

Chinese Mainland Tax and Investment Guide 2021

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Investment climate

Business environment

Since the initiation of economic reforms in the late 1970s, China has become one of the world's fastest-growing economies.

After joining the World Trade Organization (WTO) in 2001, China instituted a series of changes to its trade regulations to conform to WTO standards. Various sectors and industries were gradually opened to foreign investment. In 2003, to bolster the economies of the Hong Kong and Macau SARs, the PRC central government signed a Closer Economic Partnership Arrangement (CEPA) with each SAR government. CEPA essentially is a free trade pact that exceeds WTO commitments and gives companies from the two SARs favourable tariff treatment in China before the same treatment is granted to other WTO members. CEPA sometimes grants privileges that are not part of China's WTO commitments.

China has set up a number of special economic zones (SEZ), economic and technological development zones (ETDZ), export processing zones and bonded warehouse zones to attract domestic and foreign investment and export activities. Various preferential policies, covering tax, foreign exchange, customs, investment, employment, etc., are provided to qualified enterprises or industries in these areas. The China (Shanghai) Pilot Free Trade Zone (Pilot FTZ) was launched in September 2013, to deepen China's reform and introduce policy innovations to establish advanced

rules on trade and investment.

Three additional Pilot FTZs in Fujian, Guangdong and Tianjin were launched in April 2015, followed by seven new free trade zones launched from April 2017 in Liaoning, Zhejiang, Henan, Hubei, Sichuan and Shanxi provinces and the Chongqing Municipality. In 2019, a number of new free trade zones started operations, including Shandong, Jiangsu, Guangxi, Hebei, Yunnan, Heilongjiang, and Shanghai Lin-Gang special area. In June 2020, the Overall Plan for Hainan Free Trade Port was officially released, and in September 2020 China launched Beijing, Hunan and Anhui Pilot FTZs and expanded the Zhejiang Pilot FTZ. Each Pilot FTZ has its own characteristics, and the Pilot FTZs launched in 2020 further emphasized a new policy trend for regional integration. With the expansion of the number and area of Pilot FTZs, China has carried out reforms to give foreign investments more flexibility and transform the function of government authorities from "regulators" to "guards".

To create a more attractive business environment, China has been amending laws related to foreign investment, and successively implementing a series of policy measures, including improving the negative list management system, expanding opening-up, and promoting high-quality economic development. In short China is creating fertile ground for investment to help enterprises develop and succeed.

Foreign investment

General

The PRC Foreign Investment Law (FIL), effective on 1 January 2020, replaced long-existing legislation and is now China's basic law on foreign investment.

Under the FIL, pre-establishment National Treatment and a negative list for foreign investments apply.

Pre-establishment National Treatment

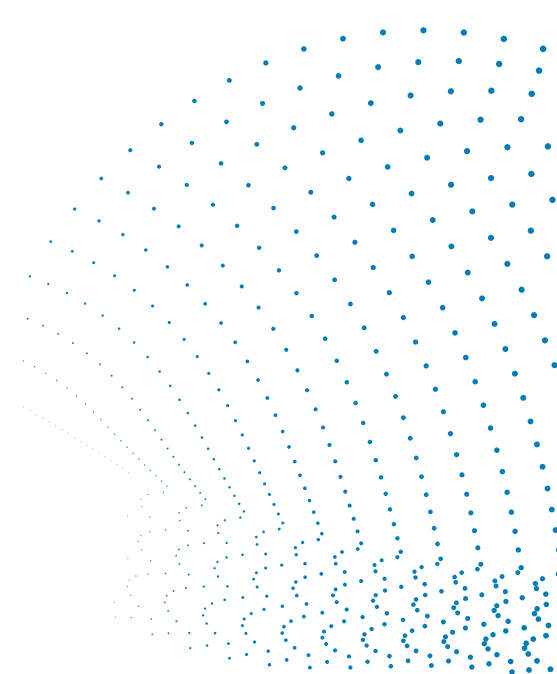
Pre-establishment National Treatment means that, at the stage of "investment access" (i.e., the investigative and planning process leading to an actual investment), the treatment of potential foreign investors and their potential investments will be no less favourable than that granted to domestic investors and their investments. For example, if a domestic investor does not have to obtain approval to set up a domestic company to conduct business in a certain industry, the foreign investor will also not need approval to set up a foreign invested enterprise ("FIE") to conduct a similar business - provided that it is not on the negative list. National Treatment is usually used by a sovereign State as a tool to attract foreign investment only after the investment has been approved. However, China has moved this treatment forward to cover the pre-establishment phase, granting expanded National Treatment to foreign investors.

The negative list

The negative list sets out industries in which foreign investors are prohibited from investing, or in which the extent or form of foreign investment will be restricted. The restrictions include a limit on the percentage of a foreign shareholding or the form of FIE (e.g., limited to a Sino-foreign equity or cooperative joint venture). For industries not on the negative list, the PRC government will grant the foreign investment National Treatment, i.e., it will be treated in the same way as a domestic enterprise.

The significance of pre-establishment National Treatment, in combination with the negative list, is that pre-investment government approval will no longer be required for a non-negative list foreign investment. The negative list system represents a major change in China's approach to inbound foreign investment. The negative list system demonstrates openness to foreign investment that is reflective, in large measure, of China's rising confidence in the sustainability and competitiveness of its domestic enterprises and its strong desire to increase investment and business interactions with the international community.

The FIL establishes a foreign investment information reporting system, through which foreign investors and FIEs are required to submit investment information to the competent market supervision authorities. Only information considered "necessary" will be required and the various government departments should not request duplicative information.



Pilot FTZs

In addition to operating as typical FTZs, in which goods can be imported, processed and exported free from customs duties and other levies, the Pilot FTZs are also testing fundamental reforms to the financial sector and further opening the economy to foreign investment. The reforms in the financial sector include but are not limited to liberalization of interest rates, free convertibility of RMB, and relaxation of limits on foreign participation in the financial industry and the offshore banking business.

Broadly, foreign investors in a Pilot FTZ are allowed more autonomy to invest (compared to non-FTZ areas) in six modern service sectors: financial

services, shipping and logistics services, commerce and trade services, professional services, cultural services and public sector services. Additional policies have been introduced to promote regional headquarter and regional operation centre activities within Pilot FTZs. With the national negative list in place, Pilot FTZs have a specialized negative list, which applies to investments in Pilot FTZs only, and is updated by the National Development and Reform Commission and the Ministry of Commerce each year. Compared to the national negative list, the Pilot FTZ negative list contains flexible rules in favour of foreign investments.

Exchange controls

General

China imposes control over foreign exchange, such as capital injection, cross-border trade and services transactions, overseas financing, and profit repatriations of FIEs. These are all subject to the exchange control regulations. The foreign exchange authorities are the State Administration of Foreign Exchange (SAFE) and its local branches.

An FIE must apply for foreign exchange registration after the issuance of its business license and obtain a foreign exchange registration certificate. The certificate should be subject to annual inspection by the foreign exchange authorities.

According to the 2008 Foreign Exchange Control Regulations, regular international payments and transfers are unrestricted. Within the PRC, the circulation of foreign currency is prohibited and foreign currency may not be quoted for settlement, except as otherwise provided by the State.

The Shanghai Pilot FTZ is operating as a platform for testing full convertibility of RMB and further opening the economy to foreign investment, including a relaxation of foreign exchange controls (e.g. removal of certain pre-approval requirements and restrictions for capital account items).

Forex control on current account and capital account



Current account

Transactions such as sale of goods, provision of services and other ordinary expenditures (e.g. payments of interest on foreign loans (but not repayment of principal) and repatriation of dividends) are generally classified as "current account" items. Payments and receipts of foreign exchange from the current account must be based on accurate and legitimate transactions.



Capital account

Traditionally, if the purpose of a transaction is to create capital (i.e. equity or securities investment, loans, derivative deals, guarantees benefiting a foreign entity, etc.), the foreign exchange will be regarded as a capital account item, with strict control over its movement. However, in recent years, SAFE has issued guidance that simplifies and relaxes the rules governing foreign exchange administration of inbound and outbound investment.

Setting up a business

Principal forms of business entities

The FIL replaced long existing laws (i.e., the Law on Wholly Foreign-owned Enterprises, the Law on Sino-foreign Equity Joint Ventures, the Law on Sino-foreign Co-operative Enterprises, collectively the "Old FIE Laws"), and is now China's basic law regulating foreign investment.¹

Under the FIL, Foreign-invested Entities (FIEs) are no longer categorized into several types, i.e., wholly foreign-owned enterprises (WFOEs), equity joint ventures (EJVs), cooperative joint ventures (CJVs) and joint stock companies (JSCs). All entities invested by foreign investors which enjoy independent legal personality are FIEs.

