

**Implementation Regulations of the Corporate Income Tax Law of
the People's Republic of China**

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Chapter 1 - General Provisions

Chapter 2 - Taxable Income

 Section 1 - General Rules

 Section 2 - Income

 Section 3 - Deductions

 Section 4 - Tax Treatment of Assets

Chapter 3 - Tax Payable

Chapter 4 - Preferential Tax Treatment

Chapter 5 - Withholding at Source

Chapter 6 - Special Tax Adjustments

Chapter 7 - Administration of Assessment and Collection

Chapter 8 - Supplementary Provisions

Chapter 1 - General Provisions

Article 1.

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

Article 2.

"Sole Proprietorship Enterprises" and "Partnership Enterprises" as stated in Article 1 of the Corporate Income Tax Law shall refer to sole proprietorship enterprises and partnership enterprises that are established in accordance with the laws and administrative regulations of China.

Article 3.

"An Enterprise which is established in accordance with the laws in China" as stated in Article 2 of the Corporate Income Tax Law shall include enterprises, public institutions, social organisations and other income generating organisations that are established in China in accordance with the laws and administrative regulations of China.

"An Enterprise which is established in accordance with the laws of foreign countries (regions)" as stated in Article 2 of the Corporate Income Tax Law shall include enterprises and other income generating organisations which are established in accordance with the laws of foreign countries (regions).

Article 4.

"Place of effective management" as stated in Article 2 of the Corporate Income Tax Law shall refer to an establishment that exercises, in substance, overall management and control over the production and business, personnel, accounting, properties, etc. of an Enterprise.

Article 5.

"An Establishment and a Place" as stated in Article 2 Paragraph 3 of the Corporate Income Tax Law shall refer to establishments and places in China engaging in production and business operations, including:

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

If a Non-Tax Resident Enterprise commissions a business agent to carry out production and business activities in the territory of China, including commissioning an enterprise or individual to regularly sign contracts, store and deliver goods etc., on its behalf, such a business agent shall be considered as the establishment or place of the Non-Tax Resident Enterprise in China.

Article 6.

"Income" as stated in Article 3 of the Corporate Income Tax Law shall include income from sale of goods, income from provision of services, income from transfer of property, dividend and profit distribution etc. from equity investment, interest income, rental income, royalty income, income from receipt of donation and other income.

Article 7.

"Income derived from sources inside and outside China" as stated in Article 3 of the Corporate Income Tax Law shall be determined pursuant to the following principles:

- (1) for income derived from the sale of goods, the source shall be determined according to the location where the transaction takes place;
- (2) for income derived from the provision of services, the source shall be determined according to the location of the services;
- (3) for income derived from the transfer of properties, where the property concerned is an immovable property, the source shall be determined according to the location where the immovable property is situated; where 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; where the property concerned is equity investment, the source shall be determined according to the location of the investee enterprise;
- (4) for dividend and profit distribution etc. from equity investment, the source shall be determined according to the location of the enterprise which distributes the dividend and profit distribution;
- (5) for interest income, rental income and royalty income, the source shall be determined according to the location of the enterprise, establishment or place which bears and/or pays the income or the residence location of the individual who bears and/or pays the income;
- (6) for other income, the source shall be determined by the in-charge finance and tax departments of the State Council.

Article 8.

"Effectively connected" as stated in Article 3 of the Corporate Income Tax Law shall refer to the situation whereby the establishment or place of a Non-Tax Resident Enterprise in China owns the shareholdings, creditor's rights which give rise to the income; and owns, manages, controls over the properties, etc. which give rise to the income.

Chapter 2 - Taxable Income

Section 1 - General Rules

Article 9.

Unless otherwise prescribed in the Implementation Regulations and by the in-charge finance and tax departments of the State Council, the Taxable Income of an Enterprise shall be calculated on accrual basis. Income and expenses that are related to the current period shall be treated as income and expenses for the current period, regardless of whether the payment has been received or made. Whereas income and expenses that are not related to the current period shall not be treated as income and expenses for the current period, even if the payment has been received or made within the current period.

Article 10.

"Loss" as stated in Article 5 of the Corporate Income Tax Law shall refer to the amount of Gross Income of an Enterprise in each tax year as reduced by Non-Taxable Income, Tax-Exempt Income and various deductions in accordance with the Corporate Income Tax Law and the Implementation Regulations, where the remaining balance is less than zero.

Article 11.

"Liquidation income" as stated in Article 55 of the Corporate Income Tax Law shall refer to the balance of realisable 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, etc.

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 recognised as dividend income; the remaining assets as reduced by the aforesaid dividend income which exceeds or is less than the investment cost shall be recognised as profit or loss from the transfer of investment assets.

Section 2 - Income

Article 12.

"Monetary income derived by the Enterprises" as stated in Article 6 of the Corporate Income Tax Law shall include cash, deposits, accounts receivable, notes receivable, bond investments that are intended to be held until maturity, and forgiveness of debts, etc.

"Non-monetary income derived by the Enterprises" as stated in Article 6 of the Corporate Income Tax Law shall include assets such as fixed assets, biological assets, intangible assets, equity investments, inventories, bond investments that are not intended to be held until maturity, labour services and relevant rights and benefits etc.

Article 13.

