

A Handy Guide to  
**DOING BUSINESS IN**  
**CHINA**



A publication of

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### **DISCLAIMER**

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Every effort has been made to make this guide as accurate as possible and it should serve only as a general guide or supporting material, not as the ultimate source of subject information.

This guide contains information that might be dated and is intended only for an informative purpose at the time of publication. The authors shall bear no liability or responsibility to any person(s) or entity regarding any loss or damage incurred, or alleged to have been incurred, directly or indirectly, by the reliance on information contained in this guide, and shall not be responsible for any errors, inaccuracies or omissions.

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# GENERAL INFORMATION

With a long history of over 5,000 years and a population of more than 1.4 billion, China is one of the world's biggest countries covering 9.6 million square kilometres of land area and 4.7 million square kilometres of territorial waters.

China officially recognises 56 distinct ethnic groups, the largest of which is the Han people, who make up about 92% of the total population. Ethnic minorities, for example, Manchurians, Uighurs, Tibetans and Koreans, account for about 8% of the population in China. There are as many as 292 living languages in China, which include Mandarin—spoken natively by 70% of the population—and various dialects such as Shanghaiese, Cantonese, and Hokkien.

## ECONOMY

China had the largest and most complex economy in the world for much of the past two thousand years, during which it has seen cycles of prosperity<sup>1</sup> and decline. Since the introduction of economic reforms in 1978<sup>2</sup>, China has become one of the world's fastest growing<sup>3</sup> major economies. In 2001, China formally joined the World Trade Organization. Currently the second largest economy in the world, China has maintained its high rate of economic growth in recent years, with its gross domestic product (GDP) growing 6.9% year on year in 2017. Meanwhile, China has successfully maintained a low inflation rate. It is also the world's largest exporter and second largest importer of goods.

In addition, China is a member of numerous formal and informal multilateral organisations, including the WTO<sup>4</sup>, APEC<sup>5</sup>, BRICS<sup>6</sup>, the Shanghai Cooperation Organisation (SCO)<sup>7</sup>, the BCIM<sup>8</sup> and the G-20<sup>9</sup>. China is seen as a major regional power<sup>10</sup> within Asia, and considered by some to be a potential superpower<sup>11</sup>.

China is now the fourth most visited country in the world, welcoming both tourists and international entrepreneurs alike. Over 47 million foreigners entered China in 2018 for leisure, business or conferences. Among the world's 500 largest multinational enterprises, over 480 have business operations in China. With the development of China's Free Trade Zones, more foreign entities are entering the Chinese market. By 2018, over 960,000 foreign-invested companies had established operations in China. In 2018, China was the world's second largest recipient of inward foreign direct investment (FDI) and total utilised foreign direct investment was US\$134.97 billion.

Like many other Asian countries, China's foreign reserves have exceeded their optimum level in recent years. According to the State Administration of Foreign Exchange of China, its foreign reserves reached US\$3.14 trillion by the end of 2017, surpassing Japan to become the country with the highest foreign reserves in the world.

## ADMINISTRATION

With its seat of government in the capital city of Beijing, the National People's Congress is the highest organ of state power in China. The central and highest organ of state administration is the State Council, which directly oversees various subordinate People's Governments at the province, direct-controlled municipality and autonomous region levels.

The Communist Party is the sole governing party of China, while other political parties participate in the National People's Congress and the Chinese People's Political Consultative Conference. A multi-party cooperation and political consultation system is adopted under the leadership of the Communist Party.

<sup>1</sup> <https://en.wikipedia.org/wiki/Prosperity>

<sup>2</sup> [https://en.wikipedia.org/wiki/Chinese\\_economic\\_reform](https://en.wikipedia.org/wiki/Chinese_economic_reform)

<sup>3</sup> [https://en.wikipedia.org/wiki/List\\_of\\_countries\\_by\\_real\\_GDP\\_growth\\_rate](https://en.wikipedia.org/wiki/List_of_countries_by_real_GDP_growth_rate)

<sup>4</sup> <https://www.wto.org>

<sup>5</sup> <https://www.apec.org>

<sup>6</sup> <http://infobrics.org>

<sup>7</sup> [https://en.wikipedia.org/wiki/Shanghai\\_Cooperation\\_Organisation](https://en.wikipedia.org/wiki/Shanghai_Cooperation_Organisation)

<sup>8</sup> [https://en.wikipedia.org/wiki/BCIM\\_Forum](https://en.wikipedia.org/wiki/BCIM_Forum)

<sup>9</sup> <https://g20.org/en/>

<sup>10</sup> [https://en.wikipedia.org/wiki/Regional\\_power](https://en.wikipedia.org/wiki/Regional_power)

<sup>11</sup> [https://en.wikipedia.org/wiki/Potential\\_superpowers](https://en.wikipedia.org/wiki/Potential_superpowers)

In 2013, the Second Session of the 18th Conference of the Chinese Communist Party and the First Session of the 12th Conference of the National People's Congress reviewed and approved the new Proposal of the State Council for Institutional Reform and Functional Transformation. These reforms are expected to greatly improve administrative efficiency, accelerate improvement of the socialist market economic system and provide institutional security for building a moderately prosperous society in China.

### **BELT AND ROAD INITIATIVE (BRI)**

In late 2013, the Chinese government unveiled the 'Belt and Road Initiative' (BRI) as a development strategy involving infrastructure development and investments in Europe, Asia and Africa. The aim is to form a single large market that can be fully accessed on the domestic and international levels through cultural exchange and integration. This is expected to enhance mutual understanding and trust of member nations, as well as increase China's capital inflow, skilled talent pool and technological innovation.

The BRI is considered one of the largest infrastructure and investment projects in history, covering more than 68 countries, including 65% of the world's population and 40% of the global gross domestic product. It addresses an 'infrastructure gap' and has the potential to accelerate economic growth across the Asia-Pacific region and central and eastern Europe.

# BUSINESS ENTITIES



*"The laws in China have always been complicated and it may be particularly difficult for foreign investors to understand the language differences and constant changes in government policies. In recent years, the Chinese government has opened up more of the economy to foreign investors by relaxing qualifications for them. The government has been revising its 'negative list' of industries where foreign investors are restricted or prohibited. Some restrictions that have been lifted are caps on foreign ownership of banks and ownership limits on brokerages and insurance companies. This encouraging move towards economic reform presents an excellent opportunity for investors to kick-start their investment plans in one of the world's biggest markets."*

*Flora Yang, Associate Director, Corporate Advisory Services*

## FOREIGN INVESTED ENTITIES

### FOREIGN INVESTED ENTITIES (FIE) WITH LIMITED LIABILITY

Under the Foreign Investment Law that took effect from 1 January 2020, FIE refers to an enterprise that is wholly or partially invested by a foreign investor. There is no minimum capital contribution requirement for this type of entity, unless otherwise provided under other laws and regulations. The registered capital of a limited liability company shall be the total capital contribution subscribed for by all the shareholders as registered with the registration authority. The capital may be contributed in cash, in kind or with intellectual property rights, land use rights or other non-monetary assets whose value may be assessed in financial terms and the ownership may be transferred in accordance with the law.

### COMPANY LIMITED BY SHARES WITH FOREIGN INVESTMENT (CLSFI)

A CLSFI generally adopts the promotion method for its establishment, while share is also permitted.

A CLSFI set up by means of promotion shall have no fewer than two but no more than 200 promoters, of whom half or more shall have a domicile in China. At least one of the promoters has to be a foreign shareholder.

An FIE with limited liability may apply to convert into a CLSFI through a share floatation. Other than the requirements in the preceding paragraph, a CLSFI established by a share flotation needs at least one promoter that has a track record of being profitable in the three consecutive years prior to the offer.

The minimum level of foreign participation in a CLSFI is 25%. A CLSFI can be listed either locally or abroad.

### BUILD-OPERATE-TRANSFER PROJECT (BOT)

BOT projects provide enterprises with concessions for key industrial or infrastructure projects in China, such as bridges, railways, industrial parks, power plants, airports, subways and expressways. After financing and building the project, the enterprise either immediately transfers the project to another party or continues to operate it for a number of years. When the agreed-upon equitable return on investment is achieved, the enterprise is required to transfer full ownership and control to the government. The terms, limitations, rules and regulations pertaining to BOT projects are often established on an ad hoc basis.

- The enterprise undertaking the project must take the form of a limited liability company.
- The registered capital should be at least 25% of the project's total investment.
- The projects are usually established through conditional franchise agreements that cannot exceed 30 years.

## FOREIGN-INVESTED PARTNERSHIP

A foreign invested partnership may have a number of foreign investors (either corporate or natural persons) and potential Chinese investors. The state encourages foreign enterprises or individuals with advanced technology and management experience to establish partnerships to promote development of the related industries in the domestic market.

A general partnership consists of general partners who bear unlimited joint and several liability for the debts of the partnership. Where there are special provisions in the Partnership Enterprise Law on the forms of liability borne by general partners, those provisions shall prevail. A professional entity with specialised knowledge and skills that provides paid services to its clients may form a specialised general partnership.

A limited liability partnership consists 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 contribution for which they have subscribed.

A general partner may make capital contributions in cash or in kind, or in the form of intellectual property rights, land-use right or other property rights, or labour services. A limited partner shall not make capital contributions in the form of labour services.

## REPRESENTATIVE OFFICE (RO)

Before actually investing in China, many foreign investors choose to establish representative offices (ROs) to engage in market research and learn more about the country. An RO is optional before making an actual investment in China and not an independent legal entity. The RO activities are confined to promotion or acting as a liaison office on behalf of its head office. An RO is not allowed to generate revenue, solicit business, engage in warehousing or sign contracts with customers. It can hire local staff through approved employment agencies.

It should also engage in activities that service the head office directly.

## INCORPORATION OF BUSINESS ENTITIES

### APPROVAL AND REGISTRATION PROCEDURE

The 'Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones' was promulgated by the National Development and Reform Commission and the Ministry of Commerce has been in effect since 30 July 2019, applicable to the Free Trade Zones in China, such as Shanghai, Guangdong, Tianjin and Fujian.

It lists restricted and prohibited projects, which were listed previously in the past 'Catalogue for the Guidance of Foreign Investment Industries'.

Foreign investors shall not invest in any field prohibited by the Negative List. For any field restricted by the Negative List, foreign investors shall fulfil the requirements provided in the Negative List.

The State Administration for Market Regulation (SAMR) has overall responsibility for approving the formation of FIEs and issuing business licenses. Under normal circumstances, the following documents should be submitted to support the application: Articles of Association, Shareholder Resolution, etc. However, the list of documents required for submission may vary depending on the location and type of operation.

In 2015, the Organisation Code Certificate and Tax Registration Certificate were combined with the Business Licence ('New Business Licence'). The SAMR will issue the New Business Licence within 10 working days upon successful submission of the application documents. Within 30 days of the issuance of the New Business Licence, the FIE must register with the local tax authority.

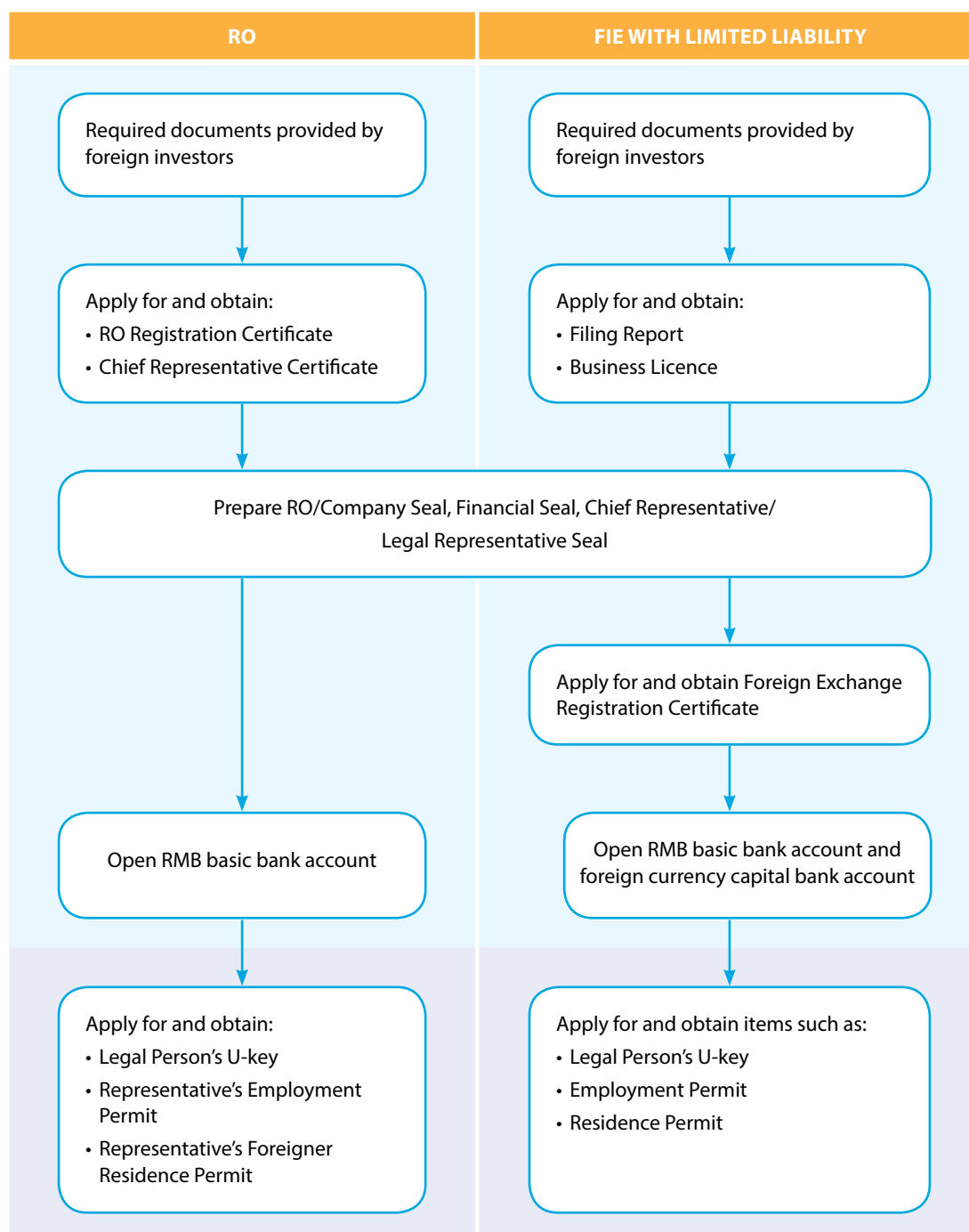
### COMPARISON OF MAIN INVESTMENT VEHICLES

FIE with Limited Liability	RO
<b>Advantages</b>	
<ul style="list-style-type: none"> <li>• Profits and risks are clearly shared in proportion to the equity of each partner</li> </ul>	<ul style="list-style-type: none"> <li>• Lower risk with initial market testing</li> </ul>
<b>Disadvantages</b>	
<ul style="list-style-type: none"> <li>• Cannot set up WFOE in specific industries</li> <li>• Foreign partner can only contribute up to 49% of registered capital in specific industries</li> </ul>	<ul style="list-style-type: none"> <li>• Cannot engage in direct business activities or enter into contracts</li> <li>• Must engage local agent to hire local staff</li> </ul>
<b>Governance</b>	
<ul style="list-style-type: none"> <li>• One Executive Director or Board of Directors (BOD) comprising at least three directors</li> <li>• A Supervisor or Supervisory Board shall also be appointed</li> </ul>	<ul style="list-style-type: none"> <li>• Chief Representative</li> </ul>
<b>Tax</b>	
<ul style="list-style-type: none"> <li>• Subject to company income tax, value-added tax, individual income tax</li> <li>• Enjoy tax incentives such as 'Reduced Tax Rate for Qualified Advanced and New Technology Enterprises'</li> <li>• Avoidance of Double Taxation Agreements apply</li> </ul>	<ul style="list-style-type: none"> <li>• Taxation based on a deemed income basis, mainly for company income tax, VAT and individual income tax (for details, please refer to Taxation section)</li> </ul>
<b>Reporting &amp; Compliance</b>	
<ul style="list-style-type: none"> <li>• Monthly Report, Quarterly Report, Annual Audit and Annual Inspection</li> </ul>	<ul style="list-style-type: none"> <li>• Monthly Report, Quarterly Report and Annual Audit</li> </ul>
<b>Lead Time to Establishment</b>	
<ul style="list-style-type: none"> <li>• 2–3 months (upon submission of required documents)</li> </ul>	<ul style="list-style-type: none"> <li>• 1–2 months (upon submission of required documents)</li> </ul>



## ESTABLISHMENT PROCEDURES

This is a simplified version for reference purposes only.



