed assets shall separately be prescribed by the finance and taxation departments of the State Council.

Article 62

The basis for calculation of taxes on productive biological assets shall be determined in accordance with the following methods:

1. with respect to the productive biological assets purchased outside, it shall consist of the purchase price and relevant taxes and fees paid; and
2. with respect to the productive biological assets acquired through donation, investment, exchange of non-monetary assets, debt restructuring, etc., it shall consist of the fair value of the assets and relevant taxes and fees paid.

The term “productive biological assets” in the preceding paragraph refers to biological assets held by an enterprise for producing agricultural products, providing services, leasing, etc., including economic forests, firewood forests, productive livestock and draught animals.

Article 63

Depreciation of productive biological assets calculated in accordance with the straight-line method shall be deductible.

An enterprise shall begin to calculate the depreciation of a productive biological asset from the

month next to the one in which the asset is put to use. Where a productive biological asset ceases to be used, calculation of its depreciation shall be discontinued from the month next to the one in which the asset goes out of use.

An enterprise shall reasonably determine the estimated net residual value of a productive biological asset in light of its nature and usage. Once the estimated net residual value is determined, it shall not be changed.

Article 64

The minimum period for the calculation of depreciation of productive biological assets shall be as follows:

1. 10 years for forestry productive biological assets; and
2. three years for livestock productive biological assets.

Article 65

Intangible assets, mentioned in Article 12 of Enterprise Income Tax Law, refer to long-term non-monetary assets without physical form that are held by an enterprise for the purpose of manufacturing products, providing services or leasing, or for business operations and management, including patents, trademarks, copyrights, land use rights, non-patented technologies and goodwill.

Article 66

The basis for the calculation of taxes on intangible assets shall be determined in accordance with the following methods:

1. with respect to an intangible asset purchased outside, it shall consist of the purchase price and relevant taxes and fees paid, as well as other expenses incurred that directly contribute to achieving the intended purpose of use of the asset;
2. with respect to a self-developed intangible asset, it shall consist of the expenses incurred during the development process from the time when the conditions for capitalization are met to the time when its intended purpose of use is achieved; and
3. with respect to an intangible asset acquired through donation, investment, exchange of non-monetary assets, debt restructuring, etc., it shall consist of the fair value of the asset and relevant taxes and fees paid.

Article 67

Amortization expenses of intangible assets calculated in accordance with the straight-line method shall be deductible.

Intangible assets shall be amortized over a period of not less than 10 years.

Where an intangible asset acquired through investment or assignment has a useful life as specified by relevant laws or agreed in a contract, it may be amortized in installments over its useful life as specified or agreed.

The expenses on goodwill purchased outside shall be deductible when an enterprise is transferred as a whole or liquidated.

Article 68

Expenses for reconstruction of fixed assets, mentioned in Subparagraphs (1) and (2) of Article 13 of Enterprise Income Tax Law, refer to expenses incurred for the purposes of altering the structure of a house or building, extending its useful life, etc.

The expenses specified in Subparagraph (1) of Article 13 of Enterprise Income Tax Law shall be amortized in installments over the estimated remaining useful life of fixed assets; and the expenses specified in Subparagraph (2) of Article 13 shall be amortized in installments over the remaining lease term as agreed in the contract.

Where a fixed asset is reconstructed to extend its useful life, its recovery period shall be extended appropriately, except for the circumstances specified in Subparagraphs (1) and (2) of Article 13 of Enterprise Income Tax Law.

Article 69

Expenses for major repairs of fixed assets, mentioned in Subparagraph (3) of Article 13 of Enterprise Income Tax Law, refer to the expenses that meet both of the following requirements:

1. the expenses on repairs account for more than 50 percent of the basis for calculation of taxes on the fixed assets which is determined at the time when such assets are acquired; and
2. the useful life of the fixed assets is extended by more than two years after their repairs.

The expenses specified in Subparagraph (3) of Article 13 of Enterprise Income Tax Law shall be amortized in installments over the remaining useful life of fixed assets.

Article 70

Other expenses that shall be treated as long-term deferred expenses, mentioned in Subparagraph (4) of Article 13 of Enterprise Income Tax Law, shall be amortized in installments, beginning from the month next to the one in which the expenses are incurred, and the amortization period shall not be less than three years.

Article 71

Investment in the form of assets, mentioned in Article 14 of Enterprise Income Tax Law, refers to the assets realized through external equity investments and debt investments made by an enterprise.

