Detailed rules and regulations for the implementation of the Income Tax Law of the People's Republic of China concerning joint ventures with Chinese and foreign investment

Article 1 These detailed rules and regulations are formulated in accordance with the provisions of Article 17 of the Income Tax Law of the People's Republic of China concerning joint ventures with Chinese and foreign investment (hereinafter called Tax Law for short).

Article 2 'Income derived from production and business' mentioned in Article 1 of the Tax Law means income from the production and business operations in industry, mining, communications, transportation, agriculture, forestry, animal husbandry, fisheries, poultry farming, commerce, tourism, food and drink, service and other trades.

'Income from other sources' mentioned in Article 1 of the Tax Law covers dividends, bonuses, interest and income from lease or transfer of property, patent right, ownership of trade marks, proprietary technology, copyright, and other sources.

Article 3 'A local surtax of 10 per cent of the assessed income tax' in Article 3 of the Tax Law means a surtax to be computed and levied according to the actual amount of income tax paid by joint ventures.

Reduction or exemption of local surtax on account of special circumstances shall be decided by the people's government of the province, municipality or autonomous region in which the joint venture is located.

Article 4 A foreign participant in a joint venture, who wants to remit its share of profits from China, shall report to the local tax authorities; the remitting agency shall withhold an income tax of 10 per cent from the remittance. No tax shall be levied on that part of its share of profits which is not remitted from China.

Article 5 'The first profit-making year' mentioned in Article 5 of the Tax Law means the year in which a joint venture has begun making profit after its losses in the initial stage of operation have been made up in accordance with the provisions of Article 7 of the Tax Law.

Article 6 A participant in a joint venture, who reinvests its share of profit in this enterprise or in other joint ventures with Chinese and foreign investment for a period of not less than five years in succession, may receive a refund of 40 per cent of the income tax already paid on the reinvested amount upon the examination and approval of the certificate of the invested enterprise by the tax authorities to which the tax was paid.

Article 7 The tax year for joint ventures starts from January 1 and ends on December 31 on the Gregorian calendar.

Article 8 The amount of taxable income shall be computed by the following formulae:

1. Industry:

a. Cost of production of the year is equal to direct material used in production of the year plus direct wages plus manufacturing expenses

b. Cost of product of the year is equal to inventory of semi-finished product at the beginning of the year and in-production product plus cost of production of the year minus inventory of semi-finished product at the end of the year and in-production product

c. Cost of sale of product is equal to cost of product of the year plus inventory of product at the beginning of the year minus inventory of product at the end of the year

d. Net volume of sale of product is equal to total volume of sale of product minus (sales returns plus sales allowance)

e. Profit from sale of product is equal to net volume of sale of product minus taxes on sales minus cost of sale of product minus (selling expenses plus administrative expenses)

f. Amount of taxable income is equal to profit from sale of product plus profit from other operations plus non-operating income minus non-operating expenditure

2. Commerce:

a. Net volume of sale is equal to total volume of sale minus (sales returns plus sales allowance)

b. Cost of sales is equal to inventory of merchandise at the beginning of the year plus [purchase of the year minus (purchase returned plus purchase discount) plus purchase expenses] minus inventory of merchandise at the end of the year

c. Sale profit is equal to net volume of sale minus sale tax minus cost of sales minus (selling expenses plus overhead expenses)

d. Amount of taxable income is equal to sale profit plus profit from other operations plus non-operating income minus non-operating expenditure

3. Service trades:

a. Net business income is equal to gross business income minus (business tax plus operating expenses plus overhead expenses)

b. Amount of taxable income is equal to net business income plus non-operating income minus non-operating expenditure

4. Other lines of operation:

For other lines of operations, refer to the above-mentioned formulae for calculation.

Article 9 The following items shall not be counted as cost, expense or loss in computing the amount of taxable income:

1. Expenditure on the purchase or construction of machinery, equipment, buildings, facilities and other fixed assets;

2. Expenditure on the purchase of intangible assets;

3. Interest on capital;

4. Income tax payment and local surtax payment;

5. Penalty for illegal operations and losses in the form of confiscated property;

6. Overdue tax payment and tax penalty;

7. Losses from windstorms, floods and fire risks covered by insurance indemnity;

8. Donations and contributions other than those for public welfare and relief purposes;

9. That part of the entertainment expenses for operating purposes above the quota of three per thousand of the total sale income in the tax year or above the quota of ten per thousand of the total operational income and those entertainment expenses that are not relevant to production and operation.

Article 10 Depreciation of fixed assets in use shall be calculated on an annual basis. Fixed assets of joint ventures cover houses, buildings, machinery and other mechanical apparatus, means of transport and other equipment for the purpose of production with useful life of more than one year. But items, with a per-unit value of less than 500 yuan and a short useful life can be itemized as expenses according to the actual number in use.