### CAPITAL CONTRIBUTION

China is currently implementing a “zero registered capital rule”, where the authority will not require verification of a company’s capital injection at the time of registration. This allows companies to complete the business registration process without the need to actually inject any capital. However, the method of capital injection, amount and schedule still need to be specified in the company’s Articles of Association. The capital contribution scheme is used to ensure proper foreign investment goals and regulate investment behaviour. The registered capital of a foreign invested company refers to the capital registered at SAMR for establishment of the foreign invested company, catering to the foreign invested company’s initial operational needs. The foreign investor may inject capital according to the capital contribution scheme, increase its registered capital or subject to the authority’s approval, also reduce its registered capital during the operating period under existing regulations.

After the latest amendment to the PRC Company Law became effective on 1 March 2014, the foreign investor can freely agree on the capital amount and contribution period based on the actual needs. Capital can be contributed by way of cash and equipment, such as properties, plant and equipment (PPE), intellectual properties (IP), and land-use rights. Registered capital (RC) is the total capital that should be contributed by the shareholders. However, another related concept, ‘total investment’ (TI), should be considered before incorporation. Both the RC and TI of a foreign invested company need to be stated in its Articles of Association. The upper limit for loan financing (from bank / holding company) is restricted to the difference between the TI and RC, while also being subject to the following guidelines for the debt-equity ratio.

TI	Minimum RC Requirement according to the TI
TI ≤ US\$3 million	70% of TI
US\$3 million < TI ≤ US\$10 million	50% of TI and not less than US\$2.1 million
US\$10 million < TI ≤ US\$30 million	40% of TI and not less than US\$5 million
TI > US\$30 million	1/3 of TI and not less than US\$12 million

The contribution of the RC must be declared through the Enterprise Credit Information Publicity System within 20 working days from the date of contribution. If the SAMR verifies that a company has failed to make such a declaration, it may order the company to fulfil this obligation within a definite time period.

A foreign invested company is only permitted to repatriate profits after tax clearance has been obtained. Where foreign invested companies are established with insufficient RC or TI, the capital increase process can take a few months to obtain the necessary approvals. Foreign investors should therefore consider carefully the expected operational funding requirement before determining the level of TI and professional advice is advisable in this regard.

### AUDIT REQUIREMENTS

All foreign invested companies must appoint a China-registered Certified Public Accountant (CPA) firm to audit their financial statements at the end of the accounting year and to issue an auditor’s report. Audits are required under the company laws, accounting regulations and income tax laws in China. Audited financial statements are also used for tax reporting purposes. Annual corporate income tax filings of non-resident entities which are foreign companies’ representative offices must be verified by a Certified Tax Agent (CTA) instead of a CPA firm. But provincial tax bureaus may still require submission of a CPA report for tax filing purposes. The annual financial statements should be submitted together with an auditor’s report issued by a CPA firm registered in China within four months of the end of the fiscal year. However, local authorities may impose earlier deadlines in certain cases.

The independent Chinese auditor appointed by a foreign invested company should be qualified and registered with the Chinese Institute of Certified Public Accountants to practise in China.

## ANNUAL COMPANY INSPECTION

Foreign invested companies in China are required to undergo an annual combined inspection conducted by six government bureaus, including the Ministry of Finance, Ministry of Commerce, State Administration of Taxation, State Administration of Foreign Exchange, National Bureau of Statistics of China and SAMR.

Foreign invested companies and representative offices are required to make annual statutory filings anytime from 1 March to 30 June every year, and foreign invested companies' operations the previous year will be examined. Tax filings and renewal of the business licence should be completed by the end of May, and foreign exchange filings should be completed by the end of June.

The general procedures for annual statutory filings are as follows:

- (1) Normally, the six government bureaus will form a special team whose responsibility is to organise, arrange and coordinate the work relating to the annual statutory filing. In some provinces, a combined office for these bureaus may be established to deal with the annual statutory filing issues. One of the six government bureaus may be appointed to collect all the required documents if there is no combined office.
- (2) The announcement for the annual statutory filing will be published in newspapers and/or on the internet, communicating the basic requirements, time and location of the annual statutory filing exercise and contact number.
- (3) Foreign invested companies and representative offices need to download the annual statutory filing report from the website of SAMR's local office. The report has to be completed accurately and thoroughly according to the audited financial statements.
- (4) Foreign invested companies and representative offices should submit the completed annual statutory filing report together with all the required documents to the combined office before April 30 (Different deadlines may be determined locally).
- (5) SAMR will return the Certificate of Operation to foreign invested companies and representative offices upon approval of the business licence.

## DISSOLUTION AND LIQUIDATION

### LIMITED LIABILITY COMPANY/COMPANY LIMITED BY SHARES

A foreign invested company can be liquidated upon:

- (1) Meeting the liquidation conditions in its Memorandum and Articles of Association;
- (2) Approval by its shareholders; or
- (3) Merger or acquisition by another company.

When the foreign invested company is placed in liquidation, a liquidation committee must be formed within 15 days. If the foreign invested company is a limited liability company, the liquidation committee must be formed by its shareholders. For a foreign invested company limited by shares, the members of the liquidation committee have to be approved at the shareholders' meeting.

In the event that no liquidation committee is formed, creditors of the foreign invested company can apply to the Court to enforce the formation of the committee.

The liquidation committee is required to:

- (1) Prepare a statement of assets and liabilities;
- (2) Notify creditors;
- (3) Continue the company's businesses and operations, but only to the extent that this relates to the liquidation;
- (4) Obtain tax clearance;
- (5) Dispose of all assets and settle all liabilities;
- (6) Distribute surplus assets to shareholders after settling all liabilities; and
- (7) Represent the company to sue or to be sued.

When the liquidation committee prepares the statement of assets and liabilities, and if it is found that the company has insufficient assets to settle all its liabilities, the committee should apply to the Court for a declaration of bankruptcy.



When a bankruptcy declaration is made, the liquidation committee should hand over the liquidation affairs to the Court.

### REPRESENTATIVE OFFICE/BRANCH OFFICE

When a foreign enterprise applies to revoke its representative office due to the expiry of the residence period or to terminate its business operations before the expiry, the following steps have to be followed, according to regulations established by the Ministry of Commerce:

- (1) Submit an application (30 days before expiry of the residence period) for cancellation—to be signed by the Chairman of the board of directors or general manager of the enterprise—via the original undertaking agency to the original examination and approval authorities;
- (2) Settle all outstanding liabilities;
- (3) Obtain tax clearance from the tax authorities;
- (4) Notify SAMR;
- (5) Notify Customs; and
- (6) Notify all other relevant authorities (e.g. SAFE and the Public Security Bureau).

If the CJV is terminated as a result of one joint venture party failing to perform its contractual obligations (condition 3), the other joint venture party has the right to claim for losses and damages against the non-performing party. The performing party can also apply to the original examination and approval authorities to terminate the CJV.

If the CJV is registered as a legal entity, a liquidation committee should be formed upon termination to administer liquidation of the CJV. On the other hand, if the CJV is registered as a non-legal entity, the Code of Civil Procedures should be used when dealing with the CJV's liquidation affairs.

### THE ENTERPRISE BANKRUPTCY LAW

The Enterprise Bankruptcy Law (the 'EBL') was updated with effect from 1 June 2007. It was previously promulgated in 1986 in light of both international and domestic experience with the objective of ensuring a clearer legal basis for formal bankruptcy proceedings.

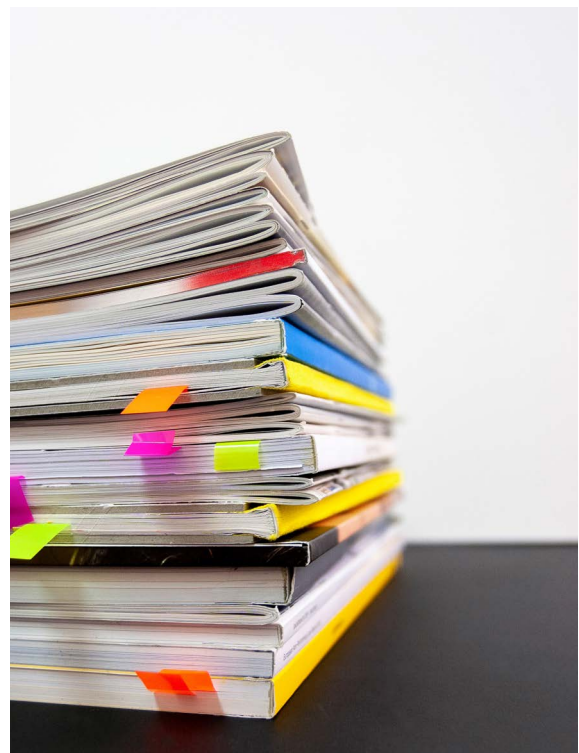
The EBL is applicable to corporate legal persons (whether state- or privately owned) that are insolvent or at risk of becoming insolvent. It also extends to the debtors' overseas assets. Natural persons are excluded from the scope of the EBL.

The EBL defines the priority of claims on a bankrupt's assets as follows:

- (1) Secured claims
- (2) Costs and expenses of the bankruptcy administration
- (3) Employees' salaries, workman's compensation, superannuation, etc.
- (4) Social insurance and taxes
- (5) Other unsecured claims

If the bankrupt company has no assets to be realised for distribution, the administrator shall apply to the Court to conclude the bankruptcy administration.

The introduction of the EBL demonstrates China's intention to bring its insolvency framework in line with international practices. It also provides a defined mechanism for foreign investors to deal with their investments under distressed situations.



### **About Flora Yang, Associate Director, Corporate Advisory Services**

Flora started her professional career as a paralegal at Zhong Lun Law Firm in 2004. In 2005, she joined Rodyk & Davidson LLP where she worked as a PRC consultant for 10 years.

Flora was a registered foreign lawyer of Attorney-General's Chambers, Singapore. She has in-depth knowledge and experience in China-related cross-border transactions, such as joint ventures, mergers & acquisitions, takeovers and initial public offerings. The majority of clients served by Flora included multinational companies in various industries such as retail, manufacturing, real estate, IT and entertainment.



Flora joined SBA Stone Forest in 2015 to head the Corporate Advisory Services department. In her current position, she serves clients in areas such as structuring of business ventures, mergers and acquisitions, corporate governance advisory and compliance, as well as corporate secretarial services covering establishment of business entities, maintenance of company statutory records and registers, company search and legal translation.

For enquiries on how we can help you to establish and conduct operations in China with ease, contact Flora at +86 21 6186 7688 or [florayang@SBASF.com](mailto:florayang@SBASF.com)



# FOREIGN EXCHANGE CONTROLS

## OVERVIEW OF FOREIGN EXCHANGE CONTROLS

### RMB EXCHANGE RATE REFORM

The Renminbi (“RMB”) is the official currency in mainland areas of the People’s Republic of China, and comes in the Yuan (元), Jiao (角), and Fen (分) denominations (1 Yuan = 10 Jiao = 100 Fen).

The People’s Bank of China is the nation’s central bank (“Central Bank”), which is responsible for formulating the exchange rates between the RMB and major foreign currencies (i.e. USD, EUR, HKD, JPY and GBP).

As part of efforts to reform the RMB exchange rate system since 2005, the Central Bank took a major step on 11 August 2015 when it adopted the middle rate that is mainly determined by the market. However, the Central Bank continues to strike a balance between ensuring stability of its currency policy and exchange rate reforms.

The State Administration of Foreign Exchange (SAFE) is the authority in charge of foreign currency exchange control in China.

### SIMPLIFIED DOMESTIC AND OVERSEAS DIRECT INVESTMENT REGISTRATION PROCEDURE

Since 1 June 2015, SAFE has revoked the administrative examination and approval procedures relating to foreign exchange registration approvals for domestic and overseas direct investments. Instead, SAFE empowers banks to review and handle the direct investment-related foreign exchange registration and other related activities. These include fulfilling duties such as examination, reporting statistics, as well as monitoring and record-filing of domestic and overseas direct investments within the scope of SAFE’s authorisation and under the guidance of SAFE.

After completing the domestic direct investment registration, the foreign invested company is allowed to open a capital account in RMB or a foreign currency to contribute its registered capital to this capital account.

### ENFORCING DISCRETIONAL FOREIGN EXCHANGE SETTLEMENT

A foreign invested company can settle foreign exchange capital in its capital account at its discretion since 1 June 2015. The proportion of discretionary settlement of foreign exchange capital of foreign invested companies is temporarily determined as 100%. SAFE may adjust the aforementioned proportion in due time based on the international balance of payments situation.



### REMITTANCE OF FUNDS OUT OF CHINA

SAFE regulates remittance of funds out of China under the trading and capital categories.

