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

- National People's Congress -

Promulgation date:	March 16, 2007
Effective date:	January 1, 2008
Department:	National People's Congress

Order of the President of the People's Republic of China (No. 63)

The Enterprise Income Tax Law of the People's Republic of China, adopted at the 5th Session of the 10th National People's Congress of the People's Republic of China on March 16, 2007, is hereby promulgated and shall come into effect on January 1, 2008.

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

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**Chapter VII Tax Assessment and Collection Administration****Chapter VIII Supplementary Provisions****Enterprise Income Tax Law
of the People's Republic of China****Chapter I General Provisions****Article 1**

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

This Law shall not apply to sole proprietorship enterprises and partnership enterprises.

Article 2

Enterprises are divided into "resident enterprises" and "non-resident enterprises".

The phrase "resident enterprise" as a term used in this Law shall refer to an enterprise established in accordance with the law within the territory of the People's Republic of China, or established in accordance with the law of a foreign country (region) but whose actual administration institution is located within the territory of the People's Republic of China.

The phrase "non-resident enterprise" as a term used in this Law shall refer to an enterprise established in accordance with the law of a foreign country (region) whose actual administration institution is located outside the territory of the People's Republic of China but with organizations or establishments within the territory of the People's Republic of China; or without organizations or establishments within the territory of the People's Republic of China but which have income derived from the territory of the People's Republic of China.

Article 3

A resident enterprise shall pay enterprise income tax on its income derived from both within and outside China.



For a non-resident enterprise with organizations or establishments within China, it shall pay enterprise income tax on its income derived from within China as well as income derived from outside China but in fact related to such organizations or establishments.

For a non-resident enterprise without any organizations or establishments within China, or with organizations or establishments within China but its income is not in fact related to such organizations or establishments, it shall pay enterprise income tax on its income derived from within China.

Article 4

Enterprise income tax shall be levied at the rate of 25%.

With regard to the income of a non-resident enterprise as mentioned in paragraph 3 of Article 3 of this Law, the applicable tax rate shall be 20%.

Chapter II Taxable Income

Article 5

The balance derived from the total income of an enterprise in each taxable year after deducting the tax-free income, tax-exempt income, other deductible items as well as the permitted carry-forward loss of previous year(s) shall be the taxable income.

Article 6

The total income of an enterprise shall consist of monetary and non-monetary income derived from various sources, including:

- (i) income from the sale of goods;
- (ii) income from the provision of labor services;
- (iii) income from the transfer of property;
- (iv) dividend, bonus and other equity investment proceeds;
- (v) interest income;
- (vi) rental income;
- (vii) income from royalties and licenses;
- (viii) income from accepted donations; and
- (ix) other incomes.

Article 7

The following income from the total income shall be tax-free incomes:

- (i) fiscal appropriations;
- (ii) administrative charges for fiscal administration and government funds in accordance with the law; and
- (iii) other tax-free incomes as prescribed by the State Council.



Article 8

Reasonable expenditure actually incurred in connection with the income of an enterprise, including costs, expenses, taxes, losses and other payments, may be deducted when computing taxable income.

Article 9

Expenditure for public welfare donations may be deducted when computing taxable income if it is within 12% of the total annual revenue.

Article 10

The following items shall not be deductible when computing taxable income:

- (i) dividend, bonus and other equity investment proceeds paid to investors;
- (ii) enterprise income tax payments;
- (iii) surcharge on overdue tax payments;
- (iv) penalties, fines and losses from confiscated property;
- (v) expenditures for donations other than those prescribed in Article 9 hereof;
- (vi) sponsorship fees;
- (vii) unverified reserve expenditures; and
- (viii) other expenses incurred not for the purpose of earning income.

Article 11

When computing taxable income, depreciation expenses for fixed assets calculated in accordance with relevant regulations may be deducted.

No depreciation expenses may be deducted for the following fixed assets:

- (i) fixed assets not in use other than houses and buildings;
- (ii) fixed assets leased in through a business lease;
- (iii) fixed assets leased out through a finance lease;
- (iv) fully depreciated fixed assets that remain in use;
- (v) fixed assets not related to business operations;
- (vi) land separately appraised and recorded as fixed assets; and
- (vii) other fixed assets for which depreciation may not be calculated.

Article 12

When computing taxable income, an enterprise may deduct amortization expenses of intangible assets calculated in accordance with relevant regulations.

Amortization expenses for the following intangible assets may not be deducted:



- (i) intangible assets whose self-development expenses have been deducted when computing taxable income;
- (ii) self-created goodwill;
- (iii) intangible assets not related to business operations; and
- (iv) other intangible assets for which amortization expenses may not be calculated.

Article 13

The following expenses incurred by an enterprise shall be deemed as long-term prepaid expenses, and the relevant amortization expenses calculated in accordance with relevant regulations may be deducted when computing taxable income:

- (i) reconstruction expenses of fully depreciated fixed assets;
- (ii) reconstruction expenses of leased fixed assets;
- (iii) hefty renovation expenses of fixed assets; and
- (iv) other expenses to be deemed as long-term prepaid expenses.

Article 14

When an enterprise makes an outbound investment, the costs of the transferred assets during the investment period shall not be deducted when computing taxable income.

Article 15

Costs incurred by an enterprise for inventories used or sold, calculated in accordance with relevant regulations, may be deducted when computing taxable income.

Article 16

Where an enterprise transfers its assets, the net value of those assets may be deducted when computing taxable income.

Article 17

When computing enterprise income tax on a consolidated basis, an enterprise is not entitled to offset the losses incurred by its overseas business operations against the profits earned within the territory.

Article 18

Losses incurred by an enterprise in a tax year may be carried forward and offset against the taxable income in successive tax years not exceeding 5 years.

Article 19

Where a non-resident enterprise obtains income as prescribed in Paragraph 3 of Article 3 of this Law, its taxable income shall be calculated in the following manner:

- (i) With regard to dividend, bonus, as well as proceeds and interests from equity investment, rental income and royalty, the total income shall be the taxable income;



- (ii) With regard to income from the transfer of assets, the balance after deducting the net value of the assets from the total income shall be the taxable income;
- (iii) With regard to other incomes, taxable income shall be computed in accordance with the methods stipulated in the preceding paragraphs.

Article 20

The provisions governing the scope and standard for incomes and deductions as well as tax treatment of assets as contained in this Chapter shall be formulated by the treasury and tax administration departments of the State Council.

Article 21

Where the financial and accounting bases adopted by an enterprise in the computation of taxable income are inconsistent with tax laws and administrative regulations, taxable income shall be computed in accordance with the provisions of tax laws and administrative regulations.

Chapter III Income Tax Payable

Article 22

The income tax payable shall be the balance of taxable income multiplied by the applicable tax rate and minus tax deductions and exemptions as provided for by the provisions regarding tax preferential treatment of this Law.

Article 23

An enterprise shall be entitled to credit its tax payable by the amount of taxes already paid overseas in the current period on the incomes listed below; the credit shall be limited to the tax otherwise payable in accordance with the provisions hereof; any excess amount that cannot be credited in the current period can be offset against tax payable within the following 5 years:

- (i) taxable income derived from outside China by a resident enterprise;
- (ii) taxable income derived from outside China by a non-resident enterprise which is actually connected with its organizations or establishments within China.

Article 24

For dividends and other distributions with respect to equity investment derived from outside China that a resident enterprise receives from a foreign enterprise that it controls directly or indirectly, the portion of income tax on such incomes paid by the foreign enterprise outside China may be treated as the allowable tax credits of the resident enterprise and be deducted within the tax credit limit as prescribed in Article 23 of this Law.



Chapter VI Preferential Tax Treatment

Article 25

Preferential tax treatment shall be granted to industries and projects whose development is supported and encouraged by the State.

Article 26

The following incomes of an enterprise shall be tax-free incomes:

- (i) interest income from government bonds;
- (ii) dividends, bonuses and other equity investment proceeds distributed between qualified resident enterprises;
- (iii) dividends, bonuses and other equity investment proceeds which a non-resident enterprise with organizations or establishments within China receives from a resident enterprise and which have actual connection with such organizations or establishments; and
- (iv) incomes of qualified non-profit organizations.

Article 27

Enterprise income tax on the following incomes may be deducted or exempted:

- (i) income from projects in agriculture, forestry, animal husbandry and fishery;
- (ii) income from major public infrastructure investment projects supported by the State;
- (iii) income from qualified environmental protection, and energy and water conservation projects;
- (iv) income from qualified transfer of technology; and
- (v) income as prescribed in Paragraph 3 of Article 3 hereof.

Article 28

Enterprise income tax for a small-scale enterprise that meets the prescribed conditions shall be levied at a reduced rate of 20%.

Enterprise income tax for State-encouraged high and new technology enterprises shall be levied at a reduced rate of 15%.

Article 29

The autonomous authority of a minority autonomous region may choose to reduce or exempt taxes for the portion of enterprise income tax for local distribution paid by an enterprise located in such region. Tax deductions or exemptions decided upon by an autonomous prefecture or county are subject to approval from the people's government of the province, autonomous region or municipality directly under the central government.

Article 30



Supper deductions shall be allowed for the following expenditures incurred by an enterprise:

- (i) research and development expenses incurred for the development of new technology, new products and new techniques; and
- (ii) salaries paid to disabled employees and other personnel whom the State encourages to offer assistance to.

Article 31

A venture capital enterprise engaged in venture capital investments supported and encouraged by the State may deduct from the taxable income a certain percentage of the total investment amount.

Article 32

Where the depreciation of any fixed assets of an enterprise is accelerated due to technology advancement or any other cause, it may shorten depreciation period or apply accelerated depreciation method.

Article 33

The income of an enterprise derived from the production of goods in conformity with the industrial policies of the State and by way of comprehensive utilization of resources may be deducted from the taxable income.

Article 34

Investments made by an enterprise in specialized equipment for environmental protection, energy and water conservation, production safety, etc. may be deducted from the tax amount at a specified percentage set forth.

Article 35

The specific measures for the implementation of the preferential tax treatments as prescribed in this Law shall be formulated by the State Council.