Article 11 Fixed assets shall be assessed according to the original price.

For fixed assets used as investment, the original price shall be the price agreed upon by the participants at the time of investment.

For purchased fixed assets, the original price shall be the purchase price plus transport fees, installation expenses and other related expenses incurred before they are put to use.

For self-made and self-built fixed assets, the original price shall be the actual expenditures incurred in the course of manufacture or construction.

Article 12 In depreciating fixed assets, the residual value shall be assessed first and deducted from the original price, the principle being making the residual value at 10 per cent of the original price; those requiring to retain a little or no residual value, shall be submitted for approval to the local tax authorities.

The depreciation of fixed assets shall generally be computed in average by the method of straight line.

Article 13 The useful life for computing depreciation of fixed assets is as follows:

1. The minimum useful life for houses and buildings is 20 years;

2. The minimum useful life for trains, ships, machines and equipment and other facilities for the purpose of production is 10 years;

3. The minimum useful life for electronic equipment and means of transport other than trains and ships is 5 years.

For cases where the fixed assets of joint ventures, owing to special reasons, need to accelerate depreciation or where methods of depreciation need to be modified, applications shall be submitted by the said ventures to the local tax authorities for examination and then relayed level by level to the Ministry of Finance of the People's Republic of China for approval.

Article 14 Expenditures arising from the increase of value of fixed assets in use as a result of technical reform shall not be listed as expense.

The fixed assets continuing in use after full depreciation shall no longer be depreciated.

Article 15 The balance of the gain of joint ventures derived from sale of fixed assets at the current price after the net sum of non-depreciated assets or the residual value is deducted shall enter the year's loss and gain account.

Article 16 Intangible assets such as technical know-how, patent right, ownership of trade marks, copyright, ownership of sites and other royalties used as investment shall be assessed by amortization according to the sums provided in the agreements or contracts from the year they begin in use; for the intangible assets that are bought in at a fixed price, the actual payment shall be assessed from the year they are put in use.

The above-mentioned intangible assets with provision of time limit for use, shall be assessed by amortization according to the provision of time limit for use; those without the provision shall be assessed by amortization in ten years.

Article 17 Expenses arising during the period of preparation for a joint venture shall be amortized after it goes into production or business, with the amount of amortization not exceeding 20 per cent each year.

Article 18 Inventory of merchandise, raw materials, in-production products, semi-finished products, finished products and by-products shall be computed according to the cost price. For the method of computation, the joint ventures may choose one of the following: First-in first-out, shifting average and weighted average. In those cases where a change in the method of computation is necessary, it shall be submitted for approval to the local tax authorities.

Article 19 Income tax to be paid in quarterly installments as prescribed in Article 8 of the Tax Law may be computed as one-fourth of the planned annual profit or the actual income in the preceding year.

Article 20 Joint ventures shall file their income tax returns and their final accounting statements with the local tax authorities within the prescribed period irrespective of profit or loss in the tax year and send the reports on auditing by the chartered public accountants registered in the People's Republic of China.

The accounting statements submitted by branches of joint ventures within China to their head offices shall be submitted to the local tax authorities at the same time for reference.

Article 21 Joint ventures shall file tax returns within the time limit set by the Tax Law. In case of failure to submit the tax returns within the prescribed time limit owing to special circumstances, application should be submitted in the said time limit, and the time limit may be appropriately extended upon the approval of the local tax authorities.

The final day of the time limit for tax payment and filing tax returns may be extended if it falls upon an official holiday.

Article 22 Income of joint ventures in foreign currency shall be assessed according to the exchange rate quoted by the State General Administration of Foreign Exchange Control on the day when the tax payment certificates are made out and shall be taxed in renminbi.

Article 23 The accounting on the accrual basis shall be practised for revenue and expenditure of joint ventures. All accounting records shall be accurate and perfect and shall have lawfull vouchers as the basis for entry account.

Article 24 The method of finance and accounting of joint ventures shall be submitted to local tax authorities for reference.

When the method of finance and accounting of joint ventures contradicts the provisions of the tax law, tax payments shall be computed according to the provisions of the Tax Law.

Article 25 Vouchers for accounting, accounting books and reports used by joint ventures shall be recorded in the Chinese language or in both Chinese and foreign language.

Accounting vouchers, accounting books and reports shall be kept for at least 15 years.

Article 26 Sales invoices and business receipts shall be submitted for approval to the local tax authorities before they are used.

Article 27 Officials sent by tax authorities shall produce identification cards when investigating the financial affairs, accounting books and tax situation of a joint venture and undertake to keep secret.

