



**CPAAI**  
CPA ASSOCIATES INTERNATIONAL

# **Doing Business in China**

**Acumen CPAs**

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## I. General Information

### 1. General Information:

National territorial area :	Approximately 9.6 million square kilometers
Population :	Approximately 1.34 billion
Standard time :	UTC +8 hours
Currency:	RMB
GDP in 2012 :	RMB 51.9 trillion
GDP per capita in 2012 :	RMB38,354

中国地大物博，资源丰富，环境优美，气候适宜。数十种矿产资源居世界前列，自然资源储藏量大，是世界上屈指可数的资源大国之一。这使中国吸引资源寻求型外商投资具有很大优势，同时自然资源丰富也为各种制造业甚至服务业外商投资提供了极好支撑。近年来，中国的基础设施也有了大幅改善，交通、通讯、水电气供应等基础设施建设基本完备，能源、原材料、零部件供应能力和质量明显提高，为外商投资生产经营提供了良好外部生产经营条件。

China is a country with vast territory, abundant natural resources, excellent surroundings and climate optimum. China has dozens of mineral resources which rank high in the world. All these advantages make China attract resource-seeking foreign investment and at the same time, provide excellent supports for various foreign investment of manufacturing and service industry. In recent years, China has improved the construction of transportation, communications, water, electricity supply and other infrastructure, and significantly improved the deliverability and quality of energy, raw materials and spare parts, which provides a good external production and operation condition for foreign investment.

### 2. National Holidays:

Holidays	Date	Days off
New Year's Day	1-Jan	1
Spring Festival (Chinese New Year)	Late January or early February	3
Women's Day	8-Mar	Half day (women)
Qingming Festival	April 4 or April 5	1
Labor's Day	1-May	1
Dragon Boat Festival	Mid June	1
Mid-autumn Festival	Late September	1
National Day	1-Oct	3

遇法定假日，政府通常会通知和假日前后的双休日连休。

例：2013年10月1日为星期二，假日之前的周日（9月29日）与假日之后的周六（10月12日）调为工作日，10月1日至10月7日连休。

Chinese government usually arranges the holiday with weekend together.

e.g.: National Day in 2013, the Chinese government arranges a golden week from Oct.1 to Oct. 7 while Sunday (Sep.29) and Saturday (Oct 12) as working days.

### **3. Relevant Laws**

#### **(1) 公司法 Corporation Law**

中国已制定外商投资企业相关法律，如《中外合资经营企业法》（适用中外合资企业），《中外合作经营企业法》（适用中外合作企业）和《外资企业法》（适用外商独资企业），《公司法》也适用外商投资企业。

China has enforced equity relevant laws for foreign-invested enterprises, such as “The Law of the PRC on Chinese-Foreign Joint Ventures”(applies to Sino-foreign Equity Joint Venture), “The Law of the PRC on Chinese-Foreign Contractual Joint Ventures”(applies to Sino-foreign Co-operative Joint Venture) and “The Law of the PRC on Foreign-funded Enterprises”(applies to Wholly Foreign-owned Enterprise). “Company law of the PRC” applies to Foreign-invested Enterprise.

#### **(2) 经济纠纷 Economic Disputes**

经济纠纷通常通过以下几种途径解决：

Economic disputes could be settled through the following ways:

行政听证与复议 Administrative hearing and reconsideration

诉讼 Litigation

仲裁 Arbitration

调解 Conciliation

协商和谈判 Consultations and negotiations

### **4. Economic Environment**

#### **(1) 鼓励外国投资者 Incentives for Foreign Investors**

随着新的企业所得税法的实施，从2008年1月1日期，对外商投资企业的税收优惠已经取消。

Preferential tax treatments to FIEs have been removed with the implementation of a new Corporate Income Tax Law of the PRC effective from 1 January 2008.

符合条件的小型，低收益型企业 and 高新技术企业减少所得税率。

Qualified small and thin-profit enterprises and qualified high/ new-tech enterprises are subject to reduced income tax rates.

比如注重技术发展、环境保护、水源保护、生产安全的企业或项目可以享有多种所得税优惠政策。

Enterprises or projects with a focus on technological development, environmental protection, energy and/or water conservation, production safety, for example, may be entitled to various types

of income tax incentives.

## (2) 外汇限制 Foreign Exchange Restrictions

中国对外汇有特定的限制。按国家外汇管理局的规定，外商投资企业要将外币银行账户分成资本账户和往来账户。

There are certain restrictions on foreign currency exchange in China. Foreign investment enterprises are required by the State Administration of Foreign Exchange (SAFE) to separate their foreign currency bank accounts into capital accounts and current accounts.

多年的快速经济增长和外国直接投资浪潮下，中国政府已累计了大量的外汇储备，逐渐放松了有关外汇的限制。

After years of strong economic growth and waves of foreign direct investment, a substantial foreign currency reserve has been accumulated by the Chinese government. With the sizeable reserve, the relevant foreign exchange restrictions have also been relaxing gradually.

## (3) 市场准入 Market Access

中国有相应的市场准入和生产控制，也有经营限制。部分行业需要前置审批。

There are market access and production controls, as well as restriction on operations. Pre-approval should be obtained for certain industries ( such as transportation)

# II. Investment in China

## 1. Entity form

外国投资者进入中国的经营方式一般可分为：外国企业（机构）驻华代表处，分支机构和公司。

Most common forms for foreign investment in China are: (1) RO (2) Branch (3) Company.

### (1) 代表处 RO

一般的外国企业常驻代表机构只能在中国境内从事非直接经营活动，代表外国企业进行外国企业的业务范围内的联络、产品推广、市场调研、技术交流等业务活动。但是，如果中国和该外国企业所在国政府签订有双边条约，该双边条约明确规定外国企业常驻代表机构可以在华从事直接经营活动的，则应当按照这些规定办理。

除个别行业代表处经税务机关审批后享受实际 0 税负外，大部分代表处按照其经费开支申报缴营业税及企业所得税，实际总体税负 11.75%。

代表处没有注册资本需求，设立过程也相对简单，因此是许多外国投资者进入中国初期的投资方式。但随着商贸、服务领域对外国投资者市场准入的政策放宽，代表处登记设立正在相应减少。

In general, ROs are not allowed to conduct business activities directly. Functions generally performed by a RO includes business liaison, product promotion, market research and technical exchanges. However, if the bilateral treaty allows a RO engage in direct business activities in China, it shall be handled in accordance with those regulations.

