



DOING BUSINESS IN CHINA - PRC 2020

Editors:

Africa: Ridha Hamzaoui, Sabrine Marsit, Emily Muyaa, Yvette Nakibuule

Asia-Pacific: Karen Lim, Janice Loke, Mei-June Soo, Nina Umar

Caribbean: Priscilla Lachman, Sandy van Thol

Europe: Mery Alvarado, Madalina Cotrut, Francesco De Lillo, Larisa Gerzova, Teresa Morales, Magdalena Olejnicka, Andreas Perdelwitz, Benjamin Rodriguez, Marnix Schellekens, Ruxandra Vlasceanu

Middle East: Ridha Hamzaoui

Latin America: Vanessa Arruda Ferreira, Maria Bocachica, Diana Calderón Manrique, Gabriela Rodríguez Arguijo

North America: John Rienstra, Julie Rogers-Glabush

IBFD

Visitors' address:

Rietlandpark 301
1019 DW Amsterdam
The Netherlands

Postal address:

P.O. Box 20237
1000 HE Amsterdam
The Netherlands

Tel.: 31-20-554 0100

www.ibfd.org

© 2020 IBFD

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the written prior permission of the publisher. Applications for permission to reproduce all or part of this publication should be directed to: permissions@ibfd.org.

Disclaimer

This publication has been carefully compiled by the IBFD and/or its author, but no representation is made or warranty given (either express or implied) as to the completeness or accuracy of the information it contains. The IBFD and/or the author are not liable for the information in this publication or any decision or consequence based on the use of it. The IBFD and/or the author will not be liable for any direct or consequential damages arising from the use of the information contained in this publication. However, the IBFD will be liable for damages that are the result of an intentional act (*opzet*) or gross negligence (*grove schuld*) on the IBFD's part. In no event shall the IBFD's total liability exceed the price of the ordered product. The information contained in this publication is not intended to be an advice on any particular matter. No subscriber or other reader should act on the basis of any matter contained in this publication without considering appropriate professional advice

Where photocopying of parts of this publication is permitted under article 16B of the 1912 Copyright Act jo. the Decree of 20 June 1974, Stb. 351, as amended by the Decree of 23 August 1985, Stb. 471, and article 17 of the 1912 Copyright Act, legally due fees must be paid to Stichting Reprerecht (P.O. Box 882, 1180 AW Amstelveen). Where the use of parts of this publication for the purpose of anthologies, readers and other compilations (article 16 of the 1912 Copyright Act) is concerned, one should address the publisher.

DOING BUSINESS IN CHINA (PEOPLE'S REP.)

JANUARY 2020

INTRODUCTION

This publication has been prepared by the International Bureau of Fiscal Documentation (IBFD) for BDO, its clients and prospective clients. Its aim is to provide the essential background information on the taxation aspects of setting up and running a business in this country. It is of use to anyone who is thinking of establishing a business in this country as a separate entity, as a branch of a foreign company or as a subsidiary of an existing foreign company. It also covers the essential background tax information for individuals considering coming to work or live permanently in this country.

This publication covers the most common forms of business entity and the taxation aspects of running or working for such a business. For individual taxpayers, the important taxes to which individuals are likely to be subject are dealt with in some detail. We have endeavoured to include the most important issues, but it is not feasible to discuss every subject in comprehensive detail within this format. If you would like to know more, please contact the BDO firm(s) with which you normally deal. Your adviser will be able to provide you with information on any further issues and on the impact of any legislation and developments subsequent to the date mentioned at the heading of each chapter.

About BDO

BDO is a global organisation of independent public accounting, tax and advisory firms which perform professional services under the name of BDO. The global fee income of BDO firms, including the members of their exclusive alliances, was US\$9.6 billion in 2019. These firms have representation in 167 countries and territories, with over 88,000 people working out of 1,617 offices worldwide.

BDO's brand promise is to be the leader for exceptional client service and when you choose to work with BDO you quickly discover what makes our service offering stand out. BDO offers a comprehensive collection of high quality tax services and assets designed to support exceptional performance, and all our tax engagements benefit from the hands-on involvement of experienced professionals, backed by world-class resources. BDO people embrace technology and combine their expertise in this area with the unique relationship-driven and responsive skills we have as human beings to create truly memorable and valuable experiences for our clients. Your advisers are both fit for the future and are agile enough to handle the biggest and the smallest names in the industries we serve.

We work hard to understand our clients' businesses and ensure that we match both our service offering and our people to their complex individual needs. We believe that providing our clients with access to experienced professionals who are actively engaged in addressing their tax and business issues is the most reliable way to provide exceptional service, always with a strong focus on trust and transparency.

Regardless of your location, size or international ambitions we can provide effective support as you expand into new areas of the world. In an ever-evolving economic environment, businesses need a global organisation that provides exceptional, bespoke service combined with local knowledge and expertise. BDO is uniquely positioned to serve this demand, providing effective support and a truly global integrated global footprint.

TABLE OF CONTENTS

CORPORATE TAXATION	9
INTRODUCTION	9
1. CORPORATE INCOME TAX	9
1.1. TYPE OF TAX SYSTEM	9
1.2. TAXABLE PERSONS	9
1.2.1. <i>Residence</i>	10
1.3. TAXABLE INCOME	10
1.3.1. <i>General</i>	10
1.3.2. <i>Exempt income</i>	11
1.3.3. <i>Deductions</i>	11
1.3.3.1. <i>Deductible expenses</i>	11
1.3.3.2. <i>Non-deductible expenses</i>	15
1.3.4. <i>Depreciation and amortization</i>	15
1.3.4.1. <i>Fixed assets</i>	15
1.3.4.2. <i>Intangibles</i>	16
1.3.4.3. <i>Accelerated depreciation</i>	16
1.3.5. <i>Reserves and provisions</i>	17
1.4. CAPITAL GAINS	17
1.5. LOSSES	17
1.5.1. <i>Ordinary losses</i>	17
1.5.2. <i>Capital losses</i>	18
1.6. RATES	18
1.6.1. <i>Income and capital gains</i>	18
1.6.2. <i>Withholding taxes on domestic payments</i>	18
1.7. INCENTIVES	18
1.8. ADMINISTRATION	23
1.8.1. <i>Taxable period</i>	23
1.8.2. <i>Tax returns and assessment</i>	23
1.8.3. <i>Payment of tax</i>	23
1.8.4. <i>Rulings</i>	23
2. TRANSACTIONS BETWEEN RESIDENT COMPANIES	23
2.1. GROUP TREATMENT	23
2.2. INTERCOMPANY DIVIDENDS	24
3. OTHER TAXES ON INCOME	24
3.1. URBAN MAINTENANCE AND CONSTRUCTION TAX AND EDUCATION SURCHARGE	24
3.2. RESOURCE TAX	24
3.3. SPECIAL INCOME TAX ON CRUDE OIL	28
4. TAXES ON PAYROLL	28
4.1. PAYROLL TAX	28
4.2. SOCIAL SECURITY CONTRIBUTIONS	28
5. TAXES ON CAPITAL	29
5.1. NET WORTH TAX	29
5.2. REAL ESTATE TAX	29
5.2.1. <i>Urban land use tax</i>	29
5.2.2. <i>House property tax</i>	29
5.2.3. <i>Farmland use tax</i>	30
6. INTERNATIONAL ASPECTS	30
6.1. RESIDENT COMPANIES	30
6.1.1. <i>Foreign income and capital gains</i>	30
6.1.2. <i>Foreign losses</i>	30

6.1.3.	<i>Foreign capital</i>	30
6.1.4.	<i>Double taxation relief</i>	30
6.2.	NON-RESIDENT COMPANIES	31
6.2.1.	<i>Taxes on income and capital gains</i>	31
6.2.2.	<i>Taxes on capital</i>	33
6.2.3.	<i>Administration</i>	33
6.3.	WITHHOLDING TAXES ON PAYMENTS TO NON-RESIDENT COMPANIES	33
6.3.1.	<i>Dividends</i>	33
6.3.2.	<i>Interest</i>	33
6.3.3.	<i>Royalties</i>	34
6.3.4.	<i>Other</i>	34
6.3.5.	<i>Withholding tax rates chart</i>	35
7.	ANTI-AVOIDANCE	40
7.1.	GENERAL	40
7.2.	TRANSFER PRICING	41
7.3.	THIN CAPITALIZATION	43
7.4.	CONTROLLED FOREIGN COMPANY	43
8.	VALUE ADDED TAX	44
8.1.	GENERAL	44
8.2.	TAXABLE PERSONS	44
8.3.	TAXABLE EVENTS	45
8.4.	TAXABLE AMOUNT	45
8.5.	RATES	46
8.6.	EXEMPTIONS	46
8.7.	NON-RESIDENTS	48
9.	MISCELLANEOUS TAXES	48
9.1.	CAPITAL DUTY	48
9.2.	TRANSFER TAX	48
9.2.1.	<i>Immovable property</i>	48
9.2.1.1.	<i>Deed tax</i>	48
9.2.1.2.	<i>Land appreciation tax</i>	49
9.2.2.	<i>Shares, bonds and other securities</i>	49
9.3.	STAMP DUTY	49
9.4.	CUSTOMS DUTY	50
9.5.	EXCISE DUTY	50
9.6.	OTHER TAXES	50
9.6.1.	<i>Vehicle and vessel use tax</i>	50
9.6.2.	<i>Vehicle purchase tax</i>	51
9.6.3.	<i>Environmental tax</i>	51
	INDIVIDUAL TAXATION	53
	INTRODUCTION	53
1.	INDIVIDUAL INCOME TAX	53
1.1.	TAXABLE PERSONS	53
1.2.	TAXABLE INCOME	54
1.2.1.	<i>General</i>	54
1.2.2.	<i>Exempt income</i>	55
1.3.	EMPLOYMENT INCOME	56
1.3.1.	<i>Salary</i>	56
1.3.2.	<i>Benefits in kind</i>	57
1.3.3.	<i>Pension income</i>	57
1.3.4.	<i>Directors' remuneration</i>	58
1.4.	BUSINESS AND PROFESSIONAL INCOME	58
1.5.	INVESTMENT INCOME	58