Options for remitting funds from China:

No.	Type of Remittance	Category	Documents Required	Legal Compliance
1	Service fee to overseas service provider	Service trading	<ul style="list-style-type: none"><li>• Service agreement</li><li>• Invoice</li><li>• Other documents supporting this service transaction</li></ul>	SAFE Hui Fa [2013] No. 30
2	Goods trading	Goods trading	<ul style="list-style-type: none"><li>• Goods trading agreement</li><li>• Invoice</li><li>• Other documents supporting this goods transaction</li></ul>	SAFE Hui Fa [2012] No. 38
3	Dividends and profits	Capital	<ul style="list-style-type: none"><li>• Proof of tax payment subject to China's tax regulations</li></ul>	SAFE Hui Fa [2013] No. 80
4	Foreign loans	Capital	<ul style="list-style-type: none"><li>• Foreign loan agreement</li><li>• Other supporting documents required by SAFE</li></ul>	SAFE Hui Fa [2013] No. 19

# TAXATION

*“For investors establishing a presence in China, one of the most painful issues is tax. Given the stringent tax administration environment in China, foreign investors should carefully consider setting up an effective and compliant tax structure on the first day they enter into China. They should also fully comply with the PRC tax regulations with accurate and timely tax filing, monitor implementation of the tax structure, as well as review tax planning during the whole life of their business operation in China.”*

*Alex Xie, Director, Tax Advisory*

## OVERVIEW OF CHINA TAX

### TYPES OF TAXES

Generally, taxes in China are categorised as follows:

#### **Taxes on turnover or revenue:**

- Value added tax (VAT)
- Consumption tax (CT)
- Customs duty on exports/imports

#### **Taxes on income:**

- Enterprise income tax (EIT)
- Individual income tax (IIT)

#### **Taxes on property and transactions:**

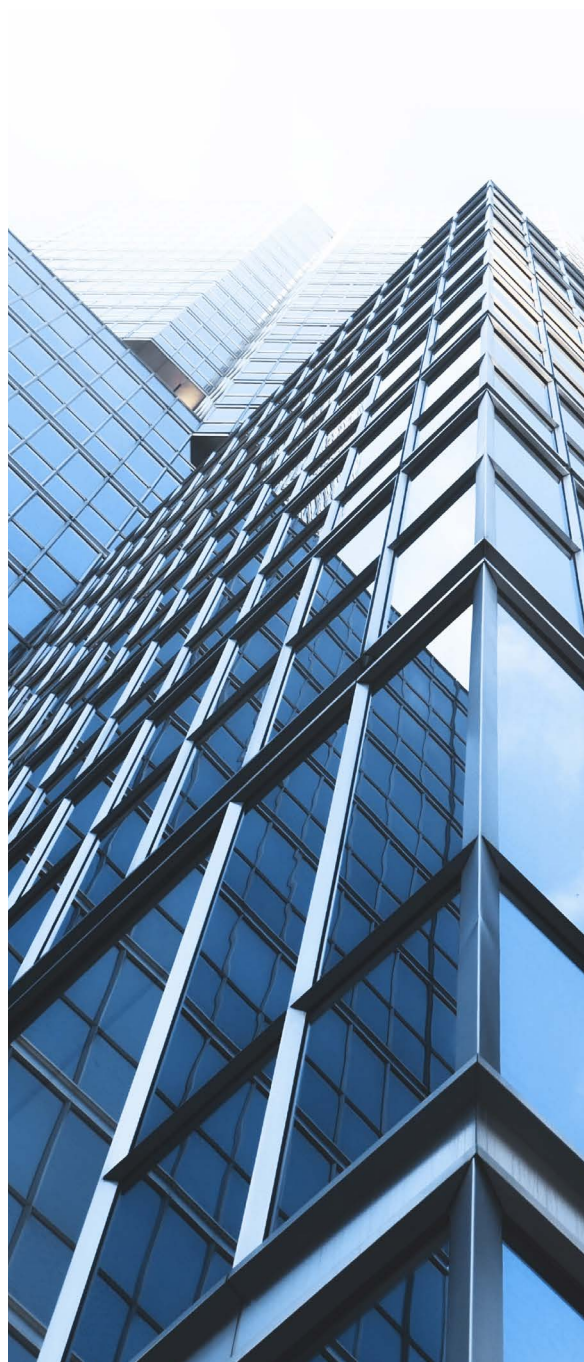
- Urban land use tax
- Real estate tax
- Vehicle and vessel usage tax
- Stamp tax
- Land appreciation tax
- Contractual tax (Deed tax)

#### **Taxes / Dues on natural resources:**

- Resource tax
- Tax on the occupancy of cultivated land

#### **Other taxes:**

- City maintenance and construction tax
- Education surcharge



## OVERVIEW OF SOME IMPORTANT TAX RATES

Tax Category	Important Taxes	Tax Rate
Taxes on Income	<u>Individual Income Tax</u> Comprehensive Income: <ul style="list-style-type: none"> <li>• Wage and salary income</li> <li>• Income from labour remuneration</li> <li>• Income from author's remuneration</li> <li>• Income from royalties</li> </ul>	3–45% (7 progressive tax rates in total)
	Income from business operation	5–35% (5 progressive rates in total)
	Income from interest, dividends and bonuses	
	Income derived from leasing of property	20%
	Income derived from transfer of property Occasional income	
Taxes on Turnover	<u>Enterprise Income Tax</u> <ul style="list-style-type: none"> <li>• Income of resident enterprises</li> <li>• Lower tax rate (e.g. High Technology Enterprises)</li> <li>• China-sourced income of foreign enterprises without establishment in China</li> <li>• Income of foreign enterprises with establishment in China, income not connected with the establishment</li> </ul>	25% 15% 20% withholding tax (10% would be adopted in practice)
	<u>VAT</u> <ul style="list-style-type: none"> <li>• Sales of general goods, providing processing, repair or maintenance services in China, importing goods into China</li> </ul>	13%
	<ul style="list-style-type: none"> <li>• Leasing services of tangible personal property</li> </ul>	
	<ul style="list-style-type: none"> <li>• Sales of goods with lower tax rates such as agricultural products, tap water, books and fodder</li> </ul>	9%
	<ul style="list-style-type: none"> <li>• Transportation service, postal services, basic telecommunications service, construction service, leasing of immovable properties, sale of real property, or transfer of any land use rights</li> </ul>	
	<ul style="list-style-type: none"> <li>• Telecommunication value-added service, financial services, modern services (research and development and technical services, information technology services, cultural creativity services, logistics ancillary services, attestation consulting services, radio, film and television services, commercial supporting services and other modern services), lifestyle services, sales of intangible assets of technologies, trademarks, copyrights, goodwill, use rights of natural resources (excluding land use right) and other equity intangible assets</li> </ul>	6%
	<ul style="list-style-type: none"> <li>• Exportation of goods and Cross-border supply of services and intangible assets as prescribed by the State Council</li> </ul>	0%
	<ul style="list-style-type: none"> <li>• Provide qualified cross-border service and goods</li> </ul>	Exemption
	<u>Consumption Tax</u> <ul style="list-style-type: none"> <li>• Tobacco, Liquor and Alcohol, Cosmetics, Precious Jewelry and Precious Jade and Gem, Firecrackers and Fireworks, Production Oil, Automobile Tires, Motorcycles, Compact Cars, Golf Balls and Golf Equipment, Luxury Watches, Yacht, Disposable Wooden Chopsticks, Solid Wood Flooring, Batteries, Coatings</li> </ul>	1–56%

## ADMINISTRATION AND REGULATIONS

### a) Tax year

The tax year is the calendar year. Tax quarters and tax months are calendar quarters and calendar months respectively.

### b) Filing and payment

Type of Return	Person Responsible for Filing	Filing & Payment Deadline
Individual Income Tax (for Comprehensive Income)	Withholding agent (i.e. the employer)	Withholding agent withholds IIT within 15 days after the end of each month in advance, and the taxpayer is required to conduct the annual IIT filing between 1 March and 30 June the following year.
Enterprise Income Tax	Enterprises and foreign enterprises with establishments in China	a) Quarterly return and payment—within 15 days after the end of each quarter b) Annual return and payment—within 5 months after the end of the tax year (together with financial and accounting records)
Withholding Tax	Withholding agent	Within 15 days after the end of each month
Value Added Tax	Taxpayer	a) 1, 5, 10 or 15 days' return and payment—within 5 days of end of period, final return and discrepancy in tax amount to be settled within 15 days after the end of the following month b) 1 month's or 1 quarter's return and payment—within 15 days from the end of the period c) Imports—within 15 days after customs issues the tax payment certificate d) Exports—apply for a refund of tax paid on a monthly basis
Consumption Tax	Taxpayer	a) 5, 10 or 15 days' return and payment—within 5 days from end of period, final return and discrepancy in tax amount to be settled within 15 days after the end of the following month b) 1 month's or 1 quarter's return and payment—within 15 days from the end of the period c) Imports—within 15 days after customs issues the tax payment certificate
Customs Duty	Taxpayer or agent	Within 15 days after the issuance date of the customs duty payment certificate

### c) Consolidated returns

China generally does not permit the filing of consolidated returns; each company must file a separate return.

### d) Statute of limitations

The statute of limitations for assessment and collection is three years if an underpayment of tax is due to the taxpayer's inadvertent error in tax computation (e.g. incorrect application of a formula).

The period is extended to five years if the accumulated amount of underpaid tax is greater than RMB100,000. The statute of limitations period could be up to 10 years for underpayments of enterprise income tax arising from transfer pricing issues or arrangements without a bona fide business purpose. There is no statute of limitations for tax evasion.

**e) Tax authorities**

Tax legislation and policy are developed jointly by the State Taxation Administration (STA) and the Ministry of Finance, with the STA and its provincial and municipal offices administering taxation policies. Each locality in China has a state tax bureau under the STA and a local tax bureau under both the STA and local government. The STA and state tax bureaus are mainly responsible for the collection and administration of taxes that generate revenue for the central government or revenue that is shared between the central and local governments.

**f) Rulings**

Advance ruling procedures are not widely adopted in China. Taxpayers normally consult their local tax officials in charge on an unofficial basis when issues arise. The tax authorities may issue post-transaction rulings in special cases. China does allow for advance pricing arrangements (APAs). Advance ruling procedures have been piloted in certain large businesses.

## TYPES OF TAXES

**VALUE ADDED TAX (VAT)**

This section is updated as of 31 December 2018. Businesses should note that China started a massive VAT reform in 2019 for areas such as VAT rate and VAT calculation, and keep track of the latest VAT updates.

VAT is a national tax, with a single rate imposed regardless of the location of the VAT taxpayer. Chinese VAT is generally levied on any person engaged in the sale of goods or the provision of processing, repair or replacement services within China, as well as on the importation of goods into China.

The VAT reform pilot programme was launched in Shanghai on 1 January 2012 following the Chinese State Council's decision on 26 October 2011. The VAT reform (initially applying to the non-railway transportation and modern service sectors) has been rolled out nationwide and new sectors have been added to the scope of the reform (i.e. railway transportation and postal services have been included within the scope of the VAT reform since 1 January 2014; telecommunication services have been included since 1 June 2014).

At the opening ceremony of the National People's Congress held on 5 March 2016, Premier Li Keqiang announced that effective from 1 May 2016, VAT would replace the Business Tax (BT) in all sectors, including real estate & construction, financial services & insurance, and lifestyle services (including hospitality, food and beverage, healthcare and entertainment).

The VAT reform aims to resolve the double taxation issues arising under the indirect tax system (because no VAT-like credit mechanism is allowed under the BT system, BT paid cannot be recovered by purchasers against their own BT liability, and VAT cannot be recovered by purchasers who are only liable to BT) and foster the development of modern service industries by gradually transitioning these industries from BT liability to VAT liability.

**a) Scope of VAT**

Sales and imports of goods, provision of processing, replacement and repair services as well as other services

**b) Types of VAT taxpayers**General taxpayers

General taxpayers are those whose taxable sales value exceeds the threshold of small-scale taxpayers. General taxpayers can deduct input VAT from output VAT, which can lead to significant cost savings. Also, being registered as a general VAT payer may increase the amount of potential output VAT due to the fact that general taxpayers are allowed to issue VAT receipts.



If the turnover of a company exceeds the threshold, it is mandatory to apply for the general VAT payer status. However, companies below that threshold can also apply to be recognised as a general VAT payer (subject to the approval of the supervising tax bureau). Once a small-scale taxpayer is recognised as a general taxpayer, the small-scale taxpayer status no longer applies even if its sales fall below the threshold in the future. [Note: A general taxpayer status needs to be granted by the tax authority.]

### Small-scale VAT taxpayers

The annual taxable sales revenue threshold of a small-scale VAT payer shall be less than or equal to RMB5 million.

Small-scale VAT payers who are able to provide sound and accurate accounting and tax-related information can register with appointed tax authorities to apply for the general taxpayer status.

### c) Calculation of VAT

Taxable Income	Scope	VAT Rate
Sales of Goods/ Imported Goods	General goods	13%
	Goods with lower tax rates such as agricultural products, tap water, books and fodder	9%
Sales of Labour Services	Processing, repair and fitting services	13%
Transportation Services	Overland transportation, pipeline transportation, business of carriage without transport carrier	9%
Postal Services	Universal postal service, other postal services	9%
Telecommunications Services	Basic telecommunications services	9%
	Telecommunications value-added services	6%
Construction Services	Engineering services, installation services, renovation services, decoration services, other construction services	9%
Financial Services	Loan services, direct fee charging financial services, insurance services, transfer of financial instruments	6%
Modern Services	Leasing services—leasing immovable properties	9%
	Leasing services—leasing tangible properties	13%
	Research and development and technical services, information technology services, cultural creativity services, logistics ancillary services, attestation consulting services, radio, film and television services, commercial supporting services and other modern services	6%
Lifestyle Services	Cultural and sports services, education and medical services, tourism and entertainment services, catering and accommodation services, daily services for residents, other lifestyle services	6%
Sales of Intangible Assets	Technologies, trademarks, copyrights, goodwill, use rights of natural resources (excluding land use right) and other equity intangible assets	6%
	Land use right	9%
Sales of Real Properties	Ownership of buildings and structures, limited property rights or perpetual use rights of buildings, ownership of buildings or structures under construction, transfer of land use right for land occupied by buildings or structures	9%

*Note: The VAT rates above are updated as at 30 April 2019.*

Small-scale VAT payers pay VAT at a rate of 3%, but there is no input VAT credit (i.e. this is a simplified VAT calculation method).