Except ROs in certain specific industries shall enjoy an effective 0% tax rate approved by tax authority, most ROs shall declare and pay business tax and corporate income tax in accordance

with their annual expenditure, the effective tax rate is 11.75%.

ROs have no registered capital requirements and the setting-up process is relatively simple, therefore, it is chosen by many foreign investors as the initial investment form when entering China. However, with loosening access for foreign investors in trade and service industry, ROs are reduced accordingly.

## (2) 分支机构 Branches

外国企业在华分支机构不具有中国法人资格。目前只有外国金融机构在中国境内可以投资设立从事金融业务的分支机构。

Branches of foreign enterprises in China is not an independent legal entity. At present, only foreign financial or insurance institutions could set up branches engaging in financial or insurance business in China.

## (3) 公司 Companies

目前外国投资者在华投资形式可以有：中外合资经营企业、中外合作经营企业、外商独资经营企业、外商投资股份制公司和外商投资合伙企业，但实际主要形式为中外合资经营企业及外商独资经营企业。

The Foreign Invested Enterprises (FIEs) could be in form of: Sino-foreign Equity Joint Venture (EJV), Sino-foreign Co-operative Joint Venture (CJV), Wholly Foreign-owned Enterprise (WFOE), Foreign-invested Joint-stock Company, and Foreign-invested Partnership since 2010, but mainly in the form of EJV and WFOE.

### 中外合资经营企业 EJV

它是外国公司、企业和其他经济组织或个人同中国的公司、企业或其他经济组织在中国境内共同投资举办的有限责任公司。其特点是合营各方共同投资、共同经营、按各自的出资比例共担风险、共负盈亏。各方出资折算成一定的出资比例，外国合营者的出资比例一般不低于 25%。除一些国家要求中方控股的特殊行业外，外方出资比例无上限要求。

中外合资经营企业是中国利用外商直接投资各种方式最早兴办和数量最多的一种。

EJV is a limited liability company invested and held by both foreign and Chinese companies or individuals. An EJV is characterized by mutual investment, operation and risk. The profits and losses of an EJV must be allocated according to the ratio of capital contributions. Generally, the ratio of contribution for foreign partners shall not be less than 25%. No upper limit on foreign contributions has been set except in some special Chinese-held industries required by the authorities.

EJV is the earliest and the most widely used FIEs form in China.

### 外商独资企业 WFOE

外商独资企业指外国的公司、企业、其他经济组织或者个人，依照我国法律在中国境内设立的全部资本由外国投资者投资的有限责任公司。

自 2004 年起，中国政府已开放贸易、批发、零售、服务等领域设立外商独资经营企业。

WFOE is a limited liability company wholly invested by foreign companies or individuals in accordance with Chinese law.

Since 2004, Chinese government has permitted the establishment of WOFE in trading, wholesales, retail and service industry.

## 2. 外商投资企业设立程序 Setting-up procedures of FIEs

以下为上海外商独资经营企业及外国企业（机构）驻华代表处的注册服务流程举例：  
Setting-up procedures of WOFE and RO (Shanghai for example).

### (1) 外商独资经营企业 WOFE in Shanghai

序号	主要程序	主管机关
1	核准名称	上海市工商行政管理局
2	项目申请，申办审批证书	上海市商务委员会
3	申办营业执照	上海市工商行政管理局
4	办理公章准刻证，刻制公章，法人章，财务章等	上海市公安局
5	申办组织机构代码证	上海市质量技术监督局
6	办理外汇 IC 卡	外汇管理局上海分局
7	税务登记	上海市税务局
8	银行开户（资本金账户、人民币基本账户）	中国人民银行上海分行
9	验资	会计师事务所，外汇管理局上海分局
10	财政登记	上海市财政局
11	统计登记	上海市统计局
12	营业执照变更	上海市工商行政管理局

No.	Main procedures	Authority
1	Name registration	Shanghai Administration of Industry and Commerce
2	Approval Certificate	Shanghai Municipal Commission of Commerce
3	Apply for Business License	Shanghai Administration of Industry and Commerce
4	Chop quasi-engraved certificate, chop engrave such as Seal of Legal representative, Financial seal	Shanghai Public Security Bureau
5	Organization Code Certificate	Shanghai Municipal Bureau of Quality and Technical Supervision
6	Foreign exchange IC card	State Administration of Foreign Exchange Shanghai Branch
7	Tax registration	Shanghai Municipal Taxation Bureau
8	Bank account (capital account, CNY basic)	The People's Bank of China

	account)	Shanghai Branch
9	Capital verification	An independent CPA firm , Foreign Exchange Shanghai Branch
10	Financial certificate registration	Shanghai Municipal Finance Bureau
11	Statistics license registration	Shanghai Municipal Statistics Bureau
12	Business license modification	Shanghai Administration of Industry and Commerce

(2) 代表处 RO in Shanghai

序号	主要程序	主管机关
1	申办工商登记证	上海市工商行政管理局
2	办理公章准刻证, 刻制公章, 法人章, 财务章等	上海市公安局
3	申办组织机构代码证	上海市质量技术监督局
4	办理外汇 IC 卡	外汇管理局上海分局
5	税务登记	上海市税务局
6	银行开户 (外币账户、人民币基本账户)	中国人民银行上海分行
7	统计登记	上海市统计局
8	健康证明	指定医疗机构
9	外籍代表就业证	外国人就业中心
10	外籍代表居留证和工作签证	上海市公安局出入境管理处