1.6.	CAPITAL GAINS	59
1.7.	PERSONAL DEDUCTIONS, ALLOWANCES AND CREDITS	60
	1.7.1. <i>Deductions</i>	60
	1.7.2. <i>Allowances</i>	61
	1.7.3. <i>Credits</i>	61
1.8.	LOSSES	62
1.9.	RATES	62
	1.9.1. <i>Income and capital gains</i>	62
	1.9.2. <i>Withholding taxes</i>	62
1.10.	ADMINISTRATION	63
	1.10.1. <i>Taxable period</i>	63
	1.10.2. <i>Tax returns and assessment</i>	63
	1.10.3. <i>Payment of tax</i>	64
	1.10.4. <i>Rulings</i>	64
2.	OTHER TAXES ON INCOME	64
2.1.	URBAN MAINTENANCE AND CONSTRUCTION TAX AND EDUCATION SURCHARGE	64
2.2.	RESOURCE TAX	64
2.3.	OTHER	64
3.	SOCIAL SECURITY CONTRIBUTIONS	64
4.	TAXES ON CAPITAL	65
4.1.	NET WEALTH TAX	65
4.2.	REAL ESTATE TAX	65
	4.2.1. <i>Urban land use tax</i>	65
	4.2.2. <i>House property tax</i>	65
4.3.	OTHER TAXES	66
	4.3.1. <i>Stamp duty</i>	66
5.	INHERITANCE AND GIFT TAXES	66
5.1.	TAXABLE PERSONS	66
5.2.	TAXABLE BASE	66
5.3.	PERSONAL ALLOWANCES	66
5.4.	RATES	66
5.5.	DOUBLE TAXATION RELIEF	66
6.	INTERNATIONAL ASPECTS	66
6.1.	RESIDENT INDIVIDUALS	66
	6.1.1. <i>Foreign income and capital gains</i>	67
	6.1.2. <i>Foreign capital</i>	67
	6.1.3. <i>Double taxation relief</i>	67
6.2.	EXPATRIATE INDIVIDUALS	68
	6.2.1. <i>Inward expatriates</i>	68
	6.2.2. <i>Outward expatriates</i>	69
6.3.	NON-RESIDENT INDIVIDUALS	69
	6.3.1. <i>Taxes on income and capital gains</i>	69
	6.3.2. <i>Taxes on capital</i>	71
	6.3.3. <i>Inheritance and gift taxes</i>	71
	6.3.4. <i>Administration</i>	71
KEY FEATURES	73

CHINA (PEOPLE'S REP.)

This chapter is based on information available up to 15 January 2020.

Introduction

The People's Republic of China is a unitary state. For administrative purposes, China has 4 autonomous municipalities, 5 autonomous regions, 2 special administrative regions and 23 provinces. The Hong Kong and Macau Special Administrative Regions are not under the tax jurisdiction of China, and the same applies to Taiwan, which China considers to be a rebel province. Thus, tax treaties concluded by China are not applicable to Hong Kong, Macau and Taiwan.

Domestic and foreign invested enterprises are subject to enterprise income tax on corporate profits. Capital gains are included in the computation of taxable income, and not subject to a separate tax. A value added tax (VAT) is also imposed.

Enterprise income tax is legislated by the Enterprise Income Tax Law (EITL), which became effective on 1 January 2008. The implementation rules, the Enterprise Income Tax Regulations (EITR), were released on 6 December 2007 and became effective on the same date.

The Ministry of Finance (MOF) is responsible for tax policy and the tax administration agency, which is a ministry-level agency, is the State Taxation Administration (the name was changed from State Administration of Taxation (SAT) in 2019, but the commonly known acronym SAT will continue to be used in this chapter). The State Council and its departments, i.e. the MOF and the SAT, are authorized to issue circulars (jointly issued by the MOF and SAT, also known as *Cai Shui*) and public notices (issued by the SAT, also known as *Gong Gao*), for the purposes of interpretation and implementation of the EITL and EITR.

Social security contributions are required from employers and employees.

The currency is the renminbi, also denoted as yuan (CNY).

1. Corporate Income Tax

1.1. Type of tax system

China operates a classical system of taxation. Profits are first taxed at the corporate level, and dividends distributed from the profits are taxed in the hands of shareholders with no applicable credits.

Subject to certain conditions, a resident enterprise or company is generally allowed to exclude dividends received from another resident enterprise or company from its taxable income.

1.2. Taxable persons

A taxpayer is any enterprise or organization in China that derives income and is therefore liable to tax in accordance with the Enterprise Income Tax Law (EITL). Enterprise income tax may be imposed on enterprises, including foreign investment enterprises, companies and other associations.

A foreign investment enterprise (FIE) is a Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or wholly foreign-owned enterprise established in China. A foreign enterprise (FE) is a foreign enterprise with or without an establishment in China which is incorporated abroad or under foreign laws. FIEs and FEs are subject to the same taxes as Chinese domestic enterprises.

This chapter is largely restricted to Chinese joint-stock companies and limited liability companies, as well as FIEs and FEs in the form of joint-stock companies and limited liability companies. These entities are referred to as enterprises.

Partnerships are not separate taxable entities, and tax is imposed on the partners individually. The EITL does not apply to domestic partnerships or sole proprietorships in China. However, foreign partnerships and sole proprietorships deriving income from China may be subject to the EITL.

1.2.1. Residence

Under the EITL, which is effective from 1 January 2008, a resident enterprise is defined as:

- an enterprise established or incorporated under the laws of China; or
- an enterprise established under foreign laws, or in a special region (e.g. Hong Kong, Macau), but whose place of effective management is in China.

Under the EITR, “effective management” means the factual and effective exercise of the entire management and control of the production and business operations, personnel, finance, assets, etc. of an enterprise.

1.3. Taxable income

1.3.1. General

A resident enterprise is subject to income tax on worldwide income. A non-resident enterprise is taxable only on income that has its source in China (see section 6.2.).

Enterprise income tax (EIT) is charged on “taxable income”. Taxable income is defined as total income less non-taxable income, exempt income, allowable deductions and losses of previous years. Taxable income is calculated on an accrual basis. However, a resident or non-resident enterprise may also be taxed on a deemed basis under certain circumstances (see e-commerce enterprises in section 1.7. and for non-resident enterprises, see section 6.2.1.).

Total income includes:

- income from trade;
- income from providing services;
- income from disposal of property;
- dividends, bonus and other investment income;
- interest;
- rental income;
- royalties;
- donations; and
- other income.

1.3.2. Exempt income

The following are not taxable (article 7 of the EITL):

- fiscal appropriations (funding) by the government;
- fees and government charges collected according to administrative rules; and
- other non-taxable income prescribed by the State Council.

Exempt income includes:

- interest on government bonds;
- 50% of the interest derived from bonds issued by the China Railway Company between 2016 and 2018 (Circular [2016] No. 30) and between 2019 and 2023 (Circular [2019] No. 57);
- dividends, profits and other investment income received by a resident enterprise from another resident enterprise, except those arising from publicly traded shares of (resident) companies which have not been held continuously for at least 12 months;
- dividends, profits and other investment income received by a permanent establishment (PE) of a foreign enterprise from a resident enterprise if such income is connected with that PE; and
- income derived by qualified non-profit organizations, including:
 - donations received from entities and individuals;
 - government subsidies other than government funds referred to in article 7 of the EITL (*see above*) and income received for services provided to the government;
 - member fees collected on the basis of regulations issued by the civil affairs or finance departments at the level higher than the province;
 - interest on bank deposits of non-taxable/exempt income; and
 - other types of income prescribed by the MOF and the SAT.

From 1 January 2018, a non-profit organization will qualify for tax exemption only if it satisfies certain conditions such as qualification by the relevant government department, conducting of activities for public interest, use of funds for non-profit activities, restriction on proprietary rights of the incorporators, salary level of employees, etc. The tax exemption status is granted for 5 years, with a possibility of renewal.

See section 1.7. for tax incentives.

1.3.3. Deductions

1.3.3.1. Deductible expenses

Costs, expenses, (certain) taxes and losses are deductible to the extent that they are incurred in gaining or producing income and if the amount to be deducted is evidenced and in accordance with the relevant laws and regulations. Expenditures are categorized as revenue or capital in nature. Expenditures incurred in acquiring fixed assets or in developing intangible assets are not deductible in the year they are incurred, but may be depreciated or amortized over a number of years. Expenditures incurred in the course of carrying on business, such as cost of goods sold, manufacturing costs, marketing expenses, administrative expenses, financial expenses and taxes on sales are deductible in the period in which they are incurred.

