

# Doing Business in China



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# General Introduction

## Geography

Located in the east of the Asian continent, on the western shore of the Pacific Ocean, the People's Republic of China (China) has a land area of about 9.6 million square kilometres and a population of 1.39 billion. It is the third largest country by land area and the largest country by population in the world.

## Language and Currency

The official language of China is Putonghua, also referred to as Mandarin Chinese, which is spoken throughout the country. However, numerous other dialects are also spoken in different parts of China, the most common being Cantonese in southern China and Shanghainese in the greater Shanghai region.

The currency used in China is Renminbi (RMB). The main unit is the Yuan.

## Time

China's entire territory is situated in a single time zone, which is eight hours ahead of Greenwich Mean Time (GMT). They do not implement "daylight savings."

## Communications and Transport

Communication and transportation are well developed in China. The Internet is used widely: telephone and mobile phone services are also well developed. There are about 135 civil airports in mainland China, of which about 39 are international airports. China has 8 out of the top 10 container ports in the world. China also has a strong expressway network and railway system, which are improving all the time.

## Constitution

The People's Republic of China is a communist republic. The socialist system is the basic system of the People's Republic of China.

## Legal Systems

Legislation drawn up by the central government and local governments at various levels are enacted through the national people's congress and the local people's congress.

The judicial system comprises four levels of courts, from county level up to the Supreme Court, with escalation and appeal processes. These courts deal with both civil and criminal cases.

## Major Exports and Imports

China is one of the most important markets in the world. For the present, it is the largest exporter and the second largest importer in the world, with exports of US\$ 17,930 billion and imports of US\$ 14,230 billion in 2020.

Major exports are electrical and other machinery, including data processing equipment, textiles, apparel, steel and iron, optical and medical equipment. Major imports are electrical and other machinery, oil and mineral fuels, optical and medical equipment, metal ores, plastics, organic chemicals.

## Sources of Finance

China is the world's most important developing country, with an investment environment attracting the world's financial institutions. The present financial system in China is under the leadership of the People's Bank of China, with exclusively State-owned commercial banks as the main body, but allowing the co-existence of and co-ordination with State policy-related banks, other commercial banks and various financial institutions. The various sources of finance including: commercial banks, policy banks (China Development Bank, Export-Import Bank of China, China Agricultural Development Bank, etc), investment institutions, credit unions and the stock exchanges.

## China Development

From the time Deng Xiaoping (a former leader of China) adopted the Open-Up Policy for China in the 1980s, economic developments have steadily burgeoned as its national GDP consistently remained in the double digits. China's low business costs and cheap labour prices made it possible for an inpour of





foreign investments and helped focus governmental efforts in preventing widening inequalities through the designation of special economic zones including cities such as Shenzhen, Zhuhai, and Xiamen.

In recent years, from the 2008 Beijing Olympics to the Shanghai World Expo in 2010, China has quickly transformed into one of the fastest growing global centres of the world. Currently in its Twelfth Five-Year national plan, China's leaders have not only set targets to continue and increase its overall economic growth, but they have also taken the initiative to engage in environmental and clean energy efforts.

In May 2017, at the “One Belt, One Road” International Cooperation Forum, President Xi Jinping launched the China International Import Expo (that will be held every year starting from 2018). The first China International Import Expo was officially held in the National Convention and Exhibition Centre in Shanghai, from 4 to 11 November. China International Import Expo (CIIE) is hosted by the Ministry of Commerce and the Shanghai Municipal People’s Government and it aims to firmly support trade liberalisation and economic globalisation and actively open the market to the world.

Since 2014, China's policy moved away from “export dependent” to “developing internal market.” In addition, China is now gearing towards “innovated in China” rather than “made in China.” These changes have been two key factors for continued growth in China's economy during the world economic crisis and will continue to contribute to China's economic growth during the next couple of years.

In November 2020, Regional Comprehensive Economic Partnership (RCEP) was signed between China and other 14 countries consisting of 10 countries from Southeast Asia, Korea, Japan, Australia and New Zealand. The 15 member countries account for about 30% of the world's population (2.2 billion people) and 30% of global GDP (\$26.2 trillion) as of 2020, making it the biggest trade bloc in history. The RCEP is the first free trade agreement between China, Japan, and South Korea, three of the four largest economies in Asia. Several analysts predicted that it would offer significant economic gains for signatory nations, as well as “pull the economic centre of gravity back towards Asia”.



# Common Investment Vehicles

The main business structures used in China are:

- Sino-Foreign Equity Joint Ventures (EJV)
- Wholly Foreign Owned Enterprises (WFOE)
- Cooperative Joint Ventures (CJV)
- Partnerships
- Representative offices
- Branches
- Trusts

In 2020, with the promulgation of Foreign Investment Law (“FIL”), the organizational form, governing structure, and operating rules of Foreign Invested Enterprises (“FIE”) will be subject to the provisions of the Company Law, the Partnership Enterprise Law, and other applicable laws, **in the same way as enterprises established by domestic investors are treated.**

FIEs established in accordance with the three old laws on WFOE, CJV and EJV before the FIL takes effect may keep their original organizational forms for five years after January 1, 2020.

## Sino-Foreign Equity Joint Venture (EJV)

An EJV is an enterprise set up by a foreign entity (including foreign companies, enterprises and other economic organisations or individuals) and a Chinese entity (including Chinese companies, enterprises and other economic organisations). An EJV is jointly operated by the entities, who share the risk, profit and loss according to the proportion of the capital they contribute.

### Set-up procedures

A. Submit the following documents to the examination and approval authorities:

- a) Application for setting up an EJV
- b) Feasibility study report

- c) The signed agreement, contract and articles of association for the EJV
- d) Names of board members
- e) Any other documents required by the examination and approval authorities

**B.** Approval by the examination and approval authorities.

The examination and approval authorities should decide to approve or not within three months. After approval, the administrative department in charge of foreign trade and economy will issue a certificate of approval.

**C.** The EJV should register and obtain a business licence within one month of the date of approval.

### Registered Capital and Total Investment

**A.** Registered Capital

The registered capital of an EJV is the capital registered with the Industrial and Commercial Bureau, which equals the total investments of all venturers. It must meet the following requirements:

- a) The foreign capital investment may not be less than 25% of the total registered capital.
- b) During the contract term of a joint venture, it may not reduce its registered capital. Increasing the registered capital needs approval by the board and must be submitted to the examination and approval authorities.

Companies in special industries need to comply with the special regulations issued by the relevant government agencies.

**B.** Total Investment

Total investment comprises registered capital and loans. The State Administration for Industry and Commerce sets the registered capital as a proportion of total investment as follows:

Total Investment	Registered capital as proportion of total investment
Up to US\$3m	70%
US\$3m to US\$10m	50% (not less than US\$2.1m)
US\$10m to US\$30m	40% (not less than US\$5m)
Above US\$30m	One third (not less than US\$12m)

### Wholly Foreign Owned Enterprise (WFOE)

A WFOE is an enterprise set up in China with all the capital invested by foreign investors. A WFOE is a separate economic entity, which has an independent accounting system, is responsible for its own profit and loss, and assumes all legal responsibilities.

FIL have limited impact on WFOE despite the fact that the old WFOE law has been repealed. One impact is that, under the old WFOE law, the only organization form that a WFOE can take is limited liability while under the new FIL, WFOE could take limited liability or joint-stock forms as per the Company Law.

## Set up procedures

A. Submit a report to the local government (county level or above), including:

- a) the objective of establishing the WFOE
- b) scope and scale of business
- c) products
- d) technical equipment
- e) land area and requirements
- f) energy conditions and volume required
- g) requirements for community facilities

The government will reply to the investor within 30 days of receiving the report.

B. Submit an application to the examination and approval authorities with the following documents:

- a) application for establishing the WFOE
- b) feasibility study report
- c) official certificate and reference of the foreign investor
- d) written replies by the local government at county level or higher about the plan to establish the WFOE
- e) the list of goods which need to be imported.

