



This document has been provided by the International Center for Not-for-Profit Law (ICNL).

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at
<http://www.icnl.org/knowledge/library/index.php>
for further resources and research from countries all over the world.

Disclaimers

Content. The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

Translations. Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

Warranty and Limitation of Liability. Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

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 has been adopted at the 5th Session of the 10th National People's Congress of the People's Republic of China on March 16, 2007. It is hereby promulgated and shall go into effect as of January 1, 2008.

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

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)

Contents

Chapter I General Rules
Chapter II Taxable Income Amount
Chapter III Payable Tax Amount
Chapter IV Preferential Tax Treatments
Chapter V Withholding by Sources
Chapter VI Special Adjustments to Tax Payments
Chapter VII Administration of Tax Levy
Chapter VIII Supplementary Rules

Chapter I General Rules

Article 1 The enterprises and other organizations which have incomes (hereinafter referred to as the enterprises) within the territory of the People's Republic of China shall be payers of the enterprise income tax and shall pay their enterprise income taxes according to the present Law.

The sole individual proprietorship enterprises and partnership enterprises are not governed by the present law.

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

The term "resident enterprise" as mentioned in the present Law means an enterprise which is set up under Chinese law within the territory of China, or set up under the law of a foreign country (region) but whose actual management organ is within the territory of China.

The term "non-resident enterprise" as mentioned in the present Law means an enterprise which is set up under the law of a foreign country (region) and whose actual management organ is not within the territory of China but who has organs or establishments within the territory of China, or who does not have any organ or establishment within the territory of China but who has incomes sourced in China.

Article 3 For its incomes sourced from both inside and outside the territory of China, a resident enterprise shall pay the enterprise income tax.

In case a non-resident enterprise sets up an organ or establishment within the territory of China, it shall pay enterprise income tax on its incomes sourced inside the territory of China and incomes sourced outside the territory of China but actually connected with the said organ or establishment.

In case a non-resident enterprise has no organ or establishment within the territory of China, or its incomes have no actual connection to its organ or establishment inside the territory of China, it shall pay enterprise income tax on the incomes sourced inside the territory of China.

Article 4 The enterprise income tax shall be levied at the rate of 25%.

In case a non-resident enterprise obtains incomes as mentioned in Paragraph 3, Article 3 of the present Law,

the tax rate shall be 20%.

Chapter II Taxable Income Amount

Article 5 The balance after the tax-free and tax-exempt incomes, each deduction item as well as the permitted remedies for losses of the previous year(s) being deducted from an enterprise's total income amount of each tax year shall be the taxable income amount.

Article 6 An enterprise's total income amount refers to the monetary and non-monetary incomes from various sources and includes:

- (1) income from selling goods;
- (2) income from providing labor services;
- (3) income from transferring property;
- (4) equity investment gains, such as dividend, bonus;
- (5) interest incomes;
- (6) rental income;
- (7) royalty income;
- (8) income from accepting donations; and
- (9) other incomes.

Article 7 The tax-free income refers to the following incomes which are included in the total income amount:

- (1) The treasury appropriations;
- (2) The administrative fees and the governmental funds which are levied in accordance with the law and fall under the treasury administration; and
- (3) Other tax-free incomes as prescribed by the State Council.

Article 8 When calculating the taxable income amount, the reasonable expenditures which actually happened and have actual connection with the business operations of an enterprise, including the costs, expenditures, taxes, losses, etc. may be deducted.

Article 9 As regards an enterprise's expenditures for public welfare donations, the portion within 12% of the total annual profits is permitted to be deducted.

Article 10 When calculating the taxable income amount, none of the following expenditures may be deducted:

- (1) Such equity investment gains as dividend, bonus paid to the investors;
- (2) Payment for enterprise income tax;
- (3) Late fee for taxes;
- (4) Pecuniary punishment, fines, and losses of confiscated properties;
- (5) Expenditures for donations other than those prescribed in Article 9;
- (6) Sponsorship expenditures;
- (7) Unverified reserve expenditures;
- (8) Other expenditures in no relation to the obtainment of revenues;

Article 11 An enterprise's depreciations of fixed assets, which are calculated pursuant to the related provisions, are permitted to be deducted in the calculation of the taxable income amount.