Costs refer to manufacturing costs such as raw materials, cost of goods sold, business expenditures, other consumable expenditures, cost of services received, cost of fixed assets and cost of intangibles incurred by an enterprise in its production and business operations.

Expenses are defined as sales expenses, administrative expenses and financial expenses incurred by an enterprise in its production and business operations, other than expenses that have already been recognized as costs.

Management fees

Service fees are deductible if they are considered to be “reasonable”. Reasonable fees paid by a Chinese establishment or place of business of a foreign enterprise to its head office in the course of production and business operations are deductible if they are at arm’s length and the payments may be substantiated.

Management fees paid to another enterprise are not allowed as a deduction.

Interest expenses

Interest expenses are generally deductible in calculating income if they are incurred in connection with the business activities of the taxpayer and the amount of the interest is reasonable. Interest paid between the branches (or business units) of an enterprise is not deductible except for banking businesses. Non-financial institutions are generally not allowed to grant loans.

Interest on loans granted to employees and persons other than shareholders and related individuals is deductible if (i) the borrowing and lending are genuine, lawful and valid, and (ii) the enterprise and individual have concluded a loan contract. The deductible interest is limited to the interest that would be charged by an independent financial institution for the same kind of loan, and for the same period.

The deduction of interest on loans taken out by an enterprise is restricted if the investors of that enterprise have not paid up the full amount of the required capital contribution. Also, thin capitalization and transfer pricing rules apply to interest paid between associated enterprises (*see* section 7.3.).

With effect from 1 September 2013, in the case of a hybrid investment by an enterprise, the interest paid by the invested enterprise must be recognized on the due date of the interest (including guaranteed minimum interest, fixed profit or fixed dividends) and included in the taxable income of the investing enterprise. Correspondingly, the same interest is deductible by the paying enterprise up to the market-rate interest. The difference between the amount of repayment (or amount of redemption) by the invested enterprise and the cost of investment (the principal amount) must be treated as gains or losses from debt restructuring and included in the taxable income of the current period (SAT Public Notice [2013] No. 41).

Entertainment expenses

Up to 60% of entertainment expenses related to production and business operations are deductible, but the total amount of these expenses may not exceed 0.5% of the turnover of the enterprise of the current year.

Promotion/advertisement expenses

Advertising expenses and business promotion expenses are deductible up to 15% of annual business turnover. For cosmetic, pharmacy and beverage (non-alcoholic) manufacturing industries, such expenses are deductible up to 30% of the sales of the

current year from 1 January 2017 to 31 December 2020. If the amount of expenses exceeds 15% and 30%, respectively, in a current year, the excess may be carried forward to future years for deduction.

Advertisement and promotion expenses incurred by tobacco industries are not deductible.

Employee expenses

Reasonable wages and salaries paid to employees are deductible. Deductible wages and salaries include all cash or non-cash payments related to labour services made by the employer during the tax year (e.g. basis wages, bonus, allowances, subsidies, year-end salary, overtime and other employment-related payments).

Employee education expenditure is deductible, but limited to 8% of the total salary and wages.

Basic social security contributions (basic pension insurance, basic medical insurance, unemployment insurance, injury insurance, maternity insurance, etc.) and housing funds that are contributed according to the standards and scope prescribed by the State Council or provincial governments are deductible. Some supplementary social security contributions are also deductible, subject to certain limitations.

Contributions to supplementary old age pension insurance and medical insurance for employees are deductible, provided that such contributions do not exceed 5% of the total wages of employees. Contributions to other commercial insurances for employees are not deductible except in relation to special occupations, such as those for mine workers.

Rental expenses

Rental payments paid for fixed assets leased by an enterprise are deductible as follows:

- expenses related to the leasing of a fixed asset under an operational lease regime may be deducted evenly throughout the lease term;
- for the same expenses under a financial lease regime, the portion that forms the value of fixed assets pursuant to the regulations may be depreciated and deducted in stages; and
- in a sale and leaseback financial lease transaction, the part of the payment that is categorized as interest is a deductible expense for the lessee.

Rental payments paid by an establishment or place of a foreign enterprise to its head office are not deductible.

Donations, sponsorships and gifts

Donations are not deductible in determining taxable income for the purposes of enterprise income tax unless the donations are made to charitable organizations designated by the government. Charitable donations of up to 12% of total annual profits are deductible.

Charitable donations are defined as donations made by an enterprise through the people's governments and their departments at the county or higher levels or through charitable organizations recognized by the provincial or higher governments for the purposes prescribed by the "Law of the People's Republic of China on Donation for Charitable Activities".

The list of qualified organizations is published annually. A charitable organization must fulfil all of the following conditions:

- it is legally registered as a legal person;
- it is non-profit seeking and aims at the development of public interests;
- the total assets and their increase are owned by the organization as a legal person;
- its revenue and positive operation results are mainly used for activities that are in line with the objectives of the organization;
- the remaining assets after liquidation may not be transferred to any individual or profit-making organization;
- it is not engaged in any activities that are not related to the objectives of the organization;
- it has a sound and complete financial and accounting system;
- donors may not in any way be involved in the distribution of the organization's assets; and
- other conditions prescribed by the State Council and the tax authorities.

Sponsorships are not deductible. The term "sponsorship" refers to all types of expenditures incurred by an enterprise which may not be classified as an advertisement expense and is not relevant to production and business operations.

With effect from 31 December 2015, prior approval for tax deduction of donations in public interest made to charitable organizations is no longer required and the organizations receiving the donations are not required to submit application reports or related documents for tax deduction qualification purposes (Circular [2015] No. 141).

Cost contribution arrangements

Costs incurred under a cost contribution arrangement, in respect of the joint development or transfer of intangible assets, or the provision or receiving of services, with an affiliated company outside China are deductible under certain conditions.

Start-up costs

Entertainment expenses during the incubation period of an enterprise are deductible subject to the limits applicable to other entertainment expenses (*see above*). Advertisement expenses incurred in the incubation period are deductible once the enterprise starts up.

Other deductions

The fees related to technical and safety maintenance and improvement are deductible in the current period for purposes of EIT.

From 1 January 2018 to 31 December 2020, investment of less than CNY 5 million in newly purchased machinery or equipment is deductible (*see section 1.3.4.1.*).

Taxes that are deductible refer to taxes (other than enterprise income tax) paid by an enterprise such as consumption tax, VAT that has not been reclaimed as input tax, urban maintenance and construction fees, education fees, resource tax, customs duties, land appreciation tax and stamp duty.

Losses of fixed assets and inventory due to damages are deductible, subject to restrictions and conditions imposed by the tax authorities.

Premiums paid by entities for employer's liability insurance and public liability insurance are deductible (SAT Public Notice [2018] No. 52).

1.3.3.2. Non-deductible expenses

The EITL prohibits the deduction of the following items:

- dividends, profit distributions and other returns on equity investment;
- enterprise income tax;
- fines for defaulted tax payments;
- fines and penalties and losses caused by confiscation;
- donations in excess of 12% of the total profit;
- sponsorships;
- non-approved reserve funds; and
- other expenditures for non-business purposes.

1.3.4. Depreciation and amortization

Depreciation is compulsory and generally may not be deferred.

The following fixed assets may not be depreciated:

- fixed assets not in use except buildings and real estate;
- fixed assets under an operating lease;
- fixed assets under a financial lease;
- fixed assets fully written off but still in service;
- fixed assets used for non-business purposes;
- land that has been separately valued and booked as a fixed asset; and
- other fixed assets that are not allowed to be depreciated, such as residential houses let out to employees the rents of which are not included in the taxable income of the enterprise, or fixed assets received as a donation.

The basis for depreciation is historical cost.

1.3.4.1. Fixed assets

The term "fixed assets" refers to assets used for production, provision of services, leasing and management with a useful life of more than 12 months. A fixed asset the value of which is less than CNY 5,000 can be deducted immediately (Circular [2014] No. 75). In other words, an asset the cost price of which is less than CNY 5,000 is not considered to be a fixed asset for the purpose of depreciation.

Depreciation for fixed assets is computed annually on a straight-line basis on the assumption that there is a reasonable residual salvage value depending on the type and use of the asset. Once the reasonable residual value is determined, it may not be changed.

Substantial costs incurred for repairs or improvements may be added to the cost of an asset. If the useful life of the asset is extended as a result of the repairs or improvements, the depreciation period may also be extended.

The prescribed depreciation periods for different classes of assets are:

- 20 years for buildings and structures;

- 10 years for aircraft, railway transportation means, vessels, machinery, mechanical equipment and other production equipment;
- 5 years for appliances, tools, furniture, etc. used in production and business activities;
- 4 years for transportation means other than aircraft, trains and vessels; and
- 3 years for electronic or digital equipment.

Separate depreciation rules apply to assets such as livestock and crops:

- 10 years for crops and forestry used in the production process; and
- 3 years for livestock.