Article 36

If national economic and social development needs so require, or in the event of an emergency, etc. that seriously affects the business operations of enterprises, the State Council may formulate special preferential policies pertaining to enterprise income tax and report to the Standing Committee of the National People's Congress for recording purposes.



Chapter V Withholding at Source

Article 37

Income tax payable by a non-resident enterprise in respect of the income earned in accordance with Paragraph 3 of Article 3 hereof shall be subject to withholding at source, with the payer acting as the withholding agent. The tax amount shall be withheld from the amount paid or due payable amount by the withholding agent when the tax payment is made or payable amount is due.

Article 38

For income tax payable on income derived within China from engineering projects or labor services by a non-resident enterprise, the tax authority may designate the payer of the contracted amount or labor service fee as the withholding agent.

Article 39

Should the withholding agent fail to withhold or be unable to perform its obligation to withhold the income tax that should be withheld in accordance with the provisions of Article 37 and 38 hereof, the taxpayer shall pay income tax at the place where the income is derived. If the taxpayer fails to do so, the tax authority is entitled to recover the tax payable of such enterprise from its other income derived within the territory of China.

Article 40

The withholding agent shall hand over the tax payments withheld to the State treasury within 7 days from the withholding date, and file withholding income tax returns with the local tax authority.

Chapter VI Special Tax Adjustment

Article 41

For business transactions between an enterprise and its affiliates that are not in conformity with the arm's length principle and thus resulting in reduced taxable revenue or income for such enterprise or its affiliates, the tax authority is entitled to make adjustments based on reasonable methods.

Costs associated with the joint development or transfer of intangible assets, or joint provision or receipt of labor services of an enterprise and its affiliates shall be apportioned in accordance with the arm's length principle when computing taxable income.

Article 42

If an enterprise wishes to enter into an advance pricing arrangement, it may furnish the tax authority with the pricing principles and computation methods it adopts in business transactions between itself and its affiliates, for discussion and negotiation about entering into such arrangement.



Article 43

When an enterprise files its annual income tax returns with the tax authority, it shall enclose an annual report on related party transactions during the year.

When the tax authority conducts an investigation on related party transactions, the enterprise and its affiliates as well as other enterprises related to such investigation shall provide relevant information in accordance with relevant regulations.

Article 44

If an enterprise fails to provide information in respect of its related party transactions, or provides false and incomplete information that does not accurately reflect its actual related party transactions, the tax authority is entitled to assess the taxable income of such enterprise in accordance with laws and regulations.

Article 45

For an enterprise established by a resident enterprise or jointly controlled by a resident enterprise and a Chinese resident and located in a country (region) where the actual tax burden is significantly lower than the tax rates as prescribed in Paragraph 1 of Article 4 hereof, and which fails to distribute profits or distributes profits lesser than it should for a cause not attributable to reasonable operational needs, the portion of such profits attributed to the resident enterprise shall be included in its income of the current period.

Article 46

When the ratio of debt and equity investment that an enterprise receives from its affiliates exceeds a prescribed standard and results in interest expenditure, such expenditure shall not be deductible when computing taxable income.

Article 47

If an enterprise enters into any business arrangement without bona fide commercial objectives that results in reduced taxable revenue or income, the tax authority is entitled to make adjustments based on reasonable methods.

Article 48

Where the tax authority makes adjustments to the taxable income in accordance with the provisions of this Chapter, tax arrears due to the adjustment will be subject to additional interest stipulated by the State Council.



Chapter VII Tax Assessment and Collection Administration

Article 49

The administration of the collection of enterprise income tax shall be governed by the *Law of the People's Republic of China on the Administration of Tax Collection* in addition to the provisions of this Law.

Article 50

Unless otherwise stipulated by tax laws and relevant administrative regulations, a resident enterprise shall pay tax at the place where it is registered. If the registered address is outside of China, the enterprise shall pay tax at the place where its actual management is located.

A resident enterprise which has established business institutions without legal person status in China shall compute and pay its enterprise income tax on a consolidated basis.

Article 51

A non-resident enterprise earning income in accordance with Paragraph 2 of Article 3 hereof shall pay tax at the place where the institution or establishment is located. A non-resident enterprise that has two or more institutions or establishments in China may, upon the examination and approval of the tax authority, choose to have its main institution or establishment pay the enterprise income tax on a consolidated basis.

A non-resident enterprise earning income in accordance with Paragraph 3 of Article 3 hereof shall pay tax at the place where the withholding agent is located.

Article 52

Unless otherwise stipulated by the State Council, an enterprise is not allowed to pay its enterprise income tax on a consolidated basis.

Article 53

Enterprise income tax shall be calculated on the basis of a tax year. A tax year shall commence on January 1 and end on December 31 of each calendar year.

If an enterprise commences or terminates its operating activities in the middle of a tax year so that its actual operational period for that tax year is less than 12 months, the actual business operation period shall constitute a tax year.

An enterprise that is liquidated in accordance with the law shall use the liquidation period as its tax year.

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**Article 54**

Provisional enterprise income tax 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, submit provisional enterprise income tax returns and make provisional tax payments to the tax authority.

The enterprise shall submit an annual enterprise income tax return to the tax authority and settle the amount of tax payable or refundable within 5 months after the end of each year.

When an enterprise submits an enterprise income tax return, it shall enclose financial statements and other relevant information in accordance with the relevant regulations.

Article 55

Where an enterprise terminates its operating activities in the middle of a year, it shall, within 60 days from the actual day of termination of its business operations, settle the enterprise income tax payment for the current period with the tax authority.

An enterprise shall, prior to the cancellation of its business registration, file its income tax return with and make tax payment to the tax authority for its liquidation income.

Article 56

Enterprise income tax paid in accordance with this Law shall be calculated in Renminbi. Income calculated in other currencies shall be converted into Renminbi and taxed accordingly.

Chapter VIII Supplementary Provisions**Article 57**

Enterprises which have been approved and established prior to the promulgation of this Law and which enjoy preferential treatment in accordance with the tax laws and administrative regulations in force at that time are allowed for, according to the provisions of the State Council, a gradual transition to tax rates provided for herein within a five year period commencing from the effective date of this Law; enterprises which enjoy preferential treatment in the form of income tax exemption or reduction for a fixed term may, according to the provisions of the State Council, continue to enjoy such treatment after the promulgation of this Law until the expiry of the fixed term. However, for enterprises that have yet to enjoy preferential treatment due to their failure to make any profits, the preferential treatment period shall commence from the year this Law becomes effective.

State-encouraged high and new technology enterprises established within special zones developed in accordance with the law for the promotion of foreign economic cooperation

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and technological exchanges and such other zones as administered by the State Council for the implementation of the above-mentioned special policies may continue to enjoy transitional preferential tax treatment with the specific measures to be formulated by the State Council.

Other enterprises under the encouraged category as already determined by the State may enjoy tax exemptions and reductions in accordance with the regulations of the State Council.

Article 58

Where the provisions of a tax treaty/agreement concluded between the government of the People's Republic of China and a foreign government are inconsistent with the provisions of this Law, the provisions of the treaty/agreement shall prevail.

Article 59

The State Council shall, in accordance with this Law, formulate the implementing regulations.

Article 60

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

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Regulations of the People's Republic of China on the Implementation of the Enterprise Income Tax Law

Promulgation Date: 2007-12-06 Promulgation Number: Decree of the State Council of the People's Republic of China No. 512 Promulgation Department: The State Council of the People's Republic of China

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

No. 512

The Regulations of the People's Republic of China on the Implementation of the Enterprise Income Tax Law, which was passed at the 197th standing meeting of the State Council on November 28, 2007, are hereby promulgated and enter into force on January 1, 2008.

Premier Wen Jiabao
December 6, 2007

Regulations of the People's Republic of China on the Implementation of the Enterprise Income Tax Law

Chapter 1 General Provisions

Article 1 The Regulations are formulated in accordance with the Enterprise Income Tax Law of the People's Republic of China (hereinafter referred to as the Enterprise Income Tax Law).

Article 2 The "sole proprietorship enterprises" and "partnership enterprises" as prescribed in Article 1 of the Enterprise Income Tax Law refer to the sole proprietorship enterprises and partnership enterprises established in accordance with the laws and regulations of China.

Article 3 The "enterprises duly established within the territory of China" as prescribed in Article 2 of the Enterprise Income Tax Law include enterprises, public institutions, social associations and other income-generating organizations established in China in accordance with the laws and administrative regulations of China.

The "enterprises established in accordance with the laws of foreign countries (regions) as prescribed in Article 2 of the Enterprise Income Tax Law include enterprises and other income-generating organizations established in accordance with the laws of foreign countries (regions).

Article 4 The "effective management" as prescribed in Article 2 of the Enterprise Income Tax Law refer to an establishment that substantially exercises overall management and control over the production, operation, personnel, accounting and properties of an enterprise.

Article 5 The "establishment and place" as prescribed in Paragraph 3 of Article 2 of the Enterprise Income Tax Law refer to the establishments and places in China engaging in production and business operations, including:

- (1) Management organizations, business organization and representative offices;
- (2) Factories, farms and places where natural resources are exploited;
- (3) Places where labor services are provided;
- (4) Places where contractor projects such as construction, installation, assembly, repair and exploration are undertaken; and
- (5) Other establishments or places where production and operation activities are undertaken.

If a non-resident enterprise entrusts a business agent to carry out production and business activities in the territory of China, including entrusting an enterprise or

individual to regularly sign contracts, store or deliver goods on its behalf, such business agent shall be considered as the establishment or place of the non-resident enterprise in China.

Article 6 The "income" as prescribed in Article 3 of the Enterprise Income Tax Law includes incomes from sale of goods, provision of services, transfer of property, dividends, interests, rents, royalty and reception of donations and other incomes.

