



## **Regulation on the Implementation of the Enterprise Income Tax Law of the People's Republic of China**

(promulgated on 28 November 2007 by the State Council and effective as of 1 January 2008. Order No 512 of the State Council of the PRC)

### **Chapter I General Provisions**

**Article 1** The present Regulation is formulated pursuant to the Enterprise Income Tax Law of the People's Republic of China (hereafter the "EIT Law").

**Article 2** The terms "sole proprietorship" and "partnership" as used in Article 1 of the EIT Law shall be a sole proprietorship or partnership established under the laws and administrative regulations of China.

**Article 3** The term "enterprises lawfully established within China" as described in Article 2 of the EIT Law shall include the enterprises, public institutions, social bodies and other organizations with income established within the territory of China under the laws and administrative regulations thereof.

The term "enterprises established under the laws of any foreign country (region)" shall include the enterprises and other organizations with income established under the laws of any foreign country (region).

**Article 4** The term "actual management institution" as used in Article 2 of the EIT Law" shall refer to an institution that conducts substantial and all-round management and control with respect to the production, operations, personnel, finance, property, etc. of the enterprise.

**Article 5** The term "institutions and establishments" as used in Article 2, Paragraph 3, of the EIT Law shall refer to the institutions and establishments that conduct production activities and business operations within the territory of China, including:

- (1) management institutions, operational institutions, and offices;
- (2) factories, farms, and places for the exploitation of natural resources;
- (3) establishments for the provision of labor services;

(4) establishments for engineering operations with respect to construction, installation, assembling, repairing, and surveying, etc.;

(5) other institutions and establishments where production activities and operations are carried out.

Where a non-resident enterprise entrusts any agent to carry out production activities or business operations within the territory of China, including the entrustment of any entity or individual to sign contracts on its behalf to handle the warehousing or delivery of goods, etc., such agent shall be regarded as an institution or establishment of the nonresident created within China.

**Article 6** The term "income" as used in Article 3 of the EIT Law shall include the income from the sale of goods, income from the provision of labor services, income from the transfer of property, income from equity investment such as dividend and bonus, interest income, rental income, income from franchise royalties, income from accepting donations, and other income.

**Article 7** The term "income from sources within and without China" as used in Article 3 of the EIT Law shall be determined under the following principles:

- (1) Income from the sale of goods shall be determined according to the place where the transaction is carried out;
- (2) Income from the provision of labor services shall be determined according to the place where labor services are provided;
- (3) With regard to income from the transfer of property, the income from the transfer of real property shall be determined according to the place where such real property is situated, while the income from the transfer of personal property shall be determined according to the place where the enterprise or institution of establishment that transfers the property is located, and the income from the transfer of equity investment assets shall be determined according to the place where the invested enterprise is located;

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(4) Income from equity investment such as dividend and bonus, etc., shall be determined according to the place where the enterprise that distributes the income is located;

(5) Interest income, rental income, and income from franchise royalties shall be determined according to the place where the enterprise, institution or establishment that pays the income is located or according to the place where the abode of the individual that pays the income is located;

(6) Other income shall be determined by the competent department of treasury or taxation of the State Council.

**Article 8** The term “actual connection” as used in Article 3 of the EIT Law refers to the connection whereby the institution or establishment set up by a nonresident within the territory of China acquires its equity or credit, or owns, manages or controls its property, etc.

## **Chapter II Taxable Amount**

### **Section I General Provisions**

**Article 9** The calculation of the taxable amount of an enterprise shall be based on the principles of the accrual method of accounting. The current incomes and expenditures shall be treated as current incomes and expenditures notwithstanding whether they have been received or paid; incomes and expenditures that are not current shall not be treated as current incomes and expenditures even the payment in question has been currently made, unless it is otherwise provided for by the present Regulation or the competent department of treasury or taxation of the State Council.

**Article 10** The term “losses” as used in Article 5 of the EIT Law refers to the amount which is less than zero resulting from the total amount of income of a certain taxable year less the tax-exempt incomes, tax-free incomes, and other various deductions.

**Article 11** The term “liquidation income” as used in Article 55 of the EIT Law refers to the amount of total cashable values or transaction price less the net value of assets, liquidation expenses, and other relevant taxes and expenditures, etc.

The residual assets that an investor obtains from the liquidated enterprise to which the part that should be

distributed but has failed to be distributed from the accumulated undistributed profits and accumulation funds of the liquidated enterprise shall be determined as income from dividend; the part of remaining assets that is greater or smaller than the investment cost after subtracting the aforesaid dividend income shall be determined as income or loss from the transfer of investment assets.

## **Section II Income**

**Article 12** The “monetary forms whereby an enterprise obtains income” as used in Article 6 of the EIT Law include cash, bank deposits, receivable accounts, receivable instruments, bond investment to be held until maturity, and relief of obligation, etc.

The “non-monetary forms whereby an enterprise obtains income” as used in Article 6 of the EIT Law include fixed assets, biological assets, intangible assets, equity investments, inventories, bond investments not to be held until maturity, labor services, and other relevant rights and interests, etc.

**Article 13** The term “income an enterprise obtains in non-monetary forms” as used in Article 6 of the EIT Law shall be determined according to the arm’s length value. The “arm’s length value” as used in the preceding paragraph refers to the value determined according to the market value.

**Article 14** The term “income from the sale of goods” as used in Article 6 (1) of the EIT Law shall refer to the income an enterprise obtains from the sale of commodities, products, raw materials, packaging materials, low-value perishables, and other inventories, etc.

**Article 15** The term “income from the provision of labor services” as used in Article 6 (2) of the EIT Law shall refer to the income an enterprise obtains from the construction, installation, reparation, fixing, transportation and traffic, warehousing and lease, finance and insurance, post and telecommunications, consultation and brokerage, cultural and sports activities, scientific research, technical services, educational trainings, catering and lodging, intermediary services, health and medical services,

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residential community services, travel, entertainment, processing, and other labor services, etc.

**Article 16** The term “income from the transfer of property” as used in Article 6 (3) of the EIT Law refers to the income an enterprise obtains from the transfer of fixed assets, biological assets, intangible assets, equity, credits, etc.

**Article 17** The term “income from equity investment such as dividend and bonus, etc.” as used in Article 6 (4) of the EIT Law refers to the income an enterprise obtains from the invested party due to equity investment.

The income from equity investment such as dividend and bonus, etc. shall be realized out of the income of the date when the invested party makes the decision of profit distribution, unless it is otherwise provided for by the competent treasury or taxation department of the State Council.

**Article 18** The term “income from interest” as used in Article 6 (5) of the EIT Law refers to the income obtained by an enterprise by providing capital to any other person for use without constituting equity investment or income arising from any other person’s use of the enterprise’s capital, including interest of bank deposits, loan interest, debenture interest, arrearage interest, etc.

Interest income shall be realized out of the income on the date as stipulated by contract for the debtor to pay interest.