The value of "non-monetary income derived by the Enterprises" as stated in Article 6 of the Corporate Income Tax Law shall be determined based on its fair value.

"Fair value" as stated in the previous paragraph shall refer to the value that is determined based on the market price.

Article 14.

"Income from sale of goods" as stated in Item (1) of Article 6 of the Corporate Income Tax Law shall refer to the income of an Enterprise derived from the sale of merchandise, products, raw materials, packaging materials, low-value consumables, and other inventories.

Article 15.

"Income from provision of labour services" as stated in Item (2) of Article 6 of the Corporate Income Tax Law shall refer to the income of an Enterprise derived from the business of construction and installation, repair and overhaul, transportation, warehousing and leasing, finance and insurance, postal and communication, consultancy and brokerage, cultural and sports, scientific research, technical services, education and training, food and beverage and lodging, middleman agency, hygiene and healthcare, community services, tourism, entertainment, processing, and other labour servicing activities.

Article 16.

"Income from transfer of property" as stated in Item (3) of Article 6 of the Corporate Income Tax Law shall refer to the income of an Enterprise derived from the transfer of properties such as fixed assets, biological assets, intangible assets, shareholdings, creditor's rights, etc.

Article 17.

"Dividend and profit distribution, etc. from equity investment" as stated in Item (4) of Article 6 of the Corporate Income Tax Law shall refer to the income derived by an Enterprise from its investee as a result of the equity investment made therein.

Unless otherwise prescribed by the in-charge finance and tax departments of the State Council, equity investment income such as dividend and profit distribution etc. is recognised as income on the day in which the investee makes a resolution to make profit distribution.

Article 18.

"Interest income" as stated in Item (5) of Article 6 of the Corporate Income Tax Law shall refer to income derived by an Enterprise from the provision of funds for other parties to use but not constituting equity investment, or from the possession of its funds by other parties, including deposit interest, loan interest, bond interest, arrear interest, etc.

Interest income is recognised as income on the interest payment due dates as agreed with the debtor in the contracts.

Article 19.

"Rental income" as stated in Item (6) of Article 6 of the Corporate Income Tax Law shall refer to the income derived by an Enterprise from the provision of the right to use of fixed assets, packaging materials, or other tangible assets.

Rental income is recognised as income on the rental payment due dates as agreed with the lessee in the contracts.

Article 20.

"Royalty income" as stated in Item (7) of Article 6 of the Corporate Income Tax Law shall refer to the income derived by an Enterprise from the provision of the right to use of patent, know-how, trademark, copyright, and other chartered rights.

Royalty income is recognised as income on the royalty payment due dates as agreed with the licensee in the contracts.

Article 21.

"Income from receipt of donation" as stated in Item (8) of Article 6 of the Corporate Income Tax Law shall refer to the monetary assets or non-monetary assets that are donated by other enterprises, organisations or individuals for free to the Enterprise.

Donation income is recognised as income on the day in which the donated assets are actually received.

Article 22.

"Other income" as stated in Item (9) of Article 6 of the Corporate Income Tax Law shall refer to income derived by an Enterprise besides those income as prescribed in Items (1) to (8) of Article 6 of the Corporate Income Tax Law, including enterprise assets premium income, deposit income for packaging materials overdue for return, accounts payable that cannot be settled, accounts receivable recovered after being written off as bad debts, income from debt restructuring, subsidies, income from violation of contracts, and exchange gain, etc.

Article 23.

Income may be recognised in stages where an Enterprise is engaged in the following production and business operations:

- (1) income for goods sold by instalment is recognised upon the dates of receipt of the proceeds as stipulated in the contracts;
- (2) for an Enterprise which is commissioned to process and manufacture large-scale mechanical equipment, vessels and aircraft or is engaging in construction, installation, assembly projects operations or labour services, where the term lasts for more than 12 months, income is recognised based on the progress of project completion or work volume completed within the tax year.

Article 24.

Where income is derived from sharing of products output, income is recognised on the day in which 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 otherwise prescribed by the in-charge finance and tax departments of the State Council, where an Enterprise has exchanged non-monetary assets or has used its goods, property or labour services for the purposes such as donation, repayment of debts, sponsorship, fund raising, advertisement, sample, staff welfare or profit distribution etc., it shall be deemed as sale of goods, transfer of property or provision of labour services.

Article 26.

"Fiscal appropriation" stated in Item (1) of Article 7 in the Corporate Income Tax Law shall refer to fiscal funds appropriated by people's governments at various levels to organisations such as public institutions and social organisations etc. which are administered within treasury budget, unless otherwise prescribed by the State Council or the in-charge finance and tax departments of the State Council.

"Governmental administration charges" as stated in Item (2) of Article 7 of the Corporate Income Tax Law shall refer to charges which are collected from specific service targets, during the process of carrying out social public administration and the process of providing specific public services to citizens, legal persons or other organisations, in accordance with the relevant rules of laws and regulations etc. as approved pursuant to the procedures formulated by the State Council and administered as treasury funds.

"Governmental funds" as stated in Item (2) of Article 7 of the Corporate Income Tax Law shall refer to fiscal funds which are collected by an Enterprise on behalf of the government for specified purposes in accordance with the relevant rules of laws and administrative regulations.

"Other Non-Taxable Income as stipulated by the State Council" as stated in Item (3) of Article 7 of the Corporate Income Tax Law shall 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 rules prescribed by the in-charge finance and tax departments of the State Council.

