

PRC Corporate Income Tax Law

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Contents

Corporate Income Tax Law 3

Implementation Rules 14

State Council Notice 39 40

State Council Notice 40 48

Introduction



This publication contains our translation of (i) the Corporate Income Tax Law (CIT) of the People's Republic of China (PRC) promulgated by the National People's Congress (effective 1 January 2008), (ii) the Implementation Rules for the CIT Law of the PRC (Implementation Rules) promulgated by the State Council (effective 1 January 2008) and (iii) the two notices setting out transitional rules promulgated by the State Council. As the law, implementation rules and notices are in Chinese only, the English translation is intended to help the users of this publication understand these documents.

Please note that there is no official English translation of the law, implementation rules and notices. This publication merely reflects our understanding, based on our experience and communications with the PRC tax authorities, of the law, implementation rules and notices as they stood at the date of publication. There is no guarantee that our translation is accurate. The official Chinese version should be referred to when in doubt. This publication does not constitute tax advice and should not be relied upon as such without consulting a tax advisor.

For tax advice on specific transactions, you may get in touch with one of our China tax partners, whose contact information can be found on our websites: www.kpmg.com.cn and www.kpmg.com.hk.

The Corporate Income Tax Law of the People's Republic of China

Chapter	Title	Articles
1	General provisions	1 – 4
2	Taxable income	5 - 21
3	Tax payable	22 – 24
4	Tax incentives	25 – 36
5	Withholding of tax at source	37 – 40
6	Special tax adjustments	41 – 48
7	Tax collection and administration	49 – 56
8	Supplementary provisions	57 – 60

Corporate Income Tax Law



Decree No. 63 of Chairman of the People's Republic of China

The Corporate Income Tax Law of the People's Republic of China was passed at the 5th Full Session of the 10th National People's Congress of the People's Republic of China on 16 March 2007 and is hereby promulgated. It will come into effect on 1 January 2008.

Hu Jintao, Chairman of the People's Republic of China
16 March 2007

Corporate Income Tax Law of the People's Republic of China

(Passed at the 5th Full Session of the 10th National People's Congress of the PRC on 16 March 2007)

- Chapter 1 General provisions
- Chapter 2 Taxable income
- Chapter 3 Tax payable
- Chapter 4 Tax incentives
- Chapter 5 Withholding of tax at source
- Chapter 6 Special tax adjustments
- Chapter 7 Tax collection and administration
- Chapter 8 Supplementary provisions

Chapter 1 General Provisions

Article 1 In the People's Republic of China (PRC), enterprises and other organisations that derive income (hereinafter referred to as enterprises) shall be the taxpayers of the Corporate Income Tax (CIT) and shall pay CIT in accordance with the provisions of this Law.

This Law shall not apply to sole proprietor enterprises or partnership enterprises.

Article 2 Enterprises are classified as resident enterprises and non-resident enterprises.

A resident enterprise as referred to in this Law is an enterprise that is established in the PRC under the PRC laws, or an enterprise that is established under the laws of foreign countries (regions) but whose place of effective management is located in the PRC.

A non-resident enterprise as referred to in this Law is an enterprise that is established under the laws of foreign countries (regions) with the place of effective management located outside the PRC, but which has an establishment or place of business in the PRC, or which does not have an establishment or place of business in the PRC, but derives income from sources within the PRC.

Article 3 A resident enterprise shall pay CIT on its income from sources within and outside the PRC.

A non-resident enterprise with an establishment or place of business in the PRC shall pay CIT on its PRC-sourced income derived by such establishment or place of business and on its foreign-sourced income which is effectively connected with such establishment or place of business.

A non-resident enterprise, that does not have any establishment or place of business in the PRC, or that has an establishment or place of business in the PRC but whose income is not effectively connected with such establishment or place of business, shall pay CIT on its PRC-sourced income.

Article 4 The CIT rate shall be 25%.

The tax rate applicable to non-resident enterprises deriving income as specified in paragraph 3 of Article 3 of this Law shall be 20%.

Chapter 2 Taxable income

Article 5 The taxable income of an enterprise in a tax year shall be its total revenue for the tax year less its non-taxable revenue, tax-exempt revenue, various deductions and allowable losses carried forward from prior years.

Article 6 The total revenue of an enterprise refers to both the monetary revenue and non-monetary revenue derived by an enterprise from various sources, which shall include:

1. Revenue from the sale of goods;
2. Revenue from the provision of services;
3. Revenue from the transfer of property;
4. Dividends, profit distributions and other returns on equity investments;
5. Interest;
6. Rentals;
7. Royalties;
8. Donations received;
9. Other revenue.

Article 7 The following revenue out of the total revenue shall be non-taxable:

1. Funds allocated under public finance;
2. Government administrative charges and contributions to government reserve funds collected according to the relevant laws and subject to government's financial administration;
3. Other non-taxable revenue stipulated by the State Council.

Article 8 Reasonable and related expenses actually incurred by an enterprise, including costs, expenses, taxes, losses and other expenses, are deductible in calculating taxable income for CIT purposes.

Article 9 Donations made by an enterprise for public welfare are deductible in calculating taxable income for CIT purposes subject to the limit of no more than 12% of total profit in the current year.

Article 10 The following items are not deductible in calculating taxable income:

1. Dividends, profit distributions and other returns on equity investments paid to investors;
2. CIT;
3. Late payment interest charged on tax underpayment;
4. Fines, penalties, and losses resulting from confiscation of property;
5. Donations other than those stipulated in Article 9 of this Law;
6. Sponsorship expenses;
7. Unapproved provisions;
8. Other expenditures incurred that are unrelated to the earning of revenue.

Article 11 In calculating its taxable income, an enterprise may deduct depreciation charges on its fixed assets where the charges are calculated in accordance with the relevant provisions.

Depreciation charges on the following fixed assets are not deductible:

1. Fixed assets not in use other than houses and buildings;
2. Fixed assets leased from another party under an operating lease;
3. Fixed assets leased to another party under a finance lease;
4. Fixed assets fully depreciated but still in use;
5. Fixed assets that are unrelated to business activities;
6. Land appraised independently and booked as fixed assets;
7. Other non-depreciable fixed assets.

Article 12 In calculating its taxable income, an enterprise can deduct the amortisation charges on its intangible assets where such charges are calculated in accordance with the relevant stipulations.

Amortisation charges on the following intangible assets are not deductible:

1. Expenses incurred by an enterprise in the development of its own intangible assets that have already been deducted in calculating the taxable income of the enterprise;
2. Self-generated goodwill;
3. Intangible assets unrelated to the business activities;
4. Other intangible assets on which amortisation charges are not allowed to be deducted.

- Article 13** In calculating its taxable income, an enterprise can deduct the following expenses where such expenses are treated as long-term deferred expenses and amortised in accordance with the relevant stipulations:
1. Expenses incurred for the alteration of fully depreciated fixed assets;
 2. Expenses incurred for the alteration of fixed assets leased from another party;
 3. Expenses incurred for the overhaul of fixed assets;
 4. Other expenses that shall be treated as long-term deferred expenses.
- Article 14** The cost of the investment assets of an enterprise shall not be deducted in calculating the taxable income of an enterprise during the period of the external investment.
- Article 15** In calculating its taxable income, the cost of inventories used or sold by an enterprise, which is computed in accordance with the relevant provisions, is allowed to be deducted.
- Article 16** Where an enterprise transfers its assets, the net asset value of such assets is allowed to be deducted in calculating its taxable income.
- Article 17** Where an enterprise calculates its CIT on a consolidated basis, losses incurred by its overseas business establishment shall not be offset against the profits from its business establishments in the PRC.
- Article 18** Losses incurred by an enterprise in a tax year are allowed to be carried forward and utilised against the income of subsequent years. The loss carry-forward period shall not exceed 5 years.
- Article 19** The taxable income of a non-resident enterprise as described in paragraph 3 of Article 3 of this Law shall be calculated according to the following methods:
1. In the case of dividends, profit distributions and other returns on equity investments, interest, rentals and royalties, the taxable income shall be the entire amount of revenue;
 2. In the case of capital gains from transfer of properties, the taxable income shall be the entire amount of revenue less net property value;
 3. In the case of other income, the taxable income shall be calculated with reference to the two methods mentioned above.
- Article 20** Detailed measures regarding the specific scope of, and the standards for, revenue and deductible expenses, and detailed measures on the tax treatment of assets as stipulated in this Chapter, shall be issued by the departments of the State Council in charge of finance and taxation.
- Article 21** In calculating its taxable income, if there is inconsistency between the financial and accounting treatment adopted by an enterprise and provisions of the tax laws and regulations, the taxable income shall be calculated in accordance with the tax laws and regulations.

Chapter 3 Tax payable

Article 22 The amount of tax payable by an enterprise shall be equal to the enterprise's taxable income times its applicable CIT rate, less the amount of its allowable reductions, exemptions and tax credits pursuant to the provisions of this Law on tax incentives.

Article 23 Foreign income tax paid on the following income may be credited against the CIT payable by an enterprise in the current period, provided that the amount of such tax credit shall not exceed the CIT otherwise payable on such income calculated in accordance with the provisions of this Law; the amount of foreign tax paid in excess of the allowable tax credit limit in the current period may be carried forward and credited against the CIT payable in any of the subsequent five years to the extent that in each of those years there remains unused credit limit for that year after the utilisation of the foreign tax credit arising in that year:

1. Taxable income from sources outside the PRC derived by a resident enterprise;
2. Taxable income derived from sources outside the PRC by a non-resident enterprise, which is effectively connected with the establishment or place of business of such non-resident enterprise within the PRC.

Article 24 For foreign-sourced dividends and profit distributions or other returns on equity investments that are distributed to a resident enterprise by a foreign enterprise directly or indirectly controlled by the resident enterprise, the portion of the income tax actually paid outside the PRC by a foreign enterprise that is attributable to such dividends, profit distributions or other returns on equity investments may be used by the resident enterprise as a foreign income tax credit and credited up to the limit specified in Article 23 of this Law.

Chapter 4 Tax incentives

Article 25 CIT incentives are available to industries and projects that are eligible for key support from the State or whose development is encouraged by the State.

Article 26 The following revenue derived by an enterprise shall be exempt from CIT:

1. Interest from state treasury debts;
2. Qualified dividends, profit distributions and other returns on equity investments derived by a resident enterprise from another resident enterprise;
3. Dividends, profit distributions and other returns on equity investments derived by a non-resident enterprise from another resident enterprise, to the extent that the dividends, profit distributions and other returns are effectively connected with the establishment or place of business in the PRC of the non-resident enterprise;
4. Revenue of a qualified non-profit organisation.

- Article 27** The following income derived by an enterprise may be eligible for exemption from or reduction of CIT:
1. Income derived from projects in the agriculture, forestry, animal husbandry or fishery industry;
 2. Income derived from investment in or operation of public infrastructure projects eligible for key support from the State;
 3. Income derived from qualified environmental protection and energy or water conservation projects;
 4. Income derived from technology transfers that meet certain conditions;
 5. Income described in paragraph 3 of Article 3 of this Law.
- Article 28** The CIT rate applicable to small-scale enterprises with low profitability that meet certain conditions shall be reduced to 20%.
- The CIT rate applicable to Advanced and New Technology Enterprises eligible for key support from the State shall be reduced to 15%.
- Article 29** The autonomous government authorities of ethnic autonomous regions may resolve to grant a reduction or exemption of the CIT to the enterprises located within their jurisdictions for such part of CIT as retained by ethnic autonomous regions. Tax reductions or exemptions that autonomous prefectures and counties resolve to grant to such enterprises shall be subject to approval from the People's Governments of the relevant provinces, autonomous regions and municipalities.
- Article 30** In calculating its taxable income for CIT purposes, an enterprise may claim additional deduction on the following expenses:
1. Research and development expenses incurred for the development of new technologies, new products and new technological processes;
 2. Salary expenses paid to disabled personnel employed by the enterprise and other personnel whose employment is encouraged by the State.
- Article 31** A venture capital enterprise, that makes venture capital investment in the areas eligible for key support and encouragement from the State, shall be eligible to set off a certain percentage of its investment against its taxable income for CIT purposes.
- Article 32** If it is necessary to accelerate depreciation of an enterprise's fixed assets due to such reasons as technology advancement, the depreciation period may be shortened or an accelerated depreciation method may be adopted.
- Article 33** Revenue derived from the manufacture of products that are in line with state industrial policy and involve the synergistic utilisation of resources may be reduced in calculating the taxable income of an enterprise.
- Article 34** A certain percentage of the investment made by an enterprise on the purchase of special equipment for the purpose of environmental protection, energy and water conservation or production safety, may be credited against the CIT payable.