Foreign investors can also establish entities without independent legal personality in China, i.e. partnerships, branches, or representative offices.

An investor's particular commercial considerations, any applicable regulatory limitations and home country tax considerations all play a role in determining the most appropriate entity in which to conduct business.

¹ For more details about Foreign Investment Law of People's Republic of China, please refer to Doing Business in China 2020 issued by Deloitte.

Foreign-invested entities

FIEs refer to Chinese entities with foreign equity investments. FIEs are permitted to conduct business activities in accordance with their scope of business as filed with the PRC government authorities. Currently, FIEs are mainly organized as limited liability companies, and the investor's ownership in an FIE is represented by the amount of paid up registered capital.

Partnership

Foreign investors are permitted to form partnerships in China, as general or limited partners under the Foreign-Invested Partnership Rules, to engage in a wide range of business activities. Legally speaking, there is no minimum or maximum amount for capital contribution by the partners to a partnership. Capital may be contributed in cash, or in kind (e.g. in the form of land use rights, intellectual property rights or services). In kind contributions must be appraised at a specific value. Partners may increase their capital contributions to the partnership, as stipulated in the partnership agreement or as decided by all partners. These additional contributions should be used to expand the partnership's scale of business or to compensate for its losses.

There are no specific limits on the number of partners in a general partnership, but a limited partnership is restricted to 50 partners. In a general partnership, each partner has equal rights to conduct the routine affairs of the partnership, the admission of new partners is subject to the approval of the partners

and the conclusion of a written partnership agreement, and newly joined partners have the same rights and responsibilities as the original partners. In a limited partnership, a limited partner cannot participate in the routine affairs of the partnership and cannot represent the limited partnership when dealing with third parties, and a limited partner's liability is limited to the amount of capital contribution subscribed by him.

Branch of a foreign corporation

Although the PRC Company Law allows a foreign company to register a branch in China, under the prevailing practice, only registration applications of overseas companies in the financial services sector and oil exploration industries are accepted.

A branch office does not have an independent legal personality, and the foreign company remains civilly liable for activities carried out in China by its branch. A branch must appoint a representative or agent within the territory of China to take charge of the branch. A branch is taxed at the same rate as domestic companies and may close only after a formal deregistration.

Representative office (RO)

Foreign companies, particularly those in the trade agency and service industries, often choose an RO to carry on liaison and marketing activities in China. Although ROs allow foreign investors to enter the Chinese market with little initial investment, they are prohibited from carrying out direct profit-making activities.

In general, an RO of a foreign company may only perform indirect business activities in China, including acting as a liaison with clients and the head office, introducing the products of the head office, conducting market research, and collecting information. Therefore, an RO of a foreign company may not sign and conclude contracts with Chinese customers directly and is prohibited from engaging in any "direct business operations" (with certain exceptions, such as the RO of a law firm).

ROs are generally taxed at the same rate as domestic companies. If an RO is able to provide a complete accounting record, the RO is required to accurately calculate and pay tax on its taxable turnover and profits ("actual amount method"), based on a principle that reflects the actual functions performed by the RO and the risks borne. If an RO is unable to provide a complete accounting record or if it cannot calculate its income and expenses with reasonable certainty, the tax authorities reserve the right to use "deemed amount methods" to determine taxable turnover and profits. Practically speaking, the actual amount method is only applied in a limited number of industries (i.e. law firms), with others taxed on a deemed basis in accordance with the RO's expenses or revenue, depending on the industry.



Mergers and acquisitions

The Provisional Rules on Merger and Acquisition of Domestic Enterprises by Foreign Investors (MA Provisional Rules) have been the guideline for mergers and acquisitions (M&As). It is commonly believed that despite of the fact that FIL, effective in January 2020, has invalidated the Old FIE Laws on which the MA Provisional Rules was established, the MA Provisional Rules remain as the applicable law on M&As, until they are amended or replaced by new legislation.

The MA Provisional Rules provide two types of M&As:

1. equity acquisitions, where foreign investors purchase existing equity of a Chinese enterprise or inject new capital into a Chinese enterprise; and
2. asset acquisitions, where foreign investors purchase the assets of a Chinese enterprise.

The tax treatment of the major forms of M&A are governed by the M&A tax rules. In this regard, an M&A transaction is classified as an ordinary or a special reorganization. In the case of an ordinary reorganization, any taxable gain/loss derived by the transferor is recognized at the time of the transaction. However, in a special reorganization, the taxpayers may elect to temporarily defer recognizing taxable gain/loss on the transaction, provided certain requirements are met.

Monopolies and restraint of trade

Monopolistic activities which are subject to the 2008 Anti-Monopoly Law include:

1. conclusion of monopoly agreements between operators;
2. abuse of a dominant market position by operators; and
3. market concentration of operators that eliminates or restricts competition, or that may eliminate or restrict competition.

The authorities in charge may investigate suspected monopolistic activities, and issue orders to terminate the activities, confiscate illegal income and/or impose administrative penalties.

China also has an Anti-Unfair Competition Law.

Intellectual property

Copyright

The PRC Copyright Law and its implementation rules protect copyrighted works of foreigners that are first published in China, or in countries that are members of the copyright protection treaty of which China also is a member. The Copyright Law and its implementation rules protect copyrighted works of a foreigner who is a national or is resident of a country that has signed a bilateral or multilateral copyright protection agreement with China.

A copyright holder is entitled to seek civil compensation for copyright infringement in an amount equal to the infringer's illegal gains or the copyright holder's losses, including reasonable expenses incurred to protect against an infringement (e.g. attorney's fees). Where the above calculation method is not available, a court has discretion to grant compensation of an amount not exceeding RMB 500,000.

Patent

The PRC Patent Law conforms to international standards and protects a range of activities, including inventions, industrial designs, and utility models.

The amount of civil compensation for patent infringement may be determined based on the infringer's illegal gains, or a multiple of royalties of the patent, or the losses of the patentee, including reasonable expenses incurred to protect against an infringement (e.g. attorney's fees). Where this calculation method is not available, a court has discretion to grant compensation of an amount ranging from RMB 10,000 to RMB 1 million.

Trademark

The PRC Trademark Law allows the authorities and courts to confiscate and destroy pirated products and equipment used for the manufacturing of such products. A trademark owner is entitled to seek civil compensation for trademark infringement in an amount equal to the illegal gain of the infringer, a multiple of the royalties of the trademark or the owner's loss, including reasonable expenses incurred to protect against an infringement (e.g. attorney's fees). Where this calculation method is not available, a court has discretion to grant compensation in an amount not exceeding RMB 5 million.

A trademark holder or its stakeholders that have evidence of infringement may apply for a court order to protect the property and prohibit the infringer from conducting any activities.

In addition to the above civil liabilities, an infringement of intellectual property rights also may be subject to administrative penalties (e.g. confiscation of illegal proceeds and/or imposition of administrative fines) and criminal liabilities.

Implementation and enforcement

With most of China's legal framework meeting international requirements, China has shifted its focus to implementation and enforcement.

Patent disputes usually are settled through the courts, and technology licensing disputes are resolved through arbitration. The National Intellectual Property Administration, PRC (CNIPA) deals with patents, and the National Copyright Administration of China (NCAC) deals with copyrights and software. The Trademark Office, an agency under the CNIPA, handles the registration, transfer and licensing of trademarks; the Trademark Review and Adjudication Board handles trademark related disputes. Administrative decisions of CNIPA and NCAC can be appealed through the court system.

Upon the application of an owner of intellectual property rights who has sufficient evidence to prove an infringement and who provides a security equivalent to the value of the goods, the customs authorities will provide border protection to trademarks, copyrights and patents that are related to imported/exported goods.

Labour

Employee rights and remuneration

Separate labor regulations govern unemployment insurance, work injury insurance, maternity insurance, and employment of foreigners, secondment and collective labor contracts. The PRC government continues to issue new regulations on labor-related issues.

An employer is responsible for health and safety measures and must contribute to the social insurance fund and housing fund for its employees. Social insurance includes pension, medical care, unemployment insurance, work injury insurance and maternity insurance.

An employer also may purchase commercial insurance for its employees.



Working hours

China generally operates an 8-hour working day or 40-hour working week for all employees.

Employees are guaranteed at least one day off per week, and overtime should not exceed 36 hours per month. The local labor bureau and unions should ensure that employees receive rest and overtime wages.