No.	Main procedures	Authority
1	Registration Certificate	Shanghai Administration of Industry and Commerce
2	Chop quasi-engraved certificate, chop engrave, such as Seal of Legal representative, Financial seal	Shanghai Public Security Bureau
3	Organization Code Certificate	Shanghai Municipal Bureau of Quality and Technical Supervision
4	Foreign exchange IC card	State Administration of Foreign Exchange Shanghai Branch
5	Tax registration	Shanghai Municipal Taxation Bureau
6	Bank account (foreign currency account、CNY basic account)	The People's Bank of China Shanghai Branch
7	Statistics license registration	Shanghai Municipal Statistics Bureau
8	Physical examination report	Appointed medical institution



9	Employment permit for expats	Shanghai Municipal Employment Service Center for Foreigners
10	Residence permit and work visa for expats	Exit-Entry Administration Bureau of Shanghai Public Security Bureau

### (3) 最低注册资本

外商投资企业的注册资本最低限额根据企业性质以及行业的不同而不同：

- (1) 外资商业性有限公司（包括：贸易、进出口、批发零售、咨询、顾问、服务等）  
设立外商投资企业商业公司从事普遍商品的批发零售或咨询服务，注册资本不得低于《公司法》最低要求即可（即：有限责任公司最低3万人民币，一人有限责任公司最低10万元），但企业注册资本应与企业的运营规模相匹配。
- (2) 外资国际货运代理公司  
外商投资国际货代企业的最低注册资本为海运500万人民币；空运300万人民币；陆运200万人民币；若同时做两项方面的货运最低注册资本为单项最高注册资本即（海运+陆运的最低注册资本为500万人民币）国际货物运输代理企业设立一个从事国际货物运输代理业务的分支机构，应当增加注册资本50万元。
- (3) 投资性外商投资公司的注册资本不低于三千万美元。
- (4) 外资图书销售公司（批发）注册资金不少于3000万元人民币；外资图书销售公司（零售）注册资金不少于500万元人民币；
- (5) 外资旅行社注册资本不少于30万元人民币。
- (6) 对注册资本最低限额法律、行政法规另有规定的从其规定。

### (3) Minimum registered capital

The minimum registered capital of FIEs depends on industries.

- a. Foreign-invested commercial enterprises (including trade, imports and exports, wholesale and retail, consulting, service, etc. )  
Its registered capital shall be not less than the minimum requirement regulated in Company Law (namely: limited liability company shall be not less than RMB 30,000 and one-person limited liability company shall be not less than RMB100, 000). However, the registered capital of a company shall match its operating scale.
- b. Foreign-invested logistics service enterprises  
Its minimum registered capital is RMB 5 million of shipping, RMB 3 million of air freight and RMB 2 million of inland carriage. If the company adopts two kinds of transportation, the minimum registered capital is the highest registered capital of a single item (the minimum registered capital of shipping plus inland carriage is RMB 5 million). If a logistics service agent sets up a branch engaging in the same business, it shall increase the registered capital RMB 500,000 for each branch.
- c. The minimum registered capital of a investment FIE shall be not less than US \$30 million.
- d. The minimum registered capital of a foreign-invested book sales company (wholesale) shall be not less than RMB 30 million and a foreign-invested book sales company (retail) shall be not

less than RMB million.

- e. The minimum registered capital of a foreign-invested travel agency shall be not less than RMB 300,000.
- f. Other laws and administrative regulations on the minimum registered capital shall be observed.

**(4) 特殊行业的前置审批 Pre-approval in special industries**

从事运输业等特殊行业的企业在中国设立公司、代表机构；所从事行业另有专项规定的，还需报相关前置审批部门审批。

If a FIE or RO engaging in special industries (such as transportation) shall be pre-approved by relevant authorities.

**3. 外商投资企业的注销程序**

**Deregistration procedures of FIEs**

序号	流程	经办部门
1	申请预注销批复	所在区商务委
2	登报公告	指定报社
3	清算组成员备案	所在区工商局
4	三年税务注销专项审计	会计师事务所
5	歇业期清算审计	会计师事务所
6	税务注销	所在区税务局
7	海关注销	海关办事处
8	财政登记证注销	所在区财政局
9	批准证书缴销	所在区商务委
10	外汇注销	外汇管理局上海分局
11	工商注销	所在区工商局
12	银行账户注销	开户银行
13	统计登记证注销	所在区统计局
14	组织机构代码注销	所在区质监局

No.	Main procedures	Authority
1	Pre-deregistration Approval	Shanghai Municipal Commission of Commerce

2	Newspaper Announcement	Appointed newspaper
3	Liquidation commit filing	Shanghai Administration of Industry and Commerce
4	Tax deregistration audit for three years	An independent CPA firm
5	Liquidation audit for the winding up period	An independent CPA firm
6	Tax deregistration	Shanghai Municipal Taxation Bureau
7	Customs deregistration	Shanghai Customs
8	Financial Certificate deregistration	Shanghai Municipal Finance Bureau
9	Certificate of approval deregistration	Shanghai Municipal Commission of Commerce
10	Foreign exchange deregistration	Shanghai Administration of Foreign Exchange Shanghai Branch
11	Business License deregistration	District Administration of Industry and Commerce
12	Bank account closing	Bank
13	Statistics license deregistration	Shanghai Municipal Statistics Bureau
14	Organization Code Certificate deregistration	Shanghai Municipal Bureau of Quality and Technical Supervision

其中，税务注销手续在整个流程中是最复杂的，涉及多项细分流程的办理。

Among the above procedures, tax deregistration procedure is the most complicated one.

### III. Human Resource Related Regulation

2008年1月1日起，中国实施《中华人民共和国劳动合同法》，进一步完善劳动合同制度，明确劳动合同双方当事人的权利和义务，保护劳动者合法权益，构建和发展和谐稳定的劳动关系。

Effective from 1 January 2008, "Labor Contract Law" was enforced in China, which further details rights and obligations for both parties, protects the legitimate rights and interests of employees.

#### 1. 劳动合同 Labor Contract

劳动合同可以分为有固定期限或无固定期限。

The labor contract could be entered into fixed term or non fixed term.

#### 2. 工作时数 Working Hours

正常工作时间不得超过每天8小时或每周40小时。

Normal working hours may not exceed 8 hours per day or 40 hours per week.