Article 35 The detailed measures for the preferential tax treatments provided for in this Law shall be stipulated by the State Council.

Article 36 To meet the needs of national economic and social development, or in response to unexpected events that have substantial impacts on enterprises' business operations, the State Council may issue policies on special tax incentives and shall notify the Standing Committee of the National People's Congress of such policies.

Chapter 5 Withholding of tax at source

Article 37 CIT payable by a non-resident enterprise on the income as described in paragraph 3 of Article 3 of this Law shall be withheld at source, and the payer shall be the withholding agent. The withholding agent shall withhold the tax from the amount paid or payable at the time the amount is paid or becomes due.

Article 38 With respect to the income tax payable on the income derived by a non-resident enterprise from performance of engineering work and provision of labour services within the PRC, the tax authorities may designate the payer of the contracted amount or labour service fee as the withholding agent.

Article 39 Should the withholding agent fail to withhold the income tax payable or be unable to perform its withholding obligation in respect of such CIT payable as specified in Article 37 and Article 38 of this Law, the taxpayer shall pay the tax at the place where such taxable income is derived. If the taxpayer fails to pay the tax as required by law, the tax authorities are empowered to recover the tax payable by the taxpayer from any other revenue due to the taxpayer from another payer in the PRC.

Article 40 A withholding agent shall remit each amount of tax it withholds to the state treasury within seven days of the date of withholding and shall file withholding tax returns with the local tax authority at the place where it is located.

Chapter 6 Special tax adjustments

Article 41 If a business transaction between an enterprise and a related party does not comply with the arm's-length principle, thus reducing the taxable income or revenue of the enterprise or the related party, the tax authorities shall be empowered to make adjustments using reasonable methods.

When calculating the taxable income, the costs incurred by an enterprise and a related party for the joint development or transfer of intangible assets, or for the joint provision or receipt of labour services, shall be allocated based on the arm's-length principle.

Article 42 An enterprise may submit the pricing principles and computational methods applied in its related-party transactions to the tax authority. Through negotiation and validation, the tax authority may conclude an advance pricing arrangement with the enterprise.

Article 43 When an enterprise files its annual CIT return with the tax authority, it shall submit, in respect of its business transactions with related parties, a form

for the annual reporting of related-party transactions along with the annual CIT return.

When the tax authority conducts an investigation on related party transactions, the enterprise under investigation, its related parties, as well as other enterprises relevant to the related party transactions under investigation, shall provide relevant information according to the relevant stipulations.

Article 44 If an enterprise does not provide information on its related-party transactions, or provides false and incomplete information that does not truthfully reflect its related-party transactions, the tax authority shall be empowered to assess its taxable income on a deemed basis according to law.

Article 45 Where a resident enterprise by itself, or together with individual PRC residents, controls an enterprise that is established in a country (region) where the effective tax burden is distinctly lower than the tax rate set forth in paragraph 1 of Article 4 of this Law and that enterprise does not distribute its profits or reduces the distribution of its profits not on account of any reasonable operational needs, the portion of the profits attributable to the resident enterprise shall be included in the revenue of the resident enterprise in the current period.

Article 46 Where an enterprise receives from its related parties debt investment and equity investment in a ratio that exceeds the prescribed level, the interest expenses incurred as a result shall not be deductible in calculating the taxable income of such enterprise.

Article 47 If an enterprise carries out any other business arrangements without reasonable business purposes resulting in reduction of its taxable revenue or income, the tax authority shall be empowered to make adjustments using reasonable methods.

Article 48 When additional tax is to be levied pursuant to a tax adjustment made by the tax authority in accordance with the stipulations of this Chapter, the additional tax shall be collected and additional interest shall also be levied in accordance with the relevant stipulations by the State Council.

Chapter 7 Tax collection and administration

Article 49 The collection and administration of CIT shall be carried out in accordance with the provisions stipulated in this Law as well as Tax Collection and Administration Law of the PRC.

Article 50 Except as otherwise specified by tax laws and regulations, a resident enterprise shall pay tax at the place where it is registered, unless it is registered outside the PRC, in which case it shall pay tax at the place of its effective management.

Where a resident enterprise has business establishments that do not have a legal person status in the PRC, the CIT of such business establishments shall be calculated and paid on a consolidated basis.

Article 51 A non-resident enterprise shall pay tax at the place where its PRC establishment or place of business is located, if it derives income as described in paragraph 2 of Article 3 of this Law. If a non-resident enterprise has two or more establishments or places of business in the PRC, it may, upon the approval of the tax authority, select its principal establishment or place of business to pay CIT on a consolidated basis.

A non-resident enterprise that derives income as described in paragraph 3 of Article 3 of this Law shall pay tax at the place where its withholding agent is located.

Article 52 Unless otherwise specified by the State Council, enterprises shall not be allowed to pay CIT on a consolidated basis.

Article 53 CIT shall be calculated for a tax year, which starts from 1 January and ends on 31 December of a calendar year.

If the actual operating period of an enterprise is less than 12 months in a tax year because it commences or terminates its business during the year, its actual operating period in the current year shall be treated as a tax year.

When an enterprise is liquidated according to law, the liquidation period shall be treated as a tax year.

Article 54 CIT shall be paid in advance on a monthly or quarterly basis.

An enterprise shall, within 15 days after the end of each month or quarter, file a CIT return with, and make the tax payment to, the tax authority.

Within five months of the year end, an enterprise shall file an annual CIT return with the tax authority, and perform the annual reconciliation so as to settle the tax to be paid or claim the tax to be refunded.

An enterprise shall file its financial and accounting reports and other relevant information along with the annual CIT return in accordance with the regulations.

Article 55 If an enterprise terminates its business operation in the middle of a tax year, it shall perform reconciliation and settle the annual CIT payment for the current period within 60 days of the date of the actual termination of the business operation.

Prior to deregistration with the tax authority, an enterprise shall file its CIT return with, and make the tax payment to, the tax authority on its liquidation income.

Article 56 CIT paid in accordance with this Law shall be calculated in renminbi. Income earned in other currencies shall be converted into renminbi for the purpose of calculating and paying tax.

Chapter 8 Supplementary provisions

Article 57 According to the stipulations of the State Council, enterprises that have been approved to be established prior to the promulgation of this Law and that are entitled to reduced tax rates in accordance with the

then prevailing tax laws and regulations, shall be eligible for a five-year transition period after the implementation of this Law in accordance with the stipulations of the State Council, during which time the tax rate will be increased step by step to the tax rate as set out in this Law; enterprises that are entitled to a tax holiday can continue to enjoy the incentive after the implementation of this Law until it expires. However, for enterprises that have not started enjoying such tax holiday yet due to their losses, the tax holiday period shall be deemed to commence from the year when this Law comes into effect.

Transitional tax incentives shall be available to newly established Advanced and New Technology Enterprises that require the key support of the State provided that they are established in specially designated areas that have been set up in accordance with national laws with an aim to develop foreign economic cooperation and technological exchange, or are established in specific areas that have been permitted by the State Council to follow the special policies available in aforementioned areas. The State Council shall issue practical stipulations for such incentives.

Other enterprises that have already been recognised by the State as encouraged-type enterprises may enjoy CIT exemptions or reductions in accordance with the stipulations of the State Council.

- Article 58** Where the provisions of a tax treaty concluded between the government of the PRC and a foreign government are different from the provisions of this Law, the provisions of the treaty shall prevail.
- Article 59** The State Council shall formulate implementation rules on the basis of this Law.
- Article 60** This Law shall become effective on 1 January 2008. The Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises passed at the 4th Session of the 7th National People's Congress on 9 April 1991 and the Provisional Regulations of the People's Republic of China on Enterprise Income Tax promulgated by the State Council on 13 December 1993 shall be repealed on the same date.

The Implementation Rules for the Corporate Income Tax Law of the People's Republic of China

Chapter	Title	Articles
1	General provisions	1 – 8
2	Taxable income	9 – 75
	Section 1 General rules	9 – 11
	Section 2 Income	12 – 26
	Section 3 Deductions	27 – 55
	Section 4 Tax treatment of assets	56 – 75
3	Tax payable	76 – 81
4	Tax incentives	82 – 102
5	Withholding of tax at source	103 – 108
6	Special tax adjustments	109 – 123
7	Tax collection and administration	124 – 130
8	Supplementary provisions	131 – 133

Implementation Rules



Decree of the State Council of the People's Republic of China

No. 512

The Implementation Rules of the Corporate Income Tax Law of the People's Republic of China, which were passed at the 197th executive meeting of the State Council on 28 November 2007, are hereby promulgated and shall take effect on 1 January 2008.

Premier Wen Jiabao
6 December 2007

The Implementation Rules for the Corporate Income Tax Law of the People's Republic of China

Chapter 1 General provisions

- Article 1** These Implementation Rules are formulated in accordance with the Corporate Income Tax Law (CIT Law) of the People's Republic of China (PRC).
- Article 2** "Sole proprietor enterprises and partnership enterprises" as mentioned in Article 1 of the CIT Law refers to sole proprietor enterprises and partnership enterprises that are established in accordance with the laws and administrative regulations of the PRC.
- Article 3** "An enterprise that is established in the PRC under the PRC laws" as mentioned in Article 2 of the CIT Law includes an enterprise, a public institution, a social body and other revenue-generating organisations that are established in the PRC in accordance with the laws and administrative regulations of the PRC.
- "An enterprise that is established under the laws of foreign countries (regions)" as mentioned in Article 2 of the CIT Law includes an enterprise and other revenue-generating organisations that are established in accordance with the laws of foreign countries (regions).
- Article 4** A "place of effective management" as mentioned in Article 2 of the CIT Law refers to an establishment that exercises substantive and overall management and control over the production and business operations, personnel, financial functions, properties, etc. of an enterprise.
- Article 5** "An establishment or place of business" as mentioned in paragraph 3 of Article 2 of the CIT Law refers to an establishment or place of business that is engaged in production and business operations in the PRC, including:
- (1) A management establishment, a business establishment or an office;
 - (2) A factory, farm, or place of extraction of natural resources;
 - (3) A place where services are provided;
 - (4) A place where a project of construction, installation, assembly, repair, exploration, etc. is carried out;
 - (5) Other establishments or places of business where production and business operations are carried out.

Where a non-resident enterprise commissions a business agent to carry out in the PRC production and business operations, including where the commissioned entity or individual habitually enters into contracts, or stores and delivers goods, etc. on its behalf, that business agent shall be regarded as an establishment or place of business of the non-resident enterprise in the PRC.

Article 6 “Income” as mentioned in Article 3 of the CIT Law includes income from the sales of goods, income from the provision of services, income from the transfer of properties, dividends, profit distributions and other returns on equity investments, interest income, rental income, royalty income, income from donations and other income.

Article 7 “Income from sources within and outside the PRC” as mentioned in Article 3 of the CIT Law shall be determined according to the following principles:

- (1) For income from the sales of goods, the source shall be the place where the transactions take place;
- (2) For income from the provision of services, the source shall be the place where the services are provided;
- (3) For income from the transfer of properties, in the case of immovable properties, the source shall be the place where the property is located; in the case of movable properties, the source shall be where the enterprise, establishment or place of business that transfers the property is located; and in the case of equity investments, the source shall be where the invested enterprise is located;
- (4) For income from dividends, profit distributions and other returns on equity investments, the source shall be the place where the enterprise making the distributions is located;
- (5) For interest income, rental income, royalty income, the source shall be the place where the enterprise, establishment or place of business that bears or pays the income is located; or the place of residence of the individual who bears or pays the income;
- (6) For other income, the source shall be determined by the departments of the State Council in charge of finance and taxation.