The examination and approval authorities will decide whether to grant approval or not within 90 days.

C. The foreign investor must register with the Industrial and Commercial Bureau and obtain a business licence within 30 days of receiving the certificate of approval.

D. The WFOE should register with the Tax Bureau within 30 days of the date on the business licence.

Separation, consolidation or other significant changes of a WFOE need the approval of the examination and approval authorities and a capital verification report issued by a Chinese CPA. After approval by the authorities, the WFOE should change its registration at the Industrial and Commercial Bureau accordingly.

## Registered Capital

The registered capital as a proportion of the total investment should be in accordance with relevant regulations. Please refer to the Regulations for Sino-Foreign Equity Joint Ventures.

## Cooperative Joint Venture (CJV)

A CJV is set up within China by foreign entities (including foreign companies, enterprises and other economic organisations or individuals) and Chinese entities (including Chinese companies, enterprises and other economic organisations). All venturers have separate rights and responsibilities according to the contract.

However, with the promulgation of FIL, the organization form CJV **is no longer available in China**. The old CJVs established before the FIL takes effect have five years after 1 January, 2020 to change their organization form. If existing CJVs have legal person status, they will need to restructure during the five-year transitional period into a limited liability company or joint-stock company, in accordance with the Company Law. If they are CJVs

without legal person status, then they can transfer within the five- year transitional period to a partnership enterprise, in accordance with the Partnership Enterprise Law, or a limited liability company or joint-stock company, in accordance with the Company Law.

## Registered Capital

Please refer to the relevant regulations about registered capital as a proportion of total investment for Sino-Foreign Equity Joint Ventures.

## Partnerships

Partnerships include both general partnerships and limited liability partnerships, both of which are established under partnership law by natural persons, legal persons or other organisations.

A general partnership is composed of general partners who bear unlimited joint and several liability for the debts of the partnership. A limited liability partnership is composed of general partners and limited partners, with the former bearing unlimited joint and several liability for the debts of the partnership and the latter bearing liability for such debts respectively within the limits of the capital contributions subscribed for.

### Set-up procedures:

To establish a partnership, documents such as a written application for registration, a partnership agreement and the identity papers of the partners must be submitted to the registration authority. If the documents are in order, the authority shall, if it can, grant the registration on the spot and issue a business licence. If the authority cannot do it on the spot, it must, within 20 days, decide whether or not to grant registration. If it decides to grant registration, it must issue a business licence; otherwise, it must give a written reply and state the reasons.

## Representative Office

Representative offices may only engage in non-operating activities in China. They act on behalf of foreign companies including making contacts, extending volume growth of products, research and marketing, technical exchange, etc. within the business scope of the foreign companies. Representative offices may engage in any business activities and sign any business contracts necessary to maintain the office as a going concern.

### Set-up procedures

There are no uniform laws or regulations at the national level about set-up procedures for representative offices in detail. For detailed set-up procedures, please refer to the relevant local regulations. However, the general set-up procedures are as follows:

- A. A foreign company must make an application to the Bureau of Commerce or State Council and relevant departments to obtain a certificate of approval.
- B. The company must go to the Administration of Industry and Commerce office to complete a registration form within 30 days of obtaining the certificate of approval and submit the following documents:
  - a) Certificate of approval
  - b) Application form signed by the Chairman of the Board or the General Manager. The application form shows: the representative office's name, responsible officer, scope of business, duration of residence, location, etc.
  - c) Official licence to do business provided by the local relevant authorities

- d) Capital credit certificate provided by the relevant financial institutions
- e) Letter of authorisation for permanent representative provided by the company and the résumé of the permanent representative

There are some differences in detailed set-up procedures in different regions. We suggest consulting local government and relevant government agencies before setting up representative offices.

## Tax registration and payment

A representative office should declare VAT on a quarterly basis and pay the tax within 15 days of the end of the quarter. Enterprise Income Tax should also be prepaid within 15 days of the end of a quarter, and the balance of tax settled within four months of the end of the year.

A consulting service representative office engaged in commerce, law, tax, accounting and audit should establish accounting books, calculate its taxable income and declare and pay the tax.

A service representative office engaged in agency and trade should calculate deemed revenue and tax based on grossing up its expenses and costs.

Except for the above two types, representative offices may declare tax based on revenue from operating activities. If there is no operating income, the office may make a declaration about the operating circumstances within one month after year-end.

## Customs

If the office needs to import office supplies and equipment, it must declare and pay customs duties.

## Employment

If the office wants to employ local employees, it must make requests to the appointed authority and go through the formalities.

## Branches

Currently, only foreign invested enterprises (FIEs), foreign banks, foreign insurance companies and foreign legal practices may establish branches in China with the approval of the relevant authorities. A foreign company must appoint a representative in charge of the branch and must allocate operational funds to the branch. Branches of foreign companies in China do not have the status of Chinese legal entities; the foreign company itself assumes liability for the operational activities of its branch(es) in China.

## Tax payments of branch office

- Income tax

If the head office of a foreign enterprise is located in China and all the branches including the head office are located in the same city, the head office should declare, calculate and file income tax on behalf of the foreign enterprise based on the profit and loss of the branch-sourced income within China.

If the head office and the branches are not located in the same city, the branches should declare, calculate and file income tax respectively.

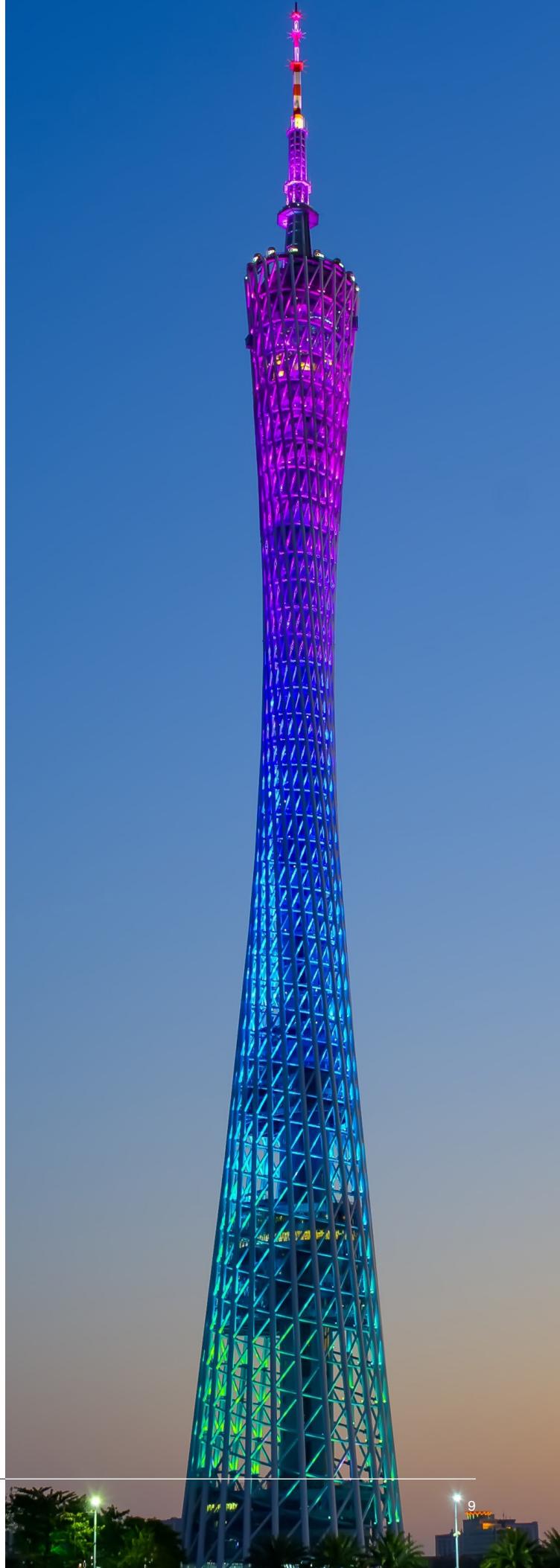
- Value added tax and business tax

The branches should pay VAT and business tax to the relevant local authorities. Unless the head office and branches are in the same city, the head office does not need to pay the VAT for branches.

