

CHAPTER III

PROFIT-SEEKING ENTERPRISE INCOME TAX

I. General Description

The current income tax system of the ROC consists of individual income tax and profit-seeking enterprise income tax. The former is a consolidated tax for various kinds of personal income, while the latter is a levy on the income of a profit-seeking enterprise.

Unlike the company or the corporate tax systems adopted by other countries, the profit-seeking enterprise income tax is imposed on companies and other forms of business organizations. For sole proprietorship and partnership organizations, the profit-seeking enterprise income tax is still required to be filed without payment because the individual consolidated income tax will be imposed on the taxable income, which includes the net income arising from the business of the sole proprietors and partners.

In addition, in order to create a better tax environment to encourage investment, the MOF decided to eliminate double taxation by implementing the integrated income tax system. The so-called integrated income tax reform bill, which integrates profit-seeking enterprise income tax and individual income tax, took effect from 1st January, 1998.

By adopting the imputation credit prototype to fully integrate the income tax system, shareholders are allowed a tax credit for the profit-seeking enterprise income tax paid on profits against their individual income tax liability. However, due to the difference between the rate of the profit-seeking enterprise income tax and individual income tax, enterprises may be induced to retain earnings therefrom. Therefore, a provision was added whereby undistributed earnings, consisting of after-tax income retained by a company, rather than being distributed as dividends to shareholders in the then current year, are subject to an additional 10% profit-seeking enterprise income tax.

Generally speaking, the aforesaid tax arrangement takes into consideration both the necessity for fairness in taxation and the need for efficiency in the overall system. With respect to the fairness of the taxation, the integrated income tax system eliminates double taxation and reduces the tax burden of taxpayers by deducting their profit-seeking enterprise income tax from their individual income tax and reducing the highest effective tax rate on investment income from 55% to 40%.

Currently, after the termination of the Statute for Upgrading Industries on 31st December, 2009, the income tax rate of profit-seeking enterprises was reduced from 25% to 17% and the taxable threshold from NT\$50,000 to NT\$120,000. The above measures which became since 2010 fiscal year, which are expected to establish an internationally competitive taxation environment, to attract more foreign investment and to promote the sustainable economic development of our country.

II. Tax Scope

Any profit-seeking enterprise operating within the territory of the ROC shall pay profit-seeking enterprise income tax, except where exemptions are provided.

The tax scope of taxation of the profit-seeking enterprise income tax can be explained as follows:

- A. Where a profit-seeking enterprise has its head office located within the territory of the ROC, the worldwide income of the entire enterprise both within and outside the country shall be subject to profit-seeking enterprise income tax. However, if the enterprise has already paid any income tax on its foreign source income abroad in accordance with the tax laws of the source country, such foreign income tax will be credited against its total profit-seeking enterprise income tax as determined to be payable upon submission by the taxpayer of evidence of tax payment for the same year issued by the tax authority of the source country.
- B. Where a profit-seeking enterprise has its head office located outside the territory of the ROC, but with all or part of its branches or any of its business agents within the territory of the ROC, profit-seeking enterprise income tax shall be levied on that part of the business profits derived from operating within the territory of the ROC, unless otherwise provided for by the income tax laws.
- C. Where a profit-seeking enterprise has a fixed place of business or business agent within the territory of the ROC, and has income derived from sources in the ROC, the tax payable shall be withheld at the respective source at a rate prescribed by the relevant regulations, there being no need to file a final return for settlement.

III. Taxpayers

“Those obligated to pay profit-seeking enterprise income Tax” refers to those who by law must either file a tax return or pay profit-seeking enterprise income tax. In addition to sole proprietorships, partnerships, companies, and co-operative organizations, all educational, cultural, public welfare, and charitable organizations and institutions must file a tax return and

pay tax under the tax law unless they are eligible for exemption.

A. Profit-Seeking Enterprises

The term “profit-seeking enterprise” as used in the Income Tax Act refers to industrial, commercial, agricultural, forestry, fishing, animal husbandry, mining, or metallurgical profit-seeking enterprises operated by public, private or joint public and private interests having a business title or place of business with profit-making as its purpose and organized in the form of a sole proprietorship, partnership, company, or any other form of organization. Of these, the principal taxpayers are profit-seeking enterprises organized as companies.

Where the head office of a profit-seeking enterprise is located within the territory of the ROC, the income of its branches shall be combined with that of the head office when filing a return for the profit-seeking enterprise income tax. Hence, the head office shall be the one having the obligation to pay the tax. Where a profit-seeking enterprise has its head office located outside the territory of the ROC, but has a fixed place of business or a business agent within the territory of the ROC, the fixed place of business or the business agent shall have the obligation to pay the tax and shall be held responsible for filing a tax return and paying income tax.