**Article 19** The term “rental income” as used in Article 6 (6) of the EIT Law refers to the income obtained by an enterprise from the right to use its fixed assets, packaging materials or any other tangible properties. Rental income shall be realized out of the income of the date as stipulated by contract for the tenant to pay rent.

**Article 20** The term “franchise royalties” as used in Article 6 (7) of the EIT Law refers to the income from obtained by an enterprise by providing the right to use its patents, know-how, trademarks, copyrights, or any other franchised rights.

Income from franchise royalties shall be realized out of the income of the date as stipulated by contract for the user of franchised right to pay franchise royalties.

**Article 21** The term “income from donations” as used in Article 6 (8) of the EIT Law refers to the monetary assets and non-monetary assets an enterprise receives gratuitously donated by any other enterprise, organization or individual.

Income from donations shall be realized out of the income of the day when the donated asset is actually received.

**Article 22** The term “other income” as used in Article 6 (9) of the EIT Law refers to the income other than those as described in Article 6 (1) through (8) of the EIT Law that an enterprise obtains, including income from the excess assets of the enterprise, income from the overdue deposits for packaging materials that fails to be refunded, the payable items that cannot be paid, the receivables that are received after being treated as bad debt, income from the restructuring of debts, income from subsidies, income from damages, income from foreign exchange rates, etc.

**Article 23** The income arising from the production activities and business operations of an enterprise as described below may be realized by installments:

- (1) In the sale of goods by installments, the income shall be realized on the date of payment as stipulated in the contract;
- (2) In the entrusted processing and making of large machines, equipment, vessels, aircrafts, or the provision of engineering services such as construction, installation, or assembling, etc. or the provision of any other labor services which lasts for 12 months or more, the income shall be realized according to the accomplished portion within the taxable year;

**Article 24** Where income is obtained by means of sharing products, income shall be realized on the date fixed for the enterprise to share products, and the amount of income shall be determined pursuant to the arm’s length value of the products.

**Article 25** Where an enterprise exchanges any non-monetary asset, or uses any goods, asset or labor services for purposes of donation, clearance of debts, sponsoring, fund-raising, advertising, samples,

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employee welfare, or profit distribution, etc., it shall be regarded as a sale of goods, transfer of property, or provision of labor services, unless it is otherwise provided for by the competent department of treasury or taxation of the State Council.

**Article 26** The term “fiscal allotments” as used in Article 7 (1) of the EIT Law shall refer to fiscal capital allotted by the people’s government at various levels to the organizations, such as public institutions and social bodies, that are included in the budgetary management unless it is otherwise provided for by the State Council or the competent department of treasury or taxation of the State Council.

The term “administrative charges” as used in Article 7 (2) of the EIT Law refers to the fees charged to the specified persons and incorporated into fiscal management according to the relevant provisions of laws or regulations and upon the approval obtained by following the procedures of the State Council in the process of conducting social public management or providing specified public services to citizens, legal persons or other organizations.

The term “governmental funds” as used in Article 7 (2) of the EIT Law refers to the fiscal capital that an enterprise collects on behalf of the government according to the relevant provisions of laws and regulations for the use of specified purposes.

The term “other tax-free income as provided for by the State Council” as used in Article 7 (3) of the EIT Law refers to the fiscal capital an enterprise obtains upon the approval of the State Council to be used for the specified purposes as determined by the competent department of treasury or taxation of the State Council.

### **Section III Deductions**

**Article 27** The term “expenses” as used in Article 8 of the EIT Law shall refer to the expenses directly related to the obtainment of income.

The term “reasonable expenses” as used in Article 8 of the EIT Law shall refer to the normal and necessary expenses that are in line with the rule of production and business operations and that shall be counted into the current profits and losses or relevant capital costs.

**Article 28** The expenses of an enterprise are classified into revenue-related expenses and capital-related expenses. Revenue-related expenses shall be deducted in the current accounts, while capital-related expenses shall be deducted by installments or included in the relevant capital costs and may not be directly deducted in the current accounts.

The expenses or property arising from the use of the tax-free income of an enterprise shall not be deducted and may not be depreciated or amortized.

Unless it is otherwise differently provided for in the EIT Law or the present Regulation, the costs, expenses, taxes paid, losses and other expenditures actually incurred by an enterprise may not be repeatedly deducted.

**Article 29** The term “cost” as used in Article 8 of the EIT Law refers to the sales costs, write-off costs, business expenditures and other expenditures incurred by an enterprise in its production activities and business operations.

**Article 30** The term “expenses” as used in Article 8 of the EIT Law refers to the sales expenses, management expenses and financial expenses incurred by an enterprise in its production activities and business operations with the exception of those that have already been included in the cost.

**Article 31** The term “taxes paid” as used in Article 8 of the EIT Law refers to the various taxes and surtaxes incurred by an enterprise other than the enterprise income taxes and value added taxes that are deductible.

**Article 32** The term “losses” as used in Article 8 of the EIT Law refers to the loss or destruction of fixed assets and inventories, loss arising from discarding anything as useless, loss from the transfer of property, loss from bad debt, loss from force majeure such as natural disaster, etc. and other kinds of loss.

The surplus of losses incurred to an enterprise after subtracting the compensations made by the person held to be liable and the compensations made by insurance shall be deducted under the provisions of the competent treasury and taxation departments of the State Council.

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Assets that have already been treated as loss shall be counted into the current income if they are recovered in full or in part during any subsequent taxable year.

**Article 33** The term “other expenditures” as used in Article 8 of the EIT Law refers to the reasonable and related expenditures incurred by an enterprise in its production activities and business operations other than the costs, expenses, taxes paid, and losses.

**Article 34** The expenses arising from the payment of reasonable salaries and wages shall be allowed for deduction.

The term “salaries and wages” as used in the preceding paragraph refers to the remunerations for labor represented in monetary and non-monetary forms paid by an enterprise during a tax year to its staff members and employees, including basic salaries, bonuses, subsidies, allowances, year-end additional salaries, overwork wages, and any other expenses relating to the work or employment of its staff members.

**Article 35** The basic social insurance premiums and housing accumulation funds which an enterprise pays for its staff members according to the scope and rates as provided for by the relevant competent departments of the State Council or the provincial people’s government, e.g., basic old-age insurance premiums, basic medical insurance premiums, unemployment insurance premiums, work-related injury insurance premiums, and birth insurance premiums, etc., are allowed to be deducted.

The supplementary old-age insurance premiums and supplementary medical insurance premiums that an enterprise pays for investors or staff members may be deducted within the scope and according to the rates as set down by the competent departments of treasury and taxation of the State Council.

**Article 36** The commercial insurance premiums that an enterprise pays for its investors or staff members shall not be deducted except for the personal security insurance premiums an enterprise pays for its staff members engaging in special occupations under the relevant provisions of the state and other commercial insurance premiums that are deductible under the

relevant provisions of the competent departments of treasury and taxation of the State Council.

**Article 37** The reasonable loan expenses incurred by an enterprise in its production activities and business operations that are not required to be capitalized are deductible.