## Trusts

In China, trusts are used as public investment vehicles or for private charitable funds. They are not generally used for business purposes and there is no equivalent of the private trust funds used in some countries to hold assets for the benefit of named, private beneficiaries.

Public investment trusts may invest in listed stocks and bonds and other types of securities provided for by the securities regulatory authority.



# Major Administrative Measures and Common Business Codes

## Regulation and Supervision of Government Authorities

Foreign investment may be subject to certain review processes by the Chinese government authorities such as Ministry of Commerce (MOFCOM), National Development and Reform Commission (NDRC) and State Administration for Market Regulation (SAMR). Depending on the form and features of the foreign investment, foreign investment may be subject to a series of administrative measures, including but not limited to: (1) foreign investment review procedures; (2) foreign investment information reporting; (3) national security review; (4) approval by or record-filing with NDRC; (5) antitrust review; and (6) industry-specific approval requirements for certain industries. There is other industry-specific review process that a foreign enterprise may need to go through, details of which requires the advice of professional consultants.

In the past, both NDRC and MOFCOM assert jurisdiction over foreign investment entry, and in some cases, there is disconnection between industrial regulations and foreign investment regulations. Now, the FIL and its corresponding regulations makes it clear that NDRC will retain sole responsibility to approve/maintain record filing of foreign investment projects and MOFCOM now have no power to review the establishment of foreign investment entities, but may participate in other reviewing process which involves market operation component.

In general, Chinese government retains a positive attitude towards foreign investors, especially those export-oriented or technologically advanced enterprises. However, Enterprises who may undermine China's interest in following aspects will be severely punished:

- China's sovereignty or public interest would be harmed;
- China's state security would be jeopardized;
- China's laws and regulations would be violated;
- The requirements for the development of China's national economy would not be satisfied; or
- Environmental pollution might be caused.

## Loosing foreign investment in China

Since 2018, Chinese regulators have replaced the original "case-by-case approval approach" with the "Negative List approach" so as to simplify the establishment and registration process for FIEs.

The number of industries on the “Special Administrative Measures (Negative List) for Foreign Investment Access” has been reduced from 14 (2018) to 12 (2020). On 17th June 2021, the National Development and Reform Commission spokesperson Meng Wei said the 2021 version of the negative list for foreign investment access will be further reduced so as to promote the expansion of the service industry and other fields.

## Accounting and Independent Auditing

The Accounting System for Business Enterprises (ASBE) and new accounting standards apply to foreign invested enterprises. The new accounting standards, which are similar to International Financial Reporting Standards, were issued by the Ministry of Finance in 2006 and came into force on 1 January 2007. Public enterprises and state-owned businesses must use the new accounting standards while others are encouraged to use them. It is strongly recommended for foreign invested enterprises to use the new accounting standards.

Foreign invested enterprises should prepare financial statements for each year and engage an audit firm to audit the financial statements.

## Fiscal Year

The fiscal and tax year both run from 1 January to 31 December.

## Foreign Exchange Control System

China has controls on foreign exchange receipts and disbursements. The following should be taken into account when using foreign currencies:

- China does not restrict normal international trading receipts and payments. However, an entity in China that purchases goods or services from abroad must register the liability that arises with the State Administration of Foreign Exchange (SAFE). When the entity wishes to pay that liability, it must notify SAFE that it will remit the funds abroad. Similarly, when an entity in China sells goods or services to a customer abroad, it must register the debt with SAFE. When funds are then received, the entity must notify SAFE in order to convert the funds into RMB. Notification can be done online or at SAFE offices.
- Offshore entities and offshore individuals who want to invest in China need approval by the departments responsible for labour and must register with SAFE.
- Loans from abroad should be processed according to regulations and be registered with SAFE.
- Chinese entities wishing to give guarantees on behalf of foreign entities must obtain approval from SAFE. After the guarantee contract being awarded, enterprises should register them with SAFE.

## Import Control System

China has adopted The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the “GATT Valuation Code”), and will generally appraise all imported goods in accordance with the transaction value of the goods. While there may be some cases where the transaction valuation is not an appropriate method of valuation, there are alternative ways to appraise the imported goods such as Transaction value of similar merchandize.

When importing, a company must declare the condition of the goods. The goods can be released after examination and approval by customs and payment of relevant tariffs and taxes. There are controls on the import of dangerous chemicals, drugs, old and scrapped goods, and endangered wildlife.

## Registration requirements and filing procedures for public securities (shares)

A company that applies for the listing of its stock shall satisfy the following requirements:

- The stock has been subject to examination and approval by the securities regulatory authority and shall have been publicly issued;
- The total amount of capital must be at least RMB 30 million;
- The publicly issued shares must be more than 25% of the total; where the total exceeds RMB 0.4 billion, the publicly issued shares must be no less than 10%; and
- The company may not have had any major irregularity over recent years or false record in its financial statements.

An application to list any securities must be filed with a stock exchange and is subject to examination and approval of the stock exchange and a listing agreement shall be reached by both parties.

The information disclosure documents mainly include prospectuses, listing announcements, periodic reports and temporary reports.

## Export Finance and Insurance

The Export-Import Bank of China (China Eximbank) is state-owned. Its objectives are to implement state policies in industry, foreign trade and economy, finance and diplomacy; to promote, through the provision of financing, the import and export of Chinese products; to encourage Chinese companies to undertake offshore construction contracts and overseas investment projects; and to strengthen China's relations with foreign countries and enhance economic and trade cooperation.

China Export & Credit Insurance Corporation (SINOSURE) is the only policy-oriented Chinese insurance company specialising in export credit insurance. It offers cover against political and commercial risks.

## Foreign Exchange Control for Overseas Investment and Financing and Round-tripping by Chinese Residents through Special Purpose Vehicles

On 14 July 2014, the State Administration of Foreign Exchange issued Circular “Hui Fa [2014] 37”. It clearly reflects the latest regulatory on return investment, namely, “cross- border outflows are managed by foreign direct investment (ODI), and cross-border inflows are managed by domestic direct investment (FDI)”.

“Return investment” is defined as “direct investment activities carried out by domestic residents directly or indirectly through special purpose companies”.

Under the regulatory framework of “Hui Fa [2014] 37”, when adopting a VIE structure, domestic residents should apply for foreign exchange registration procedures for overseas investment after setting up a foreign holding company and before setting up a WFOE. If the registration is not processed, the profits and benefits realised by the domestic residents from the special purpose company will be difficult to transfer back for domestic use, and the funds exchange between the WFOE and the overseas parent company (profit, capital contribution, etc.) will be illegal. It may create obstacles to the company’s overseas listing.

## Regulation for Overseas Cash Withdrawal

Individuals (including non-citizens) holding domestic bank cards withdrawing cash from abroad must not exceed a total amount of 100,000 RMB per year. If the annual amount exceeds 100,000 RMB, the domestic bank card will be suspended for cash withdrawal outside the country for at least 2 years.



# Grants, Incentives and Protections

## Favourable Policies for Investing in Special Regions

Some regions of China, particularly those where there is a large ethnic minority, have a degree of autonomy. In these regions, local governments can introduce preferential enterprise income tax policies, such as tax-free periods or reduced rate policies.

In the special economic zones (Shenzhen, Zhuhai, Shantou, Xiamen and Hainan) and Shanghai Pudong New Area, certain high-tech enterprises are given preferential policies on income tax. Income generated in these areas is tax-free for the two years from first making sales and is taxed at half the standard rate in the following three years.