B. Sole Proprietorships

An individual as a sole proprietor aiming at making profit and having a business title or place of business shall be regarded as a profit-seeking enterprise. The sole proprietors shall by law file a profit-seeking enterprise tax return but pay the amount of individual income tax. The aforesaid income of a profit-seeking enterprise will be combined with other taxable income of the sole proprietors, and the consolidated income tax will be levied.

C. Partnerships

Similar to the sole proprietorships, a partnership of two or more persons is also a profit-seeking enterprise, which by law shall file a tax return and pay the amount of individual income tax on their part. The consolidated income tax will be levied on the taxable income, which includes the income from the partnership.

D. Co-Operative Organizations

Except for consumers’ co-operatives, whose operations are governed by the relevant law and who do not engage in business with non-members, a co-operative organization shall by law file a tax return and pay profit-seeking

enterprise income tax.

E. Other Organizations

What are referred to as “educational, cultural, public welfare, charitable organizations and institutions” are confined to such organizations or institutions as are organized in accordance with the General Principles of the Civil Code relating to public welfare organizations and consortiums or in accordance with the provisions of other relevant laws and ordinances and are duly registered with the competent authority-in-charge. Where the criteria for tax exemption as set by the Executive Yuan are met, no income tax shall be levied, but a return shall still be filed as required. Where the criteria for tax exemption are not met, profit-seeking enterprise income tax shall be levied.

IV. Tax Rates

A. The Tax Rate Structure

The minimum taxable amount and the flat tax rate of the current profit-seeking enterprise income tax are as follows:

1. Payment of profit-seeking enterprise income tax is exempted for those enterprises with an annual taxable income of no more than NT\$120,000.
2. A 17% tax is levied on the total taxable income of a profit-seeking enterprise with an annual taxable income of more than NT\$120,000, but the amount of tax payable shall not exceed half of the amount of the taxable income in excess of NT\$120,000.

B. Withholding Rates for Various Incomes

In addition to filing a final tax return, certain items of income derived by a profit-seeking enterprise are subject to a withholding tax as shown on the following page. For profit-seeking enterprises with no fixed place of business and business agent in the ROC, the withholding tax is final.

Withholding Rates for Various Incomes

Type of Income	Withholding Rates	
	Profit-Seeking Enterprise with a Fixed Place of Business	Profit-Seeking Enterprise with No Fixed Place of Business
Dividends Distributed by Companies and Profits Distributed by Co-Operatives	—	(1) 20%
Commission	10%	20%
Interest	(1) 10%; (2) 10%, to be withheld from ordinary income on interest from short-term commercial papers; (3) 10%, to be withheld from ordinary income on interest from securities issued under the Financial Asset Securitization Act and the Real Estate Securitization Act; (4) 10%, to be withheld on interest from government bonds, corporate bonds and financial bonds.	20%; (1) 15%, to be taxed on interest from the portion of the pecuniary amount realized by short-term commercial papers at their maturity in excess of the selling price at their initial issuance; (2) 15%, to be taxed on interest from securities issued under the Financial Asset Securitization Act or the Real Estate Securitization Act; (3) 15%, to be taxed on interest from government bonds, corporate bonds or financial bonds; (4) 15%, to be taxed on interest from repo (RP/RS) trade whereby a taxpayer purchases the aforesaid bonds, securities or short-term commercial papers at the net amount of the sale price at their maturity in excess of the original purchase price.
Rental	10%	20%
Royalties	10%	20%
Awards or Prizes Obtained from Participating in Contests, Games, or Lotteries, etc.	(1) 10%; (2) 20%, to be taxed on a prize received from lotteries sponsored by the government in the case that the prize exceeds NT\$2,000 per ticket	(1) 20%; (2) 0%, in the case that the prize received is from lotteries sponsored by the government and is no more than NT\$2,000 per ticket
Reward for Information or Accusation	20%	20%
Income Derived from Property Transactions	—	20% of the reported amount
Income Derived from International Transportation, Construction Projects, Furnishing of Technical Services, and Leasing of Equipment	—	20% of the deemed profits as calculated by multiplying the ROC-sourced revenue by a fixed rate as stated below:

by a Foreign Profit-Seeking Enterprise which has been Approved by the MOF to Fix a Rate Deemed as Profit According to Article 25 of the Income Tax Act		stated below: 1. 10%, for international transportation 2. 15%, for other contracted projects
Income Derived by a Foreign Motion Picture Enterprise which has been Approved to Fix a Rate Deemed as Profit According to Article 26 of the Income Tax Act	—	20% of the deemed profits
Other Income	—	20%

V. Exemptions

A. Tax-Exempt Organizations and Institutions

The following organizations are exempted from income tax:

1. Educational, cultural, public welfare, charitable organizations and institutions such as private schools, hospitals, nursing homes, asylums, etc., and also their subsidiaries, that meet the criteria set by the Executive Yuan.