Under the VAT reform, the zero rate may be applied to R&D/design services provided to foreign entities and international transportation services, while qualifying cross-border services may be VAT-exempt. Input VAT incurred for zero-rated services may be refunded, but is unrecoverable for VAT-exempt services.

VAT incurred on the purchase or construction of fixed assets (excluding immovable property) may be credited against output VAT. Input VAT arising from the following items, however, is not deductible against output VAT:

- The purchase of goods and services for exclusive use in non-VAT taxable, VAT-exempt projects or projects subject to a simplified VAT calculation method, welfare activities or individual consumption
- The purchase of yachts, motorcycles and motor vehicles that are subject to consumption tax and for the taxpayer's own use
- Goods and relevant services purchased that are lost in an unusual manner
- Goods and relevant services purchased and consumed or used for products or finished goods that are lost in an unusual manner
- The purchase of passenger transportation services

The export refund rate is adjusted to 13% for the export of goods and cross-border VAT taxable activities that were originally subject to the VAT rate and export refund rate of 16%. The export refund rate is adjusted to 9% for the export of goods and cross-border VAT taxable activities that were originally subject to the VAT rate and export refund rate of 10%.

#### **d) Administration and regulations**

A company is required to register with the local tax authorities at the time of incorporation to have its status recognised as either a general VAT payer or small-scale VAT payer.

VAT returns are generally filed for each calendar month and must be submitted before the 15th day of the following month. A taxpayer that imports goods must pay tax within 15 days after the issuance of the tax payment certificate by the customs authorities.

### **CONSUMPTION TAX (CT)**

Consumption tax applies to the production, processing and import of prescribed non-essential and luxury as well as resource-intensive goods, such as tobacco, alcoholic drinks, cosmetics, fuel, expensive watches, disposable wooden chopsticks, yachts, golf, jewellery, car tyres, motorcycles and motor cars.

The tax is calculated based on the quantity or price of goods sold or in certain cases, a combination of both. For example, the tax rate for gasoline is RMB1.52 a litre and therefore based on the quantity. On the other hand, the tax rate for cigars is 36% of the sales price.

The proportional consumption tax rate ranges from 1% to 56% on the revenue of different types of goods. Consumption tax paid on exports is fully refundable.

## CUSTOMS DUTY

Import duties are levied at both general and preferential rates. The preferential rates apply to imports originating from countries or regions that have signed agreements with China containing reciprocal preferential tariff clauses, and the general tariff rates apply to imports originating from all other jurisdictions. However, if the State Council Customs Tariff Commission grants special approval, preferential tariff rates may be applied to imports that would otherwise be subject to the general rates.

To encourage foreign investment, foreign invested companies that meet certain requirements may be exempt from customs duties on the importation of machinery and equipment for self-use.

### a) Customs valuation

Import customs duty is levied based on the Cost Insurance Freight (CIF) value. Export customs duty is calculated based on the Free on Board (FOB) price of goods less export duty.

### b) Reduction and exemption

Customs duties will be reduced or payers are exempt from them under the following conditions:

Reduction or Exemption	Exemption
<ul style="list-style-type: none"> <li>• Goods damaged prior to customs clearance</li> <li>• Commodities covered by concluded international treaties</li> <li>• Applicable to certain areas (bonded areas, border trade, export processing zone, etc.)</li> <li>• Imported goods with special usage (scientific research and educational purposes, for disabled persons, etc.)</li> <li>• Other goods reduced from customs duties as stipulated by law</li> <li>• Commodities under certain special trade modes (processing trade, consignment sales, etc.)</li> <li>• Certain machinery and equipment imported for self-use purposes by foreign invested companies under projects categorised as 'encouraged' or 'restricted'</li> </ul>	<ul style="list-style-type: none"> <li>• Consignment of goods where the estimated customs duty is less than RMB50</li> <li>• Advertising material and samples of no commercial value</li> <li>• Goods and materials that are rendered gratis by international organisations or foreign governments</li> <li>• Goods destroyed prior to the customs clearance</li> <li>• Fuel, stores, beverages and provisions for use en route loaded on any means of transport, which are in transit across the frontier</li> <li>• Import goods for personal use within the amount specified by the General Administration of Customs ("GAC")</li> <li>• Other goods exempt from duties as stipulated by law</li> </ul>

### c) Temporary exemption

Customs may grant temporary exemption treatment to Temporary Import/Export Commodities. These commodities have to be reshipped out of or into the customs territory within six months. A guarantee letter or security deposit of an amount equivalent to the customs duty must be submitted to customs.

Items that qualify for temporary exemption include trade samples, exhibits, engineering equipment, vehicles and vessels for construction, instruments and tools for installation, cinematographic and television apparatus, containers, theatrical costumes and paraphernalia.

### d) Payment of customs duty

The payer or its agent shall make a timely customs declaration and settle the customs duty within 15 days after the issuance date of the customs duty payment certificate. Late payment penalties will be imposed at 0.05% daily on the overdue customs duty.

## ENTERPRISE INCOME TAX (EIT)

Resident enterprises have to pay EIT on their worldwide income. Foreign companies with an establishment need to pay income tax connected to this establishment. Foreign companies without an establishment are subject to EIT on income derived from within China.

### a) Tax calculation

Tax liability = [Total revenue – Non-taxable revenue – Tax-exempt revenue – Costs – Expenses – Losses] x Applicable tax rate – Allowable reductions/exemptions – Tax credit

- The standard tax rate is 25%. For high and new technology enterprises, the rate is 15%.
- Withholding tax rates vary depending on the country. In most cases, the rate is 10% (e.g. Germany), but in some countries, it might be different.
- Tax reductions are available for environmentally friendly projects.

### b) Tax registration

Enterprises are required to register with the local tax authorities within 30 days from the date of obtaining the business licence or business registration certificate.

A non-resident enterprise that has contractual projects or provides services within the territory of China shall register with the tax authorities where the project is located within 30 days from the date of concluding the project/service contract.

### c) Tax credit

Tax credit will be allowed on the amount of income tax actually paid (in accordance with the foreign tax laws) by the enterprise outside China, for the income derived by the enterprise outside China. However, the credit amount should not exceed the amount of China income tax payable on the foreign-sourced income. Any excess tax credit can be carried forward for a maximum period of five years.

### d) Assessment and administration

The tax year starts on 1 January and ends on 31 December.

All companies are required to submit provisional tax returns and advance tax payments on a monthly/quarterly basis (to be determined by the tax authorities) in RMB, within 15 days after the end of the month/quarter. An annual EIT return should be filed together with its financial and accounting reports and other relevant information (e.g. related party transactions annual return) within five months from the end of each tax year regardless of whether the enterprise is in a profit or loss position. Any deficiency shall be paid within five months from the end of each tax year and any excess payment shall be refunded.

Companies in a group are not allowed to pay EIT on a consolidated basis, unless approved by the State Council.

## INDIVIDUAL INCOME TAX (IIT)

### a) Income and IIT calculation methodology

Whether or not the foreign individuals working in China are liable to pay IIT in China depends on several key factors:

- Foreign individual's level of income
- Duration of stay
- Income source
- Positions held by the foreign individual in his/her host country and home country company

### Foreign individual's level of income

The income, including the base salary, incentive compensation such as commissions and bonuses, cash allowances and contributions to an overseas insurance scheme, should be subject to China IIT under the comprehensive income category, if these incomes are related to a China job assignment.

The tax rate levied on that comprehensive income therefore depends on its cumulated amount. China adopts a progressive taxation system in seven levels from 3% to 45%. Since 1 October 2018, the standard deduction on comprehensive income is RMB60,000 on an annual basis for all tax residents, which means the standard deduction is RMB5,000 per month.

Furthermore, for each level of the progressive taxation system, an additional quick deduction amount will be deducted from this level of taxable income.

The following IIT rate table gives an overview of comprehensive income for non-residential taxpayers.

Income Range (RMB)	Tax Rate (%)	Quick Deduction (RMB)
<3,000	3	0
3,000–12,000	10	210
Over 12,000–25,000	20	1,410
Over 25,000–35,000	25	2,660
Over 35,000–55,000	30	4,410
Over 55,000–80,000	35	7,160
>80,000	45	15,160

As mentioned above, the monthly standard deduction for non-residential taxpayers is RMB5,000 per month. Therefore, the following formula is used to calculate the non-residential taxpayers' monthly IIT burden:

$$[(\text{Gross Monthly Taxable Income} - \text{RMB5,000}) \times \text{Tax Rate}] - \text{Quick Deduction}$$

### Duration of stay and income source

Previously, non-residential foreign individuals who reside in China for more than one year but less than five consecutive years are subject to tax on their China-sourced income and the portion of foreign-sourced income that is paid or borne by units or individuals located in China. Non-residential foreign individuals who reside in China for more than five consecutive years are subject to tax, starting from the sixth year, on their worldwide income for every "one full year".

According to the new IIT law, non-residential foreign individuals who will stay in China for less than 90 days, the China-sourced income which will be paid and borne by the Chinese entity should be subjected to IIT accordingly. For those foreign individuals who stay in China for less than 183 days, the China-sourced income should be subjected to IIT, regardless of which entity will bear the salary cost. For the foreign individuals who stay in China for 183 days or more within a calendar year will be deemed as a China resident and subject to China IIT on relevant salary income, except the overseas-sourced income which will be paid and borne by overseas entity.

According to the new six-year rule for foreign individuals reformed in 2019, the overseas incomes (such as capital gain on property transfer, dividend income derived from overseas entity, etc.) of foreign individuals who stay in China for not more than six years may be exempted from China IIT if they complete tax registration with the relevant tax bureau department.

#### How to identify the source of income for director, supervisor and senior executive

For the foreign individual who will be appointed as director, supervisor or any other senior executive position (hereinafter referred to “the management”) in a domestic resident enterprise, the IIT should be imposed if the relevant director fees, supervisor fees, wages and salaries or other similar remuneration (including bonuses and stock option incentives) will be paid and borne by the domestic resident enterprise, , regardless of whether the management will fulfils the duty in the territory of China or not.

If the management will stay in China for more than 90 days but less than 183 days, the IIT should be imposed on total salary income, except the overseas-sourced income which will be paid and borne by overseas entity.

#### **b) Tax registration**

Foreign individuals who are liable to pay IIT are required to register with the relevant tax authority. The tax authority will allocate a unique taxpayer identification number for the expatriate’s monthly IIT filing purpose.

What must be included in employment income?

- |                    |                      |   |
|--------------------|----------------------|---|
| • Wages            | • Dividends          | • Long-service awards                                     |
| • Salaries         | • Various allowances | • Severance payments                                      |
| • Bonuses          | • Subsidies          | • Personal taxes paid by employers on behalf of employees |
| • Year-end bonuses | • Stock options      |   |

According to the prevailing IIT regulations, the following fringe benefits for foreign individuals are exempt from individual income tax until the end of 2021, if certain conditions are met and approval (where required) is given based on the tax bureau’s requirements below:

- Housing, meal and laundry allowances received in a non-cash form or on a reimbursement basis
- Reimbursement of relocation expenses upon commencement or cessation of China assignment
- Home leave allowance—two trips per calendar year
- Allowances for language training and children’s education
- Mandatory social security benefits

Expatriates who wish to enjoy the above allowances should be clearly reflected in the details of their labour contract. They should provide the employer with valid invoices and other relevant supporting documents. The employer should retain them for the purpose of IIT exemption. Otherwise, the allowances would be combined with the base salary subject to IIT accordingly.

#### **c) Tax credit**

Tax credit will be allowed on income tax paid by the individual (Chinese and resident taxpayers) outside China for income derived by the individual outside China. However, the credit amount shall not exceed the individual’s China income tax that would have been payable on the foreign-sourced income. The excess tax credit (after offsetting the individual’s China income tax payable for that year) can be carried forward for a maximum period of five years.

### **d) Assessment and administration**

The tax year starts on 1 January and ends on 31 December.

IIT for comprehensive income should be calculated on annual basis rather than monthly basis for tax residents according to the new IIT law.

However, withholding agents will continue to withhold tax and file the tax returns in advance on a monthly basis.

All taxpayers are allowed a monthly deduction of RMB5,000 with effect from 1 October 2018. The taxable income, after the monthly deduction, will be taxed on a progressive basis at a rate ranging from 3% to 45%.

The employer is primarily responsible for withholding individual income tax from employees. The tax withheld shall be remitted to the State Treasury within 15 days after the end of each month. Otherwise, late payment fee/penalties will be imposed.

In addition, individuals are required to keep records of income from all sources and report these annually to the local tax authority by 30 June every year if they are in any of the following circumstances:

- (1) The taxpayer receives general income in more than two places, and the balance of the annual general income minus special deductions exceeds RMB60,000;
- (2) The taxpayer has one or more income sources for personal services, author's remuneration and royalties, and the balance of the annual general income minus special deductions exceeds RMB60,000;
- (3) The amount of tax paid in advance during the tax year is lower than the amount of tax payable;
- (4) The taxpayer applies for a tax refund; or
- (5) The taxpayer was pre-judged as a non-resident individual but subsequently meets the resident individual conditions due to extension of the residence duration of 183 days or more within a calendar year, a final settlement will be conducted according to resident individuals' provisions at the end of the year. If the resident tax payer is expected to leave China without returning in the same year of departure, he/she must make a final tax settlement before leaving the country.

### **e) Relief from Year 2019's Annual IIT Filing**

- (1) The comprehensive income does not exceed RMB120,000;
- (2) The final tax payment for 2019 does not exceed RMB400; or
- (3) The prepaid IIT on comprehensive income equals to final year's IIT position in 2019, or taxpayer does not intend to file for a refund.

## **URBAN LAND USE TAX**

Urban land use tax is levied on enterprises or individuals using state-owned land in cities, county sites, administrative towns or industrial and mining areas. It is calculated on an annual basis by multiplying the actual land area used by the quota tax rate, which varies depending on the land's location.

## **REAL ESTATE TAX**

Real estate (property) tax is levied on an annual basis and payable on an instalment basis. The local tax authorities will determine when the real estate taxes are payable.

An individual's residential real estate is currently exempt from real estate tax unless it is rented out.

**a) Who pays the real estate tax?**

Circumstance	Person Responsible for Payment
Real estate is used by the owner to earn rental income	Owner
Real estate is mortgaged	Mortgagee
The owner or mortgagee does not use the real estate, or ownership of the real estate is not yet established	Custodian or user of real estate

**b) Calculation of real estate tax**

Annual real estate tax payable = Tax basis x Tax rate

Circumstance	Tax Rate	Tax Basis
Enterprises using their own real estate	1.2%	70% to 90% of the original value of real estate
Enterprises/individuals renting out their real estate	12% or 4%*	Rental income
Individuals residing in their own real estate	0%	Not applicable

\* A reduced tax rate of 4% applies to individuals renting out residential real estate.