Article 7 The "incomes from the sources inside and outside China" as prescribed in Article 3 of the Enterprise Income Tax Law shall be determined according to the following principles:

- (1) For incomes from sale of goods, the sources shall be determined according to the location where the transactions take place;
- (2) For incomes from provision of services, the sources shall be determined according to the location of services;
- (3) For incomes from transfer of properties, if the property concerned is an immovable property, the source shall be determined according to the location where the immovable property is situated; if the property concerned is a movable property, the source shall be determined according to the location of the enterprise, establishment or place which transfers the property; if the property concerned is equity investment, the source shall be determined according to the location of the enterprise receiving the investment;
- (4) For dividends and bonuses from equity investment, the sources shall be determined according to the location of the enterprises which distribute the dividends and bonuses;
- (5) For incomes from interests, rents and royalty, the source shall be determined according to the location of the enterprise, establishment or place which bears or pays the said incomes or the residence location of the individual who bears or pays the said incomes; or
- (6) For other incomes, the sources shall be determined by the competent financial and tax departments of the State Council.

Article 8 The "effective connection" as prescribed in Article 3 of the Enterprise Income Tax Law refers to the situation whereby the establishment or place of a non-resident enterprise in China owns the shareholdings and creditor's rights which give rise to incomes and owns, manages and controls over the properties which give rise to incomes.

Chapter 2 Taxable Income

Section 1 General Rules

Article 9 Unless otherwise prescribed herein and by the competent financial and tax departments of the State Council, the taxable income of an enterprise shall be calculated on accrual basis. Incomes and expenses related to the current period shall be treated as incomes and expenses of the current period, regardless of payment. And incomes and expenses that are not related to the current period shall not be treated as incomes and expenses of the current period, even if the payment has been received or made within the current period.

Article 10 The "loss" as prescribed in Article 5 of the Enterprise Income Tax Law refers to the amount of gross income of an enterprise in each tax year as reduced by non-taxable incomes, tax-exempt incomes and various deductions in accordance with the Enterprise Income Tax Law and The Regulations, where the remaining balance is less than zero.

Article 11 The "liquidation income" as prescribed in Article 55 of the Enterprise Income Tax Law refers to the balance of realizable value or transaction price of an enterprise's entire assets as reduced by the net book value of such assets, liquidation expenses and related taxes and charges.

For the remaining assets obtained by an investor enterprise from the liquidated enterprise, the portion that corresponds to the accumulated retained earnings and accumulated surplus reserve of the liquidated enterprise attributable to the enterprise shall be recognized as dividend income; the remaining assets as reduced by the aforesaid dividend income which exceeds or is less than the investment cost shall be recognized as profit or loss from the transfer of investment assets.

Section 2 Income

Article 12 The "monetary incomes obtained by enterprises" as prescribed in Article 6 of the Enterprise Income Tax Law include cash, deposits, accounts receivable, notes receivable, bond investment that are intended to be held until maturity and forgiveness of debts.

The "non-monetary incomes obtained by enterprises" as prescribed in Article 6 of the Enterprise Income Tax Law include fixed assets, biological assets, intangible assets, equity investment, inventories, bond investments that are not intended to be held until maturity, labor services and relevant rights and interests.

Article 13 The value of "non-monetary incomes obtained by enterprises" as prescribed in Article 6 of the Enterprise Income Tax Law shall be determined based on its fair value.

The fair value as prescribed in the previous paragraph refers to the value that is determined based on the market price.

Article 14 The “incomes from sale of goods” as prescribed in Paragraph 1 of Article 6 of the Enterprise Income Tax Law refer to the incomes of an enterprise from sale of commodities, products, raw materials, packing materials, low-value consumables and other inventories.

Article 15 The “incomes from provision of labor services” as prescribed in Paragraph 2 of Article 6 of the Enterprise Income Tax Law refer to the incomes of an enterprise from businesses including construction and installation, repair and overhaul, transportation, warehousing and leasing, finance and insurance, post and communication, consulting and brokerage, culture and sport, scientific research, technical service, education and training, accommodation, intermediary and agency, hygiene and healthcare, community services, tourism, entertainment, processing and other labor services.

Article 16 The “incomes from transfer of property” as prescribed in Paragraph 3 of Article 6 of the Enterprise Income Tax Law refer to incomes of an enterprise from the transfer of properties including fixed assets, biological assets, intangible assets, shareholdings and creditor's rights.

Article 17 The “incomes from equity investment including dividends and bonuses” as prescribed in Paragraph 4 of Article 6 of the Enterprise Income Tax Law refer to the incomes of an enterprise from its investee as a result of the equity investment.

Except as otherwise prescribed by the competent financial and tax departments of the State Council, equity investment incomes including dividends and bonuses are recognized as incomes on the day when the investee makes a resolution to make profit distribution.

Article 18 The “interest incomes” as prescribed in Paragraph 5 of Article 6 of the Enterprise Income Tax Law refer to the incomes obtained by an enterprise from provision of funds for others to use but not constituting equity investment, or from the possession of its funds by others, including deposit interests, loan interests, bond interests and arrear interests.

The interest incomes are recognized as incomes on the payment date of interests due as agreed with the debtor in contracts.

Article 19 The “rental incomes” as prescribed in Paragraph 6 of Article 6 of the Enterprise Income Tax Law refer to the incomes obtained by an enterprise from provision of the right to use of fixed assets, packing materials or other tangible assets.

The rental incomes are recognized as incomes on the payment date of rents due as agreed with the lessee in contracts.

Article 20 The “royalty incomes” as prescribed in Paragraph 7 of Article 6 of the Enterprise Income Tax Law refer to the incomes obtained by an enterprise from provision of the rights to use of patent, know-how, trademark, copyright and other chartered rights.

The royalty incomes are recognized as incomes on the payment date of royalty due as agreed with the licensee in contracts.

Article 21 The “incomes from receipt of donations” as prescribed in Paragraph 8 of Article 6 of the Enterprise Income Tax Law refer to the monetary or non-monetary assets that are donated by other enterprises, organization or individuals for free to an enterprise.

The donation incomes are recognized as incomes on the day when the donated assets are actually received.

Article 22 The “other incomes” as prescribed in Paragraph 9 of Article 6 of the Enterprise Income Tax Law refer to incomes obtained by an enterprise besides those incomes as prescribed in Paragraph (1) to (8) of Article 6 of the Enterprise Income Tax Law, including enterprise assets premium incomes, deposit incomes for packing materials overdue for return, accounts payable that cannot be settled, accounts receivable recovered after being written-off as bad debts and incomes from debt restructuring, subsidies, penalties and exchange gains.

Article 23 Incomes may be recognized in stages where an enterprise is engaged in the following production and operation business:

- (1) For goods sold by installment, the incomes are recognized upon the dates of receipt of the proceeds as agreed in contracts;
- (2) For an enterprise which is commissioned to process and manufacture large-scale mechanical equipment, vessels and aircrafts or is engaged in construction, installation and assembly projects or other labor services, if the term lasts for more than 12 months, the incomes are recognized based on the progress of project completion or work volume completed within the tax year.

Article 24 Where incomes are obtained from sharing of product output, incomes are recognized on the day when the shared products are distributed to the enterprise, and the amount of income shall be determined based on the fair value of the products.

Article 25 Unless as otherwise prescribed by the competent financial and tax departments of the State Council, where an enterprise has exchanged non-monetary assets or used its goods, properties or labor services for the purposes such as donation, repayment of debts, sponsorship, fund raising, advertisement, sample, staff welfare or profit distribution, it shall be deemed as sale of goods, transfer of properties or provision of labor services.

Article 26 The “fiscal appropriation” as prescribed in Paragraph 1 of Article 7 of the Enterprise Income Tax Law refers to the fiscal funds appropriated by people's governments at various levels to organizations such as public institutions and social organization, which are administered within treasury budget, unless otherwise prescribed by the State Council or the competent financial and tax departments of the State Council.

The “governmental administration charges” as prescribed in Paragraph 2 of Article 7 of the Enterprise Income Tax Law refer to charges which are collected from specific service targets, during the processes of carrying out social public administration and providing specific public services to citizens, legal persons or other organizations, in accordance with the relevant provisions of laws and regulations as approved pursuant to the procedures formulated by the State Council and administered as treasury funds.

The “governmental funds” as prescribed in Paragraph 2 of Article 7 of the Enterprise Income Tax Law refer to fiscal funds which are collected by an enterprise on behalf of the government for specified purposes in accordance with the relevant provisions of laws and administrative regulations.

The “other non-taxable incomes as stipulated by the State Council” as prescribed in Paragraph 3 of Article 7 of the Enterprise Income Tax Law refer to fiscal funds that are approved by the State Council and received by an enterprise which are to be used for specific purposes in accordance with the provisions provided by the competent financial and tax departments of the State Council.

Section 3 Deduction

Article 27 The “related expenditures” as prescribed in Article 8 of the Enterprise Income Tax Law refer to expenditures that are directly related to the generation of incomes.

The “reasonable expenditures” as prescribed in Article 8 of the Enterprise Income Tax Law refer to the necessary and ordinary expenditures incurred in the course of normal production and operation that shall be recorded as the profit and loss for the current period or the cost of relevant assets.

Article 28 Expenditures incurred by an enterprise shall be classified into revenue in nature and capital in nature. Revenue expenditures shall be directly deducted in the period when it is incurred; capital expenditure shall be deducted in stages or recorded as the cost of the relevant assets and shall not be directly deducted in the period when it is incurred.

If an enterprise uses non-taxable incomes for expenditures, the resulting expenses and assets shall not be deducted directly or through depreciation or amortization.

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

Article 29 The “costs” as prescribed in Article 8 of the Enterprise Income Tax Law refer to sales costs, costs of goods sold, business expenditures and other consumable expenditures that are incurred by an enterprise in the process of production and operation activities.

Article 30 The “expenses” as prescribed in Article 8 of the Enterprise Income Tax Law refer to the sales, overhead and financial expenses incurred by an enterprise in the process of production and operation activities except for expenses that have already been recorded as costs.

Article 31 The “taxes” as prescribed in Article 8 of the Enterprise Income Tax Law refer to various taxes and surtaxes incurred by an enterprise except for enterprise income tax and creditable VAT.