Article 8 “Effectively connected” as mentioned in Article 3 of the CIT Law refers to the situation where the establishment or place of business in the PRC of a non-resident enterprise owns the equity interests or debt claims that give rise to income, and where such establishment or place of business owns, manages or controls the properties that give rise to the income.

Chapter 2 Taxable income

Section 1 General rules

Article 9 The taxable income of an enterprise shall be determined on an accrual basis. Income and expenses that are related to the current period shall be

recognised as income and expenses for the current period regardless of whether the payments have been received or made; income and expenses that are not related to the current period shall not be recognised as income and expenses for the current period even if the payments have been received or made during the current period. Notwithstanding the above, these Implementation Rules and the departments of the State Council in charge of finance and taxation may prescribe otherwise.

Article 10 “Losses” as mentioned in Article 5 of the CIT Law refers to the negative amount that is arrived at by deducting non-taxable income, tax-exempt income and various deductions from the total income of each tax year in accordance with the provisions of the CIT Law and these Implementation Rules.

Article 11 “Liquidation income” as mentioned in Article 55 of the CIT Law refers to the balance of the realisable value of, or the transaction price for, all the assets of an enterprise after subtracting therefrom the net asset value, liquidation expenses and related taxes and charges.

Of the remaining assets that are distributed by the liquidating enterprise to the investing enterprise, the part that corresponds to the investing enterprise’s share of the accumulated undistributed earnings and accumulated surplus reserves of the liquidating enterprise shall be treated as dividend income; the part of the remaining assets in excess of the aforementioned dividend income shall be recognised as gains or losses from the transfer of investment assets to the extent that such part is in excess of or less than the cost of investment.

Section 2 Income

Article 12 “Monetary revenue derived by an enterprise” as mentioned in Article 6 of the CIT Law includes cash, deposits, accounts receivable, notes receivable, bond investments to be held to maturity, debts forgiven, etc.

“Non-monetary revenue derived by an enterprise” as mentioned in Article 6 of the CIT Law includes fixed assets, biological assets, intangible assets, equity investments, inventories, bond investments not to be held to maturity, services and related rights, etc.

Article 13 “Non-monetary revenue derived by an enterprise” as mentioned in Article 6 of the CIT Law shall be determined based on the fair value.

The aforementioned fair value refers to the value that is determined in accordance with the market price.

Article 14 “Revenue from the sale of goods” as mentioned in item 1 of Article 6 of the CIT Law refers to the income derived by an enterprise from the sale of merchandise, products, raw materials, packaging materials, low-value consumables and other inventories.

Article 15 “Revenue from the provision of services” as mentioned in item 2 of Article 6 of the CIT Law refers to the revenue derived by an enterprise from engaging in construction and installation, repair, transportation, warehousing and letting, finance and insurance, postal communications

and telecommunications, consultancy and brokerage, culture and sports, scientific research, technical services, education and training, catering and accommodation, intermediary and agency, sanitation and health care, community services, tourism, entertainment, processing and other service operations.

Article 16 “Revenue from the transfer of property” as mentioned in item 3 of Article 6 of the CIT Law refers to the revenue derived by an enterprise from the transfer of fixed assets, biological assets, intangible assets, equity interests, debt claims, etc.

Article 17 “Dividends, profit distributions and other returns on equity investments” as mentioned in item 4 of Article 6 of the CIT Law refers to income derived by an enterprise from investees on account of equity investments.

Dividends, profit distributions and other returns on equity investments shall be recognised on the date on which the investee resolves to make a profit distribution, unless the departments of the State Council in charge of finance and taxation prescribe otherwise.

Article 18 “Interest” as mentioned in item 5 of Article 6 of the CIT Law refers to revenue derived by an enterprise from the provision of funds for the use by others that does not constitute an equity investment, or from the use of its funds by others, including deposit interest, loan interest, bond interest, arrears interest, etc.

Interest shall be recognised on the date on which the interest becomes payable by the debtor under the contract.

Article 19 “Rentals” as mentioned in item 6 of Article 6 of the CIT Law refers to the revenue derived by an enterprise from the provision of the right to use fixed assets, packaging device or other tangible assets.

Rental income shall be recognised on the date on which the rent becomes payable under the contract.

Article 20 “Royalties” as mentioned in item 7 of Article 6 of the CIT Law refers to revenue derived by an enterprise from the provision of the right to use patents, non-patented technologies, trademarks, copyrights and other licensed rights.

Royalties shall be recognised on the date on which the royalties become payable under the contract.

Article 21 “Donations received” as mentioned in item 8 of Article 6 of the CIT Law refers to monetary and non-monetary assets received by an enterprise from other enterprises, organisations or individuals without consideration.

Donations received shall be recognised as revenue on the date on which the donated assets are actually received.

Article 22 “Other revenue” as mentioned in item 9 of Article 6 of the CIT Law refers to income derived by an enterprise other than those prescribed under items 1 to 8 of Article 6 of the CIT Law, including revenue from asset surpluses, deposits on packaging devices which are overdue for return,

accounts payable that cannot be settled, recoveries on accounts receivable that have been written off as bad debts, revenue from debt restructuring, subsidies, compensations for the breach of contracts, exchange gains, etc.

Article 23 Revenue from the following production and business operations may be recognised on an installment basis:

- (1) Where the sale of goods is on an installment basis, revenue shall be recognised on the date on which the payments become due under the contracts;
- (2) Where enterprises are engaged, under contract, to process or manufacture large-scale machinery and equipment, vessels, aircraft, and to carry out construction, installation, assembly projects or to provide other services, the duration of which exceeds 12 months, revenue shall be recognised based upon the rate of progress or the amount of work completed within the tax year.

Article 24 Where revenue is derived under production sharing, revenue shall be recognised on the date on which the products are distributed to the participating enterprises, and the amount of revenue shall be determined based upon the fair value of the products.

Article 25 The exchange of non-monetary assets by enterprises, and the use of goods, assets or services for donations, debt settlement, sponsorship, fund raising, advertisement, samples, staff welfare or profit distributions shall be deemed as a sale of goods, transfer of assets or provision of services, except where the departments of the State Council in charge of finance and taxation prescribe otherwise.

Article 26 “Funds allocated under public finance” as mentioned in item 1 of Article 7 of the CIT Law refers to fund allocated by the People’s Government at various levels for public institutions, social bodies, etc. that are under the budgetary administration of the government, except where the State Council or the departments of the State Council in charge of finance and taxation prescribe otherwise.

“Government administrative charges” as mentioned in item 2 of Article 7 of the CIT Law refers to charges that are collected from specific subjects and are placed under government’s financial administration during the process of carrying out social public administration, and providing specific public services to citizens, legal persons or other organisations in accordance with relevant laws and regulations, and as approved pursuant to the procedures prescribed by the State Council.

“Contributions to government reserve funds” as mentioned in item 2 of Article 7 of the CIT Law refers to funds of a fiscal nature that are collected by enterprises on behalf of the Government for specific purposes in accordance with the relevant laws and administrative regulations.

“Other non-taxable revenue stipulated by the State Council” as mentioned in item 3 of Article 7 of the CIT Law refers to funds of a fiscal nature received by enterprises, which are to be used for specific purposes as designated by the departments of the State Council in charge of finance and taxation and are approved by the State Council.

Section 3 Deductions

Article 27 “Related expenses” as mentioned in Article 8 of the CIT Law refers to expenses that are directly related to the generation of revenue.

“Reasonable expenses” as mentioned in Article 8 of the CIT Law refers to necessary and normal expenses that are incurred in the ordinary course of production and business operations and that should be taken into account in determining the profits or losses, or the costs of the related assets, during the current period.

Article 28 Expenditures incurred by an enterprise shall be classified into revenue expenditures and capital expenditures. Revenue expenditures shall be directly deducted in the period in which they are incurred; capital expenditures shall be deducted on a periodic basis or included in the cost of the related assets, instead of being directly deducted in the period in which they are incurred.

Expenses or assets, which arise out of the disbursement of non-taxable revenue of an enterprise, shall not be deducted, depreciated or amortised.

Unless the CIT Law and these Implementation Rules prescribe otherwise, costs, expenses, taxes, losses and other expenditures actually incurred by an enterprise shall not be deducted more than once.

Article 29 “Costs” as mentioned in Article 8 of the CIT Law refers to the cost of sales, cost of goods sold, business expenditures and other outlays incurred by an enterprise in the course of production and business operations.

Article 30 “Expenses” as mentioned in Article 8 of the CIT Law refers to selling expenses, administrative expenses and financial expenses incurred by an enterprise in the course of production and business operations, except for those that have been recorded as costs.

Article 31 “Taxes” as mentioned in Article 8 of the CIT Law refers to various taxes and surcharges incurred by an enterprise other than the CIT and creditable Value Added Taxes.

Article 32 “Losses” as mentioned in Article 8 of the CIT Law refers to losses suffered as a result of the stock-taking loss, damage or scrapping of fixed assets and inventories, losses arising out of transfers of properties, doubtful debts, bad debts, or natural disasters and similar force majeure, or other losses that are incurred by an enterprise in the course of production and business operations.

Losses incurred by an enterprise, after deducting the compensation from responsible persons and insurance proceeds, may be deducted in accordance with regulations prescribed by the departments of the State Council in charge of finance and taxation.

Assets that have been written off as losses shall, upon recovery in whole or in part in a subsequent tax year, be recognised as revenue in that year.

Article 33 “Other expenses” as mentioned in Article 8 of the CIT Law refers to reasonable expenses, which are incurred by an enterprise in the course of its production and business operations, other than costs, expenses, taxes and losses.

Article 34 Reasonable salary and wage expenses incurred by an enterprise shall be deductible.

“Salary and wage expenses” as mentioned in the previous paragraph refers to all cash and non-cash remunerations that are paid by an enterprise to the employees who are appointed or employed by the enterprise during each tax year, including basic wages, bonuses, allowances, subsidies, year-end extra salaries, overtime wages, and other expenditures in connection with the appointment or employment of employees.

Article 35 Basic pension premiums, basic medical insurance premiums, unemployment insurance premiums, work injury insurance premiums, maternity insurance premiums and similar basic social insurance premiums, as well as housing funds contributions, that are paid by an enterprise for its employees in accordance with the scope and standards prescribed by the departments of the State Council in charge of finance and taxation or the provincial People’s Governments shall be deductible.

Supplemental pension premiums and supplemental medical insurance premiums that are paid by an enterprise for its investors or employees in accordance with the scope and standards prescribed by the departments of the State Council in charge of finance and taxation shall be deductible.

Article 36 Except for personal safety insurance premiums paid by an enterprise for employees of special job categories in accordance with relevant government regulations and other commercial insurance premiums that are allowed as deductions by the departments of the State Council in charge of finance and taxation, commercial insurance premiums that are paid by an enterprise for its investors or employees shall not be deductible.

Article 37 Reasonable borrowing expenses that are incurred by an enterprise in the course of production and business operations and that are not required to be capitalised shall be deductible.

Where an enterprise borrows funds in the course of acquiring and constructing fixed assets, intangible assets, and inventories whose construction takes longer than 12 months* to reach the expected saleable condition, reasonable borrowing expenses that are incurred during the period of relevant acquisitions and constructions shall be capitalised as costs of the relevant assets and deducted in accordance with the provisions of these Implementation Rules.

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 non-financial institutions on loans from financial institutions, interest expenses incurred by financial institutions on various deposits and on inter-bank borrowings, interest expenses incurred by enterprises on bonds approved for issuance;
- (2) Interest expenses incurred by non-financial institutions on loans from non-financial institutions to the extent that they do not exceed the amounts calculated by reference to the interest rates applicable to loans of the same period and category made by financial institutions.