Expenditures incurred for renovations to fully written-off fixed assets, leased fixed assets and for extensive renovation to fixed assets may be amortized over the period of the new useful life after the renovation if the expenditure exceeds 50% of the book value of the fixed asset and its useful life after the renovation is more than 2 years.

Other expenditures not specified may be amortized over 3 years on a straight-line basis.

When a used asset is acquired, the depreciation period is the remaining useful life of the asset, up to the prescribed depreciation period. If an asset is still useful after it has been fully depreciated, no further depreciation is allowed.

There are other rules for special industries, such as the oil industry. Under certain circumstances, accelerated depreciation is allowed as a tax incentive (*see* section 1.3.4.3.).

1.3.4.2. Intangibles

Expenditure incurred for acquiring intangibles such as patents, proprietary technology, trademarks, copyrights and land use rights, know-how and goodwill may be amortized on a straight-line basis. The specified amortization period for intangibles is generally at least 10 years.

The amortization period may also be the useful life as stated in an agreement or contract, e.g. when intangibles are contributed as equity investments.

The following intangibles may not be amortized:

- self-developed intangibles the expenditures for which have been deducted from taxable income;
- self-created goodwill;
- intangible assets used for non-business purposes; and
- other intangibles that are not allowed to be amortized.

For depreciation of software, *see* section 1.3.4.3.

1.3.4.3. Accelerated depreciation

Accelerated depreciation is available for the following assets as a tax incentive:

- fixed assets in the manufacturing industry: limited to 60% of the statutory minimum depreciation period;
- purchased software which is treated as a fixed asset or an intangible, and machines used for integrated circuits production: 2 years and 3 years respectively; and

- as a temporary measure to stimulate the economy, any cost incurred during the period between 1 January 2018 and 31 December 2020 on newly purchased machinery or equipment with a value not exceeding CNY 5 million is eligible for tax deduction in the year of investment. If the value of such assets exceeds CNY 5 million, they will be recorded as fixed assets and depreciated according to accelerated depreciation rates stipulated under Circular [2014] No. 75 and Circular [2015] No. 106 for the upgrading of machinery and equipment by certain industries. Buildings and constructions do not fall within the scope of such rules (Circular [2018] No. 51).

Fixed assets that need to be technically upgraded or are exposed to severe corrosion or constant vibration may be eligible for accelerated depreciation. However, the minimum depreciation period may not be less than 60% of the prescribed minimum depreciation period (see section 1.3.4.1.).

1.3.5. Reserves and provisions

Reserves and provisions are generally not deductible, except for special funds prescribed by law and regulations. For example, a special provision for environmental protection is allowed to be made.

Provisions for bad debt are deductible for taxpayers engaged in banking and insurance services or other similar businesses.

The MOF and SAT have issued Circular [2015] No. 3 and Circular [2015] No. 9, which apply between 1 January 2014 and 31 December 2018, to provide detailed rules on the making of provisions by financial institutions.

1.4. Capital gains

There is no separate tax on capital gains, which are included in ordinary taxable income. The term “gains” is defined as the proceeds from the transfer of property which exceed the original cost of the property. The source of gains is the place where the property giving rise to the gains is situated. There are no exemptions.

Income from the sale of shares by an enterprise is subject to income tax.

Gains from the disposal of various property, business restructuring, donations received and recovery of unpaid payables must be included in the annual taxable income in the year of realization.

Gains on the transfer of non-cash assets used for investment may be allocated over a period of 5 years, and included in the taxable income of the relevant tax year (Circular [2014] No. 116).

1.5. Losses

Losses are generally deductible. Under the EITR, losses include a shortfall loss, damage loss and loss from the scrapping of fixed assets and inventories, loss on property transfers, loss on doubtful accounts, loss on bad debts, loss resulting from a force majeure such as natural disasters, and other losses which are incurred in the process of production and business operation activities of an enterprise.

1.5.1. Ordinary losses

Losses may be carried forward for a maximum of 5 years without any restriction.

A special rule applies from 1 January 2018 to high and new technology enterprises and small to medium-sized scientific technology enterprises that have not offset their losses within the statutory period of 5 years. These enterprises may carry forward their

losses for another 5 years. As a result, the loss carry-forward period for these enterprises has been extended to 10 years (Circular [2018] No. 76). Losses may not be carried back.

Losses incurred by an overseas establishment of an enterprise may not be set off against the profits attributable to its establishments in China. Losses realized by one branch may be used to offset income from another branch, but losses of a subsidiary may not be offset against profits of other subsidiaries. There is no regime for group relief.

In cases where an enterprise with a legal personality participates in a partnership, losses suffered by the partnership are not taken into account in determining the profits of the participating enterprise.

1.5.2. Capital losses

Losses from the sale of shares are deductible. Losses incurred from an equity investment may be deducted on a one-off basis in the tax year in which the losses are recognized (SAT [2010] No. 6). Expenses and losses arising from investments in enterprises may not be set off against income from other sources, nor may losses incurred by an enterprise's overseas establishments be utilized.

1.6. Rates

1.6.1. Income and capital gains

The statutory rate of enterprise income tax is 25%. This rate also applies to interest, royalties, rental and leasing income, as well as to capital gains which are generally included in the taxable income of an enterprise.

The tax rate may be reduced to 20% or to an effective rate of 5% or 10% for a small low-profit enterprise (*see* section 1.7.).

Other reduced rates may apply under the tax incentive regimes (*see* section 1.7.).

1.6.2. Withholding taxes on domestic payments

Dividends, interest and royalties paid to a resident enterprise are not charged to withholding tax, but included in the taxable income of the resident enterprise and taxed accordingly, except where exempted (*see* section 1.3.2.).

See section 6.3. for withholding rates on payments to non-residents.

1.7. Incentives

Tax incentives are provided under chapter 4 of the EITL. Generally, tax incentives may only be granted by law or the State Council. The State Council issued a decree Guo Fa [2015] No. 25 on the general policy on tax incentives that stresses the uniformity of the tax incentives regime and the validation of tax incentives granted by local governments. From an administrative point of view, tax incentives may be categorized into those requiring approval and those that merely pertain to filing requirements. A taxpayer may reclaim overpayment of taxes within the period prescribed by the Law on Tax Collection and Administration if it has not enjoyed the benefits of a tax incentive that it is otherwise entitled to (SAT Public Notice [2015] No. 43). The State Council is authorized to announce other tax incentives to accommodate the needs of economic and social development. From time to time, notices are, under instructions of the State Council, issued by the MOF and SAT to introduce new incentives and interpret,

detail and implement the existing tax incentives. Tax incentives are not restricted to income tax, but are also granted to VAT customs duty and other taxes. These incentives are discussed in the respective sections relating to these taxes.

The EITL provides that certain sectors, industries or regions are eligible for tax exemption or reduction. The main sectors, industries or regions include:

- agriculture, forestry, animal husbandry and fishery;
- key public infrastructure projects supported by the state;
- qualified projects engaged in environmental protection, energy or water saving; technology transfer;
- small and medium-sized enterprises;
- technology enterprises;
- designated venture capital; and
- designated regions governed by autonomous governments of minority nationalities.

The main enterprise income tax incentives are summarized below.

For accelerated depreciation, see section 1.3.4.1.

Agriculture, forestry, animal husbandry and fishery

Generally, enterprises engaged in agriculture, forestry, animal husbandry and ocean fishery are exempt from EIT and those engaged in flower, tea, spices, aquaculture are subject to EIT on 50% of taxable income that results in 50% tax reduction.

Key public infrastructure projects supported by the state

Starting from the year in which the first amount of business revenue is generated, key public infrastructure projects such as construction of harbours, airports, highways, power plants or water conservation projects are exempt from income tax in the first 3 years and taxed on 50% of the taxable income in the following 3 years.

Projects engaged in environmental protection, energy or water saving

Starting from the year in which the first amount of business revenue is generated, the projects engaged in environmental protection, energy or water saving are exempt from income tax in the first 3 years and taxed on 50% of the taxable income in the following 3 years.

Small low-profit enterprises

The tax rate for a small low-profit enterprise is 20%. A small low-profit enterprise is referred to as an enterprise that satisfies all the following three conditions:

- the annual taxable income of the enterprise is less than CNY 3 million;
- the enterprise has less than 300 employees; and
- the total value of the enterprise's assets is less than CNY 50 million.

From 1 January 2019 to 31 December 2021, a small low-profit enterprise is subject to EIT on only 25% of annual taxable income of up to CNY 1 million at a reduced rate of 20%. For the portion of annual taxable income between CNY 1 and 3 million, only 50% of the income is taxable at a reduced rate of 20%. As a result, the effective tax rate for taxable income of up to CNY 1 million and that between CNY 1 and 3 million is 5% and 10%, respectively (Circular [2019] No. 13).

The reduced rate of 20% for small low-profit enterprises does not apply to non-resident enterprises.

The R&D super deduction for small low-profit enterprises has been increased to 75% of R&D expenses or amortization on the basis of 175% of the costs if development expenses are capitalized as an intangible asset, in the period between 1 January 2017 and 31 December 2019.

