



GOVERNMENT OF CHINA QUESTIONNAIRE

DEEP DRAWN STAINLESS STEEL SINKS EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

Period of Investigation: 1 JANUARY – 31 DECEMBER 2013

Response due by: **5 MAY 2014 [EXTENDED TO 19 MAY]**

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| ABBREVIATIONS |
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|--------------------------|---|
| the Act | the Customs Act 1901 |
| ACBPS | Australian Customs and Border Protection Service |
| China | the People's Republic of China |
| CISA | China Iron and Steel Association |
| the Commission | the Anti-Dumping Commission |
| EPZ | Export Processing Zones |
| FIE | Foreign invested enterprise |
| GOC | Government of China |
| the goods | the goods the subject of the application (deep drawn stainless steel sinks) |
| the investigation period | 1 January 2013 to 31 December 2013 |
| SASAC | the State-owned Assets Supervision and Administration Commission of the State Council |
| SEZ | Special economic zone |
| SIE | State-owned or invested enterprise |
| Tasman | Tasman Sinkware Pty Ltd |

THE GOODS UNDER CONSIDERATION

Goods Description

The goods under consideration ("the goods") ie the goods exported to Australia at allegedly at dumped prices and in receipt of subsidies, are:

deep drawn stainless steel sinks with a single deep drawn bowl having a volume of between 7 and 70 litres (inclusive), or multiple drawn bowls having a combined volume of between 12 and 70 litres (inclusive), with or without integrated drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel and whether or not including accessories.

Throughout this questionnaire, the goods are referred to as 'deep drawn stainless steel sinks'.

Additional information

Further information in relation to the goods was provided in the application as follows.

For the purposes of the definition of the goods, the term "deep drawn" refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Deep drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple deep drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the investigations. "Finished or unfinished" refers to whether or not the imported goods have been surface treated to their intended final "finish" for sale. Typically, finishes include brushed or polished.

Deep drawn stainless steel sinks are covered by the scope of the investigation whether or not they are sold in conjunction with accessories such as mounting clips, fasteners, seals, sound-deadening pads, faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the definition of the goods the subject of this application are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as "fabricated sinks".

Deep drawn stainless steel sinks are commonly used in residential and non-residential installations including in kitchens, bathrooms, utility and laundry rooms. When used in the context of bathrooms, deep drawn stainless steel sinks may there be referred to, for marketing purposes, as "wash basins". As noted above, deep drawn stainless steel sinks may, or may not, have a single (or multiple) integrated drain board that forms part of the sink structure, designed to direct water into the sink bowl.

Tariff classification

The goods are currently classified to the tariff subheading 7324.10.00 (statistical code 52) of Schedule 3 to the *Customs Tariff Act 1995*. These goods are subject to 5% Customs duty.

BACKGROUND AND GENERAL INSTRUCTIONS

1. Background

On 18 March 2014, following an application by Tasman Sinkware Pty Ltd (Tasman), representing the Australian industry, the Anti-Dumping Commission (the Commission) initiated:

- a dumping investigation in respect of deep drawn stainless steel sinks exported to Australia from the People's Republic of China (China); and
- a countervailing investigation in respect of deep drawn stainless steel sinks exported to Australia from China.

Tasman alleged that it (representing the entirety of the Australian industry) has suffered material injury caused by deep drawn stainless steel sinks exported to Australia from China at dumped and subsidised prices.

The abovementioned dumping and countervailing investigation involves allegations that there is a situation within the domestic Chinese deep drawn stainless steel sinks market that renders sales within this market unsuitable for determining normal values under s.269TAC(1) of the *Customs Act 1901* (the Act) (i.e. that a 'particular market situation' exists in this market).

A notice advising initiation of the investigation was published in *The Australian* on 18 March 2014. Anti-Dumping Notice (ADN) No. 2014/20 outlining the details of the investigation and the procedures to be followed during the investigation can be accessed on the Commission's website at www.adcommission.gov.au.

2. Investigation period

The existence and amount of any dumping and subsidisation in relation to deep drawn stainless steel sinks exported to Australia from China will be determined on the basis of an investigation period of *1 January 2013 – 31 December 2013* (hereinafter referred to as 'the investigation period').

The Commission will examine details of the Australian market from 1 January 2009 for injury analysis purposes.

3. Purpose of this questionnaire

The purpose of this questionnaire is to assist the Commission to obtain the information from the Government of China (GOC) it considers necessary for investigating:

- a) the allegation that there is a particular market situation in the domestic market for deep drawn stainless steel sinks in China; and
- b) the countervailing investigation generally.

Please note that the subsidy/countervailing sections of this questionnaire focus on identified programs that the Commission is specifically investigating at this stage. However, the Commission may also investigate any additional subsidy program(s) that it considers may warrant investigation if additional information comes to light in relation to further programs.

Any additional questions (relating to either the investigation into alleged countervailable subsidies, or a particular market situation in China) will be posed to the GOC in the form of supplementary questionnaires.

A separate Exporter Questionnaire will be available for Chinese exporters of deep drawn stainless steel sinks to complete, if they chose to cooperate with the investigation. All known exporters have been sent notification of the investigation and advice how to access the Exporter Questionnaire.

The Exporter Questionnaire also has a section requesting information on subsidies and market situation.

The GOC does not have to complete this questionnaire. However, if the GOC does not respond, the Commission may be required to rely on all available information in making its conclusions and recommendations, including:

- information supplied by other parties (including information supplied by the Australian industry – the applicant for the anti-dumping measures);
- information gathered from other sources (including other findings of other anti-dumping administrations); and/or
- information gathered during previous investigations into products exported from China.

Therefore, it is considered to be in the GOC's interests and the interest of Chinese exporters of deep drawn stainless steel sinks, to provide a complete response.

If the GOC chooses to respond to this questionnaire, the response is due by COB **5 May 2014 [extended to 19 May 2014]**.

4. If you decide to respond

Should the GOC choose provide a response to this questionnaire, please note the following.

For official use only and Public Record

If the GOC chooses to respond to this questionnaire, it is required to lodge a “for official use only” and a “Public Record” version of the submission by the due date.

In submitting these versions, please ensure that each page of the information provided is clearly marked either “**FOR OFFICIAL USE ONLY**” or “**PUBLIC RECORD**” in the header and footer.

Information provided to the Commission “for official use only” will be treated confidentially. The “Public Record” version of your submission will be placed on the Public Record, which all interested parties can access.

Your Public Record submission must contain sufficient detail to allow a reasonable understanding of the substance of the “for official use only” version. If, for some reason, you cannot produce a Public Record summary, contact the investigation case officer (see contact details on Page 1 of this questionnaire).

Declaration

You are required to make a declaration that the information contained in the GOC's response is complete and correct. You must return the signed declaration of an authorised

GOC official at last section of this questionnaire with the GOC's response.

Consultants/parties acting on your behalf

If you intend to have another party acting on your behalf please advise the Commission of the relevant details.

The Commission will require a written authorisation from the GOC for any party acting on its behalf.

Provision of documents

When providing documents, please indicate whether the documents:

- are currently in force;
- were in force during the investigation period; or
- have been repealed, revised or superseded.

Where the documents have been repealed, revised or superseded;

- indicate when this revision occurred;
- provide any notice of repeal;
- provide the revised version;
- provide the document that supersedes the requested document; and;
- indicate whether the revised version was in force during the investigation period.

Responses to questions should:

- be as accurate and complete as possible, and attach all relevant supporting documents, even where not specifically requested in this questionnaire;
- be in English (with fully translated versions of all requested and other applicable documents submitted);
- list your source(s) of information for each question;
- identify all units of measurement used in any tables, lists and calculations;
- show any amounts in the currency in which they were originally denominated.

Please note that answers such as: "Not Applicable" or an answer that only refers to an exhibit or an attachment may not be considered by the Commission to be inadequate. We therefore suggest that in answering the questions you outline the key elements of your response in the primary submission document, rather than merely pointing to supporting documents of varying degrees of relevance and reliability as your answer.

Lodgement

Lodgement by email is preferred. The email address for lodgement is shown on the front cover of this questionnaire. If you lodge by email, you are still required to provide a “for official use only” and “Public Record” version of your submission by the due date.

You may also lodge your response by mailing it to the address shown on the front cover of this questionnaire. For questions requiring a response in a Microsoft Excel spreadsheet, please provide the spread sheets on a CD-ROM or USB device.

5. Future questions and verification

Please note that after receiving the GOC response to this questionnaire, the Commission may seek addition information from the GOC.

The Commission may also seek to carry out a visit to the GOC to examine relevant records and to verify the information provided. You will be contacted in advance of such a meeting to make arrangements.

SECTION A: GENERAL QUESTIONS

SECTION B: MARKET SITUATION

Section A “General Questions” & Section B “Market Situation”

The Government of China (GOC) has, in previous investigations, repeatedly and expressly stated its position that

- China is a market economy and does not have the so-called “particular market situation”;
- the findings of the Australian Customs & Border Protection Service (**Customs**) and now the Anti-Dumping Commission (**Commission**) that a “particular market situation” exists in China is unfounded and contrary to Australia’s obligations under the WTO and its recognition of China's full market economy status; and
- the way that the Commission and Customs have treated Chinese economy and Chinese enterprises is extremely unfair and discriminatory, as it is not the usual way that the Commission and Customs have treated the other countries.

In fact, the Commission and Customs have, in various investigations involving China, found the existence of a “particular market situation”, that is, finding that a “particular market situation” exists in various industries concerned. This is not true and unacceptable.

Despite the GOC’s position above, the GOC has, for almost a decade, actively cooperated in every investigation initiated by Customs or the Commission against China, including making full response to all questions on “particular market situation” that Customs and the Commission requested the GOC to complete. The GOC believes that it has shown utmost good faith and respect to the Australian government and it is time now for the Australian government to do the same and stop treating China and Chinese manufacturers and exporters in a discriminatory manner.

As advised in the dumping and subsidy investigation into silicon metal, the GOC will not

“continue to answer questions concerning unprincipled allegations of “particular market situations”. Neither would the GOC continue to analyse the compliance of the Commission’s practice to WTO rules and Australia’s WTO obligations. All efforts that could be made by the GOC have already been made, and the Commission has been fully aware of GOC’s efforts. Further provision of information from the GOC or exchange of ideas between the GOC and the Commission in this regard will just be simple reiteration.”

However, the GOC would reiterate that Australia has long recognised the market economy status of China, and hence the fact that Chinese entities operate on a commercial basis not subject to any government influence but merely subject to reasonable and necessary government regulations. The GOC notes that in his recent trip to China, the Prime Minister of Australia, the Honourable Tony Abbott, stated in a speech in Shanghai that:-

“We now appreciate that most Chinese state-owned enterprises have a highly commercial culture. They’re not the nationalised industries that we used to have in Australia.”

In addition, the GOC sincerely urges the Commission to pay respect to the deepening trade relationship between China and Australia, and in particular the two countries’ ongoing negotiations of a Free Trade Agreement (FTA) aiming to further enhance two-way trade and market access. The

Commission's position on the issue of "particular market situation" will show to the GOC whether the Australian government is to honour its commitment to treat China as a market economy, and hence the commitments that the Australian government is to make under the FTA. The GOC does not believe that continuing to afford protection to Australia's uncompetitive industries by way of labelling China as having a "particular market situation" will do any help either in the FTA negotiations or in the long-term development of trade relationship between Australia and China.

The GOC is willing to actively cooperate in dumping and subsidy investigations initiated by the Commission, but reiterates that the GOC will not continue to respond to any questions in relation to "particular market situation" in future investigations as the Commission's and previously Customs' finding of "particular market situation" has proven to be discriminatory and unfounded and contrary to Australia's commitment to China and WTO obligations.

In spite of the above, the GOC has instructed Corrs Chambers Westgarth to submit to the Commission additional observations on "particular market situation" and this submission is **attached** to the GOC's response to the questionnaire (**Attachment 1**).

SECTION C: SUBSIDIES

The applicant alleges that producers of deep drawn stainless steel sinks in China have benefited from a number of subsidies granted by the GOC, and that these subsidies are countervailable.

INVESTIGATED PROGRAMS

Table 1 below lists all the alleged countervailable subsidy programs for deep drawn stainless steel sinks that are being investigated.

Note: the below titles of programs are to the best of the Commission's knowledge and in some cases may simply be descriptions of the program. Consequently, the below titles may not exactly reflect any official titles that the GOC has in place.

The GOC is requested to provide information on each program, regardless of the year the benefit was granted by the GOC or the year that the benefit was received by the recipient company, as well as those further identified by the GOC, where the program benefits impact on the production and sale of deep drawn stainless steel sinks during the investigation period.

Table 1:

| Program Number | Program Name | Program Type |
|----------------|---|--------------------|
| Program 1 | Raw Materials Provided by the Government at Less than Fair Market Value | Provision of goods |
| Program 2 | Research & Development (R&D) Assistance Grant | Grant |
| Program 3 | Grants for Export Activities | Grant |
| Program 4 | Allowance to pay loan interest | Grant |
| Program 5 | International Market Fund for Export Companies | Grant |
| Program 6 | International Market Fund for Small and Medium-sized Export Companies | Grant |
| Program 7 | Reduced tax rate for productive FIEs scheduled to operate for a period not less than 10 years | Income Tax |
| Program 8 | Tax preference available to companies that operate at a small profit | Income Tax |

In responding to this questionnaire, if the GOC is unfamiliar with the title given to a program, but is aware of the existence of a similar program or one that it appears is being

referred to, please identify this (including providing the official title of any such program) and respond to the questionnaire in relation to that program.

ANY OTHER PROGRAM NOT PREVIOUSLY ADDRESSED

If the GOC, any of its agencies, or any other authorised non-governmental body provides any other assistance programs not previously addressed (including market development assistance programs or any domestic support programs related to the manufacture of subject goods) to manufacturers of deep drawn stainless steel sinks in China, identify these program(s). Such assistance programs are those that constitute a subsidy as defined in the attached Glossary of Terms.

The GOC is requested to provide the information requested for each of the programs identified above and any additional programs the GOC has identified. In addition, please respond to the program-specific information requested.

1. For **all programs under investigation** provide any amendments to law, regulations or policy that makes a particular program redundant for this investigation. Provide all documentary evidence.

The following questions relate to Program 1

2. In INV 177, Customs and Border Protection was provided with a copy of the 'Law of the People's Republic of China on State-Owned Assets of Enterprises'. Confirm whether this law is current and has not been superseded or supplemented by other laws. Provide any superseding or supplementary laws to the 'Law of the People's Republic of China on State-Owned Assets of Enterprises'.
3. Outline how each of the following is determined for the entities identified in Section A, Question 6 above **and** for manufacturers of deep drawn stainless steel sinks in China (where this differs across enterprise or type (e.g. SIEs, FIEs), describe this differently):
 - (a) suppliers of raw material inputs (including any restrictions as to what entities can supply raw materials);
 - (b) purchase prices of raw material inputs;
 - (c) allocation of inputs into production process, including raw materials and labour costs;
 - (d) quality by volume and value;
 - (e) selling prices;
 - (f) customers (including restrictions on entities that can purchase goods produced from the enterprise);
 - (g) production output (detail any restrictions on production output);
 - (h) safety standards; and
 - (i) electricity/energy costs.

Program 1 Raw Materials Provided by the Government at Less than Fair Market Value

The applicant's application alleged that exporters or producers of the goods under consideration (GUC) acquired raw material inputs, i.e. cold-rolled stainless steel sheet, at less than fair market value from state-owned (or invested) enterprises (SOEs or SIEs) and that the SOEs or SIEs should be considered "to be possessing, exercising, or vested with governmental authority."

The GOC believes that the allegations above are unfounded.

1. Public Body

The application predominantly relied on the findings of the Canadian Border Services Agency (CBSA) in two investigations in 2012.

The GOC has pointed out many times in previous investigations that such findings by an investigating authority in another jurisdiction cannot be taken by the Australian investigating authority as sufficient evidence in its dumping or countervailing investigations. In the recent and ongoing Silicon Metal investigation, the GOC has reiterated this position as follows:-

"the Commission has its own jurisdiction, and must follow Australia's own laws and comply with Australia's WTO obligations independently. Australia is a sovereign nation and WTO Member. The Australian investigating authority cannot simply adopt Canadian legal conclusions – based on laws and practices which are adverse to Chinese exporters – as if they were facts for the purposes of an Australian investigation."

In addition, the GOC has argued in numerous occasions, and submitted relevant evidence, in previous investigations that SIEs in China are not "public bodies". Most recently, the Anti-Dumping Review Panel (ADRP), in reviewing the findings of the Australian Customs and Border Protection Services (Customs) in the investigation into galvanised steel and aluminium zinc coated steel exported from, amongst other countries, China, confirmed that the evidence upon which Customs based its finding that SIEs were "public bodies" was not sufficient. In particular, the ADRP adopted the position that "active compliance with governmental policies and/or regulation does not equate to the exercise of governmental functions or authority".

The GOC notes that the evidence submitted in this investigation is of lesser evidentiary value and of smaller volume than that of previous investigations including the galvanised steel investigation. Accordingly, the GOC is surprised that in light of the ADRP's findings on this issue that the Commission continues to pursue this issue and this raises a number of administrative law issues in the Commission's acceptance of the application on this issue.

In any event, neither the evidence submitted by the applicant nor any other evidence that has been provide to Customs or the Commission evidences that SIEs exercise "governmental authority". Accordingly, such SIEs are not "public bodies". If the Commission or the applicant is of a different view, then the GOC would ask that the Commission or the applicant to provide evidence to support the allegations.

2. Less than adequate remuneration

The Commission should not consider the issue relating to "less than adequate remuneration" unless it finds that SIEs in China are "public bodies", a finding that the GOC believes cannot be made by the Commission.

However, to be cooperative, the GOC is willing to respond to this issue.

The **only** evidence that the application provided in support of the claim that the raw materials concerned provided to the exporters or producers of the GUC in China was at “less than adequate remuneration” is a diagram showing that Chinese stainless steel prices are lower than the prices in three selected third countries.

The GOC, in a number of previous investigations, has objected to Customs’ findings of “less than adequate remuneration” based on a comparison between Chinese prices and third countries prices. The GOC reiterates that such a comparison is **not** an appropriate and recognised test for the determination of “less than adequate remuneration” and is **not** consistent with WTO jurisprudence and findings by the then Trade Measures Review Officer (**TMRO**). In particular, the WTO Appellate Body, in *United States - Final Countervailing Duty Determination With Respect To Certain Softwood Lumber from Canada* (WT/DS257/AB/R), has ruled that in determining whether adequate remuneration is provided, an investigating authority of a WTO Member must

- first consider private prices in the country of provision unless it is **established** that private prices in that country are distorted because of the government's predominant role in providing those goods; (paragraph 90)
- use a benchmark other than private prices of the goods in the country of provision **only in limited circumstances**; (paragraph 102) and
- even though a benchmark other than private prices is considered necessary, use a benchmark that “relate(s) or refer(s) to, or be connected with, the **prevailing market conditions in that country**, and must reflect price, quality, availability, marketability, transportation and other conditions of purchase or sale.” (paragraph 103)

The GOC believes that the application does not provide sufficient evidence, if any, to establish that Chinese private stainless steel prices are so distorted as to be inappropriate to be used as the benchmark. In this connection, the Appellate Body in WT/DS257/AB/R has ruled that

- “an allegation that a government is a significant supplier would **not**, on its own, prove distortion and allow an investigating authority to choose a benchmark other than private prices in the country of provision.” (paragraph 102)

The GOC notes that the evidence submitted in this investigation is no more than a simple assertion that there is no “appropriate domestic benchmark prices of cold-rolled stainless steel sheet in China”.

Further, the GOC objects to the use of the monthly world composite 304 stainless steel prices reported by MEPS (International) LTD as the benchmark as the prices do not in any way relate to or are connected with the prevailing market conditions in China.

In addition, the GOC requests the Commission to give due consideration to the TMRO’s decisions in its review of Customs’ findings in the hollow structural sections investigation on whether raw materials are supplied at “less than adequate remuneration” needs to be decided on the basis of whether the selling prices for the raw materials are at levels inadequate to compensate the supplier for its cost of production. A comparison between Chinese prices and selected benchmark prices merely shows, at best, that China has comparative advantage in the production of the GUC, and does not show whether the selling prices of the raw materials concerned provide adequate remuneration to the producers of the raw materials.

Finally, on page 20 of the Commission’s Consideration Report No. 238 the following statement was made:-

“The applicant submits that this comparison shows that Chinese prices are at a discount of up to 10% of the prices in the Japanese (the next cheapest) market (refer to Diagram B-3.1.1.1 of the application).”

This statement is **not** correct. Diagram B-3.1.1.1 of the application does show that Japanese cold rolled stainless steel prices are the next cheapest to Chinese prices but not by “up to 10%”.

Rather, the difference between Japanese and Chinese prices according to the Diagram is less than 2% (i.e. a difference of approximately 1%). Further, neither the Diagram nor anything else in the application evidences that Chinese cold rolled stainless steel prices are being “discounted”.

If Japanese and Chinese cold rolled stainless steel prices are essentially the same, how can it be sensibly argued that the GOC subsidises such products or that they are supplied at artificially low prices due to government influence or at “less than adequate remuneration”. Rather, the evidence provided by the applicant in its application disproves the allegations it is seeking to prove.

In light of the above, the GOC requests the Commission to reject the applicant’s claim in relation to “less than adequate remuneration”.

3. Passing through

Assuming, for the sake of argument, that stainless steel is being supplied to exporters or producers of the GUC at prices “less than adequate remuneration”, the GOC believes that the claim that the subsidy program 1 exists should still be rejected by the Commission.

There is no evidence before the Commission substantiating that the alleged subsidization of raw materials actually flows through the domestic selling price of stainless steel sinks and, if so, to what extent. In previous subsidy investigations involving exports from China, Customs did not analyze whether the supply of raw materials at less than adequate remuneration “passed through” and affected the price of the end product. It was simply assumed it did or, as Customs would argue, it was ‘reasonable’ to conclude that it did. However, there was no evidence that it did or, if it did, that it materially affected prices.

The GOC believes that merely to assume that “passing through” has occurred is **not** consistent with the WTO jurisprudence, and hence urges the Commission, in this investigation, to apply an appropriate and recognised test to determine whether there is sufficient evidence to establish that the alleged subsidization of raw materials actually flows through the domestic selling price of stainless steel sinks and, if so, to what extent.

The GOC notes that in WT/DS257/AB/R, the Appellate Body has ruled that “*it cannot be presumed ... that the subsidy bestowed on the input passes through to the processed product*”. (paragraph 140) Therefore, an investigating authority of a WTO Member

- must establish “*whether, and in what amount, subsidies bestowed on the producer of the input flowed through, downstream, to the producer of the product processed from that input*”; and
- “*must not impose duties to offset an amount of the input subsidy that has not passed through to the countervailed processed products*”. (paragraph 141)

The GOC notes that the application provided no evidence to establish that the alleged subsidization of raw materials concerned actually flowed through to the producers or exporters of the GUC. However, in the Consideration Report No. 238, the Commission concluded that “there are reasonable grounds to conclude that exporters of deep drawn stainless steel sinks may have received benefits under this subsidy” **without** analysing whether “passing through” actually occurred. Without such an analysis, the GOC simply fails to see what reasonable grounds the Commission based to reach that conclusion, and how the Commission is to determine the amount of the alleged subsidy.

The following questions relate to Programs 2 - 8 identified above.

4. Provide full details of the programs including the following.
- (a) policy objective and/or purpose of the program.
 - (b) legislation under which the subsidy is granted.
 - (c) nature or form of the subsidy.
 - (d) when the program was established.
 - (e) duration of the program.
 - (f) how the program is administered and explain how it operates.
 - (g) to whom and how is the program provided.
 - (h) the GOC department or agency administering the program.
 - (i) the eligibility criteria in order to receive benefits under the program.

Program 2 Research & Development Assistance Grant

The GOC notes that the applicant's application has alleged that this program has been granted to exporters in Foshan City by Foshan Shunde Finance Bureau.

The applicant's application does not identify any Chinese laws that give effect to this alleged program. The only evidence that the application provided is China's New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures dated 20 October 2011. (**WTO Notification**) However, the application does not identify which program in the WTO Notification it refers to. Therefore, the GOC believes that there is no evidence demonstrating that the alleged program exists.

Program 3 Grants for Export Activities

The GOC notes that the applicant's application has alleged that this program has been granted to exporters in Foshan City by Foshan Shunde Finance Bureau.