Where an enterprise borrows any loan for purposes of purchasing or creating fixed assets or intangible assets and inventories that cannot enter into the scheduled marketability state until 12 months later or more, the reasonable expenses arising from such loans in the process of purchasing or creating relevant assets shall be treated as capital expenditure and be incorporated into the cost of relevant capital, and shall be deductible under the present Regulation.

**Article 38** The interest expenses incurred by an enterprise in its production activities and business operations are deductible:

- (1) interest expenses for the loans borrowed by a non-financial enterprise from a financial enterprise, the interest expenses for the various deposits of financial enterprises, the interest expenses for inter-bank loans, and the expenses for the debentures issued by an enterprise upon approval;
- (2) the portion of interest expenses for the loans borrowed by a non-financial enterprise from another non-financial enterprise that do not exceed the amount calculated at the interest rates for an identical kind and identical term of a financial enterprise.

**Article 39** The foreign exchange losses incurred by enterprise in monetary exchanges from the conversion of any non-renminbi monetary assets or obligations into current renminbi at the term-end medium exchange rate are deductible except for the portion that has already been incorporated into the relevant capital costs and the portion that relates to the profit distribution to owners.

**Article 40** The employee welfare expenses incurred by an enterprise are deductible to the extent that it does not exceed 14% of the total amount of salaries and wages.

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**Article 41** The labor union funds allocated by an enterprise are deductible to the extent that they do not exceed 2% of the total amount of salaries and wages.

**Article 42** The expenses for the education of staff members incurred by an enterprise are deductible to the extent that they do not exceed 2.5% of the total amount of salaries and wages unless it is otherwise different provided for by the State Council. The excess may be carried forward to future years for deduction.

**Article 43** The expenses for business entertainment incurred by an enterprise relating to its production activities and business operations shall be deducted to the extent of 60% of the actually incurred amount but not more than 5‰ of the sales revenue of the current year.

**Article 44** The qualified expenses for advertising and publicity incurred by an enterprise shall be deductible to the extent of not more than 15% of the sales revenue of the current year unless it is otherwise differently provided for by the competent department of treasury or taxation of the State Council. The excess may be carried forward to future years for deduction.

**Article 45** The funds an enterprise draws for the special use of environmental protection, ecological recovery pursuant to the relevant provisions of the laws and administrative regulations shall be deductible. The aforesaid special funds shall not be deductible if their purpose of use is changed after being drawn.

**Article 46** The insurance premiums that an enterprise pays according to the prescribed rates for the insurance of property shall be deductible.

**Article 47** The rentals that an enterprise pays for renting fixed assets as required by its production activities and business operations shall be deducted in the following methods:

- (1) The rental expenses incurred from the renting of fixed assets by means of operational lease shall be evenly deducted in proportion to the term of lease;
- (2) The rental expenses incurred from the renting of fixed assets by means of financing lease shall be deducted by installments to the extent of the portion of

financing that forms a part of the fixed asset value for which depreciation shall be reserved.

**Article 48** The reasonable expenses for labor protection incurred by an enterprise shall be deductible.

**Article 49** The management fees paid by one enterprise to another, the rentals and franchise royalties paid among the operational institutions within an enterprise, and the interest paid among the business offices of a non-financial enterprise shall not be deductible.

**Article 50** The institutions and establishments created within the territory of China by a non-alien enterprise may deduct the relevant expenses incurred by its overseas headquarters relating to the production activities and business operations of such institution or establishment provided that it is able to provide certification documents issued by the headquarters with respect to the scope of expenses collection, rationing, basis and method of distribution, etc., and provided that they are reasonably apportioned.

**Article 51** The term “public interest donations” as used in Article 9 of the EIT Law refers to the donations made by an enterprise via public interest social bodies or the people’s government on the county level or the instrumentalities thereof to the public interest undertakings as prescribed in the Law of the People’s Republic of China on Donation to the Public Interest Undertaking.

**Article 52** The term “public interest social bodies” as used in Article 51 of the present Regulation refers to such social bodies as foundations, charity organizations, etc. that concurrently meet the following conditions:

- (1) being lawfully registered and having the status of a legal person;
- (2) serving the purpose of promoting public interest and not taking profit-making as its purpose;
- (3) all the assets and increments belonging to the legal person;
- (4) the proceeds and operational surplus being used mainly for the cause that meets the purpose of establishment of the legal person in question;
- (5) the surplus property after the termination of the enterprise not belonging to any individual or profit-making organization;

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- (6) refraining from engaging in any business that has nothing to do with its purpose of establishment;
- (7) having a perfect financial and accounting system;
- (8) the donator not participating in the distribution of the property of the social body in any way;
- (9) other conditions as prescribed by the departments of treasury and taxation of the State Council in collaboration with the civil affairs department of the State Council in charge of the administration of the registration of social bodies.

**Article 53** The public interest expenditures incurred by an enterprise are deductible to the extent that they do not exceed 12% of the annual total amount of profits of the enterprise.

The annual total amount of profits refers to the annual accounting profits of the enterprise calculated under the uniform accounting system of the state.

**Article 54** The term “sponsor expenditures” as used in Article 10 of the EIT Law refers to the various non-advertising expenditures incurred by an enterprise that have nothing to do with its production activities or business operations.

**Article 55** The term “reserve expenditures having not been assessed” as used in Article 10 (7) of the EIT Law refers to the reserved expenditures that do not meet the relevant provisions of the competent departments of treasury and taxation of the State Council, such as the depreciation reserves and risk reserves for the various assets, etc.

#### Section IV Tax Treatment of Assets

**Article 56** The various assets of an enterprise, including fixed assets, biological assets, intangible assets, long-term expenses to be amortized, investment assets, inventories, etc., shall take their historical cost as the basis of taxation.

The term “historical cost” as used in the preceding paragraph refers to the expenses actually incurred by an enterprise so as to acquire the item of asset in question. Where, during an enterprise’s holding various assets, any of the assets appreciates or depreciates, it may not adjust the basis of taxation of such asset except for those for which losses and profits may be recognized

under the relevant provisions of the departments of treasury and taxation of the State Council.

**Article 57** The term “fixed asset” as used in Article 11 of the EIT Law refers to the non-monetary assets held by an enterprise for the making of products, provision of labor services, or for lease or operational management the use life of which exceeds 12 months, including premises, building, machines, mechanics, means of transportation, and other equipment, means, and tools, etc. relating to production activities and business operations.

**Article 58** The basis of taxation of a fixed asset shall be determined in the following methods:

- (1) for purchased fixed assets, the basis of taxation shall be the purchase price, the relevant taxes and surcharges paid, and other expenses directly attributable to making the said asset realize the predetermined purpose of use;
- (2) for self-built fixed assets, the basis of taxation shall be the expenses incurred before the final settlement upon completion of the assets in question;
- (3) for fixed assets obtained through financing lease, the basis of taxation shall be the total amount of price stipulated in the lease contract and the relevant expenses incurred by the lessee in the process of concluding the lease contract. If the total price is not stipulated in the lease contract, the basis of taxation shall be the arm’s length price of the assets and the relevant expenses incurred by the lessee in the process of concluding the lease contract;
- (4) for fixed assets arising from inventory gains, the basis of taxation shall be the total value for replacing them with similar fixed assets;
- (5) for fixed assets obtained through donations, investment, exchange of non-monetary assets, restructuring of obligations, etc. the basis of taxation shall be the arm’s length value of the assets in question plus the relevant taxes and fees paid;
- (6) for rebuilt fixed assets, the basis of taxation shall be expenses as set forth in Article 13 (1) and (2) of the EIT Law augmented by the rebuilding expenditures incurred in the process of rebuilding.