As regards any of the following fixed assets, no depreciation may be calculated for deduction:

- (1) The fixed assets which have not yet been put into use, among which houses and buildings are not included;

- (2) The fixed assets which are rented in through commercial lease;
- (3) The fixed assets which are rented out through finance leasing;
- (4) The fixed assets for which depreciation has been fully allocated but which are still in use;
- (5) The fixed assets in no relation to the business operations;
- (6) The land which is separately evaluated and entered into account as an item of fixed asset; and
- (7) Other fixed assets for which no depreciation may be calculated for deduction.

Article 12 An enterprise is allowed to deduct the amortized expenditures of intangible assets calculated under the related provisions when calculating the taxable amount of incomes.

For the following intangible assets, no amortized expense may be calculated:

- (1) The intangible assets, which are developed by the enterprise itself and the expenditures have been deducted when calculating the taxable income amount;
- (2) The self-created business reputation;
- (3) The intangible assets in no relation to the business operations; and
- (4) Other intangible assets for which no amortized expense may be calculated for deduction.

Article 13 The following expenditures incurred by an enterprise shall be deemed as long-term deferred expenditures when calculating the taxable income amount. Those amortized pursuant to the related provisions are permitted to be deducted:

- (1) The expenditures for rebuilding a fixed asset, for which depreciation has been fully allocated;
- (2) The expenditures for rebuilding a rented fixed asset;
- (3) The expenditures for heavily repairing a fixed asset; and
- (4) Other expenditures which shall be deemed as long-term deferred expenditures.

Article 14 When calculating the taxable income amount, an enterprise may not deduct the costs of the investment assets during the period of external investment.

Article 15 In case an enterprise uses or sells its inventories, it is permitted to deduct the costs of the inventories calculated pursuant to the related provisions when calculating the taxable income amount.

Article 16 In case an enterprise transfers an asset, it is permitted to deduct the net value of the asset when calculating the taxable income amount.

Article 17 An enterprise may not offset the losses of its overseas business organs against the profits of its domestic business organs in the consolidated calculation of its enterprise income taxes.

Article 18 The losses suffered by an enterprise during a tax year may be carried forward and made up by the incomes during subsequent years, however, the carry-forward period may not exceed 5 years.

Article 19 In case a non-resident enterprise obtains incomes as prescribed in Paragraph 3, Article 3 of the present Law, the following approaches shall be adopted in calculation of its the taxable income amount:

- (1) As regards dividends, bonuses and other equity investment gains, interests, rentals and royalties, the taxable income amount shall be the total income amount;
- (2) As regards incomes from assigning property, the taxable income amount shall be the balance of the total income amount less the net value of the property; and
- (3) As regards other incomes, the taxable income amount shall be calculated according to the approaches as mentioned in the preceding two items by analogy.

Article 20 The specific scope and standards of revenues and deductions, as well as the concrete tax treatment methods of assets as prescribed in this Chapter shall be constituted by the treasury and tax administrative departments under the State Council.

Article 21 If the enterprise's financial or accounting treatment method does not comply with any tax law or administrative regulation when calculating the taxable income amount, the tax law or administrative regulation shall prevail.

Chapter III Payable Tax Amount

Article 22 The payable tax amount shall be the balance of the taxable amount multiplied by the applicable tax rate minus the tax amounts deducted and exempted as prescribed in the present Law.