Article 28 Tax authorities may impose a penalty of not more than 5,000 yuan on a joint venture which has violated the provisions of Articles 9, 11 and 12 of the Tax Law according to the seriousness of the case.

Article 29 Tax authorities may impose a penalty of not more than 5,000 yuan on a joint venture which has violated the provisions of Paragraph 2 of Article 25, and Article 26 of these detailed rules and regulations.

Article 30 Tax authorities shall serve notices on cases involving penalty in accordance with the relevant provisions of the Tax Law and these detailed rules and regulations.

Article 31 When a joint venture applies for reconsideration in accordance with the provisions of Article 15 of the Tax Law. The tax authorities concerned are required to make decisions within three months after receiving the application.

Article 32 Income tax paid abroad by joint ventures or its branches on their income earned outside China may be credited against the amount of income tax to be paid by their head offices upon presenting the foreign tax payment certificate. But the credit amount shall not exceed the payable tax on the income abroad computed according to the tax rate prescribed by China's Tax Law.

Article 33 Income tax returns and tax payment certificate used by joint ventures are to be printed by the General Taxation Bureau of the Ministry of Finance of the People's Republic of China.

Article 34 The right of interpretating the provisions of these detailed rules and regulations resides in the Ministry of Finance of the People's Republic of China.

Article 35 These detailed rules and regulations come into force on the same date as the publication and enforcement of the 'Income Tax Law of the People's Republic of China Concerning Joint Ventures with Chinese and Foreign Investment'.

December 17, Xinhua

Detailed rules and regulations for the implementation of the Individual Income Tax Law of the People's Republic of China

Article 1 These detailed rules and regulations are drawn up in accordance with the provisions of Article 14 of the Individual Income Tax Law of the People's Republic of China (hereinafter called Tax Law for short).

Article 2 'Any individual residing for one year or more in the People's Republic of China' mentioned in Article 1 of the Tax Law means any individual who resides in China for a full 365 days within a tax year. No substractions shall be made of the number of days of temporary absence from Chinese territory within the tax year.

A tax year starts from January 1 and ends on December 31 on the Gregorian calendar.

Article 3 Individuals residing in the People's Republic of China for one year or more but less than five years shall pay tax only on that part of their income gained abroad which is remitted to China; individuals whose period of residence in China exceeds five years shall pay tax on all their income gained outside China beginning from the sixth year of residence.

Article 4 The range of the various categories of income mentioned in Article 2 of the Tax Law is as follows:

1. 'Wages and salaries' means wages, salaries, bonuses and year-end extras gained from work in offices, organizations, schools, enterprises, undertakings and other units.

Bonuses mentioned in the preceding paragraph do not include prizes and awards for scientific, technological or cultural achievements.

2. 'Compensation for personal services' means earnings from personal services in designing, installation, drafting, medical treatment, law practising, accounting, consultation, lecturing, news reporting, radio and television broadcasting, contributions to publications, translation, calligraphy and painting, sculpture, cinema, drama and opera, music, dancing, acrobatics, ballad singing and comic talk, sports and technical services.

3. 'Royalties' means income from the provision and transfer of patent right, copyright, the right to use proprietary technology and other rights.

4. 'Interest, dividends and bonuses' means interest on deposits, loans and various kinds of securities and dividends and bonuses from investments.

5. 'Income from lease of property' means income from lease of houses, warehouses, machinery and equipment, motor vehicles and boats, and other kinds of property.

6. 'Other kinds of income' means

income specified as taxable by the Ministry of Finance of the People's Republic of China other than that provided in the preceding items.

Article 5 The following categories of income from sources in China, regardless of whether the place of payment is in China or not, shall be taxed according to the Tax Law:

1. Individual income from work and compensation for services within China. But, for individuals whose period of residence in China does not exceed 90 days, the above compensation paid by employers outside China shall be exempted from taxation.

2. Dividends and bonuses gained by any individual within China. But dividends and bonuses derived from joint ventures and from urban and rural cooperative organizations shall be exempted from taxation.

3. Remuneration for staff members sent to work abroad by governmental offices at all levels of the People's Republic of China.

4. Royalties and interest derived by any individual within China and income from lease of property within China as well as other kinds of income specified as taxable by the Ministry of Finance of the People's Republic of China.

Article 6 For a taxpayer, who has two or more categories of taxable income as provided in Article 2 of the Tax Law, income tax shall be computed and levied separately.

Article 7 If a taxpayer's taxable income is paid in kind or in marketable securities, that part of the income thus paid shall be computed in terms of money according to the market price at the time of its acquirement.

Article 8 'Prizes and awards for scientific, technological or cultural achievements' mentioned in Item 1, Article 4, of the Tax Law mean prizes and awards given to individuals by the Chinese government or Chinese or foreign scientific, technological or cultural organizations for inventions or creations in the fields of science, technology and culture.