Wages

Wages must be paid according to the principle of "equal pay for work of comparable value". Each province or municipality must set a minimum wage standard. Above the applicable minimum wage standard, FIEs are free to set their own wages. Any change of wages or benefits of employees shall be subject to mutual agreement between FIEs and their employees. Labor unions also play an important role during the process.

Time wages are calculated on the basis of 21.75 working days per month under the standard eight-hour per day/40-hour working week. The regulations permit payment on an hourly, daily, weekly or monthly basis.



Social insurance

Several legislations covering specific social insurance were implemented nationwide, according to which contribution rates and contribution base will be determined by the city level authorities following guidelines issued by the central government.



Other benefits

There are 11 State holidays.

Employees who have worked for more than one year in a company enjoy statutory paid annual leave varying from 5 to 15 days, depending on how many years the employee has been working since his/her first job. Most employees of FIEs are entitled to more than 15 days of annual leave according to the FIE's corporate policies.

Termination of employment

The PRC Labor Law allows an FIE to dismiss an employee under specific circumstances. An employee also has the right to terminate the labor contract under certain circumstances. All dismissals shall be conducted in accordance with PRC Labor Contract Law.

The Labor Law requires an employer to make severance payments, with the amount governed by local regulations, under certain circumstances as stipulated in the Labor Contract Law. An employee must be paid severance pay based on the number of years worked with the employer, at the rate of one month's wage for each year worked.

Trade unions

China has only one trade union, the All-China Federation of Trade Unions (ACFTU), with local chapters at the factory level. Independent trade unions are not permitted. Chinese national law requires FIEs to permit the formation of unions.

In many FIEs, unions may be responsible for distributing wages,

bonuses, housing and other payments to employees. Union representatives have the right to attend board meetings when labor matters are under discussion. They also may negotiate with management on behalf of individual employees.

Any labor disputes between employers and employees can be submitted for arbitration. Arbitration awards generally must be rendered within 60 days of submission. Parties dissatisfied with the arbitration result may appeal to the People's Court within 15 days.

Employment of foreigners

In general, foreigners may be hired only where there is a demonstrated need and where approval is obtained from the local labor authorities. Foreigners must comply with a licensing system before they can start work in China. The system requires working permits, professional visas and residence permits.

All foreigners require visas to enter into China. It is required that a passport be valid for at least six months from the date of arrival in China.

Accounting, filing and auditing requirements

Under the Company Law and relevant regulations, companies are required to prepare financial statements at each calendar year-end and to be audited by a certified public accounting firm registered in China. Audited financial statements are generally required for annual enterprise income tax settlement with the relevant tax authorities. FIEs may prepare financial statements in accordance with other accounting standards or in other languages for global consolidation purposes. However, the Chinese authorities will only recognize and accept accounts in Chinese that are prepared based on Chinese accounting standards.

Chinese accounting standards have been converging with the international standards over time, facilitating a better environment for foreign investment.

Taxation on businesses

Overview

There are a wide range of taxes and surcharges levied in Chinese Mainland on businesses. In this guide, we focus on businesses that are enterprises.

- Income tax: enterprise income tax (EIT), applying to both domestic and foreign-invested enterprises
- Turnover tax: value added tax (VAT), consumption tax and customs duty

- Other taxes and surcharges: real estate tax, land appreciation tax, stamp duty, environmental protection tax, resource tax, vehicle and vessel tax, etc.

Various tax incentives may be available, which will be introduced in details in following section of "Tax incentives".

Chinese Mainland has transfer pricing (TP), thin capitalization and controlled foreign company (CFC) rules, as well as a general anti-avoidance rule (GAAR).



Income tax

- EIT



Turnover tax

- VAT
- Consumption tax
- Customs duty



Other taxes and surcharges

- Real estate tax
- Land appreciation tax
- Stamp duty
- Environmental protection tax
- Resource tax
- Vehicle and vessel tax
- ...

Residence and tax basis

An enterprise is deemed to be resident in Chinese Mainland if it is established in Chinese Mainland or if its effective management is in Chinese Mainland. Effective management is defined as substantial and overall management and control over manufacturing and business operations, human resources, financial and property aspects of the entity.

- Resident enterprises: taxed on worldwide income;
- Non-resident enterprises: taxed on Chinese Mainland-source income and income effectively connected with their establishment (if any) in Chinese Mainland;
- Profits of a resident enterprise's domestic and foreign branches are

included in the head office's income for tax purposes; foreign tax paid on profits of foreign branches is allowed to credit the enterprise's tax payable; and

- Losses of a resident enterprise's foreign branches: not allowed to be offset against enterprise's domestic profits.

Rate

The statutory EIT rate is 25%. Special rates may apply to enterprises in certain industries, enterprises incorporated in certain regions of Chinese Mainland and engaged in encouraged business activities, including but not limited to:



Taxable income

The taxable income of an enterprise is the amount remaining from its gross income in a tax year after the deduction of allowable expenses, non-taxable and tax-exempt items, and losses.

Income

Taxable income generally includes profits, capital gains and passive income, such as interest, royalties and rents. Dividends received from a foreign entity are also included in taxable income. However, qualifying dividends received from another resident enterprise are tax exempt.

Deduction

Properly documented costs related to the generation of taxable income, are deductible unless the law specifically provides otherwise. Business-related interest is deductible if the amount is reasonable, but is subject to restrictions under the thin capitalization rules.

Depreciation

Depreciation generally is calculated on a straight-line basis and assets are subject to certain minimum depreciation periods. The minimum salvage value should be reasonably determined by the taxpayers, according to the nature and condition of the fixed assets. Accelerated depreciation or an immediate deduction may be available for the following items:

Immediate deduction

- Fixed assets with unit value not exceeding RMB 5,000
- Fixed assets (exclusive of houses and buildings) acquired during the period 2018 through 2023, with unit value not exceeding RMB 5 million
- Equipment acquired in the period from 1 January 2020 to 31 March 2021 to expand production capacity by businesses manufacturing key supplies for epidemic prevention and control purposes

Accelerated depreciation

- Fixed assets affected by rapid advancements in technology or suffering from constant vibration or severe corrosion
- Instruments and equipment acquired on or after 1 January 2014 with unit value exceeding RMB 1 million and used solely for R&D purposes
- Fixed assets acquired by manufacturing businesses on or after 1 January 2019

Losses

Losses may be carried forward for:

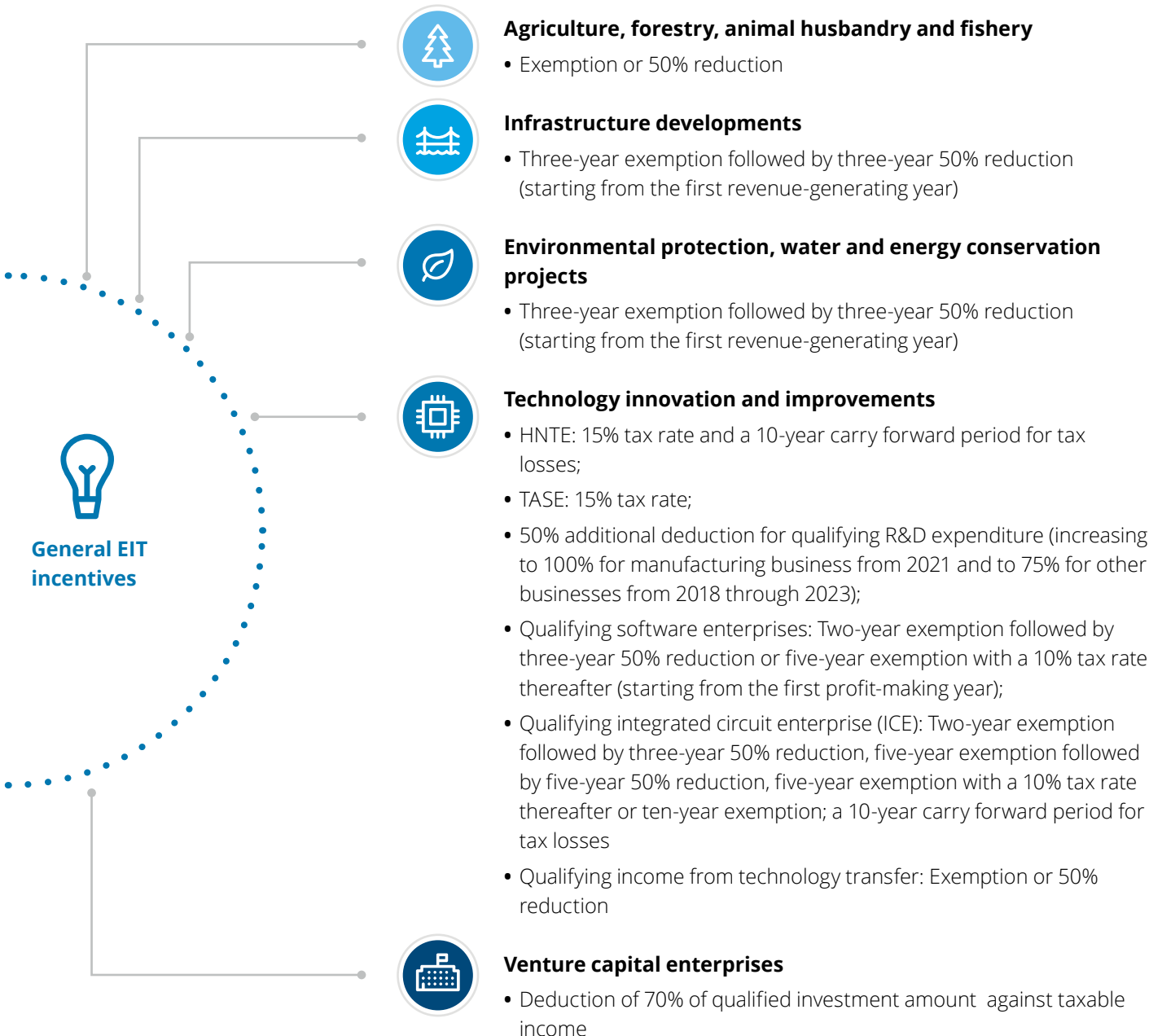
- 5 years - for general cases
- 8 years - for tax losses incurred in 2020 for businesses severely affected by COVID-19 (e.g. transportation, catering, hospitality, travel and movie industries)
- 10 years - for qualifying HNTE, mid/small sized technology enterprises and integrated circuit manufacturing enterprises with a linewidth of 130 nanometres or less.