Article 23 In case an enterprise has already paid overseas the enterprise tax for the following incomes, it may deduct it from the payable tax amount of the current period. The limit of tax credit shall be the payable tax amount on such incomes calculated under the present Law. The part exceeding the limit of tax credit may, during the five subsequent years, be offset from the balance of the limit of tax credit of each year minus the tax amount which ought to be offset in the current year:

- (1) A resident enterprise's taxable incomes sourced from outside the territory of China; and
- (2) Taxable incomes obtained outside the territory of China by a non-resident enterprise having organs or establishments inside the territory of China, but having actual connection with such organs or establishments.

Article 24 As regards the dividends, bonuses and other equity investment gains earned outside the territory of China by a resident enterprise from a foreign enterprise which it controls directly or indirectly, the portion of income tax on this income paid outside the territory of China by the foreign enterprise the territory of China may be treated as the allowable tax credit of the resident enterprise's overseas income tax amount and be deducted within the limit of tax credit as provided for in Article 23 of the present Law.

Chapter IV Preferential Tax Treatments

Article 25 The important industries and projects whose development is supported and encouraged by the state shall enjoy the preferential treatments in enterprise income tax.

Article 26 An enterprise's following incomes shall be tax-free ones:

- (1) The interest incomes from treasury bonds;
- (2) Dividends, bonuses and other equity investment gains generated between qualified resident enterprises;
- (3) Dividends, bonuses and other equity investment gains which are obtained from a resident enterprise by a non-resident enterprise with organs or establishments inside the territory of China and have actual connection with such organs or establishments; and
- (4) Incomes of qualified not-for-profit organizations.

Article 27 As regards the following incomes, the enterprise income tax may be exempted or reduced:

- (1) The incomes generated from the engagement in agriculture, forestry, husbandry and fishery;
- (2) The incomes generated from investment in and business operations of the important public infrastructure projects supported by the state;
- (3) The income generated from the projects of environmental protection, energy and water saving and satisfying the related requirements;
- (4) The incomes generated from transferring technologies and satisfying the related requirements; and
- (5) The income as provided for in Paragraph 3, Article 3 of the present Law.

Article 28 As regards a small meagre-profit enterprise satisfying the prescribed conditions, the enterprise income tax shall be levied at a reduced tax rate of 20%.

As regards important high-tech enterprises necessary to be supported by the state, the enterprise income tax

shall be levied at the reduced tax rate of 15%.

Article 29 The autonomous organ of an autonomous region of ethnic minorities may determine to reduce or exempt the enterprise income tax by enterprises within the said autonomous region. In case the decision on deduction or exemption is made by an autonomous prefecture or county, it shall be reported to the people's government of the province, autonomous region, or municipality directly under the Central Government for approval.

Article 30 An enterprise may additionally calculate and deduct the following expenditures in the calculation of the taxable income amount:

- (1) The expenditures for researching and developing new technologies, new products and new techniques; and
- (2) The wages paid to the disabled employees or other employees encouraged to hire by the State.

Article 31 In case a startup investment enterprise engages in important startup investments necessary to be supported and encouraged by the state, it may deduct a certain proportion of the investment amount from the taxable income amount.

Article 32 In case an enterprise surely needs to accelerate the depreciation of any fixed asset by virtue of technological progress or for any other reason, it may curtail the term of depreciation or adopt a method for accelerated depreciation.

Article 33 As regards the incomes earned by an enterprise from producing products complying with the industrial policies of the state by comprehensively utilizing resources, the income may be downsized in the calculation of the amount of taxable incomes.

Article 34 As regards the amount of an enterprise's investment in purchasing special equipment for protecting environment, saving energy and water, work safety, etc., the tax amount may be deducted at a certain rate.

Article 35 The specific measures for the preferential tax treatments as referred to in the present Law shall be constituted by the State Council.

Article 36 The State Council may constitute special preferential policies on the enterprise income tax in case the national economic and social development so requires, or the business operations of enterprises have been seriously affected by emergencies and other factors, and submit them to the Standing Committee of the National People's Congress for archival filling.