Institutions and their operational organizations that meet the requirements for tax exemption shall file a final tax return in accordance with the regulations and those that do not meet the requirements shall be taxed in accordance with the law.

2. Consumers' co-operatives which, by law, do not engage in business with non-members, such as consumers' co-operatives for the staff and students of a school.
3. Governments at all levels and publicly-owned enterprises such as water departments, city and county bus services, port authorities, and railway administrations.
4. Foreign enterprises engaged in international transportation; provided that reciprocal treatment is accorded by the foreign country concerned to an international transport enterprise of the ROC operating in its territory.

B. Items Not Included in Taxable Income

1. Proceeds from land sales.
2. Income from securities transactions.
3. Income from transactions of futures on which the futures transactions tax has imposed under the Futures Transactions Tax Act.
4. Property acquired from donations by an individual.

To prevent double taxation on donations, property donated by an individual is exempted. However, to prevent possible non-arm's length transactions,

property donated by other profit-seeking enterprises shall be included in its income.

5. Income from a transaction involving property disposed of for the purpose of war stockpiling in accordance with government regulations.
6. Royalty paid to a foreign enterprise for the use of its patent rights, trademarks, and/or various kinds of special licensed rights in order to introduce new production technology or products, improve product quality, or reduce production costs under the approval of the competent authority, as well as remuneration paid to a foreign enterprise for its technical services rendered in construction of a factory for an important productive enterprise approved as such by the competent authority.
7. Income, except for interest from loans to individuals, juristic persons or financial organizations within the territory of the ROC, or the ROC government, derived by offshore banking branches; interest derived by foreign governments or international financial organizations for economic development from a loan made to the ROC government or a juristic person within the territory of the ROC and interest derived by foreign organizations from the financing of a financial organization within the territory of the ROC.
8. Inter-company dividends

When a domestic company invests in another domestic profit-seeking enterprise, net income from dividends or earnings received by the company may be excluded from its taxable income.

VI. Income Computation

A. Principles

In principle, the taxable income of a profit-seeking enterprise is computed by subtracting the costs, expenses, losses, and taxes from the current year's total revenues to arrive at the amount of net profit. There are some slight differences in the manner of computation depending on the nature of the profit-seeking enterprise in question. The following are the income computation formulas for trading, manufacturing, service, and credit enterprises.

1. Trading

$$\text{Net Sales} = \text{Sales} - (\text{Sales Returns} + \text{Sales Allowance})$$

$$\text{Cost of Goods Sold} = \text{Beginning Inventory} + [(\text{Purchases} - (\text{Purchase Returns} + \text{Purchase Allowance})) + \text{Purchasing Expenses}] - \text{Ending Inventory}$$

Gross Profit = Net Sales - Cost of Goods Sold

Net Business Profit = Gross Profit - (Selling Expenses + Administrative Expenses)

Net Income = Net Business Profit + Non-Business Gains - Non-Business Losses

2. Manufacturing

Manufacturing Cost = (Beginning Inventory + Purchases - Ending Inventory) +
Direct Labor Cost + Manufacturing Overhead

Cost of Finished Products = Beginning Inventory-Goods-in-Process + Manufacturing
Cost - Ending Inventory-Goods-in-Process

Cost of Goods Sold = Beginning Inventory-Finished Goods + Cost of Finished Goods
- Ending Inventory-Finished Goods

Net Sales = Sales - (Sales Returns + Sales Allowance)

Gross Profit = Net Sales - Cost of Goods Sold

Net Business Profit = Gross Profit - (Selling Expenses + Administrative Expenses)

Net Income = Net Business Profit + Non-Business Gains - Non-Business Losses

3. Other businesses supplying services or credit

Gross Business Profit = Business Yield - Business Cost

Net Business Profit = Gross Business Profit - Administrative and Incidental Expenses