**VEHICLE AND VESSEL USAGE TAX**

Owners or managers of vehicles and vessels used within the territory of China are required to pay vehicle and vessel usage tax. Tax is assessed on net tonnage of the vessel or vehicle, or on a per unit basis.

**Assessment and administration**

Vehicle and vessel usage tax is assessed on an annual basis with payment to be made together with the compulsory traffic accident liability insurance for motor vehicles.

**STAMP DUTY**

Stamp duty, ranging from 0.005% (for loan agreements) to 0.1% (for leasing agreements, property insurance contracts, warehousing and storage contracts), applies to prescribed contracts, written certificates of transfer of property rights, business account books and permits. The rate on share transactions is 0.1% for shares listed on a domestic stock exchange.

Item	Scope	Tax Rate
Purchase and sales contracts	Contracts of supply, pre-purchase, procurement, purchase for an organisation or enterprise, purchase and sale combinations and cooperation, adjustment, compensation, barter etc.	0.03% of the purchase or sales price
Processing contracts	Processing, specific orders, renovations, repairs, printing, advertising, mapping and testing	0.05% of the income from processing or other related activities
Engineering project reconnaissance and design contracts	Prospecting contracts and design contracts	0.05% of the fees received



Item	Scope	Tax Rate
Construction and installation project contracts	Construction contracts and installation contracts	0.03% of the contract amount
Property leasing contracts	Contracts for the leasing of housing, vessels, aircraft, motorised vehicles, machinery, tools and equipment	0.1% of the leasing fee
Commodity transportation contracts	Contracts for the transport of goods by civil aircraft, rail, ship, river and road and coordinated transport contracts	0.05% of the transport cost
Storage and custody contracts	Storage contracts and custody contracts	0.1% of the storage or custody fee
Loan contracts signed between banks or other financial institutions and borrowers	Not including interbank short-term loans on which interest is calculated daily. Receipts shall be used as a contract and stamp duty shall be paid as for a contract	0.005% of the amount borrowed
Property insurance contracts	Property, liability, guarantee, and credit insurance contracts. Receipts shall be used as a contract and stamp duty shall be paid as for a contract	0.1% of the insurance premium
Technology contracts	Technology development, transfer, consultancy and service contracts	0.03% of the stated value
Documents of transfer of property rights	Documents of transfer of property titles, copyright, exclusive right of use of trademarks, patents and proprietary technology usage rights	0.05% of the stated value
Business books of account	Books of account for recording capital and capital surplus	0.05%
	Books of account for others	RMB5 per book
Documentation of rights and licences	Property ownership certificates, industrial and commercial business licences, trademark registration certificates, patent certificates and land use certificates	RMB5 per document

### LAND APPRECIATION TAX (LAT)

Gains on the sale of real property, net of development costs, are subject to the LAT. LAT applies to all types of land, construction and immovable property, including commercial, industrial and residential sites. The current regulations provide for a deduction of qualifying financing expenses, related taxes, and administration and selling expenses, with prescribed caps in different situations. A super deduction equal to 20% of the combined property development and land purchase cost is available to real estate development companies. LAT is charged in four bands ranging from 30% to 60%, depending on the percentage of gain realised.

**a) Calculation of LAT**

LAT is calculated on the value added gained by the entities or individuals through the assignment of the state-owned land use rights, buildings and other facilities attached to the land.

$$\text{Value added gained} = \text{Income derived (cash and/or other assets)} - \text{Deductible items}$$

$$\text{Land appreciation tax payable} = \text{Value added gained} \times \text{Applicable tax rate} - \text{Quick calculation deduction}$$

Deductible items include:

- Cost of obtaining land use rights
- Cost of developing the land, including construction costs
- Marketing expenses, management expenses and financial expenses
- Taxes and dues relating to the transfer of state-owned land use rights, buildings and other facilities attached to the land
- The assessed price for the transfer of old buildings
- Other deductions specified by the Ministry of Finance

**b) Exemptions**

Taxpayers are exempt from land appreciation tax under the following circumstances:

- The value added amount of the ordinary residential buildings constructed and sold by the taxpayer for civil use is less than 20% of the deductible items.
- The land is compulsorily acquired by the state due to state- or municipal-planned construction requirements.
- Subject to the approval of the tax authorities, an individual is transferring his/her ordinary residential property due to a change of employment.
- The taxpayer had used the property as his/her primary residence for at least five years.

**c) Tax rates**

Value Added Amount	Tax Rate	Quick Calculation Deduction
Value added amount ≤ 50% of deductible items	30%	Not applicable
Value added amount > 50% of deductible items but ≤ 100% of deductible items	40%	Deductible amount x 5%
Value added amount > 100% of deductible items but ≤ 200% of deductible items	50%	Deductible amount x 15%
Value added amount > 200% of deductible items	60%	Deductible amount x 35%

### CONTRACTUAL TAX (DEED TAX)

Where land use rights or building ownership rights are transferred within China, the transferee enterprises or individuals have the obligation to pay deed tax. The transfer of land use rights or building ownership rights refers to:

- The grant of state-owned land use rights
- The transfer of land use rights, including sale, gift or exchange
- Buying and selling of buildings
- A gift of buildings
- The exchange of buildings

#### a) Tax rates

The deed tax ranges from 3% to 5%, and the actual rates will be determined by the provincial or local governments.

#### b) Payment

The obligation of the transferee to pay deed tax arises on the date when the contract for the land use or building ownership transfer is signed or when the documents for the ownership transfer are obtained.

The transferee is required to file the deed tax return with the local tax authorities within 10 days from the date of the obligation to pay deed tax. The local tax authorities will set the time limit on when the tax must be paid. Any late payment will incur a penalty of 0.05% per day on the overdue amount.

### RESOURCE TAX

The resource (natural resources) tax is levied on enterprises and individuals engaged in the exploitation of mineral products or production of salt within the territory of China and waters under the country's jurisdiction. A nationwide reform of the resource tax was launched in 2011, changing the tax basis from volume to selling price for certain categories of taxable resources, e.g. crude oil, natural gas and coal. For most other taxable resources, the tax is still calculated based on the volume of products sold or self-used, at revised tax rates. The resource tax is payable to the local authorities at the place of production or exploitation.

#### a) Taxable products and tax rates

Product	Tax Rate
Crude oil	5–10% of sales volume
Natural gas	5–10% of sales volume
Coal	RMB0.30–5 per tonne
Other non-metallic mineral ores	RMB0.50–20 per tonne or cubic metre
Ferrous metallic mineral ores	RMB2–30 per tonne
Non-ferrous metallic mineral ores	RMB0.40–30 per tonne
Liquid salt	RMB2–10 per tonne
Solid salt	RMB10–60 per tonne

**b) Assessment and administration**

Payment shall be made to the local tax authorities where the taxable product is mined or produced. The local tax authorities shall determine the time limit for payment as follows:

Basis Period	Filing & Payment Deadline
1 day	<ul style="list-style-type: none"> <li>Provisional payment within 5 days of the end of the period; and</li> <li>Final return and any discrepancy in the tax amount should be settled within 10 days from the start of the following month.</li> </ul>
3 days	
5 days	
10 days	
15 days	
1 month	Within 10 days after the end of the period.

**CITY MAINTENANCE AND CONSTRUCTION TAX AND NATIONAL EDUCATION SURCHARGE**

The city maintenance and construction tax and national education surcharge apply to entities and individuals that are subject to VAT or consumption tax. The national education surcharge is levied at a flat rate of 3%, while the rates for city maintenance and construction tax depend on the location of the taxpayer or withholding agent: 7% for a location in a city, 5% for a county and town area, and 1% in other locations.

**LOCAL EDUCATION SURCHARGE**

The rate for the local education surcharge, whose collection mechanism is almost the same as that of the national education surcharge, may be applied at the discretion of the local government. However, after the Ministry of Finance issued a notice in 2010 to urge all local governments to impose the local education surcharge at a flat rate of 2%, with a view to unifying application of the surcharge across the country, many provinces have applied the 2% rate.

**WITHHOLDING TAXES****a) Dividends**

A 10% withholding tax on dividends paid to a non-resident company has been in effect since 2008.

Previously, dividends paid by a Chinese company with at least 25% of foreign participation were exempt. It should be noted, however, that dividends paid out of pre-2008 earnings continue to be exempt from withholding tax. The 10% withholding tax may be reduced under an applicable tax treaty.

**b) Interest**

Interest is generally subject to a 10% withholding tax unless the rate is reduced under a tax treaty. Interest from certain loans made to the Chinese government or resident enterprises is exempt.

**c) Royalties**

The withholding tax rate on royalties and fees arising from the licensing of trademarks, copyrights and know-how and related technical service fees is generally 10%. Royalties are generally subject to a 6% VAT, except for payments made in connection with the use of technology, where an exemption may be granted.

### **d) Wage tax/social security contributions**

The employer must withhold individual income tax on behalf of the employee and remit the relevant amount to the tax authorities.

The employer must contribute approximately 20% of basic payroll to the state-administered retirement scheme. The employer must also contribute to a medical insurance fund, maternity insurance, unemployment insurance and work-related injury insurance. The total employer contribution may be up to about 40% of the employee's base monthly salary, although the rates can vary across the country. The employee is required to contribute a certain percentage of his/her monthly salary to the above-mentioned funds, subject to a threshold set by the local authorities.

Foreign individuals legally working in China (including both locally hired individuals and those seconded from abroad to work in China) are required to participate in the same social security scheme as described above, unless an exemption is provided under an applicable bilateral social security totalisation agreement. However, enforcement may vary in different cities.

## **ANTI-AVOIDANCE PROVISIONS**

The anti-avoidance provisions have been included in the enterprise income tax (EIT) law and apply to taxpayers who entered into tax avoidance arrangements. These provisions are listed below:

- Transfer pricing rules;
- Controlled foreign corporations (CFC) rules;
- Thin capitalisation; and
- General anti-avoidance provision.

The tax authorities are permitted to make reasonable adjustments within 10 years from the tax year once the transaction occurred. Also, once the taxpayers are required to pay additional tax for the above-mentioned adjustments, interest will be levied on the additional tax payable.

### **TRANSFER PRICING**

The EIT laws provide a basis for the tax authorities to make special adjustments for transfer pricing. The related parties are required to comply with the arm's length principle in all inter-company businesses.

#### **Compliance with transfer pricing documentation requirements in China**

On 29 June 2016, SAT introduced stricter requirements for transparent information disclosure on related party transactions:

- Annual Related Party Transactions Reporting Forms, including Country-by-Country reporting
- Three-layer documentation approach including master, local and special issue files
- Legal obligation of enterprises that meet certain thresholds to prepare transfer pricing (TP) documentation

Enterprises should stay updated on the latest TP regulatory changes in China and prepare appropriate TP documentation if they reach the regulatory thresholds to mitigate the risk of non-compliance. In addition, well-prepared TP documentation serves as a "first line of defence" that protects enterprises from penalties during TP audits. Furthermore, this allows enterprises to assess or reassess the reasonableness of their TP policies for managing potential TP risk in the country.

In contrast to the old TP documentation requirements, the key changes are:

- Annual Related Party Transactions Reporting Forms (the 'New Forms') replace the previous nine forms and increase the total number of forms from nine to 22. More detailed and transparent information disclosure is required. The New Forms also include the Country-by-Country reporting form ('CbC Form').
- Bulletin 42 introduces a three-layer documentation approach, including master, local, and special issue files, compared with the old TP regime that did not involve the master and special issue files. In addition, the local file must now include a value chain analysis as well as location-specific advantages ('LSAs').

### **Conditions that require preparation of a master file**

An enterprise is required to prepare a master file for a fiscal year in Chinese if it meets any of the following thresholds:

- When the enterprise has cross-border related party transactions and its group has prepared a master file; or
- Related party transactions totalling over RMB1 billion during the year

### **Conditions that require preparation of a local file**

An enterprise is required to prepare a local file for a fiscal year in Chinese if it meets any of the following thresholds:

- Transfer of over RMB200 million (for toll manufacturing, the amount in customs records for imports and exports should be included) in tangible assets
- Transfer of over RMB100 million in financial assets
- Transfer of over RMB100 million in intangible assets
- Other related party transactions totalling over RMB40 million

An enterprise that engages in simple manufacturing activities, such as toll processing, contract manufacturing, simple distribution or contract R&D, and incurs a loss, is required to prepare a local file regardless of whether it reaches any of the thresholds listed above<sup>1</sup>.

### **Conditions that require preparation of a special issue file**

An enterprise is required to prepare a special issue file in Chinese if it meets any of the following thresholds:

- The related party debt-to-equity ratio exceeds 2:1 for non-financial enterprises or 5:1 for financial enterprises<sup>2</sup>; or
- Enterprise engaged in a cost-sharing agreement

### **Other considerations for documentation**

#### Exemption

Enterprises that have only conducted related party transactions with domestic related party companies, or implemented an Advance Pricing Arrangement (APA), are exempt from preparing master, local and special issue files.

#### Deadline for preparation

The master file shall be prepared within 12 months after the date when the group's ultimate holding company's fiscal year ends.

The local and special issue files shall be prepared before June 30 of the year following the year when the related party transaction occurred.

<sup>1</sup> The last threshold was not stated in Bulletin 42. Instead, it was specified in State Taxation Administration Bulletin on Promulgation of the Administrative Regulation for Special Tax Audit Adjustment and Mutual Agreement Procedures ('Bulletin 6').

<sup>2</sup> This threshold is related to PRC corporate income tax. It was specified in the circular of the Ministry of Finance and the State Taxation Administration on Tax Policy Issues Relating to Pre-tax Deduction Standard for the Payment of Interest by Enterprises to Affiliated Parties.

### Deadline for submission

Contemporaneous documentation shall be provided within 30 days of the tax authority's request.

### **Content of master file**

Bulletin 42 states that the master file must disclose key global business information of the whole group to which the Chinese enterprise belongs, including the group's organisational structure, the group's business description (including inter-company transactions), intangibles, financing activities, as well as the financial and tax status.