The cost of investment assets shall be deductible when an enterprise transfers or disposes of its investment assets.

The cost of investment assets shall be determined in accordance with the following methods:

1. it shall be the purchase price if the investment assets are acquired through cash payment; and
2. it shall consist of the fair value of the assets and relevant taxes and fees paid if the investment assets are acquired through methods other than cash payment.

Article 72

Inventory, mentioned in Article 15 of Enterprise Income Tax Law, refers to the products or commodities held by an enterprise which are ready for sale, the semi-finished goods in the production process, and the materials and supplies consumed during the production process or the process of service provision.

The cost of inventory shall be determined in accordance with the following methods:

1. it shall consist of the purchase price and relevant taxes and fees paid if the inventory is acquired through cash payment;
2. it shall consist of the fair value of the inventory and relevant taxes and fees paid if the inventory is acquired through methods other than cash payment; and
3. with respect to agricultural products yielded by productive biological assets, it shall consist of necessary expenses, such as expenses for materials, labor and the allocated overheads, which are incurred in the process of production or harvest.

Article 73

To calculate the cost of inventory that are con-

sumed or sold, an enterprise may select one of the following methods: the first-in-first-out method, the weighted average method or the specific identification method. Once a method has been selected, it shall not be changed at will.

Article 74

The net value of assets, mentioned in Article 16 of Enterprise Income Tax Law, and the net value of property, mentioned in Article 19 of Enterprise Income Tax Law, refer to the balance of the basis for the calculation of taxes on assets and property respectively minus depreciation, depletion, amortization, provisions, etc., that have been deducted in accordance with relevant regulations.

Article 75

Unless otherwise prescribed by the finance and taxation departments of the State Council, an enterprise shall, in the process of restructuring, recognize the profits derived from or losses caused by the transfer of relevant assets at the time when a transaction takes place, and the basis for calculation of the taxes on the assets shall be determined anew in accordance with the transaction price.

Chapter III The Amount of Tax Payable

Article 76

The formula for calculating tax payable mentioned in Article 22 of Enterprise Income Tax Law, shall be as follows:

Tax payable = Taxable income × Applicable tax rate - Tax reduced/exempted - Tax credit

Tax reduced/exempted and tax credit, mentioned in the formula, refer to the amount of taxes payable that are reduced, exempted or credited in accordance with the provisions of Enterprise Income Tax Law and the provisions of the State Council on tax preferences.

Article 77

Income tax paid outside China, mentioned in Article 23 of Enterprise Income Tax Law, refers to the tax on income derived by an enterprise from sources outside China, which is payable in accordance with tax laws and relevant regulations outside China and which has actually been paid in the nature of enterprise income tax.

Article 78

Credit limit, mentioned in Article 23 of Enterprise Income Tax Law, refers to the tax payable on income derived by an enterprise from sources outside China, which is calculated in accordance with the provisions of Enterprise Income Tax Law and the Regulations. Such credit limit shall be calculated on the basis of specific countries (regions) rather than specific categories, unless otherwise prescribed by the finance and taxation departments of the State Council. The formula for its calculation shall be as follows:

Tax credit = Total tax payable on income derived from sources inside and outside China calculated in accordance with the provisions of Enterprise Income Tax Law and the Regulations × Taxable income derived from a given country (region) ÷ Total taxable income derived from sources inside and outside China

Article 79

Five years, mentioned in Article 23 of Enterprise Income Tax Law, refer to the five consecutive tax years, beginning from the year next to the one in which the tax on income derived from sources outside China, which has already been paid outside China in the nature of enterprise income tax, exceeds the credit limit.

Article 80

Direct control, mentioned in Article 24 of Enterprise Income Tax Law, refers to the fact that a resident enterprise directly holds more than 20 percent of the shares of a foreign enterprise.

Indirect control, mentioned in Article 24 of Enterprise Income Tax Law, refers to the fact that a resident enterprise holds more than 20 percent of the shares of a foreign enterprise through indirect shareholding. The specific measures for confirmation of the fact shall separately be formulated by the finance and taxation departments of the State Council.

Article 81

When an enterprise intends to have its enterprise income tax credited in accordance with the provisions of Articles 23 and 24 of Enterprise Income Tax Law, it shall provide relevant tax payment certificates for the corresponding tax year issued by tax authorities outside China.