Section 3 - Deductions

Article 27.

"Related expenditures" as stated in Article 8 of the Corporate Income Tax Law shall refer to expenditures that are directly relevant to the generation of income.

"Reasonable expenditures" as stated in Article 8 of the Corporate Income Tax Law shall refer to the necessary and ordinary expenditures incurred in the course of normal production and business operations 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 either revenue in nature or capital in nature. Revenue expenditure shall be directly deducted in the period in which it is incurred; capital expenditures shall be deducted in stages or recorded as the cost of the relevant assets and shall not be directly deducted in the period in which it is incurred.

If an enterprise uses Non-Taxable Income for expenditures, the resulting expenses and assets shall not be deductible directly or through depreciation or amortisation.

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

Article 29.

"Costs" as stated in Article 8 of the Corporate Income Tax Law shall refer to sales costs, cost of goods sold, business expenditures and other consumable expenditures that are incurred by an Enterprise in the process of production and business operation activities.

Article 30.

"Expenses" as stated in Article 8 of the Corporate Income Tax Law shall refer to the sales expenses, administrative expenses and financial expenses incurred by an Enterprise in the process of production and business operation activities except for expenses that have already been recorded as costs.

Article 31.

"Taxes" as stated in Article 8 of the Corporate Income Tax Law shall refer to various taxes and surtaxes incurred by an Enterprise except for Corporate Income Tax and creditable VAT.

Article 32.

"Losses" as stated in Article 8 of the Corporate Income Tax Law shall 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 disaster and other losses which are incurred in the process of production and business 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 rules as prescribed by the in-charge finance and tax departments of the State Council.

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

Article 33.

"Other expenditures" as stated in Article 8 of the Corporate Income Tax Law shall refer to reasonable expenses other than costs, expenses, taxes and losses that are incurred in the production and business operation activities of an Enterprise and relevant to its production and business operation activities.

Article 34.

Reasonable wages and salaries of employees incurred by an Enterprise are allowed to be deductible.

"Wages and salaries" as stated in the previous paragraph shall refer to all cash or non-cash labour 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, bonus, allowances, subsidies, year-end salary, salary for overtime and other appointment-related or employment-related expenditures for the employees.

Article 35.

Basic social security contributions, such as basic pension insurance, basic medical insurance, unemployment insurance, injury insurance, maternity insurance, etc., and housing funds that are made by an Enterprise in accordance with the scope and criteria as prescribed by the relevant in-charge authorities of the State Council or provincial people's governments are allowed to be deductible.

Supplementary pension insurance and supplementary medical insurance contributed by an Enterprise for its investors and employees in accordance with the scope and criteria prescribed by the in-charge finance and tax departments of the State Council are allowed to be deductible.

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 deductible pursuant to the rules prescribed by the in-charge finance and tax departments of the State Council, premiums for commercial insurance policies paid by the Enterprise for its investors or employees shall not be deductible.

Article 37.

Reasonable borrowing costs that are incurred by an Enterprise during its production and business operation activities and need not be capitalised may be deductible.

For borrowing used for the acquisition and construction of fixed assets, intangible assets and inventories that require at least 12 months to construct in order 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 a capital expenditure and recorded as part of the cost of the relevant assets and deducted pursuant to the relevant rules in the Implementation Regulations.

Article 38.

The following interest expense incurred by an Enterprise in the production and business operation activities are allowed to be deductible:

- (1) Interest expense on borrowing from financial institutions by a non-financial institution, interest expense paid on various savings deposits and inter-bank borrowings as incurred by financial institutions, interest expense incurred by an Enterprise on bonds approved for issuance;
- (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 loss 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 deductible, except for the portion that has been recorded as cost of the relevant assets or is related to making profit distributions to owners.

Article 40.

Staff welfare expenditure that is incurred by an Enterprise are allowed to be deductible up to 14% of its total wages and salaries.

Article 41.

Labour union fees that are appropriated and paid by an Enterprise are allowed to be deductible up to 2% of its total wages and salaries.

Article 42.

Unless otherwise prescribed by the in-charge finance and tax departments of the State Council, expenditure for staff education that is incurred by an Enterprise are allowed to be deductible up to 2.5% of its total wages and salaries. Any excess amount is allowed to be carried forward and deductible in the following tax years.

Article 43.

For business entertainment expenses that are incurred by an Enterprise and related to its production and business operation activities, 60% of the incurred amount shall be deductible 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 deductible up to 15% of the sales (business) income of that year unless otherwise prescribed by the in-charge finance and tax departments of the State Council. Any excess amount are allowed to be carried forward and deductible in the following tax years.

Article 45.

Special funds that are appropriated for use in protecting environment and restoring ecology, etc. pursuant to the relevant laws and administrative regulations are allowed to be deductible. Where the usage of the aforesaid special funds changes, it shall not be deductible.

Article 46.

Where an Enterprise contracts for property insurance, the insurance premium paid pursuant to regulations are allowed to be deductible.

Article 47.

Rental expense paid by an Enterprise for leased fixed assets that are used for its production and business operation activities shall be deductible 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;
- (2) For rental expense incurred on fixed assets under a finance lease, the portion that forms the value of fixed assets pursuant to the regulations shall be depreciated and deductible in stages.