加班工资计算范围为正常工资的150%-300%，取决于加班期间为平日，周末或是国定假日。

Overtime pay is ranging from 150% up to 300% of normal salary depending on whether the overtime is during weekdays, weekend or national holiday.

### 3. 休假 Leaves

#### (1) 年休 Annual Leave

Years of Working	Annual Leave (days)
1~10 years	5
10~20 years	10
More than 20 years	15

#### (2) 产假 - 98-143 天 Maternity Leave: 98~143 days

#### (3) 婚假- 25 岁以上男性，23 岁以上女性首次婚假一般为 10-15 天，不同城市情况有所不同。其他情况一般为 3 天。

Marriage Leave: Normally 10-15 days for first marriage of man over 25 years old and woman over 23 years old depending on different city. Otherwise 3 days.

### 4. 雇佣终止 Termination of Employment

雇佣关系结束应书面提前三十日通知。

Thirty-days' notice in advance before terminating the employment.

不允许解雇有以下情况的员工：

It is not permitted to dismiss staff:

接受医疗的员工；

Who undergo stipulated medical treatment;

因工伤失去劳动能力的员工；

Who lose their ability to work due to occupational disease or work related injury;

怀孕或正处哺乳期的员工；

Who are pregnant or breast-feeding their baby.

在公司连续工作满十五年且距满足退休年龄不足五年的。

Who have worked in the company over 15 years, and shall retire within 5 years.

### 5. 离职补偿 Severance Package

当出现法定情形导致解除劳动合同的，公司应当向劳动者支付经济补偿；

The company shall pay compensation to employees if meet the legal requirements of dissolving the labor contract;

经济补偿按劳动者在本单位工作的年限；

The compensation shall be in accordance with employee's working years in the company;

每满一年支付一个月工资的标准向劳动者支付；

One month salary for every full year;

不满六个月的，向劳动者支付半个月工资的经济补偿；

Half a month for less than six months;

六个月以上不满一年的，按一年计算。

Over six months but less than a year, regarded as one year.

## 6. 工薪税及社会保险 Payroll Taxes & Social Insurance

公司需为员工代扣个人所得税和社保。

The company is responsible for withholding PRC Individual Income Tax (IIT) and Social Insurance for the employees.

截止至 2013 年 4 月，北京、上海、深圳社保缴费比例：

Premium rates of social insurance of Beijing, Shanghai, Shenzhen as of April 2013 are as follows:

Beijing	Employee	Employer	Total
Pension	8%	22%	30%
Unemployment	0.20%	1%	1.2%
Medical Insurance	2%+3	10%	12%+3
Housing Fund	12%	12%	24%
Work-related Injury Insurance		Manufacture 1% Service 0.5%	Manufacture 1% Service 0.5%
Maternity Insurance		0.80%	0.80%
Total	22.2%+3	Manufacture 46.8% Service 46.3%	Manufacture 69%+3 Service 68.5%+3

Shanghai	Employee	Employer	Total
Pension	8%	22%	30%
Unemployment	1%	1.7%	2.7%
Medical Insurance	2%	12%	14%
Housing Fund	7%	7%	14%
Work-related Injury Insurance		0.5%	0.5%
Maternity Insurance		0.8%	0.8%
Total	18%	44%	62%

Shenzhen	Employee	Employer	Total
Pension	8%	14%	22%
Unemployment	15	30	45
Medical Insurance	2%	7%	9%
Housing Fund	5%-20%	5%-20%	10%-40%
Work-related Injury Insurance		0.40%	0.40%
Maternity Insurance		0.50%	0.50%
Total	15%+15-30%+15	26.9%+30-41.9%+30	41.9%+45-71.9%+45

## 7. 移民条例 Immigration Rules

### 签证 Visa

出于商务目的的在中国境内进行短期居留的外国公民应申请签证,但不要求取得居留证或就业证。对于要在中国工作的外籍员工必须申请“Z”签证(即工作签证)。“Z”签证申请时应提交由公司出具的签证邀请函。

For foreign individuals making a short-term visit for business purpose, they shall apply for a visa rather than a residence permit or work permit. For foreign individuals who would take up an employment in China, a “Z” visa (working visa) shall be applied. An invitation letter issued by a sponsor entity shall be submitted for “Z” visa application.

### 工作证和居住证 Work and Residence Permit

外籍员工需从当地劳动局获取工作证,从当地公安局获取居住证。

Foreign employees shall obtain a Work Permit from the local Labor Bureau and Foreign Residence Permit from local Public Security Bureau.

## IV. Accounting and Audit

### 1. 会计 Accounting

#### 适用会计标准 Accounting Standards

目前外商投资企业可根据自身的规模、内部核算管理需要以及集团合并报表需求选择适用相应的会计制度。

FIEs could adopt proper accounting standard according to their scale, internal management requirement and consolidation purpose.

适用类型 Application Type	PRC 企业会计准则 PRC Chinese Accounting Standard (CAS)	PRC 小企业会计准则 PRC Small Enterprise Accounting Standard
适用企业规模 Scale of Enterprise	大 Large	小 Small
会计核算要求 Accounting Requirements	高 High	低 Low

会计年度从每年 1 月 1 日至 12 月 31 日。

The fiscal year runs from January 1 to December 31.

使用币种为人民币，可根据需要同时用另一种外币记录。

The accounts should be booked in RMB, another currency could be used parallelly.

会计报表、账簿等会计资料必须要用中文记录，若公司因管理需要可同时用其他外文记录。

Financial statements, account books and relevant documents should be recorded in Chinese. Other foreign languages could be used parallelly.

公司聘请的会计人员必须持有会计上岗证。

The accountants employed by the company shall have accounting certificates.

## 2. 审计 Audit

外商投资企业通常会涉及以下几种审计业务：

FIEs would usually be engaged in below audits:

年度会计报表审计

**Statutory Annual Audit**

根据国家规定外商投资企业每年 5 月底前必须进行年度会计报表审计，并将审计报告提交各政府部门参加企业年检。

The statutory annual audit has to be finished before the end of May. The audit report has to be submitted to the government authorities for the FIEs Annual Inspection.