Net Income = Net Business Profit + Non-Business Gains - Non-Business Losses

B. Special Cases

1. Special rules of computation are provided by the Income Tax Act for any profit-seeking enterprise which has its head office outside the territory of the ROC, and is engaged in international transport, construction contracting, providing technical services, or machinery and equipment leasing, etc., within the territory of the ROC. Such enterprise may apply for approval from the MOF to consider 10% or 15% of its total business revenue for an enterprise engaged in international transport business or for one engaged in any other businesses, respectively, as its income derived within the territory of the ROC in accordance with the Income Tax Act.
2. Furthermore, any foreign motion picture industry enterprise with no branches in the ROC which leases motion pictures via its business agent may calculate its income based on 50% of its rental revenue derived from the ROC. If such industry enterprise has branches in the ROC, it may claim the costs for leasing motion pictures based on 45% of its rental revenue and deduct the related

expenses while calculating its income.

3. Interest revenues received by a profit-seeking enterprise from government bonds, corporate bonds, and financial bonds shall be calculated in accordance with face value and rate. From 1st January, 2010, interest distributed from beneficiary securities or asset-backed securities issued in accordance with the Financial Asset Securitization Act or the Real Estate Securitization Act by a profit-seeking enterprise shall be added to the amount of income of the profit-seeking enterprise. In addition, the gains or losses derived from the securities transaction whereby a profit-seeking enterprise purchases the aforementioned bonds between interest payment days and then sells them before the next interest payment day, shall be the net income, i.e., the sale price after purchase price and interest revenues.
4. The profits or losses incurred by a warrant issuer from the purchase or sale of securities or derivatives for hedging purposes shall be added to the premium in calculating the gain or loss from the issuance of the warrant, to the extent of the amount of the premium less the costs and expenses incurred from the issuance. The amount of profits or losses resulting from financial derivatives transactions shall be added in when calculating the profit-seeking enterprise income in the year settlement was completed. Article 4-1 and Article 4-2 of the Income Tax Act shall not apply in the aforementioned circumstances.
5. Tonnage Tax Regime
 - a. Beginning from the 2011 fiscal year, a profit-seeking enterprise which has its head office within the territory of the ROC and is engaged in marine transportation may apply to be taxed under the tonnage tax regime. Shipping companies that meet certain criteria will be able to choose to calculate the income derived from marine transportation on the basis of the amount of the net tonnage or on the basis of the amount of the actual ordinary income; once the choice is made, however, it will be binding for a period of 10 years.
 - b. Derived profit is used in calculating income from marine shipping under the tonnage tax regime, with the derived profit being divided into four brackets based on the net tonnage as follows:

Net tonnage of ship (Unit: net tons)		Fixed profit per 100 net ton per day (Unit: NT\$)
0	-	1,000
1,001	-	10,000
10,001	-	25,000
25,001	and over	-
		67
		49
		32
		14

c. Further, shipping companies that choose to enter the tonnage tax regime will not be eligible to apply under Article 39 of the Income Tax Act regarding loss carry-forward and other tax incentives regulated under other laws.

d. The MOF will issue the related regulations after discussion with the Ministry of Transportation and Communication.

VII. Tax Payments and Returns

A. Provisional Payments

1. The current Income Tax Act provides that a profit-seeking enterprise that should pay profit-seeking enterprise income tax shall make a provisional payment to the Treasury, file a provisional tax return on a prescribed form and send it with a tax receipt to the collection authority-in-charge within the month commencing 1st September and ending 30th September. The amount of this provisional payment shall be equivalent to half of the profit-seeking enterprise income tax payable which the profit-seeking enterprise reported on the final tax return for the previous year.
2. A profit-seeking enterprise which fulfills the provisional payment without investment tax credit, refundable tax from administrative remedy and having claimed withholding tax is exempted from filing a provisional return after making a provisional payment to the Treasury.
3. If a company, which keeps sound accounting records, files blue returns or entrusts a certified public accountant to certify and duly file a provisional tax return within the time limit, it may base its tax return on the current tax rate, in accordance with the Income Tax Act, calculating its income amount with business revenue for the first half of the current year.
4. The following enterprises are exempted from filing a return and making a provisional payment of tax:

- a. Any profit-seeking enterprise which has no fixed place of business in the ROC and whose profit-seeking enterprise income tax is withheld by its business agent or payer in accordance with the Income Tax Act.
 - b. A sole proprietorship or a partnership and any approved small-scale profit-seeking enterprise.
 - c. Any enterprise that has tax exempt income during the period in which it has been granted exemption from the profit-seeking enterprise income tax by law. However, in the case that it has any taxable income, a provisional payment shall be made on a pro-rata basis.
 - d. Educational, cultural, public welfare, charitable organizations and institutions and their operational subsidiaries, consumers' co-operatives, and publicly-owned enterprises.
5. If a profit-seeking enterprise fails to make its provisional payment within the time limit imposed, but before the end of the October of the year in which, the relevant collection authority-in-charge will charge additional interest until the payment is made, calculated on a daily basis at the prevailing interest rate of local banks for a one-year deposit. Furthermore, if a profit-seeking enterprise fails to make its provisional payment before the end of October, the relevant collection authority-in-charge will send a provisional tax payment notice to the said enterprise and it will be charged an additional month of interest calculated at the prevailing interest rate of local banks for a one-year deposit.