The carry back of losses is not permitted.

Tax incentives

General EIT incentives

Preferential EIT treatments are offered to the following encouraged activities and industries:



Specific areas with preferential tax treatments

Preferential tax treatments are provided in specific areas, including but not limited to:



Specific areas with preferential tax treatments

01

Minority autonomous areas

Autonomous areas may choose to reduce or exempt taxes for the portion of EIT paid by an enterprise located in a minority autonomous region and retained by the local government under the fiscal allocation scheme between the central government and local governments.

02

Special economic zones plus Shanghai Pudong New Area

For HNTes newly established in five special economic zones in Shenzhen, Zhuhai, Shantou, Xiamen and Hainan, as well as the Shanghai Pudong New Area, with effect from the first year to which manufacturing and operational revenue earned is attributable, income earned in such zones or area may be exempt for the first two years and may be taxed at half of the statutory rate of 25% for the third to the fifth years.

03

Western region

For enterprises engaged in encouraged industries that are established in the western region, EIT may be levied at a preferential rate of 15%.

04

Hengqin New Area, Pingtan Comprehensive Experimental Area and Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone

Enterprises in encouraged industries in these areas are entitled to a preferential EIT rate of 15%. The policy is effective from 2014 to 2020. Rules have been issued to extend the policy to 2025 in Pingtan and Qianhai.

05

Shanghai Pilot Free Trade Zone (SPFTZ)

SPFTZ is a free trade zone which aims to create a largely free and open economy for the area – a competitive tax regime is not the principal focus of SPFTZ. However, in Lingang, a new area added to SPFTZ, qualified enterprises in certain key areas may be entitled to a preferential EIT rate of 15% within five years from the date of establishment. Introduction of an individual income tax (IIT) subsidy policy for qualified foreign talent is in the pipeline.

06

Guangdong-Hong Kong-Macau Greater Bay Area (GBA)

Qualified foreign talent who work in the GBA may be entitled to an IIT subsidy calculated based on the difference between the IIT amounts levied in the Chinese Mainland and those in Hong Kong, with the subsidy being exempt from IIT.

07

Hainan Free Trade Port (FTP)

Enterprises engaged in encouraged industries with substantive operations may be entitled to a preferential EIT rate of 15%. EIT is exempt for foreign-source income from newly increased foreign direct investment by Hainan FTP enterprises in tourism, modern service, and high-tech industries. A partial IIT exemption is available to qualified talent working in Hainan FTP in order to achieve a maximum 15% effective IIT rate from 1 January 2020 to 31 December 2024.

Tax treaties and double taxation relief

Unilateral relief

If a resident enterprise derives income from a foreign jurisdiction, the resident is entitled to a tax credit for the foreign income tax actually paid on the income in that jurisdiction. Additionally, an indirect foreign income tax credit is also allowed. The total amount of

credit is limited to the amount of China tax payable on the foreign income. The resident enterprise can elect to compute the credit limit on a "per jurisdiction" basis or an aggregate basis, and the method cannot be changed within five years after the election is made. If the foreign income tax exceeds the limit, the excess may be carried forward for five years.

Tax treaties

Chinese Mainland has a broad tax treaty network. Chinese Mainland's treaties generally contain OECD-compliant exchange of information provisions.

China Tax Treaty Network²



• Albania	• Estonia	• Macau*	• Singapore
• Algeria	• Ethiopia	• Macedonia	• Slovakia
• Armenia	• Finland	• Malaysia	• Slovenia
• Australia	• France	• Malta	• South Africa
• Austria	• Georgia	• Mauritius	• Spain
• Azerbaijan	• Germany	• Mexico	• Sri Lanka
• Bahrain	• Greece	• Moldova	• Sudan
• Bangladesh	• Hong Kong*	• Mongolia	• Sweden
• Barbados	• Hungary	• Morocco	• Switzerland
• Belarus	• Iceland	• Nepal	• Syria
• Belgium	• India	• Netherlands	• Tajikistan
• Bosnia & Herzegovina	• Indonesia	• New Zealand	• Thailand
• Botswana	• Iran	• Nigeria	• Trinidad & Tobago
• Brazil	• Ireland	• Norway	• Tunisia
• Brunei	• Israel	• Oman	• Turkey
• Bulgaria	• Italy	• Pakistan	• Turkmenistan
• Cambodia	• Jamaica	• Papua New Guinea	• Ukraine
• Canada	• Japan	• Philippines	• United Arab Emirates
• Chile	• Kazakhstan	• Poland	• United Kingdom
• Croatia	• Korea	• Portugal	• United States
• Cuba	• Kuwait	• Qatar	• Uzbekistan
• Cyprus	• Kyrgyzstan	• Romania	• Venezuela
• Czech Republic	• Laos	• Russia	• Vietnam
• Denmark	• Latvia	• Saudi Arabia	• Zambia
• Ecuador	• Lithuania	• Serbia and Montenegro	• Zimbabwe
• Egypt	• Luxembourg	• Seychelles	

* Chinese Mainland has signed tax arrangements with Hong Kong and Macau.

As from 1 January 2020, the application procedure to claim treaty benefits in Chinese Mainland by non-residents was greatly simplified. To claim treaty benefits, non-resident enterprises and individuals need to make a self-assessment of their eligibility, file a declaration with Chinese tax authorities and maintain the supporting documents for future inspections.

² This table contains the tax treaties have been signed and effective as of August 2021.

Anti-avoidance rules

Transfer pricing

Related parties' transactions must comply with the arm's length principle. Where intercompany charges or fees do not reflect an arm's length arrangement, the tax authorities may make adjustments by reference to normal market rates or prices for similar services or goods. Tax authorities are entitled to make adjustments retroactively on transactions between related parties that took place up to 10 years ago.

Chinese Mainland has adopted the "best method" approach for selecting a transfer pricing method, with no prioritization of methods.

Transfer pricing methods



Contemporaneous documentation requirements now encompass the three tier framework as set out in OECD's base erosion and profit shifting (BEPS) Action 13.

All the contemporaneous documentation must be submitted within 30 days upon tax authorities' request.



Master File

- A Chinese enterprise must prepare a master file for a tax year in either of the following situations:
 - i. The enterprise has conducted cross-border related party transactions during the year, and the ultimate holding company of the enterprise has already prepared a master file; or
 - ii. The total amount of the enterprise's related party transactions in the year exceeds RMB 1 billion.
- A master file must be prepared within 12 months after the group's ultimate holding company's fiscal year ends.