The applicant's application does not identify any Chinese laws that give effect to this alleged program. The only evidence that the application provided is the Canadian International Trade Tribunal's decision in relation to the subsidizing of galvanised steel wire originating in or exported from China issued on 4 September 2013. (**GSW Report**) In particular, the application alleged that in its GSW Report, the Canadian authority has "found the existence of export grants for export activities (there known as program 34) during the subsidy investigation period (1 January 2011 to 31 December 2012)." The application states that the GSW Report is provided as NON-CONFIDENTIAL ATTACHMENT C-1.1.6. (**Attachment C-1.1.6**)

The GOC does not find any information, in **Attachment C-1.1.6**, on the so-called "program 34" or on any description or findings by the Canadian authority relevant to the alleged program. Therefore, the GOC believes that there is no evidence demonstrating that the alleged program exists.

Program 4 Allowance to pay loan interest

The GOC notes that the applicant's application has alleged that this program has been granted to exporters who were small and medium sized businesses in Zhongshan City by the Zhongshan Municipal government.

The applicant's application refers to the WTO Notification and in particular Program 46 "Fund for supporting technological innovation of the technological small and medium-sized enterprises (SMEs)" as the evidence that the alleged program exists. The two main legal instruments that give effect to Program 46, including:

- *Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises*; (**Attachment 2**) and
- *General Office of State Council Circular Guo Ban Fa No. 47 of 1999*. (**Attachment 3**)

The laws above are currently effective and direct the provision of the alleged subsidy. However, the laws are all national laws and not local laws. The GOC is not aware of any local laws of Zhongshan City that mandate the provision of the alleged subsidy. However, whether the alleged subsidy may have been provided to exporters is a matter for the Commission to verify with exporters, and if it was, the amount of the subsidy so received.

Program 5 International Market Fund for Export Companies

The GOC notes that the applicant's application has alleged that this program has been granted to exporters in Jianghai District.

The applicant's application refers to

- *Measure Jiang Cai Wai [2010] No. 92*;
- the Canadian International Trade Tribunal's decision in relation to the dumping and subsidizing of steel piling pipe originating in or exported from China issued on 17 December 2012. (**SPP Report**) In particular, the application alleged that in its SPP Report, the Canadian authority has "found the existence of export grants for export activities (there known as program 73) during the investigation period (1 January 2009 to 30 June 2012)." The application states that the SPP Report is provided as NON-CONFIDENTIAL ATTACHMENT C-1.1.7. (**Attachment C-1.1.7**)

The GOC does not find any information, in **Attachment C-1.1.7**, on the so-called "program 73" or on any description or findings by the Canadian authority relevant to the alleged program. However, whether the alleged subsidy may have been provided to exporters is a matter for the Commission to verify with exporters, and if it was, the amount of the subsidy so received.

Program 6 International Market Fund for Small and Medium-sized Export Companies

The GOC notes that the applicant's application has alleged that this program has been granted to small and medium-sized exporters.

The GOC notes that this alleged program has been investigated in the hollow structural sections investigation (i.e. as program 5) in which the GOC has fully responded to the questions relating to the alleged program as contemplated by that government questionnaire, including providing all relevant laws, regulations and decrees. In this investigation the Commission is to have regard to all information submitted by the GOC in the hollow structural sections investigation on this program.

The GOC also requests the Commission to verify with exporters on whether such subsidy was actually received during the POI, and if it was, the amount of the subsidy so received.

Program 7 Reduced tax rate for productive FIEs scheduled to operate for a period not less than 10 years

The GOC notes that the applicant's application has alleged that this program has been granted to exporters which were Foreign Invested Enterprises (FIEs).

This program does not exist.

The GOC notes that in response to the government questionnaire in the hollow structural sections investigation (i.e. in relation to program 10), the GOC has pointed out that the alleged subsidy will be in operation until the end of 2012. The GOC reiterates that the alleged program does **not** exist anymore as the relevant law, i.e. the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise 1991*, which granted the subsidy has been repealed and superseded by the *Enterprise Income Tax Law of the People's Republic of China 2008*. (**Attachment 4**) The *Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax 2007* (**Attachment 5**) clearly provides that "enterprises enjoying the preferential policies in respect of enterprise income tax under the former tax law, administrative regulations and documents with the effects of administrative regulations shall be subject to a transition" by which at the end of 2012 they will be subject to the normal tax rate of 25%.

Accordingly, the GOC believes that there is no evidence demonstrating that the alleged program exists.

Program 8 Tax preference available to companies that operate at a small profit

The GOC notes that the applicant's application has alleged that this program has been granted to exporters who achieved a small profit.

The GOC is not aware that any of the exporters identified in the investigation received the alleged subsidy during the POI. The GOC urges the Commission to consider the fact that the existence of legal instruments directing the provision of a subsidy does **not** mean that the subsidy is actually received by individual exporters. Therefore, the GOC respectfully requests the Commission to verify with the exporters under investigation on whether such subsidy was actually received.

That said, the GOC is willing to provide information of the alleged subsidy below.

The objective of the program is to reduce the burden of the enterprises making little profits and to maintain job opportunities. The program was established in 2008 and is currently in operation. The GOC departments responsible for administering the program are Ministry of Finance and State Administration of Taxation.

The relevant legislation under which the subsidy is granted are

- *Enterprise Income Tax Law of the People's Republic of China 2008*; and
- *Regulations of the People's Republic of China on the Implementation of the Enterprise Income Tax Law 2008*. (**Attachment 6**)

Qualified enterprises may be entitled to a concessional income tax rate of 20% while the normal rate

is 25%. Qualified enterprises are

- industrial enterprises, whose annual taxable income does not exceed RMB 300,000, the number of employees does not exceed 100 persons, and the total amount of assets does not exceed RMB 30,000,000; and
- other enterprises, whose annual taxable income does not exceed RMB 300,000, the number of employees does not exceed 80 persons, and the total amount of assets does not exceed RMB 10,000,000.

5. Provide translated copies in English of the decrees, laws and regulations relating to the programs and any reports pertaining to the programs.

See our response to C-4.

6. Identify and explain the types of records maintained by the relevant government or governments (e.g. accounting records, company-specific files, databases, budget authorizations, etc.) regarding the program.

Program 6

The GOC has responded to this question in the hollow structural sections investigation. In this investigation the Commission is to have regard to all information submitted by the GOC in the hollow structural sections investigation in this regard.

Program 8

Not available. These records are kept by local governments.

7. Identify all companies that accrued or received benefits under the programs during the investigation period. Include the following details in the spreadsheet provided as C-7 (or in a Microsoft Excel compatible format):

- (a) the business' address (including the city, province and region);
- (b) the ownership structure of the business, including indirect ownership through associated companies (i.e. SIE, private, co-operative, FIE or joint venture);
- (c) if the business is not an SIE, whether it is otherwise associated with the GOC;
- (d) whether the entity produces deep drawn stainless steel sinks

Provide on an annual basis the value and/or nature of the benefit or concession granted (monetary and/or non-monetary) under the programs.

The GOC understands that in this question, "all companies" refer to the domestic manufacturers of the subject goods in China.

In relation to 7(b)&7(c), the GOC does not understand the relevance of the two questions to whether the alleged subsidies are countervailable subsidies. The GOC believes that for a determination of

whether a subsidy is a countervailable subsidy in accordance with the WTO Agreement on Subsidies and Countervailing Measures (**SCM Agreement**) and the relevant WTO jurisprudence, the relevant questions are (1) whether there is a financial contribution, if so (2) whether it is provided by a government or any public body, if so (3) whether it confers a benefit, and (4) whether the subsidy is specific. Sections 7(b)&7(c) are not relevant to any of the four questions. That said, the GOC reserves the right to make any comment in the following stages of this investigation and on any other appropriate occasion.

In relation to 7(a)&7(d), the GOC requests that the Commission verify with exporters whether any such subsidy was actually received during the POI, and if it was, the amount of the subsidy so received.

8. For each entity identified in your response to Question 7 above that is an SIE, answer the following questions regarding their performance and profits.

- (a) How are the operations of the enterprise funded?
- (b) Provide details of any debts or other liabilities the enterprise has with any banks or financial institutions in which the GOC holds an interest.
- (c) How is the performance of the enterprise measured? For example, profitability, employment, output, social wellbeing, etc.
- (d) Provide details and explain how the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) or any other government entity inspects or evaluates enterprise performance, including:
 - output and quality performance;
 - performance of employees/directors/managers; and
 - financial performance.

If any other GOC entity plays such a role, provide a detailed explanation of this entity and the role it plays with regard to SIEs.

- (e) Provide details of any official reporting mechanisms that the enterprise must comply with.
- (f) Provide an explanation of the systems that exist for assessing the performance of administrators of SIEs. Provide examples of recent appraisals of SIE administrators of the enterprise.
- (g) How are profits of the enterprise distributed and to whom?
- (h) Outline what action, if any, is taken by SASAC or any other government entity if the enterprises makes a loss or under-performs.
- (i) Over the past 10 years, has the GOC provided any payment or made any injection of funds to the enterprise, including but not limited to:
 - grants;
 - prizes;
 - awards;

- stimulus payments and rescue type payments;
- injected capital funds;
- purchasing of shares.

- (j) If so, provide details, indicating the amount, circumstance, and purpose of any such payment or injection of funds, as well as whether they were tied to any past or future performance, direction or action of the enterprise.

The GOC does not understand the relevance of the questions to whether the alleged subsidies are countervailable subsidies. The GOC believes that for a determination of whether a subsidy is a countervailable subsidy in accordance with the SCM Agreement and the relevant WTO jurisprudence, the relevant questions are (1) whether there is a financial contribution, if so (2) whether it is provided by a government or any public body, if so (3) whether it confers a benefit, and (4) whether the subsidy is specific. None of the questions set out in this Section 8 is relevant to any of the four questions.

9. For each entity identified in Question 7 above, answer the following questions regarding enterprise functions:

- (a) Provide a list of functions the enterprise performs.
- (b) Provide details of any government policies the enterprise administers or carries out on behalf of the GOC.
- (c) Indicate whether any of the enterprise's functions are considered to be governmental in nature.
- (d) Indicate whether the enterprise has been trusted, tasked, vested with any government authority. Provide details of this authority including how it is exercised or administered, as well as copies of relevant statutes or other legal instruments that vest this authority.
- (e) Indicate whether the enterprise has the authority or power to entrust or direct a private body to undertake responsibilities or functions.
- (f) Explain whether the enterprise is in pursuit of, or required to support governmental policies or interests.
- (g) Provide examples of any 'social responsibilities' the enterprise undertakes or is involved in (reference is made to Article 17 of the Law on State Owned Assets)?

The GOC does not understand the relevance of the questions to whether the alleged subsidies are countervailable subsidies. The GOC believes that for a determination of whether a subsidy is a countervailable subsidy in accordance with the SCM Agreement and the relevant WTO jurisprudence, the relevant questions are (1) whether there is a financial contribution, if so (2) whether it is provided by a government or any public body, if so (3) whether it confers a benefit, and (4) whether the subsidy is specific. None of the questions set out in this Section 9 is relevant to any of the four questions.

10. Describe the application process (including any application fees charged by the government agency or authority) for the program.

After an application is submitted, describe the procedures by which an application is analysed and eventually approved or disapproved.

Program 6

The GOC has responded to this question in the hollow structural sections investigation. In this investigation the Commission is to have regard to all information submitted by the GOC in the hollow structural sections investigation in this regard.

Program 8

The GOC requests that the Commission to verify with exporters whether any such subsidy was actually received during the POI, and if it was, the relevant application process and application fees.

11. Answer the following questions regarding eligibility for and actual use of the benefits provided under this program.

- (a) Is eligibility for, or actual use of this program contingent, whether solely or as one of several other conditions, upon export performance? If so, please describe.

Program 6

The GOC has responded to this question in the hollow structural sections investigation. In this investigation the Commission is to have regard to all information submitted by the GOC in the hollow structural sections investigation in this regard.

Program 8

This program is not contingent upon export performance. For the relevant eligibility criteria, please see our response to C-4.

- (b) Is eligibility for this program contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods? If so, please describe.

Program 6

The GOC has responded to this question in the hollow structural sections investigation. In this investigation the Commission is to have regard to all information submitted by the GOC in the hollow structural sections investigation in this regard.

Program 8

This program is not contingent upon the use of domestic over imported goods. For the relevant eligibility criteria, please see our response to C-4.

- (c) Is eligibility for the subsidy limited to enterprises or industries located within designated regions? If so, specify the enterprises or industries and the designated regions.

Program 6

The GOC has responded to this question in the hollow structural sections investigation. In this investigation the Commission is to have regard to all information submitted by the GOC in the hollow structural sections investigation in this regard.

Program 8

This program is not limited to particular designated regions.

- (d) Is eligibility limited, by law, to any enterprise or group of enterprises, or to any industry or group of industries? If so, describe and specify the eligible enterprises or industries.

Program 6

The GOC has responded to this question in the hollow structural sections investigation. In this investigation the Commission is to have regard to all information submitted by the GOC in the hollow structural sections investigation in this regard.

Program 8

For the relevant eligibility criteria, please see our response to C-4.

- (e) Provide any contractual agreements between the GOC and the companies that are receiving the benefits under the program (e.g., loan contracts, grant contracts, etc.).

Program 6

The GOC has responded to this question in the hollow structural sections investigation. In this investigation the Commission is to have regard to all information submitted by the GOC in the hollow structural sections investigation in this regard.

Program 8

There are no contractual agreements between the GOC and the companies.

12. Provide the total amounts of benefits received by each type of industry in each region in the year the provision of benefits was approved and each of the years from 1 January 2009 to 31 December 2013.

Program 6

The GOC has responded to this question in the hollow structural sections investigation. In this investigation the Commission is to have regard to all information submitted by the GOC in the

hollow structural sections investigation in this regard.

Program 8

Not available. The GOC does not keep such data.

- 13.** For all programs listed in Table 1, describe any anticipated changes in the program. Provide documentation substantiating your answer. If the program has been terminated, state the last date that a company could apply for or claim benefits under the program. When is the last date that a company could receive benefits under the program?

Program 6

The GOC has responded to this question in the hollow structural sections investigation. In this investigation the Commission is to have regard to all information submitted by the GOC in the hollow structural sections investigation in this regard.

Program 8

There are no anticipated changes to the program.

- 14.** Provide copies of the following:

- (a) Measure CaiQi [2010] No. 87
- (b) Measure Jiang Cai Wai [2010] No. 92
- (c) Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise
- (d) Law of the People's Republic of China on Enterprise Income Tax (2007)

If any of the above documents have been repealed, replaced or supplemented by additional documents, please provide details and copies of any relevant documentation to support this.

Please refer to our response to C-4.

The Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprise 1991, which granted the alleged subsidy program 7 has been repealed and superseded by the Enterprise Income Tax Law of the People's Republic of China 2008: see Article 60 of the Enterprise Income Tax Law of the People's Republic of China 2008.

DECLARATION

DECLARATION

The undersigned certifies that all information supplied herein in response to the questionnaire (including any data supplied in an electronic format) is complete and correct to the best of his/her knowledge and belief.

Date

Signature of authorised official

Name of authorised official

Title of authorised official

APPENDIX

GLOSSARY OF TERMS

This glossary is intended to provide you with a basic understanding of technical terms that appear in the questionnaire.

Associated Persons and/or Companies

Persons shall be deemed to be associates of each other if:

(a) both being natural persons:

- (i) they are connected by a blood relationship or by marriage or adoption; or
- (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;

(b) both being bodies corporate:

- (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); or
- (ii) both of them together control, directly or indirectly, a third body corporate; or
- (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them; or

(c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate); or

(d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or

(e) they are members of the same partnership.

Benefit

As further defined in relation to the definition of the term 'subsidy' below, 'benefit' may include:

- a direct transfer of funds;
- the acceptance of liabilities (e.g debts or other liabilities), whether actual or potential, of your enterprise;
- the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) that was otherwise due (e.g. reduced rate of income tax, waiving certain other taxes);
- the provision of goods or services otherwise than in the course of providing normal infrastructure; or
- the purchase of goods

by any the GOC (at any level), a public body of the GOC, or a private body entrusted by the GOC to carry out GOC functions.

Enterprise

"Enterprise" includes a group of enterprises, an industry and a group of industries.

Financial Contribution

There is a "financial contribution" by a government where:

(a) a government practice involves a direct transfer of funds (grants, loans, and equity infusion), potential direct transfer of funds or liabilities (e.g. loan guarantees);

(b) government revenue that is otherwise foregone or not collected (e.g. fiscal incentives such as tax credits);

(c) the government provides goods or services, other than general governmental infrastructure, or purchases goods; or

(d) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (a) to (c) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by the government.

Foreign Invested Enterprise (FIE)

An FIE may be:

1. Chinese-foreign equity joint venture:

Joint venture between a Chinese company, enterprise, or other business organisation and a foreign company, enterprise, business organisation or individual set up in the form of a Chinese limited liability company.

The characteristics of a Chinese-foreign equity joint venture are joint investment, joint operation, and the participants share profits, risks and losses in proportion to their respective contributions to the registered capital of the joint venture.

The proportion of the investment by the foreign party is no less than 25% in the registered capital of equity joint venture.

2. Chinese-foreign contractual joint venture:

A joint venture established between foreign enterprises and other economic organisations or individuals, and Chinese enterprises or other economic organisations within the territory of China. The rights and obligations of each party are determined in accordance with the agreement specified in the contractual joint venture contract. The investment or conditions for cooperation contributed by the Chinese and foreign parties may be provided in cash or in kind, or may include the right to the use of land, industrial property rights, non-patent technology or other property rights.

3. Wholly foreign owned enterprises:

A wholly foreign owned enterprise is established by foreign enterprises and other economic organisations or by individuals pursuant to the Chinese laws within the territory of China. All of the wholly foreign owned enterprise's capital is invested by foreign investors. It may also be referred to as a Foreign Enterprise (FE).

Government of China (GOC)

For the purposes of this questionnaire, GOC refers to all levels of government, i.e., central, provincial, regional, city, special economic zone, municipal, township, village, local, legislative, administrative or judicial, singular, collective, elected or appointed.

It also includes any person, agency, enterprise, or institution acting for, on behalf of, or under the authority of any law passed by, the government of that country or that provincial, state or municipal or other local or regional government.

Particular market situation

Refers to a situation within the domestic market of exported goods that renders sales within that market of those goods unsuitable for determining normal values under s.269TAC(1) of the Act.

Program(s)

The term "program", as used throughout this questionnaire in reference to alleged subsidies, refers to broad categories of subsidies that Customs and Border Protection has reason to believe may be available to exporters of the goods.

In this regard, the term "program" as used in this questionnaire should not be taken to necessarily refer to formal programs maintained by the GOC, nor should it be taken to refer to one specific subsidy. Rather, "program" as used in this questionnaire can refer to informal subsidies provided by the GOC, and can also refer to multiple individual, albeit similar, subsidies.

Special Economic Zone (SEZ)

Refers to a Special Economic Area, Economic and Technical Development Zone, Bonded Zone, Export Processing Zone, High Technology Industrial Development Zone, or any other designated area where benefits from the GOC (including central, provincial, municipal or county government) accrue to a company because of being located in such an area.

State Invested Enterprises (SIE)

For the purposes of this questionnaire, SIE refers to any company or enterprise that is wholly or partially owned by the GOC as defined above (either through direct ownership or through association).

In previous investigations and correspondence, the GOC has advised that the use of the term 'SOE' is declining in China, and that these enterprises are now referred to with terms such as:

- 'enterprises with state investment'

- 'state-owned assets'
- 'state-invested enterprises'
- 'enterprises under the supervision of SASAC'

of which there are several types.

For the purposes of this questionnaire, SIE refers to any and all of the above types of enterprises.

Subsidy

In relation to goods that are exported to Australia, means:

(a) a financial contribution:

- (i) by a government of the country or export or country of origin of those goods; or
- (ii) by a public body of that country or of which government is a member; or
- (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that is made in connection with the production, manufacture or export of those goods and that involves:

- (iv) a direct transfer of funds from that government or body to the enterprise by whom the goods are produced, manufactured or exported; or
- (v) a direct transfer of funds from that government or body to that enterprise contingent upon particular circumstances occurring; or
- (vi) the acceptance of liabilities, whether actual or potential, of that enterprise by that government body; or
- (vii) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body by that enterprise; or
- (viii) the provision by that government or body of goods or services to that enterprise otherwise than in the course of providing normal infrastructure; or
- (ix) the purchase by that government or body of goods provided by that enterprise; or

(b) any form of income or price support as referred to in Article XVI of the General Agreement Tariffs and Trade 1994, that is received from such a government or body;

if that financial contribution or income or price support confers a benefit in relation to those goods.

DECLARATION

DECLARATION

The undersigned certifies that all information supplied herein in response to the questionnaire (including any data supplied in an electronic format) is complete and correct to the best of his/her knowledge and belief.

19/05/2014

Date

Tian Shuguang

Signature of authorised official

TIAN Shuguang

Name of authorised official

Deputy Division Director, MOFCOM, PRC

Title of authorised official

To Ms Andrea Stone, Director, Operations 2 - Australian Anti-Dumping Commission

From Andrew Lumsden / Andrew Percival

Date 19 May 2014

Subject **Dumping & Subsidy Investigation - Stainless Steel Sinks**

Dear Ms Stone

Non-Confidential

As you are aware, we act for the Government of the People's Republic of China (**GOC**).

In addition to the GOC's response to the Government Questionnaire (**Questionnaire**) that the Anti-Dumping Commission (**Commission**) has submitted to the GOC for it to complete, we would like to make the following submissions on behalf of the GOC.

In relation to Sections A and B of the Questionnaire, we do not understand the relevance of these sections to whether the alleged subsidies are countervailable subsidies.

We believe that the two sections are more directed to the question of whether a "particular market situation" exists in the deep drawn stainless steel industry in China for the purposes of s.269TAC(2)(a)(ii) of the *Customs Act 1901*. As advised in the dumping and subsidy investigation into silicon metal, the GOC's position on:-

- whether state-owned or state-invested enterprises (**SOEs** or **SIEs**) are "public bodies"; and
- whether a "particular market situation" exists in relation to a particular industry in China due to the alleged influence of "public bodies" on the price of raw materials used in the production of the goods under investigation,

is well known to the Commission and the GOC simply reiterates the arguments it has previously put to the Australian Customs & Border Protection Service (**Customs**) and to the Commission on these issues and the Commission must have regard to those arguments in this investigation.

That is:-

- SOEs or SIEs are not "public bodies" as they exercise no governmental authority; and
- a "particular market situation" does not exist in relation to the deep drawn stainless steel industry in China due to the alleged influence of "public bodies" on the price of a raw material (i.e. cold rolled stainless steel) used in the production of deep drawn stainless steel sinks.

We also note that, in this investigation, the applicant has claimed that the GOC's "involvement in the Chinese domestic steel market has 'materially distorted competitive conditions, in terms of input costs [for deep drawn stainless steel sinks]', and that a market situation has resulted, making domestic sales prices of deep drawn stainless steel sinks

unsuitable as a basis for determining normal values" (p. 20, Consideration Report No. 238). On this claim, we make the following points:

- (1) the so-called "particular market situation" cannot be found to exist unless the Commission finds, based on objective and positive evidence, that the domestic selling price of deep drawn stainless steel sinks is so distorted as to become unsuitable for comparison with their export price. There is no evidence before the Commission establishing that the alleged Chinese government intervention in the market of the raw materials concerned has actually "flowed through" to, or distorted, the selling price of the end products leading to the domestic selling price of the subject goods unsuitable for comparison with the export price of the goods. Further, the application provides no evidence at all in relation to whether the alleged intervention in the market of the raw materials concerned has also affected or flowed through to the export price of the subject goods, hence whether the comparability between the domestic price and the export price has been affected as a result;
- (2) in *Minister for Small Business & Ors v La Doria Di Diodata Ferraiolli S.P.A* (1994) 33 ALD 35, 36-7, the Full Court of the Federal Court ruled that whether a "particular market situation" exists is "*a matter for the authority to determine whether [the subject goods] were being consistently sold at prices below the production and selling costs [of the goods] and therefore whether sales in [the exporting country of the goods] were not suitable for use in assessing normal value*". In the present investigation, there has been no evidence establishing that deep drawn stainless steel sinks have been sold at prices below their cost of production;
- (3) if, for the sake of argument, the Commission were to find that a "particular market situation" exists due to the alleged government intervention in the market, and hence a constructed normal value is used, then the Commission must also consider whether the alleged intervention has also distorted the export price, and if so, to what extent. If the export price is also distorted to some or the same extent as the extent of distortion caused to the domestic selling price, then that distortion must be considered and relevant adjustments made to ensure fair comparison between the constructed normal value and the export price in accordance with Article 2.4 of the WTO Anti-Dumping Agreement; and
- (4) in the scenario described in (3), the Commission must also ensure that its calculation of dumping margin and subsidy margin does not amount to "double counting". In *United States - Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* (WT/DS379/AB/R), the Appellate Body ruled that the application of concurrent duties (i.e. dumping and countervailing duties) must not amount to the imposition of "double remedies" to offset the same situation, being a situation where, for example, a subsidy has only affected the export price of goods but not the normal value of the goods such that "*the subsidy will lead to increased price discrimination and a higher margin of dumping*". "*In such circumstances, the situation of subsidization and the situation of dumping are the "same situation", and the application of concurrent duties would amount to the application of "double remedies" to compensate for, or offset, that situation*", the Appellate Body observed. (para. 568) The Appellate Body further observed that if methods other than actual domestic selling price of goods are used for the calculation of normal

value, then *"there is any possibility that the concurrent application of anti-dumping and countervailing duties on the same product could lead to 'double remedies'."*

(para. 569) In the present investigation, if the Commission were to find the existence of a "particular market situation" and hence to use constructed normal value, then the alleged government intervention and all of the alleged subsidies, if any, will have affected the export price of stainless steel sinks only but not the constructed normal value. This is a situation where "double counting" could arise. To avoid "double counting", the Commission must ensure any amount of countervailing margin be deducted from the dumping margin (if any).