The profit-seeking enterprise shall pay this amount within fifteen days following receipt of the said tax payment notice.

B. Settlement of the Final Tax Return

1. Deadline for tax return filing

A profit-seeking enterprise shall, within the period from 1st May to 31st May of each year, file a tax return with an annual income return providing the items and amounts that make up its business revenue for the preceding year along with details relating to any exemptions and deductions. The amendment that a profit-seeking enterprise organized as a sole proprietorship or a partnership shall file the annual income tax return without payment, became effective starting from 2009. To simplify the administrative procedure, where the amount of the aforesaid income of a profit-seeking enterprise shall be combined with other income of the sole proprietor of such sole proprietorship or of the partners of such profit-seeking partnership, the individual consolidated income tax shall be levied in accordance with the Income Tax

Act on such consolidated income.

2. Types of final settlement returns

a. Ordinary Returns: To be used by profit-seeking enterprises in general.

b. Blue Returns: Provided especially for encouraging honest reporting by profit-seeking enterprises and used only with the approval of the collection authority-in-charge.

c. Simplified Returns: To be used by small-scale profit-seeking enterprises which are comprised of legally-registered street vendors and those with an average monthly turnover of less than NT\$200,000.

c. Report of the final accounts of a non-profit organization to be used by educational, cultural, public welfare, charitable organizations and institutions as well as their operational organizations.

3. Computation of income and tax payable on the final return. The amount of taxable income shall computed by deducting from total revenues all costs, expenses, losses, and taxes and further by making all necessary adjustments where there are inconsistencies with the provisions of the tax laws. The formulas below are then followed to compute the supplementary tax payment or tax refund.

a. Where the business has been in operation for one year, the formula is:

(1) Amount of Taxable Income = Income for the Whole Year - Deductions of Any Losses in the Last Ten Years - Various Tax-Exempt Income

(2) Tax Payable = Amount of Taxable Income × Tax Rate

(3) Income Tax Owed/to Be Refunded = Tax Payable - Provisional Payment - Unused Credit or Withholding Tax

b. Where the business has been in operation for less than one year, the amount of income for the actual period of operation shall be converted proportionately on an annual basis to a yearly income. Where the period of actual operation is less than one month, it shall be deemed as one month and the formula of computation is as follows:

(1) Taxable Income = Income for the Whole Year - All Tax-Exempt Income

(2) Converted Annual Tax Payable = Taxable Income ×

$$\frac{12}{\text{Actual Period of Operation}} \times \text{Tax Rate}$$

$$(3) \text{ Tax Payable} = \frac{\text{Converted Annual Tax Payable} \times \text{Actual Period of Operation}}{12}$$

$$(4) \text{ Income Tax Owed/to Be Refunded} = \text{Tax Payable} - \text{Unused Credit or Withholding Tax}$$

4. Correction of errors in the final tax return

A profit-seeking enterprise may request correction of its tax return in the case that it has found on its own any error, omission, or under-reporting after it has filed its final tax return but prior to the day that the investigator designated by the collection authority-in-charge to handle the case has signed for acceptance. If a supplementary levy is called for after correction, interest calculated on a daily basis at the prevailing interest rate of local banks for a one-year deposit will be added to the tax for the period from the day after the deadline for filing the final return till the day of payment; however, a penalty in accordance with Article 110 of the Income Tax Act shall be waived.

5. Settlement of imputation credit account and allocation of credit imputed to shareholders upon distribution

Corporations shall set up an imputation credit account, and record the amount of profit-seeking enterprise income tax paid in the ROC. When the earnings are distributed, the company shall calculate the imputation credit available to its shareholders.