外汇年检审计

**Audit of foreign exchange**

根据国家外汇管理局的要求，每年 5 月底前向外汇管理局提交经会计师事务所审计的外汇统计报表。

According to State Administration of Foreign Exchange, foreign exchange statistical reports audited by CPA firms shall be submitted to State Administration of Foreign Exchange before the

end of May every year.

#### 验资

##### Capital Verification

对于投资者出资均应由会计师事务所出具验资报告以证实其出资情况。

After the capital contribution, a capital verification report should be issued by a CPA firm to verified the capital contribution.

#### 企业所得税汇算清缴纳税申报鉴证

根据税务局要求,公司在进行年度企业所得税汇算清缴时需向税务局提交纳税申报鉴证报告。

##### Tax Filing Verification of Final Settlement for Corporate Income Tax

According to Tax Bureaus, companies have to submit tax filing verification report to Tax Bureaus during final settlement for Corporate income tax .

#### 财产损失所得税税前扣除鉴证

##### Pre-tax deduction verification of property-damage tax

根据税务局要求,当年度有财产损失并且需在企业所得税税前列支的公司需向税务局提交经审计的鉴证报告。

According to tax bureaus, companies have to submit audited verification report to tax bureaus if they have assets losses to be deducted for Corporate Income Tax purpose.

#### 企业亏损鉴证

##### Tax Losses Verification

根据税务局要求,对连续几年持续亏损或企业出现巨额亏损的情况下,需向税务局提交亏损鉴证报告。

According to Tax Bureau, losses verification report shall be submitted to Tax Bureaus for continuing tax losses for years or huge tax losses.

除上述审计,海关、外管、税务局均会根据企业的具体经营提出专项审计需求,比如:税务抵扣项目、研发费用加计扣除、特许权使用费等均需提交税务鉴证报告。

In addition to the above-mentioned audits, there are several specific audit requirements from Customs, State Administration of Foreign Exchange and Tax Bureaus, such as tax verification report of, R&D expenditure extra deduction and royalty fees.

### 3. 中国会计准则与国际会计准则差异举例

#### Example for the difference of CAS and IFRS

主要区别	中国会计准则 2006	国际准则编报财务报告的框架
企业合并	同一控制下企业合并以账面价值为基础计量	以公允价值计量



资产减值准备	所有资产减值损失都不可转回，部分资产除外，如存货、投资性房地产、应收账款、建造合同，对于这些项目，适用其他具体准则	允许转回，商誉减值损失不可转回
关联方	仅仅同受国家控制而不存在其他关联方关系的企业不构成关联方	无明确例外规定

Major Differences	CAS (2006)	IFRS
Consolidation	Consolidation under the same control is measured at book value	Measure at fair value
Impairment loss of assets	Assets impairment loss shall not be reversed. Assets such as inventory, investment property, accounts receivable, apply specific standards.	Reversal is allowed, except for goodwill impairment loss
Related-party transaction	State-controlled enterprises without other affiliated relations are not regarded as related parties	No clear exceptions

## V. 税种 Taxation

### 1. 主要税种 Principal Taxes

所得税：企业所得税；个人所得税

货物与劳务税：增值税；消费税；营业税

关税

其他税：资源税；城镇土地使用税；土地增值税；房产税；城市维护建设税；车辆购置税；车船税；印花税；契税等

**Taxes on Income:** Corporate Income Tax (CIT); Individual Income Tax(IIT)

**Taxes on Turnover:** Value-added tax (VAT); Business tax (BT); Consumption tax (CT)

**Customs Duties**

**Other Taxes:** Resources tax; Tax on Using Urban Land; Land appreciation tax; Real estate tax; Urban Construction and Maintenance Tax; Motor vehicle acquisition tax; Vehicle and vessel tax; Stamp tax; Deed tax,etc.

## 2. 企业所得税 CIT

### (1) 纳税人 Taxpayer

居民企业应当就其来源于中国境内、境外的所得缴纳企业所得税。

非居民企业应当就其来源于中国境内的所得缴纳企业所得税。

Tax resident enterprises are subject to CIT on worldwide income.

Non-tax resident enterprises are subject to CIT on China sourced income.

### (2) 税率 Tax Rate

CIT are levied at a flat rate of 25%.

非居民企业预提所得税税率为 20%。现减按 10% 的税率征收企业所得税。

The concessionary rate of withholding CIT for non-tax resident enterprises is 10% (the standard rate is 20%).

### (3) 优惠税率 Preferential Tax Rate

符合条件的小型微利企业，实际按 10% 的税率征收企业所得税。

国家需要重点扶持的高新技术企业和技术先进型服务企业，减按 15% 的税率征收企业所得税。

软件企业和集成电路设计企业可以享受两免三减半的企业所得税优惠。

从 2011 年 1 月 1 日到 2020 年 12 月 31 日，对设在西部地区的鼓励类产业企业减按 15% 的税率征收企业所得税。

The effective tax rate for qualified and thin-profit small enterprises (SMEs) is 10%.

A reduced tax rate of 15% is applicable to qualified high/new-tech enterprises and technology advanced service enterprises.

Software enterprises and integrated circuit design enterprises could enjoy two years of exemptions and three years of 50% reductions of CIT.

A reduced tax rate of 15% is applicable to encouraged enterprises in the Western regions from 1 January, 2011 to 31 December, 2020,

### (4) 纳税年度 Tax Year

自公历 1 月 1 日至 12 月 31 日止。

The tax year runs from January 1 to December 31 of the calendar year

### (5) 准予扣除主要项目 Some Major Deductible Items

#### a. 工资薪金 Wages and Salaries

企业发生的合理的工资薪金支出。当地员工的基本社会保障，补充养老保险和补充医疗保险可抵扣抵扣，但受到政府规定的上限。其他可扣除的员工福利开支上限为总工资的 14%。

Actual paid wages and salaries of reasonable amount could generally be deducted. Basic social insurance (refer to III.6 Payroll Taxes & Social Insurance), supplementary pension insurance and supplementary medical insurance for local Chinese staffs are deductible according to local government regulations. Other deductible welfare are capped at 14% of the total wages and salaries.