Article 48.

Reasonable expenditures incurred by an Enterprise for labour safety protection are allowed to be deductible.

Article 49.

Management fee paid between Enterprises, rental and royalty fees paid between business units of an Enterprise and interest paid between business units of a non-bank Enterprise shall not be deductible.

Article 50.

For an establishment or place of business of a Non-Tax Resident Enterprise in China, reasonable expenses allocated from the overseas head office shall be deductible on the condition that these expenses are incurred by its head office and related to the production or business 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.

"Charitable donation expenditure" as stated in Article 9 of the Corporate Income Tax Law shall refer to donations made by an Enterprise through charitable social organisations or the people's governments and their departments at the county or above levels for the charitable undertakings that are prescribed in the "*Law of the People's Republic of China on Donation for Charitable Undertakings*".

Article 52.

"Charitable social organisations" as stated in Article 51 of the Implementation Regulations shall refer to social organisations such as funding associations and charitable institutions that fulfil all of the following conditions:

- (1) It is legally established with the status a legal person;
- (2) It aims 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 utilised 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 organisation;
- (6) It is not engaged in activities that are not related to the objective of the set-up of the organisation;
- (7) It possesses sound and complete financial and accounting system;
- (8) Donors are not involved, in any form, in the distribution of properties of the organisation; and
- (9) Other conditions jointly prescribed by the in-charge finance 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 deductible up to 12% of its total annual profit.

"Total annual profit" shall refer to the annual accounting profit calculated by an Enterprise pursuant to the unified accounting system of the State.

Article 54.

"Sponsorship expenditures" as stated in item (6) of Article 10 of the Corporate Income Tax Law shall refer to all types of expenditures that are incurred by an Enterprise, non-advertising in nature and not relevant to the production and business operation of the Enterprise.

Article 55.

"Provisions that have not been verified" as stated in item (7) of Article 10 of the Corporate Income Tax Law shall refer to various provisions for asset impairment reserves and risk reserves, etc. made by an Enterprise which are not in accordance with the rules prescribed by the in-charge finance 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, etc. shall be based on historical cost.

"Historical cost" as stated in the previous paragraph shall refer to the expenditure actually incurred by the Enterprise when acquiring the asset.

Where 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 rules as prescribed by the in-charge finance and tax departments of the State Council allow the gain or loss to be recognised.

Article 57.

"Fixed assets" as stated in Article 11 of the Corporate Income Tax Law shall refer to non-monetary assets with a useful life of more than 12 months possessed by an Enterprise for the purposes of producing products, provision of labour services, lease or operation and management, including buildings, structures, machinery, mechanisms, means of transport and other equipment, appliances and tools, etc. that are relevant to its production and business operations.

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 etc. is determined according to the fair value of the assets and related taxes and charges paid;
- (6) For re-constructed fixed assets, except for the expenditures prescribed in Items (1) and (2) of Article 13 of the Corporate 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 deductible.

An Enterprise shall calculate the depreciation of a fixed asset beginning from the month following that in which the fixed asset is placed into use. Where a fixed asset ceases 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 otherwise prescribed by the in-charge finance and tax departments of the State Council, the minimum depreciation period for various types of fixed assets shall be as follows:

- 1) Buildings, structures: 20 years;
- 2) Aircrafts, trains, vessels, machinery, mechanisms and other production equipment: 10 years;
- 3) Appliances, tools, furniture, etc, related to production and business operations: 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 the 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 in-charge finance 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 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 etc. is determined according to the fair value of the asset and related taxes and charges paid.

"Production-nature biological assets" as stated in the previous paragraph shall refer to biological assets that are possessed by an Enterprise for producing agricultural products, provision of labour services and leasing etc., including economic forest, firewood forest, livestock kept for breeding, livestock for labour, etc.

Article 63.

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

An Enterprise shall calculate the depreciation of a production-nature biological asset beginning from the month following that in which the production-nature biological is placed into use. Where 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 various types of production-nature biological assets shall be as follows:

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

Article 65.

"Intangible assets" as stated in Article 12 of the Corporate Income Tax Law shall 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 labour services, leasing, or business management, including patent, trademark, copyright, land use right, know-how and goodwill, etc.

Article 66.

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

- (1) The tax basis of an acquired intangible asset is determined according to the purchase price, related taxes and charges paid, and other expenditures incurred that are directly attributable to the asset achieving its intended purpose of usage.
- (2) The tax basis of a self-developed intangible asset is determined according to the expenditures incurred during the development process beginning from the time the conditions for capitalisation are satisfied and ending at the time such asset achieves its intended purpose of usage.
- (3) The tax basis of an intangible asset that is obtained through the forms such as donation, capital contribution, exchange of non-monetary assets and debt restructuring etc. is determined according to the fair value of the asset and related taxes and charges paid.

Article 67.

The amortisation of intangible assets calculated according to the straight-line method is allowed to be deductible.

Intangible assets shall be amortized over a period of not 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 the contracts may be amortized, in stages, pursuant to the prescribed or agreed useful life.

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

Article 68.

"Expenditures for re-constructing fixed assets" as stated in Items (1) and (2) of Article 13 of the Corporate Income Tax Law shall refer to expenditures incurred for the purposes of structural alteration of buildings or structures and extending the useful life of the assets, etc.