Local File

- A Chinese enterprise must prepare a local file for a tax year in one of the following situations:
 - i. The amount of related party purchases/sales of tangible goods in the year exceeds RMB 200 million;
 - ii. The amount of related party purchases/sales of financial assets or intangible assets in the year exceeds RMB 100 million;
 - iii. The amount of related party transactions (other than the above types) in the year exceeds RMB 40 million; or
 - iv. The enterprise assumed limited functions and risks, and solely performed contract/toll manufacturing, distribution or contract R&D activities for foreign related parties, but incurred a loss for the year.
- A local file must be prepared by 30 June of the subsequent tax year.

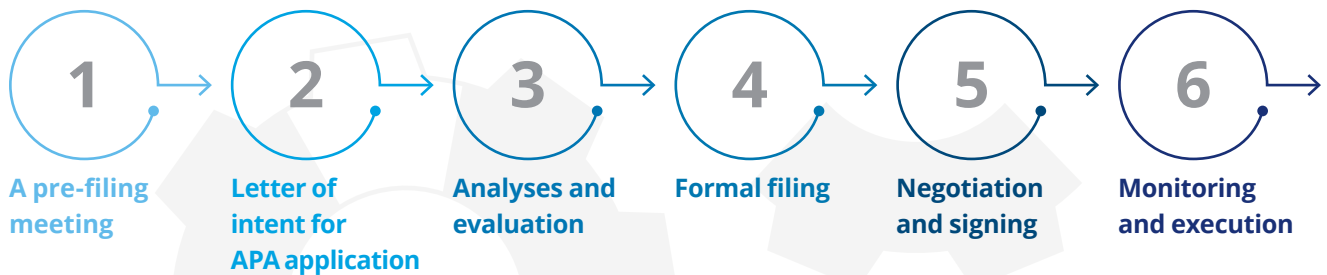


Special Issue File

- A Chinese enterprise must prepare a special issue file for a tax year if the enterprise exceeds the thin capitalization ratio or implements any cost-sharing agreement in that year.
- A special issue file must be prepared by 30 June of the subsequent tax year.

There are rules on cost-sharing agreements and advance pricing arrangements (APAs).

APAs can be unilateral, bilateral or multilateral, and are valid for three to five years. The APA process generally includes six phases shown below:



The State Taxation Administration (STA) issued Bulletin 24 on 7 July 2021. If certain requirements are met, taxpayers can use simplified procedures to apply for unilateral APAs. The simplified procedures include three phases as shown below:



Thin capitalization

The thin capitalization rules operate to disallow a deduction for excessive interest expense with respect to related party financing. The debt-to-equity ratio is specified as 5:1 for financial institutions and 2:1 in all other cases. Interest expense exceeding the stipulated threshold is non-deductible in the current and subsequent periods, unless the enterprise can produce supporting documentation demonstrating that the financing is at arm's length, or if between two domestic enterprises, the effective tax rate of the borrowing entity is not higher than the rate of the domestic related party that receives the interest.

Country-by-Country reporting

Chinese Mainland introduced Country-by-Country (CbC) reporting obligations for qualifying groups following the recommendations of BEPS Action 13. CbC reporting forms are included as part of the annual income tax filing package for enterprises. CbC reporting forms are required for a resident enterprises that is:

- The ultimate parent of a multinational group with consolidated revenue over RMB 5.5 billion; or
- Appointed by the multinational group as the filing entity for CbC reporting.

Regulations allow the Chinese tax authorities to request copies of the CbC report upon performing a transfer pricing audit where they cannot effectively obtain the CbC report from the relevant overseas tax authorities through an information exchange mechanism, or if the overseas ultimate holding company does not provide a CbC report to any country.

Chinese Mainland has signed the multilateral competent authority agreement for the automatic exchange of CbC reports.

Controlled foreign companies

A Chinese shareholder may be taxed on its proportionate share of undistributed profits of CFCs located in certain low tax jurisdictions where there are no valid business reasons for the decision not to distribute the profits. To be a CFC, the enterprise must be incorporated in a country or region where the effective tax rate is 50% or less than Chinese Mainland's statutory EIT rate (i.e. 12.5% or less). The 2019 Individual Income Tax (IIT) law introduces a CFC rule for individual taxpayers.

An enterprise can avoid application of the CFC rules if:

- The CFC is located in a "white list" country (Australia, Canada, France, Germany, India, Italy, Japan, New Zealand, Norway, South Africa, the UK and the US);
- The CFC's income is derived mainly from active business activities; or
- The annual profits of the CFC are lower than RMB 5 million.

General anti-avoidance rule

Chinese Mainland's GAAR requires a bona fide business purpose for any commercial arrangement that has the effect of reducing, deferring or avoiding taxable revenue or taxable income. In the absence of such a purpose, the tax authorities have the power to disregard the arrangement and impose adjustment as the case may be. The 2019 IIT law introduces a GAAR provision for individual taxpayers.

Multilateral instruments

Chinese Mainland signed the OECD's multilateral instruments (MLI) on 7 June 2017, but, so far, Chinese Mainland has not ratified the MLI in line with domestic rules.

The Chinese provisional list of covered tax agreements (CTAs) includes 102 tax treaties³. While Chinese Mainland is on the relevant lists of Chile and India, the CTAs with these two countries are not on Chinese Mainland's list. After the MLI comes into effect, the CTAs may be modified according to choices made by Chinese Mainland and relevant treaty partners.

Two major choices made by Chinese Mainland are as follows:

Prevent treaty abuse

To implement the BEPS minimum standard on preventing treaty abuse, the MLI will amend the preamble of Chinese Mainland's CTAs, which provides the following language to be included in the preamble text of a treaty:

"... Intending to eliminate double taxation with respect to the taxes covered by this agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions)."

In addition, Chinese Mainland has opted for the Principal Purpose Test to prevent treaty abuse.

Dispute resolution mechanism

The MLI implements the BEPS minimum standard for resolving disputes under a tax treaty, which Chinese Mainland adopted. It is worth noting that Chinese Mainland allows a taxpayer to present its dispute only to the tax authorities of the contracting state in which it is a resident or national (in the event of a non-discrimination case) and then the referred tax authorities will implement a bilateral notification or consultation process. Chinese Mainland has opted not to participate in binding arbitration.

³ Two treaties concluded with Romania are included.

Compliance and administration

Tax year

The tax year is the calendar year.

Filing and payment

Provisional EIT returns

- Returns are to be filed within 15 days of the end of each quarter; and
- The advance tax payments are generally calculated according to the actual quarterly profits.

Annual EIT returns

- Annual filing and final settlement are to be performed within five months of the end of the tax year.

Late payment interests and penalty

- Late payment interests are imposed on a daily basis, at a rate of 0.05% of the amount of underpaid tax; and
- Penalties may be imposed in addition to the late payment interests.

An interest-based penalty

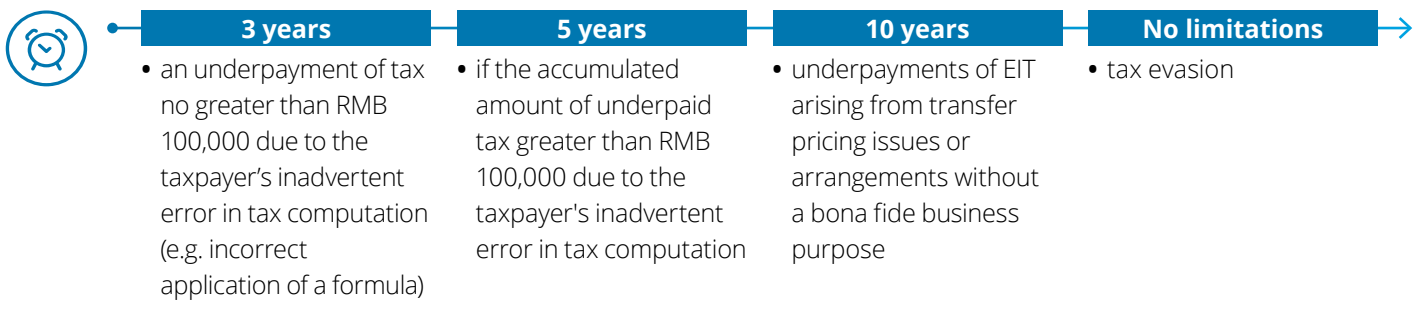
- An interest-based penalty may be imposed on the underpaid tax arising from transfer pricing, thin capitalization, CFC and GAAR adjustments.

In general, when a resident enterprise has branch offices registered in provinces different from where the head offices located, the enterprise should compute tax on a legal entity basis. However, the head office and the branches may be required to allocate the tax among them and make provisional EIT filings in their respective provinces.