Article 32 The “losses” as prescribed in Article 8 of the Enterprise Income Tax Law refer to the shortfall loss, damage loss and loss from scrapping of fixed assets and inventories, loss on property transfer, loss on doubtful accounts, loss on bad debts, loss resulted from force majeure such as natural disasters and other losses which are incurred in the process of production and operation activities of an enterprise.

The balance of the losses that an enterprise has incurred, as reduced by compensation from the responsible party and insurance claims, shall be deductible in accordance with the provisions provided by the competent financial and tax departments of the State Council.

Assets which have been written off as losses and that are entirely or partially recovered in tax years in the future shall be regarded as income in the period of recovery.

Article 33 The “other expenditures” as prescribed in Article 8 of the Enterprise Income Tax Law refer to reasonable expenses other than costs, expenses, taxes and losses that are incurred in the production and operation activities of an enterprise and relevant to its production and operation activities.

Article 34 Reasonable wages and salaries incurred by an enterprise are allowed to be deducted.

The “wages and salaries” as stated in the preceding paragraph refer to all cash and non-cash labor service remuneration paid by an enterprise during each tax year to its employees who are appointed in the enterprise or employed by the enterprise, including basic wages, bonuses, allowances, subsidies, year-end salaries, salaries for overtime and other appointment-related or employment-related expenditures for employees.

Article 35 Basic social security contributions including basic pension insurance, basic medical insurance, unemployment insurance, work-related injury insurance and maternity insurance and housing funds that are made by an enterprise in accordance with the scope and criteria as provided by the relevant competent departments of the State Council or provincial people's governments are allowed to be deducted.

Supplementary pension insurance and supplementary medical insurance contributed by an enterprise for its investors or employees in accordance with the scope and criteria provided by the competent financial and tax departments of the State Council are allowed to be deducted.

Article 36 Except for premiums for personal safety insurance paid by an enterprise pursuant to the State's relevant regulations for its workers conducting special types of production work and premiums paid for other commercial insurance policies that may be deducted pursuant to the provisions provided by the competent financial and tax departments of the State Council, premiums for commercial insurance policies paid by the enterprise for its investors or employees shall not be deducted.

Article 37 Reasonable borrowing costs that are incurred by an enterprise during its production and operation activities and need not be capitalized may be deductible.

For borrowings used for acquisition and construction of fixed assets, intangible assets and inventories that require at least 12 months to construct to reach the intended saleable condition, reasonable borrowing costs incurred during the period of acquisition and construction of the relevant assets shall be treated as capital expenditure and recorded as part of the cost of the relevant assets and deducted pursuant to the relevant provisions herein.

Article 38 The following interest expenses incurred by an enterprise in its production and operation activities are allowed to be deducted:

- (1) Interest expenses on borrowing from financial institutions by a non-financial institution, interest expenses paid on various savings deposits and inter-bank borrowings as incurred by financial institutions and interest expenses incurred by an enterprise on bonds approved for issuance; and
- (2) For interest expenses on borrowings from non-financial institutions by a non-financial institution, the portion that does not exceed the amount calculated by reference to the interest rate of similar loan with the same term as provided by financial institutions.

Article 39 Exchange losses incurred by an enterprise on transactions involving currencies and at the end of a tax year on translation of monetary assets and liabilities denominated in non-RMB currencies to RMB based on spot medium exchange rates at the year end date are allowed to be deducted, except for the portion that has been recorded as cost of the relevant assets or is related to profit distributions to owners.

Article 40 Staff welfare expenditures that are incurred by an enterprise are allowed to be deducted up to 14% of its total wages and salaries.

Article 41 Labor union fees that are appropriated and paid by an enterprise are allowed to be deducted up to 2% of its total wages and salaries.

Article 42 Unless as otherwise prescribed by the competent financial and tax departments of the State Council, expenditures for staff education that are incurred by an enterprise are allowed to be deducted up to 2.5% of its total wages and salaries. Any excess amount is allowed to be carried forward and deducted in the following tax years.

Article 43 For business entertainment expenses that are incurred by an enterprise and related to its production and operation activities, 60% of the amount incurred may be deducted, but the deduction shall not exceed 0.5% of the sales (business) income of that year.

Article 44 Expenditures incurred by an enterprise for qualified advertising expenses and business promotion expenses are allowed to be deducted up to 15% of the sales (business) income of that year unless otherwise provided by the competent financial and tax departments of the State Council. Any excess amount is allowed to be carried forward and deducted in the following tax years.

Article 45 Special funds that are appropriated for use in protecting environment and restoring ecology pursuant to the relevant laws and administrative regulations are allowed to be deducted. Where the purposes of the aforesaid funds change, it shall not be deducted.

Article 46 Where an enterprise contracts for property insurance, the insurance premium paid pursuant to provisions are allowed to be deducted.

Article 47 The rental expenses paid by an enterprise for leased fixed assets that are used for its production and operation activities shall be deducted pursuant to the following methods:

- (1) Rental expense incurred on fixed assets leased under an operating lease shall be deducted evenly throughout the lease term; and
- (2) For rental expense incurred on fixed assets under a finance lease, the portion that forms the value of fixed assets pursuant to the provisions shall be depreciated and deducted in stages.

Article 48 Reasonable expenditures incurred by an enterprise for labor safety protection are allowed to be deducted.

Article 49 Overhead expenses paid between enterprises, rental and royalty fees paid between business units of an enterprise and interests paid between unites of a non-banking enterprise shall not be deducted.

Article 50 For an establishment or place of business of a non-resident enterprise in China, reasonable expenses allocated from the overseas head office may be deducted on the condition that these expenses are incurred by its head office and related to the production or operation of such establishment or place and supporting documents issued by its head office certifying the overall scope of the expenses, the amount involved and the basis and methods of allocation can be provided.

Article 51 The “charitable donation expenditures” as prescribed in Article 9 of the Enterprise Income Tax Law refer to donations made by an enterprise through charitable social organizations or the people’s governments and departments thereof at the county level or above for the charitable undertakings that are prescribed in the Law of the People’s Republic of China on Donation for Charitable Undertakings.

Article 52 The “charitable social organizations” as prescribed in Article 51 herein refer to social organizations such as funding associations and charitable institutions that fulfill all of the following conditions:

- (1) Legally established with status as legal person;
- (2) Aiming at developing public welfare with no profit-making objective;
- (3) The entire assets and the corresponding appreciation are owned by that legal person;
- (4) Earnings and surplus from operation are mainly utilized for the undertakings which are in line with the objective of the set-up of such legal person;
- (5) Upon termination, any assets remaining shall not belong to any individual or profit-making organization;
- (6) Not engaged in activities that are not related to the objective of the set-up of the organization;
- (7) Possessing sound and complete financial and accounting system;
- (8) Donors are not involve, in any form, in the distribution of properties of the organization; and
- (9) Other conditions jointly provided by the competent financial and tax departments of the State Council and the registration bureaus such as the civil administration departments of the State Council.

Article 53 Charitable donations incurred by an enterprise are allowed to be deducted up to 12% of its total annual profits.

The “total annual profits” refer to the annual accounting profits calculated by an enterprise pursuant to the unified accounting system of the State.

Article 54 The “sponsorship expenditures” as prescribed in Paragraph 6 of Article 10 of the Enterprise Income Tax Law refer to all types of expenditures that are incurred by an enterprise, non-advertising in nature and not related to the production and operation of the enterprise.

Article 55 The “provisions that have not been verified” as prescribed in Paragraph 7 of Article 10 of the Enterprise Income Tax Law refer to various provisions for asset impairment reserves and risk reserves made by an enterprise which are not in accordance with the rules prescribed by the competent financial and tax departments of the State Council.

Section 4 Tax Treatment of Assets

Article 56 The tax basis for various assets of an enterprise, including fixed assets, biological assets, intangible assets, long-term deferred expenses, investment assets and inventories shall be based on historical cost.

The “historical cost” as prescribed in the preceding paragraphs refers to the expenditures actually incurred by the enterprise when acquiring the assets.

When the value of various assets have appreciated or devalued during the holding period by an enterprise, the tax basis of these assets shall not be adjusted unless the provisions as prescribed by the competent financial and tax departments of the State Council allow the gain or loss to be recognized.

Article 57 The “fixed assets” as prescribed in Article 11 of the Enterprise Income Tax shall refer to non-monetary assets with a useful life of more than 12 months possessed by an enterprise for the purpose of producing products, provision of labor services, lease or operation and management, including buildings, structures, machinery, mechanisms, means of transport and other equipment, appliances and tools that are related to its production and operation activities.

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

- (1) The tax basis of acquired fixed assets is determined according to the purchase price and related taxes and charges, and other expenditures incurred that are directly attributable to the assets achieving their intended purpose of usage;
- (2) The tax basis of self-constructed fixed assets is determined according to the expenditure incurred until the completion of the construction;
- (3) The tax basis of fixed assets leased under a financing lease is determined according to the total lease payments as agreed in the lease agreement and the relevant expenses incurred by the lessee during the process of concluding the lease agreement. If the total lease payment is not stated in the lease agreement, the tax basis is determined according to the fair value of the assets and the relevant expenses incurred by the lessee during the process of concluding the lease agreement;
- (4) The tax basis of fixed assets inventory surplus is determined according to the full replacement cost of the same type of fixed assets;
- (5) The tax basis of fixed assets that are obtained through donation, capital contribution, exchange of non-monetary assets and debt restructuring is determined

according to the fair value of the assets and related taxes and charge paid;

- (6) For re-constructed fixed assets, except for the expenditures prescribed in Paragraph 1 and 2 of Article 13 of the Enterprise Income Tax Law, re-construction expenditures incurred during the re-construction process is added to the tax basis.

Article 59 Depreciation of fixed assets calculated according to the straight-line method are allowed to be deducted.

An enterprise shall calculate the depreciation of a fixed assets beginning from the month following that the fixed assets is placed into use. If the fixed assets cease to be used, depreciation shall not be calculated beginning from the month following that in which the use of the fixed asset ceases.

An enterprise shall reasonably determine the estimated residual value of a fixed asset based on the nature and use condition. Once the estimated residual value is determined, it shall not be changed.