**Article 59** The depreciation of fixed assets calculated under the straight-line method are deductible.

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An enterprise shall calculate depreciations as of the next months after a fixed asset is placed into use. Where a fixed asset is no longer used, the depreciation thereof shall be terminated as of the next month after the month when its use is terminated.

An enterprise shall reasonably determine the predicted net residual value of a fixed asset according to the nature and use of the fixed asset in question. Once the predicted net residual value of the fixed asset is determined, it shall not be changed.

**Article 60** Unless it is otherwise differently provided for by the competent department of treasury and taxation of the State Council, the minimum number of years for calculating the depreciation of a fixed asset shall be:

- (1) premises and buildings, 20 years;
- (2) airplanes, trains, ships, machines, mechanical appliances, and other production equipments, 10 years;
- (3) means, tools, and furniture relating to production activities or business operations, 5 years;
- (4) other means of transportation than airplanes, trains, and ships, 4 years;
- (5) electronic appliances, 3 years.

**Article 61** For an enterprise engaging in the exploitation of mineral resources such as oil and natural gas, the method for calculating the loss and depreciation of the expenses and relevant fixed assets incurred before the commercial production starts shall be separately set forth by the competent department of treasury and taxation of the State Council.

**Article 62** The basis of taxation of a productive biological asset shall be determined in either of the following ways:

- (1) in the case of a purchased productive biological asset, the basis of taxation shall be the purchase price plus the relevant taxes and fees paid;
- (2) in the case of a productive biological asset obtained by means of donation, investment, exchange of non-monetary assets, restructuring of obligations, etc., the basis of taxation thereof shall be the arm's length value of the asset in question plus the relevant taxes and fees paid.

The term "productive biological asset" as used in the preceding paragraph refers to the biological assets held by an enterprise for the purpose of producing

agricultural products, providing labor services or as a result of lease, etc., including economic forests, forests used for firewood and charcoal purposes, productive animals, and labor animals, etc.

**Article 63** The depreciation of a productive biological asset calculated under the straight-line method are deductible.

An enterprise shall calculate depreciations as of the next month after the month when a productive biological asset is put into use. Where a productive biological asset is no longer used, the depreciation thereof shall be terminated as of the next month after the month when its use is stopped.

An enterprise shall reasonably determine the predicted net residual value of a productive biological asset according to the nature and use of the productive biological asset in question. Once the predicted net residual value of the productive biological asset is determined, it shall not be changed.

**Article 64** The minimum number of years for the calculation of depreciation of a productive biological asset shall be:

- (1) in the case of productive biological asset falling into the category of woods, 10 years;
- (2) in the case of productive biological asset falling into the category of animals, 3 years.

**Article 65** The term "intangible asset" as use in Article 12 of the EIT Law refers to the non-monetary long-term assets without a physical form which are held by an enterprise for purposes of producing products, providing labor services, lease, or operational management, etc., including patent rights, trademark rights, copyrights, land use rights, know-how, going concern, etc.

**Article 66** The basis of taxation of an intangible asset shall be determined under the following methods:

- (1) in the case of purchased intangible assets, the basis of taxation shall be the purchase price, the relevant taxes and fees paid and other expenses directly attributable to making the said asset reaching the predetermined purposes of use;
- (2) in the case of self-developed intangible assets, the basis of taxation shall be the expenses incurred, in the

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process of development, after the said asset has met the conditions of capitalization but before the predetermined purpose of use is reached;

(3) in the case of intangibles obtained through donations, investments, exchange of non-monetary assets, restructuring of obligations, etc., the basis of taxation shall be the arm's length value of the said asset plus the relevant taxes and fees paid.

**Article 67** The amortized expenses of an intangible asset calculated under the straight-line method are deductible.

An intangible asset shall be amortized for no less than 10 years.

Where, in the case of an intangible asset used as an investment or in the case of an donated intangible asset, a fixed number of years for its use is stipulated in any law or contract, it may be amortized pursuant to the prescribed or stipulated number of years.

The expenses arising from the purchasing of going concern shall be deductible when the enterprise is transferred as a whole or is liquidated.

**Article 68** The term "rebuilding expenses of a fixed asset" as used in Article 13 (1) and (2) of the EIT Law refers to the expenses resulting from changing the structure of a premise or building or extending the use life thereof.

The expenses as set forth in Article 13 (1) of the EIT Law shall be amortized within the number of years the fixed asset is predicted to be usable. The expenses as set forth in Article 13 (2) shall be amortized by installments within the remaining term of lease as stipulated in the contract.

Where the life of a fixed asset is extended, the number of years of depreciation shall be extended appropriately unless it falls within the provisions of Article 13 (1) and (2) of the EIT Law.

**Article 69** The term "expenses for the major reparation of a fixed asset" as used in Article 13 (3) of the EIT Law refers to the expenses that concurrently meet the following conditions:

- (1) the reparation expenses attain to 50% of the basis of taxation of the fixed asset when it was gained;
- (2) the life of use of the post-preparation fixed asset is extended for two or more years.

The expenses as set forth in Article 13 (3) of the EIT Law shall be amortized by installments within the years such fixed asset is usable.

**Article 70** The "other expenses that should be treated as long-term amortizations" as used in Article 13 (4) of the EIT Law shall be amortized by installments as expenses for long-term amortization for no less than three years as of the next month after the expense is incurred.

**Article 71** The term "investment assets" as used in Article 14 of the EIT Law refers to the assets formed by an enterprise through external equity investments or bond investments.

When an enterprise transfers or disposes of its investment assets, the cost of the investment assets are deductible.

The cost of an investment asset shall be determined under the following methods:

- (1) in the case of an investment asset obtained by paying cash, the cost shall be the purchase price;
- (2) in the case of an investment asset obtained by any other means than the payment of cash, the cost shall be the arm's length value of the asset in question plus the relevant taxes and fees paid.

**Article 72** The term "inventory" as used in Article 15 of the EIT Law refers to the products or commodities an enterprise holds for sale, the products being made in the process of production, and the materials and stuff used in the process of production or provision of labor services.

The cost of an inventory shall be determined under the following methods:

- (1) in the case of an inventory obtained by paying cash, the cost shall be the purchase price;
- (2) in the case of an inventory obtained by any other means than the payment of cash, the cost shall be the arm's length value of the asset in question plus the relevant taxes and fees paid.