Expenditure as stipulated in Item (1) of Article 13 of the Corporate Income Tax Law shall be amortised according to the estimated remaining useful life; expenditure as stipulated in Item (2) shall be amortised, in stages, according to the remaining lease term as agreed in the contracts.

Where the useful life of a fixed asset is extended as a result of re-construction, except for the provisions in Items (1) and (2) of Article 13 of the Corporate Income Tax Law, the depreciation period shall also be extended appropriately.

Article 69.

"Expenditures incurred for major repairs of fixed assets" as stated in Item (3) of Article 13 of the Corporate Income Tax Law shall refer to expenditures that satisfy both of the following conditions:

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

The expenditures as stipulated in Item (3) of Article 13 of the Corporate Income Tax Law shall be amortised, in stages, according to the remaining useful life of the fixed assets.

Article 70.

"Expenditures which shall be treated as long-term deferred expenses" as stated in Item (4) of Article 13 of the Corporate Income Tax Law shall be amortised, 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.

"Investment assets" as stated in Article 14 of the Corporate Income Tax Law shall 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 deductible 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 paid.

Article 72.

"Inventory" as stated in Article 15 of the Corporate Income Tax Law shall refer to products or merchandise that are possessed by an Enterprise for the purpose of sales, semi-finished goods under production process and materials and ingredients consumed during the production process or the provision of labour services process, etc.

The cost of inventory 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 paid;
- (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 paid;
- (3) The cost of agricultural products generated by production-nature biological assets shall be determined according to the necessary expenditures such as material expenses, labour cost and allocated overheads etc. 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 respectively stated in Articles 16 and 19 of the Corporate Income Tax Law shall refer to the tax basis of the relevant

assets and properties as reduced by depreciation, depletion, amortisation and provisions, etc. already deducted pursuant to the regulations.

Article 75.

Unless otherwise prescribed by the in-charge finance and tax departments of the State Council, where an Enterprise undergoes restructuring, it shall recognise 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 stated in Article 22 of the Corporate Income Tax Law shall be as follows:

$$\text{Tax Payable} = \text{Taxable Income} \times \text{Applicable tax rate} - \text{Reduced/exempted tax} - \text{Tax credit}$$

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

Article 77.

"Foreign income tax already paid abroad" as stated in Article 23 of the Corporate Income Tax Law shall refer to the tax amounts in the nature of corporate income tax, in respect of income derived from sources outside China, that is payable and actually paid overseas in accordance with foreign tax laws and relevant regulations.

Article 78.

"Credit Limit" as stated in Article 23 of the Corporate Income Tax Law shall refer to tax payable that is calculated based on the income derived from sources outside China and pursuant to the Corporate Income Tax Law and the Implementation 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:

$$\text{Credit Limit} = \frac{\text{Total tax payable on income sourced inside and outside China computed in accordance with the Corporate Income Tax Law and the Implementation Regulations} \times \text{Taxable Income sourced from certain country(region)}}{\text{Total China and foreign sourced Taxable Income}}$$

Article 79.

"Five Years" as stated in Article 23 of the Corporate Income Tax Law shall refer to the five consecutive tax years following the year in which the amount of foreign tax in the nature of corporate income tax paid in respect of income sourced outside China exceeds the credit limit.

Article 80.

"Direct control" as stated in Article 24 of the Corporate Income Tax Law shall refer to the situation where a Tax Resident Enterprise directly owns more than 20% shareholding of a foreign enterprise.

"Indirect control" as stated in Article 24 of the Corporate Income Tax Law shall refer to the situation that a Tax 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 in-charge finance and tax departments of the State Council.

Article 81.

When an Enterprise claims a corporate income tax credit in accordance with the rules prescribed in Articles 23 and 24 of the Corporate 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.

"Interest income from State treasury bonds" as stated in Item (1) of Article 26 of the Corporate Income Tax Law shall refer to interest income derived from State treasury bonds issued by the in-charge finance department of the State Council and held by the Enterprise.

Article 83.

"Qualified dividend and profit distribution etc. from equity investment between Tax Resident Enterprises" as stated in Item (2) of Article 26 of the Corporate Income Tax Law shall refer to investment income derived by a Tax Resident Enterprise from the direct investment in other Tax Resident Enterprises. "Dividend and profit distribution etc. from equity investment" as stated in Items (2) and (3) of Article 26 of the Corporate Income Tax Law shall exclude investment income from circulating stocks issued publicly by Tax Resident Enterprises and traded on stock exchanges where the holding period is less than 12 months.

Article 84.

"Qualified non-profit-making organisations" as stated in Item (4) of Article 26 of the Corporate Income Tax Law shall refer to organizations which fulfil the following conditions:

- (1) It has legally performed registration procedures as a non-profit-making organisation;
- (2) It is engaged in charitable and non-profit-making activities;
- (3) Apart from using it for reasonable and relevant expenditures of such organisation, all of the income derived is used for the charitable or non-profit-making undertakings as approved in registration or prescribed in its by-law;
- (4) Assets and interest derived from these assets shall not be used for distribution;
- (5) As approved in registration or prescribed in its by-law, after the organisation 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 organisation, and the same shall be announced to the general public;
- (6) The donors shall not retain or enjoy any right of the assets donated to the organisation;
- (7) Expenditures on salaries and welfare for staff shall be controlled within the prescribed percentage. The organisation shall not distribute its assets in any disguised form;

The measures for the assessment of non-profit-making organisations as prescribed in the previous paragraph shall be jointly formulated by the in-charge finance and tax departments of the State Council and the relevant governmental bodies of the State Council.