Technology transfer

Gains from transfers of technology by a Chinese resident enterprise of up to CNY 5 million are exempt from EIT, while the excess amount is taxed on 50% of taxable income which results in an effective tax rate of 12.5%. Income from technical advice, service and training, which are necessary for the conversion of the technology transferred into production and practical use, are considered to be gains from transfer of technology and may be exempt or taxed at the favourable rate if the technical advice, service and training related to technology transfer are agreed to be provided in the transfer contract and the aggregated payment for the technology transfer includes the amounts paid for the technical advice, service and training connected to the transfer.

High-new technology enterprise (HNTE)

A high-new technology enterprise is taxed at a reduced rate of 15% if certain conditions are satisfied. From 1 January 2016, the “Working Guidelines for Qualification of High-New Technology Enterprises” (Guo Ke Fa Huo [2016] No. 195), jointly issued by the Ministry of Science and Technology, the MOF and the SAT, apply. The Guidelines stipulate the rules with regard to the authorities that are involved in the qualification of enterprises, procedures, conditions and administrative aspects of tax incentives.

A qualifying HNTE can enjoy the tax incentive starting from the year in which the HNTE certificate is issued and the filing procedure is completed. An HNTE is required to make a prepayment of EIT at a rate of 15% in the year that the HNTE certificate expires. If it fails to renew the certificate by the end of that year, it must pay EIT at the full tax rate by making a supplement to the prepayment. The loss carry-forward period for HNTEs as well as for small to medium-sized scientific technology enterprises has been extended from 5 to 10 years.

Advanced Technology Service Enterprise (ATSE)

Advanced technology service enterprises are subject to EIT at a rate of 15%. An advanced technology service enterprise is required to observe the relevant provisions of Circular [2014] No. 59 when applying for the tax incentive. The services eligible for the incentive include, among others, computer and information services, research and development technical services, cultural-technical services, and medical services practiced according to standards of traditional Chinese medicine.

Chinese depository receipts (CDRs) issued by innovative enterprises

Income from the transfer of, and dividends received in holding CDRs of innovative enterprises are temporarily exempt from EIT if the CDRs are transferred or the dividends are received by closed-end and open-end publicly offered securities investment funds (Circular [2019] No. 52).

Additional deductions for research and development (super-deduction)

Special (additional) deductions are allowed for research and development (R&D) expenditures for the development of new technology, new products and new processes. The enterprise is allowed to claim, in addition to the actual expenses, a special

deduction of 50% of the R&D expenses if the developed product is charged to the profit and loss account in the current period, or amortization on the basis of 150% of the costs if they are capitalized as an intangible asset.

The deduction is increased for small and low-profit enterprises from 2017 to 2019 (*see below*).

From 1 January 2018 to 31 December 2020, the super deduction in addition to the actual costs and expenses incurred on R&D activities of an enterprise may be increased by 75% in determining the enterprise's profits if the R&D activities have not yet resulted in an intangible. Where the R&D activities have created an intangible, the amortization base of that intangible may be increased by 175% (Circular [2018] No. 99).

Software or integrated circuits enterprises

From 1 January 2018, an exemption from enterprise income tax for the first 2 years (starting from the first profit-making year) and a reduction of the enterprise income tax rate from 25% to 12.5% for the next 3 years apply to certified software and integrated circuits (IC) manufacturing enterprises. IC-manufacturing enterprises engaged in production of more advanced ICs may enjoy even a 5-year tax exemption followed by 5 years of 50% tax reduction if certain conditions are met (Circular [2018] No. 27).

The incentive applies only to enterprises that are recognized by the authorized government agency and are duly certified, and that calculate their business results based on accounting records (and not on the deemed profit basis). Once the tax holiday period commences, it may not be interrupted or suspended by losses in a certain year or for other reasons (SAT Public Notice [2013] No. 43).

Accelerated amortization or depreciation is available for software and machines used for integrated circuits production, over 2 years and 3 years respectively.

A 10% tax rate is available to certified key software enterprises (i.e. those recognized within the state's plan). In May 2016, the MOF, the SAT, the National Development and Reform Commission and the Ministry of Industry and Information Technology jointly issued notices providing detailed rules for implementation and eligibility requirements of these tax incentives (Circular [2016] No. 49, Fa Gai Gao Ji [2016] No. 1056 and Circular [2018] No. 27).

Venture capital

A venture capital enterprise which invests in a non-listed small to medium-sized high-/new technology enterprise or a technology start-up for more than 2 years may deduct an amount up to 70% of its investment from the taxable income. Unused allowance may be carried over to the following years.

Underdeveloped regions

From 1 January 2011 to 31 December 2020, enterprises newly established in the underdeveloped regions of Xinjiang are exempt from enterprise income tax for the first 2 years starting from the first profit-making year, and tax will subsequently be reduced in the following 3 years by 50% (i.e. an effective rate of 12.5%). Enterprises eligible for the incentives must carry on at least 70% of the businesses listed in a government catalogue.

FIEs investing in the central and western regions in alignment with the Priority Industry Catalogue for Foreign Investment in Central and Western Regions of 2013 are entitled to a reduced enterprise income tax rate of 15%, provided that certain conditions are satisfied.

Deferral of withholding tax on dividends/profits reinvested by foreign investors

Subject to certain conditions, withholding tax on dividends/profits derived by a foreign investor (non-resident enterprise) can be deferred if the dividends or profits are reinvested in foreign investment projects that are not prohibited under Chinese law and regulations (Circular [2018] No. 102).

The main condition is that investments made using the distributed dividends/profits must be direct investments. The forms of investment include increasing the capital or capital reserve of the existing resident company, the establishment of a new enterprise, and the acquisition of a Chinese enterprise, but increase of share capital, conversion of profits to share capital and acquisition of a listed company are excluded.

Furthermore, SAT Public Notice [2018] No. 53 provides supplementary rules and requires the foreign investor and the enterprise distributing the dividends/profits to complete the “Reporting Form on Information of Withholding Tax Deferral by Non-Resident Enterprise” and “Reporting Form on Withholding of Enterprise Income Tax” respectively when applying for the tax deferral.

With the exception of an approved merger, foreign investors must still pay the withholding tax within 7 days in the event of the withdrawal of the investment that has benefited from the exemption, such as a share transfer, share buy-back or liquidation of a business.

The foreign investor and the distributing enterprise may appoint an agent to handle the tax matters regulated in the Public Notice. However, a Letter of Power of Attorney must be signed in writing and filed with the competent tax authority for that purpose.

Cross border e-commerce enterprises

From 1 January 2020 and subject to certain conditions, e-commerce enterprises engaged in cross-border business located within a cross-border e-commerce pilot zone will be taxed on a deemed profit basis of 4% of revenue.

Prevention and control of COVID-19 outbreak

In order to support the prevention and control of the 2019 coronavirus (COVID-19) outbreak, the MOF, General Administration of Customs and SAT have issued several circulars to grant the following tax exemptions:

- enterprises engaged in the production of key goods and devices used for COVID-19 outbreak prevention, which expand their production capacity, may include the expenditure on the purchase of new equipment as costs of the current period (Circular [2020] No. 8);
- donations in cash or in kind for fighting the COVID-19 outbreak are fully deductible (Circular [2020] No. 9);
- losses suffered in 2020 by enterprises in the transportation, hotel and restaurant and tourism business that are affected by the COVID-19 outbreak may be carried forward for 8 years (Circular [2020] No. 8);
- proceeds derived from the transportation of key goods for outbreak prevention are exempt from VAT. The VAT exemption equally applies to public transportation ser-

- vices, living services and the provision of courier delivery services for essential living supplies (Circular [2020] No. 8);
- unused input VAT on the transportation of key goods for outbreak prevention that have been accrued from the end of December 2019 may be refunded in full (Circular [2020] No. 8); and
 - the import of goods and equipment donated for the prevention and control of COVID-19 is exempt from import duties, VAT and consumption tax (Circular [2020] No. 6).

1.8. Administration

1.8.1. Taxable period

The tax year is the calendar year. In cases where an enterprise commences or terminates its operation during a year, the period of the operation counts as a tax year.

1.8.2. Tax returns and assessment

Enterprises are required to file their tax returns on a fixed date within 5 months after the accounting year, irrespective of whether they have made profits or suffered losses. An application for an extension of time for the submission of tax returns may be made to the tax authorities.

Taxpayers must also file monthly or quarterly provisional tax returns with the local tax authorities and pay EIT in respect of advance tax (see section 1.8.3.).

1.8.3. Payment of tax

Monthly or quarterly advance payments are required within 15 days after the end of the month or quarter concerned. The annual payment should be made within 5 months of the end of the tax year. Any overpayment is refunded by the tax authorities.

The amount of tax is computed as 1 month or quarter of the planned annual profit or the actual income in the preceding year, payable within 15 days from the end of each quarter. The final settlement must be made within 5 months from the end of each tax year. Any shortfall must be made up and any excess payment is refunded.

1.8.4. Rulings

Public rulings consist of notices (circulars), replies and letters which are issued by the MOF or the SAT to local tax authorities to clarify specific tax matters raised by either the local tax authorities or taxpayers.

There is no advance tax ruling (private ruling) system, except for rulings on transfer pricing.

For the purposes of transfer pricing, advance pricing arrangements (APAs) are available.

2. Transactions between Resident Companies

2.1. Group treatment

Group taxation is not allowed in China. The EITL does not contain a provision which will make group consolidation possible.