Chapter V Withholding by Sources

Article 37 The payable income taxes on the incomes obtained by a non-resident enterprise as prescribed in Paragraph 3, Article 3 of the present Law shall be withheld by sources, with the payer acting as the obligatory withholder, who shall withhold the tax amount from each payment or payment due.

Article 38 As regards the payable income taxes on the incomes obtained by a non-resident enterprise within the territory of China from undertaking engineering projects or providing labor services, the payer of the project price or remuneration may be designated as the obligatory withholder by the tax organ.

Article 39 In case the obligatory withholder has failed to withhold the income tax which ought to be withheld according to Articles 37 and 38 of the present Law or is unable to perform the withholding obligation, the taxpayer shall pay them at the place where the income has occurred. In case the taxpayer fails to do so, the tax organ may recover the payable tax of the enterprise from its other income items within the territory of China which ought to be paid by the payer.

Article 40 A obligatory withholder shall, within 7 days after the date of withholding, turn over to the state treasury the tax payments which it withholds every time and submit a form of report on the withheld

enterprise income taxes to the local tax organ.

Chapter VI Special Adjustments to Tax Payments

Article 41 As regards a transaction between an enterprise and its affiliated parties, in case the taxable revenue or income of the enterprise or its affiliated parties reduces by virtue of the failure to conform to the arms length principle, the tax organ may, through a reasonable method, make an adjustment.

As regards the costs of an enterprise and its affiliated parties for jointly developing or accepting intangible assets, or jointly providing or accepting labor services, they shall, when calculating the taxable income amount, apportion them according to the arms length principle.

Article 42 An enterprise may propose the pricing principles and calculation methods for the transactions between it and its affiliated parties to the tax organ, the tax organ and the enterprise shall, upon negotiations and confirmation, achieve an advance pricing arrangement.

Article 43 When an enterprise submits its annual enterprise income tax returns to the tax organ, an annual report on the affiliated transactions between it and its affiliated parties shall be attached.

When the tax organ investigates into the affiliated transactions, the enterprise and its affiliated parties, as well as other enterprises in relation to the affiliated transactions under investigation, shall, according to the related provisions, provide the related materials.

Article 44 In case any enterprise refuses to submit the materials on transactions which happened between it and its affiliated parties, or provides any false or incomplete material, on the basis of which the true information about the affiliated transactions cannot be reflected, the tax organ may determine upon check its taxable income amount.

Article 45 As regards an enterprise which is set up in a country (region) where the actual tax burden is apparently lower than the tax rate as prescribed in Paragraph 1 of Article 4 of the present Law by a resident enterprise or controlled by an resident enterprise or by a Chinese resident, in case it fails to distribute the profits or decreases the distribution not by virtue of reasonable business operations, the portion of the aforesaid profits attributable to this resident enterprise shall be included in its incomes of the current period.

Article 46 As regards an enterprise's interest expenditures for any credit investments and equity investments accepted from its affiliated parties, in excess of the prescribed criterion, the enterprise may not deduct them when calculating the taxable income amount.

Article 47 In case an enterprise makes any other arrangement not for any reasonable commercial purpose, which causes the decrease of its taxable revenue or income, the tax organ may, through a reasonable method, make an adjustment.

Article 48 In case the tax organ makes an adjustment to a tax payment pursuant to the provisions in this Chapter so that it is necessary to recover the tax payment in arrears, it shall do so and charge an additional interest according to the provisions of the State Council.

Chapter VII Administration of Tax Levy

Article 49 The administration for levying enterprise income taxes shall be subject to the Law of the People's Republic of China on Administering Tax Levy in addition to the present Law.

Article 50 The tax payment place of a resident enterprise shall be its registration place unless it is otherwise provided for in any tax law or administrative regulation. But in case its registration place is outside the territory of China, the tax payment place shall be the place at the locality of its actual management organ.

As regards a resident enterprise which has set up operational organs without legal person status inside the territory of China, it shall, on a consolidated basis, calculate and pay its enterprise income taxes.