Chapter IV Tax Preferences

Article 82

Income from interest on government bonds, mentioned in Subparagraph (1) of Article 26 of Enterprise Income Tax Law, refers to the income derived by an enterprise from interest paid on government bonds issued by the finance department of the State Council.

Article 83

Income from equity investment, such as dividends and profit distribution, between qualified resident enterprises, mentioned in Subparagraph (2) of Article 26 of Enterprise Income Tax Law, refers to the income derived by a resident enterprise from direct investment in another resident enterprise. Income from equity investment, such as dividends and profit distribution, mentioned in Subparagraphs (2) and (3) of Article 26 of Enterprise Income Tax Law, does not include investment income derived from shares held for less than 12 months consecutively, which are publicly issued by a resident enterprise and are listed and circulated.

Article 84

A qualified non-profit organization, mentioned in Subparagraph (4) of Article 26 of Enterprise Income Tax Law, refers to an organization that meets all of the following conditions:

1. it has gone through the formalities of registration for non-profit organizations in accordance with the law;
2. it is engaged in public welfare or non-profit activities;
3. apart from the part of income obtained that is used for reasonable expenses related to the organization, all the rest of its income is used for public welfare or non-profit undertakings as is approved upon registration or as is prescribed by its articles of association;
4. its property and interest accruing therefrom are not used for distribution;
5. after the organization is deregistered, the remaining assets are used for public welfare or non-profit purposes, as approved upon registration or as prescribed by its articles of association, or are donated by the registration authority to another organization that has the same nature and purpose as the organization, which is made known to the public;

6. the investor does not reserve or enjoy any right to the assets invested in the organization; and
7. the expenses for salaries paid and welfare benefits provided to its employees are controlled within the prescribed proportion, and it does not distribute its assets in any disguised form.

The administrative measures for confirming a non-profit organization as prescribed in the preceding paragraph shall be jointly formulated by the finance and taxation departments of the State Council and relevant departments of the State Council.

Article 85

Income derived by a qualified non-profit organization, mentioned in Subparagraph (4) of Article 26 of Enterprise Income Tax Law, does not include income derived by a non-profit organization from profit-making activities, unless otherwise prescribed by the finance and taxation departments of the State Council.

Article 86

Enterprise income tax on income derived by an enterprise from projects of farming, forestry, animal husbandry and fisheries may be exempted or reduced, as mentioned in Subparagraph (1) of Article 27 of Enterprise Income Tax Law, which refers to:

1. income derived by an enterprise from one of the following projects shall be exempted from enterprise income tax:
 - a. growing of vegetables, grain crops, tuber crops, oil-bearing crops, bean and pea crops, cotton, bast-fiber plants, sugar crops, fruits and nuts;
 - b. selection and cultivation of new varieties of farm crops;
 - c. cultivation of Chinese medicinal herbs;
 - d. cultivation and growing of forests;
 - e. raising of livestock and poultry;
 - f. collection of forestry products;
 - g. service projects relating to farming, forestry, animal husbandry and fisheries, such as irrigation, preliminary processing of agro-products, veterinary services, promotion of agricultural technologies, farm machine services and repairs; and
 - h. ocean fishing.
2. enterprise income tax on income derived by an enterprise from one of the following projects shall be reduced by half:
 - a. cultivation of flowers, tea and other bever-

- age and spice crops; and
- b. seawater aquaculture and fresh water aquaculture.

An enterprise engaging in projects that are restricted or prohibited from development by the State shall not enjoy enterprise income tax preferences as specified in this Article.

Article 87

Infrastructure projects that have major support of the State, mentioned in Subparagraph (2) of Article 27 of Enterprise Income Tax Law, include ports, wharves, airports, railways, highways, urban public transportation, electric power and water conservancy projects specified in Catalog of Preferential Enterprise Income Tax Treatment for Public Infrastructure Projects.

Enterprise income tax on income derived by an enterprise from investment in and operation of the public infrastructure projects that have major support of the State, as specified in the preceding paragraph, shall be exempted from the first to the third year, beginning from the tax year in which the first production and operation income is derived from the projects, and such tax shall be reduced by half from the fourth to the sixth year.

An enterprise engaging in contracted operations, contracted construction or self-construction and self-use of the projects specified in this Article, shall not enjoy enterprise income tax preferences as prescribed in this Article.