## Hainan Free Trad Port

In October 10, 2018, the State Council promulgated the Overall Plan for China (Hainan) Pilot Free Trade Zone. Subsequently, various laws, regulations and government policies has been promulgated to grant incentives and preferential treatment to enterprises incorporated and registered. Major incentives include:

- Lower Corporate Income Tax
- Tariff related preferential policies, including no tariff or low tariff
- Preferential treatment towards high-skilled talented people
- Less restrictions on foreign entry
- Relaxed foreign currency regulations
- One-off subsidy to certain enterprises

## Favourable Policies for Investing in Special Industries

VAT preferential policies for special industries

VAT-free industries include:

- agricultural primary products (self-grown)
- re-export of goods processed with imported material

- equipment and raw materials donated by foreign governments or international organisations
- special imported goods conforming to national regulations for the disabled
- personal (not including self-employed) sale of self-used goods
- construction materials produced by waste residue conforming to national regulations
- nursing and education services provided by nurseries and kindergartens
- elderly care services provided by elderly service institutions
- medical services provided by medical institutions
- education services provided by schools engaged in diploma education
- transportation income obtained from the Mainland by Taiwan shipping companies
- and airlines engaged in direct shipping or flight business across the Taiwan Strait
- international freight transportation agency services provided by taxpayers directly or indirectly
- technology transfer and research and development and technology consulting and technical services.

### Income tax preferential policies for special industries

- A. Approved high-tech enterprises enjoy a 15% income tax rate
- B. The following industries are free of income tax:
  - Various agriculture, forestry and related industries
  - Traditional Chinese medicinal materials
  - Livestock and poultry
  - Distant water fisheries
- C. The following are taxable at half the standard rate:
  - Flower, tea, other beverage crop and spice crop planting
  - Sea culture and inland aquaculture
- D. Income from conditional environmental protection, energy-saving and water-saving projects is tax free for three years from first making an operating profit, then taxed at half the standard rate for the following three years.
- E. Income for conditional technology transfer
- F. The income tax rate is 20% for small low-profit enterprises, defined as follows:
  - a) for industrial undertakings, taxable profits do not exceed RMB 1,000,000, employees are less than 100 and total assets do not exceed RMB 30 million.
  - b) for others, taxable profits are do not exceed RMB 1,000,000, employees are less than 80 and total assets do not exceed RMB 10 million.

## **Incentives on Research and Development (R&D)**

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175% of R&D costs may be deducted in arriving at taxable profit. Capitalised R&D costs may be amortised on the basis of 175% of total costs.

## **Incentives on Export**

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China has special preferential policies for exported goods. Exported goods attract a VAT export refund at different rates and are free of consumption tax.

## **Regional Headquarters (RHQ) Concession**

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A number of concessions are designed to encourage transnational corporations to set up regional headquarters and business entities in China.

These concessions include preferential tax policies: regional Headquarters with research and development functions established in Shanghai are eligible for preferential policies available to high and new technology enterprises in accordance with relevant provisions. Regional Headquarters registered in Pudong New Area are eligible for preferential policies available in Pudong New Area in accordance with relevant provisions. These concessions also include some subsidies or rewards etc.

## **Protection of Intellectual and Industrial Property**

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Intellectual Property is a precious property for foreign investors, and China has made strides in recent years to improve IP protection such as revising its IP laws and establishing a new national IP appeals court.

### **Copyright**

Copyright is protected in China by Copyright Law ("CL"). The CL was enacted in 1990 and was amended three times. The latest amendment was made on November 11, 2020, when the Standing Committee of the National People's Congress passed the latest revision to the CL.

The basic ideas of copyright law are that generally, copyright belongs to the author. The rights of authorship, alteration and integrity of an author are unlimited in time.

The new amendments to CL furtherance protection towards copyright from following aspects:

- Specifies a list of activities that are deemed to be copyright infringers;
- New criteria for calculating damages compensation;
- Increases the statutory damages;
- Introduces punitive damages;
- More sound standards regulating burden of proof
- Introduces provisions related to technological protection measures
- Conferring to the copyright authorities' additional powers when investigating suspected infringements

### **Trade Marks**

Some types of goods are required by law to bear a trademark for which a trademark should be applied. If no trademark has been granted, such goods cannot be marketed. There are a complete and complicated rules regulating trademark application related issues, such as distinguishability of trademarks, legitimate words and symbols etc.

The relevant law regulating this is Trademark Law (“TL”) whose latest amendment was made on April 23, 2019. The latest amendments mainly tackled the notorious “bad faith trademark applications” issues and intensify the punishment for trademark infringement.

## Patents

Patents are protected via Patents Law (“PL”). On 17 October 2020, China approved the fourth amendment to the China Patent Law (CPL). The new PL have many notable changes, including:

- Formally introducing “**Partial Design**”
- Extending Design patent term to 15 years
- Introducing pharmaceutical patent term compensation
- Introducing punitive damages up to five times of original damages
- Statutory damages up to five million RMB
- Introduce the open license system
- Providing administrative protection of patents

Application for patents requires the assistance of professional advice. The core ideas are that any invention or utility model for which a patent right may be granted must possess novelty, inventiveness and practical applicability. But there are other conditions that may need to be met.



# Taxation

## Brief Introduction

Tax is the most important source of fiscal revenue in China. It is also an important economic lever utilised by the State to strengthen macro-economic regulation, which plays a key role in China's economic and social development.

Tax regulations in China can be complex and are liable to periodic change. Professional advice is therefore recommended on matters that may have tax implications.

In China, there are many types of taxes, which can be divided into the following categories:

- A. Turnover taxes. These include Value Added Tax, Consumption Tax and Customs Duty. They are normally based on the volume of turnover or sales of the taxpayers in the manufacturing, distribution or service sectors.
- B. Income taxes. These include Corporate Income Tax and Individual Income Tax. They are levied on the basis of the profits gained by producers or dealers, or the income earned by individuals.
- C. Resource taxes – Resource Tax and Urban and Township Land Use Tax. They apply to those engaged in natural resource exploitation or to users of urban and township land. They reflect the chargeable use of state-owned natural resources.
- D. Taxes for special purposes. These include City Maintenance and Construction Tax, and Land Appreciation Tax. They are levied on specific items for special regulatory purposes.
- E. Property taxes – Real Estate Tax and Land Use Tax.
- F. Behaviour taxes. These include Vehicle and Vessel Usage Tax, Stamp Duties, Deed Tax etc. As the name implies, these taxes are levied on specific behaviours.

The following taxes will be introduced in detail in this chapter.

- VAT
- Corporate Income Tax (CIT)
- Individual Income Tax (IIT)
- Consumption Tax

- Customs Duties
- Stamp Duties

Due to the low tax rates and limited coverage, other taxes are not dealt with here.

## [Value Added Tax \(VAT\)](#)

### **Applied scope**

VAT is levied on the sales amount in respect of selling, transferring or importing of commodities, selling or transferring of properties and intangible assets, provision of repairs and processing, as well as rendering services covering research and development, and technical services; information technology services; cultural creative services; logistic auxiliary services; certification and consulting services; and tangible movable property leasing services; radio and television services; postage services, telecommunication services; construction; financing and consume services etc. in China. The VAT regulations are outlined below.

### **General taxpayers and small-scale taxpayers**

A small-scale taxpayer is a corporate VAT payer with sales below defined limits, which does not have a sound accounting system and cannot report and submit tax information under the provisions.

A sound accounting system is defined by the ability to calculate the VAT amount on input tax, output tax and tax liability.

The sales limits for small-scale taxpayers are that the annual income shall be less than RMB 5 million per year.

Non-enterprise entities and entities which do not have regular taxable activities can choose whether to be a small-scale taxpayer or not when declaring VAT.

A general taxpayer is an enterprise with a sound accounting system and which can report and submit tax information under the provisions or where the sales amount is above the sales limits for a small-scale taxpayer. General taxpayers should obtain certification from the tax authority.