Article 60 Unless as otherwise prescribed by the competent financial and tax departments of the State Council, the minimum depreciation period for fixed assets shall be calculated as follows:

- (1) Buildings and structures: 20 years;
- (2) Aircrafts, trains, vessels, machinery, mechanisms and other production equipment: 10 years;
- (3) Appliances, tools and furniture related to production and operation activities: 5 years;
- (4) Means of transport other than aircrafts, trains and vessels: 4 years;
- (5) Electronic equipment: 3 years.

Article 61 For an enterprise which is engaged in exploitation of mineral resources such as petroleum and natural gas, the depletion and depreciation methods for the expenses incurred before the commencement of commercial production and for the relevant fixed assets shall be separately formulated by the competent financial and tax departments of the State Council.

Article 62 The tax basis for production-nature biological assets shall be determined according to the following methods:

- (1) The tax basis of acquired production-nature biological assets is determined according to the purchase price and he relevant taxes and charges;
- (2) The tax basis of production-nature biological assets obtained through the forms such as donation, capital contribution, exchange of non-monetary assets and debt restructuring is determined according to the fair value of the asset and relevant taxes and charges;

The "production-nature biological assets" as stated in the preceding paragraphs refer to biological assets that are possessed by an enterprise for producing agricultural products, provision of labor services and leasing, including economic forests, firewood forests, livestock kept for breeding and livestock for labor.

Article 63 Depreciation of production-nature biological assets calculated according to the straight-line method is allowed to be deducted.

An enterprise shall calculate the depreciation of a production-nature biological asset beginning from the month following that in which the production-nature biological assets are placed into use. If a production-nature biological asset ceases to be used, depreciation shall not be calculated beginning from the month following that in which the use of the production-nature biological asset ceases.

An enterprise shall reasonably determine the estimated residual value of a production-nature biological asset based on its nature and use condition. Once the estimated residual value is determined, it shall not be changed.

Article 64 The minimum depreciation period for production-nature biological assets shall be as follows:

- (1) Production-nature biological assets in the nature of forestry: 10 years;
- (2) Production-nature biological assets in the nature of livestock: 3 years.

Article 65 The "intangible assets" as prescribed in Article 12 of the Enterprise Income Tax Law refer to non-monetary long-term assets that bear no physical forms and are possessed by an enterprise for the purposes of manufacturing of products, provision of labor services, leasing or business management, including patent, trademark, copyright, land use right, know-how and goodwill.

Article 66 The tax basis for intangible assets shall be determined according to the following methods:

- (1) The tax basis for an acquired intangible asset is determined according to the purchase price, related taxes and charges, and other expenditures incurred that are directly attributable to the asset achieving its intended purpose of usage;
- (2) The tax basis for a self-developed intangible asset is determined according to the expenditures incurred during the development process beginning from the time

the conditions for capitalization are satisfied and ending at the time when such asset achieves its intended purpose of usage.

- (3) The tax basis for an intangible asset that is obtained through the forms such as donation, capital contribution, exchange of non-monetary assets and debt restructuring is determined according to the fair value of the asset and related taxes and charges.

Article 67 The amortization of intangible assets calculated according to the straight-line method is allowed to be deducted.

Intangible assets shall be amortized over a period of no less than 10 years.

Intangible asset which is obtained through capital contribution or assignment and its useful life is prescribed in the relevant laws or agreed in contracts may be amortized in stages pursuant to the prescribed or agreed useful life.

The cost of acquired goodwill is allowed to be deducted at the time when the entire enterprise is transferred or liquidated.

Article 68 The "expenditures for re-constructing fixed assets" as prescribed in Paragraph 1 and 2 of Article 13 of the Enterprise Income Tax Law refer to expenditures incurred for the purposes of structural alteration of buildings or structures and extension of the useful life of the assets.

The expenditures as prescribed in Paragraph 1 of Article 13 of the Enterprise Income Tax Law shall be amortized according to the estimated remaining useful life; the expenditures as prescribed in Paragraph 2 shall be amortized in stages according to the remaining lease term as agreed in contracts.

If the useful life of a fixed asset is extended as a result of re-construction, except for the provisions in Paragraph 1 and 2 of Article 13 of the Enterprise Income Tax Law, the depreciation period shall be extended appropriately.

Article 69 The "expenditures incurred for major repairs of fixed assets" as prescribed in Paragraph 3 of Article 13 of the Enterprise Income Tax Law shall refer to expenditures that satisfy both of following conditions:

- (1) The expenditures incurred on repairs account for over 50% of the original tax basis of fixed assets when obtained;
- (2) The useful life of the fixed assets is extended for more than 2 years after the repair.

The expenditures as prescribed in Paragraph 3 of Article 13 of the Enterprise Income Tax Law shall be amortized in stages according to the remaining useful life of the fixed assets.

Article 70 The "expenditures which shall be treated as long-term deferred expenses" as prescribed in Paragraph 4 of Article 13 of the Enterprise Income Tax Law shall be amortized in stages starting from the month following that in which the expense is incurred over a period of no less than 3 years.

Article 71 The "investment assets" as prescribed in Article 14 of the Enterprise Income Tax Law refer to the assets resulted from external equity investment and debt investment made by an enterprise.

The cost of investment assets made by an enterprise is allowed to be deducted when the investment is transferred or disposed.

The cost of investment assets shall be determined according to the following methods:

- (1) The cost of investment assets that are obtained through cash settlement shall be determined according to the purchase price;
- (2) The cost of investment assets that are obtained through methods other than cash settlement shall be determined according to the fair value of the asset and related taxes and charges.

Article 72 The "inventories" as prescribed in Article 15 of the Enterprise Income Tax Law refer to products or goods that are possessed by an enterprise for the purpose of sale, semi-finished goods under production process and materials and ingredients consumed during the production process or the provision of labor services process.

The cost of inventories shall be determined according to the following methods:

- (1) The cost of inventories that are obtained through cash settlement shall be determined according to the purchase price and the related taxes and charges;
- (2) The cost of inventories that are obtained through methods other than cash settlement shall be determined according to the fair value of the asset and the related taxes and charges;
- (3) The cost of agricultural products generated by production-nature biological assets shall be determined according to the necessary expenditures such as material expenses, labor cost and allocated indirect expenses that are incurred during the process of production or harvest.

Article 73 In order to determine the cost of inventories that are consumed or sold, an Enterprise may select one of the following calculation methods: the first-in-first-out method, weighted average method, or specific identification method. Once a calculation method has been selected, it shall not be arbitrarily changed.

Article 74 The “net book value of assets” and the “net book value of properties” as prescribed in Article 16 and 19 of the Enterprise Income Tax Law refer to the tax basis of the relevant assets and properties as reduced by depreciation, depletion, amortization and provisions already deducted pursuant to the regulations.

Article 75 Unless as otherwise prescribed by the competent financial and tax departments of the State Council, where an enterprise undergoes restructuring, it shall recognize the profit or loss from the transfer of the relevant assets at the time when the transaction takes place, and the tax basis of the relevant assets shall be revised according to the transaction prices.

Chapter 3 Tax Payable

Article 76 The computation formula for tax payable as prescribed in Article 22 of the Enterprise Income Tax shall be as follows:

Tax payable = Tax income * Applicable tax rate – Reduced/exempted tax – Tax credit

Reduced/exempted tax and tax credit as stated in the formula refer to the tax payable that is reduced, exempted and credited pursuant to the preferential tax treatments as prescribed under the Enterprise Income Tax Law or by the State Council.

Article 77 The “foreign income tax already paid abroad” as prescribed in Article 23 of the Enterprise Income Tax Law refers to the tax amounts in the nature of enterprise income tax in respect of income obtained from sources outside China that is payable and actually paid overseas in accordance with foreign tax laws and relevant regulations.

Article 78 The “credit limit” as prescribed in Article 23 of the Enterprise Income Tax Law refers to the tax payable that is calculated based on the income obtained from sources outside China and pursuant to the Enterprise Income Tax Law and The Regulations. Such credit limit should be calculated with a country (region)-basket limitation without an item-basket limitation. The computation formula shall be as follows:

Credit limit = Total tax payable on income sourced inside and outside China computed in accordance with the Enterprise Income Tax Law and The Regulations * Taxable income sourced from certain country (region) / Total China and foreign sourced taxable income

Article 79 The “five years” as prescribed in Article 23 of the Enterprise Income Tax Law refer to the five consecutive tax years following the year in which the amount of foreign tax in the nature of enterprise income tax paid in respect of income sourced outside China exceeds the credit limit.

Article 80 The “direct control” as prescribed in Article 24 of the Enterprise Income Tax Law refers to the situation where a resident enterprise directly owns more than 20% shareholding of a foreign enterprise.

The “indirect control” as prescribed in Article 24 of the Enterprise Income Tax Law refers to the situation that a resident enterprise owns more than 20% of the shareholding of a foreign enterprise through indirect ownership. The detailed measures for assessment shall separately be formulated by the competent financial and tax departments of the State Council.

Article 81 When an enterprise claims an enterprise income tax credit in accordance with the provisions prescribed in Articles 23 and 24 of the Enterprise Income Tax Law, it shall provide the relevant tax payment certificates for the corresponding tax year issued by the foreign tax authorities.

Chapter 4 Preferential Tax Treatment

Article 82 The “interest incomes from State treasury bonds” as stated in Paragraph (1) of Article 26 of the Enterprise Income Tax Law refer to interest income obtained from State treasury bonds issued by the competent financial department of the State Council and held by the Enterprise.

Article 83 The “qualified dividends and profit distribution from equity investment between resident enterprises” as prescribed in Paragraph (2) of Article 26 of the Enterprise Income Tax Law refer to investment income obtained by a resident enterprise from the direct investment in other resident enterprises. The “dividends and profit distribution from equity investment” as prescribed in Paragraph (2) and (3) of Article 26 of the Enterprise Income Tax Law exclude investment income from circulating stocks issued publicly by a resident enterprises and traded on stock exchanges where the holding period is less than 12 months.