Finally, we are surprised that the Commission has accepted the applicant's application on these issues after the decision of the Anti-Dumping Review Panel (**ADRP**) in its review of the decisions of the Attorney-General in relation to zinc coated (galvanised) steel and aluminium zinc coated steel exported from China. In that review, the ADRP found that state-owned and state-invested bodies could not be considered to be "public bodies". The Minister of Industry, represented by the Parliamentary Secretary for Industry, agreed with the ADRP. In the present investigation, there is no evidence before the Commission establishing that SIEs exercise "government authority". In the absence of any such evidence the Commission cannot find that SIEs are "public bodies".

What the Commission has been seeking from the GOC is to prove that it has not influenced prices of inputs to manufacture – in short to prove that something does not exist or to prove a negative. That is not the requirement under WTO rules and jurisprudence. It is incumbent on applicants and governmental authorities to provide positive evidence that a "particular market situation" exists and renders domestic selling prices of the goods under investigation unsuitable for normal value purposes. That is, that inputs to manufacture have been supplied to producers of the goods under investigation at less than adequate remuneration. No such evidence has been advanced in this investigation.

In light of the foregoing, it is difficult to understand how or on what basis the Commission continues to pursue these issues, particularly when no objective and credible evidence is presented in the applicant's application that the GOC, either directly or indirectly, influences stainless steel prices in China and that this flows through to deep drawn stainless steel sink prices.

If you have any queries, please let us know.

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Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises (Order of the President No.69)

Order of the President of the People's Republic of China

No. 69

The Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises, adopted at the 28th meeting of the Standing Committee of the Ninth National People's Congress of the People's Republic of China, is hereby promulgated and shall go into effect as of January 1, 2003.

Jiang Zemin

President of the People's Republic of China

June 29, 2002

Law of the People's Republic of China on Promotion of Small and Medium-sized Enterprises

(Adopted at the 28th Meeting of the Standing Committee of the Ninth National People's Congress on June 29, 2002)

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Chapter I General Provisions

Chapter II Funding

Chapter III Support for Establishment of Enterprises

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Chapter I

General Provisions

Article 1 This Law is enacted for the purpose of improving the business environment for small and medium-sized enterprises, promoting their sound development, creating more job opportunities in both urban and rural areas, and giving play to the important role of such enterprises in national economic and social development.

Article 2 For purposes of this Law, small and medium-sized enterprises refer to the different forms of enterprises under different ownerships that are established within the territory of the People's Republic of China according to law, that help to meet the social needs and create more job opportunities, that comply with the industrial policies of the State and that are small and medium-sized in production and business operation.

The criteria for determining small and medium-sized enterprises shall be laid down by the department under the State Council in charge of work in respect of enterprises, on the basis of the number of employees, volume of sale, total assets, etc. of an enterprise and in light of the characteristics of different trades and shall be submitted to the State Council for approval.

Article 3 With regard to small and medium-sized enterprises, the State applies the principles of active support, strong guidance, perfect service, lawful standardization and guaranteed rights and interests, in order to create a favorable environment for their establishment and development.

Article 4 The State Council shall be responsible for formulating policies regarding small and medium-sized enterprises and make overall planning for their development.

The department under the State Council in charge of work in respect of enterprises shall arrange for the implementation of the State policies and plans concerning the small and medium-sized enterprises, making all-round coordination and providing guidance and services in the work regarding such enterprises throughout the country.

The related departments under the State Council shall, according to the policies and overall planning of the State for small and medium-sized enterprises and within the scope of their respective functions and responsibilities, provide guidance and services to such enterprises.

Local people's governments at or above the county level, the administrative departments under them in charge of work in respect of enterprises and other departments concerned shall, within the scope of their respective functions and responsibilities, provide guidance and services to small and medium-sized enterprises located within their respective administrative areas.

Article 5 The department under the State Council in charge of work in respect of enterprises shall, according to the industrial policies of the State and in light of the characteristics of the small and medium-sized enterprises and the conditions of their development, determine the key ones for support by formulating a catalogue of small and medium-sized enterprises to be provided with guidance for their industrial development or by other means, in order to encourage the development of all such enterprises.

Article 6 The State protects the lawful investments made by small and medium-sized enterprises and their investors, as well as the legitimate profits earned from the investments. No unit or individual may infringe upon the property and lawful rights and interests of such enterprises.

No unit may, in violation of laws and regulations, charge fees to or impose fines on small and medium-sized enterprises, nor collect money or things of value from them. The enterprises shall have the right to refuse to make the payment and the right to report and accuse violations of the provisions mentioned above.

Article 7 Administrative departments shall safeguard the lawful rights and interests of small and medium-sized enterprises, protect their right to participate in fair competition and transaction according to law, and they may not discriminate against the enterprises or add unequal conditions to their transactions.

Article 8 small and medium-sized enterprises shall observe State laws and regulations governing occupational safety, occupational health, social security, resources, environment protection, product quality, public finance, taxation, finance, etc., and manage business according to law, and they may not infringe upon the lawful rights and interests of their employees or impair public interests.

Article 9 small and medium-sized enterprises shall observe professional ethics, abide by the principle of good faith, work hard to raise their business level and increase the ability to develop themselves.

Chapter II

Funding

Article 10 In the budget of the Central Government there shall be a heading for small and medium-sized enterprises, under which to arrange special funds for supporting the development of such enterprises.

Local people's governments shall, in light of actual conditions, provide financial support to small and medium-sized enterprises.

Article 11 The special funds provided by the State for supporting the development of small and medium-sized enterprises shall be used to promote the establishment of a service system for such enterprises, to carry out work in their support, to supplement their funds for development and to support their development in other areas.

Article 12 The State establishes development funds for small and medium-sized enterprises, which are composed of the following:

- (1) the special funds arranged in the budget of the Central Government for supporting the said enterprises;

(2) profits yielded by the funds;

(3) donation; and

(4) others.

The State encourages donations to the development funds for small and medium-sized enterprises through taxation policies.

Article 13 The State development funds for small and medium-sized enterprises shall be used to support the following fields of endeavor:

(1) instructions on and services for establishment of enterprises;

(2) establishment of a credit guaranty system for the enterprises;

(3) technological innovation;

(4) encouragement for their specialization and their cooperation with large enterprises;

(5) personnel training and information consultancy, etc. provided by the service institutions for the enterprises;

(6) creation of international market;

(7) cleaner production; and

(8) others.

The administrative measures for establishment and use of the development funds for small and medium-sized enterprises shall be formulated separately by the State Council.

Article 14 The People's Bank of China shall give better guidance in credit policies and help improve the financing environment for small and medium-sized enterprises.

The People's Bank of China shall give more vigorous support to small and medium-sized financial institutions and encourage commercial banks to readjust their credit structure and provide greater credit support to small and medium-sized enterprises.

Article 15 All financial institutions shall provide financial support to small and medium-sized enterprises, make efforts to improve financial service, change their style of service, enhance their awareness of the importance of service and improve service quality.

All commercial banks and credit cooperatives shall improve credit management, expand the areas of services and develop financial products that are suited to the development of small and medium-sized enterprises, readjust their credit structure, and provide the enterprises with such services as loans, balancing of accounts, financial consultancy and investment management.

State policy-oriented financial institutions shall, within their business scope, provide financial services to small and medium-sized enterprises.

Article 16 The State takes measures to broaden the channels of direct financing for small and medium-sized enterprises and gives them active guidance in their efforts to create conditions for direct financing through various ways as permitted by laws and administrative regulations.

Article 17 The State, through taxation policies, encourages various kinds of risk investment institutions established according to law to increase investment in small and medium-sized enterprises.

Article 18 The State promotes the development of the credit system for small and medium-sized enterprises by establishing a collection and assessment system of credit information, in order to socialize the inquiry about and the exchange and sharing of credit information concerning such enterprises.

Article 19 People's governments at or above the county level and related departments shall promote and arrange for the establishment of a credit guaranty system for small and medium-sized enterprises, encourage credit guaranty for them and create conditions for their financing.

The administrative measures for credit guaranty for small and medium-sized enterprises shall be formulated separately by the State Council.

Article 20 The State encourages all kinds of guaranty institutions to provide credit guaranty to small and medium-sized enterprises.

Article 21 The State encourages small and medium-sized enterprises to enter into different forms of mutual-help financing guaranty according to law.

Chapter III

Support for Establishment of Enterprises

Article 22 The government departments concerned shall actively create conditions to provide necessary and suitable information and consultancy and, when working out plans for urban and rural construction, make rational arrangements for the necessary places and facilities to meet the needs for the development of small and medium-sized enterprises and support the establishment of such enterprises.

Where unemployed or disabled establish small and medium-sized enterprises, the local government shall actively support them, provide conveniences and better guidance.

The government departments concerned shall take measures to broaden channels for the small and medium-sized enterprises to employ graduates of colleges and specialized secondary schools.

Article 23 The State supports and encourages, through relevant taxation policies, the establishment and development of small and medium-sized enterprises.

Article 24 With regard to the small and medium-sized enterprises that are established by unemployed persons or that employ laid-off workers in the year of their establishment, the number of whom reaches the percentage fixed by the State, the ones that use new and high technologies and conform to State policies for supporting and encouraging the development of such enterprises the ones that are established in minority ethnic areas and poverty-stricken areas, and the ones that provide jobs to disabled persons, the number of whom reaches the percentage fixed by the State, the State reduces the rate of tax or exempts them from income tax during a certain period of time, and adopts preferential taxation policies.

Article 25 Local people's governments shall, in light of actual conditions, provide persons who establish enterprises with policy consultancy and information services concerning industrial and commercial administration, public finance, taxation, financing, labor, employment, social security, etc.

Article 26 Government departments in charge of enterprise registration shall, in compliance with the statutory requirements and procedures, handle registration for the small and medium-sized enterprises established, increase their work efficiency and provide conveniences to the registrants. They may not impose preconditions for registration of enterprises beyond the provisions of laws and administrative regulations; and they may not collect fees beyond the ones or rates specified by laws and administrative regulations.

Article 27 The State encourages small and medium-sized enterprises, in accordance with the State policies for the use of foreign funds, to introduce foreign investment and advanced technology and management expertise and to establish Chinese-foreign equity joint ventures and contractual joint ventures.

Article 28 The State encourages individuals and legal persons, in accordance with law, to take part in the establishment of small and medium-sized enterprises by investing their industrial property right, nonpatented technology, etc.

Chapter IV

Technological Innovation

Article 29 The State formulates policies to encourage small and medium-sized enterprises to develop new products and to adopt advanced technology, manufacturing technique and equipment to meet market needs and to improve product quality and make technological progress.

When launching projects for technological innovation and projects for technological updating in support of the products of large enterprises, small and medium-sized enterprises may enjoy the policy of discount interest on loans.

Article 30 The government departments concerned shall give policy-related support to small and medium-sized enterprises in terms of planning, land use and finance, promote the establishment of different kinds of technical service institutions and establish centers for advancing the productive forces and bases for creating science- and technology-oriented enterprises, in order to provide small and medium-sized enterprises with services relating to technological information, consultancy and transferring and services for the development of products and technologies, and to help promote the transformation of scientific and technological achievements and upgrade the technology and product of the enterprises.

Article 31 The State encourages technological cooperation, development and exchange between small and medium-sized enterprises on the one hand and research institutions and institutions of higher education on the other, in order to promote the industrialization of scientific and technological achievements and actively develop small and medium-sized

enterprises that make use of scientific and technological achievements.

Chapter V

Market Development

Article 32 The State encourages and supports large enterprises to establish, on the basis of resources allocation by the market, stable relations of cooperation with small and medium-sized enterprise in respect of the supply of raw and semi-processed materials, production, marketing, and technological development and updating, in order to help promote the development of small and medium-sized enterprises.

Article 33 The State gives guidance to, promotes and regulates the restructuring of the assets of small and medium-sized enterprises through merge, purchase, etc., in order to optimize the allocation of resources.

Article 34 When purchasing goods or service, the government shall give first priority to small and medium-sized enterprises.

Article 35 The government departments and institutions concerned shall provide guidance and assistance to small and medium-sized enterprises to stimulate the export of their products and promote their economic and technological cooperation and exchange with other countries.

The policy-oriented financial institutions of the State concerned shall, by means of providing loans for import and export, export credit insurance, etc., support small and medium-sized enterprises in their efforts to develop market abroad.

Article 36 The State formulates policies to encourage qualified small and medium-sized enterprises to invest abroad, participate in international trade and develop international market.

Article 37 The State encourages the service institutions for small and medium-sized enterprises to hold exhibitions and fairs for their products and to conduct information consultancy activities.

Chapter VI

Public Services

Article 38 The State encourages all sectors of the society to establish and improve the service system for small and medium-sized enterprises and to provide them with services.

Article 39 The government shall, in light of actual needs, support the institutions established in the service of small and medium-sized enterprises and see that they provide top-notch services to the enterprises.

The service institutions for small and medium-sized enterprises shall make full use of computer networks and other advanced technologies to gradually establish and improve the information service system opening to the entire community.

The service institutions for small and medium-sized enterprises shall contact the various kinds of public intermediary agencies and encourage them to serve such enterprises.

Article 40 The State encourages the various kinds of public intermediary agencies to provide the small and medium-sized enterprises with such services as instructions on establishment of enterprises, business consulting, information consultancy, marketing, investment, financing, credit guaranty, property right transaction, technological support, bringing in of talents, personnel training, cooperation with other countries, exhibitions, fairs and legal advice.

Article 41 The State encourages related institutions and institutions of higher education to train managerial, technical and other personnel for small and medium-sized enterprises, in order to help raise the enterprises' level of marketing, management and technology.

Article 42 The self-regulating trade organizations shall actively serve the small and medium-sized enterprises.

Article 43 The self-regulating organizations in charge of the self-restricting and self serving small and medium-sized enterprises shall safeguard the legitimate rights and interests of the enterprises, express their suggestions and requirements, and serve them in market development and increase of their management ability.

Chapter VII

Supplementary Provisions

Article 44 The provinces, autonomous regions and municipalities directly under the Central Government may, in light of the conditions of the local small and medium-sized enterprises, formulate measures for implementation of this Law.

Article 45 This Law shall go into effect as of January 1, 2003.

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中华人民共和国中小企业促进法

(2002年6月29日第九届全国人民代表大会常务委员会第二十八次会议通过)
中华人民共和国主席令第69号

《中华人民共和国中小企业促进法》已由中华人民共和国第九届全国人民代表大会常务委员会第二十八次会议于2002年6月29日通过，现予公布，自2003年1月1日起施行。

中华人民共和国主席 江泽民
2002年6月29日

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第一章 总则

第一条 为了改善中小企业经营环境，促进中小企业健康发展，扩大城乡就业，发挥中小企业在国民经济和社会发展中的重要作用，制定本法。

第二条 本法所称中小企业，是指在中华人民共和国境内依法设立的有利于满足社会需要，增加就业，符合国家产业政策，生产经营规模属于中小型的各种所有制和各种形式的企业。

中小企业的划分标准由国务院负责企业工作的部门根据企业职工人数、销售额、资产总额等指标，结合行业特点制定，报国务院批准。

第三条 国家对中小企业实行积极扶持、加强引导、完善服务、依法规范、保障权益的方针，为中小企业创立和发展创造有利的环境。

第四条 国务院负责制定中小企业政策，对全国中小企业的发展进行统筹规划。

国务院负责企业工作的部门组织实施国家中小企业政策和规划，对全国中小企业工作进行综合协调、指导和服务。

国务院有关部门根据国家中小企业政策和统筹规划，在各自职责范围内对中小

企业进行指导和服务。

县级以上地方各级人民政府及其所属的负责企业工作的部门和其他有关部门在各自职责范围内对本行政区域内的中小企业进行指导和服务。

第五条 国务院负责企业工作的部门根据国家产业政策，结合中小企业特点和发展状况，以制定中小企业发展产业指导目录等方式，确定扶持重点，引导鼓励中小企业发展。

第六条 国家保护中小企业及其出资人的合法投资，及因投资取得的合法收益。任何单位和个人不得侵犯中小企业财产及其合法收益。

任何单位不得违反法律、法规向中小企业收费和罚款，不得向中小企业摊派财物。中小企业对违反上述规定的行为有权拒绝和有权举报、控告。

第七条 行政管理部门应当维护中小企业的合法权益，保护其依法参与公平竞争与公平交易的权利，不得歧视，不得附加不平等的交易条件。

第八条 中小企业必须遵守国家劳动安全、职业卫生、社会保障、资源环保、质量、财政税收、金融等方面的法律、法规，依法经营管理，不得侵害职工合法权益，不得损害社会公共利益。

第九条 中小企业应当遵守职业道德，恪守诚实信用原则，努力提高业务水平，增强自我发展能力。

第二章 资金支持

第十条 中央财政预算应当设立中小企业科目，安排扶持中小企业发展专项资金。

地方人民政府应当根据实际情况为中小企业提供财政支持。

第十一条 国家扶持中小企业发展专项资金用于促进中小企业服务体系建设，开展支持中小企业的工作，补充中小企业发展基金和扶持中小企业发展的其他事项。

第十二条 国家设立中小企业发展基金。中小企业发展基金由下列资金组成：

- （一）中央财政预算安排的扶持中小企业发展专项资金；
- （二）基金收益；
- （三）捐赠；
- （四）其他资金。

国家通过税收政策，鼓励对中小企业发展基金的捐赠。

第十三条 国家中小企业发展基金用于下列扶持中小企业的事项：

- （一）创业辅导和服务；
- （二）支持建立中小企业信用担保体系；

- (三) 支持技术创新;
- (四) 鼓励专业化发展以及与大企业的协作配套;
- (五) 支持中小企业服务机构开展人员培训、信息咨询等工作;
- (六) 支持中小企业开拓国际市场;
- (七) 支持中小企业实施清洁生产;
- (八) 其他事项。

中小企业发展基金的设立和使用管理办法由国务院另行规定。

第十四条 中国人民银行应当加强信贷政策指导,改善中小企业融资环境。

中国人民银行应当加强对中小金融机构的支持力度,鼓励商业银行调整信贷结构,加大对中小企业的信贷支持。

第十五条 各金融机构应当对中小企业提供金融支持,努力改进金融服务,转变服务作风,增强服务意识,提高服务质量。

各商业银行和信用社应当改善信贷管理,扩展服务领域,开发适应中小企业发展的金融产品,调整信贷结构,为中小企业提供信贷、结算、财务咨询、投资管理等方面的服务。

国家政策性金融机构应当在其业务经营范围内,采取多种形式,为中小企业提供金融服务。

第十六条 国家采取措施拓宽中小企业的直接融资渠道,积极引导中小企业创造条件,通过法律、行政法规允许的各种方式直接融资。

第十七条 国家通过税收政策鼓励各类依法设立的风险投资机构增加对中小企业的投资。

第十八条 国家推进中小企业信用制度建设,建立信用信息征集与评价体系,实现中小企业信用信息查询、交流和共享的社会化。

第十九条 县级以上人民政府和有关部门应当推进和组织建立中小企业信用担保体系,推动对中小企业的信用担保,为中小企业融资创造条件。

中小企业信用担保管理办法由国务院另行规定。

第二十条 国家鼓励各种担保机构为中小企业提供信用担保。

第二十一条 国家鼓励中小企业依法开展多种形式的互助性融资担保。

第三章 创业扶持

第二十二条 政府有关部门应当积极创造条件,提供必要的、相应的信息和咨询服务,在城乡建设规划中根据中小企业发展的需要,合理安排必要的场地和设施,支持创办中小企业。

失业人员、残疾人员创办中小企业的，所在地政府应当积极扶持，提供便利，加强指导。

政府有关部门应当采取措施，拓宽渠道，引导中小企业吸纳大中专学校毕业生就业。

第二十三条 国家在有关税收政策上支持和鼓励中小企业的创立和发展。

第二十四条 国家对失业人员创立的中小企业和当年吸纳失业人员达到国家规定比例的中小企业，符合国家支持和鼓励发展政策的高新技术中小企业，在少数民族地区、贫困地区创办的中小企业，安置残疾人员达到国家规定比例的中小企业，在一定期限内减征、免征所得税，实行税收优惠。

第二十五条 地方人民政府应当根据实际情况，为创业人员提供工商、财税、融资、劳动用工、社会保障等方面的政策咨询和信息服务。

第二十六条 企业登记机关应当依法定条件和法定程序办理中小企业设立登记手续，提高工作效率，方便登记者。不得在法律、行政法规规定之外设置企业登记的前置条件；不得在法律、行政法规规定的收费项目和收费标准之外，收取其他费用。

第二十七条 国家鼓励中小企业根据国家利用外资政策，引进国外资金、先进技术和管理经验，创办中外合资经营、中外合作经营企业。

第二十八条 国家鼓励个人或者法人依法以工业产权或者非专利技术投资参与创办中小企业。

第四章 技术创新

第二十九条 国家制定政策，鼓励中小企业按照市场需要，开发新产品，采用先进的技术、生产工艺和设备，提高产品质量，实现技术进步。

中小企业技术创新项目以及为大企业产品配套的技术改造项目，可以享受贷款贴息政策。

第三十条 政府有关部门应当在规划、用地、财政等方面提供政策支持，推进建立各类技术服务机构，建立生产力促进中心和科技企业孵化基地，为中小企业提供技术信息、技术咨询和技术转让服务，为中小企业产品研制、技术开发提供服务，促进科技成果转化，实现企业技术、产品升级。

第三十一条 国家鼓励中小企业与研究机构、大专院校开展技术合作、开发与交流，促进科技成果产业化，积极发展科技型中小企业。

第五章 市场开拓

第三十二条 国家鼓励和支持大企业与中小企业建立以市场配置资源为基础的、稳定的原材料供应、生产、销售、技术开发和技术改造等方面的协作关系，带动和促进中小企业发展。

第三十三条 国家引导、推动并规范中小企业通过合并、收购等方式，进行资产重组，优化资源配置。

第三十四条 政府采购应当优先安排向中小企业购买商品或者服务。

第三十五条 政府有关部门和机构应当为中小企业提供指导和帮助，促进中小企业产品出口，推动对外经济技术合作与交流。

国家有关政策性金融机构应当通过开展进出口信贷、出口信用保险等业务，支持中小企业开拓国外市场。

第三十六条 国家制定政策，鼓励符合条件的中小企业到境外投资，参与国际贸易，开拓国际市场。

第三十七条 国家鼓励中小企业服务机构举办中小企业产品展览展销和信息咨询活动。

第六章 社会服务

第三十八条 国家鼓励社会各方面力量，建立健全中小企业服务体系，为中小企业提供服务。

第三十九条 政府根据实际需要扶持建立的中小企业服务机构，应当为中小企业提供优质服务。

中小企业服务机构应当充分利用计算机网络等先进技术手段，逐步建立健全向全社会开放的信息服务系统。

中小企业服务机构联系和引导各类社会中介机构为中小企业提供服务。

第四十条 国家鼓励各类社会中介机构为中小企业提供创业辅导、企业诊断、信息咨询、市场营销、投资融资、贷款担保、产权交易、技术支持、人才引进、人员培训、对外合作、展览展销和法律咨询等服务。

第四十一条 国家鼓励有关机构、大专院校培训中小企业经营管理及生产技术等方面的人员，提高中小企业营销、管理和技术水平。

第四十二条 行业的自律性组织应当积极为中小企业服务。

第四十三条 中小企业自我约束、自我服务的自律性组织，应当维护中小企业的合法权益，反映中小企业的建议和要求，为中小企业开拓市场、提高经营管理能力提供服务。

第七章 附则

第四十四条 省、自治区、直辖市可以根据本地区中小企业的情况，制定有关的实施办法。

第四十五条 本法自2003年1月1日起施行

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CIRCUKAR OF THE GENERAL OFFICE OF THE STATE COUNCIL ON ISSUING THE INTERIM PROVISIONS OF THE MINISTRY OF SCIENCE AND TECHNOLOGY AND THE MINISTRY OF FINANCE ON TECHNOLOGICAL INNOVATION FUNDS OF SCIENCE-AND-TECHNOLOGY-ORIENTED SMALL AND MEDIUM-SIZED ENTERPRISES

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|----------------------|------------|-----------------------|---|------------------|----------|
| Category | BANKING | Organ of Promulgation | The General Office of the State Council | Status of Effect | In Force |
| Date of Promulgation | 1999-05-21 | Effective Date | 1999-05-21 | | |

Circukar of the General Office of the State Council on Issuing the Interim Provisions of the Ministry of Science and Technology and the Ministry of Finance on Technological Innovation Funds of Science-and-Technology-Oriented Small and Medium-sized Enterprises

(Promulgated by Document No. [1999] 47 of the General Office of the State Council on May 21st, 1999)

In order to support and promote the technological innovation of science-and-technology-oriented small and medium-sized enterprises (hereinafter referred to as small and medium-sized enterprises), upon the approval of the State Council, a special government fund (hereinafter referred to as innovation fund) is established to support technological innovation projects in science-and-technology-oriented small and medium-sized enterprises (hereinafter referred to as small and medium-sized enterprises). In order to strengthen the management of the innovation fund, and increase its employing benefits, provisions are hereby made as follows:

1 The innovation fund is an introductory fund, through which a new investment system is to be gradually built catering to the objective discipline of socialist market economy and supporting the technological innovation of small and medium-sized enterprises by attracting investment into technological innovation of small and medium-sized enterprises from localities, enterprises,

investment institutions of science and technology and financial organizations.