### Organisational structure

A chart illustrating the group's global organisational structure, shareholding structure and geographical location of all business entities in the group

### Group's business description

A description of the group's business, including the supply chain and geographical locations of major markets, important intragroup service arrangements, value-creating contributions from each entity, functional changes due to business restructuring, risks or assets within the group, and reorganisations during the fiscal year

### Intangibles

- A description of overall strategies in relation to the development and utilisation of intangibles, determination of the ownership of intangibles, the group's transfer pricing policies relating to R&D and intangibles, as well as any transfer of interests in intangibles among related parties during the fiscal year
- A list of the group's intangibles that have a significant impact on its transfer pricing policy, the ownership of such intangibles, and significant intangibles-related agreements between entities in the group

### Financing activities

A description of intragroup financing arrangements, the group's key financing arrangements with unrelated parties, entities in the group that provide central financing for the group, as well as the group's transfer pricing policies relating to financing arrangements between related parties

### Financial and tax status

- The group's annual consolidated financial statements for the latest fiscal year
- A list of the group's existing unilateral APAs, bilateral APAs and other tax rulings relating to the allocation of income among countries, together with brief descriptions, names and locations of entities in the group that will prepare and submit the Country-by-Country report

### **Content of local file**

Bulletin 42 states that the local file should provide an overview of the Chinese enterprise, detailed information of its related party relationships and transactions, information on the selection and application of transfer pricing methods, as well as a comparability analysis.

Overview of Chinese enterprise

- (1) Organisational structure;
- (2) Management structure;
- (3) Industry description;
- (4) Business strategy;
- (5) Financial data for each type of business and product; and
- (6) A description of reorganisations or transfers of intangibles that involve or affect the Chinese enterprise, and how such changes affect it

Related party relationships

- (1) Information on related parties;
- (2) Information on income taxes that apply to related parties, including names of such taxes, tax rates and any preferential tax treatment; and
- (3) Changes in related party relationships during the fiscal year

Related party transactions

- (1) Overview of related party transactions;
- (2) Analysis of value chain;
- (3) Outbound investment;
- (4) Related party equity transfer;
- (5) Related party services; and
- (6) APAs in foreign countries and tax rulings directly relating to the enterprise's related party transactions

Comparability analysis

- (1) Factors considered in comparability analysis;
- (2) Information on functions performed, risks assumed and assets employed by comparable enterprises;
- (3) The search method, source, selection criteria and rationale for the comparable information;
- (4) Information of selected internal or external comparable uncontrolled transactions and the financials of comparable enterprises; and
- (5) Adjustments made to the comparable data and rationale for these adjustments



### Selection and application of transfer pricing methods

- (1) Selection of the tested party and rationale for the selection;
- (2) Selection of transfer pricing method and rationale for the selection (regardless of the method selected, the enterprise must explain its contribution to the group's overall profit or residual profit);
- (3) Any assumptions and judgements made in the process of determining the arm's length prices or profits;
- (4) Application of reasonable transfer pricing methods and results of the comparability analysis to determine the arm's length prices or profits;
- (5) Other information to justify selection of the transfer pricing method; and
- (6) Analysis and conclusion on whether the transfer pricing policy of the related party transaction complied with the arm's length principle

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### **About Alex Xie, Director, Tax Advisory Services**

Alex Xie joined SBA Stone Forest in 2019. Alex is a CPA (Australia) and is leading the Tax Advisory & Compliance division in SBA Stone Forest.

He started his career as a tax consultant with one of the Big 4 firms in Australia and went on to build his career in the tax function with multiple MNCs. He specializes in tax planning, tax policies, tax strategies, transfer pricing, international taxation, merger and acquisition, risk management, and tax dispute. Alex also has in-house finance experience in accounting, tax and treasury, budget and forecast, compliance, internal control and post-deal integration, with strong exposure in both the Asia-Pacific and the US regions.



As the Head of Tax Advisory & Compliance, Alex is more than glad to share some important pointers on how to better manage your business' operation. For enquiries on how we can meet your tax advisory needs in China, contact Alex Xie at +86 21 6186 7998 or [alexxie@SBASF.com](mailto:alexxie@SBASF.com)

# MANPOWER

*"Affected by the economic downturn, many companies have adjusted their strategies in China and reduced their budgets. But with new, stricter compliance requirements nationwide from a HR policy perspective, it can be very difficult for some businesses, especially manufacturing companies, to maximise profits by controlling labour costs. Therefore, an effective HR plan that plays a key role in reducing overall costs and ensuring compliance with new social insurance, IIT filing and other regulations is particularly important. At the same time, the IIT reform included a change from the original monthly basis salary calculation method to the rolling calculation method. Companies must not only declare employees' IIT payable, but also allow staff to declare their six special deductions and comprehensive income through different options. In addition, the HRIS and salary calculation system must be adjusted according to the new compliance requirements. These significantly increase the challenge faced by HR teams."*

*Tan Lee Lee, Director, Business Advisory*

## MANDATORY PROCEDURES FOR HIRING STAFF IN CHINA

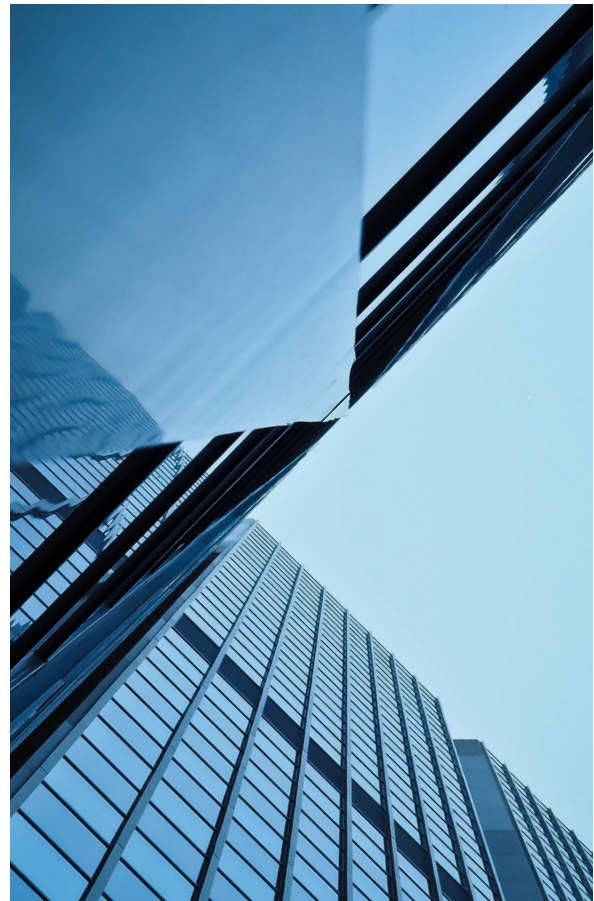
The process of hiring employees in China will usually follow the key mandatory procedures below:

- Conclude labour contract with staff member
- Process new employment registration and apply for employment permit from the labour bureau
- Register staff social benefits information
- Process monthly salary payment before the agreed payday
- File individual income tax return every month with special deduction items
- Contribute to staff social benefit

## SOCIAL BENEFITS IN CHINA

Employers are required by law to contribute both the company's and individual's components of social benefits. Social benefits in China include:

- Pension
- Unemployment
- Medical
- Work-related injury
- Maternity
- Housing fund



The social benefit contribution rates and contribution base are different in different Chinese cities. As an illustration, the social benefit contribution base and rates in Beijing and Shanghai are as follows:

	Beijing	Shanghai
Social benefit contribution base (new employees)	Full month gross salary for the first working month in the company	Full month gross salary for the first working month in the company
Social benefit contribution base (existing employees)	Employee's average salary the previous year	Employee's average salary the previous year
Maximum base in year 2019/2020	RMB27,786	RMB24,633
Minimum base in year 2019/2020	RMB5,557	RMB4,279
Employer's Contributions		
Pension	16%	16%
Medical Insurance	10%	9.5%
Unemployment Insurance	0.8%	0.5%
Injury Insurance	0.2–1.9%	0.2–1.9%
Pregnancy Insurance	0.8%	1%
Housing Fund	12%	5–7%
Employee's Contributions		
Pension	8%	8%
Medical Insurance	2%	2%
Unemployment Insurance	0.2%	0.5%
Housing Fund	12%	5–7%

*\*The maximum and minimum base on each year is subject to revisions in the middle of the year and applicable for use until the next revision in the middle of the following year.*

The contribution base amount is the employees' average monthly salary including all types of income such as basic salary before tax, overtime pay, allowance, bonus and any other salary pay items of each employee in the previous year. This is subject to a cap of three times the citizens' average salary in the city the previous year and the minimum base is defined as 60% of citizens' average salary in the city.

Employees shall enjoy social insurance benefits under the following circumstances in accordance with the law:

- Retirement;
- Illness;
- Disability caused by work-related injury or occupational disease;
- Unemployment; and
- Childbearing

The conditions and standards for employees to enjoy social insurance benefits shall be stipulated by laws, rules and regulations.

## HIRING EXPATRIATE STAFF IN CHINA

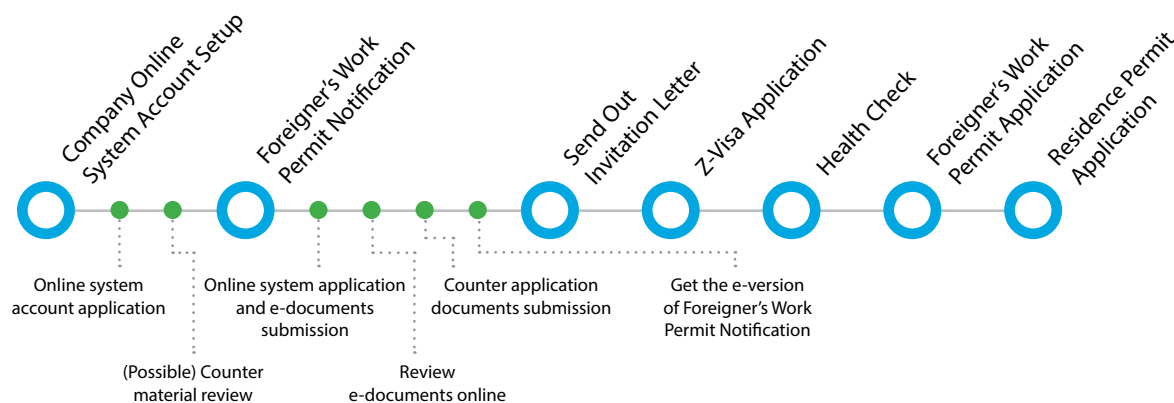
For expatriate staff to legally work in China, the company is required to apply for work permits and residence permits on their behalf. The expatriate staff is required to acquire an employment pass before concluding any labour contracts for work in China.

The general requirements for an expatriate employee working in China are as follow:

- Is older than 18 years of age;
- Has good health status;
- Has no criminal record;
- Has relevant working experience (at least two years);
- Has relevant educational background; and
- Has relevant qualifications

According to the expatriate staff's qualification and experience, the work permit will be categorised as Class A, Class B or Class C. It will score by annual salary level, education, working experience, age, Mandarin proficiency and other aspects. Class A is for expert talent, while Class B is for normal expatriate professionals required by various industries in China. Class C is for temporary staff or non-professionals whose approved headcount is strictly controlled.

The whole process, from application of the company account to application of the expatriate employee's residence permit, usually takes about two months, as shown below:



However, the detailed application requirements and timelines may differ according to the local requirements of each city's authorities.

Foreign nationals can also enter China for temporary business purposes with the visas below.

### F VISA

The F Visa, also known as the business visa, was used previously by foreign nationals coming to China on business but not employed by a Chinese entity. However, new regulations have limited the scope of this type of visa to non-commercial purposes only, such as cultural exchanges, visits and inspections. Therefore, it is no longer appropriate for business except within its limited range of permitted activities.

## M VISA

New regulations have introduced a new visa for business travellers called the M Visa. This is applicable to foreigners coming to the country for business and trade purposes lasting no more than six months (180 days). Like the previous F Visa, M Visas are most suitable for foreigners who will:

- Spend less than six months in China during any calendar year
- Frequently enter and leave China
- Not hold a formal senior position at an entity based in China
- Not be paid by a company incorporated in China

M Visas can be renewed after six months at the discretion of the immigration bureau, with the risk of rejection rising as the foreigner continuously resides in China for a longer period of time.

## CHINA LABOUR CONTRACT LAW

China's new labour contract law has been in effect since 2008. A labour contract defines the rights, interests and obligations of employers and employees. The law states that a labour contract shall be concluded where a labour relationship is to be established. In addition, conclusion and modification of a labour contract shall follow the principles of equality, voluntary participation and unanimity through consultation, and shall not conflict with Chinese laws, administrative rules and regulations. A labour contract, once concluded in accordance with the law, shall also possess legal binding force.

## CONCLUSION OF LABOUR CONTRACTS IN CHINA

### KEY COMPONENTS OF A VALID EMPLOYMENT CONTRACT

- Name, domicile and legal representative or employer's main person in charge
- Name, residential address and number of the resident ID card or other valid identity document of the worker
- Terms of the labour contract
- Scope of work and place of work
- Working hours, rest and leave
- Labour compensation
- Social insurance
- Labour protection, working conditions and protection against occupational hazards
- Other issues required by laws and regulations to be included in the labour contract

## IMPLEMENTING THE EMPLOYMENT CONTRACT

Employment contracts are divided into fixed-term employment contracts, open-ended employment contracts and employment contracts that expire upon completion of a certain job.

According to the Labour Contract Law of the People's Republic of China, a written labour contract shall be concluded for the establishment of a labour relationship. Where a written labour contract is not concluded simultaneously with the establishment of a labour relationship, a written labour contract shall be concluded within one month from the date of commencement of work. If an employer fails to conclude a written employment contract with an employee within one year from the employee's first day of work, the employer and employee shall be deemed to have concluded an open-ended employment contract.

If the contract is bilingual, the original version in Chinese shall prevail. The signature on the contract should be in Chinese.

## TYPES OF EMPLOYMENT CONTRACTS

### Fixed-term

An employment contract with a predetermined ending date as agreed upon by both the employer and employee

### Open-ended

An employment contract with no predetermined ending date as agreed upon by both the employer and employee

### Specific Work

An employment contract that expires upon the completion of a specific task as opposed to a specific length of time

## PROBATIONARY PERIODS

Contract Length	Probation Period
Contract term < 3 months	No probation
3 months ≤ Contract term < 1 year	Probation ≤ 1 month
1 year ≤ Contract term < 3 years	Probation ≤ 2 months
3 years ≤ Contract term ≤ Open-ended	Probation ≤ 6 months

- An employer may stipulate only one probation period for any given employee.
- No probation period may be specified in an employment contract with a term that expires upon completion of a certain job or an employment contract with a term of less than three months.
- According to the law, the wages of an employee on probation may not be less than the statutory minimum wage in the place where the employer is located and less than 80% of the wage upon confirmation that is agreed on in the employment contract.