Article 84 The “qualified non-profit-making organizations” as prescribed in Paragraph (4) of Article 26 of the Enterprise Income Tax Law refer to the organizations which fulfill the following conditions:

- (1) Have legally gone through registration procedures as a non-profit-making organization;
- (2) Engaged in charitable and non-profit-making activities;
- (3) Apart from using it for reasonable and relevant expenditures of such organization, all of the income obtained is used for the charitable or non-profit-making undertakings as approved in registration or prescribed in its articles of association;
- (4) Assets and interest obtained from these assets are not be used for distribution;
- (5) As approved in registration or prescribed in its articles of association, after the organization is deregistered, the remaining assets shall be used for charitable or non-profit-making purposes or donated through the registration and administration authorities to other organizations that have the same nature and principle as

those of the deregistered organization, and the same shall be announced to the public;

- (6) The donors shall not retain or enjoy any right of the assets donated to the organization; and
- (7) Expenditures on salaries and welfare for staff shall be controlled within the prescribed percentage. The organization shall not distribute its assets in any disguised form.

The measures for the assessment of non-profit-making organizations as prescribed in the previous paragraphs shall be jointly formulated by the competent financial and tax departments of the State Council and the relevant departments of the State Council.

Article 85 Unless otherwise prescribed by the competent financial and tax departments of the State Council, "income obtained by qualified non-profit-making organizations" as prescribed in Paragraph (4) of Article 26 of the Enterprise Income Tax Law shall exclude income obtained by non profit-making organizations from profit-making activities.

Article 86 The "enterprise income tax of an enterprise on the income obtained from activities in agricultural, forestry, animal husbandry and fishery projects that may be reduced or exempted" as stipulated in Paragraph (1) of Article 27 of the Enterprise Income Tax Law refers to:

- (1) The incomes obtained by an enterprise from engaging in the following projects may be exempted from enterprise income tax:
 - a. Cultivation of vegetables, grain crop, tuber crop, oil-bearing crop, bean and pea crop, cotton, bast-fiber plants, sugar crops, fruit and nut;
 - b. Selection and cultivation of new types of agricultural products;
 - c. Cultivation of Chinese medicine herb;
 - d. Breeding and cultivation of forestry;
 - e. Raising of livestock and poultry;
 - f. Collection of forestry products;
 - g. Service projects relating to agriculture, forestry, animal husbandry and fishery such as irrigation, agro-product preliminary processing, veterinary services, promotion of agricultural technologies, agricultural machinery services and repair of agricultural machinery;
 - h. Ocean fishing.
- (2) Enterprise income tax on incomes obtained by an enterprise from engaging in the following projects may be reduced by half:
 - a. Cultivation of flower, crop for tea and other beverage and spice crop;
 - b. Sea water fish farming and fresh water fish farming.

Enterprises engaging in projects that are restricted or prohibited by the State shall not enjoy the preferential enterprise income tax treatments as prescribed in this article.

Article 87 The "public infrastructure projects that are specifically supported by the State" as prescribed in Paragraph (2) of Article 27 of the Enterprise Income Tax Law refer to projects such as harbor, wharf, airport, railway, highway, city public transportation, electric power, water resources utilization projects as prescribed in the Catalogue of Public Basic Infrastructure Projects Qualified for Enterprise Income Tax Preferential Treatments.

The enterprise income tax in respect of the incomes generated by an enterprise from investing and operating in public infrastructure projects as stipulated in the previous paragraphs shall be exempted for the first to third years and allowed a fifty percent reduction in the fourth to sixth years beginning from the tax year the project derives its first production and operation income.

Enterprises engaging in the operation or construction of projects prescribed in this article by contract or engaging in the construction of these projects for self-usage shall not enjoy the enterprise income tax preferential treatments as prescribed in this Article.

Article 88 The "environmental protection and energy and water conservation projects which meet certain prescribed criteria" as provided in Paragraph (3) of Article 27 of the Enterprise Income Tax Law include public sewage treatment, public refuse treatment, comprehensive development and utilization of methane, technical alteration for energy-saving and emission reduction and seawater desalination. The detailed conditions and scope for these projects shall be jointly formulated by the competent financial and tax departments of the State Council and the relevant departments of the State Council and released for enforcement after being reported to and approved by the State Council.

The enterprise income tax in respect of the incomes generated by an enterprise from environmental protection and energy and water saving conservation projects as stipulated in the previous paragraphs shall be exempted for the first to third years and allowed a fifty percent reduction in the fourth to sixth years beginning from the

tax year the project derives its first production and operation income.

Article 89 Where an enterprise has already enjoyed tax reduction or exemption in respect of a project in accordance with Articles 87 and 88 of The Regulations, and transferred the project during the tax holiday, the transferee may enjoy the prescribed preferential enterprise income tax treatments from the date of transfer for the remaining period of tax holiday; where the project is transferred after the expiry of tax holiday, the transferee shall not enjoy the reduction or exemption with respect to such project.

Article 90 The "enterprise income tax that may be reduced or exempted on the income obtained by an enterprise from the transfer of technology which meets the prescribed conditions" as stated in Paragraph (4) of Article 27 of the Enterprise Income Tax Law refer to the treatments that for the income obtained by a resident enterprise from the transfer of technology in a tax year, the portion that does not exceed RMB5mn shall be exempted from enterprise income tax; and the portion that exceed RMB5mn shall be allowed a half reduction of enterprise income tax.

Article 91 The enterprise income tax shall be levied at the reduced rate of 10% for the incomes prescribed in Paragraph (5) of Article 27 of the Enterprise Income Tax Law obtained by a non-resident enterprise.

The following income may be exempted from enterprise income tax:

- (1) Interest incomes on loans made by foreign governments to the Chinese government;
- (2) Interest incomes on preferential loans made by international financial organizations to the Chinese government and resident enterprises; and
- (3) Other incomes as approved by the State Council.

Article 92 The "qualified small and thin-profit enterprises" as prescribed in Paragraph (1) of Article 28 of the Enterprise Income Tax Law refer to enterprises engaging in industries not restricted or prohibited by the State and fulfilling the following conditions:

- (1) For industrial enterprises, the annual taxable incomes do not exceed RMB300,000; the number of employees does not exceed 100 and the total assets do not exceed RMB30mn;
- (2) For other enterprises, the annual taxable incomes do not exceed RMB300,000; the number of employees does not exceed 80 and the total assets do not exceed RMB10mn.

Article 93 The "hi-tech enterprises that are specifically supported by the State" as prescribed in Paragraph (2) of Article 28 of the Enterprise Income Tax Law refer to an enterprise that owns the core proprietary intellectual property rights and fulfils all of the following conditions:

- (1) Its products (services) fall under the prescribed scope of the Hi-Tech Sectors Specifically Supported by the State;
- (2) Research and development expenses shall not be less than the prescribed percentage;
- (3) Incomes from hi-tech products (services) accounts for not less than the prescribed percentage of its total incomes;
- (4) The number of technicians accounts for not less than the prescribed percentage of the total number of employees of the enterprise;
- (5) Other conditions as prescribed in the administrative measures for the assessment of the Hi-tech enterprises.

The Hi-Tech Sectors Specifically Supported by the State and the administrative measures for the assessment of the Hi-Tech enterprises shall be jointly formulated by the competent scientific & technological, financial and tax departments of the State Council and other relevant departments of the State Council and released for enforcement after being reported to and approved by the State Council.

Article 94 The "autonomous regions" as prescribed in Article 29 of the Enterprise Income Tax Law refer to the autonomous regions, autonomous prefectures and autonomous counties that exercise regional autonomy by ethnic minorities pursuant to the Law of the People's Republic of China on Regional Autonomy by Ethnic Minorities.

Enterprise income tax for the enterprises which are within the autonomous regions and engaged in the industries restricted or prohibited by the State shall not be exempted or reduced.

Article 95 The "Additional deduction for research and development expenses" as prescribed in Paragraph (1) of Article 30 of the Enterprise Income Tax Law refers to the treatment that for research and development expenses incurred by an enterprise for the development of new technology, new products and new craftsmanship, not forming an intangible asset, but being charged to profit and loss for the current period, the enterprise is allowed to claim, on top of the actual deduction, an additional deduction of 50% of the research and development expenses; where an intangible asset is formed, the cost of the intangible assets is allowed to be amortized based on 150%.

Article 96 The "additional deduction for salaries paid in the course of settling handicapped staff" as prescribed in Paragraph (2) of Article 30 of the Enterprise

Income Tax Law refer to the treatment that where an enterprise settles handicapped staff, it is allowed to claim, on top of the actual deduction of the salaries paid to such handicapped staff, an additional deduction of 100% of the salaries paid to the handicapped staff. The relevant provisions in the Law of the People's Republic of China for Safeguarding the Handicapped shall be followed in determining the scope of the handicapped staff.

The methods for "additional deduction for salaries paid to the other employees encouraged by the State" as stipulated in Paragraph (2) of Article 30 of the Enterprise Income Tax Law shall be separately formulated by the State Council.

Article 97 The "deduction against the taxable incomes" as prescribed in Article 31 of the Enterprise Income Tax Law shall refer to the treatment that for a venture capital enterprise that makes an equity investment in a non-listed small-to-medium sized hi-tech enterprise for more than 2 years, 70% of its investment amount may be used to offset against the taxable income of the venture capital enterprise in the year after the holding period has reached 2 years. Any portion that is not utilized in that year may be carried forward and deducted in the following years.

Article 98 The fixed assets which may be depreciated over shorter periods or under accelerated depreciation methods as prescribed in Article 32 of the Enterprise Income Tax Law include:

- (1) Fixed assets that need to be replaced due to advancement of technology and fast upgrading of products; and
- (2) Fixed assets that suffer from constant vibration or severe corrosion throughout years.

Where the shorter depreciation period method is applied, the minimum depreciation period shall not be less than 60% of the minimum depreciation period as prescribed in Article 60 of The Regulations; where accelerated depreciation method is applied, the double declining balance method or the sum-of-years-digits method may be used.