Article 88

Qualified projects of environmental protection or energy and water conservation, mentioned in Subparagraph (3) of Article 27 of Enterprise Income Tax Law, include projects for public sewage treatment, public refuse treatment, comprehensive development and utilization of methane, technological reform for energy conservation and discharge reduction, and seawater desalination. The specific requirements for and scope of such projects shall be determined by the finance and taxation departments of the State Council in consultation with relevant departments of the State Council, and shall be promulgated for implementation upon approval by the State Council.

Enterprise income tax on income derived by an enterprise from the qualified projects for environmental protection or energy and water conserva-

tion as specified in the preceding paragraph shall be exempted from the first to the third year, beginning from the tax year in which the first production and operation income is derived from the projects, and such tax shall be reduced by half from the fourth to the sixth year.

Article 89

Where a project enjoying tax reduction and exemption in accordance with the provisions of Articles 87 and 88 of the Regulations is transferred within the period of such reduction and exemption, the transferee may, beginning from the date of transfer, enjoy the prescribed preferences within the remaining period; where the project is transferred after the expiration of the period of tax reduction and exemption, the transferee shall not enjoy such tax reduction and exemption with respect to the project repeatedly.

Article 90

The exemption and reduction of enterprise income tax on income from qualified technology transfer, mentioned in Subparagraph (4) of Article 27 of Enterprise Income Tax Law, means that the portion of income derived by a resident enterprise from transfer of technologies in a tax year which does not exceed 5,000,000 yuan shall be exempted from enterprise income tax; and such tax on the portion that exceeds 5,000,000 yuan shall be reduced by half.

Article 91

Enterprise income tax on income derived by a non-resident enterprise, as specified in Subparagraph (5) of Article 27 of Enterprise Income Tax Law, shall be levied at a reduced rate of 10 percent.

The following incomes may be exempted from enterprise income tax:

1. interest income on loans provided by a foreign government to the Chinese government;
2. interest income on preferential loans provided by an international financial organization to the Chinese government and resident enterprises; and
3. other incomes as approved by the State Council.

Article 92

A qualified small and low-profit enterprise, mentioned in the first paragraph of Article 28 of Enterprise Income Tax Law, refers to an enterprise that

engage in industries which are not restricted or prohibited by the State and that meet the following conditions:

1. industrial enterprises, whose annual taxable income does not exceed 300,000 yuan, the number of whose employees does not exceed 100 persons, and the total amount of whose assets does not exceed 30,000,000 yuan; and
2. other enterprises, whose annual taxable income does not exceed 300,000 yuan, the number of whose employees does not exceed 80 persons, and the total amount of whose assets does not exceed 10,000,000 yuan.

Article 93

High-tech enterprises that are specifically supported by the State, mentioned in the second paragraph of Article 28 of Enterprise Income Tax Law, refer to the enterprises that have core independent intellectual property rights and meet all of the following conditions:

1. their products (services) fall within the scope specified in New and High-tech Sectors That Have Major Support of the State;
2. the proportion of their research and development expenses to sales income is not smaller than the prescribed proportion;
3. the proportion of their income from high-tech products (services) to their total income is not smaller than the prescribed proportion;
4. the proportion of their technicians to the total number of their employees is not smaller than the prescribed proportion; and
5. other conditions as prescribed by administrative measures for confirmation of high-tech enterprises.

High-tech Sectors That Have Major Support of the State and the administrative measures for confirmation of high-tech enterprises shall be formulated by the science and technology, finance and taxation departments of the State Council in consultation with relevant departments of the State Council, and shall be promulgated for implementation upon approval by the State Council.

Article 94

An ethnic autonomous prefecture or county, mentioned in Article 29 of Enterprise Income Tax Law, refers to an autonomous area, prefecture or county where regional ethnic autonomy is exercised in accordance with the provisions of Law of the People's

Republic of China on Regional Ethnic Autonomy. For enterprises within an ethnic autonomous area engaging in the industries that are restricted or prohibited by the State, enterprise income tax shall not be reduced or exempted.

Article 95

Super deduction for research and development expenses, mentioned in Subparagraph (1) of Article 30 of Enterprise Income Tax Law, means that where the research and development expenses incurred by an enterprise for the development of new technologies, new products and new techniques are not included in the current profits or losses before they become intangible assets, a super deduction of 50 percent of the research and development expenses shall be made in addition to the deduction of actual expenses in accordance with relevant regulations; where they become intangible assets, the expenses shall be amortized at 150 percent of the cost of the intangible assets.