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(3) in the case of agricultural products obtained from productive biological assets, the cost shall be the necessary expenditures incurred in the process of producing or harvesting, such as the cost of materials, human cost, and apportioned indirect expenses, etc.

**Article 73** For the method of calculating the cost of inventories an enterprise uses by itself or sells, it may use either the “first in, first out” method, or the weighted average method, or the individual pricing method. Once a method is chosen, it shall not be changed.

**Article 74** The terms “net value of asset” as used in Article 16 and “net value of property” as used in Article 19 of the EIT Law refer to the balance obtained from the basis of taxation of the relevant asset and property after deducting the depreciations, losses, amortizations, reserves, etc. pursuant to the relevant provisions.

**Article 75** Unless it is otherwise differently provided for by the competent department of treasury or taxation of the State Council, an enterprise shall, in the process of restructuring, realize its gain or loss arising from the transfer of the relevant assets when the transaction is conducted, and the basis of taxation of the relevant assets shall be determined anew pursuant to the transaction price.

### Chapter III Tax Amount

**Article 76** The formula for calculating the tax amount as provided for in Article 22 of the EIT Law is:

Tax amount = taxable amount × applicable rate – amount of tax reduction and exemption – tax credit

The amount of tax reduction and exemption and the amount of tax credit as used in the formula are the amount of taxes that are reduced, exempted or credited under the EIT Law and the tax preferential policies of the State Council.

**Article 77** The term “amount of income taxes paid overseas” as used in Article 23 of the EIT Law refers to the amount of taxes in the nature of income tax that an enterprise is due for the incomes sourced outside of China pursuant to the foreign tax laws and regulations and has in effect paid.

**Article 78** The term “amount of deduction and exemption” as used in Article 23 of the EIT Law refers to the amount of taxes as calculated under the EIT Law and the present Regulation for the enterprise’s income sourced outside of China. Unless it is otherwise differently provided for by the competent department of treasury or taxation of the State Council, the amount of deduction and exemption shall be calculated without regard to the different countries (regions), and the formula of calculation is:

Amount of deduction and exemption = total amount of taxes calculated under the EIT Law and the present Regulation for the incomes sourced both inside and outside of China × taxable amount for the income sourced from a certain country (region) ÷ total amount of taxable income sourced both inside and outside China

**Article 79** The term “five years” as used in Article 23 of the EIT Law refers to the consecutively five years as of the year following the year when the amount of taxes in the nature of income tax for the income sourced outside of China which an enterprise has paid exceeds the amount of deductions and exemptions.

**Article 80** The term “direct control” as used in Article 24 of the EIT Law refers to an equity of 20% or more a resident enterprise directly holds in a foreign enterprise. The term “indirect control” as used in Article 24 of the EIT Law refers to an equity of 20% or more a resident enterprise indirectly holds in a foreign enterprise, the specific measures for the determination of which shall be separately formulated by the competent departments of treasury and taxation of the State Council.

**Article 81** When an enterprise makes credit against any income taxes as provided for in article 23 or 24 pursuant to the EIT Law, it shall provide the relevant proof of tax payment issued by the foreign tax authority for the year when the tax amount is due.

### Chapter IV Preferential Tax Policies

**Article 82** The term “interest income from treasury bonds” as used in Article 26 of the EIT Law refers to the interest income arising from the treasury bonds an

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enterprise holds issued by the treasury department of the State Council.

**Article 83** The term “qualifying proceeds from equity investment such as dividends and bonuses between resident enterprises” as used in Article 26 (2) of the EIT Law refers to the investment proceeds obtained by a resident enterprise from its direct investment in any other resident enterprises. The term “proceeds from equity investment such as dividends and bonuses” as used in Article 26 (2) and (3) of the EIT Law shall not include the investment proceeds from stock publicly issued and trade on a stock exchange which is consecutively held by a resident enterprise for not more than 12 months.

**Article 84** The term “qualifying not-for-profit organizations” as used in Article 26 (4) of the EIT Law refers to the organizations that concurrently meet the following conditions:

- (1) having completed the registration for not-for-profit organizations according to law;
- (2) engaging in public interest activities or not-for-profit activities;
- (3) the incomes obtained are all used for the public interest or not-for-profit undertaking as registered, approved, or stipulated in the charter with the exception of the reasonable expenses relating to the organization in question;
- (4) the properties and the fruits thereof are not to be distributed;
- (5) pursuant to the registration, approval or stipulations of the charter, the surplus properties of the organization after write-off shall be used for public interest or not-for-profit purposes or shall be donated via the registration administrative organ to any other organization in the same nature and with the same tenets, and shall be publicized to the general public;
- (6) the sponsor shall not reserve or enjoy any property right to the properties he gave to the organization in question;
- (7) the expenses for the salaries and fringe benefits of the staff members are controlled within the prescribed proportion, and none of the organization’s properties shall be distributed in any disguised manner.

The measures for the determination of the not-for-profit organizations as described in the preceding paragraph shall be formulated by the competent department of treasury and taxation of the State Council in

collaboration with the other departments of the State Council.

**Article 85** The term “qualifying income of the not-for-profit organization” as used in Article 26 (4) of the EIT Law does not include the income of the not-for-profit organization arising from profitable activities unless it is otherwise differently set forth by the competent department of treasury or taxation of the State Council.

**Article 86** The term “income of an enterprise obtained from agricultural, forest, animal raising, and fishing projects” as used in Article 27 (1) of the EIT Law refers to:

- (1) the enterprise’s income obtained from the following projects which shall be exempt from the EIT:
  - a. the planting of vegetables, cereals, potatoes, oil plants, beans, cotton, hems, sugar plants, fruits, nuts, etc;
  - b. breeding of new varieties of crops;
  - c. planting of traditional Chinese medicinal herbs;
  - d. cultivation and planting of forest trees;
  - e. raising of animals and poultry;
  - f. gathering of forest products;
  - g. other agricultural, forest, animal raising and fishing projects such as irrigation, initial processing of agricultural products, veterinary science, promotion of agricultural techniques, operations and reparation of agricultural machines, etc.;
  - h. ocean fishing.
- (2) the enterprise’s income obtained from the following project shall be subject to income tax levy at the reduced half rate:
  - a. the planting of flowers, teas, and other beverage plants and spicery plants;
  - b. maritime aquaculture and inland aquaculture.

An enterprise which engages in any of the projects restricted or prohibited by the state may not enjoy any of the preferential EIT treatment as set forth in the present Regulation.

**Article 87** The term “public infrastructure projects under the key support of the state” as used in Article 27 (2) of the EIT Law refers to the ports, wharves, airports, railways, highways, municipal public transportation, electric power, water conservancy, etc. as listed in the

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## Catalogue of Public Infrastructure Projects Entitled to Enterprise Income Tax Preferential Treatment.

The income obtained by an enterprise from investing in or operating any of the public infrastructure projects under the key support of the state as mentioned in the preceding paragraph shall be exempted from the EIT for the first three years as of the tax year when the first revenue arising from production or operation it is attributable to, and shall be taxed at the reduced half rate for the fourth to the sixth years.