### **Tax rate**

- For general taxpayers engaged in the sale of goods, services, lease of tangible movables or importation of goods, the VAT rate is 13% except in specific circumstances.
- For general taxpayers engaged in the sale of transportation, postal, basic telecommunications, construction, lease of immovables, sale of immovables, transfer of land use rights, sale or importation of the following goods, the VAT rate is 9%:
  - Food grains, edible vegetable oils, raw milk
  - Tap water, heating, air conditioning, hot water, coal gas, liquified petroleum gas, natural gas, methane gas, coal/charcoal products for household use
  - Books, newspapers, magazines
  - Feeds, chemical fertilisers, agricultural chemicals, agricultural machinery and covering plastic-film for farming
  - Other goods as regulated by the State Council.
- For general taxpayers engaged in rendering the following services or transfer of intangible assets, the VAT rate is 9%:

- Basic telecommunication services
- Construction
- Postal services
- Transportation services
- Real estate (leasing and sale of immovable properties)
- Transfer of land use rights

**D.** For general taxpayers engaged in rendering the following services or transfer of intangible assets, the VAT rate is 6%:

- Consumer lifestyle services
- Financial services
- Value-added telecommunication services
- Sale of intangibles (except land use rights)
- Other modern services

**E.** For small-scale taxpayers, the VAT rate is 3%

## Calculation

### 1. General VAT payers

- Tax liability

For taxpayers selling goods or taxable services, VAT payable is the balance of output tax minus input tax for the period. If the output tax is less than the input tax for the period, the excess input tax can be carried forward for set-off in subsequent periods. Excess input tax cannot be recovered from the tax authorities as it can in some other countries.

- Output tax

Output tax is calculated as sales x tax rate.

- Input tax

The input tax allowed for deduction from output tax is limited to the VAT amounts shown on the documents listed below.

- special VAT invoices obtained from sellers
- tax payment receipts obtained from the customs office
- the purchasing of tax exempt agricultural products from producers of agricultural and small-scale taxpayers, calculated based on a deemed deduction rate on the actual purchase price.

Input tax on the following items may not be deducted from output tax:

- goods or services used for non-taxable items
- goods or services used for tax exempt items

## 2. Small-scale taxpayers

Small-scale taxpayers use a simplified method for calculating tax payable. Tax payable is calculated based on sales and a net tax rate of 3%. Taxpayers are not entitled to claim any input VAT paid to set off against the output VAT.

## Other provisions

- A. For taxpayers dealing in goods or providing services with different tax rates, these shall be accounted for separately.
- B. Where the prices used by the taxpayer in selling goods or taxable services are obviously low and without proper justification, the sales amount will be determined by the tax authorities.
- C. The sales amount shall be calculated in RMB. Sales settled in foreign currencies shall be translated into RMB at the mid-rate on the transaction day or the first day of the month.
- D. Where taxpayers have not obtained and kept VAT deduction documents in accordance with the regulations, or the VAT payable and other relevant items are not indicated on the VAT deduction document, no input tax can be claimed.
- E. For taxpayers importing goods, tax payable is based on the composite assessable price and the tax rates. The formulas for computing the composite assessable price and the tax payable are as follows:
  - Composite assessable price = Customs dutiable value + Customs Duty + Consumption Tax
  - Tax payable = Composite assessable price × Tax rate
- F. The following items are exempt from VAT:
  - Self-produced agricultural products sold by agricultural producers
  - Contraceptive medicines and devices
  - Antique books
  - Importation of instruments and equipment directly used in scientific research, experiment and education
  - Importation of materials and equipment from foreign governments and international organisations as assistance free of charge
  - Articles imported directly by organisations for the disabled for special use by the disabled

In all other cases, VAT exemption and reduction items are decided by the State Council, not by local governments or any other departments.

- G. For taxpayers engaged in tax exempt or tax reduced items, sales of tax exempt or tax-reduced items shall be accounted for separately.
- H. The time at which VAT liability arises is:
  - for sales of goods or taxable services, when the sales sum is received or documented evidence of the right to collect the sales amount is obtained
  - for importation of goods, the date of import declaration
- I. Sellers must issue VAT invoices to purchasers. Sales amounts and output tax shall be separately shown, but in any of the following situations, the invoice may be an ordinary invoice rather than a special VAT invoice:

- Sale of goods or taxable services to consumers
- Sale of VAT exempt goods
- Sale of goods or taxable services by small-scale taxpayers.

## Payment of Tax

The VAT assessable period may be one day, three days, five days, ten days, fifteen days, one month or one quarter respectively.

Taxpayers that adopt one month as an assessable period shall report and pay tax within 15 days following the end of the period. If an assessable period of one day, three days, five days, ten days or fifteen days is adopted, the tax shall be prepaid within five days following the end of the period and a monthly return shall be filed with any balance of tax due settled within 15 days from the first day of the following month.

## Corporate Income Tax (CIT)

### Applied scope

- A. Resident enterprise: liable to CIT for income sourced from both inside and outside China.
- B. Non-resident enterprise:
  - If it sets up an organ or establishment within China, it will be liable for CIT on its income sourced from China and income sourced from outside China but connected with the said organ or establishment.
  - If it has no organ or establishment within China or its income has no connection with its organ or establishment in China, it will be liable for CIT on income sourced from China. In this circumstance, the law states that a favourable tax rate of 10% will be used.

### Taxpayers

Income tax payers are classified into resident and non-resident enterprises.

- A. Resident enterprise means an enterprise set up under Chinese law within China, or set up under the law of a foreign country (region) but whose actual management organ is within China.
- B. Non-resident enterprise means an enterprise which is set up under the law of a foreign country (region) and whose actual management organ is not within China but which has organs or establishments within China, or which does not have any organ or establishment within China but has income sourced in China.

### Tax rate

The standard rate of CIT is 25%.

### Calculation

Taxable income equals total income less tax-free and tax-exempt income less deduction items less permitted losses of previous year(s).

- Total income refers to monetary and non-monetary income from various sources and includes:
  - income from sale of goods;
  - income from provision of labour services;
  - income from transfer of property;

- gains from dividends, bonus issues or other returns on equity investment;
- interest income;
- rental income;
- income from royalties;
- income from gifts and donations; and
- other income.
- The following types of income are tax-free:
  - interest from treasury bonds;
  - dividends, bonuses and other equity investment gains generated between qualified resident enterprises;
  - dividends, bonuses and other equity investment gains obtained from a resident enterprise by a non-resident enterprise with organs or establishments in China and which have connection with such organs or establishments; and
  - income of qualified not-for-profit organisations.
- When calculating taxable income, reasonable expenditures which effectively take place and are connected with the business operations of an enterprise, including costs, expenditures, taxes, losses, etc. may be deducted.

## **Deduction Rules**

- A. When calculating taxable income, none of the following expenditures may be deducted:
1. equity investment gains such as dividends or bonuses paid to investors;
  2. CIT payments;
  3. late payment fees for taxes;
  4. pecuniary punishment, fines, and losses of confiscated properties;
  5. non-public welfare donations;
  6. sponsorship expenditures;
  7. unverified reserve expenditures; and
  8. other expenditures unrelated to obtaining revenues.
- B. Regarding an enterprise's expenditures for public welfare donations, up to 12% of the total annual profit before tax may be deducted; the part in excess of 12% of annual profits may be carried forward to the next three years for deduction purposes.
- C. The following expenses can be deducted before CIT:
1. Reasonable salary payments may be deducted.
  2. Social insurance charges may be deducted.
  3. Welfare expenditures for employees may be deducted up to 14% of total salaries.
  4. Union fees may be deducted up to 2% of total salaries.

- 5. Training fees may be deducted up to 8% of total salaries during the current year and the balance may be carried forward to later tax years.
- D. Interest payable on loans that a non-financial enterprise borrows from other non-financial enterprises is limited to the amount that would be paid on the same type of loan from a financial enterprise.
- E. 60% of business entertainment costs related to operating activities may be deducted, up to 0.5% of sales revenue.
- F. Advertising costs may be deducted up to 15% of current year sales revenue. The excess may be carried forward to later years.
- G. Property insurance paid as stated in regulations may be deducted.

### **Relief for losses**

Losses suffered during a tax year may be carried forward for up to five years.

From 1 January 2018, high-tech enterprises or technology-oriented small- or medium-sized enterprises (SME) may carry forward losses up to a maximum of ten years.