Article 96

Super deduction for salaries paid for job placement of the disabled, mentioned in Subparagraph (2) of Article 30 of Enterprise Income Tax Law, means that where an enterprise provides jobs to the persons with disabilities, a super deduction of 100 percent of the salaries paid to them shall be made in addition to the deduction of the actual wages paid to them. The relevant provisions of Law of the People's Republic of China on the Protection of Persons with Disabilities shall be applicable to the scope of persons with disabilities.

The method for super deduction of the salaries paid by an enterprise for job placement of other persons as encouraged by the State, mentioned in Subparagraph (2) of Article 30 of Enterprise Income Tax Law, shall be separately prescribed by the State Council.

Article 97

To be deductible against taxable income, mentioned in Article 31 of Enterprise Income Tax Law, means that where a venture investment enterprise makes an equity investment in a non-listed small or medium-sized high-tech enterprise for more than two years, 70 percent of the investment made by the venture investment enterprise may be offset against its taxable income in the year in which the enterprise has held the equity for two full years.

Any amount that is not offset in the said year may be carried forward and offset in the following tax years.

Article 98

The fixed assets for which the recovery period may be shortened or accelerated depreciation may be applied, mentioned in Article 32 of Enterprise Income Tax Law, include:

1. fixed assets the products of which have to be updated or upgraded relatively fast due to technological advance; and
2. fixed assets that remain in a state of high-frequency vibration or strong corrosion all year round.

Where the recovery period is shortened, the minimum recovery period shall not be less than 60 percent of the recovery period as specified in Article 60 of the Regulations; where depreciation is accelerated, the double declining balance method or sum-of-years-digits method may be used.

Article 99

The amount that may be deducted, mentioned in Article 33 of Enterprise Income Tax Law, means that where an enterprise uses the resources specified in Catalog of Preferential Enterprise Income Tax Treatment for Comprehensive Use of Resources as its main raw materials to manufacture products that are not restricted or prohibited by the State and that meet relevant national and industrial standards, its income thus derived shall be included in the total income at a reduced rate of 90 percent.

The proportion of the raw materials mentioned in the preceding paragraph to the production materials shall not be lower than the standard specified in Catalog of Preferential Enterprise Income Tax Treatment for Comprehensive Use of Resources.

Article 100

Credited against the tax payable, mentioned in Article 34 of Enterprise Income Tax Law, means that where an enterprise purchases and actually uses the equipment specially designed for environmental protection, energy and water conservation, safe production, etc., as specified in Catalog of Preferential Enterprise Income Tax Treatment for Special Environmental Protection Equipment, Catalog of Preferential Enterprise Income Tax Treatment for Special Energy and Water Conservation Equipment and Catalog of Enterprise Income Tax Preferences

for Special Safe Production Equipment, 10 percent of its investment in the special equipment may be credited against its tax payable for the current year; any amount that is not credited in that year may be carried forward and credited in the following five tax years.

An enterprise that enjoys enterprise income tax preferences specified in the preceding paragraph shall actually purchase the special equipment specified in the preceding paragraph and actually put such equipment to use itself. Where the enterprise transfers or leases the aforesaid equipment within five years after purchase, it shall cease to enjoy enterprise income tax preferences and shall pay back the amount of enterprise income tax that has already been credited.

Article 101

The catalogs of enterprise income tax preferences specified in Articles 87, 99 and 100 of this Chapter shall be formulated by the finance and taxation departments of the State Council in consultation with relevant departments of the State Council, and shall be promulgated for implementation upon approval by the State Council.

Article 102

Where an enterprise, at the same time, engages in projects on which different enterprise income taxes are levied, its income derived from the projects to which preferences are applied shall separately be calculated, and its period expenses shall reasonably be allocated. Where an enterprise fails to separately calculate the income, it shall not enjoy enterprise income tax preferences.

Chapter V Tax Withheld at Source

Article 103

Where enterprise income tax payable withholding at source is applied to a non-resident enterprise in accordance with Enterprise Income Tax Law, the taxable income shall be calculated in accordance with the provisions of Article 19 of Enterprise Income Tax Law.

The total amount of income, mentioned in Article 19 of Enterprise Income Tax Law, refers to the total payments and all other charges received by a non-resident enterprise from payers.