## **b. 利息 Interest**

利息支出通常可以抵扣。

非金融企业向非金融企业借款的利息支出，不超过按照金融企业同期同类贷款利率计算的数额的部分。未支出的资本费用利息应资本化，而随后发生的利息在同期中可扣除。

根据企业所得税法，支付给关联方的利息扣除受资本弱化规则的影响。金融产业资本弱化的比例是5:1，其他行业是2:1。

Interest expense is generally deductible.

Interest expense incurred between non-financial enterprises could not exceed the commercial interest rate. Interest on capital expenses shall be capitalized before they are put into use, while interest incurred subsequently is deductible in the current period.

According to the CIT Law, the deduction of interest paid to related parties is subject to the thin capitalization rule. The thin capitalization ratio for the financial industry is 5:1 and for other industries is 2:1.

## **c. 业务招待费 Business Entertainment**

企业发生的与生产经营活动有关的业务招待费支出，按照发生额的 60%扣除，但最高不得超过当年销售(营业)收入的 5%。

Only 60% of actual incurred business entertainment expenses are deductible. The total amount is capped at 0.05% of the total sales (business) revenue of the subject tax year.

## **d. 广告费和业务宣传费 Advertising & Promotion Expense**

企业发生的符合条件的广告费和业务宣传费支出，除另有规定外，不超过当年销售(营业)收入 15%的部分，准予扣除；超过部分，准予在以后纳税年度结转扣除。

The deduction is limited to 15% of the total sales (business) revenue of the subject tax year. The remaining expenses could then be carried forward and deducted in future years.

## **e. 费用加计扣除 Extra Deduction of Expenditures**

开发新技术、新产品、新工艺发生的研究开发费用未形成无形资产计入当期损益的，在按照规定据实扣除的基础上，按照研究开发费用的 50%加计扣除；形成无形资产的，按照无形资产成本的 150%摊销。

R&D expenditures incurred by enterprises in the development of new technology shall have an extra 50% deduction of the expenditures.

## **f. 捐赠 Donation**

企业发生的公益性捐赠支出，在年度利润总额 12% 以内的部分。

Charitable donation are deductible up to 12% of the total annual profit.

## **g. 总机构费用 Inter-Company Charges**

关联公司在日常经营中提供的服务收费在合理范围内通常是允许扣除的但有一定的限制。

居民企业支付的合理的特许权使用费和服务费通常是允许扣除的。

Reasonable inter-company charges are generally deductible but subject to certain restrictions, which represent specific and active services provided by affiliated companies for the day-to-day

operations of an enterprise in China .

Royalties and service fees paid are generally allowed as a deduction, provided the charges are at arm's length.

#### **(6) 不得扣除的项目 Non-deductible Items**

不得扣除的项目主要有向投资者支付的股息红利等权益性投资收益款项、企业所得税税款、税收滞纳金、罚金、罚款和被没收财物的损失、不符合条件的捐赠支出、赞助支出、未经核定的准备金支出。

Dividend payment

CIT payment

Tax delay charge, penalties, fines

Unqualified donations and sponsorships

Non-verified provisions.

#### **(7) 关联交易 Related Party Transactions**

所有企业与关联方的交易需遵循公平交易原则。中国税务机关非常注重转移定价操作。如果企业与关联方交易不遵循公平交易原则，中国税务机关有权对关联方交易作出调整及对企业应缴纳所得税做出调整。

中国对转让定价的执行文件和相关信息提交有严格的要求。纳税人必须在法定申报期限也就是每年的五月 31 日之前提交年度关联交易报告作为其年度企业所得税纳税申报包部分。此外，根据税务当局的要求，企业必须上交转让定价的文件的地方予以检查。满足特定条件的企业可以不交这些文件。

It is required that all enterprises shall conduct revenue and capital transactions with affiliated parties on arm's-length basis. Special attention are paid by the Chinese tax authorities to transfer pricing practices. If they determine a transaction is not at arm's-length, they are empowered to disregard, vary or make adjustments to the related party transaction and adjust the taxable income of the enterprise.

China adopts stringent requirements on filing and submission of related party information for transfer pricing enforcement. Taxpayers are required to file annual related party transactions reports as part of their annual corporate income tax return package on or before the statutory filing due date which is 31 May of each year. In addition, enterprises are required to prepare transfer pricing documentation in place for inspection upon request by the Chinese tax authorities. Enterprises meeting certain conditions are exempted from such documentation requirement.

#### **(8) 税务亏损 Tax Loss**

企业所得税法规定，企业纳税年度发生的亏损，准予向以后年度结转，用以后年度的所得弥补，但结转年限最长不得超过 5 年。此外，税务亏损也不得向以前年度结转。

Tax losses could be carried forward for the succeeding five years but not carried back.

#### **(9) 汇算清缴 Tax Filing**

企业应当自月份或者季度终了之日起十五日内，向税务机关报送预缴企业所得税纳税申报表，预缴税款。

企业应当自年度终了之日起五个月内，向税务机关报送年度企业所得税纳税申报表，并汇算清缴，结清应缴应退税款。

Provisional reports and payments have to be made on a monthly or quarterly basis which is determined by the in-charge tax authorities. Provisional payments shall be settled with 15 days following the end of each month/quarter.

Annual tax return has to be filed by the end of May following the end of a tax year, which is subject to local changes.

## 2. 个人所得税 IIT

### (1) Taxpayers

居民纳税人就其从中国境内和境外取得的所得缴税。

Individuals domiciled in China are subject to IIT on their worldwide income.