### **Preferential Tax Treatments**

- Important industries and projects whose development is supported and encouraged by the state enjoy preferential CIT treatment.
- CIT on income from the following may be exempted or reduced:
  1. agriculture, forestry, husbandry and fishery
  2. investment in and business operations of important public infrastructure projects supported by the state
  3. projects of environmental protection, energy and water saving
  4. transferring technologies
- For small enterprises satisfying prescribed conditions, CIT is levied at a reduced rate of 20%. From 1 January 2021 to 31 December 2022, small enterprises with annual taxable income equal to or lower than RMB 1 million can enjoy an 87.5% deduction on calculating the taxable income and are subject to a 20% CIT rate. For small enterprises with annual taxable income equal to or lower than RMB 3 million, the part equal to less than RMB 1 million can enjoy a 87.5% deduction on calculating the taxable income while the part that exceeds RMB 1 million but does not exceed RMB 3 million can enjoy a 50% deduction on calculating the taxable income and is subject to a 20% CIT rate.
- A small enterprise is also subject to the following conditions:
  1. To not be engaged in an industry that is restricted and prohibited by the State
  2. Annual taxable income does not exceed RMB 3 million
  3. The number of employees does not exceed 300
  4. Total assets do not exceed RMB 50 million
- For important high-tech enterprises in need of State support, CIT is levied at a reduced rate of 15%.
- For service enterprises with advanced technology that are recognised by the State, CIT is levied at a reduced rate of 15%.

- For enterprises in industries encouraged by the state that are established in western regions, a 15% concession on business income tax will be granted.
- An enterprise may additionally deduct the following in calculating taxable income:
  1. costs of researching and developing new technologies, new products and new techniques
  2. wages paid to disabled employees or other employees whose hiring is encouraged by the state
- Income from producing products complying with the industrial policies of the state by comprehensively utilising resources may be reduced in calculating taxable income.

## **Payment of Tax**

CIT on a monthly or quarterly basis must be paid in advance.

An enterprise must submit a tax return for advance payment to the tax bureau and pay the tax in advance within 15 days after the end of a month or quarter.

An enterprise shall submit an annual CIT return for the settlement of tax payments to the tax bureau and settle the payable or refundable amount of taxes within 5 months after the end of each year.

## **Repatriation of Profits**

Profits earned by FIEs before 1 January 2008 may be paid to foreign investors after that date free of withholding tax. However, profits earned by FIEs after 1 January 2008 are subject to withholding tax at 10% when distributed to foreign investors. The withholding tax rate may be further reduced subject to the conditions of a double tax treaty.

Where an overseas investor makes an investment directly with the profits obtained from a Chinese resident enterprise in an investment project under the encouraged category or in the categories for which foreign investments are not banned, the tax deferral policy shall apply provided that certain requirements are fulfilled, which means that the withholding tax is temporarily not levied.

The term “investor” as used above means a non-resident enterprise that does not have any organ or establishment within China but that has income sourced in China.

## **Transfer Pricing (“TP”)**

China has adopted stringent requirements for related party transactions disclosure and taxpayers have to disclose related party transactions in Related Party Transaction Forms. The acceptable transfer pricing methods are the comparable uncontrolled price method (CUP); resale price method (RPM); cost-plus method (CPM); transactional net margin method (TNMM); profits split method (PSM); and other methods that are consistent with the arm’s length principle approved by the competent tax authorities.

In June 2016, China tax authorities issued new transfer pricing compliance requirements.

According to China TP regulations, transfer pricing documentation includes a master file, local file, and special issue file. The thresholds for the preparation of TP documentation are listed hereafter.

- A. If the company meets either of the following criteria, it shall prepare a Master File;
- Has cross-border related party transactions, and belongs to a group which has prepared the master file, or
  - The total annual related party transactions exceed RMB 1 billion.

- B. For the Local File, the thresholds depend on the types of related party transactions, which are listed hereafter:
- RMB 200 million for tangible assets transfer (in the case of tolling manufacturing, the total amount in the annual customs record including raw material should be taken into account);
  - RMB 100 million for financial assets transfer;
  - RMB 100 million for intangible assets transfer; and
  - RMB 40 million for other related party transactions in total.

- C. The special issue file is required for taxpayers who are engaged in a cost sharing agreement or fall within the thin capitalisation threshold.

Where the related-party debt-to-equity ratio of an enterprise exceeds the standard ratio (5:1 for financial enterprises; and 2:1 for any other enterprises), a special issue file on thin capitalisation shall be prepared.

The transfer pricing compliance regulations also require the submission of a country by country (CbC) report if a Chinese resident company is the ultimate holding company of the group and the consolidated revenue exceeds RMB 5.5 billion or it is nominated as the reporting entity by the group.

## Individual Income Tax

### Applied scope

- A. Income derived by resident individuals from inside and outside China shall be subject to Individual Income Tax (IIT);
- B. Income derived by non-resident individuals from China shall be subject to Individual Income Tax (IIT).

### Taxpayers

- A. Resident individuals: individuals who have a domicile in China or individuals who do not have a domicile in China but have resided in China for an aggregate of 183 days or more within a single tax year shall be deemed as resident individuals;
- B. Non-resident individuals: individuals who do not have a domicile in China and have resided in China for less than 183 days in aggregate within a tax year shall be deemed as non-resident individuals.

Foreign employee would be exempt from China IIT on foreign source income when he/ she has not been a Chinese tax resident for six consecutive years or the individual has been a Chinese tax resident for six consecutive years but was outside China for more than 30 days on a single trip during the six-year period.

## Tax Items

Under the Individual Income Tax (IIT) Law, the following nine categories of income are subject to IIT in China:

Comprehensive Income	<ul style="list-style-type: none"><li>• Wages and salaries;</li><li>• Income from labour service;</li><li>• Remunerations to authors;</li><li>• Royalties;</li></ul>
Income from Business Operations	Income of individual industrial and commercial operators from production or business operations;
Other Income	<ul style="list-style-type: none"><li>• Interest and dividends;</li><li>• Income from leasing of property;</li><li>• Income from transfer of property;</li><li>• Contingency income.</li></ul>

## Tax rate and Calculation

### 1. Comprehensive Income

Effective from 1 January 2019, the first to fourth categories including salary, personal labour service income, royalty income and author's remuneration are combined into one comprehensive income base to be taxed on an aggregate basis for resident individuals. However, it will still be taxed on a separate basis for non-resident individuals.

For tax residents, comprehensive Income shall be taxable at the following rates:

Annual Taxable Income (RMB)	Tax Rate (%)
0 - 36,000	3
36,001 - 144,000	10
144,001 - 300,000	20
300,001 - 420,000	25
420,001 - 660,000	30
660,001 - 960,000	35
960,001 or above	45

For non-tax residents, each item within comprehensive income is taxed separately according to the table below.

Monthly Taxable Income (RMB)	Tax Rate (%)
0 – 3,000	3
3,001 - 12,000	10
12,001 - 25,000	20
25,001 - 35,000	25
35,001 - 55,000	30
55,001 - 80,000	35
80,001 or above	45

For comprehensive income, a yearly deduction of RMB 60,000 is allowed (RMB 5,000 per month). Apart from that, the following items were recently introduced to be deducted from the comprehensive income.

- Dependent children's education expenditure
- Serious illness medical expenditure
- Continuous education expenditure
- Rental or housing mortgage interest
- Dependent parents

Currently, non-resident individuals working in China could enjoy certain tax exempt items including rental, car leasing, children's education, home leave trip transportation expense, laundry etc. This policy for tax exempt items will expire by the end of 2021.