Article 104

The payer, mentioned in Article 37 of Enterprise Income Tax Law, means an entity or an individual that is directly obligated to pay relevant money to a non-resident enterprise in accordance with relevant provisions of laws or as agreed in a contract.

Article 105

The payment, mentioned in Article 37 of Enterprise Income Tax Law, includes monetary and non-monetary payments, such as payment in cash, on remittance, by transfer of accounts and by rights of equivalent value.

Payment due, mentioned in Article 37 of Enterprise Income Tax Law, refers to the payables that, on the accrual basis, are to be included in relevant costs and expenses of the payer.

Article 106

The situations under which a withholding agent may be designated, as specified in Article 38 of Enterprise Income Tax Law, include:

1. where the anticipated period for project operation or the period for service provision is less than a tax year and there is evidence to show that the obligation to pay tax is not fulfilled;
2. where the formalities for tax registration or temporary tax registration have not been completed, and no agent in China is entrusted to fulfill the obligation to pay tax; and
3. where tax returns or prepaid tax returns for enterprise income tax have not been filed within the prescribed time limit.

The withholding agent specified in the preceding paragraph shall be designated by the tax authority at or above the county level, and shall concurrently be informed of the basis and method for calculating the tax to be withheld, as well as the time limit and method for withholding.

Article 107

The place where income is derived, mentioned in Article 39 of Enterprise Income Tax Law, refers to the place where income is derived as determined in accordance with the principle specified in Article 7 of the Regulations. Where income is derived at more than one place in China, the taxpayer shall choose one of the places to file tax returns and pay enterprise income tax.

Article 108

The taxpayer's other income in China, mentioned in Article 39 of Enterprise Income Tax Law, refers to the incomes derived by the taxpayer from other different sources inside China.

In recovering tax payable from the taxpayer, the tax authority shall inform the taxpayer of the reasons, the amount involved the time limit and method for payment, etc.

Chapter VI Special Tax Adjustment

Article 109

Associated parties, mentioned in Article 41 of Enterprise Income Tax Law, refer to enterprises, other organizations or individuals that have one of the following relationships with an enterprise:

1. having a direct or indirect control relationship with respect to funds, business operations, purchases and sales, etc.;
2. being controlled by the same third party directly or indirectly; or
3. having other relationships in connection with interest.

Article 110

The arm's length principle, mentioned in Article 41 of Enterprise Income Tax Law, refers to the principle that the unassociated parties adhere to in business transactions conducted on the basis of fair transactional prices and normal business practices.

Article 111

Appropriate methods, mentioned in Article 41 of Enterprise Income Tax Law, include the following:

1. comparable uncontrolled price method, which refers to the method of determining prices on the basis of the prices set for identical or similar business transactions between unassociated parties;
2. resale price method, which refers to the method of determining prices on the basis of the prices of the commodities that are purchased from an associated party and are resold to an unassociated party, minus the gross margins on sales through identical or similar business transactions;
3. cost plus method, which refers to the method of determining prices on the basis of costs plus reasonable expenses and profit margins;

4. transactional net margin method, which refers to the method of determining profits on the basis of the level of net profits obtained by unassociated parties through identical or similar business transactions;
5. profit split method, which refers to the method of distributing consolidated profits or losses among an enterprise and its associated parties on the basis of reasonable standards; and
6. other methods that conform to the arm's length principle.

Article 112

An enterprise may, in accordance with the provisions of the second paragraph of Article 41 of Enterprise Income Tax Law, allocate the costs jointly incurred with its associated parties, on the arm's-length principle, and reach an agreement on costs sharing.

When an enterprise shares costs with its associated parties, it shall do so on the principle of matching the costs with the anticipated benefits, and it shall submit relevant data in accordance with the requirements of the tax authority within the period as prescribed by the tax authority.

Where an enterprise violates the provisions of the first or the second paragraph of this Article when sharing costs with its associated parties, the costs allocated by itself shall not be deducted when its taxable income is calculated.

Article 113

The advance pricing arrangement, mentioned in Article 42 of Enterprise Income Tax Law, refers to an agreement reached by an enterprise with the tax authority, in respect of the pricing principles and calculation methods to be adopted for its transactions with the associated parties in the years to come, after it submits an application to the tax authority, consults with the authority on the arm's length principle and obtains the authority's confirmation.