Article 85.

Unless otherwise prescribed by the in-charge finance and tax departments of the State Council, "income derived by qualified non-profit-making organisations" as stated in Item (4) of Article 26 of the Corporate Income Tax Law shall exclude income derived by non profit-making organisations from engaging in profit-making activities.

Article 86.

"Corporate Income Tax of an Enterprise on the income derived from engaging in agricultural, forestry, animal husbandry and fishery projects may be reduced or exempted" as stipulated in Item (1) of Article 27 of the Corporate Income Tax Law shall refer to:

- (1) Income derived by an Enterprise from engaging in the following projects may be exempted from corporate income tax:
 - i. Cultivation of vegetables, grain crop, tuber crop, oil-bearing crop, bean and pea crop, cotton, bast-fibre plants, sugar crops, fruit and nut;
 - ii. Selection and cultivation of new types of agricultural products;
 - iii. Cultivation of Chinese medicine herb;
 - iv. Breeding and cultivation of forestry;
 - v. Raising of livestock and poultry;
 - vi. Collection of forestry products;
 - vii. 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, etc.;
 - viii. Ocean fishing.
- (2) Corporate Income Tax on income derived by an Enterprise from engaging in the following projects may be reduced by half:
 - i. Cultivation of flower, crop for tea and other beverage and spice crop;
 - ii. Sea water fish farming, fresh water fish farming.

Enterprises engaging in projects that are restricted or prohibited by the State shall not enjoy the preferential Corporate Income Tax treatments as prescribed in this article.

Article 87.

"Public basic infrastructure projects that are specifically supported by the State" as stated in Item (2) of Article 27 of the Corporate Income Tax Law shall refer to projects such as harbour, wharf, airport, railway, highway, city public transportation, electric power, water resources utilisation projects, etc. prescribed in the "Catalogue of Public Basic Infrastructure Projects Qualified for Corporate Income Tax Preferential Treatments".

The Corporate Income Tax in respect of the income generated by an Enterprise from investing and operating in the public basic infrastructure projects as stipulated in the previous paragraph 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 Corporate Income Tax preferential treatments as prescribed in this Article.

Article 88.

"Environmental protection, energy and water conservation projects which meet certain prescribed criteria" as stated in Item (3) of Article 27 of the Corporate Income Tax Law shall include public sewage treatment, public refuse treatment, comprehensive development and utilisation of methane, technologies alteration for energy-saving and emission reduction, seawater desalination, etc. The detailed conditions and scope for these projects shall be jointly formulated by the in-charge finance and tax departments of the State Council and the relevant governmental bodies of the State Council and released for enforcement after being reported to and approved by the State Council.

The Corporate Income Tax in respect of the income generated by an Enterprise from operating in the environmental protection, energy and water saving conservation projects as stipulated in the previous paragraph 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 Implementation Regulations, and transferred the project during the tax holiday, the transferee may enjoy the prescribed preferential corporate 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.

"Corporate Income Tax may be reduced or exempted on the income derived by an Enterprise from the transfer of technology which meets the prescribed conditions" as stated in Item (4) of Article 27 of the Corporate Income Tax Law shall refer to the treatments that for the income derived by a Tax Resident Enterprise from the transfer of technology in a tax year, the portion that does not exceed RMB5 million shall be exempted from Corporate Income Tax; and the portion that exceed RMB5 million shall be allowed a half reduction of Corporate Income Tax.

Article 91.

Corporate Income Tax shall be levied at the reduced rate of 10% for income prescribed in Item (5) of Article 27 of the Corporate Income Tax Law derived by a Non-Tax Resident Enterprise. The following income may be exempted from Corporate Income Tax:

- 1) Interest income on loans made by foreign governments to the Chinese government;
- 2) Interest income on preferential loans made by the International Financial Organizations to the Chinese government and Tax Resident Enterprises;
- 3) Other income as approved by the State Council.

Article 92.

"Qualified Small and Thin-profit Enterprises" as stated in Paragraph (1) of Article 28 of the Corporate Income Tax Law shall 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 Income does not exceed RMB300,000; the number of employees does not exceed 100 and the total assets does not exceed RMB30 million;
- (2) For other enterprises, the annual Taxable Income does not exceed RMB300,000; the number of employees does not exceed 80 and the total assets does not exceed RMB10 million;

Article 93.

"High/New Tech Enterprises that are specifically supported by the State" as stated in Paragraph (2) of Article 28 of the Corporate Income Tax Law shall 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 "High/New Tech Sectors Specifically Supported by the State";
- (2) Research and development expenses shall not be less than the prescribed percentage;
- (3) Income from high/new tech products (services) accounts for not less than the prescribed percentage of its total income;
- (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 High/New Tech Enterprises.

The "High/New Tech Sectors Specifically Supported by the State" and the administrative measures for the assessment of the High/New Tech Enterprises shall be jointly formulated by the in-charge science technology, finance and tax departments of the State Council and other relevant government bodies of the State Council and released for enforcement after being reported to and approved by the State Council.