## 2. Income from Business Operations

Net income derived from production and business operations by individuals (i.e. annual gross income less business costs, expenses and losses) shall be taxable at the following rates:

Annual Taxable Income (RMB)	Tax Rate (%)
0 - 30,000	5
30,001 - 90,000	10
90,001 - 300,000	20
300,001 - 500,000	30
500,001 or above	35

## 3. Other Income

Income derived from interest, dividends and bonuses, or contingency income and other income is taxed at a flat rate of 20%

## Tax exemption

The following categories of Individual income shall be exempted from individual income tax:

- A. Awards for achievements in science, education, technology, culture, public health, sports environmental protection, etc. granted by appointed organisations;
- B. Income from interest on treasury bonds and other financial debentures issued by the State;
- C. Subsidies and allowances given under uniform state regulations;
- D. Welfare benefits, disability and death compensation, and relief funds;
- E. Insurance indemnities;
- F. Military severance pay, demobilisation pay and decommissioning pay received by members of the armed forces;
- G. Settling-in allowance, severance pay, basic pension or retirement pay, and full-pay retirement pension and living allowances (for qualified veteran cadres) given to public servants and workers under uniform state regulations;
- H. Income of diplomatic representatives, consular officers and other personnel of foreign embassies and consulates in China, which are exempted from tax pursuant to the provisions of the relevant laws of China;
- I. Tax-exempt income stipulated in international conventions to which the Chinese Government has acceded or in agreements which the Chinese Government has signed; and
- J. Other tax-exempt income as stipulated by the State Council.
- K. Individual income tax may be reduced in any of the following circumstances:
  - income received by disabled persons, unsupported elderly persons, or dependents of persons recognised as martyrs;
  - income received by taxpayers suffering heavy losses due to a natural disaster.

## Payment of Tax

### 1. Income from business operations

Taxpayers obtaining income from business operations shall compute individual income tax on a yearly basis, file tax returns within 15 days after the end of each month or quarter, make prepayment of tax and complete the annual filing before March 31 of the following year.

### 2. Comprehensive income and other income

Where there is a withholding agent, the withholding agent shall withhold and prepay tax on a monthly basis or based on each income item.

Where there is no withholding agent for the taxable income, the taxpayer shall file tax returns within the first 15 days of the following month after obtaining the income, and pay tax.

Annual filing for comprehensive income is required for residents to be completed the next year from 1 March to 30 June. Non-resident individuals are not subject to annual filing for comprehensive income.

## **Liabilities for non-payment of tax**

If an individual fails to declare his/her tax within the specified period, a penalty of 0.05% per day may be imposed based on tax liability.

## **Consumption Tax**

### **Applied scope**

All units and individuals, engaged in the production, subcontracting for processing or the importation of consumer goods in China, have to pay Consumption Tax.

Consumer goods include cigarettes, alcohol, cosmetics, yachts, motorcycles, compact cars, valuable jewellery, petroleum products, etc.

### **Tax rate**

Proportional tax rate and fixed tax rate are used to calculate consumption tax. Consumption tax rates differ between goods.

### **Calculation**

Consumption Tax is calculated using the ad valorem method, the specific duty method or a combination of the two.

### **Other provisions**

- A. Where taxpayers deal in taxable consumer goods with different tax rates, the sales amounts and sales volumes for the taxable consumer goods shall be accounted for separately.
- B. Taxable consumer goods produced by the taxpayer are subject to tax on sales. For self-produced taxable consumer goods for the taxpayer's own use in the continuous production of taxable consumer goods, no tax is levied. Tax is assessed when the goods are transferred for other use.
- C. Where the taxpayer uses a price that is clearly too low and without proper justification, the tax authorities will determine the price to use in calculating tax.
- D. Where taxpayers export taxable consumer goods, Consumption Tax will not be levied, unless otherwise determined by the State Council.

### **Payment of Tax**

The Consumption Tax assessable period shall be one day, three days, five days, ten days, fifteen days, one month or one quarter. Taxpayers that adopt one month or one quarter as an assessable period must report and pay tax within fifteen days of the end of the period. If an assessable period of one day, three days, five days, ten days or fifteen days is adopted, the tax shall be prepaid within five days following the end of the period and a monthly tax return must be filed with any balance of tax due settled within fifteen days from the first day of the following month.

## **Customs Duty**

### **Applied scope**

Import and export duties are levied on goods imported into or exported from China.

## **Taxpayers**

The consignee of imported goods, consignor of export goods, and owners of entry articles are parties held liable for paying customs duties.

## **Tax rate**

Imported goods classification, prices after tax and tax rates are determined according to the import duty rate schedule.

## **Calculation**

Customs duties of import and export goods may be levied by means of ad valorem, specific duties or otherwise as specified by the State.

## **Reductions and exemptions**

Various reductions and exemptions are available under detailed rules.

## **Payment of Tax**

A duty payer must pay the duties within 15 days from the day when the duty payment form is issued by the Customs, subject to penalties for late payment.

## **Land Use Tax**

State Taxes comprise house duty, city and town land use tax, land value increment tax, deed tax, tax on land occupation, stamp duties, city maintenance construction tax, vehicle and vessel use tax, resource tax and tobacco tax.

## **Stamp Duties**

Local tax bureaus levy stamp duty on a number of transactions including transfers of property, mortgages, leases, deeds, hire purchase agreements, contracts, licences and permits and business account books. Different rates apply to different transactions and the stamp duty is often calculated based on the amount of money involved or at a fixed tax rate.

## **Superannuation Guarantee**

China has a compulsory superannuation scheme with employers required to make monthly contributions to approved superannuation funds on behalf of their employees. Where the employer fails to make the minimum level of monthly contributions, they are subject to a late payment penalty. Superannuation contributions made by employers are tax deductible, whilst penalties are not.

## **Taxation of Partnerships & Trust Funds**

Operating income of partnerships in China is not subject to CIT. However, the individual partners are subject to Individual Income Tax at rates ranging from 5% to 35% while corporate partners are subject to the applicable CIT.

Securities investment funds are exempt from CIT for revenue arising from purchasing and selling stocks, bonds and other securities, dividends and bond interest.

## Interaction with International Tax Regime

China is a signatory to a number of double taxation agreements, based on the UN Model. Counterparties include Japan, Singapore, many Asian nations, Australia, New Zealand, Canada, the USA, the UK and many European nations.

If an enterprise has already paid tax overseas on the types of income below, it may deduct it from the tax payable for the current period. The limit of tax credit is the tax payable on such income calculated under the present law. Any excess may, during the five subsequent years, be offset against the balance of the limit of tax credit of each year minus the tax amount to be offset in that year.

- A. Income of an enterprise resident in China sourced from outside China; and
- B. Income obtained outside China of a non-resident enterprise having organs or establishments inside China, but having an actual connection with such organs or establishments.





# Foreign Personnel in China

## Entry into China

Visitors to China must apply for visas from Chinese diplomatic missions, consular offices or other authorised resident agencies. In specific situations foreigners may apply for visas to visa-granting offices at designated ports.

## APEC Business Travel Card

Business visitors from Australia, Brunei, Canada\*, Chile, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Taiwan, Thailand, the USA\* and Vietnam can apply for an APEC Business Travel Card, which gives them visa-free travel to China and other participating APEC countries. \*(Rights for APEC card holders still under negotiations)

## Residence permits

An initial visa grants the holder the right to enter China for a specific purpose, but expires after a few months. To stay longer in China, one needs to apply for a residence permit, which is a multiple-entry visa, allowing one to leave the country and return without an additional visa as long as the permit remains valid. Upon arrival in China, one has 30 days to obtain a residence permit.

There are three types of residence permits that allow one to live in China:

- Permanent residence permits.
- Temporary residence permits are valid for 6-12 months. Generally required for visiting scholars or those entering for job training.
- Foreigner residence permits are normally valid for one year (up to 5 years) and are renewable annually. They are the standard residence permits issued to the majority of foreigners working in China.

The ministry of public security has released new regulations that allow five categories of foreigners to apply for residence permits in China. (Effective since 1 June 2010):

- Chinese citizens' foreign spouse, as well as their parents and children;
- Foreigners above 60 years-old, who have no relatives in their countries, but have relatives in China, as well as their foreign spouse;

- Foreigners above 60 years-old who own houses in China, as well as their spouse and children who are under 18 years old;
- Foreigners who come to China to look after their Chinese parents who are above 60 years old and with no children in China;
- Children of overseas Chinese or children of Chinese citizens who have residence permits in other countries.
- There are no entry or exit limitations for visitors with residence permits noted above, and the permit is valid for 2 years.