An enterprise that operates any of the projects described in the present article on the contractual basis, or builds on the contractual basis, or builds for its own use shall not enjoy the EIT preferential treatment of the present article.

**Article 88** The term “qualifying environmental protection, energy-saving and water-saving projects” as used in Article 27 (3) of the EIT Law shall include the processing of public sewage, the processing of public garbage, the comprehensive exploitation and utilization of firedamp, the renovation of technologies of saving energy or discharging wastes, the desalination of sea water, etc. The specific conditions and scope of such projects shall be set down by the competent departments of treasury and taxation of the State Council in collaboration with other relevant department of the State Council, which shall come into effect after being ratified by the State Council.

The qualifying income obtained by an enterprise from engaging in any of the environmental protection or energy-saving or water saving projects as described in the preceding paragraph shall be exempted from the EIT for the first three years as of the tax year the first revenue arising from production or operation is attributable to, and shall be taxed at the reduced half rate for the fourth to the sixth years.

**Article 89** Where any project which qualifies for the preferential treatment of tax reduction and exemption as set forth in Articles 87 and 88 of the present Regulation is transferred to any other party during the term of tax reduction or exemption, the transferee may enjoy the tax reduction or exemption treatment as of the day it accepts the project for the remaining part of the tax preferential treatment period; if the project is

transferred after the expiration of the term of tax reduction or exemption, the transferee may not enjoy the tax preferential treatment.

**Article 90** The term “reduction and exemption of EIT for qualifying technological transfers” as used in Article 27 (4) of the EIT Law refers to the portion not exceeding 5 million yuan obtained by a resident enterprise from technological transfer shall be exempted from EIT, and the excess shall be taxed at the reduced half rate.

**Article 91** The incomes which a non-resident enterprise obtains pursuant to Article 27 (5) of the EIT Law shall be taxed at the reduced 10% rate.

The following incomes shall be exempted from the EIT:

- (1) interest income obtained by a foreign government from its loans to the Chinese government;
- (2) interest income obtained by an international financial organization from its loan to the Chinese government or the resident enterprises thereof at preferential rates;
- (3) other incomes as approved by the State Council.

**Article 92** The term “qualifying small meagre-profit enterprises” as used in Article 28 (1) of the EIT Law are enterprises that meet the following conditions engaging in the industries not restricted or prohibited by the state:

- (1) an industrial enterprise shall have an annual taxable amount not exceeding 300,000 yuan, have not more than 100 employees, and a total asset of more than 30 million yuan;
- (2) any other enterprise shall have an annual taxable amount of not more than 300,000 yuan, have not more than 80 employees, and a total asset of not more than 10 million yuan.

**Article 93** The expression “high and new-technology enterprises under the key support of the state” as used in Article 28 (2) of the EIT Law are enterprises that have their own independent, kernel intellectual property rights and at the same time meet the following conditions:

- (1) The product (service) falls within the scope of the High and New Technology Areas Entitled to the Key Support of the State;
- (2) The proportion of research and development expenses in the sales revenues is not lower than the prescribed proportion;

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(3) The proportion of the income from high and new technology products (services) in the total income of the enterprise is not lower than the prescribed proportion.

(4) The proportion of technicians in the total number of staff members of the enterprise is not lower than the prescribed proportion;

(5) Other conditions as stipulated in the measures for the determination of high and new technology enterprises.

The High and New Technology Areas Entitled to the Key Support of the State and the measures for the determination of high and new technology enterprises shall be formulated by the competent departments of the State Council in charge of science and technology, treasury, and taxation in collaboration with other relevant departments, and shall become effective after being ratified by the State Council.

**Article 94** The term “ethnic autonomous areas” as used in Article 29 of the EIT Law refers to the autonomous regions, autonomous prefectures, and autonomous counties that are under the autonomy of the ethnic groups under the Law of the People’s Republic of China on the Autonomy in Ethnic Areas.

An enterprise of an ethnic autonomous area that engages in an industry restricted or prohibited by the state shall not have their EIT reduced or exempted.

**Article 95** The term “additional deduction of research and development expenses” as used in Article 30 (1) of the EIT Law refers to an additional 50% deduction of the research and development expenses incurred from the research and development of new technologies, new products, and new techniques on the basis of the actual deductions where the enterprise when no intangible asset has been formed and calculated into the current gains and losses. If intangible assets have been formed, they shall be amortized at 150% of the cost of the intangible assets.

**Article 96** The expression “addition deduction of salaries and wages paid to the disabled employees of the enterprise” as used in Article 30 (2) of the EIT Law refers to an additional 100% deduction of the salaries and wages paid by the enterprise to the disabled employees thereof. The definition of disabled persons shall be that

in the Law of the People’s Republic of China on the Protection of Disabled People.

The measures for the additional deduction of the salaries and wages paid by an enterprise to other employees whose employment is encouraged by the state as mentioned in Article 30 (2) of the EIT Law shall be separately formulated by the State Council.

**Article 97** The term “offset of taxable amount” as used in Article 31 of the EIT Law refers to that, where a startup investment enterprise invests, by means of equity investment, in an unlisted small or medium-sized high and new technology enterprise for two or more years, it may set off 70% of its equity investment against the current taxable amount of the startup investment enterprise when its equity holding attains to two full years. If the taxable amount is not enough for setoff, the margin may be carried forward to subsequent years for setoff.

**Article 98** The fixed assets for which the method of shortened depreciation or accelerated depreciation as mentioned in Article 32 of the EIT Law include:

- (1) the fixed assets created due to technological progress or fast product upgrading;
- (2) fixed assets which are in a state of strong shaking or severe erosion all year round.

Where the shortened depreciation method is used, the minimum number of years shall not be less than 60% of the number of years for depreciation as set forth in Article 60 of the present Regulation. Where the accelerated depreciation method is adopted, the double-declining balance method (DDB) or the Sum-of-the-years-digits method (SYD).

**Article 99** The term “reduction of income” as used in Article 33 of the EIT Law refers to that, where an enterprise uses any of the materials as listed in the Catalogue of Resources for Comprehensive Utilization by Enterprises Entitled to Preferential Income Tax Treatment as its major raw materials, the income obtained from producing products which are not restricted or prohibited by the state and which meet the relevant standards of the state or the industry concerned shall be calculated into the total income at the reduced 90%.

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The proportion of raw materials in the materials for the production of products as described in the preceding paragraph shall not be any lower than the standards described in the Catalogue of Resources for Comprehensive Utilization by Enterprises Entitled to Preferential Income Tax Treatment.

**Article 100** The term “credit of taxes” as used in Article 34 of the EIT Law refers to that, where an enterprise purchases and actually uses any of the special equipments dedicated to environmental protection, conservation of energy and water, safety of work, etc. as described in the Catalogue of Special Equipments Dedicated to Environmental Protection Entitled to Preferential Income Tax Treatment, the Catalogue of Special Equipments Dedicated to Conservation of Energy and Water Entitled to Preferential Income Tax Treatment, and the Catalogue of Special Equipments Dedicated to Work Safety Entitled to Preferential Income Tax Treatment, 10% of the investment in the special equipment may be credited to the enterprise’s amount of taxes of the current year. If the amount of taxes is not sufficient for credit, the margin may be carried forward for credit in the following 5 tax years.