The withholding tax on dividends is not required on dividends paid to resident shareholders. The credit available to shareholders is calculated by multiplying the net dividend received by a creditable ratio, which is the maximum credit available for companies to allocate to shareholders. The creditable ratio and imputation tax credit shall be calculated as follows:

$$\text{Creditable Ratio} = \frac{\text{Balance of Imputation Credit Account}}{\text{Accumulated Retained Earnings since 1998}}$$

$$\text{Imputation Credit} = \text{Net Dividend} \times \text{Creditable Ratio}$$

The balance of the imputation credit account in turn is determined by the amount of domestic profit-seeking enterprise income tax paid by the company, plus the amount of credit passed on from dividends received from domestic investments, and other designated items. However, such a ratio should not exceed:

- a. 33.33% if the accumulated retained earnings before 2009 have been not subject to 10% surtax. And 20.48% if the accumulated retained earnings after 2010 have been not subject to 10% surtax.
- b. 48.15% if all the accumulated retained earnings before 2009 have been subject to 10% surtax. And 33.87% if all the accumulated retained earnings after 2010 have been subject to 10% surtax.
- c. For an aggregate amount of undistributed earnings that have been partially subject to 10% surtax and have been partially not subject to 10% surtax: the sum of the creditable ratio to be calculated respectively based on the applicable tax creditable ratios specified in the preceding two items in respect of the different proportions of the aforesaid two parts of undistributed earnings to the aggregate amount of the undistributed earnings.

In this way, the ratio may vary from company to company according to a company's tax liability.

Corporations shall issue dividend vouchers to their shareholders stating the amount of the net dividend paid and the credit imputed thereon before the end of January following the year the distribution is made.

C. Settlement of the Surtax on Undistributed Earnings

A profit-seeking enterprise shall, within the period from 1st May to 31st May of the year, file a report regarding its undistributed earnings for the year before the last year. The term "undistributed earnings" beginning from the year 2005, shall denote the amount of income after tax as calculated by a profit-seeking enterprise in accordance with the Commercial Accounting Act. After such calculation adjustments should then be made, which include consideration of certain deductible items such as make-up of the losses in previous years and the next-year-loss which have been duly audited and certified by a certificated public accountant; net dividends or net earnings which have been distributed from the earnings gained in the current year; other reserve funds or payment funds set aside according to the relevant laws; bonus or remuneration paid to directors, governors and employees from the surplus earnings in accordance with the provisions of the Articles of Incorporation of the company or co-operative; and other items permitted by the MOF.

In the case where the financial statements in the current year of a profit-seeking enterprise were duly audited and certified by a certified public accountant, the term "income after tax" shall be based on the amount which was assessed by such certified public accountant. However, if thereafter the collection authority-in-charge conducts an assessment of such financial statements and makes an adjustment to the amount of income after tax, the original amount shall be replaced by the amount after such adjustment of which the collection

authority-in-charge has informed the enterprise.

If the reasons why distributable earnings were restricted from distribution pursuant to the provisions of Items 5 and 7 of Paragraph 2 of Article 66-9 of the Income Tax Act are no longer pertaining, the part of which the distributable earnings there from have been undistributed prior to the end of the fiscal year following the year when the reasons no longer pertain shall be added to the undistributed earnings of the year when the reasons no longer pertain and be subject to the levy of an additional profit-seeking income tax at the rate of 10%.

After the surtax is paid, the retained earnings can be accumulated without any limitation. The restrictions on retained earnings shall no longer apply to profits generated beginning from 1998.

D. Filing a Return for Final Settlement of Accounts for the Current Period

1. In the case of dissolution, closure, amalgamation, or transfer of ownership, a profit-seeking enterprise shall file a return within forty-five days beginning from the day of dissolution, closure, amalgamation, or transfer of ownership. The starting date of the period shall be the next day after the day on which the dissolution is approved by the collection authority-in-charge. The procedure and the computation of income for filing the return are the same as those for filing the annual final return for settlement.
2. When a profit-seeking enterprise is declared bankrupt, it shall file an income tax return with the collection authority-in-charge within ten days prior to the time limit prescribed for credit registration announced by the court.

E. Reporting Liquidation

In the case of dissolution or closure, liquidation income during the liquidation period shall be reported within thirty days after the completion of liquidation.

F. Deduction of Losses during the Preceding Ten Years

No losses incurred during the preceding years may be deducted from the profits for the current year. However, in the case where a company which keeps sound accounting records, files blue returns, or entrusts a certified public accountant to certify and file a return on its behalf in both of the loss and reporting years and duly files a tax return within the time limit, the collection authority-in-charge may, before making assessment on its tax payable, deduct the losses incurred during the preceding ten years from the net profits for the current year. The abovementioned regulation, which was promulgated on 21st January, 2009, came into effect as of the filing of 2008 annual tax return.