To obtain a residence permit, one must provide the following documentation:

- A passport with the respective visa matching the residence permit for which one is applying
- A passport photo
- Residence registration
- The respective application form
- Health certificate
- If applicable, job contract and work permit

## Physical Exam Certificate

In theory, one is required to present a physical examination certificate in order to obtain a residence permit (the Chinese embassy lists them as required documents for residence visas). However, people are not always asked to submit the paperwork.

## Labour Agreements

The employer and its foreign employee should, by law, conclude a labour contract. The employer should, within 15 days after the entry of the employed foreigner, take to the office that granted the employment licence (see below) the employment licence, the labour contract with the foreigner and his passport and fill out a foreigner employment registration form to receive his employment permit.

The term of the labour contract shall not exceed five years. Such contract may be renewed upon expiration after the completion of clearance process.

## Work Permits

All foreign nationals who are working in PRC need to apply for a work permit. Foreign workers are categorised in the following three classes:

- Class A: applicants shall be extraordinary talents, including scientists, science and technology main experts, international entrepreneurs, and special talents who are needed for PRC's economic and social development.
- Class B: professional workers
- Class C: temporary workers (maximum of 90 days).

Foreigners seeking employment in China must hold an employment visa and may work within China only after obtaining a work permit and residence permit.

## **Individual Income Tax (IIT) on Foreign Personnel**

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Which Foreign Individuals Need to Pay IIT in China?

- Foreigners and residents of Hong Kong, Macau and Taiwan (“foreign individuals”) who derive income from work or employment with enterprises or organisations within China.
- Foreign individuals who derive income from personal services provided (including design work, shows, performances, advisory positions, brokerage services, agency services, etc.)
- Foreign individuals who derive income from author’s remuneration, royalties, interest, dividends, bonuses, the leasing of property, transfer of property, contingent income and income from other sources inside China.

Any non-Chinese passport holder working for a local company, a foreign company’s representative office, subsidiary in China, or a WFOE in China needs to pay IIT. In short, if the entity for which you work is registered in China, you need to pay IIT.

### **Regulations on the source of income**

Individuals’ wages and salaries from their working period in China would be defined as domestic wages and salaries. The domestic working period is calculated based on the number of days the individual worked in China, including the actual working days in China, and the number of public holidays and personal vacations and training days in China or out of China during the domestic working period. In addition, for individuals staying in China for less than 24 hours, the domestic working day should be counted as half of the day.

### **CRS**

The Common Reporting Standard (CRS) is an information standard for the automatic exchange of information (AEOI) regarding bank accounts on a global level, between tax authorities, which the Organisation for Economic Co-operation and Development (OECD) developed in 2014.

China has officially entered into the CRS era since the “Administrative Measures for Due Diligence of Tax-related Information on Non-resident Financial Accounts” were signed in May 2017 implementing the AEOI (Automatic Exchange of Information Automatic Exchange) system. In September 2018, China automatically exchanged the financial account tax information under CRS for the first time. By the end of 2018, the Chinese government exchanged the financial account information of Chinese taxpayers with more than 100 countries around the world. As long as you are a Chinese passport holder or a foreigner living in China, your global income will be taxed in China according to law.

### **Tax Liability**

The criterion used to determine a foreign employee’s tax liability in China is the duration of stay.

A distinction is also made between junior staff and senior executives. Foreigners and Chinese from Hong Kong, Macao and Taiwan have to pay IIT on income derived from Chinese sources for work in China even if they have lived in the country for less than 90 days (183 days for citizens of countries that have signed a double tax treaty with China). If a foreign employee has been living in China for more than 90 days but less than a 183 days, income for work in China from all sources is taxable. Foreign senior executives (e.g. CEOs, General Managers, Chief Representatives, etc.) however, are liable for their full income derived from Chinese sources from the first day in the country, subject to the application of a double tax treaty.

For better understanding taxable income for longer periods of stay and for senior officials compared to ordinary employees please see the chart below.

Source of income	Foreign Employees				Foreign Senior Executives			
	Work in China		Work abroad		Work in China		Work abroad	
	China	Abroad	China	Abroad	China	Abroad	China	Abroad
< 90 days	✓				✓		✓	
>90 days and < 183 days	✓	✓			✓	✓	✓	
> 183 days and	✓	✓	✓		✓	✓	✓	
< 6 years	✓	✓	✓	✓	✓	✓	✓	✓

However, one specific situation is worth mentioning: the salary of a chief representative (of a representative office) which is paid by the parent company abroad is taxed on a prorated basis, even for durations of stay of less than 90/183 days per year. The chief representative must apply for part-time status, which allows him to pay taxes on his income from abroad only for the time spent in China.

### Registration Procedures

If the employee is liable for China tax filing, the following procedures for registration apply and the following documents are required:

Original salary certificate from overseas employer

- Copy of employment contract
- Copy of all pages of passport
- If the employer is a “permanent establishment” in China: employee’s work permit, employer’s tax registration certificate and employer’s business licence.

Significant fines apply to both the employer and employee if this is not adhered to.

### Tax Calculation

The calculation process shown below is for foreign employees as non-tax residents in China. Foreign employees may deduct an amount of RMB 5,000 (instead of RMB 4,800 since 1 October 2018) before calculating the tax payable according to the schedule above.

Level	Monthly Taxable Income (RMB)	Tax Rate (%)
1	3,000 or less	3%
2	3,000 to 12,000	10%
3	12,001 to 25,000	20%
4	25,001 to 35,000	25%
5	35,001 to 55,000	30%
6	55,001 to 80,000	35%
7	80,001 upwards	45%

Example:

Gross Salary	Taxable Income (-5,000)	Tax Rate (%)	Quick Deduction	Tax Payable	Net Salary
8,500	3,500	10%	210	140	8,360

## Self-declaration of IIT

China's tax regulations require taxpayers who fall under any of the following five categories to self-declare their earnings:

1. where a taxpayer derives consolidated income from more than two places, and the balance of the annual consolidated income minus special deductions exceeds CNY60,000;
2. where a taxpayer derives one or more income from remuneration for personal services, income from author's remuneration, and royalty income, and the balance of the annual consolidated income minus special deductions exceeds CNY60,000;
3. where the amount of tax paid in advance during the tax year is lower than the amount of tax payable; or
4. where a taxpayer applies for a tax refund.

Taxpayers must declare taxes to the relevant authorities within the period from March 1 to June 30 of the year after the year.

As shown in the examples above, certain deductions can be deducted from the taxpayer's taxable income, such as social insurance contributions and a personal allowance of RMB 5,000. Certain amounts provided to an expatriate are not taxed if they are included within their employment contract, or by company policy, and recorded through proper reimbursements supported by Chinese valid tax invoices. These include housing, meal, laundry, relocation, home leave, children's education, language training and business trips. The expenses should be for reasonable purposes and at a reasonable amount.

During the period from 1 January 2019 to 31 December 2021, foreign individuals meeting the conditions for resident individuals may choose to enjoy either additional special deductions for individual income tax or the preferential tax-exemption policies on allowances for housing subsidies, language training expenses and children's education expenses, etc. After making such choice, foreign individuals cannot make changes within a tax year. As of 1 January 2022, foreign individuals will no longer enjoy preferential tax-exemption policies on allowances for housing subsidies, language training expenses and children's education expenses etc. but shall enjoy additional special deductions as required.

Additional special deductions for individual income tax refer to six types of additional special deductions for the expenses of children's education, continuing education, medical treatment for critical illness, home mortgage interest, house rental and elderly support.

## Liabilities for non-payment of tax

If an individual fails to declare his/her tax within the specified period, a penalty of 0.05% per day may be imposed based on tax liability.

## Taxation of Capital Gains

Gains from individual disposals of capital assets are subject to IIT. The taxable income is the gross transfer income after deducting the original value of the property and reasonable expenses. The tax rate is 20%.



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DBICHN102021