2 The innovation fund, not aiming at making profit, is to strengthen the innovative capability of small and medium-sized enterprises by supporting their innovation programs.

3 The employment and management of innovation fund must conform to the relevant laws, administrative regulations and financial regulations and rules of the State, and follow the principle of applying honestly, consider justly, manage scientifically, support favorably, publicize clearly and special funds used specially.

4 The innovation fund comes from the allocation of the Central finance and the interests thereof.

5 The innovation fund is geared to the needs of all types of small and medium-sized enterprises registered within China. The program the fund supports and the enterprises taking the program must meet the following conditions:

(1) the program the fund supports must be a program involving the transference of high and new technological achievements and conforming to the State's policy of industrial technology, having high level of innovation and strong competitive power in the market, possessing the potentialities of producing economic and social benefits, and having the possibility to form jumped-up industry.

(2) the enterprise has register with the administrative department for industry and commerce at the place where it is located, possesses the qualification of enterprise legal person and a complete financial system; the number of its workers and staff should, in principal, not exceed 500, among them, the technological personnel with the academic degree higher than that conferred by an institution of higher education should have a ratio of not less than 30% to the total amount of the workers and staff. As for an high and new technology enterprises recognized by the competent department of science and technology under the people's government at or above the provincial level which engages in scaled production of technological innovation programs, the requirements for the ration of the technological personnel to its workers and staff may be properly relaxed.

(3) the enterprises should mainly engage in research, development, production and service of products with high and new technology, and the persons in charge of the enterprise should have strong sense of innovation, market development capability and managing skills. The money used in the research and development of products with high and new technology should not be less than 3% of the sales volume, and the number of workers and staff directly engaged in research and development must be not less than 10% of the total number of the workers and staff. Those enterprises with leading products which will be produced in batches or those engaged in scaled production must have a good operating record.

6 The innovation fund encourages and gives priority to the support to joint innovation of production, study and research, and also gives priority to the support to those programs which possess independent intellectual property right, contain high technology and high added value and which can provide employment, save energy, reduce costs, improve environment and make profits from export.

7 The innovation fund should not support repeated construction at a low level, infrastructure construction with merely purpose, technology introduction and ordinary processing projects.

8 According to different characteristics of small and medium-sized enterprises and programs, the innovation fund gives support in different forms such as subsidization to the interests of loan, gratis financial aid and input of capital fund:

(1) subsidization to the interests of loan: for those innovation programs with certain level, scale

and profits, the measure of giving subsidy to the interests of loan is usually taken to encourage loaning in order to enlarge the production scale. The subsidy is equal to 50% -100% of the annual interest of loan. The total interest should not exceed 1 million yuan and the total interest of some major program should not exceed 2 million yuan.

(2) gratis financial aid: this financial aid is mainly used to subsidize the research, development and test of products in the technological innovation of small and medium-sized enterprises and to help researching personnel transfer the achievements when they establish enterprises with their scientific and technological achievements. The sum of this financial aid is usually no more than 1 million yuan and no more than 2 million yuan with some major programs. In addition, the enterprises must have the same amount of matching capital or more.

(3) input of capital fund: the fund provides capital money to those programs which have high starting point, rich innovation content, high innovation level, innovation potential, great potential demand in market and the possibility of becoming a new industry. The capital money is invested in order to induce the investment of other capitals. The sum is usually no more than 20% of the enterprise's registered capital. In principle, the capital money can be transferred according to law or retracted by joint operation within the time limit. The specific measure is to be formulated separately.

9 The Ministry of Science and Technology is the competent department of the innovative fund, which is responsible for considering and announcing the annual priorities of support and work guidelines of the innovative fund, discussing major events in the operation of the innovation fund, approving the annual working plan of the innovative fund, examining and approving programs to be supported in cooperation with the Ministry of Finance, submitting reports on the implementation to the State Council annually.

10 The Ministry of Finance is the supervision department of the innovative fund, which participates in considering and announcing the annual priorities of support and work guidelines of the innovative fund, allocates in two batches each year the innovative fund into the special account of the Innovative Fund Administration Center through the Ministry of Science and Technology according to the annual working plan of the innovative fund, supervises and inspects the operation and use of the fund.

11 An Experts Consulting Committee of Innovation Fund is to be constituted by the authoritative experts on technology, economy and management and entrepreneurs, which is responsible for researching into the fields given priority in support and major programs for each year, guiding the formulation of annual priorities in support and work guidelines of the innovative fund, and providing technical consultation to the Innovative Fund Administration Center.

12 To establish Innovative Fund Administration Center of Small and Medium-Sized Enterprises (hereinafter referred to as Administration Center), as a non-profit institution legal person, which is responsible for the administration of the innovative fund and performs the following functions under the direction of the Ministry of Science and Technology and the Ministry of Finance:

(1) making research and putting forward annual priorities in support and work guidelines of the innovative fund, uniformly accepting applications for innovation fund and conducting procedural examination;

(2) making research and putting forward the standard for evaluation, assessment and bid of innovative fund programs, putting forward the qualifications of evaluating organs and other intermediary organs participating in the innovation fund administration;

(3) accrediting or organizing related units or organs to conduct the evaluation, assessment and bid

of innovation fund programs;

(4) being responsible for working out the annual final settlement of accounts and working plan of the innovation fund, making proposals on annual programs to be supported by innovation fund, and being responsible for the operation of innovation fund;

(5) being responsible for the integrative administration in the course of implementation of innovation fund programs, and for the audit, supervision and periodical report of the innovation fund program.

13 The Ministry of Science and Technology annually promulgates priorities in support and work guidelines of the innovative fund. For programs conforming to the requirements for support of the innovation fund, enterprises may submit corresponding application materials according to requirements for applications; application materials should be submitted with recommendation opinions of the recommending units, those applying for subsidization to the interests of loan should also provide the promise on offering the loan of the banks concerned.

14 The recommending units of programs should conduct serious examination on the applying enterprises' qualifications, accuracy and truth of the materials; and provide recommendation opinions to programs conforming to the applying conditions and requirements.

15 Competition system should be introduced actively and the systems of evaluation and bid for innovation fund be implemented. Units conforming to bid conditions should be selected for the program through public competition.

16 The Administration Center handles and investigates the applications according to relevant standards and submit to related evaluating organs or experts for evaluation, investigation or consultation; those conforming to the conditions must be selected through the evaluation of bidding materials and performance.

17 Assessment organs and evaluation experts should objectively assess and evaluate the marketing prospect, technological innovation, technical feasibility, risks and profits of the applying program as well as the managing and operating skills of the applying enterprises and give definite opinions.

18 The Administration Center provides suggestions on the supporting programs of innovation fund according to the bid condition and evaluating opinions; if necessary, the Ministry of Science and Technology and the Ministry of Finance may reconsider the evaluating results. After the program proposal has been examined and approved by the Ministry of Science and Technology together with the Ministry of Finance, the Administration Center should conclude a contract with the enterprise, on the basis of which the corresponding procedures should be gone through.

19 the Ministry of Science and Technology and the Ministry of Finance publicize annually in batches the supported programs and enterprises of the innovation fund and receive the supervision form the society.

20 For programs have not passed the procedural examination or not been given support of the innovation fund after evaluation, assessment and bid, the Administration Center should inform the applying enterprises in written form within 4 months of the date of the acceptance of the applications.

21 The annual budget for innovation fund is decided by the Ministry of Finance. The Ministry of Science and Technology should report the use of the innovation fund according to related provisions of the Ministry of Finance and receive supervision from the Ministry of Finance.

22 The Administration Center should allocate the innovation fund completely to the units who are in charge of the programs in accordance with the requirements of contract. The innovation fund should not be used in financing, stocks, futures, real estate, sponsoring, donation, etc. and should not be appropriated.

23 The Administration Center should budget the fees used in evaluation, assessment and bid as well as daily administration of the innovation fund, which are disbursed from the interests of innovation fund after the approval of the Ministry of Finance.

24 The unit responsible for the project should report the implementation of the program to the Administration Center annually; the Administration Center should submit the annual budget and implementation situation to the Ministry of Science and Technology, which in turn submit to the Ministry of Finance.

25 If the enterprise needs to adjust the objective, progress or outlay of the project owing to objective reasons, it should submit a written application, which can only be implemented after the verification of the Administration Center and examination and approval of the Ministry of Science and Technology and the Ministry of Finance.

26 If the contracted projects are retracted or held in abeyance after the approval of the Administration Center, enterprises should clear the accounts and turned the left funds completely to the Administration Center.

27 The implementation scheme concerning the administration of programs and expenditures put forward by the Administration Center should come into effect after being submitted to and approved by the Ministry of Science and Technology and the Ministry of Finance.

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国务院办公厅转发科技部、财政部《关于科技型中小企业技术创新基金的暂行规定》的通知

1999年5月21日 国办发〔1999〕47号

各省、自治区、直辖市人民政府，国务院各部委、各直属机构：

《科学技术部、财政部关于科技型中小企业技术创新基金的暂行规定》已经国务院同意，现转发给你们，请认真贯彻执行。

科学技术部 财政部

关于科技型中小企业技术创新基金的暂行规定

为了扶持、促进科技型中小企业技术创新，经国务院批准，设立用于支持科技型中小企业(以下简称“中小企业”)技术创新项目的政府专项基金(以下简称“创新基金”)。为了加强创新基金管理，提高创新基金使用效益，特作如下规定：

一、创新基金是一种引导性资金，通过吸引地方、企业、科技创业投资机构和金融机构对中小企业技术创新的投资，逐步建立起符合社会主义市场经济客观规律、支持中小企业技术创新的新型投资机制。

二、创新基金不以营利为目的，通过对中小企业技术创新项目的支持，增强其创新能力。

三、创新基金的使用和管理必须遵守国家有关法律、行政法规和财务规章制度，遵循诚实申请、公正受理、科学管理、择优支持、公开透明、专款专用的原则。

四、创新基金的资金来源为中央财政拨款及其银行存款利息。

五、创新基金面向在中国境内注册的各类中小企业，其支持的项目及承担项目的企业应当具备下列条件：

(一)创新基金支持的项目应当是符合国家产业技术政策、有较高创新水平和较

强市场竞争力、有较好的潜在经济效益和社会效益、有望形成新兴产业的高新技术成果转化的项目。

(二)企业已在所在地工商行政管理机关依法登记注册,具备企业法人资格,具有健全的财务管理制度;职工人数原则上不超过500人,其中具有大专以上学历的科技人员占职工总数的比例不低于30%。经省级以上人民政府科技主管部门认定的高新技术企业进行技术创新项目的规模化生产,其企业人数和科技人员所占比例条件可适当放宽。

(三)企业应当主要从事高新技术产品的研制、开发、生产和服务业务,企业负责人应当具有较强的创新意识、较高的市场开拓能力和经营管理水平。企业每年用于高新技术产品研究开发的经费不低于销售额的3%,直接从事研究开发的科技人员应占职工总数的10%以上。对于已有主导产品并将逐步形成批量和已形成规模化生产的企业,必须有良好的经营业绩。

六、创新基金鼓励并优先支持产、学、研的联合创新,优先支持具有自主知识产权、高技术、高附加值、能大量吸纳就业、节能降耗、有利环境保护以及出口创汇的各类项目。

七、创新基金不得支持低水平的重复建设、单纯的基本建设、技术引进和一般加工工业项目。

八、根据中小企业和项目的不同特点,创新基金分别以贷款贴息、无偿资助、资本金投入等不同的方式给予支持:

(一)贷款贴息:对已具有一定水平、规模和效益的创新项目,原则上采取贴息方式支持其使用银行贷款,以扩大生产规模。一般按贷款额年利息的50%-100%给予补贴,贴息总额一般不超过100万元,个别重大项目最高不超过200万元。

(二)无偿资助:主要用于中小企业技术创新中产品研究开发及中试阶段的必要补助、科研人员携带科技成果创办企业进行成果转化的补助。资助数额一般不超过100万元,个别重大项目最高不超过200万元,且企业须有等额以上的自有匹配资金。

(三)资本金投入:对少数起点高、具有较广创新内涵、较高创新水平并有后续创新潜力、预计投产后具有较大市场需求、有望形成新兴产业的项目,采取资本金投入方式。资本金投入以引导其他资本投入为主要目的,数额一般不超过企业注册资本的20%,原则上可以依法转让,或者采取合作经营的方式在规定期限内依法收回投资。具体办法另行制定。

九、科学技术部是创新基金的主管部门,负责审议和发布创新基金年度支持重点和工作指南,审议创新基金运作中的重大事项,批准创新基金的年度工作计划,并会同财政部审批创新基金支持项目,向国务院提交年度执行情况报告等。

十、财政部是创新基金的监管部门,参与审议创新基金年度支持重点和工作指南,并根据创新基金年度工作计划,每年分两批将创新基金经科学技术部拨入创新基金管理中心专用帐户,同时对基金运作和使用情况进行监督、检查。

十一、由具有一定权威的技术、经济、管理专家和企业组成创新基金专家咨询委员会,负责研究创新基金年度优先支持领域和重点项目,指导创新基金年度支持重点和工作指南的制定,为创新基金管理中心提供技术咨询。

十二、组建中小企业创新基金管理中心(以下简称“管理中心”),为非营利性

事业法人，在科学技术部和财政部指导下，负责创新基金的管理工作，履行下列职能：

(一)研究提出创新基金年度支持重点和工作指南，统一受理创新基金项目申请并进行程序性审查；

(二)研究提出有关创新基金项目的评估、评审、招标标准，提出参与创新基金管理的评估机构及其他中介机构的资格条件。

(三)委托或者组织有关单位或者机构进行创新基金项目的评估、评审、招标等工作；

(四)负责编制创新基金的年度财务决算和工作计划，提出创新基金年度支持的项目建议，具体负责创新基金的运作；

(五)全面负责创新基金项目实施过程的综合管理，负责创新基金项目的统计、监理和定期报告工作。

十三、科学技术部每年发布创新基金支持重点和工作指南。凡符合创新基金支持条件的项目，由企业按申请要求提供相应申请材料；申请材料须经项目推荐单位出具推荐意见，其中申请贴息的企业还需提供有关银行的承贷意见。

十四、项目推荐单位要对申请企业的申请资格、申请材料的准确性、真实性等进行认真审查；对符合申请和要求的項目，出具推荐意见。

十五、积极引入竞争机制，推行创新基金项目评估、招标制度。凡符合招标条件的，必须通过公开竞争方式择优确定项目承担单位。

十六、管理中心按照有关标准要求，统一受理项目申请并负责程序性审查，送有关评估机构或专家进行评估、评审或咨询；符合招标条件的，须进行标书制定和评标选优。

十七、评估机构和评审专家对申报项目的市场前景、技术创新性、技术可行性、风险性、效益性、申报企业的经营管理水平等进行客观评估、评审，并出具明确的评估、评审意见。

十八、管理中心根据招标情况和评估、评审意见，提出创新基金年度支持的项目建议；必要时，科学技术部和财政部可以对评估结果进行复审。项目建议经科学技术部会同财政部审定批准后，由管理中心与企业签订合同，并据此办理相应手续。

十九、科学技术部和财政部每年分批向社会发布创新基金支持的项目和企业名单，接受社会监督。

二十、对未通过程序性审查和经评审、评估、招标后明确不予支持的项目，管理中心应当在受理之日起四个月内，书面通知申报企业。

二十一、创新基金的年度预算安排由财政部确定。科学技术部根据财政部的有关规定，报告创新基金的使用情况，并财政部监督。

二十二、管理中心应当按照合同的要求，及时足额将创新基金拨至有关项目承担单位。创新基金不得用于金融性融资、股票、期货、房地产、赞助、捐赠等支出，更不得挪作他用。

二十三、管理中心用于创新基金项目的评审、评估、招标和日常管理工作的费用，实行决算管理，报财政部审批后从创新基金利息收入中列支。

二十四、项目承担单位每年应当向管理中心报告项目年度执行情况；管理中心应当向科学技术部报送年度预决算及执行情况。科学技术部每年向财政部报送年度预决算及执行情况。

二十五、因客观原因，企业需要对项目的目标、进度、经费进行调整或撤销时，应当提出书面申请，经管理中心审核，报科学技术部和财政部审批后，方可执行。

二十六、已签合同项目经管理中心批准撤销或者中止，企业应当进行财务清算，并将剩余经费如数上缴管理中心。

二十七、管理中心提出有关项目管理、经费管理的实施方案，报科学技术部和财政部批准后实施。

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

China.org.cn, February 14, 2011

Order of the President of the People's Republic of China

No.63

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

Hu Jintao

President of the People's Republic of China

March 16, 2007

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

(Adopted at the Fifth Session of the Tenth National People's Congress on March 16, 2007)

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Chapter I

General Provisions

Article 1 The enterprises and other organizations that are located within the People's Republic of China and earn income (hereinafter generally referred to as enterprises) are payers of enterprise income tax, which shall be paid in accordance with the provisions of this Law.

This Law is not applicable to individual proprietorship enterprises and partnerships.

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

For the purposes of this Law, resident enterprises are enterprises which are set up in China in accordance with law, or which are set up in accordance with the law of a foreign country (region) but which are actually under the administration of institutions in China.

For the purposes of this Law, non-resident enterprises are enterprises which are set up in accordance with the law of a foreign country (region) and whose actual administrative institution is not in China, but which have institutions or establishments in China, or which have no such institutions or establishments but have income generated from inside China.

Article 3 A resident enterprise shall pay enterprise tax on its income generated from both inside and outside China.

A non-resident enterprise that has set up institutions or establishments in China shall pay tax on the income earned by its institutions or establishments from inside China and the income which is generated from outside China but which is actually relevant to the said institutions or establishments set up in China.

Where a non-resident enterprise has not set up any institutions or establishments in China, or it has done so but the income it earns is not actually relevant to the said institutions or establishments, it shall pay tax on the portion of its income generated from inside China.

Article 4 The rate of enterprise income tax shall be 25 per cent.

On the income earned by non-resident enterprises, as specified in the third paragraph of Article 3 of this Law, the applicable tax rate shall be 20 per cent.

Chapter II

The Amount of Income Taxable

Article 5 The amount of the income of an enterprise taxable in each tax year shall be the remainder of its gross income after the untaxed amount, the amount exempted from taxation, other deductions and the amount allowed to be used to make up the losses of the previous year are deducted.

Article 6 The income earned by an enterprise from various sources in monetary and non-monetary terms

constitutes the gross income, which includes:

- (1) income from sale of goods;
- (2) income from provision of labor services;
- (3) income from transfer of property;
- (4) benefits from equity investment, such as dividends and bonuses;
- (5) interest income;
- (6) rental income;
- (7) income from royalties;
- (8) income from donations; and
- (9) income from other sources.

Article 7 The following of the gross income are untaxed income:

- (1) government appropriations;
- (2) administrative fees and government funds collected in accordance with law and placed under government control; and
- (3) other untaxed income prescribed by the State Council.

Article 8 When calculating the amount of its income taxable, an enterprise may deduct its reasonable expenses which are actually incurred in relation to its income earned, including, among other items, the costs, fees, tax payments, and losses.

Article 9 When calculating the amount of its income taxable, an enterprise may deduct its expenses incurred due to donation for public welfare, provided that the portion involved is not more than 12 percent of the total amount of its annual profits.

Article 10 When calculating the amount of taxable income, the following expenses may not be deducted:

- (1) monies from equity investment paid to investors, such as dividends and bonuses;
- (2) payment of enterprise income tax;
- (3) fines for delaying tax payment;

- (4) losses caused by penalties, fines, and property confiscation;
- (5) expenses due to donations other than what is specified in Article 9 of this Law;
- (6) sponsorship expenses;
- (7) non-verified reserves; and
- (8) other expenses irrelevant to the income earned.

Article 11 When calculating the amount of its income taxable, an enterprise may deduct its depreciation of fixed assets which are calculated in accordance with relevant regulations.

When calculating depreciations for deduction, none of the following fixed assets may be induced:

- (1) fixed assets other than the houses and structures that are not put to use;
- (2) fixed assets leased from another person to sublet for profits;
- (3) fixed assets rent to another person by way of financial leasing;
- (4) fixed assets that have been depreciated in full but are still in use;
- (5) fixed assets that are irrelevant to business activities;
- (6) land which is separately evaluated and entered into an account book as fixed assets; and
- (7) other fixed assets the depreciation of which may not be calculated for deduction.

Article 12 When calculating the amount of its income taxable, an enterprise may deduct the amortized expenses for the intangible assets calculated in accordance with relevant regulations.

When calculating the amortized expenses for deduction, none of the following intangible assets may be included:

- (1) intangible assets the expenses for the independent development of which are deducted at the time when the amount of the taxable income is calculated;
- (2) self-created reputation;
- (3) intangible assets that are irrelevant to business activities; and
- (4) other intangible assets the amortized expenses for which may not be calculated for deduction.

Article 13 When calculating the amount of its income taxable, an enterprise may deduct the following expenses to be incurred as anticipated long-term amortized expenses and to be amortized in accordance with relevant

regulations:

- (1) expenses for reconstruction of the fixed assets that are depreciated in full;
- (2) expenses for reconstruction of the fixed assets leased from another person;
- (3) expenses for major repairs of the fixed assets; and
- (4) other expenses to be used as anticipated long-term amortized expenses.

Article 14 During the period when an enterprise invests outside, the cost of the investment in the form of assets may not be deducted when it calculates the amount of its income taxable.

Article 15 When calculating the amount of its income taxable, an enterprise may deduct the cost of the inventory to be used or sold, which is calculated in accordance with relevant regulations.

Article 16 Where an enterprise transfers its assets, it may deduct the net value of the said assets when calculating the amount of its income taxable.

Article 17 When an enterprise calculates its income tax on a basis, it may not offset the losses of its business institutions outside China by the profits of the business institutions inside China.

Article 18 An enterprise may carry over the losses it incurs in a tax year to the succeeding years, namely, it may have the losses made up by the income of the succeeding years, but the number of years for carrying over such losses may not exceed five years.

Article 19 With respect to the income earned as prescribed in the third paragraph of Article 3 of this Law, a non-resident enterprise shall calculate the amount of its income taxable according to the following methods:

- (1) For income derived from equity investment such as dividends and bonuses, and from interest, rent and income from royalties, the total amount of such income shall be the amount of income taxable;
- (2) For income derived from property transfer, the remainder of the total amount of the income minus the net value of the property shall be the amount of income taxable; and
- (3) For other sources of income, the amount of the income taxable shall be calculated mutatis mutandis according to the methods specified in the preceding two Subparagraphs.

Article 20 The income, the specific scope and criteria for deduction and the methods for handling taxation affairs in respect of assets, as specified in this Chapter, shall be formulated by the departments in charge of finance and taxation under the State Council.