- Article 39** Foreign exchange losses that are incurred by an enterprise in currency transactions, and foreign exchange losses that arise at the end of a tax year as a result of a conversion of non-RMB denominated monetary assets and liabilities to RMB at the year-end medium spot exchange rate shall be deductible, except for the portion that has been recorded as the cost of assets or that is related to profit distributions to the shareholders.
- Article 40** Staff welfare expenses incurred by an enterprise, to the extent not exceeding 14% of the total salaries and wages, shall be deductible.
- Article 41** Labour union funds contributed by an enterprise, to the extent not exceeding 2% of the total salaries and wages, shall be deductible.
- Article 42** Unless the departments of the State Council in charge of finance and taxation prescribe otherwise, staff education expenses that are incurred by an enterprise, to the extent not exceeding 2.5% of the total salaries and wages, shall be deductible; any excess amount may be carried forward and deducted in succeeding tax years.
- Article 43** Entertainment expenses incurred by an enterprise in connection with production and business operations shall be deductible at 60% of the actual amount, but such deduction shall not exceed 0.5% of the sales (business) revenue of the year.
- Article 44** Qualified advertising expenses and promotional expenses that are incurred by an enterprise, except where the departments of the State Council in charge of finance and taxation prescribe otherwise, shall be deductible to the extent not exceeding 15% of the sales (business) revenue of the year; any excess amount may be carried forward and deducted in succeeding tax years.
- Article 45** Specific funds that are set aside by an enterprise for environmental protection, eco-regeneration and similar purposes in accordance with relevant laws and administrative regulations shall be deductible. The deduction shall be disallowed where the use of aforementioned specific funds has changed.
- Article 46** Insurance premiums paid by an enterprise for the insurance of its properties in accordance with relevant regulations shall be deductible.
- Article 47** Leasing expenses that are incurred by an enterprise on the lease of fixed assets that are required for production and business operations shall be deducted under the following methods:
- (1) Leasing expenses that are incurred on the lease of fixed assets under operating leases shall be deducted evenly over the term of the lease;
 - (2) Where leasing expenses are incurred on the lease of fixed assets under finance leases, the part of such expenses that constitutes the value of the fixed assets under finance leases in accordance with relevant regulations shall be depreciated and deducted periodically.
- Article 48** Reasonable labour protection expenses incurred by an enterprise shall be deductible.
- Article 49** Management fees paid between enterprises, rentals and royalties paid between business establishments within enterprises and interest paid

between business establishments within non-bank enterprises shall not be deductible.

Article 50 For establishments and places of business that are established by non-resident enterprises in the PRC, expenses that are incurred by their head offices outside the PRC in connection with the production and business operations of such establishments and places of business shall be deductible, provided that such expenses can be substantiated by documentation from the head offices certifying the scope of the expenses to be allocated, the amounts involved, the basis and methodologies of allocation, etc. and that such allocation is reasonable.

Article 51 “Donations made by an enterprise for public welfare” as mentioned in Article 9 of the CIT Law refers to donations that are made by enterprises through social bodies serving public welfare or People’s Governments above county level* and their departments and that are used for public welfare undertakings prescribed by the Welfare Donations Law of the People’s Republic of China.

Article 52 “Social bodies serving public welfare” as mentioned in Article 51 of these Implementation Rules refers to foundations, charitable organisations and similar social organisations that meet the following criteria:

- (1) They are registered according to the law and have the legal person status;
- (2) Their mission is to pursue public welfare undertakings, and their objective is not to make profits;
- (3) All assets and their appreciation are owned by the legal persons;
- (4) Earnings and operating surplus are used primarily in undertakings that are consistent with the goals of the legal persons;
- (5) Upon termination, the remaining assets do not belong to any individuals or for-profit organisations;
- (6) They do not engage in any business that is not relevant to their established goals;
- (7) They have sound and comprehensive financial accounting systems;
- (8) Their donors do not participate in the distribution of the assets of the social organisations in any way or form;
- (9) They meet other criteria that the departments of the State Council in charge of finance and taxation may prescribe in conjunction with the civil affairs departments of the State Council and similar registration and administrative departments.

Article 53 Donations for public welfare that are made by an enterprise, to the extent not exceeding 12% of the total profit for the year, shall be deductible.

The “total profit for the year” refers to the accounting profit of an enterprise that is calculated based upon the rules of the uniform accounting system of the PRC.

Article 54 “Sponsorship expenses” as mentioned in item 6 of Article 10 of the CIT Law refers to various expenses incurred by an enterprise that are not connected with the production and business operations and that are not in the nature of advertising expenses.

Article 55 “Unapproved provisions” as mentioned in item 7 of Article 10 of the CIT Law refers to various provisions for asset impairment, risk reserves, etc. that are not in compliance with the regulations prescribed by the departments of the State Council in charge of finance and taxation.

Section 4 Tax treatment of assets

Article 56 The tax base of an enterprise’s assets, including fixed assets, biological assets, intangible assets, long-term deferred expenditures, investment assets, inventories, etc. shall be based on historical cost.

“Historical cost” as mentioned in the previous paragraph refers to expenditures that are actually incurred by an enterprise in acquiring the assets.

Where assets held by an enterprise appreciate or depreciate in value during the holding period, the tax base of such assets shall not be adjusted unless gains or losses are determined according to the regulations prescribed by the departments of the State Council in charge of finance and taxation.

Article 57 “Fixed assets” as mentioned in Article 11 of the CIT Law refers to non-monetary assets which are used for a period in excess of 12 months and which are held by an enterprise for the production of goods, the provision of services, leasing or operation and management, including buildings, structures, machinery, mechanical apparatus, means of transportation and other equipment, instruments, tools, etc. that are related to production and business operations.

Article 58 The tax base of fixed assets shall be determined according to the following methods:

- (1) The tax base of purchased fixed assets shall be determined based upon the purchase price, related taxes and charges paid, other expenditures that are directly attributed to preparing the assets for their intended use;
- (2) The tax base of self-constructed fixed assets shall be the expenditures that are incurred prior to the completion of such construction;
- (3) The tax base of fixed assets under finance leases shall be the total lease payments under the lease contract and the related expenses that are incurred by the lessee in the course of entering into the lease contract. Where the total lease payments are not specified in the lease contract, the tax base of fixed assets under finance leases shall be the fair value of the assets and related expenses that are incurred by the lessee in the course of entering into the lease contract;
- (4) The tax base of surplus fixed assets shall be the total replacement value of fixed assets of the same category;
- (5) The tax base of fixed assets that are acquired through donations, investment, exchange of non-monetary assets, debt restructuring, etc. shall be the fair value of such assets and related taxes and charges paid;

- (6) The tax base of the fixed assets that have been altered shall be the alteration costs that are incurred during the alteration, excluding expenses referred to in items 1 and 2 of Article 13 of the CIT Law.

Article 59 Depreciation expenses on fixed assets that are calculated using the straight-line method shall be deductible.

An enterprise shall commence the calculation of depreciation expenses for fixed assets in the month following the month during which the fixed asset is put into use; where a fixed asset ceases to be used, the enterprise shall stop the calculation of depreciation expenses in the month following the month during which the fixed asset ceases to be used.

An enterprise shall reasonably determine the estimated residual value of fixed assets taking into account the nature and the use of the fixed assets. Once the residual value is determined, it shall not be changed.

Article 60 Unless otherwise prescribed by the departments of the State Council in charge of finance and taxation, the minimum periods for calculating depreciation expenses for fixed assets shall be as follows:

- (1) Buildings and structures – 20 years;
- (2) Aircraft, trains, vessels, machinery, mechanical apparatus and other production equipment – 10 years;
- (3) Instruments, tools, furniture, etc. that are connected with production and business operations – 5 years;
- (4) Means of transportation other than aircraft, trains, vessels – 4 years;
- (5) Electronic equipment – 3 years.

Article 61 For an enterprise that is engaged in the extraction of petroleum, natural gas and similar mineral resources, the deduction method for expenses that are incurred prior to commercial production and the depletion and the depreciation methods for relevant fixed assets shall be separately prescribed by the departments of the State Council in charge of finance and taxation.

Article 62 The tax base for biological assets used for production shall be determined using the following methods:

- (1) For purchased biological assets used for production, the tax base shall be the purchase price and related taxes and charges paid;
- (2) For biological assets used for production that are acquired through donations, investment, exchange of non-monetary assets, debt restructuring, etc., the tax base shall be the fair value of the assets and related taxes and charges paid.

“Biological assets used for production” as mentioned in the previous paragraph refers to biological assets that are held by an enterprise for the production of agricultural products, the provision of services, leasing, etc., including economic forests, forests of charcoal and firewood, productive livestock, draft animals, etc.

Article 63 Depreciation expenses for biological assets used for production that are calculated using the straight-line method shall be deductible.

An enterprise shall commence the calculation of depreciation expenses for the biological assets used for production in the month following the month during which the biological assets used for production are put into use; where a biological asset used for production ceases to be used, the enterprise shall stop the calculation of depreciation expense for the biological asset used for production in the month following the month during which the biological asset used for production ceases to be used.

An enterprise shall reasonably determine the estimated residual value of biological assets used for production taking into account the nature and the use of the biological assets used for production. Once the residual value is determined, it shall not be changed.

Article 64 The minimum periods for calculating depreciation expenses for biological assets used for production shall be as follows:

- (1) Forestry biological assets used for production - 10 years;
- (2) Livestock biological assets used for production - 3 years

Article 65 "Intangible assets" as mentioned in Article 12 of the CIT Law refers to incorporeal, non-monetary, long term assets that are held by an enterprise for the production of goods, provision of services, leasing or operation and management, including patents, trademarks, copyrights, land use rights, proprietary technologies, goodwill, etc.

Article 66 The tax base of intangible assets shall be determined using the following methods:

- (1) The tax base of purchased intangible assets shall be the purchase price, related taxes and charges paid, and other expenditures that are directly attributed to preparing the assets for their intended use;
- (2) The tax base of self-developed intangible assets shall be the expenses that are incurred by an enterprise during the period from when the intangible assets first meet the criteria for capitalisation to when the intangible assets reach the stage of their intended use;
- (3) The tax base of intangible assets that are acquired through donations, investments, exchanges of non-monetary assets, debt restructurings, etc. shall be the fair value of the assets and related taxes and charges paid.

Article 67 Amortisation expenses for intangible assets that are calculated using the straight-line method shall be deductible.

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

Intangible assets that are acquired through investments or acquisitions shall be amortised over their useful lives prescribed under relevant laws or contracts.

Expenditures that are incurred in acquiring goodwill shall be deductible upon the complete disposal or liquidation of the enterprise.

Article 68 “Expenses incurred for the alteration of fixed assets” as mentioned in items 1 and 2 of Article 13 refers to expenses that are incurred for structural alterations of buildings and structures, extension of their useful lives, etc.

Expenses that are prescribed in item 1 of Article 13 of the CIT Law shall be amortised over the estimated remaining useful life of the fixed assets; expenses that are prescribed in item 2 of Article 13 shall be amortised over the remaining lease term that is stipulated in the lease contract.

Where the useful lives of fixed assets that have been altered are extended, their depreciation periods shall be extended accordingly, unless items 1 and 2 of Article 13 of the CIT Law prescribe otherwise.

Article 69 “Expenses incurred for the overhaul of fixed assets” as mentioned in item 3 of Article 13 of the CIT Law refers to expenses that meet all of the following criteria:

(1) Repair expenses are more than 50%* of the tax base at the time of the acquisition of the fixed assets;

(2) The useful life of the fixed assets is extended by more than two years*.

Expenses that are prescribed in item 3 of Article 13 of the CIT Law shall be amortised over the remaining useful life of the fixed assets.

Article 70 “Other expenses that shall be treated as long-term deferred expenses” as mentioned in item 4 of Article 13 of the CIT Law shall be amortised starting from the month following the month during which the expenditures are incurred, and shall be amortised over a period of not less than three years.

Article 71 “Investment assets” as mentioned in Article 14 of the CIT Law refers to assets that arise out of external equity investments and debt investments made by an enterprise.

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

The costs of investment assets shall be determined using the following methods:

(1) Where the investment assets are acquired with cash, the costs shall be the purchase price;

(2) Where the investment assets are acquired with consideration other than cash, the costs shall be the fair value of the assets and the related taxes and charges paid.

Article 72 “Inventories” as mentioned in Article 15 of the CIT Law refers to products or merchandise that are held by an enterprise for sale, work in progress, materials, etc. that are consumed in the process of production or provision of services.

The costs of inventories shall be determined using the following methods:

- (1) Where the inventories are acquired with cash, the costs shall be the purchase price and the related taxes and charges paid;
- (2) Where the inventories are acquired with consideration other than cash, the costs shall be the fair value of the assets and the related taxes and charges paid;
- (3) For agricultural products that are derived from biological assets used for production, the costs shall be the materials costs, the labour costs, shared indirect costs and similar necessary expenditures that are incurred in the course of production or harvesting.