An enterprise entitled to the preferential income tax treatment as described in the preceding paragraph shall actually purchase and put into use the special equipments as described in the preceding paragraph. If the enterprise transfers or leases any of the aforesaid special equipment within 5 years after its purchase, its preferential treatment shall be terminated and the enterprise shall make up the already credited enterprise income taxes.

**Article 101** The catalogue of preferential enterprise income tax treatments as mentioned in Articles 87, 99, and 100 shall be formulated by the competent departments of treasury and taxation of the State Council in collaboration with other relevant departments of the State Council, which shall become effective after being ratified by the State Council.

**Article 102** Where an enterprise is engaged in projects to which different enterprise income tax treatments apply, the projects to which preferential treatment applies shall be separately calculated with respect to its income and the expenses incurred during this period shall be reasonably amortized. Where it is not

separately calculated, the enterprise in question may not enjoy the preferential income tax treatment.

## Chapter V Withholding at Source

**Article 103** Where a non-resident shall be subject to withholding of enterprise income taxes at source under the EIT Law, the taxable amount shall be calculated pursuant to Article 19 of the EIT Law.

The amount of total income as used in Article 19 of the EIT Law refers to the total price and ex-price fees that a non-resident has collected against the payor.

**Article 104** The term “payor” as used in Article 37 of the EIT Law is an entity or individual that directly bears the obligation to make relevant payments to a non-resident enterprise under the provisions of law or stipulations of a contract.

**Article 105** The term “payment” as used in Article 37 includes monetary payments and non-monetary payments, e.g., cash payment, payment by remittance, transfer payment, and payment by equity consideration, etc.

The term “due payable items” as used in Article 37 of the EIT Law refers to the payable items which the payor shall incorporate into relevant costs and expenses under the accrual principles of accounting.

**Article 106** The circumstances wherein a withholder may be designated as provided for in Article 38 of the EIT Law include:

- (1) where it is predicted that the term of engineering operations or provision of labor services is not as long as a year, and there is evidence to prove that no tax payment obligation will be performed;
- (2) where it has failed to go through tax registration or interim tax registration formalities and failed to entrust any agent within China to perform the obligation of tax payment;
- (3) where it has failed to file a tax return or preliminary tax return for enterprise income taxes with the prescribed time limit.

The term “withholder” as used in the preceding paragraph shall be designated by the tax authority at the county level or above, which shall inform the withholder of the basis of computing the amount of

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taxes, the method of computation, the term of withholding, and how to withhold.

**Article 107** The term “place of income” as used in Article 39 of the EIT Law refers to the place where an income is incurred as determined under Article 7 of the present Regulation. Where there are two or more places of income within the territory of China, the taxpayer may choose any of them to pay its EIT.

**Article 108** The term “other income of the taxpayer within China” as used in Article 39 of the EIT Law refers to the income of the taxpayer obtained from various sources within the territory of China.

When a tax authority recovers any of the taxes the taxpayer is due, it shall inform the taxpayer of the reason, amount, time limit and how to pay the taxes due.

## Chapter VI Special Tax Adjustments

**Article 109** The term “related party” as used in Article 41 of the EIT Law refers to the enterprises, other organizations and individuals that have any of the following relations with an enterprise:

- (1) direct or indirect relationship with respect to capital, management, sale or purchase, etc.;
- (2) directly or indirectly controlled by a common third party;
- (3) any other relationship of interest.

**Article 110** The term “arm’s length principle” as used in Article 41 of the EIT Law refers to the principle which all unrelated parties to a transaction have to follow so as to carry on business transactions under fair transaction prices and business conventions.

**Article 111** The term “reasonable methods” as used in Article 41 of the EIT Law include:

- (1) method of comparable uncontrolled prices, a method by which the price is set according to the prices that unrelated parties to a transaction carry on identical or similar transactions;
- (2) resale price method, a method by which the price is set according to the price under which commodities are purchased from a related party and then sold to a unrelated party less the gross profit arising from identical or similar sales;

(3) cost plus method, a method by which the price is set based on the cost plus reasonable expenses and profits;

(4) net transaction profit method, a method by which the profit is determined according to the net profit obtained from identical or similar transactions between unrelated parties;

(5) Profit split method, a method by which consolidated profits or losses are reasonably distributed between an enterprise and its related parties;

(6) other methods that meet the arm’s length principle.

**Article 112** An enterprise may, under Article 41 (2) of the EIT Law, reach a cost allocation agreement with related parties under the arm’s length principle for the allocation of common costs.

When allocating costs to related parties, an enterprise shall follow the principle of commensurability between cost and predicted proceeds, and shall submit relevant materials as required by the tax authorities within the time limit set by the tax authorities.

An enterprise which violates paragraphs 1 and 2 of the present article in the allocation of costs with related parties, it shall not be allowed to deduct its allocated costs in the calculation of taxable income.

**Article 113** The term “advance pricing agreement” as used in Article 42 of the EIT Law is an agreement reached between an enterprise and the tax authority under the arm’s length principle and through negotiations, under which the enterprise files an application to the tax authorities with respect to its principles of pricing and calculation method to be used in future years for related transactions.

**Article 114** The term “relevant materials” as used in Article 43 of the EIT Law include:

- (1) current materials relating to related transactions with respect to prices, the setting of standards for expenses, method of calculation specifications;
- (2) relevant materials relating to the related transactions with respect to the prices for the resale (transfer) of properties, property rights, and labor, etc.;
- (3) relevant materials relating to the related transactions that other enterprises have to provide with respect to the comparable product prices, pricing

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strategies, and profit level of the enterprise under investigation, etc.;

(4) other materials relating to related transactions.

The term “other enterprises relating to the related transaction under investigation” as used in Article 43 of the EIT Law are those enterprises that are similar to the enterprise under investigation in the contents and pattern of production and business management.

An enterprise shall provide within the time limit as set down by the tax authorities relating to the prices, setting of expense standards, calculation methods, and specifications, etc. The related parties and other enterprises relating to the related transaction under investigation that shall provide the relevant materials within the time limit which it has agreed to with the tax authorities.

**Article 115** A tax authority may adopt any of the following methods in assessing the amount of taxable income of an enterprise pursuant to Article 44 of the EIT Law:

- (1) assessing with reference to the profitability level of identical or similar enterprises;
- (2) assessing based on the cost of the enterprise plus reasonable expenses and profits;
- (3) assessing pursuant to a reasonable proportion in the overall profit of the enterprise group;
- (4) assessing by using any other reasonable methods.

Where the enterprises defies the amount of taxable income assessed by using any of the methods mentioned in the preceding paragraph, it shall provide relevant evidence, and the amount of taxable income may be readjusted upon the recognition of the tax authority.