Article 21 Where in calculating the amount of income taxable, where financial and accounting methods of an

enterprise are inconsistent with the provisions of the laws and administrative regulations governing taxation, the said amount shall be calculated in accordance with the provisions of such laws and administrative regulations.

Chapter III

The Amount of Tax Payable

Article 22 The amount of an enterprise's income taxable shall be the remainder of the amount of the income taxable multiplied by the applicable tax rate, minus the amount of tax reduced, exempted or offset pursuant to the preferential tax policies provided for by this Law.

Article 23 The amount of income tax paid outside China on the following income earned by an enterprise may offset the tax payable for the current period, the amount of tax quota for the offset being the amount of the tax to be paid on the said income, which is calculated in accordance with the provisions of this Law; the portion in excess of the said quota may be made up with the balance of the annual amount of tax to be offset in each current year within the next five years:

- (1) taxable income generated outside China by a resident enterprise; and
- (2) taxable income which is generated outside China by a non-resident enterprise that has institution or establishments in China but which is actually relevant to the said institutions or establishments.

Article 24 The portion of the income tax on the income from equity investment, such as dividends and bonuses, which is derived outside China by a resident enterprise from foreign enterprises that are under its direct or indirect control and which covered by the amount of the income tax actually paid outside China by the foreign enterprises, may offset, within the offset quota specified in Article 23 of this Law, the amount of income tax on the income earned outside China by the resident enterprise.

Chapter IV

Preferential Tax Policies

Article 25 The State implements preferential tax policies with respect to the industries and projects which have the major support of, and the development of which is encouraged by, the State.

Article 26 The following income of an enterprise shall be income exempted from tax:

- (1) income from interest on government bonds;
- (2) income from equity investment, such as dividends and bonuses, between qualified resident enterprises;
- (3) income from equity investment, such as dividends and bonuses, which is received from a resident enterprise by

a non-resident enterprise that has institutions or establishments in China, and which is actually relevant to the said institutions or establishments; and

(4) income of a qualified non-profit organization.

Article 27 Tax on the following income of an enterprise may be exempted or reduced:

(1) income earned from projects of farming, forestry, animal husbandry, and fisheries;

(2) income from investment in and operation of infrastructure projects which have the major support of the State;

(3) income earned from qualified projects of environmental protection or energy and water conservation;

(4) income from qualified technology transfer; and

(5) income as specified in the third paragraph of Article 3 of this Law.

Article 28 With respect to a qualified small enterprise earning low profits, the tax levied on its income shall be reduced at a rate of 20 percent.

With respect to a high and new technology enterprise that needs key support by the State, the tax levied on its income shall be reduced at a rate of 15 per cent.

Article 29 The autonomous authority of a national autonomous region may decide to reduce or exempt tax on the part of the enterprise income tax payable by an enterprise located at the said region, which is to be shared by the local authority of the region. Tax reduction or exemption decided on by an autonomous prefecture or county shall be subject to approval by the people's government of a province, autonomous region or municipality directly under the Central Government.

Article 30 Weighted deduction may be made for the following expenses when the amount of taxable income of an enterprise is calculated:

(1) expenses on research and development incurred for developing new technologies, products or techniques; and

(2) wages paid for job placement of the disabled and of other persons so encouraged by the State.

Article 31 An investment venture that invests in pioneering undertakings, which the State deems it necessary to give major support and encouragement may offset the amount of its income taxable at a certain ratio to the amount of its investment.

Article 32 Where accelerated depreciation of the fixed assets of an enterprise is really necessary due to technology advancement or other reasons, the number of years for their depreciation may be lessened, or accelerated depreciation may be made.

Article 33 The income earned by an enterprise from manufacturing, through comprehensive use of resources, products in conformity with the industrial policies of the State may be deducted when it calculates the amount of its taxable income.

Article 34 The amount of money an enterprise invest in the purchase of special equipment for environmental protection, energy and water conservation, and safe production may offset the amount of tax payable at a certain ratio.

Article 35 The specific preferential tax policies as provided for in this Law shall be formulated by the State Council.

Article 36 To meet the need of national economic and social development or the challenge of unexpected incidents, etc. which exert a major impact on the business activities of enterprises, the State Council may formulate special preferential policies with respect to enterprise income tax and submit them to the Standing Committee of the National People's Congress for the record.

Chapter V

Tax Withheld at Source

Article 37 The tax payable on the income earned by a non-resident enterprise, as specified in the third paragraph of Article 3 of this Law, shall be withheld at source, with the provider of the income serving as the withholding obligor. When making such a payment or when such payment is due, the withholding obligor shall withhold the income tax from such payment.

Article 38 With respect to the tax payable on the income earned by a non-resident enterprise from engineering operations and labor services in China, the taxation authority may designate the provider of money for engineering operation or labor services as the withholding obligor.

Article 39 Where with respect to the income tax that should be withheld in accordance with the provisions in Articles 37 and 38 of this Law, the withholding obligor fails to withhold tax in accordance with law, or can not perform the withholding obligation, the taxpayer shall pay the tax at the place where the income is generated. If the taxpayer fails to do so in accordance with law, the taxation authority may recover payment of the tax from the money to be paid to him for other projects in China by other providers.

Article 40 The withholding obligor shall turn the tax payment withheld in each installment to the Treasury within seven days from the date of withholding, and shall submit a withholding enterprise income tax return to the local taxation authority.

Chapter IV

Adjustment of Special Tax Payment

Article 41 Where a business transaction effected between an enterprise and its affiliate is at variance with the principle of arm's-length transaction but the taxable income or the amount of the income taxable of the enterprise or its affiliate is reduced, the taxation authority shall have the right to make adjustment in a reasonable manner.

The cost incurred by an enterprise and its affiliate in joint development or transfer of intangible assets, or in joint provision or acceptance of labor services shall be shared by them under the principle of independent transaction, when the amount of income taxable is calculated.

Article 42 An enterprise may make suggestions to the taxation authority as to the principle of pricing and the method of calculation for the transactions effected between itself and its affiliate. The taxation authority and the enterprise may, after consultation and confirmation, reach an advance pricing agreement.

Article 43 When an enterprise submits to the taxation authority its annual income tax return, it shall enclose a statement of its annual business transactions effected with its affiliate.

When the taxation authority conducts investigation on affiliated business, the enterprise and its affiliate, and other enterprises related to the investigation shall provide the relevant information in accordance with relevant regulations.

Article 44 Where an enterprise fails to provide the information of its business transactions effected with affiliate, or provides false or incomplete information which does not reflect the truthfully affiliated business transactions, the taxation authority shall have the right to verify and determine the amount of its income taxable in accordance with law.

Article 45 For an enterprises which is controlled by a resident enterprise or by both a resident enterprise and a Chinese resident but which is established in another country (region) where the actual tax burden is obviously lower than the tax rate specified in the first paragraph of Article 4 of this Law, if it does not distribute its profits or distributes the profits at a reduced rate for reasons other than reasonable business needs, the portion of the aforesaid profits that should go to the said resident enterprise shall be included in the income of the current period of the said resident enterprise.

Article 46 The expenses incurred by an enterprise for payment of interest, due to the fact that the ratio of the bond or equity investment it receives from its affiliates is in excess of the prescribed norm, may not be deducted when it calculates the amount of its income taxable.

Article 47 Where an enterprise earns less taxable income or amount of income because it implements plans other than the ones designed to achieve reasonable business objectives, the taxation authority shall have the right to make adjustment in a reasonable way.

Article 48 Where additional tax needs to be levied after a taxation authority makes adjustment to tax payment in accordance with the provisions of this Chapter, the additional tax shall be levied and additional interest shall be collected in accordance with the relevant regulations of the State Council.

Chapter VII

Administration of Tax Levying and Collection

Article 49 Apart from the provisions of this Law, administration of the levying and collection of enterprise income tax shall be exercised in accordance with the provisions of the Law of the People's Republic of China on the Administration of Tax Collection.

Article 50 Unless otherwise provided for by the laws and administrative regulations governing taxation, the place of registration for a resident enterprise is the place where it pays tax; if it registers outside China, the place where the actual administration institution is located shall be the place for it to pay tax.

Where a resident enterprise establishes a business institution that does not have the status of a legal person in China, it shall consolidate the calculation and payment of its income tax.

Article 51 A non-resident enterprise that earns income as specified in the second paragraph of Article 3 of this Law shall pay tax at the place where its institution or establishment is located. A non-resident enterprise that has two or more institutions or establishments in China may, upon examination and approval by the taxation authority, choose a main institution or establishment to pay the consolidated enterprise income tax.

A non-resident enterprise that earns income as specified in the third paragraph of Article 3 of this Law shall pay tax at the place where its withholding obligor is located.

Article 52 An enterprise may not pay consolidated enterprise income tax with another enterprise, unless otherwise prescribed by the State Council.

Article 53 Enterprise income tax shall be calculated on the basis of the tax year, which begins on January 1 and ends on December 31 of a calendar year.

If an enterprise commences business or terminates its business activities during a tax year, so that the actual period of business conducted in the tax year is less than 12 months, the actual period of business operation shall be deemed to be a tax year.

When an enterprise is being liquidated in accordance with law, the period of liquidation shall be deemed to be a tax year.

Article 54 Enterprise income tax shall be prepaid on a monthly or quarterly basis.

For prepayment of tax, an enterprise shall submit an enterprise income tax return for prepayment to the taxation authority within 15 days from the end of a month or quarter.

For consolidated tax payment, an enterprise shall submit an annual enterprise income tax return to the taxation authority within five months from the end of a tax year and settle the tax payable and refundable.

When submitting its enterprise income tax return, an enterprise shall enclose in it a financial statement and other relevant information according to relevant regulations.

Article 55 Where an enterprise terminates its business activities during a tax year, it shall, within 60 days from the date it actually terminates its business operation, settle its enterprise income tax of the current period on a consolidated basis with the taxation authority.

Before going through the procedure for cancellation of registration, an enterprise shall file with the taxation authority the return on the income settled and pay enterprise income tax in accordance with law.

Article 56 Enterprise income tax to be paid in accordance with this Law shall be calculated in terms of Renminbi. Where the income is calculated in a currency other than Renminbi, it shall be converted into Renminbi for tax payment.

Chapter VIII

Supplementary Provisions

Article 57 An enterprise set up upon approval prior to the promulgation of this Law that enjoys the preferential policy of a low tax rate in accordance with the laws and administrative regulations governing taxation of the time may, pursuant to the relevant regulations of the State Council, gradually go over to the tax rate prescribed by this Law within five years after this Law goes into effect; an enterprise that enjoys the preferential policy in the form of regular tax exemption or reduction may, pursuant to the relevant regulations of the State Council, continue enjoying such policy after this Law goes into effect, until the period for such policy expires; however, if it has not enjoyed such policy because it fails to make any profits, the period for such policy shall be calculated from the year this Law goes into effect.

High and new technology enterprises that are set up in a given zone in accordance with law for the purpose of developing economic cooperation and technological exchange with other countries and that are newly set up in an area where special policies adopted for the said zone are implemented, as prescribed by the State Council, -- all of which the State deems it necessary to give major support -- may enjoy transitional preferential taxation policies, and specific measures in this regard shall be formulated by the State Council.

Other enterprises of the encouraged type as much confirmed by the State may be enjoy the preferential policies for tax exemption or reduction in accordance with the relevant regulations of the State Council.

Article 58 Where provisions in the agreements on taxation concluded by the Government of the People's Republic of China with the governments of other countries are different from the ones in this Law, the provisions there shall prevail.

Article 59 The State Council shall, according to this Law, formulate regulations for implementation of this Law.

Article 60 This Law shall go into effect as of January 1, 2008. The Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises, which was adopted at the Forth Session of the Seventh National People's Congress on April 9, 1991, and the Interim Regulations of the People's Republic of China on Enterprise Income Tax, which was promulgated by the State Council on December 13, 1993, shall be repealed simultaneously.

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中央政府门户网站 www.gov.cn 2007年03月19日 来源: 新华社

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中华人民共和国主席令

第 六 十 三 号

《中华人民共和国企业所得税法》已由中华人民共和国第十届全国人民代表大会第五次会议于2007年3月16日通过，现予公布，自2008年1月1日起施行。

中华人民共和国主席 胡锦涛

2007年3月16日

中华人民共和国企业所得税法

(2007年3月16日第十届全国人民代表大会第五次会议通过)

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第一章 总 则

第一条 在中华人民共和国境内，企业和其他取得收入的组织（以下统称企业）为企业所得税的纳税人，依照本法的规定缴纳企业所得税。

个人独资企业、合伙企业不适用本法。

第二条 企业分为居民企业和非居民企业。

本法所称居民企业，是指依法在中国境内成立，或者依照外国(地区)法律成立但实

际管理机构在中国境内的企业。

本法所称非居民企业，是指依照外国（地区）法律成立且实际管理机构不在中国境内，但在中国境内设立机构、场所的，或者在中国境内未设立机构、场所，但有来源于中国境内所得的企业。

第三条 居民企业应当就其来源于中国境内、境外的所得缴纳企业所得税。

非居民企业在中国境内设立机构、场所的，应当就其所设机构、场所取得的来源于中国境内的所得，以及发生在中国境外但与其所设机构、场所有实际联系的所得，缴纳企业所得税。

非居民企业在中国境内未设立机构、场所的，或者虽设立机构、场所但取得的所得与其所设机构、场所没有实际联系的，应当就其来源于中国境内的所得缴纳企业所得税。

第四条 企业所得税的税率为25%。

非居民企业取得本法第三条第三款规定的所得，适用税率为20%。

第二章 应纳税所得额

第五条 企业每一纳税年度的收入总额，减除不征税收入、免税收入、各项扣除以及允许弥补的以前年度亏损后的余额，为应纳税所得额。

第六条 企业以货币形式和非货币形式从各种来源取得的收入，为收入总额。包括：

- （一）销售货物收入；
- （二）提供劳务收入；
- （三）转让财产收入；
- （四）股息、红利等权益性投资收益；
- （五）利息收入；
- （六）租金收入；
- （七）特许权使用费收入；
- （八）接受捐赠收入；
- （九）其他收入。

第七条 收入总额中的下列收入为不征税收入：

- （一）财政拨款；
- （二）依法收取并纳入财政管理的行政事业性收费、政府性基金；
- （三）国务院规定的其他不征税收入。

第八条 企业实际发生的与取得收入有关的、合理的支出，包括成本、费用、税金、损失和其他支出，准予在计算应纳税所得额时扣除。

第九条 企业发生的公益性捐赠支出，在年度利润总额12%以内的部分，准予在计算应纳税所得额时扣除。

第十条 在计算应纳税所得额时，下列支出不得扣除：

- （一）向投资者支付的股息、红利等权益性投资收益款项；
- （二）企业所得税税款；

- （三）税收滞纳金；
- （四）罚金、罚款和被没收财物的损失；
- （五）本法第九条规定以外的捐赠支出；
- （六）赞助支出；
- （七）未经核定的准备金支出；
- （八）与取得收入无关的其他支出。

第十一条 在计算应纳税所得额时，企业按照规定计算的固定资产折旧，准予扣除。

下列固定资产不得计算折旧扣除：

- （一）房屋、建筑物以外未投入使用的固定资产；
- （二）以经营租赁方式租入的固定资产；
- （三）以融资租赁方式租出的固定资产；
- （四）已足额提取折旧仍继续使用的固定资产；
- （五）与经营活动无关的固定资产；
- （六）单独估价作为固定资产入账的土地；
- （七）其他不得计算折旧扣除的固定资产。

第十二条 在计算应纳税所得额时，企业按照规定计算的无形资产摊销费用，准予扣除。

下列无形资产不得计算摊销费用扣除：

- （一）自行开发的支出已在计算应纳税所得额时扣除的无形资产；
- （二）自创商誉；
- （三）与经营活动无关的无形资产；
- （四）其他不得计算摊销费用扣除的无形资产。

第十三条 在计算应纳税所得额时，企业发生的下列支出作为长期待摊费用，按照规定摊销的，准予扣除：

- （一）已足额提取折旧的固定资产的改建支出；
- （二）租入固定资产的改建支出；
- （三）固定资产的大修理支出；
- （四）其他应当作为长期待摊费用的支出。

第十四条 企业对外投资期间，投资资产的成本在计算应纳税所得额时不得扣除。

第十五条 企业使用或者销售存货，按照规定计算的存货成本，准予在计算应纳税所得额时扣除。

第十六条 企业转让资产，该项资产的净值，准予在计算应纳税所得额时扣除。

第十七条 企业在汇总计算缴纳企业所得税时，其境外营业机构的亏损不得抵减境内营业机构的盈利。

第十八条 企业纳税年度发生的亏损，准予向以后年度结转，用以后年度的所得弥补，但结转年限最长不得超过五年。

第十九条 非居民企业取得本法第三条第三款规定的所得，按照下列方法计算其应纳税所得额：

- （一）股息、红利等权益性投资收益和利息、租金、特许权使用费所得，以收入全

额为应纳税所得额；

（二）转让财产所得，以收入全额减除财产净值后的余额为应纳税所得额；

（三）其他所得，参照前两项规定的方法计算应纳税所得额。

第二十条 本章规定的收入、扣除的具体范围、标准和资产的税务处理的具体办法，由国务院财政、税务主管部门规定。

第二十一条 在计算应纳税所得额时，企业财务、会计处理办法与税收法律、行政法规的规定不一致的，应当依照税收法律、行政法规的规定计算。

第三章 应纳税额

第二十二条 企业的应纳税所得额乘以适用税率，减除依照本法关于税收优惠的规定减免和抵免的税额后的余额，为应纳税额。

第二十三条 企业取得的下列所得已在境外缴纳的所得税税额，可以从其当期应纳税额中抵免，抵免限额为该项所得依照本法规定计算的应纳税额；超过抵免限额的部分，可以在以后五个年度内，用每年度抵免限额抵免当年应抵税额后的余额进行抵补：

（一）居民企业来源于中国境外的应税所得；

（二）非居民企业在中国境内设立机构、场所，取得发生在中国境外但与该机构、场所有实际联系的应税所得。

第二十四条 居民企业从其直接或者间接控制的外国企业分得的来源于中国境外的股息、红利等权益性投资收益，外国企业在境外实际缴纳的所得税税额中属于该项所得负担的部分，可以作为该居民企业的可抵免境外所得税税额，在本法第二十三条规定的抵免限额内抵免。

第四章 税收优惠

第二十五条 国家对重点扶持和鼓励发展的产业和项目，给予企业所得税优惠。

第二十六条 企业的下列收入为免税收入：

（一）国债利息收入；

（二）符合条件的居民企业之间的股息、红利等权益性投资收益；

（三）在中国境内设立机构、场所的非居民企业从居民企业取得与该机构、场所有实际联系的股息、红利等权益性投资收益；

（四）符合条件的非营利组织的收入。

第二十七条 企业的下列所得，可以免征、减征企业所得税：

（一）从事农、林、牧、渔业项目的所得；

（二）从事国家重点扶持的公共基础设施项目投资经营的所得；

（三）从事符合条件的环境保护、节能节水项目的所得；

（四）符合条件的技术转让所得；

（五）本法第三条第三款规定的所得。

第二十八条 符合条件的小型微利企业，减按20%的税率征收企业所得税。

国家需要重点扶持的高新技术企业，减按15%的税率征收企业所得税。

第二十九条 民族自治地方的自治机关对本民族自治地方的企业应缴纳的企业所得

税中属于地方分享的部分，可以决定减征或者免征。自治州、自治县决定减征或者免征的，须报省、自治区、直辖市人民政府批准。

第三十条 企业的下列支出，可以在计算应纳税所得额时加计扣除：

- （一）开发新技术、新产品、新工艺发生的研究开发费用；
- （二）安置残疾人员及国家鼓励安置的其他就业人员所支付的工资。

第三十一条 创业投资企业从事国家需要重点扶持和鼓励的创业投资，可以按投资额的一定比例抵扣应纳税所得额。

第三十二条 企业的固定资产由于技术进步等原因，确需加速折旧的，可以缩短折旧年限或者采取加速折旧的方法。

第三十三条 企业综合利用资源，生产符合国家产业政策规定的产品所取得的收入，可以在计算应纳税所得额时减计收入。

第三十四条 企业购置用于环境保护、节能节水、安全生产等专用设备的投资额，可以按一定比例实行税额抵免。

第三十五条 本法规定的税收优惠的具体办法，由国务院规定。

第三十六条 根据国民经济和社会发展的需要，或者由于突发事件等原因对企业经营活动产生重大影响的，国务院可以制定企业所得税专项优惠政策，报全国人民代表大会常务委员会备案。

第五章 源泉扣缴

第三十七条 对非居民企业取得本法第三条第三款规定的所得应缴纳的所得税，实行源泉扣缴，以支付人为扣缴义务人。税款由扣缴义务人在每次支付或者到期应支付时，从支付或者到期应支付的款项中扣缴。

第三十八条 对非居民企业在中国境内取得工程作业和劳务所得应缴纳的所得税，税务机关可以指定工程价款或者劳务费的支付人为扣缴义务人。

第三十九条 依照本法第三十七条、第三十八条规定应当扣缴的所得税，扣缴义务人未依法扣缴或者无法履行扣缴义务的，由纳税人在所得发生地缴纳。纳税人未依法缴纳的，税务机关可以从该纳税人在中国境内其他收入项目的支付人应付的款项中，追缴该纳税人的应纳税款。

第四十条 扣缴义务人每次代扣的税款，应当自代扣之日起七日内缴入国库，并向所在地的税务机关报送扣缴企业所得税报告表。

第六章 特别纳税调整

第四十一条 企业与其关联方之间的业务往来，不符合独立交易原则而减少企业或者其关联方应纳税收入或者所得额的，税务机关有权按照合理方法调整。

企业与其关联方共同开发、受让无形资产，或者共同提供、接受劳务发生的成本，在计算应纳税所得额时应当按照独立交易原则进行分摊。

第四十二条 企业可以向税务机关提出与其关联方之间业务往来的定价原则和计算方法，税务机关与企业协商、确认后，达成预约定价安排。

第四十三条 企业向税务机关报送年度企业所得税纳税申报表时，应当就其与关联

方之间的业务往来，附送年度关联业务往来报告表。

税务机关在进行关联业务调查时，企业及其关联方，以及与关联业务调查有关的其他企业，应当按照规定提供相关资料。

第四十四条 企业不提供与其关联方之间业务往来资料，或者提供虚假、不完整资料，未能真实反映其关联业务往来情况的，税务机关有权依法核定其应纳税所得额。

第四十五条 由居民企业，或者由居民企业和中国居民控制的设立在实际税负明显低于本法第四条第一款规定税率水平的国家（地区）的企业，并非由于合理的经营需要而对利润不作分配或者减少分配的，上述利润中应归属于该居民企业的部分，应当计入该居民企业的当期收入。

第四十六条 企业从其关联方接受的债权性投资与权益性投资的比例超过规定标准而发生的利息支出，不得在计算应纳税所得额时扣除。

第四十七条 企业实施其他不具有合理商业目的的安排而减少其应纳税收入或者所得额的，税务机关有权按照合理方法调整。

第四十八条 税务机关依照本章规定作出纳税调整，需要补征税款的，应当补征税款，并按照国务院规定加收利息。

第七章 征收管理

第四十九条 企业所得税的征收管理除本法规定外，依照《中华人民共和国税收征收管理法》的规定执行。

第五十条 除税收法律、行政法规另有规定外，居民企业以企业登记注册地为纳税地点；但登记注册地在境外的，以实际管理机构所在地为纳税地点。

居民企业在中国境内设立不具有法人资格的营业机构的，应当汇总计算并缴纳企业所得税。

第五十一条 非居民企业取得本法第三条第二款规定的所得，以机构、场所所在地为纳税地点。非居民企业在中国境内设立两个或者两个以上机构、场所的，经税务机关审核批准，可以选择由其主机构、场所汇总缴纳企业所得税。

非居民企业取得本法第三条第三款规定的所得，以扣缴义务人所在地为纳税地点。

第五十二条 除国务院另有规定外，企业之间不得合并缴纳企业所得税。

第五十三条 企业所得税按纳税年度计算。纳税年度自公历1月1日起至12月31日止。

企业在一个纳税年度中间开业，或者终止经营活动，使该纳税年度的实际经营期不足十二个月的，应当以其实际经营期为一个纳税年度。

企业依法清算时，应当以清算期间作为一个纳税年度。

第五十四条 企业所得税分月或者分季预缴。

企业应当自月份或者季度终了之日起十五日内，向税务机关报送预缴企业所得税纳税申报表，预缴税款。

企业应当自年度终了之日起五个月内，向税务机关报送年度企业所得税纳税申报表，并汇算清缴，结清应缴应退税款。

企业在报送企业所得税纳税申报表时，应当按照规定附送财务会计报告和其他有关

资料。

第五十五条 企业在年度中间终止经营活动的，应当自实际经营终止之日起六十日内，向税务机关办理当期企业所得税汇算清缴。

企业应当在办理注销登记前，就其清算所得向税务机关申报并依法缴纳企业所得税。

第五十六条 依照本法缴纳的企业所得税，以人民币计算。所得以人民币以外的货币计算的，应当折合成人民币计算并缴纳税款。

第八章 附 则

第五十七条 本法公布前已经批准设立的企业，依照当时的税收法律、行政法规规定，享受低税率优惠的，按照国务院规定，可以在本法施行后五年内，逐步过渡到本法规定的税率；享受定期减免税优惠的，按照国务院规定，可以在本法施行后继续享受到期满为止，但因未获利而尚未享受优惠的，优惠期限从本法施行年度起计算。

法律设置的发展对外经济合作和技术交流的特定地区内，以及国务院已规定执行上述地区特殊政策的地区内新设立的国家需要重点扶持的高新技术企业，可以享受过渡性税收优惠，具体办法由国务院规定。

国家已确定的其他鼓励类企业，可以按照国务院规定享受减免税优惠。

第五十八条 中华人民共和国政府同外国政府订立的有关税收的协定与本法有不同规定的，依照协定的规定办理。

第五十九条 国务院根据本法制定实施条例。

第六十条 本法自2008年1月1日起施行。1991年4月9日第七届全国人民代表大会第四次会议通过的《中华人民共和国外商投资企业和外国企业所得税法》和1993年12月13日国务院发布的《中华人民共和国企业所得税暂行条例》同时废止。

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Notice of the State Council on the Implementation of the Transitional Preferential Policies in respect of Enterprise Income Tax
(No. 39 [2007] of the State Council)

The people's governments of all provinces, autonomous regions, municipalities directly under the Central Government, all ministries and commissions of the State Council, all institutions directly under the State Council,

The Enterprise Income Tax Law of the People's Republic of China (hereinafter referred to as the EITL) and the Regulation on the Implementation of the Enterprise Income Tax Law of the People's Republic of China (hereinafter referred to as the RIEITL) shall come into force as of January 1, 2008. In accordance with Article 57 of the EITL, you are hereby notified of the following issues concerning the preferential policies in respect of enterprise income tax:

1 The measures for the transition of preferential tax treatments to enterprises established prior to the promulgation of the EITL

Enterprises enjoying the preferential policies in respect of enterprise income tax under the former tax law, administrative regulations and documents with the effects of administrative regulations shall be subject to a transition under the following measures:

As of January 1, 2008, enterprises that previously enjoy the preferential policies of low tax rates shall be gradually transitioned to enjoy the statutory tax rate within 5 years after the implementation of the EITL. Among them, the enterprises that enjoy the enterprise income tax rate of 15% shall be subject to the enterprise income tax rate of 18% in 2008, 20% in 2009, 22% in 2010, 24% in 2011 and 25% in 2012. The enterprises that previously enjoy the tax rate of 24% shall be subject to the tax rate of 25% as of 2008.