Article 114

Relevant information, mentioned in Article 43 of Enterprise Income Tax Law, includes the following:

1. information about the determining standards, computation methods, descriptions, etc., of the prices and expenses at the time when a business transaction is effected with an associated party;

2. information about the resale (or transfer) prices or ultimate sale (or transfer) prices of property, rights to use the property, services, etc., involved in business transactions between associated parties;
3. information about product prices, pricing methods, profit levels, etc., comparable to those of the enterprise under investigation, which are to be submitted by other enterprises and which are related to the investigation on transactions between associated parties; and
4. other information about transactions between associated parties.

Other enterprises related to the investigations, mentioned in Article 43 of Enterprise Income Tax Law, refer to the enterprises that are similar to the enterprise under investigation in terms of the substance and form of production and business operations. An enterprise shall submit information about the determining standards, computation methods, descriptions, etc., of the prices and expenses of transactions between associated parties within the time limit as prescribed by the tax authority. The associated parties and other enterprises related to the investigation on transactions between associated parties shall provide relevant information within the time limit as agreed with the tax authority.

Article 115

The tax authority may use the following methods when determining the taxable income of an enterprise in accordance with the provisions of Article 44 of Enterprise Income Tax Law:

1. by referring to the profit rate levels of identical or similar enterprises;
2. based on the enterprise's costs plus its reasonable expenses and profit margins;
3. based on the reasonable proportion of the associated parties' group profits; or
4. by other reasonable methods.

Where an enterprise disagrees with the taxable income determined by the tax authority in accordance with the methods specified in the preceding paragraph, it shall provide relevant evidence, and the taxable income determined may be adjusted upon verification by the tax authority.

Article 116

A Chinese individual resident, mentioned in Article 45 of Enterprise Income Tax Law, refers to the individuals who, in accordance with the provisions of

Individual Income Tax Law of the People's Republic of China, pay individual income tax in China on their income derived inside or outside China.

Article 117

Control, mentioned in Article 45 of Enterprise Income Tax Law, includes:

1. the situation where a resident enterprise or Chinese resident individually holds more than 10 percent of a foreign enterprise's voting shares in a direct or indirect manner, and holds jointly with each other more than 50 percent of that foreign enterprise's shares; and
2. the situation where the proportion of the shares held by a resident enterprise, or by a resident enterprise jointly with a Chinese resident, does not reach the standard as specified in Subparagraph (1), but it constitutes an effective control over the foreign enterprise in terms of shares, funds, business operations, purchases, sales, etc.

Article 118

The effective tax burden is substantially lower than the tax rate specified in the first paragraph of Article 4 of Enterprise Income Tax Law, as mentioned in Article 45 of Enterprise Income Tax Law, means that it is lower than the tax rate specified in the first paragraph of Article 4 of Enterprise Income Tax Law by 50 percent.

Article 119

Debt investment, mentioned in Article 46 of Enterprise Income Tax Law, refers to the financing directly or indirectly obtained by an enterprise from its associated parties which requires the returning of the principal and payment of interest or which requires compensation in other forms in the nature of interest payment.

Debt investment indirectly obtained by an enterprise from its associated parties includes:

1. debt investment provided by an associated party through an unrelated third party;
2. debt investment provided by an unrelated third party which is guaranteed by an associated party who is jointly and severally held liable in that regard; and
3. other debt investments indirectly obtained from an associated party, which are debts in essence.

Equity investment, mentioned in Article 46 of Enterprise Income Tax Law, refers to the investment received by an enterprise, which does not need the returning of the principal and payment of interest and by which the investors have the ownership of the net assets of the enterprise.

The standard, mentioned in Article 46 of Enterprise Income Tax Law, shall be separately prescribed by the finance and taxation departments of the State Council.

Article 120

Without reasonable business purposes, as mentioned in Article 47 of Enterprise Income Tax Law, means that the main purpose is to reduce, exempt or defer tax payments.

Article 121

Where the tax authority makes special adjustment to tax payments of an enterprise in accordance with the provisions of tax laws and administrative regulations, it shall charge additional interest on a daily basis on the tax levied retroactively, during the period beginning from June 1 of the year next to the tax year in which the tax should be paid to the date on which the tax levied retroactively is paid.

The additional interest charged as specified in the preceding paragraph shall not be deducted from taxable income.

Article 122

Interest, mentioned in Article 48 of Enterprise Income Tax Law, shall be calculated on the basis of the benchmark interest rate for loans in Renminbi, as published by the People's Bank of China in the tax year in which the tax should be paid, for the same period as the tax is paid retroactively, plus five percentage points.