Article 94.

"Autonomous regions" as stated in Article 29 of the Corporate Income Tax Law shall refer to the autonomous districts, autonomous cities or 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".

Corporate Income Tax for 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.

"Additional deduction for research and development expenses" as stated in Item (1) of Article 30 of the Corporate Income Tax Law shall refer 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.

"Additional deduction for salaries paid in the course of settling handicapped staff" as stated in Item (2) of Article 30 of the Corporate Income Tax Law shall 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 rules 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 method for "additional deduction for salaries paid to the other employees encouraged by the State" as stipulated in Article 30, item (2) shall be separately formulated by the State Council.

Article 97.

"Deduction against the Taxable Income" as stated in Article 31 of the Corporate 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 high/new 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 utilised in that year may be carried forward and deductible in the following years.

Article 98.

Fixed assets which may be depreciated over shorter periods or under accelerated depreciation methods as prescribed in Article 32 of the Corporate Income Tax Law shall include:

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

Where 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 Implementation Regulations; where accelerated depreciation method is applied, double declining balance method or sum-of-years-digits method may be used.

Article 99.

"Income reduction" as stated in Article 33 of the Corporate Income Tax Law shall refer to the treatment that where an enterprise uses the resources stipulated in the "Catalogue for Comprehensive Utilization of Resources Qualified for Corporate 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 derived shall 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 Corporate Income Tax Preferential Treatments".

Article 100.

"Credit against its Tax Payable" as stated in Article 34 of the Corporate Income Tax Law shall refer to the treatment that where an Enterprise acquires and actually uses specific equipment for the purposes of environmental protection, energy and water conservation etc. as stipulated in the "Catalogue of Specific Equipment for Environmental Protection Qualified for Corporate Income Tax Preferential Treatments", "Catalogue of Equipment for Energy and Water Conservation Purposes Qualified for Corporate Income Tax Preferential Treatments" and "Catalogue of Equipment for Production Safety Qualified for Corporate 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 deductible in the following 5 tax years.

An Enterprise that is eligible for the preferential Corporate 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 itself. Where the Enterprise transfers or leases the aforesaid specific equipment within 5 years after acquisition, the Enterprise shall no longer enjoy the preferential Corporate Income Tax treatments and shall pay back the amount of Corporate Income Tax which has already been offset.

Article 101.

The catalogues for Corporate Income Tax preferential treatments as stipulated in Articles 87, 99 and 100 of this Chapter shall be jointly formulated by the in-charge finance and tax departments of the State Council and the relevant governmental bodies 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 Corporate Income Tax treatments, it shall separately calculate the income derived from different projects eligible for preferential Corporate Income Tax treatments, reasonably allocate periodical expenses. Where it is not separately calculated, the Enterprise shall not enjoy the preferential Corporate Income Tax treatments.

Chapter 5 - Withholding at Source

Article 103.

Where withholding at source shall be adopted for Corporate Income Tax payable by a Non-Tax Resident Enterprise in accordance with the Corporate Income Tax Law, the Taxable Income shall be calculated pursuant to Article 19 of the Corporate Income Tax Law.

"Gross Income" as stated in Article 19 of the Corporate Income Tax Law shall refer to the total payments and all other charges receivable by a Non-Tax Resident Enterprise from the payer.

Article 104.

"Payer" as stated in Article 37 of the Corporate Income Tax Law shall refer to organizations or individuals that are directly obligated for paying the proceeds to the Non-Tax Resident Enterprises pursuant to the relevant laws and regulations or contracts.

Article 105.

"Payments" as stated in Article 37 of the Corporate Income Tax Law shall include monetary and non-monetary payments such as payments in cash, by remittance or through transfer and rights of equivalent value, etc.

"Payments due" as stated in Article 37 of the Corporate Income Tax Law shall 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 Corporate Income Tax Law shall include:

- (1) The anticipated term of contractor project or service is less than a tax year and there is evidence showing that the Non-Tax Resident Enterprise will not fulfil tax obligations;
- (2) The Non-Tax Resident Enterprise has not performed tax registration or temporary tax registration, and has not engaged any agent in China to fulfil its tax obligations; or
- (3) The Non-Tax Resident Enterprise has not filed or pre-paid any Corporate Income Tax within 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 and computation method, as well as the time limit and forms for withholding and settlement.

Article 107.

"The location of the source of income" as stated in Article 39 of the Corporate Income Tax Law shall refer to the location of the source of income as determined in accordance with Article 7 of the Implementation 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 Corporate Income Tax payments.

Article 108.

"Taxpayer's other income within China" as stated in Article 39 of the Corporate Income Tax Law shall refer to income derived 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 etc.

Chapter 6 - Special Tax Adjustments

Article 109

A "related party" as stated in Article 41 of the Corporate Income Tax Law shall refer to an enterprise, an organisation 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 sales, etc.;
- (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 stated in Article 41 of the Corporate Income Tax Law shall refer 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 stated in Article 41 of the Corporate Income Tax Law shall 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 merchandise 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 Corporate 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 deductible in calculating its Taxable Income.