Article 99 The "income reduction" as prescribed in Article 33 of the Enterprise Income Tax Law refer to the treatment that where an enterprise uses the resources stipulated in the Catalogue for Comprehensive Utilization of Resources Qualified for Enterprise Income Tax Preferential Treatments as its major raw materials to produce products that are not restricted or prohibited by the State and satisfy the relevant State and industrial criteria, only 90% of the income may be used to calculate its total income.

The proportion of the raw materials against the total production materials for the products as stated in the previous paragraph shall not be lower than the criteria provided in the Catalogue for Comprehensive Utilization of Resources Qualified for Enterprise Income Tax Preferential Treatments.

Article 100 The "credit against tax payable" as prescribed in Article 34 of the Enterprise Income Tax Law refers to the treatment that where an enterprise acquires and actually uses specific equipment for the purposes of environmental protection and energy and water conservation as stipulated in the Catalogue of Specific Equipment for Environmental Protection Qualified for Enterprise Income Tax Preferential Treatments, the Catalogue of Equipment for Energy and Water Conservation Purposes Qualified for Enterprise Income Tax Preferential Treatments and the Catalogue of Equipment for Production Safety Qualified for Enterprise Income Tax Preferential Treatments, 10% of its investment in the specific equipment may be offset against its income tax payable for the current year. Any excess amount may be carried forward and deducted in the following 5 tax years.

An enterprise that is eligible for the preferential enterprise income tax treatments as stipulated in the previous paragraph shall actually acquire and put into use the specific equipment as stipulated in the previous paragraph. Where the enterprise transfers or leases the aforesaid specific equipment within 5 years after acquisition, the enterprise shall no longer enjoy the preferential enterprise income tax treatments and shall pay back the amount of enterprise income tax which has already been offset.

Article 101 The catalogues for enterprise income tax preferential treatments as stipulated in Articles 87, 99 and 100 herein shall be jointly formulated by the competent financial and tax departments of the State Council and the relevant departments of the State Council and released for enforcement after being reported to and approved by the State Council.

Article 102 Where an Enterprise engages in projects that are eligible for different enterprise income tax treatments, it shall separately calculate the incomes obtained from different projects eligible for preferential enterprise income tax treatments and reasonably allocate periodical expenses. Where it is not separately calculated, the enterprise shall not enjoy the preferential enterprise income tax treatments.

Chapter 5 Withholding at Source

Article 103 Where withholding at source shall be adopted for enterprise income tax payable by a non-resident enterprise in accordance with the Enterprise Income Tax Law, the taxable income shall be calculated pursuant to Article 19 of the Enterprise Income Tax Law.

The "gross incomes" as prescribed in Article 19 of the Enterprise Income Tax Law refer to the total payments and all other charges receivable by a non-resident enterprise from the payer.

Article 104 The "payer" as prescribed in Article 37 of the Enterprise Income Tax Law refers to organizations or individuals that are directly obligated for paying the

proceeds to the non-resident enterprises pursuant to the relevant laws and regulations or contracts.

Article 105 The “payments” as prescribed in Article 37 of the Enterprise Income Tax Law include monetary and non-monetary payments such as payments in cash, by remittance or through transfer and rights of equivalent value.

The “payments due” as prescribed in Article 37 of the Enterprise Income Tax Law refer to payable amounts that shall be booked by the payer as costs and expenses according to accrual principle.

Article 106 Situations under which the withholding agent may be appointed as stipulated in Article 38 of the Enterprise Income Tax Law include:

- (1) The anticipated term of contractor project or service is less than a tax year and there is evidence showing that the non-resident enterprise will not fulfill tax obligations;
- (2) The non-resident enterprise has not performed tax registration or temporary tax registration, and has not engaged any agent in China to fulfill its tax obligations; or
- (3) The non-resident enterprise has not filed or pre-paid any enterprise income tax within the prescribed time limit.

The withholding agent as stipulated in the previous paragraph shall be appointed by the tax authorities above the county level. These tax authorities shall also advise the withholding agent of the basis, computation method, the time limit and forms for withholding and settlement.

Article 107 “The location of the source of income” as prescribed in Article 39 of the Enterprise Income Tax Law refers to the location of the source of income as determined in accordance with Article 7 of The Regulations. Where the sources of income are from more than one location in China, the taxpayer shall choose one of these locations to file and settle the enterprise income tax payments.

Article 108 “Taxpayer’s other incomes within China” as prescribed in Article 39 of the Enterprise Income Tax Law refer to the incomes obtained by the taxpayer from various sources within China.

In pursuing collections from the taxpayer for overdue tax payments, the tax authorities shall notify the taxpayer of the reason, amount, time limit and way of filing and settlement.

Chapter 6 Special Tax Adjustments

Article 109 The “related party” as prescribed in Article 41 of the Enterprise Income Tax Law refers to an enterprise, an organization or an individual that has any of the following relationships with the enterprise:

- (1) Direct or indirect control with respect to capital, business operations, purchases and sale;
- (2) Direct or indirect common control by a third party; and
- (3) Any other relationships arising from mutual interest.

Article 110 The “arm’s length principle” as prescribed in Article 41 of the Enterprise Income Tax Law refers to the principle adopted by unrelated parties when conducting business transactions based on fair transactional prices and normal business practices.

Article 111 The “appropriate methods” as prescribed in Article 41 of the Enterprise Income Tax Law include the following:

- (1) Comparable uncontrolled price method (“CUP”), which refers to the method of determining prices based on the prices between unrelated parties in identical or similar business transactions;
- (2) Resale price method (“RPM”), which refers to the method of determining prices based on the resale price to an unrelated party in respect of the commodity purchased from a related party, less the gross margins generated from identical or similar business;
- (3) Cost plus method (“CPM”), which refers to the method of determining prices by adding reasonable expenses and profit margins to the cost;
- (4) Transactional net margin method (“TNMM”), which refers to the method of determining profit based on the net profit margins attained by unrelated parties from identical or similar business transactions;
- (5) Profit split method (“PSM”), which refers to the method of allocation of the combined profits or losses derived by the enterprise and its related parties based on a reasonable criteria; and
- (6) Other methods which are consistent with the arm's length principle.

Article 112 An enterprise may share the costs jointly incurred with its related parties based on the arm’s length principle and enter into a Cost sharing agreement in accordance with Paragraph 2 of Article 41 of the Enterprise Income Tax Law.

When an enterprise shares the cost with its related parties, it shall share the costs based on the principle of matching of costs and expected benefits, and it shall file the relevant information with the tax authorities in accordance with the requirement of the tax authorities within the period as requested by the tax authorities.

Where an enterprise fails to comply with Paragraphs (1) and (2) of this Article when sharing the costs with its related parties, the self-allocated costs are not deducted in calculating its taxable incomes.

Article 113 The “advance pricing arrangement” as prescribed in Article 42 of the Enterprise Income Tax Law refers to the arrangement where a taxpayer applies in advance and discusses and reaches an agreement with the tax authorities in respect of the transfer pricing methods and relevant calculation methods of its related party transactions in accordance with the arm's length principle for future years.

Article 114 The “relevant information” as prescribed in Article 43 of the Enterprise Income Tax Law includes the following:

- (1) Contemporaneous documentation regarding the determination standards, computation methods and explanation of the prices and expenses relevant to the business transactions with related parties;
- (2) The relevant information regarding the resale (or transferring) prices or ultimate sales (or transferring) prices of properties, rights to use of the properties and labor services involved in business transactions with related parties;
- (3) Information of product prices, pricing methods and profit levels comparable to the enterprise under investigation, to be submitted by other enterprises, which are relevant to the related party business investigation; and
- (4) Other relevant information of the related party business transactions.

The “other enterprises related to the related party business investigation” as prescribed in Article 43 of the Enterprise Income Tax Law refer to enterprises which are comparable to the enterprise under investigation in terms of the substance and form of the production and operations.

An Enterprise shall submit documentation regarding the determination standards, computation methods and explanation of the prices and expenses relevant to business transactions with related parties within the time limit provided by the tax authorities. The related parties of the enterprise and other enterprises which are relevant to the related party business investigation shall provide the relevant information within the time limit as agreed with the tax authorities.

Article 115 The tax authorities may use the following methods when deeming the taxable income of an enterprise according to Article 44 of the Enterprise Income Tax Law:

- (1) By reference to the profit rate levels of identical or similar enterprises;
- (2) Based on the enterprise's costs plus a reasonable amount of expenses and profit margin;
- (3) Based on a reasonable proportion out of the total profits earned by the related party group; and
- (4) Based on other reasonable methods.

Where the enterprise does not agree with the taxable incomes deemed by the tax authorities using the methods mentioned in the above paragraphs, the enterprise shall provide relevant evidence; and the deemed taxable incomes may be adjusted upon verification by the tax authorities.

Article 116 The “Chinese resident” as prescribed in Article 45 of the Enterprise Income Tax Law refers to any person who pays individual income tax on income obtained from within and outside China, according to the Individual Income Tax Law of the People's Republic of China.

Article 117 The “control” as prescribed in Article 45 of the Enterprise Income Tax Law includes:

- (1) A resident enterprise or a Chinese resident directly or indirectly individually owning more than 10% of a foreign enterprise's voting shares, and jointly owning more than 50% of that foreign enterprise's shares;
- (2) The percentage of ownership of shares by a resident enterprise, or a resident enterprise jointly with a Chinese resident does not meet with the criteria prescribed in Paragraph (1) above, but an effective control is exercised over the foreign enterprise by virtue of shares, capital, business operations, purchases and sales.

Article 118 The “effective tax burden substantially lower than the tax rate as stated in Paragraph 1 of Article 4 of the Enterprise Income Tax Law” as prescribed in Article 45 of the Enterprise Income Tax Law refers to the case where the effective tax rate is lower than 50% of the tax rate as stated in Paragraph 1 of Article 4 of the Enterprise Income Tax Law.

Article 119 The “debt investment” as prescribed in Article 46 of the Enterprise Income Tax Law refers to financing directly or indirectly obtained by an enterprise from its related parties that requires repayment of principal and interests, or other forms of compensation with an interest element.