As of January 1, 2008, the enterprises that previously enjoy "2-year exemption and 3-year half payment", "5-year exemption and 5-year half payment" of the enterprise income tax and other preferential treatments in the form of periodic tax deductions and exemptions may, after the implementation of the EITL, continue to enjoy the relevant preferential treatments under the preferential measures and the time period prescribed in the former tax law, administrative regulations and relevant documents until the expiration of the said time period. However, if such an enterprise has not enjoyed the preferential treatments yet because of its failure to make profits, its preferential time period shall be calculated from 2008.

The expression "enterprises enjoying the preferential policies" as mentioned above refers to the enterprises established and registered in the industrial and commercial administrative department and in other registration administrative departments prior to March 16, 2007. The items and scope of the transitional preferential policies shall conform to the Table for the Implementation of Transitional Preferential Policy on

Enterprise Income Tax (see Attached Table).

II Continuously implementing the preferential tax policies for the Western Development Program

In accordance with the relevant documents of the State Council on carrying out the Western Development Program, the preferential policies for Western Development Program in respect of enterprise income tax as provided in the Notice of the Ministry of Finance, State Administration of Taxation and General Administration of Customs on the Preferential Policies for Western Development Program in respect of Enterprise Income Tax (No. 202 [2001] of the Ministry of Finance) jointly promulgated by the Ministry of Finance, State Administration of Taxation and General Administration of Customs shall be implemented continuously.

III Other provisions on the implementation of transitional preferential policies in respect of enterprise income tax

An enterprise enjoying the transitional preferential policies in respect of enterprise income tax shall compute the taxable income amount under the provisions of the EITL and the RIEITL regarding the incomes and deductions and shall calculate and enjoy the preferential tax treatments under section 1 of this Notice.

In case that there is any overlap between the transitional preferential policies in respect of enterprise income tax and those as provided in the EITL and the RIEITL, an enterprise may choose the most preferential policies. It shall not enjoy such policies repeatedly, and once it makes a choice, it shall not change it.

Attached Table: Table for the Implementation of Transitional Preferential Policies on Enterprise Income Tax

State Council
December 26, 2007

Table for the Implementation of Transitional Preferential Policy on Enterprise Income Tax

| Sequential Order | Document Name | Contents of Relevant Policies |
|------------------|---|--|
| 1 | Article 7 (1) of the Law of the People's Republic of China on the | Foreign-funded enterprises established in special economic zones, foreign enterprises that established institutions and bases in |

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| | Income Tax for Foreign-funded Enterprises and Foreign Enterprises#/a# | special economic zones to engage in production and operation and productive foreign-funded enterprises established in economic and technological development zones shall be subject to the enterprise income tax at the reduced rate of 15%. |
| 2 | Article 7 (3) of the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises | The foreign-funded enterprises established in open coastal economic areas or in the old areas of the cities where the special economic zones or the economic and technological development zones are located, or established in other areas as prescribed by the State Council may be subject to the enterprise income tax at the reduced rate of 15% if they are engaged in the energy, traffic, port and dock projects or other projects encouraged by the state. |
| 3 | Article 73 (1) (a) of the Detailed Rules for the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises | The productive foreign-funded enterprises established in the open coastal economic areas, or in the old areas of the cities where the special economic zones or economic and technological development zones are located and engaged in such projects as technology intensive and knowledge intensive projects, projects with more than 30 million US dollars of foreign investment and a long period for recovery of the investment and projects of energy, |

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| | | traffic and port construction may be subject to the enterprise income tax at the reduced rate of 15%. |
| 4 | Article 73 (1) (b) of the Detailed Rules for the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises | The Sino-foreign equity joint enterprises engaged in port and dock construction may be subject to the enterprise income tax at the reduced rate of 15%. |
| 5 | Article 73 (1) (d) of the Detailed Rules for the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises | Productive foreign-funded enterprises established in Pudong New District of Shanghai, and foreign-funded enterprises engaged in energy and traffic construction projects such as airport, port, railway, highway and power station may be subject to the enterprise income tax at the reduced rate of 15%. |
| 6 | Replies of the State Council on Shanghai Waigaoqiao, Tianjin Port, Shenzhen Futian, Shenzhen Shaotoujiao, Dalian, Guangzhou, Xiamen Xiangyu, Zhangjiagang, Haikou, Qingdao, Ningbo, Fuzhou, Shantou, Zhuhai and Shenzhen Yantian Bonded Areas (Letter No.26 [1991] of the State Council, Letter No. 32 [1991] of the State Council, Letter No.43 [1992] of the State Council, Letter No.44 [1992] of the State Council, Letter No.148 [1992] of the State Council, Letter No.150 [1992] of the State Council, Letter No.159 [1992] of the State Council, | Productive foreign-funded enterprises shall be subject to the enterprise income tax at the reduced rate of 15%. |

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| | Letter No.179 [1992] of the State Council, Letter No.180 [1992] of the State Council, Letter No.181 [1992] of the State Council, and Letter No.3 [1993] of the State Council) | |
| 7 | Reply of the State Council on the Establishment of Taiwan Businessmen Investment Areas in the Coastal Areas of Fujian Province (Letter No. 35 [1989] of the State Council. | The enterprises invested and established by Taiwan businessmen in Xiamen Taiwan Businessmen Investment Area shall be subject to the enterprise income tax at the reduced rate of 15%. The productive enterprises invested and established in Fuzhou Taiwan Businessmen Investment Area shall be subject to the enterprise income tax at the reduced rate of 15% and non-productive Taiwan-funded enterprises shall be subject to the enterprise income tax at the reduced rate of 24%. |
| 8 | Notices of the State Council on Further Opening Nanning, Chongqing, Huangshi, Yangtze Three Gorges Economic Development Zone, Beijing and other cities (Letter No. 62 [1992] of the State Council, Letter No. 93 [1992] of the State Council, Letter No. 19 [1993] of the State Council, Letter No. 92 [1994] of the State Council, Letter No. 16 [1995] of the State Council) | The productive foreign-funded enterprises established in capital cities and open riparian cities and engaged in the following projects shall be subject to the enterprise income tax at the reduced rate of 15%: the technology intensive and knowledge intensive projects; projects with more than 30 million US dollars of foreign investment and a long period for recovery of the investment; and projects of energy, traffic and port construction. |

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| 9 | Reply of the State Council on the Development and Construction of Suzhou Industrial Park (Letter No. 9 [1994] of the State Council) | The productive foreign-funded enterprises established in Suzhou Industrial Park shall be subject to the enterprise income tax at the reduced rate of 15%. |
| 10 | Notice of the State Council on Expanding the Scope of Application of the Preferential Tax Provision to Foreign-funded Enterprises Engaged in Infrastructure Projects of Energy and Traffic (No. 13 [1999] of the State Council) | As of January 1, 1999, the provision in Article 73 (1) (a) (i) of the Detailed Rules for the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises, which productive foreign-funded enterprises engaged in infrastructure construction of energy and traffic shall be subject to the enterprise income tax at the reduced rate of 15%, shall be applicable throughout the country. |
| 11 | Regulation on Special Economic Zones of Guangdong Province (Adopted at the 15th Session of the Standing Committee of the Fifth National People's Congress on August 26, 1980) | The enterprise income tax rate for Shenzhen, Zhuhai and Shantou Special Economic Zones of Guangdong Province shall be 15%. |
| 12 | Reply to Fujian Province on the Construction of Xiamen Special Economic Zone (Letter No. 88 [80] of the State Council) | The enterprise income tax rate for Xiamen Special Economic Zone shall be 15%. |
| 13 | Provisions of the State Council on Encouraging Investments to the Development of Hainan Island (No. 26 [1988] of the State Council) | All incomes from production and operation by enterprises (except for state banks and insurance companies) established in Hainan Island shall be subject to the |

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| | | enterprise income tax at the rate of 15%. |
| 14 | Article 7 (2) of the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises | The foreign-funded enterprises established in open coastal economic areas, or in the old areas of the cities where the special economic zones or the economic and technological development zones are located shall be subject to the enterprise income tax at the reduced rate of 24%. |
| 15 | Notice of the State Council on the Pilot Project for National Tourist Vacation Areas (No. 46 [1992] of the State Council) | The foreign-funded enterprises in the national tourist vacation areas shall be subject to the enterprise income tax at the reduced rate of 24%. |
| 16 | Notices of the State Council on further opening border cities of Heihe, Yining, Pingxiang, Erlianhot (Letter No. 21 [1992] of the State Council, Letter No. 61 [1992] of the State Council, Letter No. 62[1992] of the State Council, Letter No. 94 [1992] of the State Council) | The productive foreign-funded enterprises in open border cities shall be subject to the enterprise income tax at the reduced tax rate of 24% |
| 17 | Notice of the State Council on Further Opening Nanning, Kunming, Pingxiang and Other Two Border Cities and Towns (Letter No. 62 [1992] of the State Council) | Pingxiang, Dongxing, Wanting, Ruili and Hekou (5 cities, counties or towns) are allowed to establish border economic cooperation zones in qualified cities (counties and towns) and the productive inland associated enterprises established in the border economic cooperation zones and mainly engaged in export |

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| | | shall be subject to the reduced tax rate of 24%. |
| 18 | Notices of the State Council on further opening Nanning, Chongqing, Huangshi and Yangtze Three Gorges Open Economic Zones, Beijing and other cities (Letter No. 62[1992] of the State Council, Letter No. 93 [1992] of the State Council, Letter No. 19 [1993], No. 92 [1994] of the State Council, Letter No. 16 [1995] of the State Council) | The productive foreign-funded enterprises in capital cities and open riparian cities shall be subject to the enterprise income tax at the reduced tax rate of 24%. |
| 19 | Article 8 (1) of the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises | A productive foreign-funded enterprise with the operation period of 10 years or longer shall, as of the year when it begins to make profits, be exempted from the enterprise income tax for the first two years and be subject to the half-reduced enterprise income tax from the third to the fifth year. |
| 20 | Article 75 (1) (a) of the Detailed Rules for the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises | A Sino-foreign equity joint venture engaged in the port and dock construction and with the operation period of 15 years or longer may, upon approval of its application by the tax organ of the province, autonomous region or municipality directly under the Central Government where it is located, enjoy exemption from the enterprise income tax from the first profit-making year to the fifth year, |

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| | | and reduction in enterprise income tax by half from the sixth to the tenth year. |
| 21 | Article 75 (1) (b) of the Detailed Rules for the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises | A foreign-funded enterprise established in Hainan Special Economic Zone and engaged in the construction of such infrastructure projects as airport, port, dock, railway, highway, power station, coal mine, water conservancy, etc., or in the development and operation of agriculture, and with the operation period of 15 years or longer may, upon approval of its application by Hainan provincial tax organ, enjoy exemption from the enterprise income tax starting from the first profit-making year to the fifth year, and reduction in enterprise income tax by half from the sixth to the tenth year. |
| 22 | Article 75 (1) (c) of the Detailed Rules for the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises | A foreign-funded enterprise established in Shanghai Pudong New Area and engaged in the construction of such energy and transportation projects as airport, port, railway, highway and power station, etc. and with the operation period of 15 years or longer may, upon approval of its application by Shanghai municipal tax organ, enjoy exemption from enterprise income tax starting from the first profit-making year to the fifth year, and reduction in enterprise income |

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| | | tax by half from the sixth to the tenth year. |
| 23 | Article 75 (1) (d) of the Detailed Rules for the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises | A foreign-funded enterprise established in a special economic zone, engaged in the service industry, with a foreign investment of US \$ 5 million or more and with the operation period of 10 years or longer may, upon approval of its application by tax organ in the special economic zone, enjoy exemption from enterprise income tax for the first profit-making year, and reduction in enterprise income tax by half for the second and third years. |
| 24 | Article 75 (1) (f) of the Detailed Rules for the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises | A foreign-funded enterprise recognized as a high-tech enterprise and established in a high-tech industrial development zone approved by the State Council and with the operation period of 10 years or longer may, upon approval of its application by the local tax organ, enjoy exemption from the enterprise income tax for the first two profit-making years. |
| 25 | Article 75 (1) (f) of the Detailed Rules for the Law of the People's Republic of China on the Income Tax for Foreign-funded Enterprises and Foreign Enterprises Reply of the State Council about the | A foreign-funded enterprise established in Beijing Pilot Zone for the Development of New Technology Industry shall be subject to the preferential tax provisions treatments regarding Beijing Pilot Zone for the Development of New |

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| | Interim Regulation on Beijing Pilot Zone for the Development of New Technology Industry (Letter No. 74 [1988] of the State Council) | Technology Industry. It shall, as of its date of establishment, be exempted from the income tax within 3 years. Upon approval of the department designated by Beijing Municipal Government, it may, on the basis of the tax rate of 15% or 10%, enjoy the reduction of the income tax by half. |
| 26 | Article 8 (1) of the Interim Regulation of the Peoples' Republic of China on Enterprise Income Tax | For an enterprise in an ethnic autonomous region requiring special incentives and encouragement and enjoying tax reductions or exemptions for a specified period upon approval of the provincial people's government, the period for the implementation of the transitional preferential tax policy shall not exceed 5 years. |
| 27 | Provisions of the State Council on Encouraging Investments to the Development of Hainan Island (No. 26 [1988] of the State Council) | An enterprise (except for a state bank or insurance company) established in Hainan Island and engaged in the construction of such infrastructure projects as port, dock, airport, highway, railway, power station, coal mine, water conservancy, etc., or in the development and operation of agriculture and with the operation period of 15 years or longer may enjoy exemption from the enterprise income tax starting from its first five profit-making years, and reduction in enterprise income tax by half |

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| | | from the sixth to the tenth year. |
| 28 | | An enterprise (except for a state bank or insurance company) established in Hainan Island and engaged in industry or transport industry and with the operation period of 10 years or longer may enjoy exemption from the enterprise income tax for its first and second profit-making years and enjoy reduction of the income tax by half from the third to fifth year. |
| 29 | | An enterprise (except for a state bank or insurance company) established in Hainan Island, engaged in the service industry, with the total investment in excess of USD 5 million or 20 million yuan and with the operation period of 10 years or longer may be exempted from the income tax for its first profit-making year and enjoy reduction of the income tax by half for the second and third years. |
| 30 | Notice of the State Council on Implementing the Several Supporting Policies concerning National Outlines for Medium and Long-term Planning for Scientific and Technological Development (2006-2020) (No. 6 [2006] of the State Council) | A high-tech enterprise newly established in a national high-tech industry development area may, upon strict recognition, be exempted from the income tax for its first two profit-making years. |

国务院

关于实施企业所得税过渡优惠政策的通知

国发〔2007〕39号

字体：【大】【中】【小】

各省、自治区、直辖市人民政府，国务院各部委、各直属机构：

《中华人民共和国企业所得税法》（以下简称新税法）和《中华人民共和国企业所得税法实施条例》（以下简称实施条例）将于2008年1月1日起施行。根据新税法第五十七条规定，现对企业所得税优惠政策过渡问题通知如下：

一、新税法公布前批准设立的企业税收优惠过渡办法

企业按照原税收法律、行政法规和具有行政效力文件规定享受的企业所得税优惠政策，按以下办法实施过渡：

自2008年1月1日起，原享受低税率优惠政策的企业，在新税法施行后5年内逐步过渡到法定税率。其中：享受企业所得税15%税率的企业，2008年按18%税率执行，2009年按20%税率执行，2010年按22%税率执行，2011年按24%税率执行，2012年按25%税率执行；原执行24%税率的企业，2008年起按25%税率执行。

自2008年1月1日起，原享受企业所得税“两免三减半”、“五免五减半”等定期减免税优惠的企业，新税法施行后继续按原税收法律、行政法规及相关文件规定的优惠办法及年限享受至期满为止，但因未获利而尚未享受税收优惠的，其优惠期限从2008年度起计算。

享受上述过渡优惠政策的企业，是指2007年3月16日以前经工商等登记管理机关登记设立的企业；实施过渡优惠政策的项目和范围按《实施企业所得税过渡优惠政策表》（见附表）执行。

二、继续执行西部大开发税收优惠政策

根据国务院实施西部大开发有关文件精神，财政部、税务总局和海关总署联合下发的《财政部、国家税务总局、海关总署关于西部大开发税收优惠政策问题的通知》（财税〔2001〕202号）中规定的西部大开发企业所得税优惠政策继续执行。

三、实施企业所得税过渡优惠政策的其他规定

享受企业所得税过渡优惠政策的企业，应按照新税法和实施条例中有关收入和扣除的规定计算应纳税所得额，并按本通知第一部分规定计算享受税收优惠。

企业所得税过渡优惠政策与新税法及实施条例规定的优惠政策存在交叉的，由企业选择最优惠的政策执行，不得叠加享受，且一经选择，不得改变。

附表：实施企业所得税过渡优惠政策表

国务院
二〇〇七年十二月二十六日

附表：实施企业所得税过渡优惠政策表

| 序号 | 文 件 名 称 | 相关政策内容 |
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| 1 | 《中华人民共和国外商投资企业和外国企业所得税法》第七条第一款 | 设在经济特区的外商投资企业、在经济特区设立机构、场所从事生产、经营的外国企业和设在经济技术开发区的生产性外商投资企业，减按15%的税率征收企业所得税。 |
| 2 | 《中华人民共和国外商投资企业和外国企业所得税法》第七条第三款 | 设在沿海经济开放区和经济特区、经济技术开发区所在城市的老市区或者设在国务院规定的其他地区的外商投资企业，属于能源、交通、港口、码头或者国家鼓励的其他项目的，可以减按15%的税率征收企业所得税。 |
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| 3 | 《中华人民共和国外商投资企业和外国企业所得税法实施细则》第七十三条第一款第一项 | 在沿海经济开放区和经济特区、经济技术开发区所在城市的老市区设立的从事下列项目的生产性外资企业，可以减按15%的税率征收企业所得税：技术密集、知识密集型的项目；外商投资在3000万美元以上，回收投资时间长的项目；能源、交通、港口建设的项目。 |
| 4 | 《中华人民共和国外商投资企业和外国企业所得税法实施细则》第七十三条第一款第二项 | 从事港口、码头建设的中外合资经营企业，可以减按15%的税率征收企业所得税。 |
| 5 | 《中华人民共和国外商投资企业和外国企业所得税法实施细则》第七十三条第一款第四项 | 在上海浦东新区设立的生产性外商投资企业，以及从事机场、港口、铁路、公路、电站等能源、交通建设项目的投资外商投资企业，可以减按15%的税率征收企业所得税。 |
| 6 | 国务院关于上海外高桥、天津港、深圳福田、深圳沙头角、大连、广州、厦门象屿、张家港、海口、青岛、宁波、福州、汕头、珠海、深圳盐田保税区的批复（国函〔1991〕26号、国函〔1991〕32号、国函〔1992〕43号、国函〔1992〕44号、国函〔1992〕148号、国函〔1992〕150号、国函〔1992〕159号、国函〔1992〕179号、国函〔1992〕180号、国函〔1992〕181号、国函〔1993〕3号等） | 生产性外商投资企业，减按15%的税率征收企业所得税。 |
| 7 | 《国务院关于在福建省沿海地区设立台商投资区的批复》（国函〔1989〕35号） | 厦门台商投资区内设立的台商投资企业，减按15%税率征收企业所得税；福州台商投资区内设立的生产性台商投资企业，减按15%税率征收企业所得税，非生产性台资企业，减按24%税率征收企业所得税。 |
| 8 | 国务院关于进一步对外开放南宁、重庆、黄石、长江三峡经济开放区、北京等城市的通知（国函〔1992〕62号、国函〔1992〕93号、国函〔1993〕19号、国函〔1994〕92号、国函〔1995〕16号） | 省会（首府）城市及沿江开放城市从事下列项目的生产性外资企业，减按15%的税率征收企业所得税：技术密集、知识密集型的项目；外商投资在3000万美元以上，回收投资时间长的项目；能源、交通、港口建设的项目。 |
| 9 | 《国务院关于开发建设苏州工业园区有关问题的批复》（国函〔1994〕9号） | 在苏州工业园区设立的生产性外商投资企业，减按15%税率征收企业所得税。 |
| 10 | 《国务院关于扩大外商投资企业从事能源交通基础设施项目税收优惠规定适用范围的通知》（国发〔1999〕13号） | 自1999年1月1日起，将外资税法实施细则第七十三条第一款第（一）项第3目关于从事能源、交通基础设施建设的生产性外商投资企业，减按15%征收企业所得税的规定扩大到全国。 |
| 11 | 《广东省经济特区条例》（1980年8月26日第五届全国人民代表大会常务委员会第十五次会议批准施行） | 广东省深圳、珠海、汕头经济特区的企业所得税率为15%。 |
| 12 | 《对福建省关于建设厦门经济特区的批复》（〔80〕国函字88号） | 厦门经济特区所得税率按15%执行。 |
| 13 | 《国务院关于鼓励投资开发海南岛的规定》（国发〔1988〕26号） | 在海南岛举办的企业（国家银行和保险公司除外），从事生产、经营所得税和其他所得，均按15%的税率征收企业所得税。 |
| | | 设在沿海经济开放区和经济特区、经济 |