2.2. Intercompany dividends

A resident enterprise is allowed to exclude dividends received from another resident enterprise from its taxable income to avoid double taxation. However, this does not apply to publicly traded shares of resident companies which have not been held for at least 12 consecutive months.

3. Other Taxes on Income

3.1. Urban maintenance and construction tax and education surcharge

On 20 November 2019, the State Council approved the draft of the Urban Maintenance and Construction Tax Law. The charge of the draft tax remains the same as the Urban Maintenance and Construction Fee currently imposed by the interim regulation. Once approved, this fee will be codified as an official tax.

Under the existing regulation, with effect from 1 December 2010, foreign invested enterprises, foreign enterprises and foreign individuals, including those that were previously exempt, are subject to the urban maintenance/construction tax and education surcharge.

The tax and surcharge are based on the amounts paid for VAT and consumption tax. Depending on where the taxpayer is located, the rate of the urban maintenance and construction tax may be 7% in a city, 5% in a county or town or 1% in the other remaining areas. The education surcharge is 3%.

Local governments may introduce a local additional education charge at a rate ranging from 1% to 2% on indirect taxes.

From 1 January 2019, local governments may, according to the local circumstances, reduce the urban maintenance and construction tax and education surcharges for VAT small-scale taxpayers by up to 50% of the tax or charges payable (Circular [2019] No. 13).

Small enterprises with a monthly turnover of less than CNY 100,000, or a quarterly turnover of less than CNY 300,000, are exempt from education surcharge and local additional education surcharge (Circular [2016] No. 12).

3.2. Resource tax

Resource tax is imposed on natural resource products on an ad valorem basis. From 1 July 2016, the tax rates of the main taxable products are as follows. (From 1 September 2020, the Resource Tax Law will apply; *see below* for the new rates.)

<i>Taxable product</i>	<i>Rate (% of value/price)</i>
Crude oil	6
Natural gas	6
Coal	2-10
Rare earths	7.5-27
Tungsten	6.5
Molybdenum	11
Iron ore	1-6
Gold	1-4
Copper	2-8
Bauxite ore	3-9
Lead-zinc, nickel, tin ore	2-6

<i>Taxable product</i>	<i>Rate (% of value/price)</i>
Other ferrous metals	> 20
Graphite	3-10
Diatomite, kaolin, fluorite, limestone, pyrite	1-6
Phosphate rock ore, potassium chloride	3-8
Potassium sulphate	6-12
Well salt, lake salt	1-6
Extraction of underground salt brine salt	3-15
Coal seam (into) gas	1-2
Clay, gravel ore (CNY)	0.1-5 per ton or cubic metre
Other non-ferrous products not listed (CNY)	> 30 per ton or cubic metre, or 20% on an ad valorem basis
Sea salt	1-5

The resource tax reform on water resources was launched as a pilot project in Hebei Province on 1 July 2016, regulated under Circular [2016] No. 55. From 1 December 2017, the pilot reform was expanded to the following places at the applicable minimum rates:

<i>City</i>	<i>Surface water (CNY per m³)</i>	<i>Ground water (CNY per m³)</i>
Beijing	1.6	4.0
Tianjin	0.8	4.0
Shanxi	0.5	2.0
Inner Mongolia	0.5	2.0
Shangdong	0.4	1.5
Henan	0.4	1.5
Sichuan	0.1	0.2
Shangxi	0.3	0.7
Ninxia	0.3	0.7

The range of rates and detailed rules on tax base, assessment of sale proceeds, preferential policies and tax administration are provided in Circular [2015] No. 52, Circular [2016] No. 53, Circular [2016] No 54 and SAT Public Notice [2018] No. 13.

The local governments may determine the applicable rate of resource tax. There are also exemptions or reductions of resource tax available for e.g. crude oil and natural gas used within the oil field, for fields with a low abundance of oil and gas, and for deepwater oil and gas fields, etc.

For contracts concluded before 1 November 2011 by joint ventures with foreign companies in oil and gas fields, the fees imposed on mining activities shall be continually paid and the resource tax is exempt. For contracts concluded after 1 November 2011, the resource tax applies and the fees on mining activities are exempt (Circular [2014] No. 73).

From 1 September 2020, the new tax rates under the Resource Tax Law, passed by the Standing Committee of the National Congress, will apply:

<i>Tax item</i>		<i>Taxable object</i>	<i>Tax rate (%)</i>	
Energy and minerals	Crude oil	Raw ore	6	
	Natural gas, shale gas and gas hydrate	Raw ore	6	
	Coal	Raw ore or mineral processing products	2-10	
	Coal-generated (seam) gas	Raw ore	1-2	
	Uranium, thorium	Raw ore	4	
	Oil shale, oil sand, natural bituminous, and stone coal	Raw ore or mineral processing products	1-4	
	Geothermal energy	Raw ore	1-20, or CNY 1-30 per cubic meter	
Metal minerals	Ferrous metals	Iron, manganese chromium, vanadium, titanium	Raw ore or mineral processing products	1-9
	Non-ferrous metals	Copper, lead, zinc, tin, nickel, antimony, magnesium, cobalt, bismuth, mercury	Raw ore or mineral processing products	2-10
		Bauxite	Raw ore or mineral processing products	2-9
		Tungsten	Mineral processing products	6.5
		Molybdenum	Mineral processing products	8
		Gold silver	Raw ore or mineral processing products	2-6
		Platinum, palladium, ruthenium, osmium, iridium, rhodium	Raw ore or mineral processing products	5-10
		Light rare earth	Mineral processing products	7-12
		Medium heavy rare earth	Mineral processing products	20
		Beryllium, lithium, zirconium, strontium, rubidium, cesium, niobium, tantalum, germanium, indium, thallium, hafnium, rhenium, cadmium, selenium, tellurium	Raw ore or mineral processing products	2-10

<i>Tax item</i>		<i>Taxable object</i>	<i>Tax rate (%)</i>
Non-metallic minerals	Minerals	Kaolin	Raw ore or mineral processing products 1-6
		Limestone	Raw ore or mineral processing products 1-6 or CNY 1-10 per ton (or cubic meter)
		Phosphorus	Raw ore or mineral processing products 3-8
		Graphite	Raw ore or mineral processing products 3-12
		Fluorite, pyrite, natural sulfur	Raw ore or mineral processing products 1-8
		Natural quartz sand, gangue, quartz powder, crystal, industrial diamond, Iceland spar, cyanite, sillimanite, feldspar, talc, corundum, magnesite, pigment mineral, trona, mirabilite, sodium saltpeter, alum, arsenic, boron, iodide, bromine, bentonite, diatomite, ceramic clay, fire clay, bauxite, attapulgite clay, sepiolite clay, illite clay, rectorite clay	Raw ore or mineral processing products 1-12
		Pyrophyllite, wollastonite, diopside, perlite, mica, zeolite, barite, witherite, calcite, vermiculite, tremolite, industrial tourmaline, chalk, asbestos, blue asbestos, andalusite garnet, gypsum	Raw ore or mineral processing products 2-12
	Other clay (cast clay, tile clay, ceramsite clay, cement ingredient clay, cement ingredient red clay, cement ingredient loess, cement ingredient mudstone, clay for insulation)	Raw ore or mineral processing products 1-5 or CNY 0.1-5 per ton (or cubic meter)	
	Rock	Marble, granite, dolomite, quartzite, sandstone, diabase, andesite, diorite, slate, basalt, gneiss, amphibolites, shale, pumice, tuff, obsidian, nepheline syenite, serpentine, medical stone, marl, potassium-bearing rock, potassium-bearing sand shale, natural oilstone, peridotite, pitchstone, trachyte, gabbro, pyroxenite, syenite, volcanic ash, volcanic slag, peat	Raw ore or mineral processing products 1-10
		Sandstone	Raw ore or mineral processing products 1-5 or CNY 0.1-5 per ton (or cubic meter)
Gemstone	Gemstones, jade, gem-quality diamonds, agate, topaz, tourmaline	Raw ore or mineral processing products 4-20	

<i>Tax item</i>		<i>Taxable object</i>	<i>Tax rate (%)</i>
Ground-water and gas minerals	Carbon dioxide gas, hydrogen sulfide, helium gas, radon gas	Raw ore	2%-5%
	Mineral water	Raw ore	1-20 or CNY 1-30 per ton (or cubic meter)
Salt	Sodium salt, potassium salt, magnesium salt, lithium salt	Mineral processing products	3-15
	Natural brine	Raw ore	3-15 or CNY 1-10 per ton (or cubic meter)
	Sea salt		2-5

3.3. Special income tax on crude oil

A windfall tax (special income tax on crude oil) is imposed on income from crude oil. The rates are as follows from 1 January 2015:

<i>Price per barrel (USD)</i>	<i>Rates (%)</i>
65 - 70	20
70 - 75	25
75 - 80	30
80 - 85	35
Over 85	40

4. Taxes on Payroll

4.1. Payroll tax

There is no payroll tax. However, employers are required to withhold individual income tax on wages and salaries of their employees on a monthly basis.