Article 9 'Interest on savings deposits in the state banks and credit cooperatives of the People's Republic of China' mentioned in Item 2, Article 4, of the Tax Law includes interest on savings deposits in renminbi and foreign currency and interest on savings deposits in other banks entrusted by the state banks.

Dividends in investments by individuals in local construction (investment) companies in China, which pay no bonuses and whose dividends are not higher than the interest on savings deposits in state banks and credit cooperatives, are also exempt from tax.

Article 10 'Salaries of diplomatic officials of foreign embassies and consulates in China' mentioned in Item 7, Article 4, refer to salaries of diplomats in foreign embassies, consuls and other persons enjoying the same treatment as diplomats.

Tax exemption for salaries earned by other persons in foreign embassies and consulates in China shall be kept at the same level as the tax exemption for persons of similar status in Chinese embassies and consulates granted by the relevant countries.

Article 11 Compensation for personal services, royalties and income from lease of property gained in China by individuals not residing in China shall be taxed on the full amount received in such payment.

Article 12 'Income from compensation for personal services, royalties or lease of property' 'in a single payment' mentioned in Article 5 of the Tax Law means income gained on one single occasion or income from performance of only one piece of task of matter, and the amount so paid is counted as a single payment. For succeeding income from the same item that cannot be obviously divided into separate payments, such income received within a month is combined and counted as a single payment.

Article 13 For the same item of income gained by two or more persons in collaboration, deduction for expenses, if eligible according to the Tax Law, may be made from each share separately.

Article 14 The withholding agents in making various kinds of taxable payment shall withhold the taxes according to the Tax Law, turn them in to the state treasury in time and put them in itemized records for future reference.

The various kinds of taxable payment referred to in the preceding paragraph includes payment in cash, payment by remittance, payment by the transfer of accounts and payment in marketable securities or in kind, the value of which is computed in terms of money.

Article 15 Withholding agents and taxpayers filing personal returns shall submit tax returns within the time limit prescribed by the Tax Law. In cases of failure to submit the returns within the prescribed time limit on account of special circumstances, applications for extension shall be submitted within the prescribed time limit for approval to the local tax authorities.

The final day for tax payment and submission of tax returns may be extended if it falls upon an official holiday.

Article 16 For individuals residing in China for one year or more, the income gained outside China shall be computed and taxed separately from the taxable income earned within China. The amount of taxable income shall be computed after deducting expenses for different categories as provided in Article 5 of the Tax Law.

Income tax paid by taxpayers outside China for income earned abroad may be credited against the amount of income tax computed according to the tax rate prescribed by the Tax Law of China through applications by presenting tax payment certificate.

Article 17 Individual income in foreign currency shall be assessed according to the exchange rate quoted by the State General Administration of Foreign Exchange Control on the day when the tax payment certificate is made out and shall be taxed in renminbi.

Article 18 Individuals liable to the tax in China who desire to leave the country are required to pay off the tax to the local tax authorities seven days before departure from China and only then can they go through exit formalities.

Article 19 In conducting investigations concerning the payment of tax by withholding agents or taxpayers filing personal returns, the tax officials sent by tax authorities are required to produce identification cards and undertake to keep secret.

Article 20 For the commission of 1 per cent of the tax amount paid to the withholding agents provided in Article 10 of the Tax Law, the local tax authorities shll make out refund notice for the withholding agents on the monthly basis in accordance with the actual amount of tax withheld and the withholding agents may go through refunding formalities at the designated banks.

Article 21 A withholding agent or taxpayer filing personal returns who has violated the provisions of Article 9 of the Tax Law shall be penalized

500 yuan or less by the tax authorities according to the seriousness of the case.

Article 22 A withholding agent or a taxpayer filing personal returns who has violated the provisions of Article 14 and 15 of these detailed rules and regulations shall be penalized 500 yuan or less by the tax authorities.

Article 23 The tax authorities shall serve notices on cases involving penalty in accordance with the relevant provisions of the Tax Law and these detailed rules and regulations.

Article 24 For cases of applying for reconsideration by a withholding agent or a taxpayer filing personal returns according to the provisions of Article 13 of the Tax Law, the tax authorities concerned are required to make decisions within three months after the application is received.

Article 25 Tax returns and tax payment certificates for individual income tax are to be printed by the General Tax Bureau of the Ministry of Finance of the People's Republic of China.

Article 26 The right of explanation of the present detailed rules and regulations resides in the Ministry of Finance of the People's Republic of China.

Article 27 These detailed rules and regulations come into force on the same date as the publication and enforcement of the 'Individual Income Tax Law of the People's Republic of China'.

December 17, Xinhua

Quelle:

Ta Kung Pao *Thursday, December 18, 1980*