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| 14 | 《中华人民共和国外商投资企业和外国企业所得税法》第七条第二款 | 技术开发区所在城市的老市区的生产性外商投资企业，减按24%的税率征收企业所得税。 |
| 15 | 《国务院关于试办国家旅游度假区有关问题的通知》（国发〔1992〕46号） | 国家旅游度假区内的外商投资企业，减按24%税率征收企业所得税。 |
| 16 | 国务院关于进一步对外开放黑河、伊宁、凭祥、二连浩特市等边境城市的通知（国函〔1992〕21号、国函〔1992〕61号、国函〔1992〕62号、国函〔1992〕94号） | 沿边开放城市的生产性外商投资企业，减按24%税率征收企业所得税。 |
| 17 | 《国务院关于进一步对外开放南宁、昆明市及凭祥等五个边境城镇的通知（国函〔1992〕62号） | 允许凭祥、东兴、畹町、瑞丽、河口五市（县、镇）在具备条件的市（县、镇）兴办边境经济合作区，对边境经济合作区内以出口为主的生产性内联企业，减按24%的税率征收。 |
| 18 | 国务院关于进一步对外开放南宁、重庆、黄石、长江三峡经济开放区、北京等城市的通知（国函〔1992〕62号、国函〔1992〕93号、国函〔1993〕19号、国函〔1994〕92号、国函〔1995〕16号） | 省会（首府）城市及沿江开放城市的生产性外商投资企业，减按24%税率征收企业所得税。 |
| 19 | 《中华人民共和国外商投资企业和外国企业所得税法》第八条第一款 | 对生产性外商投资企业，经营期在十年以上的，从开始获利的年度起，第一年和第二年免征企业所得税，第三年至第五年减半征收企业所得税。 |
| 20 | 《中华人民共和国外商投资企业和外国企业所得税法实施细则》第七十五条第一款第一项 | 从事港口码头建设的中外合资经营企业，经营期在15年以上的，经企业申请，所在地的省、自治区、直辖市税务机关批准，从开始获利的年度起，第一年至第五年免征企业所得税，第六年至第十年减半征收企业所得税。 |
| 21 | 《中华人民共和国外商投资企业和外国企业所得税法实施细则》第七十五条第一款第二项 | 在海南经济特区设立的从事机场、港口、码头、铁路、公路、电站、煤矿、水利等基础设施项目的外商投资企业和从事农业开发经营的外商投资企业，经营期在15年以上的，经企业申请，海南省税务机关批准，从开始获利的年度起，第一年至第五年免征企业所得税，第六年至第十年减半征收企业所得税。 |
| 22 | 《中华人民共和国外商投资企业和外国企业所得税法实施细则》第七十五条第一款第三项 | 在上海浦东新区设立的从事机场、港口、铁路、公路、电站等能源、交通建设项目的外商投资企业，经营期在15年以上的，经企业申请，上海市税务机关批准，从开始获利的年度起，第一年至第五年免征企业所得税，第六年至第十年减半征收企业所得税。 |
| 23 | 《中华人民共和国外商投资企业和外国企业所得税法实施细则》第七十五条第一款第四项 | 在经济特区设立的从事服务性行业的外商投资企业，外商投资超过500万美元，经营期在十年以上的，经企业申请，经济特区税务机关批准，从开始获利的年度起，第一年免征企业所得税，第二年和第三年减半征收企业所得税。 |
| 24 | 《中华人民共和国外商投资企业和外国企业所得税法实施细则》第七十五条第一款第六项 | 在国务院确定的国家高新技术产业开发区设立的被认定为高新技术企业的中外合资经营企业，经营期在十年以上的，经企业申请，当地税务机关批准，从开 |

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| | | 始获利的年度起，第一年和第二年免征企业所得税。 |
| 25 | 《中华人民共和国外商投资企业和外国企业所得税法实施细则》第七十五条第一款第六项 《国务院关于〈北京市新技术产业开发试验区暂行条例〉的批复》（国函〔1988〕74号） | 设在北京市新技术产业开发试验区的外商投资企业，依照北京市新技术产业开发试验区的税收优惠规定执行。 对试验区的新技术企业自开办之日起，三年内免征所得税。经北京市人民政府指定的部门批准，第四至六年可按15%或10%的税率，减半征收所得税。 |
| 26 | 《中华人民共和国企业所得税暂行条例》第八条第一款 | 需要照顾和鼓励的民族自治地方的企业，经省级人民政府批准实行定期减税或免税的，过渡优惠执行期限不超过5年。 |
| 27 | 《国务院关于鼓励投资开发海南岛的规定》（国发〔1988〕26号） | 在海南岛举办的企业（国家银行和保险公司除外），从事港口、码头、机场、公路、铁路、电站、煤矿、水利等基础设施开发经营的企业和从事农业开发经营的企业，经营期限在十五年以上的，从开始获利的年度起，第一年至第五年免征所得税，第六年至第十年减半征收所得税。 |
| 28 | | 在海南岛举办的企业（国家银行和保险公司除外），从事工业、交通运输业等生产性行业的企业经营期限在十年以上的，从开始获利的年度起，第一年和第二年免征所得税，第三年至第五年减半征收所得税。 |
| 29 | | 在海南岛举办的企业（国家银行和保险公司除外），从事服务性行业的企业，投资总额超过500万美元或者2000万人民币，经营期限在十年以上的，从开始获利的年度起，第一年免征所得税，第二年和第三年减半征收所得税。 |
| 30 | 《国务院关于实施〈国家中长期科学和技术发展规划纲要（2006-2020年）若干配套政策的通知〉》（国发〔2006〕6号） | 国家高新技术产业开发区内新创办的高新技术企业经严格认定后，自获利年度起两年内免征所得税。 |

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

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

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

No. 512

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

Premier Wen Jiabao

December 6, 2007

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

Chapter I General Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 2 Taxable Income

Section 1 General Rules

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

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

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

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

Section 2 Income

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3 Deduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4 Tax Treatment of Assets

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 3 Tax Payable

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

$$\text{Tax payable} = \text{Tax income} * \text{Applicable tax rate} - \text{Reduced/exempted tax} - \text{Tax credit}$$

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

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

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

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

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

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

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

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

Chapter 4 Preferential Tax Treatment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The following income may be exempted from enterprise income tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 5 Withholding at Source

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 6 Special Tax Adjustments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 7 Administration of Collection

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

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

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

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

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

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

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

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

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

stipulated in Article 54 of the Enterprise Income Tax Law.

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

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

Chapter 8 Supplementary Provisions

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

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

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

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中华人民共和国国务院
中华人民共和国企业所得税法实施条例

中华人民共和国国务院令 第512号

字体：【大】【中】【小】

《中华人民共和国企业所得税法实施条例》已经2007年11月28日国务院第197次常务会议通过，现予公布，自2008年1月1日起施行。

总 理 温家宝
二〇〇七年十二月六日

中华人民共和国企业所得税法实施条例

第一章 总 则

第一条 根据《中华人民共和国企业所得税法》（以下简称企业所得税法）的规定，制定本条例。

第二条 企业所得税法第一条所称个人独资企业、合伙企业，是指依照中国法律、行政法规成立的个人独资企业、合伙企业。

第三条 企业所得税法第二条所称依法在中国境内成立的企业，包括依照中国法律、行政法规在中国境内成立的企业、事业单位、社会团体以及其他取得收入的组织。

企业所得税法第二条所称依照外国（地区）法律成立的企业，包括依照外国（地区）法律成立的企业和其他取得收入的组织。

第四条 企业所得税法第二条所称实际管理机构，是指对企业的生产经营、人员、账务、财产等实施实质性全面管理和控制的机构。

第五条 企业所得税法第二条第三款所称机构、场所，是指在中国境内从事生产经营活动的机构、场所，包括：

- （一）管理机构、营业机构、办事机构；
- （二）工厂、农场、开采自然资源的场所；
- （三）提供劳务的场所；
- （四）从事建筑、安装、装配、修理、勘探等工程作业的场所；
- （五）其他从事生产经营活动的机构、场所。

非居民企业委托营业代理人在中国境内从事生产经营活动的，包括委托单位或者个人经常代其签订合同，或者储存、交付货物等，该营业代理人视为非居民企业在中国境内设立的机构、场所。

第六条 企业所得税法第三条所称所得，包括销售货物所得、提供劳务所得、转让财产所得、股息红利等权益性投资所得、利息所得、租金所得、特许权使用费所得、接受捐赠所得和其他所得。

第七条 企业所得税法第三条所称来源于中国境内、境外的所得，按照以下原则确定：

- （一）销售货物所得，按照交易活动发生地确定；
- （二）提供劳务所得，按照劳务发生地确定；
- （三）转让财产所得，不动产转让所得按照不动产所在地确定，动产转让所得按照转让动产的企业或者机构、场所所在地确定，权益性投资资产转让所得按照被投资企业所在地确定；
- （四）股息、红利等权益性投资所得，按照分配所得的企业所在地确定；
- （五）利息所得、租金所得、特许权使用费所得，按照负担、支付所得的企业或者机构、场所所在地确定，或者按照负担、支付所得的个人的住所地确定；
- （六）其他所得，由国务院财政、税务主管部门确定。

第八条 企业所得税法第三条所称实际联系，是指非居民企业在中国境内设立的机构、场所拥有据以取得所得的股权、债权，以及拥有、管理、控制据以取得所得的财产等。

第二章 应纳税所得额

第一节 一般规定

第九条 企业应纳税所得额的计算，以权责发生制为原则，属于当期的收入和费用，不论款项是否收付，均作为当期的收入和费用；不属于当期的收入和费用，即使款项已经在当期收付，均不作为当期的收入和费用。本条例和国务院财政、税务主管部门另有规定的除外。

第十条 企业所得税法第五条所称亏损，是指企业依照企业所得税法和本条例的规定将每一纳税年度的收入总额减除不征税收入、免税收入和各项扣除后小于零的数额。

第十一条 企业所得税法第五十五条所称清算所得，是指企业的全部资产可变现价值或者交易价格减除资产净值、清算费用以及相关税费等后的余额。

投资方企业从被清算企业分得的剩余资产，其中相当于从被清算企业累计未分配利润和累计盈余公积中应当分得的部分，应当确认为股息所得；剩余资产减除上述股息所得后的余额，超过或者低于投资成本的部分，应当确认为投资资产转让所得或者损失。

第二节 收入

第十二条 企业所得税法第六条所称企业取得收入的货币形式，包括现金、存款、应收账款、应收票据、准备持有至到期的债券投资以及债务的豁免等。

企业所得税法第六条所称企业取得收入的非货币形式，包括固定资产、生物资产、无形资产、股权投资、存货、不准备持有至到期的债券投资、劳务以及有关权益等。

第十三条 企业所得税法第六条所称企业以非货币形式取得的收入，应当按照公允价值确定收入额。

前款所称公允价值，是指按照市场价格确定的价值。

第十四条 企业所得税法第六条第（一）项所称销售货物收入，是指企业销售商品、产品、原材料、包装物、低值易耗品以及其他存货取得的收入。

第十五条 企业所得税法第六条第（二）项所称提供劳务收入，是指企业从事建筑安装、修理修配、交通运输、仓储租赁、金融保险、邮电通信、咨询经纪、文化体育、科学研究、技术服务、教育培训、餐饮住宿、中介代理、卫生保健、社区服务、旅游、娱乐、加工以及其他劳务服务活动取得的收入。

第十六条 企业所得税法第六条第（三）项所称转让财产收入，是指企业转让固定资产、生物资产、无形资产、股权、债权等财产取得的收入。

第十七条 企业所得税法第六条第（四）项所称股息、红利等权益性投资收益，是指企业因权益性投资从被投资方取得的收入。

股息、红利等权益性投资收益，除国务院财政、税务主管部门另有规定外，按照被投资方作出利润分配决定的日期确认收入的实现。

第十八条 企业所得税法第六条第（五）项所称利息收入，是指企业将资金提供他人使用但不构成权益性投资，或者因他人占用本企业资金取得的收入，包括存款利息、贷款利息、债券利息、欠款利息等收入。

利息收入，按照合同约定的债务人应付利息的日期确认收入的实现。

第十九条 企业所得税法第六条第（六）项所称租金收入，是指企业提供固定资产、包装物或者其他有形资产的使用权取得的收入。

租金收入，按照合同约定的承租人应付租金的日期确认收入的实现。

第二十条 企业所得税法第六条第（七）项所称特许权使用费收入，是指企业提供专利权、非专利技术、商标权、著作权以及其他特许权的使用权取得的收入。

特许权使用费收入，按照合同约定的特许权使用人应付特许权使用费的日期确认收入的实现。

第二十一条 企业所得税法第六条第（八）项所称接受捐赠收入，是指企业接受的来自其他企业、组织或者个人无偿给予的货币性资产、非货币性资产。

接受捐赠收入，按照实际收到捐赠资产的日期确认收入的实现。

第二十二条 企业所得税法第六条第（九）项所称其他收入，是指企业取得的除企业所得税法第六条第（一）项至第（八）项规定的收入外的其他收入，包括企业资产溢余收入、逾期未退包装物押金收入、确实无法偿付的应付款项、已作坏账损失处理后又收回的应收款项、债务重组收入、补贴收入、违约金收入、汇兑收益等。

第二十三条 企业的下列生产经营业务可以分期确认收入的实现：

（一）以分期收款方式销售货物的，按照合同约定的收款日期确认收入的实现；

（二）企业受托加工制造大型机械设备、船舶、飞机，以及从事建筑、安装、装配工程业务或者提供其他劳务等，持续时间超过12个月的，按照纳税年度内完工进度或者完成的工作量确认收入的实现。

第二十四条 采取产品分成方式取得收入的，按照企业分得产品的日期确认收入的实现，其收入额按照产品的公允价值确定。

第二十五条 企业发生非货币性资产交换，以及将货物、财产、劳务用于捐赠、偿债、赞助、集资、广告、样品、职工福利或者利润分配等用途的，应当视同销售货物、转让财产或者提供劳务，但国务院财政、税务主管部门另有规定的除外。

第二十六条 企业所得税法第七条第（一）项所称财政拨款，是指各级人民政府对纳入预算管理的事业单位、社会团体等组织拨付的财政资金，但国务院和国务院财政、税务主管部门另有规定的除外。

企业所得税法第七条第（二）项所称行政事业性收费，是指依照法律法规等有关规定，按照国务院规定程序批准，在实施社会公共管理，以及在向公民、法人或者其他组织提供特定公共服务过程中，向特定对象收取并纳入财政管理的费用。

企业所得税法第七条第（二）项所称政府性基金，是指企业依照法律、行政法规等有关规定，代政府收取的具有专项用途的财政资金。

企业所得税法第七条第（三）项所称国务院规定的其他不征税收入，是指企业取得的，由国务院财政、税务主管部门规定专项用途并经国务院批准的财政性资金。

第三节 扣除

第二十七条 企业所得税法第八条所称有关的支出，是指与取得收入直接相关的支出。

企业所得税法第八条所称合理的支出，是指符合生产经营活动常规，应当计入当期损益或者有关资产成本的必要和正常的支出。

第二十八条 企业发生的支出应当区分收益性支出和资本性支出。收益性支出在发生当期直接扣除；资本性支出应当分期扣除或者计入有关资产成本，不得在发生当期直接扣除。

企业的不征税收入用于支出所形成的费用或者财产，不得扣除或者计算对应的折旧、摊销扣除。

除企业所得税法和条例另有规定外，企业实际发生的成本、费用、税金、损失和其他支出，不得重复扣除。

第二十九条 企业所得税法第八条所称成本，是指企业在生产经营活动中发生的销售成本、销货成本、业务支出以及其他耗

费。

第三十条 企业所得税法第八条所称费用，是指企业在生产经营活动中发生的销售费用、管理费用和财务费用，已经计入成本的有关费用除外。

第三十一条 企业所得税法第八条所称税金，是指企业发生的除企业所得税和允许抵扣的增值税以外的各项税金及其附加。

第三十二条 企业所得税法第八条所称损失，是指企业在生产经营活动中发生的固定资产和存货的盘亏、毁损、报废损失，转让财产损失，呆账损失，坏账损失，自然灾害等不可抗力因素造成的损失以及其他损失。

企业发生的损失，减除责任人赔偿和保险赔款后的余额，依照国务院财政、税务主管部门的规定扣除。

企业已经作为损失处理的资产，在以后纳税年度又全部收回或者部分收回时，应当计入当期收入。

第三十三条 企业所得税法第八条所称其他支出，是指除成本、费用、税金、损失外，企业在生产经营活动中发生的与生产经营活动有关的、合理的支出。

第三十四条 企业发生的合理的工资薪金支出，准予扣除。

前款所称工资薪金，是指企业每一纳税年度支付给在本企业任职或者受雇的员工的所有现金形式或者非现金形式的劳动报酬，包括基本工资、奖金、津贴、补贴、年终加薪、加班工资，以及与员工任职或者受雇有关的其他支出。

第三十五条 企业依照国务院有关主管部门或者省级人民政府规定的范围和标准为职工缴纳的基本养老保险费、基本医疗保险费、失业保险费、工伤保险费、生育保险费等基本社会保险费和住房公积金，准予扣除。

企业为投资者或者职工支付的补充养老保险费、补充医疗保险费，在国务院财政、税务主管部门规定的范围和标准内，准予扣除。

第三十六条 除企业依照国家有关规定为特殊工种职工支付的人身安全保险费和国务院财政、税务主管部门规定可以扣除的其他商业保险费外，企业为投资者或者职工支付的其他商业保险费，不得扣除。

第三十七条 企业在生产经营活动中发生的合理的不需要资本化的借款费用，准予扣除。

企业为购置、建造固定资产、无形资产和经过12个月以上的建造才能达到预定可销售状态的存货发生借款的，在有关资产购置、建造期间发生的合理的借款费用，应当作为资本性支出计入有关资产的成本，并依照本条例的规定扣除。

第三十八条 企业在生产经营活动中发生的下列利息支出，准予扣除：

（一）非金融企业向金融企业借款的利息支出、金融企业的各项存款利息支出和同业拆借利息支出、企业经批准发行债券的利息支出；

（二）非金融企业向非金融企业借款的利息支出，不超过按照金融企业同期同类贷款利率计算的数额的部分。

第三十九条 企业在货币交易中，以及纳税年度终了时将人民币以外的货币性资产、负债按照期末即期人民币汇率中间价折算为人民币时产生的汇兑损失，除已经计入有关资产成本以及向所有者进行利润分配相关的部分外，准予扣除。

第四十条 企业发生的职工福利费支出，不超过工资薪金总额14%的部分，准予扣除。

第四十一条 企业拨缴的工会经费，不超过工资薪金总额2%的部分，准予扣除。

第四十二条 除国务院财政、税务主管部门另有规定外，企业发生的职工教育经费支出，不超过工资薪金总额2.5%的部分，准予扣除；超过部分，准予在以后纳税年度结转扣除。

第四十三条 企业发生的与生产经营活动有关的业务招待费支出，按照发生额的60%扣除，但最高不得超过当年销售（营业）收入的5%。

第四十四条 企业发生的符合条件的广告费和业务宣传费支出，除国务院财政、税务主管部门另有规定外，不超过当年销售（营业）收入15%的部分，准予扣除；超过部分，准予在以后纳税年度结转扣除。

第四十五条 企业依照法律、行政法规有关规定提取的用于环境保护、生态恢复等方面的专项资金，准予扣除。上述专项资金提取后改变用途的，不得扣除。

第四十六条 企业参加财产保险，按照规定缴纳的保险费，准予扣除。

第四十七条 企业根据生产经营活动的需要租入固定资产支付的租赁费，按照以下方法扣除：

（一）以经营租赁方式租入固定资产发生的租赁费支出，按照租赁期限均匀扣除；

（二）以融资租赁方式租入固定资产发生的租赁费支出，按照规定构成融资租入固定资产价值的部分应当提取折旧费用，分期扣除。

第四十八条 企业发生的合理的劳动保护支出，准予扣除。

第四十九条 企业之间支付的管理费、企业内营业机构之间支付的租金和特许权使用费，以及非银行企业内营业机构之间支付的利息，不得扣除。

第五十条 非居民企业在中国境内设立的机构、场所，就其中国境外总机构发生的与该机构、场所生产经营有关的费用，能够提供总机构出具的费用汇集范围、定额、分配依据和方法等证明文件，并合理分摊的，准予扣除。

第五十一条 企业所得税法第九条所称公益性捐赠，是指企业通过公益性社会团体或者县级以上人民政府及其部门，用于《中华人民共和国公益事业捐赠法》规定的公益事业的捐赠。

第五十二条 本条例第五十一条所称公益性社会团体，是指同时符合下列条件的基金会、慈善组织等社会团体：

（一）依法登记，具有法人资格；

（二）以发展公益事业为宗旨，且不以营利为目的；

（三）全部资产及其增值为该法人所有；

（四）收益和营运结余主要用于符合该法人设立目的的事业；

（五）终止后的剩余财产不归属任何个人或者营利组织；

（六）不经营与其设立目的无关的业务；

（七）有健全的财务会计制度；

（八）捐赠者不以任何形式参与社会团体财产的分配；

(九) 国务院财政、税务主管部门会同国务院民政部门等登记管理部门规定的其他条件。

第五十三条 企业发生的公益性捐赠支出，不超过年度利润总额12%的部分，准予扣除。

年度利润总额，是指企业依照国家统一会计制度的规定计算的年度会计利润。

第五十四条 企业所得税法第十条第(六)项所称赞助支出，是指企业发生的与生产经营活动无关的各种非广告性质支出。

第五十五条 企业所得税法第十条第(七)项所称未经核定的准备金支出，是指不符合国务院财政、税务主管部门规定的各项资产减值准备、风险准备等准备金支出。

第四节 资产的税务处理

第五十六条 企业的各项资产，包括固定资产、生物资产、无形资产、长期待摊费用、投资资产、存货等，以历史成本为计税基础。

前款所称历史成本，是指企业取得该项资产时实际发生的支出。

企业持有各项资产期间资产增值或者减值，除国务院财政、税务主管部门规定可以确认损益外，不得调整该资产的计税基础。

第五十七条 企业所得税法第十一条所称固定资产，是指企业为生产产品、提供劳务、出租或者经营管理而持有的、使用时间超过12个月的非货币性资产，包括房屋、建筑物、机器、机械、运输工具以及其他与生产经营活动有关的设备、器具、工具等。

第五十八条 固定资产按照以下方法确定计税基础：

(一) 外购的固定资产，以购买价款和支付的相关税费以及直接归属于使该资产达到预定用途发生的其他支出为计税基础；

(二) 自行建造的固定资产，以竣工结算前发生的支出为计税基础；

(三) 融资租入的固定资产，以租赁合同约定的付款总额和承租人在签订租赁合同过程中发生的相关费用为计税基础，租赁合同未约定付款总额的，以该资产的公允价值和承租人在签订租赁合同过程中发生的相关费用为计税基础；

(四) 盘盈的固定资产，以同类固定资产的重置完全价值为计税基础；

(五) 通过捐赠、投资、非货币性资产交换、债务重组等方式取得的固定资产，以该资产的公允价值和支付的相关税费为计税基础；

(六) 改建的固定资产，除企业所得税法第十三条第(一)项和第(二)项规定的支出外，以改建过程中发生的改建支出增加计税基础。

第五十九条 固定资产按照直线法计算的折旧，准予扣除。

企业应当自固定资产投入使用月份的次月起计算折旧；停止使用的固定资产，应当自停止使用月份的次月起停止计算折旧。

企业应当根据固定资产的性质和使用情况，合理确定固定资产的预计净残值。固定资产的预计净残值一经确定，不得变更。

第六十条 除国务院财政、税务主管部门另有规定外，固定资产计算折旧的最低年限如下：

(一) 房屋、建筑物，为20年；

(二) 飞机、火车、轮船、机器、机械和其他生产设备，为10年；

(三) 与生产经营活动有关的器具、工具、家具等，为5年；

(四) 飞机、火车、轮船以外的运输工具，为4年；

(五) 电子设备，为3年。

第六十一条 从事开采石油、天然气等矿产资源的企业，在开始商业性生产前发生的费用和有关固定资产的折耗、折旧方法，由国务院财政、税务主管部门另行规定。

第六十二条 生产性生物资产按照以下方法确定计税基础：

(一) 外购的生产性生物资产，以购买价款和支付的相关税费为计税基础；

(二) 通过捐赠、投资、非货币性资产交换、债务重组等方式取得的生产性生物资产，以该资产的公允价值和支付的相关税费为计税基础。

前款所称生产性生物资产，是指企业为生产农产品、提供劳务或者出租等而持有的生物资产，包括经济林、薪炭林、产畜和役畜等。

第六十三条 生产性生物资产按照直线法计算的折旧，准予扣除。

企业应当自生产性生物资产投入使用月份的次月起计算折旧；停止使用的生产性生物资产，应当自停止使用月份的次月起停止计算折旧。

企业应当根据生产性生物资产的性质和使用情况，合理确定生产性生物资产的预计净残值。生产性生物资产的预计净残值一经确定，不得变更。

第六十四条 生产性生物资产计算折旧的最低年限如下：

(一) 林木类生产性生物资产，为10年；

(二) 畜类生产性生物资产，为3年。

第六十五条 企业所得税法第十二条所称无形资产，是指企业为生产产品、提供劳务、出租或者经营管理而持有的、没有实物形态的非货币性长期资产，包括专利权、商标权、著作权、土地使用权、非专利技术、商誉等。