4.2. Social security contributions

Urban employers, including FIEs, are required to register with the local social insurance departments. The national law allows each local authority to set its own contribution rates, thus the rates vary from city to city:

- old-age pension insurance: up to 16% of total wages of the enterprise (in Beijing, the rate of the employer's contribution is fixed at 16% of gross salary);
- medical insurance: 8%;
- unemployment insurance: 1% to 1.5% (total contributions by employer and employee);
- occupational injury insurance: 0.5%-2% (the average contribution rate may be reduced by 0.25% under Ren She Bu Fa [2016] No. 36 and, depending on the balance of the accumulated fund of this insurance, may be further reduced by 20% to 50% before 1 May 2020 (Circular of the Ministry of Human Resources and Social Security Insurances [2019] No.35));

- maternity fund: less than 1% (the average contribution rate may be reduced by 0.5% under Ren She Bu Fa [2016] No. 36); and
- housing fund: 5% to 20%, depending on the employer.

For all social security contributions, there is a maximum amount (ceiling) on which the premium is imposed. Contributions by employers are deductible for tax purposes, provided the contributions are limited to the amounts set by the government.

Foreign employees working in China (including employees from Hong Kong, Macau and Taiwan from 1 January 2020), and their employers, are also required to contribute to all the above social security insurances except the housing fund. *See further* Individual Taxation section 3.

5. Taxes on Capital

5.1. Net worth tax

There is no net worth tax.

5.2. Real estate tax

Plans exist to introduce a real estate tax. The legislation is expected to be available by the end of 2017.

5.2.1. Urban land use tax

Urban land use tax is imposed on all units which use land located in cities and towns, including FIEs. The tax rates vary from CNY 1.5 to CNY 30 per square metre in large cities, from CNY 1.2 to CNY 24 per square metre in medium-sized cities, and from CNY 0.9 to CNY 18 in small cities. The rates for county towns and mining areas are from CNY 0.6 to CNY 12. In less developed inland areas and autonomous regions, reduced rates are used provided that permission is obtained from the local governments. As a general rule, local governments are allowed to adjust tax rates on the condition that the reduced rate is not lower than 30% of the lowest rate for county towns and mining areas.

Certain types of land are exempt from tax, including land used by state organs, armed forces and people's organizations, land used by non-profit units financed by the government, land occupied by religious temples, shrines, parks and places of historic interest, streets, squares and green areas of a city, and land directly used by units such as agriculture, forestry, animal husbandry and fisheries, and land for public use.

5.2.2. House property tax

House property tax is levied on property (houses and other buildings, but not land) by the local government authority of the city, town, county or municipality in which the property is situated. The tax is also levied on FIEs and foreign enterprises.

The tax rate is either 1.2% of the assessed value of the property or 12% of the annual rental income. However, a deduction of 10% to 30% (as determined by local governments) of the assessed value or rental income is allowed in arriving at the taxable base.

The rate of 12% may be reduced to 4% if a living accommodation is let by an individual or a social organization for residential use.

In general, the tax is payable by the owner of the property, or the mortgagee where the property is mortgaged. Where the property is owned by the state and used by a business unit, the latter pays the tax.

Certain properties are exempt from tax, such as public schools, hospitals, childcare centres, parks, scenic areas, historic sites and buildings used for religious purposes.

Further exemptions may be provided by the MOF or local government authorities.

5.2.3. *Farmland use tax*

The Law on Farmland Use Tax is in force from 1 September 2019. The farmland use tax applies to businesses and institutions which use farmland for non-farming purposes, excluding farmland used for military purposes, railways and airports, schools, kindergartens, hospitals, etc. Exemptions also apply to farmland used by FIEs, except enterprises that are wholly owned by Hong Kong investors.

The tax rates vary depending on the population density of the farmland location, and range from CNY 10-50 per square metre for land that is located in a county where per capita farmland is less than 1 mu (each mu approximately equals 0.0777 hectares), to CNY 5-25 per square metre for land located in a place where per capita farmland is more than 3 mu. However, the exact rate of the tax is determined by the government of the province, autonomous region or municipality directly under the central government, where the land is situated.

6. International Aspects

6.1. *Resident companies*

See section 1.2.1.

6.1.1. *Foreign income and capital gains*

Resident companies are taxed on worldwide income, including capital gains. The tax treatment of foreign income is generally the same as for Chinese-sourced income (see sections 1.3. to 1.8.).

Dividends received from foreign companies are taxable. A credit is available in respect of withholding tax paid on the dividends and for underlying tax on the corporate profits if the shareholding requirement of 20% is met. The amount of credit is limited to the amount of Chinese tax payable.

6.1.2. *Foreign losses*

Losses suffered by foreign branches or the permanent establishment of a Chinese resident enterprise may not be offset against the profits of that enterprise. The same applies to losses suffered by participations in foreign companies.

6.1.3. *Foreign capital*

There is no net worth tax. Property located abroad is generally not subject to tax in China.

6.1.4. *Double taxation relief*

An ordinary tax credit is granted, both unilaterally and under tax treaties, for foreign tax paid on foreign income. The amount of foreign tax credit (FTC) is limited to the amount of Chinese tax on the foreign income. FTC is calculated and granted either per country or on an overall basis (overall credit). Once the election is made, it may not be altered for 5 years. Excess credits may be carried forward for up to 5 years.

A certificate of residence is required to obtain tax treaty relief.

A credit for underlying taxes is available if the shareholding in the foreign dividend-distributing company (up to 5 tiers) is at least 20%.

Enterprises that are not able to calculate the FTC limit for a particular country are not entitled to the FTC for the current period, and are not allowed to carry over the foreign taxes to the following years.

However, a simplified method of calculating the FTC limit for foreign business income and qualified foreign dividend income is allowed if an enterprise deriving foreign dividends or profits is not able to determine the true and accurate amount of foreign tax due to “uncontrollable reasons”, although a payment certificate or evidence of sorts is issued by the source country. In this case, the FTC limit for foreign business income and qualified foreign dividend income may be set at 12.5% of the foreign taxable income.

This method is not allowed where the effective tax rate of the foreign country (or region) is *less* than 50% of the Chinese enterprise income tax rate of 25%.

In cases where the statutory and effective tax rate of the foreign country (or region) is obviously *higher* than the Chinese enterprise income tax rate, the foreign taxes may be credited with limitation. Several countries are recognized as having a higher income tax rate than China, including Argentina, France, Japan, Pakistan and the United States.

The foreign taxes of a resident enterprise which are exempt or reduced in a foreign state according to the tax laws or regulations of that state, and which should be treated as having been paid on the basis of a treaty provision on tax sparing credit, may be credited against Chinese income taxes.

The preferential tax rate of 15% for qualified new high-technology enterprises (see section 1.7.) applies to the foreign income derived by such enterprises. In determining the limit of the FTC (maximum deduction), the total tax on total income must be calculated on the basis of the preferential tax rate of 15%.

See section 6.3.5. for a list of tax treaties in force.

6.2. Non-resident companies

A non-resident enterprise is defined as:

- an enterprise established under foreign laws, with an establishment, place, etc. in China but whose place of effective management is not in China; or
- an enterprise that is not established in China and does not have an establishment, place, etc. in China, but derives income from sources in China.

6.2.1. Taxes on income and capital gains

Non-residents are assessed only on income sourced in China, including capital gains. The income is generally subject to tax under the normal rules for residents (see sections 1.3. to 1.7.).

The tax rate in respect of business income of non-resident enterprises is the same as for resident enterprises, i.e. 25%, but the reduced rate for low-profit enterprises does not apply to non-residents (see section 1.6.1.).

In determining the source of income in or outside China, the following rules must be observed:

- income from the sale of goods: the place where the transaction takes place;
- income from services: the place where the service is provided;
- income from disposal of properties: the place where the real estate is located; in the case of movable property, the place where the entity or establishment or site

- transferring the property is located; or in the case of investment property, the place where the invested corporation is located;
- dividend income and profits: the place where the corporation distributing the income is located;
 - interest, rental income or royalty: the place where the corporation or individual owning or distributing the income is located; and
 - other income: the place determined by the State Council and the relevant tax authorities.

A non-resident is taxable on income derived from a business carried on through an establishment or place in China.

The terms “establishment” (*Ji Gou*) and “place” (*Chang Suo*), rather than “permanent establishment” (*Chang She Ji Gou*), are used in the EITL. It is defined to include (i) management offices, business sites and representative offices, (ii) factories, farms and places of extraction of natural resources, (iii) places where services are provided, (iv) contracted projects such as construction, installation, assembly, repair or exploration sites, or (v) establishments and places for production or business operations.

However, the term “permanent establishment” is used in China’s tax treaties and generally follows the definition in the UN and OECD model conventions.

According to the SAT, a subsidiary fully controlled by a foreign enterprise does not in itself trigger a permanent establishment. However, under certain circumstances, a permanent establishment could be considered to be established if there are complex exchanges of personnel or transactions between the parent and subsidiary in practice (Guo Shui Fa [2010] No. 75).

Under certain circumstances, the secondment of personnel to China could constitute a permanent establishment. A non-resident enterprise that seconded to China a person, or commissions an entity or person in China, to carry on the day-to-day management of their real properties is considered to have a permanent establishment in China and is required to file a tax return for the purposes of enterprise income tax.

A permanent establishment is generally treated as a “separate entity”, and all transactions with its head office must be conducted at arm’s length.