Article 73 Enterprises may select the first-in-first-out method, the weighted average method or the specific identification method as their inventory costing method for inventories that are used or sold by the enterprises. Once selected, the inventory costing method shall not be arbitrarily changed.

Article 74 “Net asset value” as mentioned in Article 16 of the CIT Law and “net property value” as mentioned in Article 19 refer to the remaining tax base of the assets or properties, after deducting the depreciation, depletion, amortisation, provisions, etc. in accordance with relevant regulations.

Article 75 Unless otherwise prescribed by the departments of the State Council in charge of finance and taxation, an enterprise shall recognise, at the time when the transactions take place, the gains or losses that arise out of transfers of assets in the course of a reorganisation. The tax base of the relevant assets shall be re-determined based upon the transaction prices.

Chapter 3 Tax payable

Article 76 The calculation formula for tax payable as prescribed in Article 22 of the CIT Law shall be:

$$\text{Tax payable} = \text{Taxable income} \times \text{applicable tax rate} - \text{Tax reduced/exempted} - \text{Tax credit}$$

The tax reduced/exempted and tax credit in the formula refer to taxes otherwise payable that are reduced, exempted and credited in accordance with the preferential tax treatments prescribed by the CIT Law and the State Council.

Article 77 “Foreign income tax paid” as mentioned in Article 23 of the CIT Law refers to taxes in the nature of corporate income tax that are payable, and actually paid, on income derived from sources outside the PRC in accordance with the foreign tax laws and related regulations.

Article 78 “Tax credit limit” as mentioned in Article 23 of the CIT Law refers to the tax payable on income derived from sources outside the PRC in accordance with the CIT Law and these Implementation Rules. Unless otherwise prescribed by the departments of the State Council in charge of finance and taxation, such tax credit limit shall be calculated by country (region) and not by income category and the calculation formula is as follows:

$$\text{Tax Credit Limit} = \frac{\text{Total tax payable on income derived from both within and outside the PRC as calculated in accordance with the CIT Law and these Implementation Rules}}{\text{Total taxable income derived from sources both within and outside the PRC}} \times \frac{\text{Taxable income derived from the particular foreign country (region)}}{\text{Total taxable income derived from sources both within and outside the PRC}}$$

Article 79 "Five years" as mentioned in Article 23 of the CIT Law refers to the five successive tax years following the year in which the taxes in the nature of corporate income tax, which are paid outside the PRC on income derived from sources outside the PRC, exceeds the tax credit limit.

Article 80 "Directly controlled" mentioned in Article 24 of the CIT Law refers to the situation where a resident enterprise directly holds more than 20%* of equity interest in a foreign enterprise.

"Indirectly controlled" mentioned in Article 24 of the CIT Law refers to the situation where a resident enterprise indirectly holds more than 20%* of the equity interest in a foreign enterprise. Detailed measures for determining indirect control shall be separately formulated by the departments of the State Council in charge of finance and taxation.

Article 81 When an enterprise claims a credit against tax payable in accordance with Articles 23 and 24 of the CIT Law, it shall provide relevant tax payment certificates for the corresponding year issued by the foreign tax authorities.

Chapter 4 Tax Incentives

Article 82 "Interest from state treasury debts" as mentioned in item 1 of Article 26 of the CIT Law refers to interest that is derived by an enterprise from the state treasury debts issued by the finance department of the State Council.

Article 83 "Qualified dividends, profit distributions and other returns on equity investments derived from a resident enterprise from another resident enterprise" as mentioned in item 2 of Article 26 of the CIT Law refers to the investment return derived by a resident enterprise from its direct investment in another resident enterprise. "Dividends, profit distributions and other returns on equity investments" as referred to in items 2 and 3 of Article 26 of the CIT Law shall not include the return on investment in publicly issued and traded shares of a resident enterprise that are held for less than 12 consecutive months.

Article 84 "Qualified non-profit organisation" as mentioned in item 4 of Article 26 of the CIT Law refers to an organisation that satisfies all of the following conditions:

- (1) It has completed the registration procedures required for non-profit organisations in accordance with the laws;
- (2) It is engaged in public welfare or non-profit operations;
- (3) Income derived by the organisation is entirely used for the public welfare or non-profit undertakings that are prescribed upon registration or in the Articles of Association, except for related and reasonable expenses of the organisation;

- (4) Its properties and the income or gains derived as a result of the holding of such properties are not used for distributions;
- (5) As authorised in its registration and stipulated in its Articles of Association, the remaining assets after deregistration of the organisation are used for public welfare or non-profit purposes, or are re-donated through registration and administrative authorities to other organisations of the same nature and missions, and the same are announced to the general public;
- (6) The donors do not reserve or enjoy any rights in the assets that are donated to the organisation;
- (7) Salaries and welfare benefits of employees are limited by prescribed ratios and properties of the organisation are not distributed in a disguised form.

The administrative measures for assessing the qualifications of a non-profit organisation referred to in the preceding paragraph shall be formulated by the departments of the State Council in charge of finance and taxation in conjunction with other relevant departments of the State Council.

Article 85 "Revenue of a qualified non-profit organisation" as mentioned in item 4 of Article 26 of the CIT Law shall not include any revenue that is derived from for-profit operations of the non-profit organisation, unless otherwise prescribed by the departments of the State Council in charge of finance and taxation.

Article 86 The tax exemption and reduction, as prescribed in item 1 of Article 27 of the CIT Law, on income derived by an enterprise from projects in agriculture, forestry, animal husbandry and fishery refer to:

- (1) Income derived by an enterprise engaging in the following projects shall be exempt from CIT:
 - 1 The growing of vegetables, grains, tuber crops, oil plants, beans, cotton, hems, sugar crops, fruits and nuts;
 - 2 The selection and cultivation of new agricultural species;
 - 3 The growing of Chinese medicinal herbs;
 - 4 The cultivation and growing of forests;
 - 5 The rearing of livestock and poultry;
 - 6 The harvesting of forestry products;
 - 7 Irrigation, preliminary processing of agricultural products, veterinary services, promotion of agricultural technologies, operation and maintenance of agricultural machineries and similar agricultural, forestry, animal husbandry, fishery services projects;
 - 8 Fishing in high seas.
- (2) The CIT applicable to an enterprise engaging in the following projects shall be reduced by 50%:

- 1 The growing of flowers, tea plants and other crops used for beverages and spices;
- 2 Sea and inland water aquaculture.

Enterprises engaging in any projects that are restricted and prohibited by the State shall not be entitled to the preferential CIT treatments under this Article.

Article 87 “Public infrastructure projects eligible for key support from the State” as mentioned in item 2 of Article 27 of the CIT Law refers to projects involving ports and wharfs, airports, railways, highways, urban public transportation, electric power, water supplies, etc. as prescribed in the *Catalogue of Public Infrastructure Projects Eligible for Preferential Corporate Income Tax Treatment*.

Income derived by an enterprise from the investment in, and the operation of, public infrastructure projects eligible for key support from the State as referred to in the previous paragraph shall be eligible for a tax exemption for the first year to the third year, and a 50% reduction in CIT for the fourth year to the sixth year, starting from the year in which the project first generates operating income.

Enterprises that are engaged, under contract, in the operation or construction of projects referred to in this Article, or are engaged in the construction of projects referred to in this Article for self-use, shall not be entitled to the preferential CIT treatment prescribed under this Article.

Article 88 “Qualified environmental protection and energy or water conservation projects” as mentioned in item 3 of Article 27 of the CIT Law includes public sewerage treatment, public refuse treatment, synergistic development and utilisation of methane, technological innovation in energy conservation and emission reduction, sea water desalination and similar projects. The qualification criteria and the scope shall be formulated by the departments of the State Council in charge of finance and taxation in conjunction with relevant departments of the State Council, and shall be promulgated and implemented with the approval of the State Council.

Income derived by an enterprise from engaging in qualified environmental protection and energy or water conservation projects as prescribed in the previous paragraph shall be eligible for a tax exemption for the first year to the third year, and a 50% reduction in CIT for the fourth year to the sixth year, starting from the year in which the project first generates operating income.

Article 89 For projects that are eligible for tax reductions/exemptions under Articles 87 and 88 of these Implementation Rules, where the projects are transferred during the period of such tax reductions/exemptions, the transferees of such projects shall become eligible, on the date of the transfer, for the preferential treatment during the remaining period of such tax reductions/exemptions. Where the projects are transferred after the period for the tax reductions/exemptions has expired, the transferee of such projects shall not enjoy the above tax reductions/exemptions with respect to the same projects.

Article 90 “Income derived from technology transfers that meet certain conditions [is eligible for CIT reductions/exemptions]” as mentioned in item 4 of Article 27 of the CIT Law means that, within a tax year, the portion of income from technology transfer that does not exceed RMB 5 million shall be exempt from CIT; the portion of income that exceeds RMB 5 million shall enjoy a 50% reduction.

Article 91 Income referred to in item 5 of Article 27 of the CIT Law that is derived by a non-resident enterprise shall be subject to CIT at a reduced rate of 10%.

The following income shall be exempt from CIT:

- (1) Interest income from loans made by a foreign government to the PRC government;
- (2) Interest income from loans with preferential terms made by international financial organisations to the PRC government and resident enterprises;
- (3) Other income approved by the State Council.

Article 92 “Small-scale enterprises with low profitability that meet certain conditions” as mentioned in paragraph 1 of Article 28 of the CIT Law refers to enterprises that are not engaged in industries restricted or prohibited by the State and that meet all of the following conditions:

- (1) For industrial enterprises, the taxable income for the year shall not exceed RMB 300,000, total employees shall not exceed 100, and total assets shall not exceed RMB 30 million;
- (2) For all other enterprises, the taxable income for the year shall not exceed RMB 300,000, total employees shall not exceed 80, and total assets shall not exceed RMB 10 million.

Article 93 “Advanced and new technology enterprises eligible for key support from the State” as mentioned in paragraph 2 of Article 28 of the CIT Law refers to enterprises that own core proprietary intellectual property rights, and that meet all of the following conditions:

- (1) Products (services) are within the scope prescribed in the *Advanced and New Technology Sectors Eligible for Key Support from the State*;
- (2) The proportion of research and development expenditures to sales revenue is not lower than a prescribed ratio;
- (3) The proportion of the revenue derived from high and new technology products (services) to the total revenue of the enterprise is not lower than a prescribed ratio;
- (4) The proportion of the number of research and development personnel to the number of all employees is not lower than a prescribed ratio; and
- (5) Other conditions prescribed by the administrative measures for assessing the qualifications of advanced and new technology enterprises.

The Advanced and New Technology Sectors Eligible for Key Support from the State and the Administrative Measures for the Recognition of Advanced

and New Technology Enterprises shall be formulated by the departments of the State Council in charge of science and technology, finance and taxation in conjunction with relevant departments of the State Council, and shall be promulgated and implemented with the approval of the State Council.

Article 94 “Ethnic autonomous regions” as mentioned in Article 29 of the CIT Law refers to autonomous regions, prefectures and counties with regional ethnic autonomy in accordance with the *Law of the People’s Republic of China on Ethnic Regional Autonomy*.

Enterprises in ethnic autonomous regions that are engaged in industries restricted or prohibited by the State shall not be eligible for CIT reduction or exemption.

Article 95 “Additional deductions on [research and development expenses]” as mentioned in item 1 of Article 30 of the CIT Law refers to the additional tax deduction in excess of the actual research and development expenses incurred for developing new technologies, new products and new technological processes. Such additional tax deduction for research and development expenses shall equal 50% of the amount actually incurred in the case where the research and development expenses are not required to be capitalised as intangible assets. Research and development expenses that are required to be capitalised as intangible assets shall be amortised based upon 150% of the capitalised amount.

Article 96 “Additional deductions on [salary expenses paid to disabled personnel employed by the enterprise]” as mentioned in item 2 of Article 30 of the CIT Law refers to the additional tax deduction of 100% of the actual amount of salaries paid to disabled personnel employed by the enterprise. The relevant rules of the *Law of the People’s Republic of China on Safeguard of Disabled Persons* shall apply with respect to the determination of the qualifications of the disabled personnel.