Consolidated returns

Chinese Mainland generally does not permit the filing of consolidated returns; each enterprise must file a separate return.

Statute of limitations



Tax authorities

Tax legislation and policy are developed jointly by the STA and the Ministry of Finance, with the STA and its provincial and municipal offices administering taxation policies. Local tax bureaus are responsible for the collection and administration of all taxes (other than import taxes and customs duty) and various non-tax fees and

charges in their respective regions. The import-stage taxes (i.e. the VAT and consumption tax on imports) and customs duty are collected by customs authorities.

Rulings

Advance ruling procedures are not widely adopted in Chinese Mainland,

although they have been piloted with respect to certain large enterprises as well as in some locations. Taxpayers normally consult their local in-charge tax officials on an unofficial basis when issues arise. The tax authorities may issue post-transaction rulings in special cases.

Withholding taxes

Dividends

A 10% withholding tax on dividends paid to a non-resident company has applied since 2008. Dividends paid out of pre-2008 earnings are still exempt from withholding tax. The 10% withholding tax may be reduced under an applicable tax treaty.

Dividends paid to a non-resident individual are generally subject to a 20% withholding tax, unless the rate is reduced under a tax treaty. Dividends paid by FIEs to a foreign national may be exempt from income tax.

Interest

Interest paid to a non-resident company 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 state banks is exempt from the withholding tax. A 6% VAT also applies to interest payments.

Interest paid to a non-resident individual is generally subject to a 20% withholding tax, unless the rate is reduced under a tax treaty.

Royalties

The withholding tax rate on royalties and fees paid to a non-resident company 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.

Royalties paid to a non-resident individual are generally subject to a 20% withholding tax, unless the rate is reduced under a tax treaty.

Branch remittance tax

Currently, Chinese Mainland does not levy a branch remittance tax.

Taxation on individuals

Residence

Basis

Individual income tax is levied on both Chinese and foreign individuals with varying allowances and tax is imposed on business income as well as employment income.

Each individual must file a separate return; joint filing is not permitted. Foreign individuals as well as Hong Kong, Macau and Taiwan citizens shall register with the competent Chinese tax authorities as soon as they become liable to individual income tax ("IIT").

Tax year

The tax year is the calendar year.

Domicile and residence

A domiciled individual is defined as an individual who habitually resides in Chinese Mainland due to his or her household registration status, family ties, and/or economic interests. Foreign nationals as well as Hong Kong, Macau and Taiwan citizens, usually are considered non-domiciled individuals. A domiciled individual is treated as Chinese tax resident and a non-domiciled individual will become a Chinese tax resident of the year if he or she stays in Chinese Mainland for 183 days or more in the calendar year, otherwise the non-domiciled individual will be treated as non-resident. The days of entering and exiting Chinese Mainland will not be counted as Chinese Mainland days in counting the days above.

Taxable income and tax rates

Domiciled individuals are subject to IIT on their worldwide income. Non-resident individuals are only subject to IIT on their Chinese Mainland-source income for that year. Certain Chinese Mainland-source income may be further exempt from IIT if the individual stays in Chinese Mainland for no more than 90 days in that year. However, non-domiciled resident individuals' foreign-source income derived in that year is exempt from IIT to the extent the foreign-source income is paid and the cost absorbed by a foreign party, and provided it meets either of the following situations: 1) in any year of the preceding six consecutive years the individual has stayed in Chinese Mainland for less than 183 days; or 2) in any year of the preceding six consecutive years the individual was outside Chinese Mainland for a single trip of more than 30 days. The six-year clock began to run as from 2019, irrespective of how many years a non-domiciled individual had stayed in Chinese Mainland before 2019.

- **Taxable income is classified into 9 categories** and different categories are taxed separately. Below is one general summary of the income category and corresponding tax rate.

Income category	Tax rate
Salaries and wages income	
Remuneration for independent services	Consolidated into one tax basket for resident Individuals, named "comprehensive income"
Author's remuneration	
Income from royalties	
Income from business operation	Progressive tax rate from 5% to 35%
Income from lease of property	20%*
Income from interest and dividends	20%
Income from transfer of property	20%*
Incidental income	20%

*Note: If the property is real estate, there may exist local comprehensive tax rate or tax relief.

- **Comprehensive income** received by resident individuals is subject to progressive tax rates ranging from 3% to 45% with seven tax brackets as follows:

Annum Taxable income	Tax rate
Up to RMB 36,000	3%
RMB 36,000 – RMB 144,000	10%
RMB 144,000 – RMB 300,000	20%
RMB 300,000 – RMB 420,000	25%
RMB 420,000 – RMB 660,000	30%
RMB 660,000 – RMB 960,000	35%
Over RMB 960,000	45%

- **Tax on salaries and wages** derived by non-resident individuals is calculated on a monthly basis, with progressive tax rates ranging from 3% to 45% with seven tax brackets as follows. For non-resident individuals' **tax on remuneration for independent services, author's remuneration and income from royalties**, the same tax rates would apply and tax is calculated on a transactional basis.

Taxable Income	Tax rate
Up to RMB 3,000	3%
RMB 3,000 – RMB 12,000	10%
RMB 12,000 – RMB 25,000	20%
RMB 25,000 – RMB 35,000	25%
RMB 35,000 – RMB 55,000	30%
RMB 55,000 – RMB 80,000	35%
Over RMB 80,000	45%

Deductions

Deductions are available, depending on an individual's residence and category of income.

- Resident individuals are entitled to a fixed annual standard deduction of RMB 60,000; non-resident individuals are entitled to a fixed monthly deduction of RMB 5,000 for salaries and wage income.
- Resident individuals' social security and housing funds contributions are deductible. These include payments to authority centrally managed housing funds, medical insurance, pension and unemployment insurance, which should be in accordance with relevant regulations and each of the deductions has a cap, relating to the income amount of the taxpayer.
- Resident individuals are entitled to six additional itemized deductions for certain living expenses, if certain criteria are met, including education expenses for children; expenses for continuing education; health care costs for serious illnesses; either residential mortgage interest or housing rent; and expenses to support elderly parents. Each of these deductions would have a cap on a monthly or annual basis and the cap would differ according to an individual's specific situation.
- For remuneration for independent services, author's remuneration, and income from royalties, 20% of the gross income is deductible. For author's remuneration, a further 30% deduction on the reduced gross income is allowed. In other words, 44% of the gross amount of author's remuneration is deductible.
- Deduction of charitable donations (i.e. donations for purposes of education, alleviation of poverty, etc.) generally is capped at 30% of taxable income, although the cap could be lifted for certain items approved by the State Council.
- Qualified annuity, tax efficient commercial health insurance, tax deferred pension insurance are also deductible with certain cap set by relevant regulations.
- Before 1 January 2022, foreign individuals can enjoy the non-taxable benefits-in-kind (BIK) through reimbursement with sufficient documentation, which include housing costs, relocation expenses, meal and laundry expenses; reasonable home leave fares of 2 trips per annum for the employee (not including family members'); Chinese language training expenses for the employee; and child education expenses. Practically, Hong Kong, Macau and Taiwan citizens can also enjoy the non-taxable BIK described above. Between the non-taxable BIK and the deduction of the itemized deductions for resident individuals as discussed above, resident individuals who are foreign nationals can choose only one. Although advanced approval of the tax authorities is not usually required for such BIK exemption, supporting documents and valid commercial invoices must be retained for the tax authorities' future review.
- The deduction for income from business operation has complex rules, which are similar to those rules applicable to companies.
- For income from lease of property and income from transfer of property, the deduction can include original cost and reasonable expenses.

Withholding obligation

In most cases, an employer, legal entity or a person who pays taxable income to the individual is obliged to act as a withholding agent and is responsible for filing a tax return and remitting tax payments to the tax authorities on behalf of the individual. If there is no withholding agent, the individual is responsible for filing his/her tax return and paying the tax assessed.

The advance taxes to be withheld on comprehensive income for resident individuals are collected through the withholding of taxes, which are remitted to tax authorities by the withholding agent on a monthly or transactional basis.

Compliance

Withholding agents and individuals file tax returns to the tax authorities and make the tax payment to the state treasury within 15 days after the end of the month in which the income was derived.

If a non-domiciled individual is estimated to be a resident individual at the beginning of the year but subsequently becomes a non-resident for the tax year, he/she must report to the competent tax authority in a period from the date when he/she does not meet resident individual conditions to the time of 15 days after the end of the year, re-calculate the tax payable as a non-resident individual.

A late payment surcharge is imposed on a daily basis at a rate of 0.05% of the amount of underpaid tax. Penalties may be imposed in addition to the late payment surcharge.