**Article 116** The term “Chinese resident” as used in Article 45 of the EIT Law is an individual who shall, under the provisions of the Law of the People’s Republic of China on Individual Income Tax, pay individual income tax for the income he obtains from both inside and outside of China.

**Article 117** The term “control” as used in Article 45 of the EIT Law includes:

- (1) directly or indirectly holding by a resident enterprise or a Chinese resident singly 10% or more of

the voting common stock of a foreign enterprise and jointly holding 50% or more of the stock of the foreign enterprise;

- (2) the proportion of stock held by a resident enterprise or a resident enterprise and a Chinese resident jointly failing to reach the preceding percentage, but nonetheless constituting substantial control over the foreign enterprise with respect to equity, capital, business management, sale or purchase, etc.

**Article 118** The expression “the actual tax burden is obviously lower than the tax rate as provided for in Article 4 (1)” as used in Article 45 of the EIT Law refers to the 50% tax rate as set forth in Article 4 (1) of the EIT Law.

**Article 119** The term “debt investment” as used in Article 46 of the EIT Law refers to the kind of financing which an enterprise directly or indirectly obtains but has to repay the principal and pay interest or has to make compensation by any other means in the nature of interest payment.

The debt investment obtained by an enterprise from any related party shall include:

- (1) debt investment a related party provides through an unrelated third party;
- (2) debt investment an unrelated third party provides which is guaranteed by a related party that assumes several and joint liabilities;
- (3) any other debt investment indirectly obtained through any related party in the nature of obligation assumption.

The term “equity-based investment” as used in Article 46 of the EIT Law refers to the type of investment which an enterprise accepts for which it does not have to repay the principal and pay interest and the investor holds ownership over the net assets of the enterprise. The “standards” as used in Article 46 of the EIT Law shall be separately formulated by the competent departments of treasury and taxation of the State Council.

**Article 120** The expression “not have a reasonable commercial purpose” as used in Article 47 of the EIT Law refers to that the main purpose is to reduce, exempt or defer the payment of taxes.

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**Article 121** Where a tax authority makes any special adjustment of taxation to an enterprise under the provisions of law or regulations, it shall charge an interest for the tax that should be made up for the period between June 1 of the year following the year the tax is due to the day when the tax is made up.

The interest that is charged as described in the preceding paragraph shall not be deducted in the calculation of taxable income.

**Article 122** The interest as mentioned in Article 48 of the EIT Law shall be calculated under the benchmark interest rate for renminbi loans for the same period in the tax years to which the taxes due and the made-up taxes are attributable as published by the People's Bank of China plus 5 percentage points.

Where an enterprise provides the relevant materials as set forth in Article 43 of the EIT Law, it may calculate its interest according to the benchmark interest rate as mentioned in the preceding paragraph.

**Article 123** In the event that the business transactions between an enterprises and its related parties are not compatible with the arm's length principle or the enterprise carries on any arrangement that does not have any reasonable business purpose, the tax authority shall be entitled to make tax readjustments for the 10 years as of the tax year when the transaction was conducted.

## Chapter VII Collection of Taxes

**Article 124** The "place of enterprise registration" as mentioned in Article 50 of the EIT Law shall be the place of residence of the enterprise registered under the relevant provisions of the state.

**Article 125** When calculating its EIT in a consolidated way, an enterprise shall uniformly calculate the taxable amount, the specific measures for which shall be separately formulated by the competent department of treasury and taxation of the State Council.

**Article 126** The main institution or establishment as mentioned in Article 50 of the EIT Law shall meet the following conditions concurrently:

- (1) bearing the responsibility to supervise and manage the production activities and business operations of other institutions and establishments;
- (2) establishing complete books and vouchers which can precisely reflect the revenues, costs, expenses, profits and losses of the institutions and establishments concerned.

**Article 127** The expression "subject to approval of the tax authority" as used in Article 51 of the EIT Law refers to the examination and approval of the common superior tax authority of the tax authority where the various institutions and establishments are located.

If, after a non-resident enterprise has paid its EIT on the consolidated basis upon approval, it finds it necessary to add, combine, move or close down any institution or establishment or terminates the business operation of any institution or establishment, the enterprise that files the consolidated tax return shall first report to the tax authority where the main institution or establishment is located. Where it is necessary to change the main institution or establishment that files the consolidated EIT return, the aforesaid provisions shall be followed.

**Article 128** EIT shall be prepaid on the monthly or quarterly basis, the specific measures for which shall be subject to the assessment of the tax authorities.

Where an enterprise prepays EIT on the monthly or quarterly basis under Article 54 of the EIT Law, it shall make the prepayment in line with its monthly or quarterly actual profits. Where it is difficult for it to make prepayment based on its monthly or quarterly actual profits, it may make the prepayment based on the monthly or quarterly average of the amount of tax of the preceding tax year, or make the prepayment by any other means acceptable to the tax authority. Once a method of prepayment is determined, it may not be changed at will within the tax year.

**Article 129** An enterprise shall, within the time limit as prescribed in Article 54 of the EIT Law, submit to the tax authority its return of prepaid EIT, return of annual EIT, financial and accounting reports, and other relevant materials as required by the tax authority, no matter it has made profits or suffered losses during a tax year.

**Article 130** Where an enterprise computes its income on the basis of a currency other than RMB, when it

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makes a prepayment of enterprise tax, it shall translate its income into RMB on the basis of the RMB central parity of RMB exchange rate on the last day of the month or quarter and then compute the amount of taxable income. When it settles the payable or refundable amount of tax by the end of a year, it does not have to repeat the translation and computation of the amount of taxable income, on which it has already prepaid the tax on a monthly or quarterly basis, it shall only translate the part, on which it has not paid the enterprise income tax, into RMB on the basis of the RMB central parity of RMB exchange rate on the last day of the tax year and then compute the amount of taxable income.

Where, upon check and confirmation by the tax organ, an enterprise under-computes or over-computes the income as mentioned in the preceding paragraph, it shall only translate the under-computed or over-computed income into RMB, compute the amount of taxable income on the basis of the RMB central parity on the last day of the one month prior to the check and confirmation and compute the amount of payable or refundable tax.

## **Chapter VIII Supplementary Provisions**

**Article 131** The term “enterprises established prior to the promulgation of this Law” as mentioned in Article 57 (1) of the EIT Law refers to the enterprises that have finished the registration procedures prior to the promulgation of the EIT Law.

**Article 132** The relevant provisions of Article 2 (2) and (3) are applicable to enterprises established in Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan Region.

**Article 133** This Regulation shall come into force as of January 1, 2008. The Detailed Rules for the Implementation of the Law of the People’s Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises promulgated by the State Council on June 30, 1991 and the Detailed Rules for the Interim Regulation of the People’s Republic of China on Enterprise Income Tax promulgated by the Ministry of Finance on February 4, 1994 shall be abolished simultaneously.

## **Hwuason Lawyers**

Hwuason’s Corporate Tax Planning and Advisory Services team is experienced at advising clients on the impact of the Enterprise Income Tax Law on their business and how best to structure their affairs in order to obtain the best available tax result.

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