Measures for additional deductions on salary expenses paid to “other personnel whose employment is encouraged by the State” as mentioned in item 2 of Article 30 of the CIT Law shall be separately prescribed by the State Council.

Article 97 “Set off [...] against its taxable income” as mentioned in Article 31 of the CIT Law means that where a venture capital enterprise has invested for more than two years*, in the form of an equity investment, in a medium-to small-sized advanced and new technology enterprise that has not been listed on a stock exchange, 70% of the amount so invested may be set off against its taxable income in the year in which the equity has been held for two years; any amount that is not set off in that year may be carried forward and set off against its taxable income in succeeding tax years.

Article 98 Fixed assets for which “the depreciation period may be shortened or an accelerated depreciation method may be adopted” as mentioned in Article 32 of the CIT Law includes:

- (1) Fixed assets that are upgraded and replaced frequently due to advancement in technologies;
- (2) Fixed assets that are exposed to constantly high level of vibration or corrosion.

For fixed assets to be depreciated over shortened depreciable periods, the minimum depreciable periods shall not be shorter than 60% of the depreciable periods prescribed in Article 60 of these Implementation Rules. For fixed assets to be depreciated using an accelerated depreciation method, either the double-declining-balance method or the sum-of-the-years-digits method shall be adopted.

Article 99 The reduction in revenue mentioned in Article 33 of the CIT Law means that when calculating its taxable income, an enterprise may take into account 90% of the revenue derived from the use as its raw materials of the resources prescribed in *Catalogue of Preferential Corporate Income Tax Treatments for Synergistic Utilisation of Resources* in the production of goods that are neither restricted nor prohibited by the State and that are in compliance with relevant State and industry standards.

The proportion of the amount of raw materials referred to in the previous paragraph to the amount of materials for the production of goods shall not be lower than the criteria prescribed in *Catalogue of Preferential Corporate Income Tax Treatments for Synergistic Utilisation of Resources*.

Article 100 “[Credit] against the CIT payable” as mentioned in Article 34 of the CIT Law refers to 10% of the amount invested in specialised equipment that may be credited against the tax payable by the enterprise for the current year, where the enterprise purchases and actually uses specialised equipment in environmental protection, energy or water conservation, safe production, etc. as prescribed in *Catalogue of Preferential Corporate Income Tax Treatments for Specialised Equipment in Environmental Protection*, *Catalogue of Preferential Corporate Income Tax Treatments for Specialised Equipment in Energy or Water Conservation* and *Catalogue of Preferential Corporate Income Tax Treatments for Specialised Equipment in Safe Production*; any excess in such credit may be carried forward for five succeeding tax years.

An enterprise that is eligible for the preferential CIT treatment prescribed in the previous paragraph shall actually purchase and use the equipment prescribed in the previous paragraph. An enterprise that purchases the aforementioned specialised equipment and that transfers or leases the same within five years of the purchase shall no longer be eligible for the preferential CIT treatment, and shall repay the amount that has been credited against the CIT payable.

Article 101 The catalogues of preferential CIT treatments referred to in Articles 87, 99 and 100 of these Implementation Rules shall be formulated by the departments of the State Council in charge of finance and taxation in conjunction with relevant departments of the State Council, and shall be promulgated and implemented with the approval of the State Council.

Article 102 An enterprise that is concurrently engaged in projects that are eligible for different preferential CIT treatments shall separately account for income eligible for each preferential treatment, and shall reasonably allocate the relevant expenses incurred during the period. Where income is not so separately accounted for, it shall not be eligible for the preferential CIT treatment.

Chapter 5 Withholding of tax at source

Article 103 Where a non-resident enterprise is subject to the withholding of tax at source in accordance with the CIT Law, the taxable income shall be calculated in accordance with Article 19 of the CIT Law.

“The entire amount of revenue” as mentioned in Article 19 of the CIT Law refers to the total consideration and other charges received by a non-resident enterprise from a payer.

Article 104 “Payer” as mentioned in Article 37 of the CIT Law refers to an entity or an individual who is directly liable to a non-resident enterprise for the payment of all relevant amounts in accordance with relevant laws and regulations or contracts.

Article 105 “Pay” as mentioned in Article 37 of the CIT Law includes paying by cash, by remittance, by account transfers, by transfers of rights of equal value and similar monetary and non-monetary payments.

“Amount payable” as mentioned in Article 37 of the CIT Law refers to the amount payable that should be accounted for by the payer on an accrual basis in relevant costs and expenses.

Article 106 Circumstances under which a withholding agent may be designated, as prescribed in Article 38 of the CIT Law, include:

- (1) Where the work on a project or the provision of services is projected to last less than a tax year, and there is evidence of non-fulfillment of tax obligations;
- (2) Where tax registration or temporary tax registration has not been completed, and an agent in the PRC has not been appointed to fulfill tax obligations on its behalf;
- (3) Where the annual or quarterly corporate income tax return has not been filed within the prescribed time limits.

The tax authorities above the county level* shall designate the withholding agent prescribed in the previous paragraph, and shall at the same time notify the withholding agent of the calculation basis, the calculation methods, the withholding deadline and the withholding methods.

Article 107 “The place where such taxable income is derived” as mentioned in Article 39 of the CIT Law refers to the place where taxable income is derived, as determined under the principles prescribed in Article 7 of these Implementation Rules. Where there are multiple places in the PRC where taxable income is derived, the taxpayer shall select one of the places that shall perform CIT filing and make CIT payments.

Article 108 “Other revenue due to the taxpayer [...] in the PRC” as mentioned in Article 39 of the CIT Law refers to revenue derived by the taxpayer from various other sources within the PRC.

When attempting to collect from the taxpayer the overdue tax payable, the tax authorities shall notify the taxpayer of the reasons, amount, deadline and methods of collection.

Chapter 6 Special tax adjustments

Article 109 “Related party” as mentioned in Article 41 of the CIT Law refers to an enterprise, an organisation or an individual that has one of the following relationships with the enterprise:

- (1) There is a direct or indirect controlling relationship in financing, business operations, purchases, sales, etc.;
- (2) The parties are directly or indirectly controlled by the same third party;
- (3) Other relationships in which the parties have associated interests.

Article 110 “The arm’s-length principle” as mentioned in Article 41 of the CIT Law refers to the principle of adopting fair market prices and business norms for transactions carried out between non-related parties.

Article 111 “Reasonable methods” as mentioned in Article 41 of the CIT Law include:

- (1) Comparable uncontrolled price method (CUP): refers to the pricing method based on a price for identical or similar business transactions conducted between non-related enterprises;
- (2) Resale price method (RPM): refers to the pricing method based on the resale price at which the goods purchased from related parties are sold to non-related parties minus the gross margin derived from identical or similar transactions;
- (3) Cost plus method (CPLM): refers to the pricing method based on cost plus reasonable expenses and profit margin;
- (4) Transactional net margin method (TNMM): refers to the method whereby the profit is based on the net profit level achieved from identical or similar business transactions conducted between non-related parties;
- (5) Profit split method (PSM): refers to the method whereby the consolidated profit or loss of an enterprise and its related parties are split based on reasonable criteria;
- (6) Other methods in compliance with the arm’s-length principle.

Article 112 An enterprise may reach a cost sharing agreement with its related parties on the sharing of jointly incurred costs based on the arm’s length principle in accordance with paragraph 2 of Article 41 of the CIT Law.

When costs are shared between an enterprise and its related parties, the principle of matching costs with expected benefits shall be followed. The required information as specified by the tax authorities shall be filed with the tax authorities within the prescribed period.

If an enterprise fails to comply with paragraphs 1 and 2 of this Article in the sharing of costs with its related parties, the costs allocated shall not be allowed to be deducted when calculating the enterprise’s taxable income.

Article 113 “Advance pricing arrangement” as mentioned in Article 42 of the CIT Law refers to an agreement reached between an enterprise and the tax authorities, after the enterprise submits its application and negotiates

with the tax authorities based on the arm's-length principle, on the pricing principle and computation method applicable to its related party transactions for future years.

Article 114 "Relevant information" as mentioned in Article 43 of the CIT Law includes:

- (1) contemporaneous documentation relating to the standards, computation method and other explanations, etc. used to determine the prices or charges of the related party transactions;
- (2) information relating to the resale (or transfer) price or ultimate sale (or transfer) price of property, rights to use the property, services etc. involved in the related party transactions;
- (3) information to be submitted by other enterprises relevant to the related-party transaction investigation regarding product prices, pricing methods and profitability, etc. that are comparable to the enterprise under investigation;
- (4) other information relevant to the related party transactions.

"Other enterprises relevant to the related party transactions under investigation" as mentioned in Article 43 of the CIT Law refers to enterprises whose business scope and operation model are similar to the enterprise under investigation.

Enterprises shall provide tax authorities with the standards, computation methods and relevant explanations adopted in determining the prices and expenses of related party transactions within the prescribed time. The related parties and other enterprises relevant to the investigation of the related party transactions shall provide information within the time period agreed upon with the tax authorities.

Article 115 The following methods may be adopted by the tax authorities when assessing an enterprise's taxable income on a deemed basis in accordance with Article 44 of the CIT Law:

- (1) by reference to the profit level of identical or similar enterprises;
- (2) based on the enterprises' cost plus reasonable expenses and profit;
- (3) based on the reasonable proportion of the related party's group profit;
- (4) based on other reasonable methods.

Where an enterprise disagrees with the tax authorities regarding the amount of deemed taxable income, calculated using the methods prescribed in the previous paragraph, it shall provide relevant supporting evidence. Upon confirmation by the tax authorities, the deemed taxable income can then be adjusted.

Article 116 "Individual PRC resident" as mentioned in Article 45 of the CIT Law refers to an individual who is liable for individual income tax in the PRC on income derived from both within and outside the PRC in accordance with the PRC Individual Income Tax Law.

Article 117 "Control" as mentioned in Article 45 of the CIT Law includes the following instances:

- (1) Where resident enterprises or PRC residents individually hold, directly or indirectly, more than 10%* in voting shares of a foreign enterprise, and collectively hold more than 50%* in shares of the foreign enterprise;
- (2) Where the shareholding percentages of resident enterprises, or resident enterprises and PRC residents, do not reach the percentages prescribed in (1) above, but such resident enterprises, or resident enterprises and PRC residents have substantive control of the foreign enterprise in shareholdings, funding, operations, purchases and sales and similar aspects.

Article 118 “The effective tax burden [that] is distinctly lower than the tax rate set forth in paragraph 1 of Article 4 of [the CIT] Law” as mentioned in Article 45 of the CIT Law refers to a tax rate that is lower than 50% of the tax rate set forth in paragraph 1 of Article 4 of the CIT Law.

Article 119 “Debt investment” as mentioned in Article 46 of the CIT Law refers to financing that is directly or indirectly obtained by an enterprise from its related parties, and that is to be repaid in principal and interest or to be compensated in ways similar in nature to paying interest.

The debt investments that an enterprise indirectly obtains from related parties include the following:

- (1) The debt investments offered by related parties through an unrelated third party;
- (2) The debt investments provided by an unrelated third party, with a related party guaranteeing the underlying debts and assuming joint liabilities on the debts;
- (3) Other debt investments, having the substance as such, obtained indirectly from related parties.

“Equity investment” as mentioned in Article 46 of the CIT Law refers to investments received by an enterprise without the obligation to repay principal and interest, and through which investors possess ownership rights in the net assets of the enterprise.

“The prescribed level” as mentioned in Article 46 of the CIT Law shall be separately prescribed by the departments of the State Council in charge of finance and taxation.

Article 120 “Without reasonable business purposes” as mentioned in Article 47 of the CIT Law refers to having reducing, avoiding or deferring paying taxes as primary purposes.

Article 121 When tax authorities make special tax adjustments in accordance with tax laws and administrative regulations, there shall be imposed interest, on a daily basis, upon the underpaid taxes for the period from 1 June of the year following the taxable year to which the underpayment relates to the date when the underpaid taxes are paid.

The interest prescribed in the previous paragraph shall not be deducted when calculating the taxable income.