G. Deferment of Payment

When a taxpayer is unable to make full tax payment within the statutory time

limit owing to natural calamity, emergency, or major loss of property, he or she may petition the collection authority-in-charge within the prescribed period of payment for deferment or for payment by installment. However, the period of deferment or payment by installment shall not exceed three years.

H. Tax Refund

A taxpayer may file an application for refund along with concrete evidence within five years from the date of his or her overpayment, if such overpayment resulted from misapplication of the law or miscalculation. No application can be made beyond that period.

I. Levy or Refund Excused

In the case that the sum of tax that a taxpayer is required to pay is in the form of a supplementary payment (NT\$300 since 24th September, 2010), or the collection authority-in-charge is required to provide a refund (NT\$200 since 24th September, 2010) below a certain figure, the MOF may, in consideration of the actual situation, set such figure and report to the Executive Yuan for approval to be excused from levy or refund.

J. Addition of Interest

1. When a profit-seeking enterprise has underpaid its tax as a result of having exceeded the limits set in the present law and its subordinate regulations in deducting costs, expenses, and losses in its final return for settlement and has been found by the collection authority-in-charge to be liable for a supplementary payment, it shall be liable at the same time for an additional payment of interest, calculated on a daily basis at the prevailing interest rate of local banks for a one-year deposit for the period from the day immediately following the deadline for tax return filing to the day of actual supplementary payment. The period of additional interest shall not exceed one year.
2. Interest as computed according to the above-mentioned provisions may be exempted from collection if the amount is below NT\$1,500.

K. Deferment of Taxable Year

Income derived from technology appraised as capital stock of a qualified shareholder may be deferred from income taxation for a five-year period. Furthermore, the newly emerging industry may issue and grant stock options to the provider of technology whose taxable year of income taxation shall be deferred to the exercise year. (The tax incentives provided under the Statute for Upgrading Industries were terminated on 31st December, 2009.)

VIII. Investigation and Assessment

After a profit-seeking enterprise has filed its tax return in accordance with the law, the collection authority-in-charge shall proceed to investigate to determine its income and tax payable on the basis of the return, related account books, and documentary evidence. However, owing to limitations in the amount of man-power available for collection and in order to encourage honest reporting, cases which fulfill certain conditions will be assessed by means of a paper review. Where the final tax return has not been filed within the prescribed time period or the final tax return has been filed within the prescribed time period, but no account evidence has been submitted within the prescribed period, such cases will be assessed in light of the information available and the average profit of the trade concerned.

A. Paper Review and Assessment

1. Requirements of paper review in general

- a. Any profit-seeking enterprise with an income exceeding the standard income of the industry concerned. The so-called standard is set by the collection authority-in-charge by a sampled investigation of the industry.
- b. Cases that are entrusted to a certified public accountant for check, certification, and report.
- c. Blue return cases with no irregularities.

2. Requirements of expanded paper review

- a. A paper review will be accorded to those cases which satisfy the following three criteria:
 - (1) The total amount of business and non-business revenue is less than NT\$30,000,000.
 - (2) The final tax return is accompanied by all the necessary documents.
 - (3) The net income ratio of the said profit-seeking enterprise has reached a prescribed standard and the taxpayer has made full tax payment.

However, provisions regarding paper review are not applicable to some cases, e.g., the tax returns of real estate, which must be subject to auditing for assessment.

- b. A small-scale profit-seeking enterprise organized in the form of sole proprietorship, or partnership doing sporadic business with a monthly average sales amount of less than NT\$200,000, having been granted permission by the collection authority-in-charge not to use uniform invoices, may have its total amount of earnings calculated by the authority, attributed to individual total income and assessed for the individual income tax of the sole proprietor or partners.

3. Random checks

Each year the collection authority-in-charge shall select an appropriate sample of the paper review cases for on-the-spot auditing on the basis of all relevant information. Such selection of an appropriate sample shall be determined in accordance with the manpower available for auditing and the total number of paper review cases by the chief of the collection authority-in-charge. However, any qualifying cases certified by CPAs shall be sampled at a reduced rate or be exempted.

B. Assessment through Auditing

1. Cases to be audited

- a. Cases selected for examination by computerized sampling.
- b. Cases selected for examination by the collection authority-in-charge through manual labor in light of the revenue, budgetary, or manpower collection situation.
- c. Cases that should be but have not been entrusted to a tax agent to check, certify, and report.
- d. Cases that have been found on preliminary checking as failing to meet the requirements for paper review.
- e. Cases that have been found by paper review to have certain abnormalities.
- f. Cases that have been listed as targets for auditing according to the provisions for the random checking of paper review cases.