Where a resident individual is dispatched to work overseas by a dispatching entity in Chinese Mainland, with salaries and wages income as well as remuneration for independent services paid or borne by the overseas entity, the dispatching entity may need to report the information of the dispatched person to its competent tax authority before 28 February of the following year.

Annual self-declaration

Resident individuals are required to file an IIT annual reconciliation for comprehensive income under certain circumstances such as that the annual cumulative tax amount withheld during the year is inconsistent with the individual's final tax payable amount. Within the period from 1 March to 30 June of the year after the year in which the income is derived, the concerned resident individuals should handle the tax declaration with the competent tax authority.

A resident individual is exempt from IIT annual reconciliation filing if 1) his or her total comprehensive income does not exceed RMB 120,000*, or 2) the final tax owed for comprehensive income does not exceed RMB 400*, or 3) the final assessed tax payable amount is less than the tax withheld during the year while the individual chooses to forego the tax refund.⁴

Foreign tax relief

If a resident individual has to pay tax on foreign-source income in another jurisdiction as well as in Chinese Mainland, the tax paid in the foreign jurisdiction may be used to offset the individual's Chinese Mainland IIT. However, the maximum amount of the offset may not exceed the IIT payable, as calculated in accordance with relevant laws and regulations.

Social security contributions

The employer is required to contribute approximately 16% of employee's basic payroll to the state-administered retirement scheme and also must contribute to a medical insurance fund, maternity insurance, unemployment insurance and work-related injury insurance. The contribution rates can vary across the country (e.g. total employer contributions can be up to around 27% of the employee's monthly salary in Shanghai). The employee is required to contribute a certain percentage of his/her monthly salary to the funds, subject to certain caps.

Foreign individuals as well as Hong Kong, Macau and Taiwan citizens working legally in Chinese Mainland (including locally hired individuals and those seconded from abroad to work in the Chinese Mainland) are required to participate in the same social security scheme as described above. Under the condition that one bilateral social security totalization agreement is applicable to the foreign individuals, or the Hong Kong, Macau and Taiwan citizens continue to maintain their social security in home location, the obligation to participate in corresponding Chinese Mainland social security scheme could be exempted. However, the enforcement of above group individuals' participation in Chinese Mainland social security scheme may vary in different cities.

⁴The first 2 circumstances where IIT annual reconciliation filing is exempt are only available for tax year 2019 and 2020.

Value added tax and other taxes

Value added tax

Scope of taxation

VAT applies to most sales of goods, services and imports. Immovable property and most intangible assets are considered goods for VAT purposes.

VAT payers

There are two types of VAT payers, i.e. general VAT payers and small-scale VAT payers. A general VAT payer is allowed to credit input VAT against the VAT charged on its sales (i.e. output VAT) to compute the VAT due. Small-scale VAT payers compute VAT payable on sales at a lower rate but no credit of input VAT is allowed. Input VAT is the VAT charged on the goods or services supplied to a business and paid by the business to the suppliers of such goods or services.

A business is generally required to register as a general VAT payer if its sales in a 12-month period reaches the threshold of RMB 5 million. A business whose sales do not reach the threshold may voluntarily register as a general VAT payer. However, a foreign company cannot register as a general VAT payer.

Tax rate

Taxable items	Applicable rate (for general VAT payers)
General goods; processing, repair or replacement services; and leasing tangible and moveable assets	13%
Specified goods (e.g. food, books and utilities); immovable property/land use rights; services including transportation, postal service, basic telecommunications, construction, leasing immovable property	9%
Intangible assets (excluding land use rights); and services including value-added telecommunications, financial services, lifestyle services⁵, modern services⁶	6%

⁵ Lifestyle services include cultural and sports service, educational and medical service, tourism and entertainment, catering and accommodation service, resident daily services, etc.

⁶ Modern services include R&D, IT, logistics auxiliary service, leasing, consulting, business support, etc.

Export of goods and provision of certain services (e.g. R&D/design services provided to overseas entities and fully consumed outside Chinese Mainland, international transportation services) may attract a zero rate of VAT, i.e. no VAT is charged on the sales with a refund of the relevant input VAT.

There are also some goods and services (e.g. childcare/medical/academic education service, construction service for projects located in foreign jurisdictions) which are exempt from VAT, i.e. no VAT is charged on the sales but without a refund or credit of the relevant input VAT.

Small-scale VAT payers are subject to a 3% VAT on their sales without a credit of the relevant input VAT. The rate is reduced to 1% for small-scale VAT payers during the period 1 March through 31 December 2021.

Start from 1 April 2021, small-scale VAT payers are exempted from VAT if their total monthly sales have not exceed RMB 0.15 million or quarterly sales not exceed for 0.45 million.

Credit/refund of input VAT

To claim a credit of input VAT against output VAT, a general VAT payer must maintain relevant valid supporting documents (e.g. special VAT invoices).

If the amount of the input VAT exceeds that of the output VAT, the excess may be carried forward to the next period, or partially refunded for qualifying taxpayers.

Input VAT in respect of some goods and services are excluded from being creditable against output VAT, for example:



Goods and services acquired for purposes of private consumption or VAT-exempt activities

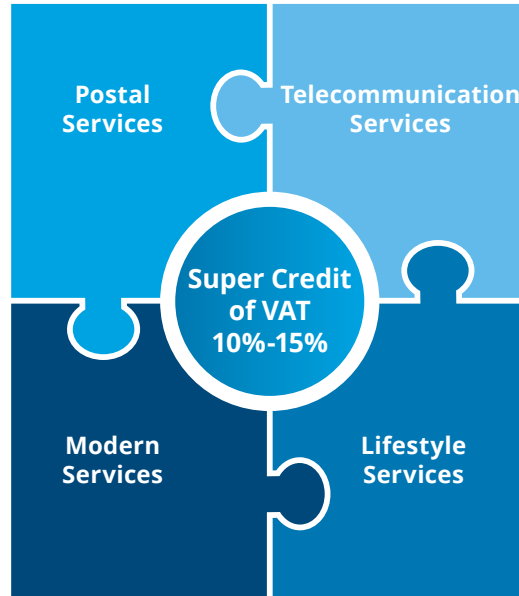


Loans, catering, entertainment and daily living services (e.g. housekeeping, senior caring, hairdressing, etc.)



Goods that have been lost, stolen or damaged due to improper management

"Super credit" of input VAT



For the period 1 April 2019 through 31 December 2021, a general VAT payer in the four specified sectors (see the diagram below) are granted a "super credit" (i.e. an additional VAT credit), which is computed as 10% of the creditable input VAT. The rate has been increased to 15% for taxpayers engaged in lifestyle services from 1 October 2019.

Administration

VAT returns of general VAT payers generally must be filed for each calendar month and 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.

Tax Digitalization

Tax digitalization driven by STA

In 2015, the STA formulated its "Internet plus Taxation" action plan, built the electronic tax system using tax Big Data, and gradually began to process many different kinds of tax matters through the Internet. In 2017, a pilot scheme for innovative Internet tax applications launched, and the tax bureau developed e-tax standards and rules. In 2020, the "Internet plus Taxation" action plan developed further. Following this, many tax-related matters can now be handled online, the tax process has been simplified, tax administration costs are saved, and tax efficiency is improved, so that taxpayers can enjoy more convenient and efficient services. The tax bureau promoted actions such as:

- **Internet plus electronic invoice system:** Paper invoices will gradually be replaced by electronic invoices, and taxpayers will no longer need to visit tax bureaus to get blank paper invoices;
- **Internet plus invoice examination:** The taxpayer can check and verify the authenticity of invoices through webpages, mobile applications, WeChat and SMS, making invoice verification more convenient;
- **Internet plus tax payment channels:** The channels for paying taxes online are expanding. Tax payments can be made through bank transfers, POS machines, online banking, mobile banking and third-party payment platforms.

- **Internet plus tax-related big data:** In order to enhance tax administration and provide taxpayers with high-quality tax-related services, the tax bureau has promoted electronic tax systems, i.e., the Golden Tax Phase III project, and the e-tax Bureau and Invoice Service Platform. Through such electronic tax systems, the tax bureau has also consolidated basic information, tax filing information and invoices of taxpayers, collected and organized multiple data resources, made comparative analysis, carried out the whole process to monitor enterprise business operation and sales, strengthened data analysis, data application and tax-related risk supervision.

E-invoicing

A VAT taxpayer can issue a special VAT invoice or a general VAT invoice for a VAT taxable activity.