Article 122 “Interest” as mentioned in Article 48 of the CIT Law shall be calculated based upon the RMB loan base rate published by the People’s Bank of

China in the tax year(s) to which the underpaid tax belongs for a loan of the same term as the period for which additional tax is payable, plus 5%.

Enterprises which provide relevant information as prescribed in Article 43 of the CIT Law and these Implementation Rules may calculate the interest using only the benchmark interest rate on RMB loans prescribed in the previous paragraph.

Article 123 Where transactions conducted between related parties do not conform to the arm's-length principle, or where enterprises enter into arrangements with no reasonable business purpose, the tax authorities shall have the right to make tax adjustments within 10 years of the year during which the transactions take place.

Chapter 7 Tax collection and administration

Article 124 "The place where [an enterprise] is registered" as mentioned in Article 50 of the CIT Law refers to the location of the enterprise that is registered in accordance with the relevant regulations of the State.

Article 125 Where an enterprise consolidates the calculation and settlement of its CIT liability, it shall compute its taxable income on a consolidated basis. The detailed measures shall be separately formulated by the departments of the State Council in charge of finance and taxation.

Article 126 "Principal establishment or place of business" as mentioned in Article 51 of the CIT Law shall meet both of the following conditions:

- (1) It bears the responsibility for the supervision and management of the production and business operations at other establishments and places of business;
- (2) It keeps complete accounting records and vouchers, which accurately reflect the income, costs, expenses and profits and losses of each establishment or place of business.

Article 127 "Upon the approval by the tax authorities" as mentioned in Article 51 of the CIT Law refers to the examination and approval by the upper-level tax authority which supervises the tax authorities at the locations of the establishments or places of business.

Where, subsequent to obtaining the approval for tax consolidation, a non-resident enterprise undergoes an expansion, merger, relocation, closure of establishments or places of business, or a termination of the business operations of the establishments or places of business, the principal establishment or place of business that is charged with consolidated filing and settlement shall report in advance to the tax authorities of the location of such principal establishment or place of business. Where the choice of the principal establishment or place of business that is charged with consolidated filing and settlement is to be changed, the procedures prescribed in the previous paragraph shall apply.

Article 128 The tax authorities shall determine whether an enterprise makes provisional CIT payments on a monthly or a quarterly basis.

Where an enterprise makes provisional CIT payments on a monthly or a quarterly basis in accordance with Article 54 of the CIT Law, the provisional

CIT payments shall be determined based upon the actual profits for the month or the quarter. Where it is difficult for an enterprise to determine its provisional CIT payments based upon the actual profits for the month or the quarter, the provisional CIT payments shall be determined based upon the average monthly or quarterly profits for the immediate preceding year, or based upon other methods permitted by the tax authorities. Once a provisional payment method is determined, that method shall not be arbitrarily changed within the tax year.

Article 129 An enterprise, irrespective of its profits or losses in a tax year, shall file with tax authorities the provisional CIT returns, annual CIT return, financial accounting reports and other information that is required by the tax authorities within the time limits prescribed by Article 54 of the CIT Law.

Article 130 Where the income of an enterprise is calculated in a currency other than RMB, the taxable income shall be converted into RMB using the medium exchange rate on the last day of a month or a quarter for which the provisional CIT payments are made. When settling the annual payment after the end of the year, the provisional CIT payments that have been made shall not be re-converted; instead, the enterprise shall calculate that part of its taxable income for which the provisional CIT payments have not been made, and convert such taxable income into RMB using the medium exchange rate on the last day of the year.

Where, upon the tax authorities' examination, an enterprise is determined to have understated or overstated its income, the enterprise shall calculate the understated or overstated income in RMB using the medium exchange rate on the last day of the month immediately preceding the month during which the underpayment or overpayment of taxes is determined, and then calculate the amount of taxes to be paid additionally or refunded.

Chapter 8 Supplementary provisions

Article 131 "Enterprises that have been approved to be established prior to the promulgation of this Law" as mentioned in Article 57 of the CIT Law refers to enterprises that have completed the business registration prior to the promulgation of the CIT Law.

Article 132 Enterprises that are established in the Hong Kong Special Administrative Region, the Macao Special Administrative Region and Taiwan region shall apply the relevant provisions under paragraph 2 and paragraph 3 of Article 2 of the CIT Law.

Article 133 These Implementation Rules shall take effect on 1 January 2008. The Detailed Implementation Rules of the Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises promulgated by the State Council on 30 June 1991 and the Detailed Implementation Rules for the Provisional Regulations of the People's Republic of China on Enterprise Income Tax promulgated by the Ministry of Finance on 4 February 1994 shall hereby be repealed.

* a literal translation which may be inconsistent with the regulatory intent of the State Council. Terms such as "above" "more than" or "longer than" may, in fact, be used in an inclusive sense in these Implementation Rules. For example, "more than 10%" may be used to mean "10% or more."

State Council Notice 39



State Council

Notice on the Implementation of the Transitional Preferential CIT Policies

Guofa [2007] No. 39

Issued on: 26 December 2007

The People's Governments of all Provinces, Autonomous Regions and Municipalities under the direct jurisdiction of the Central Government, all Ministries and Commissions of the State Council, and all institutions under the direct supervision of the State Council:

The Corporate Income Tax Law of the People's Republic of China (hereinafter referred to as the "CIT Law") and the Implementation Rules for the Corporate Income Tax Law of the People's Republic of China (hereinafter referred to as the "Implementation Rules") shall take effect on 1 January 2008. Pursuant to Article 57 of the CIT Law, the transitional preferential policies for the Corporate Income Tax (the "CIT") are hereby stipulated as follows:

1. The transitional measures for the preferential corporate tax treatment for enterprises whose establishment was approved prior to the promulgation of the CIT Law.

The preferential CIT policies that were enjoyed by enterprises in accordance with the previous tax laws, administrative regulations and instruments that have the effect of administrative regulations shall be subject to the following transitional measures:

As of 1 January 2008, an enterprise that previously enjoyed the preferential policy in the form of a reduced tax rate shall have five years from the time when the CIT Law takes effect to transition progressively to the legally prescribed tax rate. During this period, an enterprise that enjoyed the 15% enterprise income tax rate shall be subject to the 18% tax rate for the year 2008, 20% for the year 2009, 22% for the year 2010, 24% for the year 2011, and 25% for the year 2012; an enterprise that previously enjoyed the 24% tax rate shall be subject to the 25% tax rate starting the year 2008.

As of 1 January 2008, an enterprise that previously enjoyed fixed-term preferential enterprise income tax treatment in the form of tax reductions and exemptions, such as the "two-year tax exemption followed by three-year 50% tax reduction" or the "five-year tax exemption followed by five-year 50% tax reduction," etc., shall continue to enjoy preferential treatment for their initial term as prescribed under the previous tax laws, administrative regulations and related instruments after the CIT Law takes effect until the initial term expires; an enterprise that has not started enjoying preferential tax treatment because it has not made a profit shall commence the term of preferential tax treatment in the year 2008.

Enterprises that enjoy the aforementioned transitional preferential policies refer to those enterprises established and registered with the Industrial and Commercial Registration and Administration Bureaus prior to 16 March 2007; the projects eligible for, and the scope of, the transitional preferential policies shall follow the "Table for the Implementation of the Transitional Preferential CIT Policies" (See Appendix).

2. The continued application of the preferential tax policies for the extensive development of the western regions

According to the principles of the relevant State Council issuances concerning the extensive development of the Western Regions, the preferential CIT policies for the extensive development of the Western Regions, which are prescribed in Notice of the Ministry of Finance, the State Administration of Taxation and the General Administration of Customs on the Preferential Tax Policies for the Extensive Development of the Western Regions (Caishui [2001] No. 202) jointly issued by the Ministry of Finance, the State Administration of Taxation and the General Administration of Customs, shall continue to be applied.

3. Other rules on the implementation of the transitional preferential tax policies

An enterprise that enjoys the transitional preferential CIT policies shall calculate its taxable income according to the provisions of the CIT Law and its Implementation Rules concerning revenue and deductions, and shall calculate and enjoy the preferential tax treatment in accordance with the prescription of Part one of this Notice.

Where the transitional preferential CIT policies and the preferential policies prescribed under the CIT Law and its Implementation Rules overlap, an enterprise may choose to carry out the most preferential policy, but shall not enjoy multiple preferential policies; once the choice has been made, it cannot be changed.

Appendix: Table for the implementation of the transitional preferential CIT policies

State Council
26 December 2007

Appendix:

Table for the implementation of the transitional preferential CIT policies

No.	Name of issuances	Relevant policy contents
1	Paragraph 1 of Article 7 of the <i>Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i>	Foreign Investment Enterprises (FIEs) that were established in the Special Economic Zones, foreign enterprises that set up establishments and places of business, and engage in production and business operations in the Special Economic Zones, and production-type FIEs that are established in the Economic and Technological Development Zones were subject to the reduced corporate income tax rate of 15%.
2	Paragraph 3 of Article 7 of the <i>Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i>	FIEs that were established in the Coastal Economic Open Zones, in the old urban districts of the cities where the Special Economic Zones or the Economic and Technological Development Zones are located, or in other regions prescribed by the State Council, and that are engaged in energy, transportation, ports, wharfs or other projects encouraged by the State were subject to the reduced corporate income tax rate of 15%.
3	Paragraph 1(1) of Article 73 of the <i>Detailed Implementation Rules for the Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i>	Production-type FIEs that were established in the Coastal Economic Open Zones and in the old urban districts of the cities where the Special Economic Zones or the Economic and Technological Development Zones are located, and that were engaged in the following projects were subject to the reduced corporate income tax rate of 15%: technology-intensive or knowledge-intensive projects, projects with foreign investment of at least USD 30 million and with long recovery period on investment, projects in energy, transportation and port construction.
4	Paragraph 1(2) of Article 73 of the <i>Detailed Implementation Rules for the Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i>	Chinese-foreign equity joint ventures that were engaged in the construction of ports and wharfs were subject to the reduced corporate income tax rate of 15%.
5	Paragraph 1(4) of Article 73 of the <i>Detailed Implementation Rules for the Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i>	Production-type FIEs that were established in the Shanghai Pudong New Area, and FIEs that were engaged in energy and transportation construction projects such as airports, ports, railways, highways and power stations were subject to the reduced corporate income tax rate of 15%.

No.	Name of issuances	Relevant policy contents
6	<p><i>The State Council Replies on the Bonded Zones in Shanghai Wai Gao Qiao, Port of Tianjin, Shenzhen Futian, Shenzhen Shatoujiao, Dalian, Guangzhou, Xiamen Xiangyu, Zhangjiagang, Haikou, Qingdao, Ningbo, Fuzhou, Shantou, Zhuhai, Shenzhen Yantian</i> (Guohan [1991] No. 26, Guohan [1991] No. 32, Guohan [1992] No. 43, Guohan [1992] No. 44, Guohan [1992] No. 148, Guohan [1992] No. 150, Guohan [1992] No. 159, Guohan [1992] No. 179, Guohan [1992] No. 180, Guohan [1992] No. 181, Guohan [1993] No. 3, etc.)</p>	<p>Production-type FIEs were subject to the reduced corporate income tax rate of 15%.</p>
7	<p><i>The State Council Reply on the Establishment of the Investment Zones for Taiwanese Investors in the Coastal Region of Fujian Province</i> (Guohan [1989] No. 35)</p>	<p>Taiwan-invested Enterprises that were established in the Xiamen Investment Zone for Taiwanese Investors were subject to the reduced corporate income tax rate of 15%; production-type Taiwan-invested Enterprises that were established in the Fuzhou Investment Zone for Taiwanese Investors were subject to the reduced corporate income tax rate of 15%, while non-production-type Taiwan-invested Enterprises were subject to the reduced corporate income tax rate of 24%.</p>
8	<p><i>The State Council Notice on the Further Opening of Nanning, Chongqing, Huangshi, the Three Gorges of Yangtze River Economic Open Zone, Beijing and other cities</i> (Guohan [1992] No. 62, Guohan [1992] No. 93, Guohan [1993] No. 19, Guohan [1994] No. 92, Guohan [1995] No. 16)</p>	<p>Production-type FIEs that were engaged in the following projects in Provincial Capital Cities and open cities along the Yangtze River were subject to the reduced corporate income tax rate of 15%: technology-intensive or knowledge-intensive projects; projects with foreign investment of at least USD 30 million and with long recovery period on investment; projects in energy, transportation and port construction.</p>
9	<p><i>The State Council Reply on Issues Relevant to the Development and Construction of the Suzhou Industrial Park</i> (Guohan [1994] No. 9)</p>	<p>Production-type FIEs that were established in the Suzhou Industrial Park were subject to the reduced corporate income tax rate of 15%.</p>
10	<p><i>The State Council Notice on the Applicable Scope of the Regulation on the Expansion of Preferential Tax Treatments for Foreign Investment Enterprises Engaged in Energy and Transportation Infrastructure Projects</i> (Guofa [1999] No. 13)</p>	<p>Starting 1 January 1999, the reduced corporate income tax rate of 15%, which was applicable to production-type FIEs that were engaged in energy and transportation infrastructure projects pursuant to paragraph 1(1)(3) of Article 73 of the <i>Detailed Implementation Rules for the Income Tax Law of the People's Republic of China for Foreign-invested Enterprises and Foreign Enterprises</i>, were extended to the entire nation.</p>