非居民纳税人工资征税规定如下：

在境内居住 天数	职务	境内工作期间		境外工作期间	
		由境内支付或 承担的工资薪金	由境外支付并 承担的工资薪金	由境内支付或 承担的工资薪金	由境外支付并 承担的工资薪金
不满 183 天/90 天	董事及高层 管理人员	交税	不交	交税	不交
	一般人员	交税	不交	不交	不交
超过 183 天/90 天不满 一年	董事及高层 管理人员	交税	交税	交税	不交
	一般人员	交税	交税	不交	不交
超过一年不满 五年	董事及高层 管理人员	交税	交税	交税	不交
	一般人员	交税	交税	交税	不交
超过五年	董事及高层 管理人员	全球收入在中国境内交税			
	一般人员	全球收入在中国境内交税			

Foreign individuals are subject to IIT as follows:

Days reside in China	position	Inbound Working Period		Outbound Working Period	
		Wages and salaries paid or assumed inbound of	Wages and salaries paid and assumed outbound of	Wages and salaries paid or assumed inbound of China	Wages and salaries paid and assumed

		China	China		outbound of China
Less than 183/90 days	Directors & senior management	Subject to IIT	No IIT	Subject to IIT	No IIT
	General staff	Subject to IIT	No IIT	No IIT	No IIT
More than 183/90 days but less than 1 year	Directors & senior management	Subject to IIT	Subject to IIT	Subject to IIT	No IIT
	General staff	Subject to IIT	Subject to IIT	No IIT	No IIT
More than 1 year but less than 5 consecutive full years	Directors & senior management	Subject to IIT	Subject to IIT	Subject to IIT	No IIT
	General staff	Subject to IIT	Subject to IIT	Subject to IIT	No IIT
More than 5 full consecutive years	Directors & senior management	Worldwide income are subject to IIT			
	General staff	Worldwide income are subject to IIT			

个人所得税以支付所得的单位或者个人为扣缴义务人。

The employers have the obligation to withhold the IIT for the employees.

## (2) 纳税年度 Tax Year

自公历 1 月 1 日至 12 月 31 日止。

The tax year runs from January 1 to December 31 of the calendar year.

## (3) 起征点 Allowable Deduction

工资薪金所得，以每月收入额减除费用 3500 元后的余额，为应纳税所得额。

受雇的外籍人员在 3500 元扣除额的基础上，再附加 1300 元的费用扣除额，即 4800 元。

A monthly standard deduction of RMB3,500 (RMB4,800 for foreign employees) is available for employment income.

## (4) 个人所得税率表 Tax Rate

关于工资、薪金所得，我国适用七级超额累进税率：

Income from wages and salaries is taxed according to the following progressive rates:

Monthly Taxable income 全月应纳税所得额	Rate (%)
Grading 含税级距	
Less than 1500	3

The portion of income in excess of 1,500-4,500	10
The portion of income in excess of 4,500-9,000	20
The portion of income in excess of 9,000-35,000	25
The portion of income in excess of 35,000-55,000	30
The portion of income in excess of 55,000-80,000	35
The portion of income in excess of 80,000	45

除了工资薪金，其他项目个人所得税率一般根据项目的不同会有所变化：

Income other than employment income:

应纳税所得项目	一般适用税率
个体工商户的生产、经营所得	5-35%超额累进
对企事业单位承包经营、承租经营所得	5-35%超额累进
劳务报酬所得	20%; 收入畸高的, 加征 50% 或 100%
稿酬所得	20% 并减征 30%
特许权使用费所得	20%
财产租赁所得	
利息、股息、红利所得	
财产转让所得	
偶然所得	
其他所得	

Items for taxable income	Generally applicable tax rate
Income from solo trader	5-35% progressive
Income from labor service	20%; the excessively high income will levy extra 50% or 100%
Income from author's remuneration	20% and deduction of 30%
Income from franchise royalties	
Income from leasing property	
Income form interest, dividend and bonus	20%
Income from transferring property	
Other incomes	

**(5) 外籍人员暂免征收个人所得税项目 Items Exemption from IIT for Foreign Individuals**

- (a) 外籍个人以非现金形式或实报实销形式取得的住房补贴、伙食补贴、搬迁费、洗衣费；
- (b) 外籍个人按合理标准取得的境内、外出差补贴；
- (c) 外籍个人取得的探亲费、语言训练费、子女教育费等的合理开支部分；
- (d) 外籍个人从外商投资企业取得的股息、红利所得。

a. Reasonable housing cost (with supporting invoices) ;

- b. Reasonable 2 home trips per annum (with supporting invoices) ;
- c. Reasonable relocation & moving cost (with supporting invoices) ;
- d. Reasonable reimbursement of meals, laundry expenses, work related expenses (traveling expenses) (with supporting invoices) ;
- e. Reasonable language training cost and children's education cost (with supporting invoices) ;
- f. Dividend and bonus from FIES.

### (6) 年所得 12 万元 个人自行申报 Self-declaration of IIT

自 2006 年 1 月 1 日起, 在一个纳税年度内取得个人所得税法中规定的 11 项应税所得合计数额达到 12 万元以上的纳税人, 应在纳税年度终了后三个月内, 向主管税务机关办理自行纳税申报的相关事宜。

From Jan.1, 2006, taxpayers whose total taxable income reaches RMB 120,000 within a tax year shall handle the self-declaration of IIT to the tax bureau within three months after the tax year.

### 3. 税收协定 Tax convention

非税居民企业的收入来源, 如股息, 利息, 租金和特许权使用费, 属于预提企业所得税, 有 10% 的优惠税率。

The source of income for non-tax resident enterprises, such as dividends, interest, rent and royalties are subject to withholding CIT at a 10% concessionary rate .

