

**Grand Jury Interpretation
No. 657 of April 3, 2009**

Translation from Chinese

April 2009

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Article 82, Paragraph 3 of the Enforcement Rules of the Income Tax Act materially stipulates that, “unpaid expenses or losses payable recorded on a profit-seeking enterprise’s accounts which are not actually paid within two years shall then be classified as “other revenue”, which shall again be classified under the accounts of “non-operating expenditures upon actual payment”. Furthermore, Article 108-1 of the Guidelines for the Audit of Income Taxes on Profit-Seeking Enterprises materially provides that “unpaid expenses or losses payable recorded on a profit-seeking enterprise’s accounts which are not actually paid within two years shall be classified as “other revenues”, which again are to be enumerated under the accounts of “non-operating expenditures upon actual payment”.

The two provisions aforesaid, regarding unpaid expenses losses payable being re-classified as other revenue, increase the enterprises’ income and therefore increase the tax payable of that year.

The provisions are obviously not for matters that would concern technical details or secondary issues only. They lack a clear and specific authorization, i.e. legal basis from the Income Tax Act, and thus contradict the principle of *nullum capitagium sine lege* of Article 19 of the Constitution. Therefore, these provisions shall become null and void no later than one year from the date of this Interpretation.

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