Article 113

The "Advance Pricing Arrangement" as stated in Article 42 of the Corporate Income Tax Law shall refer 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 stated in Article 43 of the Corporate Income Tax Law shall include the following:

- (1) Contemporaneous documentation regarding the determination standards, computation methods and explanation, etc. of the prices and expenses relevant to the business transactions with related parties;
- (2) The relevant information regarding the resale (or transfer) prices or ultimate sale (or transfer) prices of properties, rights to use of the properties and labour services, etc. involved in business transactions with related parties;
- (3) Information of product price, pricing methods and profit levels, etc. 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.

"Other enterprises related to the related party business investigation" as stated in Article 43 of the Corporate Income Tax Law shall refer to enterprises which are comparable to the Enterprise under investigation in terms of the substance and form of the production and business operations.

An Enterprise shall submit documentation regarding the determination standards, computation methods and explanation, etc. of the prices and expenses relevant to business transactions with related parties within the time limit stipulated by the tax authorities. 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 Corporate 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 Income deemed by the tax authorities using the methods mentioned in the above paragraph, the Enterprise shall provide relevant evidence; and upon verification by the tax authorities, the deemed Taxable Income may be adjusted.

Article 116

"Chinese Individual Resident" as stated in Article 45 of the Corporate Income Tax Law shall refer to any person who pays Individual Income Tax on income derived from within and outside China, according to the "*Individual Income Tax Law of the People's Republic of China*".

Article 117

"Control" as stated in Article 45 of the Corporate Income Tax Law shall include:

- (1) A Tax Resident Enterprise or Chinese Individual 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 Tax Resident Enterprise, or a Tax Resident Enterprise jointly with a Chinese Individual 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, etc.

Article 118

"Effective tax burden substantially lower than the tax rate as stated in Article 4 Paragraph 1 of the Corporate Income Tax Law" as stated in Article 45 of the Corporate Income Tax Law shall refer to the case where the effective tax rate is lower than 50% of the tax rate as stated in Article 4 Paragraph 1 of the Corporate Income Tax Law.

Article 119

"Debt investment" as stated in Article 46 of the Corporate Income Tax Law shall refer to financing directly or indirectly obtained by an Enterprise from its related parties that requires repayment of principal and interest, or other forms of compensation with an interest element.

Debt investment indirectly obtained by the Enterprise from related parties shall 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.

"Equity investment" as stated in Article 46 of the Corporate Income Tax Law shall refer to investment obtained by an Enterprise without the need of the repayment of principal or interest, and the investor(s) having the entitlement to the net assets of the Enterprise.

The "prescribed standard" as stated in Article 46 of the Corporate Income Tax Law shall be determined by the in-charge finance and tax departments of the State Council.

Article 120

"Without reasonable commercial purpose" as stated in Article 47 of the Corporate Income Tax Law shall refer 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 Income.

Article 122

"Interest Levy" as stated in Article 48 of the Corporate 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 Corporate Income Tax Law and the Implementation Regulations, 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 purpose, 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 Assessment and Collection

Article 124.

"Place of registration of an Enterprise" as stated in Article 50 of the Corporate Income Tax Law shall refer to the residence location registered by the Enterprise pursuant to the relevant regulations of the State.

Article 125.

Where an Enterprise makes combined Corporate Income Tax filing and settlement, it shall calculate the Taxable Income on a combined basis. The detailed method shall be separately formulated by the in-charge finance and tax departments of the State Council.

Article 126.

"Main establishment or place" as stated in Article 51 of the Corporate Income Tax Law shall satisfy both of the following criteria:

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

Article 127.

"Subject to the examination and approval by the tax authorities" as stated in Article 51 of the Corporate Income Tax Law shall refer to the examination and approval by the upper-level tax

authorities which supervise all the local-level tax authorities where the various establishments and places are located.

After a Non-Tax Resident Enterprise makes combined Corporate 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 Corporate 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 Corporate Income Tax in monthly or quarterly instalments.

An Enterprise pre-paying Corporate Income Tax in monthly or quarterly instalments pursuant to Article 54 of the Corporate Income Tax Law shall base on its actual profit amount 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 amount, 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 recognised 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 Corporate Income Tax returns, annual Corporate 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 Corporate Income Tax Law.

Article 130.

If the income of an Enterprise is denominated in currencies other than RMB, when it pre-pays provisional Corporate 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 Income accordingly. When the Enterprise performs annual Corporate Income Tax reconciliation after the end of the year, the income on which tax has already been prepaid in monthly or quarterly instalments shall not be converted and calculated again; only the income on which Corporate 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, after the examination by the tax authorities, the Enterprise has under-declared or over-declared income as prescribed in the previous paragraph, it shall convert the under-declared or over-declared income using the medium exchange rates for RMB on the last day of the month after which the examination is completed, for calculating the Taxable Income and the tax amounts that shall be made up or refunded.

Chapter 8 - Supplementary Provisions

Article 131.

"Enterprises approved to establish before the publication of this Law" as stated in Paragraph (1) of Article 57 of the Corporate Income Tax Law shall refer to Enterprises that have completed business registration before the publication of the Corporate Income Tax Law.

Article 132.

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 Corporate Income Tax Law.

Article 133.

The Implementation Regulations shall take effect from 1 January 2008.

The "Detailed Rules for the Implementation of the Income Tax Law of the People's Republic of China for Foreign Investment Enterprises and Foreign Enterprises" promulgated on 30 June 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 4 February 1994 by the Ministry of Finance shall be annulled simultaneously.

----- End -----

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