第六十六条 无形资产按照以下方法确定计税基础：

(一) 外购的无形资产，以购买价款和支付的相关税费以及直接归属于使该资产达到预定用途发生的其他支出为计税基础；

(二) 自行开发的无形资产，以开发过程中该资产符合资本化条件后至达到预定用途前发生的支出为计税基础；

(三) 通过捐赠、投资、非货币性资产交换、债务重组等方式取得的无形资产，以该资产的公允价值和支付的相关税费为计税基础。

第六十七条 无形资产按照直线法计算的摊销费用，准予扣除。

无形资产的摊销年限不得低于10年。

作为投资或者受让的无形资产，有关法律规定或者合同约定了使用年限的，可以按照规定或者约定的使用年限分期摊销。

外购商誉的支出，在企业整体转让或者清算时，准予扣除。

第六十八条 企业所得税法第十三条第（一）项和第（二）项所称固定资产的改建支出，是指改变房屋或者建筑物结构、延长使用年限等发生的支出。

企业所得税法第十三条第（一）项规定的支出，按照固定资产预计尚可使用年限分期摊销；第（二）项规定的支出，按照合同约定的剩余租赁期限分期摊销。

改建的固定资产延长使用年限的，除企业所得税法第十三条第（一）项和第（二）项规定外，应当适当延长折旧年限。

第六十九条 企业所得税法第十三条第（三）项所称固定资产的大修理支出，是指同时符合下列条件的支出：

（一）修理支出达到取得固定资产时的计税基础50%以上；

（二）修理后固定资产的使用年限延长2年以上。

企业所得税法第十三条第（三）项规定的支出，按照固定资产尚可使用年限分期摊销。

第七十条 企业所得税法第十三条第（四）项所称其他应当作为长期待摊费用的支出，自支出发生月份的次月起，分期摊销，摊销年限不得低于3年。

第七十一条 企业所得税法第十四条所称投资资产，是指企业对外进行权益性投资和债权性投资形成的资产。

企业在转让或者处置投资资产时，投资资产的成本，准予扣除。

投资资产按照以下方法确定成本：

（一）通过支付现金方式取得的投资资产，以购买价款为成本；

（二）通过支付现金以外的方式取得的投资资产，以该资产的公允价值和支付的相关税费为成本。

第七十二条 企业所得税法第十五条所称存货，是指企业持有以备出售的产品或者商品、处在生产过程中的在产品、在生产或者提供劳务过程中耗用的材料和物料等。

存货按照以下方法确定成本：

（一）通过支付现金方式取得的存货，以购买价款和支付的相关税费为成本；

（二）通过支付现金以外的方式取得的存货，以该存货的公允价值和支付的相关税费为成本；

（三）生产性生物资产收获的农产品，以产出或者采收过程中发生的材料费、人工费和分摊的间接费用等必要支出为成本。

第七十三条 企业使用或者销售的存货的成本计算方法，可以在先进先出法、加权平均法、个别计价法中选用一种。计价方法一经选用，不得随意变更。

第七十四条 企业所得税法第十六条所称资产的净值和第十九条所称财产净值，是指有关资产、财产的计税基础减除已经按照规定扣除的折旧、折耗、摊销、准备金等后的余额。

第七十五条 除国务院财政、税务主管部门另有规定外，企业在重组过程中，应当在交易发生时确认有关资产的转让所得或者损失，相关资产应当按照交易价格重新确定计税基础。

第三章 应纳税额

第七十六条 企业所得税法第二十二条规定的应纳税额的计算公式为：

应纳税额=应纳税所得额×适用税率-减免税额-抵免税额

公式中的减免税额和抵免税额，是指依照企业所得税法和国务院的税收优惠规定减征、免征和抵免的应纳税额。

第七十七条 企业所得税法第二十三条所称已在境外缴纳的所得税税额，是指企业来源于中国境外的所得依照中国境外税收法律以及相关规定应当缴纳并已经实际缴纳的企业所得税性质的税款。

第七十八条 企业所得税法第二十三条所称抵免限额，是指企业来源于中国境外的所得，依照企业所得税法和本条例的规定计算的应纳税额。除国务院财政、税务主管部门另有规定外，该抵免限额应当分国（地区）不分项计算，计算公式如下：

抵免限额=中国境内、境外所得依照企业所得税法和本条例的规定计算的应纳税总额×来源于某国（地区）的应纳税所得额÷中国境内、境外应纳税所得总额

第七十九条 企业所得税法第二十三条所称5个年度，是指从企业取得的来源于中国境外的所得，已经在中国境外缴纳的企业所得税性质的税额超过抵免限额的当年的次年起连续5个纳税年度。

第八十条 企业所得税法第二十四条所称直接控制，是指居民企业直接持有外国企业20%以上股份。

企业所得税法第二十四条所称间接控制，是指居民企业以间接持股方式持有外国企业20%以上股份，具体认定办法由国务院财政、税务主管部门另行制定。

第八十一条 企业依照企业所得税法第二十三条、第二十四条的规定抵免企业所得税税额时，应当提供中国境外税务机关出具的税款所属年度的有关纳税凭证。

第四章 税收优惠

第八十二条 企业所得税法第二十六条第（一）项所称国债利息收入，是指企业持有国务院财政部门发行的国债取得的利息收入。

第八十三条 企业所得税法第二十六条第（二）项所称符合条件的居民企业之间的股息、红利等权益性投资收益，是指居民企业直接投资于其他居民企业取得的投资收益。企业所得税法第二十六条第（二）项和第（三）项所称股息、红利等权益性投资收益，不包括连续持有居民企业公开发行并上市流通的股票不足12个月取得的投资收益。

第八十四条 企业所得税法第二十六条第（四）项所称符合条件的非营利组织，是指同时符合下列条件的组织：

（一）依法履行非营利组织登记手续；

（二）从事公益性或者非营利性活动；

（三）取得的收入除用于与该组织有关的、合理的支出外，全部用于登记核定或者章程规定的公益性或者非营利性事业；

（四）财产及其孳息不用于分配；

（五）按照登记核定或者章程规定，该组织注销后的剩余财产用于公益性或者非营利性目的，或者由登记管理机关转赠给与该组织性质、宗旨相同的组织，并向社会公告；

（六）投入人对投入该组织的财产不保留或者享有任何财产权利；

(七) 工作人员工资福利开支控制在规定的比例内, 不变相分配该组织的财产。

前款规定的非营利组织的认定管理办法由国务院财政、税务主管部门会同国务院有关部门制定。

第八十五条 企业所得税法第二十六条第(四)项所称符合条件的非营利组织的收入, 不包括非营利组织从事营利性活动取得的收入, 但国务院财政、税务主管部门另有规定的除外。

第八十六条 企业所得税法第二十七条第(一)项规定的企业从事农、林、牧、渔业项目的所得, 可以免征、减征企业所得税, 是指:

(一) 企业从事下列项目的所得, 免征企业所得税:

1. 蔬菜、谷物、薯类、油料、豆类、棉花、麻类、糖料、水果、坚果的种植;
2. 农作物新品种的选育;
3. 中药材的种植;
4. 林木的培育和种植;
5. 牲畜、家禽的饲养;
6. 林产品的采集;
7. 灌溉、农产品初加工、兽医、农技推广、农机作业和维修等农、林、牧、渔服务业项目;
8. 远洋捕捞。

(二) 企业从事下列项目的所得, 减半征收企业所得税:

1. 花卉、茶以及其他饮料作物和香料作物的种植;
2. 海水养殖、内陆养殖。

企业从事国家限制和禁止发展的项目, 不得享受本条规定的企业所得税优惠。

第八十七条 企业所得税法第二十七条第(二)项所称国家重点扶持的公共基础设施项目, 是指《公共基础设施项目企业所得税优惠目录》规定的港口码头、机场、铁路、公路、城市公共交通、电力、水利等项目。

企业从事前款规定的国家重点扶持的公共基础设施项目的投资经营的所得, 自项目取得第一笔生产经营收入所属纳税年度起, 第一年至第三年免征企业所得税, 第四年至第六年减半征收企业所得税。

企业承包经营、承包建设和内部自建自用本条规定的项目, 不得享受本条规定的企业所得税优惠。

第八十八条 企业所得税法第二十七条第(三)项所称符合条件的环境保护、节能节水项目, 包括公共污水处理、公共垃圾处理、沼气综合利用、节能减排技术改造、海水淡化等。项目的具体条件和范围由国务院财政、税务主管部门商国务院有关部门制订, 报国务院批准后公布施行。

企业从事前款规定的符合条件的环境保护、节能节水项目的所得, 自项目取得第一笔生产经营收入所属纳税年度起, 第一年至第三年免征企业所得税, 第四年至第六年减半征收企业所得税。

第八十九条 依照本条例第八十七条和第八十八条规定享受减免税优惠的项目, 在减免税期限内转让的, 受让方自受让之日起, 可以在剩余期限内享受规定的减免税优惠; 减免税期限届满后转让的, 受让方不得就该项目重复享受减免税优惠。

第九十条 企业所得税法第二十七条第(四)项所称符合条件的技术转让所得免征、减征企业所得税, 是指一个纳税年度内, 居民企业技术转让所得不超过500万元的部分, 免征企业所得税; 超过500万元的部分, 减半征收企业所得税。

第九十一条 非居民企业取得企业所得税法第二十七条第(五)项规定的所得, 减按10%的税率征收企业所得税。

下列所得可以免征企业所得税:

- (一) 外国政府向中国政府提供贷款取得的利息所得;
- (二) 国际金融组织向中国政府 and 居民企业提供优惠贷款取得的利息所得;
- (三) 经国务院批准的其他所得。

第九十二条 企业所得税法第二十八条第一款所称符合条件的小型微利企业, 是指从事国家非限制和禁止行业, 并符合下列条件的企业:

- (一) 工业企业, 年度应纳税所得额不超过30万元, 从业人数不超过100人, 资产总额不超过3000万元;
- (二) 其他企业, 年度应纳税所得额不超过30万元, 从业人数不超过80人, 资产总额不超过1000万元。

第九十三条 企业所得税法第二十八条第二款所称国家需要重点扶持的高新技术企业, 是指拥有核心自主知识产权, 并同时符合下列条件的企业:

- (一) 产品(服务)属于《国家重点支持的高新技术领域》规定的范围;
- (二) 研究开发费用占销售收入的比例不低于规定比例;
- (三) 高新技术产品(服务)收入占企业总收入的比例不低于规定比例;
- (四) 科技人员占企业职工总数的比例不低于规定比例;
- (五) 高新技术企业认定管理办法规定的其它条件。

《国家重点支持的高新技术领域》和高新技术企业认定管理办法由国务院科技、财政、税务主管部门商国务院有关部门制订, 报国务院批准后公布施行。

第九十四条 企业所得税法第二十九条所称民族自治地方, 是指依照《中华人民共和国民族区域自治法》的规定, 实行民族区域自治的自治区、自治州、自治县。

对民族自治地方内国家限制和禁止行业的企业, 不得减征或者免征企业所得税。

第九十五条 企业所得税法第三十条第(一)项所称研究开发费用的加计扣除, 是指企业为开发新技术、新产品、新工艺发生的研究开发费用, 未形成无形资产计入当期损益的, 在按照规定据实扣除的基础上, 按照研究开发费用的50%加计扣除; 形成无形资产的, 按照无形资产成本的150%摊销。

第九十六条 企业所得税法第三十条第(二)项所称企业安置残疾人员所支付的工资的加计扣除, 是指企业安置残疾人员的, 在按照支付给残疾职工工资据实扣除的基础上, 按照支付给残疾职工工资的100%加计扣除。残疾人员的范围适用《中华人民共和国

残疾人保障法》的有关规定。

企业所得税法第三十条第（二）项所称企业安置国家鼓励安置的其他就业人员所支付的工资的加计扣除办法，由国务院另行规定。

第九十七条 企业所得税法第三十一条所称抵扣应纳税所得额，是指创业投资企业采取股权投资方式投资于未上市的中小高新技术企业2年以上的，可以按照其投资额的70%在股权持有满2年的当年抵扣该创业投资企业的应纳税所得额；当年不足抵扣的，可以在以后纳税年度结转抵扣。

第九十八条 企业所得税法第三十二条所称可以采取缩短折旧年限或者采取加速折旧的方法的固定资产，包括：

- （一）由于技术进步，产品更新换代较快的固定资产；
- （二）常年处于强震动、高腐蚀状态的固定资产。

采取缩短折旧年限方法的，最低折旧年限不得低于本条例第六十条规定折旧年限的60%；采取加速折旧方法的，可以采取双倍余额递减法或者年数总和法。

第九十九条 企业所得税法第三十三条所称减计收入，是指企业以《资源综合利用企业所得税优惠目录》规定的资源作为主要原材料，生产国家非限制和禁止并符合国家和行业相关标准的产品取得的收入，减按90%计入收入总额。

前款所称原材料占生产产品材料的比例不得低于《资源综合利用企业所得税优惠目录》规定的标准。

第一百条 企业所得税法第三十四条所称税额抵免，是指企业购置并实际使用《环境保护专用设备企业所得税优惠目录》、《节能节水专用设备企业所得税优惠目录》和《安全生产专用设备企业所得税优惠目录》规定的环境保护、节能节水、安全生产等专用设备的，该专用设备的投资额的10%可以从企业当年的应纳税额中抵免；当年不足抵免的，可以在以后5个纳税年度结转抵免。

享受前款规定的企业所得税优惠的企业，应当实际购置并自身实际投入使用前款规定的专用设备；企业购置上述专用设备在5年内转让、出租的，应当停止享受企业所得税优惠，并补缴已经抵免的企业所得税税款。

第一百零一条 本章第八十七条、第九十九条、第一百条规定的企业所得税优惠目录，由国务院财政、税务主管部门商国务院有关部门制订，报国务院批准后公布施行。

第一百零二条 企业同时从事适用不同企业所得税待遇的项目的，其优惠项目应当单独计算所得，并合理分摊企业的期间费用；没有单独计算的，不得享受企业所得税优惠。

第五章 源泉扣缴

第一百零三条 依照企业所得税法对非居民企业应当缴纳的企业所得税实行源泉扣缴的，应当依照企业所得税法第十九条的规定计算应纳税所得额。

企业所得税法第十九条所称收入全额，是指非居民企业向支付人收取的全部价款和价外费用。

第一百零四条 企业所得税法第三十七条所称支付人，是指依照有关法律规定或者合同约定对非居民企业直接负有支付相关款项义务的单位或者个人。

第一百零五条 企业所得税法第三十七条所称支付，包括现金支付、汇拨支付、转账支付和权益兑价支付等货币支付和非货币支付。

企业所得税法第三十七条所称到期应支付的款项，是指支付人按照权责发生制原则应当计入相关成本、费用的应付款项。

第一百零六条 企业所得税法第三十八条规定的可以指定扣缴义务人的情形，包括：

- （一）预计工程作业或者提供劳务期限不足一个纳税年度，且有证据表明不履行纳税义务的；
- （二）没有办理税务登记或者临时税务登记，且未委托中国境内的代理人履行纳税义务的；
- （三）未按照规定期限办理企业所得税纳税申报或者预缴申报的。

前款规定的扣缴义务人，由县级以上税务机关指定，并同时告知扣缴义务人所扣税款的计算依据、计算方法、扣缴期限和扣缴方式。

第一百零七条 企业所得税法第三十九条所称所得发生地，是指依照本条例第七条规定的原则确定的所得发生地。在中国境内存在多处所得发生地的，由纳税人选择其中之一申报缴纳企业所得税。

第一百零八条 企业所得税法第三十九条所称该纳税人在中国境内其他收入，是指该纳税人在中国境内取得的其他各种来源的收入。

税务机关在追缴该纳税人应纳税款时，应当将追缴理由、追缴数额、缴纳期限和缴纳方式等告知该纳税人。

第六章 特别纳税调整

第一百零九条 企业所得税法第四十一条所称关联方，是指与企业有下列关联关系之一的企业、其他组织或者个人：

- （一）在资金、经营、购销等方面存在直接或者间接的控制关系；
- （二）直接或者间接地同为第三者控制；
- （三）在利益上具有相关联的其他关系。

第一百一十条 企业所得税法第四十一条所称独立交易原则，是指没有关联关系的交易各方，按照公平成交价格 and 营业常规进行业务往来遵循的原则。

第一百一十一条 企业所得税法第四十一条所称合理方法，包括：

- （一）可比非受控价格法，是指按照没有关联关系的交易各方进行相同或者类似业务往来的价格进行定价的方法；
- （二）再销售价格法，是指按照从关联方购进商品再销售给没有关联关系的交易方的价格，减除相同或者类似业务的销售毛利进行定价的方法；
- （三）成本加成法，是指按照成本加合理的费用和利润进行定价的方法；
- （四）交易净利润法，是指按照没有关联关系的交易各方进行相同或者类似业务往来取得的净利润水平确定利润的方法；
- （五）利润分割法，是指将企业与其关联方的合并利润或者亏损在各方之间采用合理标准进行分配的方法；
- （六）其他符合独立交易原则的方法。

第一百一十二条 企业可以依照企业所得税法第四十一条第二款的规定，按照独立交易原则与其关联方分摊共同发生的成本，

达成成本分摊协议。

企业与其关联方分摊成本时，应当按照成本与预期收益相配比的原则进行分摊，并在税务机关规定的期限内，按照税务机关的要求报送有关资料。

企业与其关联方分摊成本时违反本条第一款、第二款规定的，其自行分摊的成本不得在计算应纳税所得额时扣除。

第一百一十三条 企业所得税法第四十二条所称预约定价安排，是指企业就其未来年度关联交易的定价原则和计算方法，向税务机关提出申请，与税务机关按照独立交易原则协商、确认后达成的协议。

第一百一十四条 企业所得税法第四十三条所称相关资料，包括：

- (一) 与关联业务往来有关的价格、费用的制定标准、计算方法和说明等同期资料；
- (二) 关联业务往来所涉及的财产、财产使用权、劳务等的再销售（转让）价格或者最终销售（转让）价格的相关资料；
- (三) 与关联业务调查有关的其他企业应当提供的与被调查企业可比的产品价格、定价方式以及利润水平等资料；
- (四) 其他与关联业务往来有关的资料。

企业所得税法第四十三条所称与关联业务调查有关的其他企业，是指与被调查企业在生产经营内容和方式上相类似的企业。

企业应当在税务机关规定的期限内提供与关联业务往来有关的价格、费用的制定标准、计算方法和说明等资料。关联方以及与关联业务调查有关的其他企业应当在税务机关与其约定的期限内提供相关资料。

第一百一十五条 税务机关依照企业所得税法第四十四条的规定核定企业的应纳税所得额时，可以采用下列方法：

- (一) 参照同类或者类似企业的利润率水平核定；
- (二) 按照企业成本加合理的费用和利润的方法核定；
- (三) 按照关联企业集团整体利润的合理比例核定；
- (四) 按照其他合理方法核定。

企业对税务机关按照前款规定的方法核定的应纳税所得额有异议的，应当提供相关证据，经税务机关认定后，调整核定的应纳税所得额。

第一百一十六条 企业所得税法第四十五条所称中国居民，是指根据《中华人民共和国个人所得税法》的规定，就其从中国境内、境外取得的所得在中国缴纳个人所得税的个人。

第一百一十七条 企业所得税法第四十五条所称控制，包括：

- (一) 居民企业或者中国居民直接或者间接单一持有外国企业10%以上有表决权股份，且由其共同持有该外国企业50%以上股份；
- (二) 居民企业，或者居民企业和中国居民持股比例没有达到第（一）项规定的标准，但在股份、资金、经营、购销等方面对该外国企业构成实质控制。

第一百一十八条 企业所得税法第四十五条所称实际税负明显低于企业所得税法第四条第一款规定税率水平，是指低于企业所得税法第四条第一款规定税率的50%。

第一百一十九条 企业所得税法第四十六条所称债权性投资，是指企业直接或者间接从关联方获得的，需要偿还本金和支付利息或者需要以其他具有支付利息性质的方式予以补偿的融资。

企业间接从关联方获得的债权性投资，包括：

- (一) 关联方通过无关联第三方提供的债权性投资；
- (二) 无关联第三方提供的、由关联方担保且负有连带责任的债权性投资；
- (三) 其他间接从关联方获得的具有负债实质的债权性投资。

企业所得税法第四十六条所称权益性投资，是指企业接受的不需要偿还本金和支付利息，投资人对企业净资产拥有所有权的投资。

企业所得税法第四十六条所称标准，由国务院财政、税务主管部门另行规定。

第一百二十条 企业所得税法第四十七条所称不具有合理商业目的，是指以减少、免除或者推迟缴纳税款为主要目的。

第一百二十一条 税务机关根据税收法律、行政法规的规定，对企业作出特别纳税调整的，应当对补征的税款，自税款所属纳税年度的次年6月1日起至补缴税款之日止的期间，按日加收利息。

前款规定加收的利息，不得在计算应纳税所得额时扣除。

第一百二十二条 企业所得税法第四十八条所称利息，应当按照税款所属纳税年度中国人民银行公布的与补税期间同期的人民币贷款基准利率加5个百分点计算。

企业依照企业所得税法第四十三条和本条例的规定提供有关资料的，可以只按前款规定的人民币贷款基准利率计算利息。

第一百二十三条 企业与其关联方之间的业务往来，不符合独立交易原则，或者企业实施其他不具有合理商业目的安排的，税务机关有权在该业务发生的纳税年度起10年内，进行纳税调整。

第七章 征收管理

第一百二十四条 企业所得税法第五十条所称企业登记注册地，是指企业依照国家有关规定登记注册的住所地。

第一百二十五条 企业汇总计算并缴纳企业所得税时，应当统一核算应纳税所得额，具体办法由国务院财政、税务主管部门另行制定。

第一百二十六条 企业所得税法第五十一条所称主要机构、场所，应当同时符合下列条件：

- (一) 对其他各机构、场所的生产经营活动负有监督管理责任；
- (二) 设有完整的账簿、凭证，能够准确反映各机构、场所的收入、成本、费用和盈亏情况。

第一百二十七条 企业所得税法第五十一条所称经税务机关审核批准，是指经各机构、场所所在地税务机关的共同上级税务机关审核批准。

非居民企业经批准汇总缴纳企业所得税后，需要增设、合并、迁移、关闭机构、场所或者停止机构、场所业务的，应当事先由负责汇总申报缴纳企业所得税的主要机构、场所向其所在地税务机关报告；需要变更汇总缴纳企业所得税的主要机构、场所的，依

照前款规定办理。

第一百二十八条 企业所得税分月或者分季预缴，由税务机关具体核定。

企业根据企业所得税法第五十四条规定分月或者分季预缴企业所得税时，应当按照月度或者季度的实际利润额预缴；按照月度或者季度的实际利润额预缴有困难的，可以按照上一纳税年度应纳税所得额的月度或者季度平均额预缴，或者按照经税务机关认可的其他方法预缴。预缴方法一经确定，该纳税年度内不得随意变更。

第一百二十九条 企业在纳税年度内无论盈利或者亏损，都应当依照企业所得税法第五十四条规定的期限，向税务机关报送预缴企业所得税纳税申报表、年度企业所得税纳税申报表、财务会计报告和税务机关规定应当报送的其他有关资料。

第一百三十条 企业所得以人民币以外的货币计算的，预缴企业所得税时，应当按照月度或者季度最后一日的人民币汇率中间价，折合成人民币计算应纳税所得额。年度终了汇算清缴时，对已经按照月度或者季度预缴税款的，不再重新折合计算，只就该纳税年度内未缴纳企业所得税的部分，按照纳税年度最后一日的人民币汇率中间价，折合成人民币计算应纳税所得额。

经税务机关检查确认，企业少计或者多计前款规定的所得的，应当按照检查确认补税或者退税时的上一个月最后一日的人民币汇率中间价，将少计或者多计的所得折合成人民币计算应纳税所得额，再计算应补缴或者应退的税款。

第八章 附 则

第一百三十一条 企业所得税法第五十七条第一款所称本法公布前已经批准设立的企业，是指企业所得税法公布前已经完成登记注册的企业。

第一百三十二条 在香港特别行政区、澳门特别行政区和台湾地区成立的企业，参照适用企业所得税法第二条第二款、第三款的有关规定。

第一百三十三条 本条例自2008年1月1日起施行。1991年6月30日国务院发布的《中华人民共和国外商投资企业和外国企业所得税法实施细则》和1994年2月4日财政部发布的《中华人民共和国企业所得税暂行条例实施细则》同时废止。

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