Article 51 In case a non-resident enterprise earns any income as prescribed in Paragraph 2, Article 3 of the present Law, the tax payment place shall be the place at the locality of the organ or establishment. In case a non-resident enterprise has set up two or more organs or establishments within the territory of China, it may choose to have its main organ or establishment make a consolidated payment of the enterprise income tax upon the examination and approval of the tax organ.

As regards a non-resident enterprise which earns any income as prescribed in Paragraph 3, Article 3 of the present Law, the place at the locality of the obligatory withholder shall be the tax payment place.

Article 52 Enterprises may not pay their enterprise income taxes on a consolidated basis unless it is otherwise prescribed by the State Council.

Article 53 Enterprise income taxes shall be calculated on the basis of a tax year, which is from January 1 to December 31 of the Gregorian calendar year.

In case an enterprise's business operations are started or terminated in the middle of a tax year, which leads to its actual business operation period in this tax year being shorter than 12 months, its actual business operation period shall constitute a tax year.

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

Article 54 Enterprise income taxes shall, on the monthly or quarterly basis, be paid in advance.

An enterprise shall submit an enterprise income tax return for advance payment to the tax organ and pay the tax in advance within 15 days after the end of a month or quarter.

An enterprise shall submit an annual enterprise income tax return for the settlement of tax payments to the tax organ and settle the payable or refundable amount of taxes within 5 months after the end of each year.

When an enterprise submits an enterprise income tax return, the financial statements and other related materials shall be attached in accordance with the related provisions.

Article 55 In case an enterprise terminates its business operation in the middle of a year, it shall apply to the tax organ for calculating and paying the enterprise income taxes of the current period within 60 days after the actual date for terminating its business operations.

Before the deregistration formalities are handled, an enterprise shall make a declaration to the tax organ and pay the enterprise income taxes on the basis of the income of the liquidation.

Article 56 Enterprise income taxes to be paid pursuant to the present law shall be calculated on the basis of RMB. In case any income is calculated on the basis of a currency other than RMB, the taxes shall, after such income converted into RMB, be calculated and paid.

Chapter VIII Supplementary Rules

Article 57 In case an enterprise has already been set up before the promulgation of the present Law and enjoys low tax rates in accordance with the provisions of the tax laws and administrative regulations in force at that time, it may, in accordance with the provisions of the State Council, continue to enjoy the preferential treatments within five years as of the promulgation of the present Law and gradually transfer to the tax rate as prescribed in the present Law. In case an enterprise enjoys the preferential treatment of tax exemption for a fixed term, it may, after the promulgation of this Law, continue to enjoy such treatment in accordance with the provisions of the State Council until the fixed term expires. However, if an enterprise has failed to enjoy the preferential treatment by virtue of failure to make profits, the term of preferential treatment may be counted as

of the year when the present Law is promulgated.

As regards high-tech enterprises which are newly established with the key support of the State within the particular areas set up by law for developing foreign economic cooperation and technological exchanges or the areas enjoying the abovementioned special policies as provided for by the State Council, they may enjoy transitional preferential tax treatments. The specific measures thereof shall be constituted by the State Council.

As regards other enterprises falling within the encouraged category as already determined by the State Council, they may, according to the provisions of the State Council, enjoy the preferential treatment of tax reduction or exemption.

Article 58 In case any provision in a tax treaty concluded between the government of the People's Republic of China and a foreign government is different from the provisions in the present Law, the provision in the said treaty shall prevail.

Article 59 The State Council shall constitute a regulation for implementing the present Law.

Article 60 The present law shall go into effect as of January 1, 2008. The Income Tax Law of the People's Republic of China Concerning Foreign-funded Enterprises and Foreign Enterprises as adopted on April 9, 1991 at the 4th Session of the Standing Committee of the 7th National People's Congress and the Interim Regulation of the People's Republic of China Concerning Enterprise Income Tax as promulgated on December 13, 1993 by the State Council shall be concurrently abolished.