## TERMINATION

In practice, termination of employees in China can be more difficult than expected, especially under the comparatively stringent regulations on terminating employment contracts since 2008. Employers should follow the steps below to ensure compliance with all relevant statutes:

Step 1	Determine whether the termination is an early termination or not. If the employer chooses to terminate the employee prior to expiration of the first fixed-term contract, this is considered 'early termination' and certain additional requirements apply.
Step 2	In the case of early termination, the employer should attempt to negotiate an agreement with the employee, including the termination date, severance payment and any other necessary details. This is often the safer option even if there are grounds for unilateral termination.
Step 3	If the employer and employee are unable to come to a termination agreement, consider whether there are grounds to support immediate termination for cause or a 30-day notice period for termination without cause, keeping in mind the statutory obstacles to such forms of termination.

## WORKING HOURS IN CHINA

There are three types of working hours in China:

- Standard working hours  
The employees shall work for no more than eight hours a day and no more than 40 hours a week on average. If they work beyond these standard durations, the overtime (OT) rates below shall apply:

OT on working days	150% of regular salary / OT hour
OT on weekends	200% of regular salary / OT hour
OT on public holidays	300% of regular salary / OT hour

- Flexible working hours
- Integrated working hours

Arrangements for both flexible working hours and integrated working hours require approval from the government. These two types of working hours allow the company to arrange non-standard working hours according to business needs with less OT payment cost.





## PUBLIC HOLIDAYS AND LEAVE

The employer shall arrange holidays for employees in accordance with the law as follows:

Public Holiday	Date	Days
New Year	January 1	1
Chinese New Year (Chinese Lunar Calendar)	Lunar New Year's Eve (Second Day of the Second Lunar Month)	3
Qing Ming Day (Chinese Lunar Calendar)	Fifth Day of the Fourth Lunar Month	1
Labour Day (May Day)	May 1	1
Dragon Boat Festival (Chinese Lunar Calendar)	Fifth Day of the Fifth Lunar Month	1
Mid-Autumn Festival (Chinese Lunar Calendar)	15th Day of the Eighth Lunar Month	1
National Day	October 1–3	3

Employees who have worked continuously for one year or more shall be entitled to annual leave with full pay. The details are shown in the table below.

Work Period (Years)	Annual Leave (Days)
$1 \leq \text{Work period} < 10$	5
$10 \leq \text{Work period} < 20$	10
$\text{Work period} \geq 20$	15

## LABOUR DISPUTES

When there is a labour dispute between the employer and its employees, the parties concerned may apply for mediation or arbitration, take legal proceedings according to the law, or seek a settlement through consultation.

## LEGAL RESPONSIBILITY

If the employer's actions and internal policies relating to HR management are found to be non-compliant with laws, rules and regulations, the labour bureau may issue the company a warning letter and order it to make corrections. If any harm has been caused to employees as a result of the non-compliance, the company shall be liable to provide compensation.

If the employer is found to have extended working hours of employees in violation of Chinese labour law, the labour bureau and other related administrative departments may also issue it a warning letter, order it to make corrections, and possibly impose a fine.

The government may also order the employer to remunerate/compensate employees or make up for any financial losses they suffered if the company violated employees' legitimate rights and interests in any of the following ways:

- The employer deducts wages or delays payment of wages to employees without reason.
- The employer refuses to pay employees overtime payment.
- The employer pays employees wages below the local minimum wage standard.
- The employer fails to provide employees with severance pay in accordance with labour contract law after termination of labour contracts.

According to the law, the employer shall bear responsibility for compensation if the execution of any invalid contracts is attributed to the company and resulted in damages to employees.

In addition, an employer that revokes labour contracts or purposely delays the execution of labour contracts in violation of the conditions specified in labour contract law may be ordered by the labour bureau and other related administrative departments to make corrections, and shall bear the responsibility of providing compensation if this resulted in damages to employees.

Employers that recruit employees whose labour contracts with their previous employer have not yet been terminated shall assume joint responsibility for compensation if the previous employer suffered economic losses as a result.

Employers that fail to pay social insurance premiums without reason may be ordered by the labour bureau and other related administrative departments to make payment within a fixed period of time. If the company still fails to make the payment after the time limit, an additional arrears payment may be demanded.

Employees who terminate labour contracts in violation of the conditions specified in labour contract law or violate confidentiality terms agreed upon in the labour contracts and consequently cause the employer to suffer economic losses shall be liable to provide compensation in accordance with the law.

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#### **About Tan Lee Lee, Director, Business Advisory**

With more than 15 years of accounting, audit and financial management experience in Singapore and China, Lee Lee is a CPA (Australia) and Director of Business Advisory at SBA Stone Forest. She assists many foreign companies in strategising their market entry into China and the provision of business support solutions, such as Accounting, Tax, Corporate Advisory and Payroll/HR services.



Over the past 10 years, Lee Lee has helped many foreign companies from the US, Europe, and Asia (including Singapore) understand China's complex and dynamic business environment, offering them solutions to overcome their local challenges.

She started her audit career in one of the Big 4 firms where she was responsible for the attestation engagement of companies listed in Singapore and the United States, group and multinational corporations' audits, as well as local joint ventures. Apart from her rich experience in the software & IT, education, healthcare, infrastructure, industrial and consumer markets, Lee Lee is also well versed in PRC GAAP, IFRS, US GAAP/SOX and regulations relating to doing business in China.

For enquiries on how we can meet your payroll and HR advisory needs in China, contact Lee Lee at +86 21 6186 7602 or [tanleelee@SBASF.com](mailto:tanleelee@SBASF.com)

# ACCOUNTING

*"Due to China's broad territory and different administrative divisions, each entity will be directed to the respective local government bureaus to facilitate regulatory compliance. Each region also has different incorporation and taxation policies for compliance. For example, a company's subsidiaries incorporated in different regions may be treated as different types of branches subject to relevant local tax compliance and related accounting policies.*

*Fapiao, a special invoice format, is unique to China. Each company's fapiao is managed by the tax bureau, including its maximum amount and maximum quantity that can be purchased each month. Changes to these must be approved by the tax bureau."*

*Vicky Wei, Associate Director, Accounting & Advisory Services*

## ACCOUNTING REGULATIONS AND STANDARDS

A unified accounting system was implemented for business enterprises with effect from 2002. Further regulations were implemented for financial institutions in 2002 and small enterprises in 2005. The Ministry of Finance has supplemented these regulations by the issuance of specific accounting standards designed to converge with International Financial Reporting Standards (IFRS) and accounting interpretations. Collectively, the regulations, standards, and interpretations are referred to as China GAAP.



The accounting regulations and standards required for non-listed companies are as follows:

- Accounting Standards for Business Enterprises (original and first revised versions effective from 1 July 1993 and 1 January 2007 respectively, with latest version effective since 23 July 2014)
- Accounting Regulations for Business Enterprises (effective 1 January 2001)
- Accounting Regulations for Financial Institutions (effective 1 January 2002)
- Accounting Regulations for Small Enterprises (original effective 1 January 2005, latest version effective since 1 January 2013)
- Basic Standard (original and first revised versions effective from 1 July 1993 and 1 January 2007 respectively, latest version effective since 23 July 2014)
- Events after Balance Sheet Dates (effective 1 January 1998, revised in 2003, latest version effective since 1 January 2007)
- Cash Flow Statement (original effective 1 January 1998, revised in 2001 and 2006, latest version effective since 1 January 2007)
- Changes in Accounting Policies, Accounting Estimates and Correction of Accounting Errors (original effective 1 January 1999, revised in 2001, latest version effective since 1 January 2007)
- Investments (original effective 1 January 1999, revised in 2001, latest version effective since 1 January 2007)
- Debt Restructuring (original effective 1 January 1999, revised in 2001, latest version effective since 1 January 2007)
- Contingencies (original effective 1 July 2000, revised version effective since 1 January 2007)
- Non-monetary Transactions (original effective 1 January 2000, revised in 2001, latest version effective since 1 January 2007)
- Leases (effective 1 January 2001)
- Borrowing Costs (original effective 1 January 2001, revised version effective since 1 January 2007)
- Fixed Assets (original effective 1 January 2001, revised version effective since 1 January 2007)
- Inventories (original effective 1 January 2001, revised version effective since 1 January 2007)

### NEW ACCOUNTING STANDARDS

In February 2006, a basic standard and 38 new accounting standards were issued, supplemented by another 33 implementation notes and four interpretation notes. These standards and interpretation notes (New GAAP) took effect on 1 January 2007 and are compulsory for public listed companies, centrally managed state-owned enterprises, financial institutions, security investment funds and fund management companies. All large and medium-sized entities are required to adopt the New GAAP. Other companies, including foreign investment enterprises, are encouraged to adopt the New GAAP, but have the option to continue using the accounting regulations and standards mentioned in the preceding section.

The New GAAP underwent major reforms in July 2014, including a revision of the basic standard and five accounting standards, as well as the addition of three new accounting standards.

Further major reforms occurred in 2017, including a revision of six accounting standards, as well as the addition of a new accounting standard. In addition, six interpretation notes were supplemented.

These latest changes are shown in bold below:

No.	Standard	No.	Standard
<b>1</b>	<b>Basic Standard (revised in 2014)</b>	<b>23</b>	<b>Financial Instruments: Recognition and Measurement (revised in 2017)</b>
<b>2</b>	<b>Inventories (revised in 2007)</b>	<b>24</b>	<b>Transfer of Financial Assets (revised in 2017)</b>
<b>3</b>	<b>Long Term Equity Investments (revised in 2014)</b>	<b>25</b>	<b>Hedging (revised in 2017)</b>
4	Investment Properties	26	Insurance Contracts
5	Property, Plant and Equipment	27	Reinsurance Contracts
6	Biological Assets	28	Extraction of Oil and Natural Gas
7	Intangible Assets	29	Changes in Accounting Policies and Estimates and Correction of Errors
8	Exchange of Non-monetary Assets	30	Events after the Balance Sheet Date
9	Impairment of Assets	<b>31</b>	<b>Presentation of Financial Statements (revised in 2014)</b>
<b>10</b>	<b>Employee Benefits (revised in 2014)</b>	32	Cash Flow Statements
11	Enterprise Pension Funds	33	Interim Financial Reporting
12	Share-based Payments	<b>34</b>	<b>Consolidated Financial Statements (revised in 2014)</b>
13	Debt Restructuring	35	Earnings Per Share
14	Contingencies	36	Segment Reporting
<b>15</b>	<b>Revenue (revised in 2017)</b>	37	Related Party Disclosures
16	Construction Contracts	<b>38</b>	<b>Financial Instruments: Presentation and Disclosures (revised in 2014 and further revised in 2017)</b>
<b>17</b>	<b>Government Grants (revised in 2017)</b>	39	First-time Adoption of Accounting Standards for Business Enterprises
18	Borrowing Costs	<b>40</b>	<b>Fair Value Measurements (newly added in 2014)</b>
19	Income Tax	<b>41</b>	<b>Joint Venture Arrangements (newly added in 2014)</b>
20	Foreign Currency Translations	<b>42</b>	<b>Disclosure of Interests in Other Entities (newly added in 2014)</b>
21	Business Combinations	<b>43</b>	<b>Non-current Assets and Disposal Groups Held for Sale and Discontinued Operations (newly added in 2017)</b>
22	Leasing		

Since the adoption of the New GAAP, the differences between IFRS and accounting standards in China have reduced significantly.

## ACCOUNTING STANDARDS FOR SMALL AND MEDIUM-SIZED ENTERPRISES

The new accounting standards for small and medium-sized enterprises (SMEs) implemented in January 2013 replaced the old accounting regulations implemented in 2005. They present a simplified accounting framework for SMEs in order to reduce compliance costs and allow growing enterprises to focus on internal control and business strategy.

These accounting standards are not applicable for the following:

- Small enterprises whose stocks or bonds are listed publicly in the market for trading
- Financial institutions or other small enterprises that provide services of a financial nature
- Parent company and subsidiaries of a group

## ACCOUNTING

Additional regulations have been issued to establish the criteria for qualification as a small enterprise. The criteria are based on headcounts, revenues and total asset values of businesses in different industries:

Business	Headcount	Revenue (RMB million)	Total Asset Value (RMB million)
Agriculture, Forestry, Animal Husbandry and Fishery	Not Applicable	<5	Not Applicable
Industrial	<300	<20	Not Applicable
Construction	Not Applicable	<60	<50
Wholesale	<20	<50	Not Applicable
Retail	<50	<5	Not Applicable
Transportation	<300	<30	Not Applicable
Storage	<100	<10	Not Applicable
Postal	<300	<20	Not Applicable
Hotel and Food	<100	<20	Not Applicable
Catering	<100	<20	Not Applicable
Information Transmission	<100	<10	Not Applicable
Software and Information Technology	<100	<10	Not Applicable
Real Estate Development	Not Applicable	<10	<50
Property Management	<300	<10	Not Applicable
Leasing and Service	<100	Not Applicable	<80
Others	<100	Not Applicable	Not Applicable

The following are some major features or requirements when applying accounting standards for small enterprises compared with accounting standards for larger businesses:

- Only the Balance Sheet and Income Statements need to be presented. Cash flow statements and the statement of changes in equity are optional.
- For notes to the accounts, only significant accounting policies, accounting estimates and transactions for the financial period need to be disclosed.
- In accounting for tax, the tax payable method is adopted.
- Actual cost is used in accounting for inventory, while the retail and standard cost methods are permitted under accounting standards for larger businesses.
- Borrowing costs for specific purposes can be capitalised upon incurrence of a debt and need not be in line with the incurrence of capital expenditure.

In the event that the SME is expected to breach the criteria for qualification in the near future, it would be advisable to adopt the full China GAAP rather than the simplified version for SMEs to avoid the risk of non-compliance.

## AUTHORISED REPRESENTATIVE TAX MANAGEMENT PROCEDURE

China's State Taxation Administration has implemented a tax management procedure that determines the scope of authorised representative information to be collected based on factors such as enterprise type and tax-related risks. It also allows the recognition and one-time collection of authorised representative information for multiple uses by the State Taxation Administration and local tax bureaus. The tax management procedure includes simplifying the submission of relevant supporting documents, optimising tax management processes, strengthening credit management, and guarding against various tax-related risks such as the receipt and issue of invoices by proxy.

Those handling tax affairs and subject to the procedure include legal representatives, persons in charge of finance, tax staff, tax agents, and other personnel authorised by legal representatives.

The information on tax affairs handlers shall include the following:

- Names
- Identity certification
- Mobile phone numbers
- Photo information
- Other information as required

Identity certification refers to the original valid resident identity cards, temporary resident identity cards, identity certification of Chinese People's Liberation Army soldiers, identity certification of Chinese People's Armed Police, mainland travel permits for Hong Kong and Macao residents, mainland travel permits for Taiwan residents, passports of foreign citizens, and other identity certification.