If an enterprise provides relevant information in accordance with the provisions of Article 43 of Enterprise Income Tax Law and the Regulations, interest may only be calculated on the basis of the benchmark interest rate for loans in Renminbi, as specified in the preceding paragraph.

Article 123

Where an enterprise effects a business transaction with its associated party at variance with the arm's length principle, or it makes other arrangements without reasonable business purposes, the tax authority shall have the power to make tax adjust-

ment within 10 years beginning from the tax year in which such transaction occurs.

Chapter VII Tax Collection and Administration

Article 124

The place of registration, mentioned in Article 50 of Enterprise Income Tax Law, means the domicile registered by the enterprise in accordance with relevant regulations of the State.

Article 125

When an enterprise calculates and pays enterprise income tax on a consolidated basis, it shall compute its taxable income in a uniform manner. The specific measures in this respect shall separately be formulated by the finance and taxation departments of the State Council.

Article 126

The principal establishment or place, mentioned in Article 51 of Enterprise Income Tax Law, shall meet both of the following conditions:

1. having supervisory and administrative responsibility for the production and business operations of all the other establishments or places; and
2. keeping complete accounting records and vouchers that serve to reflect the accurate income, costs, expenses, profits and losses of all establishments or places.

Article 127

Enterprise income tax shall be prepaid on a monthly or quarterly basis, subject to decision by the tax authority.

Where an enterprise prepays enterprise income tax on a monthly or quarterly basis in accordance with the provisions of Article 54 of Enterprise Income Tax Law, it shall make the payment on the basis of its actual monthly or quarterly profits. If it has difficulty in making such payment, it may do so on the basis of the average monthly or quarterly taxable income of the preceding tax year, or through other methods as approved by the tax authority. Once the prepayment method is determined, it shall not arbitrarily be altered during that tax year.

Article 128

Whether an enterprise has made a profit or suf-

ferred losses during a tax year, it shall, within the time limit specified in Article 54 of Enterprise Income Tax Law, file prepaid enterprise income tax returns, the annual enterprise income tax return, financial accounting announcements, and other relevant information as prescribed by the tax authority.

Article 129

When prepaying enterprise income tax, the enterprise that calculates its income in currency other than Renminbi shall convert such income into Renminbi at the Renminbi central parity on the last day of each month or quarter, and calculate its taxable income accordingly. When making tax settlement at the end of the year, the enterprise shall not convert and calculate again the amount of the income on which tax has already been prepaid on a monthly or quarterly basis, and it shall only convert into Renminbi the amount of the income on which enterprise income tax has not been paid for that tax year, at the Renminbi central parity on the last day of the tax year, and calculate the taxable income.

Where the tax authority, upon examination, confirms that an enterprise has under-calculated or over-calculated its income prescribed in the preceding paragraph, the enterprise shall calculate the taxable income by converting the amount of under-calculated or over-calculated income into Renminbi at the Renminbi central parity quoted on the last day of the month preceding the one in which the tax authority, upon examination, confirms that the overdue tax shall be paid or the overpaid tax shall be refunded, and then calculate the amount of tax to be paid or refunded.

Chapter VIII Supplementary Provisions

Article 130

An enterprise set up upon approval prior to the promulgation of Enterprise Income Tax Law, mentioned in the first paragraph of Article 57 of Enterprise Income Tax Law, refers to an enterprise that has completed the formalities of registration before the promulgation of Enterprise Income Tax Law.

Article 131

The relevant provisions of the second and the third paragraphs of Article 2 of Enterprise Income Tax Law shall be applicable *mutatis mutandis* to the

enterprises established in Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan region.

Article 132

The Regulations shall enter into force from January 1, 2008. Implementation Rules for Income Tax Law of the People's Republic of China for Foreign Invested Enterprises and Foreign Enterprises, promulgated by the State Council on June 30, 1991, and Implementation Rules for Provisional Regulations of the People's Republic of China on Enterprise Income Tax, promulgated by the Ministry of Finance on February 4, 1994, shall be repealed simultaneously.



CPO & Partners (Shanghai) Co.,Ltd.
Yan 'an middle road n.841, Jing 'an District 200040, Shanghai - OOCL Plaza, Floor 26, Suite 2604, 2605
Tel: +86 021 63120097 – www.cpopartners.com – e-mail: shanghai@cpopartners.com