The debt investments indirectly obtained by the enterprise from its related parties include:

- (1) Debt investment provided by a related party through an unrelated third party;
- (2) Debt investment provided by an unrelated third party that is guaranteed and pledged with collateral liability by the related party; or
- (3) Any other debt investment indirectly made by the related party with the substance of debt.

The "equity investment" as prescribed in Article 46 of the Enterprise Income Tax Law refers to the investment obtained by an enterprise without the need of the repayment of principal or interest, but the investor(s) having the entitlement to the net assets of the enterprise.

The "standards" as prescribed in Article 46 of the Enterprise Income Tax Law shall be formulated by the competent financial and tax departments of the State Council separately.

Article 120 "Without reasonable commercial purpose" as prescribed in Article 47 of the Enterprise Income Tax Law refers to where the main purpose is reduction, exemption or deferral of tax payments.

Article 121 Where the tax authorities make special tax adjustment according to the relevant tax laws and administrative rules and regulations, the underpaid tax shall be subject to an interest levy on a daily basis, starting from June 1 of the tax year following the year to which the tax payment is related until the day the underpaid tax is settled.

The interest levy mentioned in the above paragraph is not deductible in calculating the taxable incomes.

Article 122 The "interest levy" as prescribed in Article 48 of the Enterprise Income Tax Law shall be determined based on the Renminbi loan base rate applicable to the relevant period of tax delinquency as published by the People's Bank of China in the tax year to which the tax payment is related, plus 5 percentage points.

If an enterprise provides relevant information in accordance with Article 43 of the Enterprise Income Tax Law and The Regulations, the interest levy may be only based on the Renminbi loan based rate mentioned in the above paragraph.

Article 123 Where a transaction of an enterprise with its related party does not comply with the arm's length principle or the enterprise implements an arrangement without reasonable commercial purposes, the tax authorities shall have the right to make tax adjustments within 10 years starting from the tax year during which such a transaction takes place.

Chapter 7 Administration of Collection

Article 124 The "place of registration of an Enterprise" as prescribed in Article 50 of the Enterprise Income Tax Law refers to the residence location registered by the Enterprise pursuant to the relevant provisions of the State.

Article 125 Where an enterprise makes combined enterprise income tax filing and settlement, it shall calculate the taxable incomes on a combined basis. The detailed methods shall be separately formulated by the competent financial and tax departments of the State Council.

Article 126 The "main establishment or place" as prescribed in Article 51 of the Enterprise Income Tax Law shall satisfy both of the following conditions:

- (1) Assuming supervisory and administrative responsibility for the production and operation activities of the other establishments and places; and
- (2) Keeping complete accounting records and vouchers which accurately reflect the income, costs, expenses, and profit and loss standing of other establishments or places.

Article 127 "Subject to the examination and approval by the tax authorities" as prescribed in Article 51 of the Enterprise Income Tax Law refers to the examination and approval by the upper-level tax authorities which supervise all the local-level tax authorities where the establishments and places are located.

After a non-resident enterprise makes combined enterprise income tax filing and settlement upon approval, if it encounters situations such as addition, merger, removal or termination of an establishment or place or suspension of business of the establishment or place, it shall report beforehand to the local-level tax authorities by the main establishment or place that is responsible for the combined enterprise income tax filing and settlement. Any change involving the said establishment itself shall be handled pursuant to the provisions of the previous paragraph.

Article 128 The tax authorities shall verify whether an enterprise should pre-pay its enterprise income tax in monthly or quarterly installments.

An enterprise pre-paying enterprise income tax in monthly or quarterly installments pursuant to Article 54 of the Enterprise Income Tax Law shall base on its actual profit amounts for the month or quarter. Where an enterprise has difficulty to determine its pre-paid income tax based on its actual monthly or quarterly profit amounts, it may settle the pre-payments based the assessment on its average monthly or quarterly taxable income for the previous tax year or other methods recognized by the tax authorities. Once confirmed, the prepayment method shall not be arbitrarily altered during that tax year.

Article 129 Regardless of whether an Enterprise has made a profit or loss during a tax year, it shall lodge the provisional enterprise income tax returns, annual enterprise income tax returns, financial accounting reports, and other relevant information as required by the tax authorities to the tax authorities within the time limit

stipulated in Article 54 of the Enterprise Income Tax Law.

Article 130 If the incomes of an Enterprise are denominated in currencies other than RMB, when it pre-pays provisional enterprise income tax, the enterprise shall convert such income into RMB using the medium exchange rates for RMB on the last day of each month or quarter and calculate its taxable incomes accordingly. When the enterprise performs annual enterprise income tax reconciliation after the end of the year, the income on which tax has already been prepaid in monthly or quarterly installments shall not be converted and calculated again; only the incomes on which enterprise income tax has not been paid for that tax year shall be converted into RMB using the medium exchange rates for RMB on the last day of the tax year and the taxable income be calculated accordingly.

Where the enterprise has under-declared or over-declared income as prescribed in the previous paragraph after the examination by the tax authorities, it shall convert the under-declared or over-declared incomes using the medium exchange rates for RMB on the last day of the month after which the examination is completed, for calculating the taxable incomes and the tax amounts that shall be made up or refunded.

Chapter 8 Supplementary Provisions

Article 131 The enterprises approved to establish before the publication of this Law" as prescribed in Paragraph (1) of Article 57 of the Enterprise Income Tax Law refer to the enterprises that have completed business registration before the publication of the Enterprise Income Tax Law.

Article 132 The enterprises established in the Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan shall observe and apply the relevant provisions in Paragraphs (2) and (3) of Article 2 of the Enterprise Income Tax Law.

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

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Circular of the State Administration of Taxation on the Issues Concerning Implementation of the Preferential Income Tax for Hi-Tech Enterprises

Guo Shui Han [2009] No. 203

The state tax bureaus and local tax bureaus of provinces, autonomous regions, municipalities directly under the Central Government and separately planning cities,

For the purpose of implementing the preferential income tax of hi-tech enterprises and transitionally preferential policies, in accordance with the *Enterprise Income Tax Law of the People's Republic of China* (hereinafter referred to as Enterprise Income Tax Law) and the *Implementation Regulations of the Enterprise Income Tax Law of the People's Republic of China* (hereinafter referred to as Implementation Regulations) and related taxation provisions, the related issues are hereby notified as follows:

Article 1 In case of any hi-tech enterprise whose enterprise income tax may be levied at the reduced tax rate of 15% in a year or which enjoys the transitional taxation preference in accordance with the *Circular of the State Council on Implementing Transitional Preferential Taxation for Hi-Tech Enterprises in Special Economic Zones and Shanghai Pudong New Area* (Guo Fa [2007] No. 40) and whose requirements for tax reduction or exemption change in the same year when the relevant preferential taxation is actually implemented, tax treatment shall be done in accordance to Paragraph 2 of Article 9 of the *Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Printing and Distributing Measures for the Administration of Identification of Hi-Tech Enterprises* (Guo Ke Fa Huo [2008] No. 172).

Article 2 The hi-tech enterprises that originally enjoy the regular deduction or exemption of enterprise income tax within the prescribed period according to law and simultaneously conforms to the qualifications of Article 1 of this Circular may, in accordance with the *Measures for the Administration of Identification of Hi-Tech Enterprises* and related provisions of the Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Printing and Distributing the *Guidance on Identification of High-New Technology Enterprises* (Guo Ke Fa Huo [2008] No. 362), enjoy the transitional policies on implementing the regular tax deduction or exemption that are not mature till the expiration thereof as of January 1, 2008 after acquiring the hi-tech enterprise qualification certificates issued by accrediting agencies based on new standards.

Article 3 For the hi-tech enterprise that was established in the period from January 1, 2006 to March 16, 2007 but still failed to make profits (the amount of taxable income is zero after making up for the loss of previous years) by the end of 2007, after it has acquired the hi-tech enterprise certificate issued by accrediting agencies based on new standards in accordance with the related provisions of the *Measures for the Administration of Identification of Hi-Tech Enterprises* and the *Guidance on Identification of High-New Technology Enterprises*, the period for its tax exemption

shall be computed as of January 1, 2008 according to the provisions of Article 57 of the Enterprise Income Tax Law.

Article 4 Any qualified hi-tech enterprise after identification (re-examination) may apply for preferential enterprise income tax from the year when the approval of identification (re-examination) is valid. After acquiring the hi-tech enterprise certificate issued by hi-tech enterprise identification administration agencies of provinces, autonomous regions, municipalities directly under the Central Government and separately planning cities, a hi-tech enterprise may hold the “hi-tech enterprise certificate” and its copies and relevant materials to apply to the competent tax authority for handling the formalities of reduction or exemption of tax. Consequently, the hi-tech enterprise may make pre-declaration of enterprise income tax payment or enjoy transitional preferential taxation at the tax rate of 15%.

Article 5 During the period from the expiration of tax year to the time when the annual tax return is submitted, the hi-tech enterprise that has gone through the formalities of deduction or exemption of tax shall go to the competent tax authority for recordal of the following materials:

- (I) Statement on the scope of products (service) belonging to High and New Technology Fields under Key Support of the State;
- (II) List of annual enterprise research and development expenses (see the attachment);
- (III) Statement on the proportion of the revenues of hi-tech products (service) of the current year among the gross revenues of enterprise; and
- (IV) Statement on the proportion of the scientific and technical personnel with academic degree of professional college and above among total employees of the enterprise of the current year and on that of the research and development personnel among total employees of the enterprise of the current year.

Calculation and filing procedures of the above-mentioned materials are subject to the relevant provisions of the *Guidance on Identification of High-New Technology Enterprises*.

Article 6 Any enterprise that fails to acquire the hi-tech enterprise qualification or has acquired the hi-tech enterprise qualification but does not meet the enterprise income tax law and its implementation regulations or the relevant requirements of this Circular shall not enjoy the preference for hi-tech enterprises; and those that have enjoyed such preference treatment shall recover the reduced or exempted enterprise income tax.

Article 7 The Circular shall take effect as of January 1, 2008.

Attachment: List of annual enterprise research and development expenses (omitted)

State Administration of Taxation
April 22, 2009