然而, 在预提税方面, 中国和每个外国国家之间有一些特殊的税收协定。 以下为我国对世界一些主要国家的税率 (预提所得税) :

However, there are some special tax treaty between China and other foreign countries. The following table contains tax rates towards some major countries:

#### 协定国家与地区

协定国家/地区	股息 (%)	利息 (%)	特许权使用费 (%)	特许权使用费其中对设备的使用
美国	10	10	10	7
英国	10	10	10	7
德国	10	10	10	7
法国	10	10	10	6
澳大利亚	15	10	10	10
加拿大	控股 10% 的为 10%, 其他 15%	10	10	10
日本	10	10	10	10
新加坡	控股 25% 的为 5%, 其他 10%	金融机构的为 7%, 其他为 10%	10	10
韩国	控股 25% 的为 5%, 其他 10%	10	10	10
中国香港	控股 25% 的为 5%, 其他 10%	7	7	7
中国澳门	10	金融机构的为 7%, 其他	10	10



		为 10%		
阿拉伯联合酋长国	7	7	10	10

#### Treaty Countries and regions

Countries / regions with treaty agreement	Dividend (%)	Interest (%)	Royalty (%)	Facility usage of royalty
American	10	10	10	7
Britain	10	10	10	7
Germany	10	10	10	7
France	10	10	10	6
Australia	15	10	10	10
Canada	Ownership over 10%: 10%, Other: 15%	10	10	10
Japan	10	10	10	10
Singapore	Ownership over 25%: 5%, Other: 10%	Financial institution: 7%, Other: 10%	10	10
Korea	Ownership over 25%: 5%, Other: 10%	10	10	10
HongKong	Ownership over 25%: 5%, Other: 10%	7	7	7
Macao	10	Financial institution: 7%, Other: 10%	10	10
The United Arab Emirates	7	7	10	10

#### 4. 流转税 Turnover Tax

我国现行的流转税类主要包括增值税、消费税、营业税等。

Turnover tax mainly includes Value-added Tax, Consumption Tax and Business Tax.

##### (1) 增值税 VAT

##### a. 征税范围和纳税人 Taxpayers

在中华人民共和国境内销售货物或者提供加工、修理修配劳务以及进口货物应缴的个人所得税。

增值税纳税人一般分为一般纳税人和小规模纳税人。

符合一定条件的一般纳税人可以将进项抵扣销项。

Sell or import goods or provide processing, repairs, replacement services are subject to VAT.

Taxpayers of VAT are generally divided into general taxpayers and small-scale taxpayers.

For general VAT taxpayers, input VAT incurred could be deducted from output VAT under certain condition.

## **b. 税率 Tax Rate**

一般纳税人通常适用税率为 17%

部分商品销售适用税率为 13%

小规模纳税人适用税率为 3%

出口货物适用零税率

The standard VAT rate is 17% but the reduced rate for necessity good is 13%, 3% for small-scale taxpayers and 0% for export goods.

## **c. 营业税改征增值税 Pilot Program of Transforming BT to VAT**

2012 年 1 月 1 日起在上海市交通运输业和部分现代服务业开展营业税改征增值税试点改革，2012 年 8 月 1 日起至年底，营业税改征增值税试点范围扩大，由上海市扩大至北京、天津、江苏、浙江、安徽、福建、湖北、广东和厦门、深圳 10 个省（直辖市、计划单列市）。2013 年继续扩大试点地区，并选择部分行业在全国范围试点。

改革试点的主要内容是，交通运输业适用 11% 的税率，研发和技术服务、文化创意、物流辅助和鉴证咨询等现代服务业适用 6% 的税率。

From January 1<sup>st</sup>, 2012, a Pilot Program of Transforming BT to VAT has been effective in Shanghai.

The main contents of Pilot Program are: VAT rate applicable to the transportation industry is 11 %; to modern service industries such as R&D and technology service, cultural creativity, auxiliary logistics, and consultation is 6% .

From Aug. 1<sup>st</sup>, 2012 to the end of 2012, the Pilot Program expanded from Shanghai to another 10 provinces, including Beijing, Tianjin, Jiangsu, Zhejiang, Anhui, Fujian, Hubei, Guangdong, Xiamen, and Shenzhen. The pilot will continue to expand in 2013, and some more industrials will be added in the Pilot Program.

## **(2) 营业税 BT**

在中华人民共和国境内提供营业税条例规定的劳务、转让无形资产或者销售不动产应缴纳营业税。

Business tax is levied on providing services by the enterprises, transfer of intangible assets or immovables property.

除娱乐业以外，其他劳务服务营业税税率为 3% 或 5%（娱乐业税率为 5%—20%）。

The most common BT rate is 3% or 5%, except for entertainment industry (5% to 20%).

## **(3) 消费税 Consumption tax**

在中华人民共和国境内生产、委托加工、进口及销售烟、酒、贵重首饰及珠宝玉石、摩托车、小汽车、等产品均应缴纳消费税。

消费税是在对货物征收增值税，关税的基础上再征收的。

Consumption tax is levied on manufacturing, importing and selling consumer goods such as tobacco, alcohol, jewellery and jade, motorcycles, automobiles and etc.

Consumption tax is imposed in addition to applicable VAT and customs duties.

## 5. 关税 Customs Duties

关税对进口货物征收。它是在进口时由海关征收的。

对于外商投资企业来说，所投资的项目符合《外商投资产业指导目录》中鼓励类的产业条目，在投资总额内进口的自用机械和设备免征关税，而进口的机器或设备不在商品目录内，照常征税。

经海关批准，暂时进出境的下列货物，并自进境或者出境之日起6个月内复运出境或复运进境的，在进境或出境时纳税人向海关缴纳相当于应纳税款的保证金或提供其他担保的，可暂不缴纳关税。

符合一定条件下，来料加工项下进口料、件，免征进口的关税和增值税。

进境货物到指定的自由贸易区予以保税。

Customs duty is levied on the importation of goods. At the time of importation, it is collected by the customs authorities .

Customs duty is exempt on machinery and equipment imported by a FIE within the amount of its total investment, if the project falls within the encouraged category of the new “Catalogue Guiding Foreign Investors on Industries for Investment” for its own use, and the imported machinery or equipment is not listed commodities that are non-exempted for importation.

Limited exemptions from customs duty may also apply to machinery and equipment and other goods which are temporarily imported into the PRC, provided they are re-exported. Although the temporary importation period may be extended to one year, it is generally six months. A deposit for the duty may be required.

Customs duty and VAT exemption may be allowed to importing raw materials for contract processing or import manufacturing subject to certain condition.

Goods may be imported into designated Free Trade Zones without liability to to customs duty or VAT.

We are always happy to support your business in China with our professional knowledge and experience. Please contact:

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