2. Types of auditing

- a. Where all related account books and documentary evidence relating to certain income have been presented as required and the records are complete, the amount of income will be determined in light of the evidence.
- b. When in the process of investigation, there has arisen suspicion of serious tax evasion, and if the situation so warrants, investigation may be instituted after reporting to the MOF for approval on the taxpayer's net value of assets, cash flow, and other business data as being found not to be in conformity with regular business practice.

C. Assessment According to Available Data or the Profit Standard of the Same Trade Concerned

1. Assessment entirely in accordance with the law

In any of the following cases, the collection authority-in-charge may assess the

taxpayer's business income in light of the profit standard of the same trade concerned. If any non-business income exists, it should be added to the business income for tax purposes. If any non-business expenditures exist for which concrete facts have been ascertained and which are in conformity with the provisions of the tax law, they may be deductible. The so-called "Profit Standard of the Same Trade Concerned" includes the gross profit ratio and the net profit ratio.

- a. Cases in which, upon notification, account books and documentary evidence have not been presented or have not been presented for inspection within the set time limit.
- b. Failure to set up or keep account books in accordance with the provisions of "The Measures to Supervise the Account Books and Documentary Evidence of Profit-Seeking Enterprises by the Collection Authority-in-Charge."
- c. The account books and documentary evidence of a profit-seeking enterprise have been lost or destroyed because such information has been removed from the place of business without lawful reason.
- d. Failure to file the final tax return within the time limit and continuation of such failure after being notified to file said final tax return.

2. Assessment partly in accordance with the Income Tax Act

When a taxpayer is unable to present the account books and documentary evidence relating to a part of his or her income or to all the taxable income for a certain period, the collection authority-in-charge may assess the amount of the said part of the income in light of the available data and the profit standard of the same trade concerned. Where the account books and documentary evidence are available, assessment may still be made through auditing. However, the amount assessed shall not exceed the total annual net business receipts as assessed in accordance with the profit standard of the same trade concerned.

IX. Penalty Provisions

There are two kinds of penalty for profit-seeking enterprise income tax: penalty for violation of the obligation to act and penalty for tax evasion. Here are some of the important penalty rules:

- A. Failure to set up and keep account books in accordance with the regulations is subject to a fine of not less than NT\$3,000 and not more than NT\$7,500. Furthermore, the profit-seeking enterprise is required to set up and keep account books in accordance with the regulations within one month. Failure to do so on the expiry of the one-month period is subject to a fine of not less than NT\$7,500

and not more than NT\$15,000, and the enterprise is once more required to set up and keep account books in accordance with the regulations within one month. If account books are still not set up during this period, the enterprise shall be subject to a suspension of one month of business, and the suspension may continue until the account books are set up in accordance with regulations.

- B. Failure to follow regulations to obtain documentary evidence from others, to give documentary evidence to others, or to keep documentary evidence is liable to a fine of 5% of the acknowledged amount. If a profit-seeking enterprise obtains certificates from a non-actually traded party, but it is found that it indeed had bought the goods and that the certificate was given by the actually traded profit-seeking enterprise and the actually traded profit-seeking enterprise was already fined by law, the penalty may be lifted.
The amount of the fines in the preceding paragraph shall not exceed NT\$1,000,000.
- C. Failure to present the various account books or documentary evidence relating to income within the prescribed time period is liable to a fine of not more than NT\$1,500.
- D. Failure to file a tax return, including the undistributed earnings return within the prescribed time period, but filing a tax return after being notified is liable to a surcharge for late reporting at 10% of the assessed tax payable; however, the amount of the delinquent reporting surcharge shall not be more than NT\$30,000 but shall not be less than NT\$1,500. Failure to follow the notification to file the tax return, including the undistributed earnings return is liable to a further surcharge of 20% of the assessed tax payable, which is determined by the collection authority-in-charge according to available data or the profit standard of the same trade concerned. However, the amount of the delinquent reporting surcharge shall not be more than NT\$90,000 and not less than NT\$4,500.
- E. When a final tax return has been filed in accordance with the law, and there is an under-reporting of taxable income, a fine of not more than twice the amount of tax evaded shall be imposed; for under-reporting of the undistributed earnings, a fine of not more than the amount of tax evaded shall be imposed. If a profit-seeking enterprise fails to file a final tax return and has some taxable income still outstanding, it is liable for a fine of not more than three times the amount of tax evaded in addition to the assessed supplementary tax payable.