## PRC ADMINISTRATIVE MEASURES FOR INVOICES

The present Administrative Measures of the People's Republic of China for Invoices ("Measures") were adopted by the State Council on 12 December 1993 and revised on 20 December 2010. The Implementation Rules for Invoice Management Measures of the People's Republic of China were promulgated by State Taxation Administration (STA) on 28 December 1993 and revised on 27 December 2014. All entities and individuals that print, purchase, issue, obtain, keep, and cancel invoices within the territory of the People's Republic of China must observe these Measures.

With implementation of the VAT (value added tax) reform on 1 May 2016, VAT has replaced BT (business tax) in all sectors. The administrative procedures for purchasing and upgrading VAT invoices are explained next.

### TYPES OF VAT INVOICES

There are two types of VAT invoices in China—the normal VAT invoice and special VAT invoice. VAT invoices are suitable for general and small-scale VAT taxpayers. Only a company with a general VAT taxpayer certificate may obtain special VAT invoices and use them for VAT deduction purposes. In this publication, we will mainly cover the administrative procedures for the special VAT invoice.



### SPECIAL VAT INVOICE PURCHASING AND UPGRADING PROCEDURES

#### Who can purchase special VAT invoices?

Only general VAT taxpayers can purchase special VAT invoices and companies should note the steps below to obtain the general VAT taxpayer certificate:

- (1) Submit application forms with the company's U-key through the STA website
- (2) Normally, STA verifies and approves application within three working days

The company can check the STA website to find out if its application is successful.

#### How to purchase special VAT invoices?

The company's appointee for handling tax affairs should complete verification of the types of VAT invoices through the STA website. Normally, the company can check the verification results through the STA website within three working days.

Once verification is complete, the company is required to purchase a golden tax disk from a designated IT company. Thereafter, the appointee for handling tax affairs can apply for VAT invoices from STA.

#### Upgrading the special VAT invoice version

##### Special VAT invoice version upgrading rules

The upper limit amount of the original VAT invoice version is RMB9,999.99 per invoice (excluding output VAT). And the upper limit issuance quantity is 50 VAT invoices a month. That means the company can only issue RMB500,000 worth of invoices a month. Normally, if a company's monthly sales total is more than RMB500,000, the company may apply to upgrade its special VAT invoice version. There are two kinds of upgrading—temporary and permanent. And the different versions of special VAT invoices are listed as follow:

- RMB9,999.99 (Original Version 10K)
- RMB99,999.99 (Version 100K)
- RMB999,999.99 (Version 1M)
- RMB9,999,999.99 (Version 10M)
- RMB99,999,999.99 (Version 100M)

##### Temporary upgrading

A company may apply for temporary upgrading of its special VAT invoice upper limit amount where the upgraded limit is only effective for 10 days. For example, a company whose original special VAT invoice upper limit amount is RMB9,999.99 may apply for a temporary special VAT invoice with an upper limit of RMB99,999,999.99 if its contract amount is above its original special VAT invoice upper limit.



Permanent upgrading

There are given conditions for each level of permanent upgrading of the special VAT invoice upper limit amount as shown below.

Version	Conditions
<b>100K</b>	The amount of each contract or sales revenue is consistently above RMB10,000 for two consecutive months. In addition, the accumulated revenue is more than the monthly revenue by 25%, and the monthly revenue is over RMB300,000.
<b>1M</b>	The company's registered capital is over RMB500,000 and sales revenue is consistently above RMB100,000 per transaction for three consecutive months. In addition, the accumulated revenue is more than the monthly revenue by 30%, and the monthly revenue is over RMB4 million. The company should also have paid VAT and been rated A/B class for tax credit.
<b>10M</b>	The company's registered capital is over RMB5 million and sales revenue is consistently above RMB1 million per transaction for three consecutive months. In addition, the accumulated revenue is more than the monthly revenue by 40%, and the monthly revenue is over RMB50 million. The company should also have paid VAT and been rated A/B class for tax credit.
<b>100M</b>	The company's registered capital is over RMB50 million and sales revenue is consistently above RMB10 million per transaction for three consecutive months. In addition, the accumulated revenue is more than the monthly revenue by 40%, and the monthly revenue is over RMB500 million. The company should also have paid VAT and been rated A/B class for tax credit.

Procedures to temporarily or permanently upgrade special VAT invoice version

For 100K & 1M Upgrading	
Step 1	Submit the application on the STA website.
Step 2	The company will obtain approval from the STA within three to five working days. If the upgrade is recognised as temporary, the upgraded limit is effective for three months. If the upgrade is recognised as permanent, there is no time limit.
Step 3	Upgrade the golden tax disk after obtaining approval through the STA website.

For 10M & 100M Upgrading	
Step 1	Manually submit required application documents for STA's review, including a statement of application, sales contract and other documents.
Step 2	Obtain STA's confirmation of the document review within 10 working days.
Step 3	Submit the application on STA's website for approval. If the upgrade is recognised as temporary, the upgraded limit is effective for three months. If the upgrade is recognised as permanent, there will be no time limit.
Step 4	Upgrade the golden tax disk after obtaining approval through the STA website.

### Procedures to temporarily or permanently increase the special VAT invoice quantity

Temporary Increase	
Step 1	Submit the application on the STA website.
Step 2	Obtain approval from the STA website within three to five working days.
Step 3	Go to the STA office to pick up the approved number of special VAT invoices.

Permanent Increase	
Step 1	Submit the application on the STA website. A temporary increase for three consecutive months is required before application for a permanent increase is allowed.
Step 2	Obtain approval from the STA website within three to five working days.
Step 3	Go to the STA office to pick up the approved number of special VAT invoices.

### **Ongoing special VAT invoice application**

The company can apply for special VAT invoices during the month within the upper limit amount and quantity when it runs out of such invoices. After the month-end closing, the company can only apply for new special VAT invoices after filing the previous month's VAT return before the 15th day of the current month.

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### **About Vicky Wei, Associate Director, Accounting & Advisory Services**

Vicky joined SBA Stone Forest in 2012 and heads the firm's Accounting & Advisory Services division.

She has vast outsourcing experience in financial control and process optimisation, and is adept at providing accounting solutions for clients in industries ranging from F&B and retail to trading and services.



Prior to joining the firm, she worked as an in-house accountant for a German company.

Vicky is an FCCA and a certified Project Management Professional.

For enquiries on how we can assist you in accounting and advisory services in China, contact Vicky at +86 21 6186 7906 or vickywei@SBASF.com

# **INTELLECTUAL PROPERTY RIGHTS IN CHINA**

### CATEGORIES OF INTELLECTUAL PROPERTY RIGHTS

An intellectual property right ('IPR') in China is a term referring to a brand, invention, design or other kind of creation that a person or business has legal rights over. Almost all businesses own some form of IPR, which could be a business asset.

Some of the most common forms of IPR in China are as follow:

- Copyright-protected written or published works such as books, songs, films, web content and artistic works.
- Patents include patents for inventions, patents for utility models and patents for designs. This protects commercial inventions, such as a new business product or process, and designs, such as drawings or computer models.
- Trademarks protect signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

### IPR LEGAL SYSTEM IN CHINA

Categories of IPR	Administrative Department	Relevant Laws & Regulations	Relevant Rules	Treaties & Reciprocal Agreements
Copyright	National Copyright Administration	<ul style="list-style-type: none"> <li>• Copyright Law (Revised in 2013)</li> <li>• The Copyright Implementation Regulations (Revised in 2013)</li> </ul>	National Copyright Administration is the authority responsible for the administration and enforcement of copyright and related issues in China.	The Berne Convention—each member state recognises the copyright of authors from other member states in the same way as the copyright of its own nationals.
Patent	State Intellectual Property Office (SIPO)	Patent Law (Revised in 2010)	<ul style="list-style-type: none"> <li>• Invention patents give protection for a maximum of 20 years, while utility model and design patents give protection for a maximum of 10 years.</li> <li>• 'First to file' principle, i.e. if two people apply for a patent on an identical invention, the first one to file the application will be awarded the patent.</li> </ul>	The Paris Convention—any person from a signatory state can apply for a patent or trademark in any other signatory state, and would be given the same enforcement rights and status as a national of that country would be.
Trademark	SAMR Trademark Office	<ul style="list-style-type: none"> <li>• Trademark Law (Revised in 2013)</li> <li>• Implementation Regulations of the Trademark Law (Revised in 2014)</li> </ul>	<ul style="list-style-type: none"> <li>• Registration by foreign businesses under the Madrid Protocol takes about 18 months, while a direct registration using the Chinese domestic system will usually take two to four years.</li> <li>• A trademark is valid for 10 years, after which it may be renewed indefinitely for every 10-year period.</li> </ul>	<ul style="list-style-type: none"> <li>• The Paris Convention</li> <li>• The Madrid Protocol—this is a central system for obtaining a 'bundle' of national trademark registrations in different jurisdictions, through a single application.</li> </ul>

## REGISTRATION OF IPRs IN CHINA

### **COPYRIGHT**

Registration of copyright is not compulsory in order to receive copyright protection, though seeking redress for any violations can be difficult without prior registration.

### **PATENT**

Foreign enterprises can appoint an agent authorised by the State Intellectual Property Office (SIPO) to handle their patent applications.

### **TRADEMARK**

Foreign enterprises can appoint an authorised trademark agent to handle their applications for trademark registration.

## HOW TO PROTECT IPRs IN CHINA

The protection of IPRs is overseen by the State Intellectual Property Office (SIPO) in China, which also handles disputes on IPRs. Disputes over trademarks are handled by the Trademark Office or the Trademark Review and Adjudication Board under SAMR.

Infringement of IPRs can be resolved through mediation for the parties involved. If mediation fails, then the infringement can be dealt with by way of legal proceedings or administrative procedures.

For enquiries on our intellectual property rights advisory service in China, contact Flora at +86 21 6186 7688 or [florayang@SBASF.com](mailto:florayang@SBASF.com)

## **LISTING IN CHINA AND SINGAPORE**

## LISTING IN CHINA

Mainland China has two stock exchanges that are located in Shanghai ('SSE'; opened in December 1990) and Shenzhen ('SZSE'; opened in July 1991). Both exchanges are governed by the China Securities Regulatory Commission ('CSRC').

### MAINBOARD AND SME BOARD

The Mainboard is designed for big companies that intend to raise large amounts of public funds. Separately, the Small and Medium Enterprise Board ('SME Board') adopts the same listing requirements as the Mainboard, while targeting small and medium-sized companies.

### SECOND BOARD

In 2009, the Growth Enterprise Board ('Second Board') was launched in the Shenzhen Stock Exchange. It serves as a new direct financing platform for innovative companies.

### NEW THIRD BOARD

Launched in 2006, the National Equities Exchange and Quotations ('NEEQ') system, also known as the New Third Board, serves as China's 'over the counter' ('OTC') market. Trading takes place on an OTC basis, which means transactions happen directly between participants rather than via an exchange. Compared with the Mainboard and Second Board, it attracts many start-ups.

### REQUIREMENTS AND PROCEDURES FOR DIFFERENT MARKETS IN CHINA

	Mainboard & SME Board	Second Board	New Third Board
<b>Listing venues</b>	Mainboard (SSE & SZSE) SME Board (SZSE)	SZSE	NEEQ
<b>Listing qualification</b>	Securities issued to the public	Securities issued to the public	Non-listed company approved by CSRC
<b>Number of shareholders</b>	≤ 200	≤ 200	No restrictions
<b>Track record</b>	Three years	Three years	Two years
<b>Total share capital</b>	Market capitalisation no less than RMB50 million	Market capitalisation no less than RMB30 million	No restrictions
<b>Quantitative criteria</b>	<ul style="list-style-type: none"> <li>Positive net profit and cumulative profits for the last three fiscal years exceeding RMB30 million;</li> <li>Cumulative cash flows for the last three fiscal years derived from operations exceeding RMB50 million or cumulative revenue for the last three fiscal years exceeding RMB300 million;</li> <li>Pre-listing capital is no less than RMB30 million;</li> <li>Company did not suffer any unrecovered losses at the end of its most recent fiscal period; and</li> <li>The proportion of its intangible assets (deducting land use right, water farming right, mining right and other rights) as at the end of its most recent fiscal period does not exceed 20% of net assets.</li> </ul>	<ul style="list-style-type: none"> <li>Has generated profits for the latest two consecutive years, with a cumulative revenue of not less than RMB10 million, or operating income for the immediate preceding year no less than RMB50 million and the annual growth rate of revenue for the latest two years is no less than 30%;</li> <li>The net profit for the latest fiscal period is no less than RMB20 million; and</li> <li>There are no unrecovered losses.</li> </ul>	<ul style="list-style-type: none"> <li>Has the ability to make profits continuously</li> <li>A joint stock company applying for a listing on NEEQ is not subject to restrictions on the nature of ownership of a shareholder.</li> <li>If it is a limited liability company, it must be fully transformed into a joint stock company by converting the shares at the original net book value of assets.</li> </ul>



### LISTING IN SINGAPORE

Companies are attracted to list on the Singapore Exchange ('SGX') for various reasons. SGX is recognised as a global financial hub with over S\$3.3 trillion of assets under management. SGX is also a truly international exchange, with foreign firms accounting for about 40% of listed companies.

Companies may choose to list either on the SGX Mainboard or Catalist if they meet the respective admission criteria. The Mainboard caters to established companies. To qualify for listing on the Mainboard, a company must have an operating track record and meet either one of the two profit tests or the market capitalisation test. Besides these quantitative criteria, there are also qualitative requirements, such as appointing directors with appropriate experience in managing the business, and appointing at least two independent non-executive directors who are resident in Singapore.

On the other hand, the Catalist caters to fast-growing companies. While there are no minimum quantitative admission criteria, a company seeking admission on the Catalist must engage an approved sponsor who will assess whether it is suitable for listing. The qualitative requirements for the Mainboard mentioned earlier also apply to listing on the Catalist.

Companies typically take about six to nine months to prepare for submission of the listing application. After submission, the application and review process for a Mainboard listing typically takes more than six to eight weeks. However, listing on the Catalist generally takes a shorter period of time.

Whether the company chooses to list on the Mainboard or the Catalist, it will need the help of various professionals, such as an issue manager for the Mainboard or a sponsor for the Catalist, and legal advisors. Reporting accountants and independent auditors are also engaged to audit the accounts of the company as presented in the accountants' report and highlight any weaknesses in the internal controls of the company. Some companies also engage public relations consultants to assist in increasing investor awareness of the company.

Listing on the Mainboard is generally more costly than listing on the Catalist in terms of the Initial Listing Fee and Annual Listing Fee. However, companies listed on the Catalist must additionally retain a continuing sponsor and pay an annual sponsorship fee for as long as they are listed.

For information or enquiries on our services, please visit [www.SBASF.com](http://www.SBASF.com)

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