- Special VAT invoices are usually obtained and used by VAT general taxpayers;
- VAT small-scale taxpayers who need to issue a special VAT invoice for a VAT taxable activity may apply to competent tax authorities to issue it on their behalf, or may voluntarily use the VAT invoice administrative system to issue it;
- Both general taxpayers and small-scale taxpayers can issue general VAT invoices; and
- The VAT amount indicated in the special VAT invoice is allowed to be used as input VAT to credit against output VAT of the purchaser. Except for certain cases, the VAT amount stated in general VAT invoices are generally not used for input VAT credit against output VAT.

In recent years, the STA has actively promoted the digitalization of invoices and has gradually implemented electronic invoices nationwide.

Regarding the operation of electronic general VAT invoices (e-general VAT invoices), there have been the following two phases:

- From 1 August 2015, a pilot operation has been carried out in Beijing, Shanghai, Shenzhen and Zhejiang; and
- From 1 December 2015, the e-general VAT invoice has been comprehensively promoted nationwide.

Where the issuing party and the recipient party of the e-general VAT invoice requires a hard copy, they may print it. The hard copy's legal validity, basic purpose, basic use provisions, etc. are the same as the paper invoices printed under supervision of the tax authorities.

The pilot implementation of the digitalization of special VAT invoices (e-special VAT invoices) was launched in 2020, and from 1 September 2020 some taxpayers in the Haishu District of Ningbo City and Cixi City were selected to pilot the e-special VAT invoice. Starting from 16 September 2020, the pilot of e-special VAT invoice expanded to all districts of Ningbo. From 21 December 2020, newly registered Chinese VAT payers in 11 regions may issue e-special VAT invoices, and, as from 21 January 2021, newly registered VAT payers in other domestic regions may do so as well.

Enterprises can issue e-special VAT invoices in three ways:



Public services platform

Advantages:

- Electronic invoices are issued directly through the electronic invoice public service platform

Disadvantages:

- Invoices are issued manually one by one without system integration



Third-party platform

Advantages:

- Third party application* for standard tax control interface service
- Supports remote centralized invoice issuing scenario

Disadvantages:

- The tax control interface is mainly based on cloud services, and the data security depends on the third-party platform



Self-built by the enterprise

Advantages:

- Platform can be highly customized according to the enterprise's own requirements
- Invoice data is kept inside the enterprise

Disadvantages:

- Platform needs to meet the requirements of the third level of information security level protection, and complete an annual guarantee evaluation
- High requirements for enterprise IT technology and operation, and maintenance capabilities
- High investment cost (including initial investment and operating costs)

Small enterprises

Medium and large enterprises
or
Enterprise with a
financial sharing centre

Super-large enterprise
+
Mass invoicing demand

*In order to effectively reduce the tax cost of enterprises, based on the original tax control structure, STA has further relaxed the access requirements. All qualified third-party electronic invoice service providers or the enterprise itself can directly connect the invoicing data to the electronic invoice public service platform after completing the corresponding qualification evaluation and filing.

The digitalization of invoices brings a variety of benefits, including but not limited to the following:

- It enables taxpayers to issue and verify invoices on the Internet through the unified Invoice Service Platform of the tax authority with reduced costs;
- After receiving electronic invoices, an enterprise can conduct verifications in a timely manner, thereby reducing the risk of receiving false invoices; and
- The use of electronic invoices saves the time of invoice circulation, making the whole process more efficient (from receiving electronic invoices to bookkeeping, bookkeeping to voucher) and enables the intelligent connection of business data, financial data and tax data, helping enterprises control accounts/audits and check taxes with e-invoices.

E-filing of electronic accounting vouchers

Electronic invoices are a type of electronic accounting vouchers, which include financial electronic notes, electronic passenger tickets, electronic itineraries, special payment notices for electronic Customs, bank electronic acknowledgement of receipt, etc. Valid and authentic electronic accounting vouchers have the same legal validity as hard copy accounting documents.

In addition, where an enterprise uses a hard copy of an electronic accounting voucher as the basis for bookkeeping and archiving for reimbursement purpose, its electronic accounting voucher should be saved simultaneously.

Enterprises may only use electronic accounting vouchers for reimbursement, bookkeeping and archiving if they satisfy all of the following criteria:

- The electronic accounting vouchers received were verified as lawful and authentic;
- The transmission and storage of electronic accounting documents is secure and reliable, and any tampering with electronic accounting documents can be discovered on a timely basis;
- The accounting system used is capable of accurately and completely reading and outputting electronic accounting vouchers, and completing financial accounting records, with necessary review and approval procedures in the system to prevent repeated entry of electronic accounting vouchers; and
- Archiving and management of electronic accounting vouchers shall be in compliance with the requirements set forth in the Administrative Measures on Accounting Archives, etc.

Other taxes

Capital tax

Chinese Mainland does not levy capital duty.

Real estate tax

A real estate tax is imposed on the owner of property at a rate of 1.2% on the assessed value, or 12% on the rental value of leased property. This tax applies to entities, including FIEs,

and individuals. A local land use tax is levied at varying rates, depending on the size of the city or locale.

Deed tax

A deed tax is imposed on the transferee of real property. The deed tax is calculated as a certain percentage of the total value of the transferred real property at rates ranging from 3% to 5%.

Transfer tax

Chinese Mainland does not levy transfer tax.

Stamp duty

The first stamp duty law was promulgated on 10 June, 2021, with an effective date of 1 July 2022. Currently, stamp duty is regulated by provisional measures. Under the current regulations, stamp duty rate, 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. There will be some rate changes under the new stamp duty law.

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 Chinese Mainland 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 otherwise would be subject to the general rates.

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

Environmental protection taxes

From 2018 Chinese Mainland started to collect environmental protection tax. Taxable pollutants are divided into four categories, atmospheric pollutants, water pollutants, solid water and noise. Environmental tax is levied according to pollutant emission equivalent amount.

Consumption tax

Consumption tax applies to prescribed nonessential and luxury or resource-intensive goods (including alcohol, luxury cosmetics, fuel oil, jewellery, motorcycles, motor vehicles, petrol, yachts, golf products, luxury watches, disposable wood chopsticks, tobacco, certain cell and coating products), and it mainly affects companies involved in producing or importing these goods. The tax is calculated based on the sales value of the goods, the sales volume or a combination of the two. The proportional consumption tax rate is from 1% to 56% on the sales revenue of the goods. Exports are exempt.

Consumption tax returns generally should be filed each calendar month and submitted before the 15th day of the following month.

Urban construction and maintenance tax/ education surcharge

The urban construction and maintenance tax and the education surcharge generally apply to entities and individuals that are subject to VAT or/and consumption tax. The two surcharges are calculated as a percentage of the VAT or/and consumption tax due. The rates of the urban construction and maintenance tax depend on the location of the taxpayer:

- 7% for urban areas;
- 5% for county and town areas; and
- 1% for other areas.

The national education surcharge is levied at a flat rate of 3% and the local education surcharge is applied at a flat rate of 2%.

Land appreciation tax

Gains on the sale of real property, net of development costs and/or relevant expenditures, are subject to the land appreciation tax (LAT). LAT applies to all types of land, construction and immovable property, including commercial, industrial and residential sites. The implementing regulations provide for a deduction of qualified financing expenses, related taxes, administration and selling expenses, with prescribed caps in different situations. A super deduction equal to 20% of property development costs and land purchase costs is available to real estate development companies.

LAT is charged in four bands ranging from 30% to 60%, depending on the percentage of gain realized.

Resource tax

The natural resources tax is levied on enterprises and individuals engaged in the exploitation of taxable resources within the territory of and other sea areas under the jurisdiction of Chinese Mainland. The tax basis for the resource tax is the sales price for most categories of taxable resources (e.g. crude oil, natural gas and coal) and for other taxable resources, the tax is calculated based on the volume of products sold or self-used. The resource tax is payable to the local authorities at the place of production or exploitation. Water resource tax was introduced on a trial basis in several provinces in Chinese Mainland since 2016. Entities and individuals that directly extract water from natural bodies of water or extract ground water are taxpayers of the tax. As the next step of the tax reform, the scope of resource tax will further expand to natural resources, such as forest, grassland and mud flats etc.

Vehicle and vessel tax

Vehicle and vessel tax is generally imposed on owners or users of vehicles and vessels. The applicable tax rates can be decided by the local authorities within the range prescribed by the tax law.

Chinese Mainland Tax and Investment Guide 2021 is published of a general nature only. Readers are advised to consult their tax advisors before acting on any information contained in this guide. For more information or advice on the above subject or analysis of other tax issues, please contact:

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