No.	Name of issuances	Relevant policy contents
11	<i>The Regulations on the Special Economic Zones In Guangdong Province</i> (Approved for implementation at the 15 th Session of the Standing Committee of the 5 th National People's Congress on 26 August 1980)	The corporate income tax rate in Shenzhen, Zhuhai and Shantou Special Economic Zones in Guangdong Province was 15%.
12	<i>Reply on the Construction by Fujian Province of the Xiamen Special Economic Zone</i> ([80] Guohanzi No. 88)	The income tax rate in the Xiamen Special Economic Zone was 15%.
13	<i>The State Council Regulations on the Encouragement of the Investment in, and the Development of, Hainan Island</i> (Guofa [1988] No. 26)	Income from production and business operations and other income derived by enterprises that were established on Hainan Island (excluding State banks and insurance companies) were subject to the reduced corporate income tax rate of 15%.
14	Paragraph 2 of Article 7 of the <i>Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i>	Production-type FIEs that were established in the Coastal Economic Open Zones, or in the old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones were located were subject to the reduced corporate income tax rate of 24%.
15	<i>The State Council Notice on Issues Relevant to the Experimental Establishment of National Tourism and Vacation Areas</i> (Guofa [1992] No. 46)	FIEs that were established in National Tourism and Vacation Areas were subject to the reduced corporate income tax rate of 24%.
16	<i>The State Council Notice on the Further Opening of Heihe, Yining, Pingxiang, Erenhot and Other Border Cities</i> (Guohan [1992] No. 21, Guohan [1992] No. 61, Guohan [1992] No. 62, Guohan [1992] No. 94)	Production-type FIEs in border cities were subject to the reduced corporate income tax rate of 24%.
17	<i>The State Council Notice on the Further Opening of Five Border Cities Including Nanning, Kunming, Pingxiang, etc.</i> (Guohan [1992] No. 62)	The five cities (counties, towns) of Pingxiang, Dongxing, Wanding, Ruli, Hekou were permitted to establish Border Economic Cooperation Zones in cities (counties, towns) meeting certain conditions. Domestic production-type joint venture enterprises that were established in Border Economic Cooperation Zones and that were engaged primarily in exportation were subject to the reduced tax rate of 24%.
18	<i>The State Council Notice on the Further Opening of Nanning, Chongqing, Huangshi, the Three Gorges of the Yangtze River Economic Open Zone, Beijing and Other Cities</i> (Guohan [1992] No. 62, Guohan [1992] No. 93, Guohan [1993] No. 19, Guohan [1994] No. 92, Guohan [1995] No. 16).	Production-type FIEs in the Provincial Capital Cities and open cities along the Yangtze River were subject to the reduced corporate income tax rate of 24%.

No.	Name of issuances	Relevant policy contents
19	Paragraph 1 of Article 8 of the <i>Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i>	Production-type FIEs with an operating period of 10 years or more were exempt from corporate income tax for the first and the second years starting from the first profitable year, and were subject to 50% of the applicable corporate income tax rates in the third through the fifth years.
20	Paragraph 1(1) of Article 75 of the <i>Detailed Implementation Rules for the Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i>	A Chinese-foreign equity joint venture that was engaged in port and wharf construction and that had an operating period of 15 years or more was exempt from corporate income tax in the first through the fifth years starting from the first profitable year, and was subject to 50% of the applicable corporate income tax rates in the sixth through the tenth years upon application by the enterprise and the approval by the tax authorities of the Province, the Autonomous Region or the municipality under the direct jurisdiction of the Central Government.
21	Paragraph 1(2) of Article 75 of the <i>Detailed Implementation Rules for the Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i>	FIEs that were established in the Hainan Special Economic Zone and that were engaged in infrastructure projects such as airports, ports, wharfs, railways, highways, power stations, coal mines, water supplies, etc., and FIEs that were engaged in agricultural development and operations, where their operating periods were 15 years or more, were exempt from corporate income tax in the first through the fifth years starting from the first profitable year, and were subject to 50% of the applicable corporate income tax rates in the sixth through the tenth years upon the application by the enterprise and the approval by the tax authorities of Hainan Province.
22	Paragraph 1(3) of Article 75 of the <i>Detailed Implementation Rules for Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i>	FIEs that were established in the Shanghai Pudong New Area and that were engaged in energy and transportation projects such as airports, ports, railways, highways, power stations, etc., where their operating periods were 15 years or more, were exempt from corporate income tax in the first through the fifth years starting from the first profitable year, and were subject to 50% of the applicable corporate income tax rates in the sixth through the tenth years upon the application by the enterprise and the approval by the tax authorities of the City of Shanghai.

No.	Name of issuances	Relevant policy contents
23	Paragraph 1(4) of Article 75 of the <i>Detailed Implementation Rules for the Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i>	FIEs that were established in Special Economic Zones and that were engaged in the service industry, where the foreign investment exceeded USD 5 million and the operating period was 10 years or more, were exempt from corporate income tax in the first profitable year and subject to 50% of the applicable tax rate in the second and the third years upon the application by the enterprise and the approval by the tax authorities of the Special Economic Zones.
24	Paragraph 1(6) of Article 75 of the <i>Detailed Implementation Rules for the Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i>	Chinese-foreign equity joint ventures that were established in the Advanced and New Technology Industrial Development Zones recognised by the State Council and that were recognised as Advanced and New Technology Enterprises, where their operating periods were 10 years or more, were exempt from corporate income tax in the first and the second years starting from the first profitable year upon the application by the enterprises and the approval by the local tax authorities.
25	Paragraph 1(6) of Article 75 of the <i>Detailed Implementation Rules for the Income Tax Law of the People's Republic of China on Foreign Investment Enterprises and Foreign Enterprises</i> <i>The State Council Reply on the Provisional Regulations for the Beijing Development and Experiment Zone for New Technology Industries (Guohan [1988] No. 74)</i>	FIEs that were established in the Beijing Development and Experiment Zone for New Technology Industries, were eligible for the preferential tax treatments prescribed for the Zone. The new technology enterprises in the Experiment Zone were exempt from income tax for three years starting from the days of their establishment. With the permission by departments designated by the People's Government of Beijing, such enterprises were subject to 50% of the 15% or 10% tax rate in the fourth through the sixth years.
26	Paragraph 1 of Article 8 of the <i>Provisional Regulations on Enterprise Income Tax of the People's Republic of China</i>	Enterprises of the Ethnic Autonomous Regions that were in need of particular support and encouragement and that were eligible for fixed-term tax reductions or exemptions as permitted by Provincial People's Government shall not enjoy the transitional preferential treatment for more than five years.

No.	Name of Issuances	Relevant policy contents
27		Enterprises that were established on Hainan Island (except state banks and insurance companies), and that were engaged in the development and operation of infrastructure such as ports, wharfs, airports, highways, railways, power stations, coal mines, water supplies, etc., and in agricultural development and operations, where their operating periods were 15 years or more, were exempt from income tax from the first through the fifth years starting from the first profitable year, and were subject to 50% of the applicable income tax rates in the sixth through the tenth years.
28	<i>The State Council Regulations on Encouraging the Investment in, and the Development in Hainan Island</i> (Guofa [1988] No. 26)	Enterprises that were established on Hainan Island (except state banks and insurance companies), and that were engaged in industry and transportation, where their operating periods were 10 years or more, were exempt from income tax in the first and the second years starting from the first profitable year, and were subject to 50% of the applicable tax rates in the third to the fifth years.
29		Enterprises that were established on Hainan Island (except state banks and insurance companies), and that were engaged in service industries, where the total investment exceeded USD 5 million or RMB 20 million and the operating period was 10 years or more, were exempt from income tax in the first profitable year, and were subject to 50% of the applicable tax rates in the second and the third years.
30	<i>Circular of the State Council on Several Supporting Policies for Implementing the National Outlines of Medium and Long-Range Scientific and Technological Development (2006-2020)</i> (Guofa [2006] No. 6)	The newly established high-tech enterprises in national Advanced and New Technology Industrial Development Zones, upon completing the strict recognition process, were exempt from income tax for two years starting from the first profitable year.

State Council Notice 40



State Council

Notice on the Implementation of the Transitional Preferential Tax Treatment for Advanced and New Technology Enterprises Newly Established in the Special Economic Zones and the Shanghai Pudong New Area Guofa [2007] No. 40

Issued on: 26 December 2007

The People's Governments of all Provinces, Autonomous Regions and Municipalities under the direct jurisdiction of the Central Government, all Ministries and Commissions of the State Council, and all institutions under the direct supervision of the State Council:

According to Article 57 of the Corporate Income Tax (CIT) Law of the People's Republic of China, the State Council decides to implement transitional preferential tax treatments for Advanced and New Technology Enterprises that require the key support of the State and that are newly established in legally designated areas for developing foreign economic cooperation and technological exchanges and in areas where the State Council has determined that the special policies in the aforementioned areas are applicable. Some of the relevant issues are hereby addressed as follows:

1. The legally designated areas for developing foreign economic cooperation and technological exchanges refer to Shenzhen, Zhuhai, Shantou, Xiamen and Hainan Special Economic Zone; areas where the State Council has determined that the special policies in the aforementioned areas are applicable refer to the Shanghai Pudong New Area.
2. For Advanced and New Technology Enterprises that complete the registration in the Special Economic Zones and the Shanghai Pudong New Area on or after 1 January 2008 and that require the key support of the State (hereinafter referred to as the "Newly Established Advanced and New Technology Enterprises"), income derived from within the Special Economic Zones and the Shanghai Pudong New Area shall, starting from the tax year during which revenue from production and business operations is first derived, be exempt from CIT in the first and the second years, and be subject to 50% of the prescribed tax rate of 25% in the third through the fifth years.

The Advanced and New Technology Enterprises that require the key support of the State refer to the Advanced and New Technology Enterprises that own core, proprietary intellectual property rights, that satisfy the requirements prescribed under Article 93 of The Implementation Rules for the Corporate Income Tax Law of the People's Republic of China, and are recognised as such pursuant to the Administrative Measures for the Recognition of Advanced and New Technology Enterprises.

3. Where a Newly Established Advanced and New Technology Enterprise in a Special Economic Zone or the Shanghai Pudong New Area is engaged in production and business operations outside the Special Economic Zone or the Shanghai Pudong New Area, the enterprise shall separately calculate its income derived from within the Special Economic Zone or the Shanghai Pudong New Area, and shall reasonably allocate its expenses for the corresponding period; where the enterprise does not conduct a separate calculation, it shall not enjoy preferential CIT treatment.
4. Where, during the period when an Advanced and New Technology Enterprise enjoys the transitional preferential tax treatments according to this Notice, the enterprise no longer qualifies as an Advanced and New Technology Enterprise based upon a review or a random assessment, the enterprise shall cease to enjoy the transitional preferential tax treatments starting from the year during which the enterprise no longer qualifies as an Advanced and New Technology Enterprise; where the enterprise is subsequently recognised again as an Advanced and New Technology Enterprise, it shall not resume or restart its enjoyment of the transitional preferential tax treatments.
5. This Notice shall take effect 1 January 2008.

State Council
26 December 2007

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