For capital gains, non-residents are subject to withholding tax. The SAT has issued a ruling on the treatment of capital gains derived by non-resident enterprises from the transfer of equity in Chinese resident enterprises. Under the ruling, gains on a transfer of shares, which takes place outside China, may be subject to income tax in China if the structure has no reasonable commercial purpose (*see further* section 7.1.).

Qualified foreign institutional investors (QFII) and renminbi qualified foreign institutional investors (RQFII) are exempt from enterprise income tax on capital gains from the disposal of shares or other equity interests sourced in China (Circular [2014] No. 79).

In cases where the accounting records are incomplete and there is a lack of information to carry out a tax audit, or where there are other reasons for the inability to accurately calculate taxable income, the tax authorities may determine the taxable income on a deemed profit basis. The standard deemed profit rates vary from 15% to 50%, depending on the type of industry.

See section 6.3. for withholding rates.

6.2.2. *Taxes on capital*

There is no net worth tax.

6.2.3. *Administration*

If income received is subject to final withholding tax and the tax is properly withheld, there should be no filing requirements (*see* section 6.3.). Otherwise, the requirements for non-residents to file tax returns are the same as for residents. *See* section 1.8. for tax compliance and administration.

6.3. *Withholding taxes on payments to non-resident companies*

Income paid to a non-resident enterprise without an establishment in China is subject to withholding tax. The payer is required to act as the withholding agent and withhold tax each time a payment is made or becomes due. The tax withheld must be paid to the tax authorities within 7 days of the date of withholding and a withholding tax return must be filed at the same time.

Treaty rates may be applied in respect of withholding taxes. Non-resident taxpayers that are entitled to treaty benefits may apply for tax exemption or reduction at the time of filing their tax returns or when the tax is withheld by a withholding agent. From 1 January 2020, non-residents who want to claim treaty benefits have to make a self-assessment in respect of their entitlement to treaty benefits, file a tax return to claim the benefits and maintain supporting documents for an eventual tax audit (such as a tax residence certificate, contracts, company resolutions or receipts in relation to income received, and evidence of beneficial ownership). Pre-examination and approval from the tax authority is not required.

If the non-resident taxpayer has a withholding agent, it must submit the “Information Form of Non-Resident on the Entitlement to Tax Treaty Benefits” to that agent who in turn has to file a tax return together with the form, the agent also has to withhold and pay the tax.

6.3.1. *Dividends*

Dividends paid to non-residents are subject to a withholding tax at 10% on the gross amount. The tax is final if they do not have an establishment in China, or they have an establishment but the dividends paid are not connected with that establishment.

A resident enterprise paying dividends/profits to a non-resident without a permanent establishment in China is required to withhold tax on the date of the actual payment or the due date of the payment.

Dividends distributed from profits generated prior to 2008 are exempt from withholding tax (*see* section 1.7.).

Withholding tax on dividends/profits derived by foreign investors can be deferred, subject to certain conditions, if the dividends or profits are reinvested in China (*see* section 1.7.).

6.3.2. *Interest*

Interest paid to non-residents is subject to a final withholding tax of 10% on the gross amount if the recipient is a non-resident company without a permanent establishment in China, or if it has a permanent establishment in China but the interest income has no connection with the permanent establishment.

Withholding tax exemption is granted for certain types of interest income provided approval is obtained from the tax authorities.

Interest on bonds derived by foreign institutions from the Chinese bond market is temporarily exempt from enterprise income tax and value added tax from 7 November 2018 to 6 November 2021 (Circular [2018] No. 108). However, this temporary exemption does not apply to interest on bonds derived by a Chinese establishment or site of a foreign institution where that interest is effectively connected with such establishment or site. Interest income may be subject to VAT.

6.3.3. *Royalties*

Royalties paid to non-residents are subject to withholding tax at 10% of the gross amount, but the tax may be waived or reduced for a transfer of advanced technology. The tax is final if the non-residents do not have a permanent establishment in China.

The SAT has clarified that “information concerning industrial, commercial or scientific experience” refers to proprietary technologies. Service fees for providing guidance, etc. for the use of proprietary technologies under a transfer or licensing of such technologies are treated as royalties if the provision of such services does not give rise to a permanent establishment.

Technical services related to the transfer of a right to use proprietary technology constitute part of the technology transfer. The income arising from these services is classified as royalties for the purposes of the treaty.

The definition of royalties also includes payments (rentals) received as consideration for the use of, or right to use, industrial, commercial or scientific equipment. Royalties do not include the portion of payments treated as interest under a financial lease scheme when the ownership is transferred to the lessee, nor consideration for the use of immovable property.

Royalties also include compensation received for the renting of films, videotapes and audio tapes to China, and fees paid for the use of software attached to post and telecommunications equipment sold by an enterprise with no place of business in China.

Royalties are subject to VAT.

6.3.4. *Other*

Technical assistance and service fees

Technical assistance and service fees are generally treated as business profits and are only taxable in China if there is a permanent establishment to which the fees are attributable. Otherwise, no withholding tax on technical assistance and service fees is imposed if there is no such permanent establishment. The services include (i) pure after-sales services for goods, (ii) services provided by sellers to buyers during a warranty period, (iii) professional services rendered by an institution or individual, such as engineering, management or consultancy services, and (iv) other similar remuneration as designated by the SAT.

Fees paid for technical assistance and services are regarded as royalties where they are provided for the purpose of facilitating the proper use of rights to use proprietary technology, such as patents, copyrights and designs, technical or industrial or commercial knowledge. In that case, withholding tax on royalties will be imposed.

Capital gains

Capital gains derived by non-residents, including from the sale of shares held in a Chinese entity, are subject to withholding tax at 10% on the net gains (sale proceeds less purchase price). The tax is final if the non-resident has no permanent establishment in China, or if there is a permanent establishment in China but the gains have no connection with that permanent establishment.

There is an exemption for QFIs and RQFIs, *see* section 6.2.1.

Gains from transfer of land-use rights

Gains derived by a non-resident on a transfer of land-use rights are subject to enterprise income tax, and tax must be withheld unless such gains are connected with a permanent establishment of the non-resident in China. In addition, such income may be subject to land appreciation tax (*see* section 9.2.1.2.).

Lease and rental income from real property

Non-residents receiving rental and leasing income from sources in China are subject to a withholding tax of 10% on the gross payment. The lessees are obliged to withhold the tax.

Under a financial lease arrangement, the difference between the total lease payments and the price of the leased asset (including the transfer price at the end of the lease) received by a non-resident lessor without a permanent establishment in China must be treated as interest on a loan on which the paying enterprise must withhold tax.

Income derived by a non-resident enterprise without a permanent establishment in China from the lease of real properties such as houses and buildings is subject to tax on a gross basis, and the tenant must withhold tax when each rent payment is made or has become due.

Payment defaults

If a Chinese enterprise is in default on contractual payments of interest, rentals and royalties to a non-resident enterprise, and the payments due have already been brought into account and deducted on the tax return, the enterprise must withhold tax on such defaults although no payment has actually been made.

Where the interest, rentals or royalties are discounted in the price of an asset or treated as start-up expenditure, the enterprise must withhold tax at the moment that such asset is depreciated or such expenditure is amortized.

Guarantee fees

Guarantee fees received by a non-resident enterprise must be treated as interest and taxed accordingly.

There is no branch profits or remittance tax.

6.3.5. Withholding tax rates chart

The following chart contains the withholding tax rates that are applicable to dividends, interest and royalty payments from China to non-residents under the tax treaties in force as at the date of review.

Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable. If the treaty provides for a rate lower than the domestic rate, the reduced treaty rate may be applied at source. Treaty rates may be applied at source if the recipient can provide a residence certificate of the contracting state and satisfies other conditions such as beneficial ownership.

	<i>Dividends</i>		<i>Interest¹</i>	<i>Royalties</i>
	<i>Individuals, companies</i>	<i>Qualifying companies</i>		
	<i>(%)</i>	<i>(%)</i>	<i>(%)</i>	<i>(%)</i>
Domestic Rates				
<i>Companies:</i>	10	10	0/10	10
<i>Individuals:</i>	0/7/10/20	n/a	0/20	3-45
Treaty Rates				
<i>Treaty With:</i>				
Albania	10	10	10	10
Algeria	10	5 ²	7	10
Armenia	10	5 ²	10	10
Australia	15	15	10	10
Austria	10	7 ²	10	10
Azerbaijan	10	10	10	10
Bahrain	10	10	10	10
Bangladesh	10	10	10	10
Barbados	10	5 ²	10	10
Belarus	10	10	10	10
Belgium	10	5 ³	10	7
Bosnia and Herzegovina ⁴	10	10	10	10
Botswana	5	5	7.5	5
Brazil	15	15	15	15/25 ⁵
Bulgaria	10	10	10	7/10 ⁶
Cambodia	10	10	10	10
Canada	15	10 ⁷	10	10
Chile	10	10	4/5/10 ⁸	2/10 ⁹
Croatia	5	5	10	10
Cuba	10	5 ²	7.5	5
Cyprus	10	10	10	10
Czech Republic	10	5 ²	7.5	10
Denmark	10	5 ²	10	10 ¹⁰
Ecuador	5	5	0/10	10
Egypt	8	8	10	8
Estonia	10	5 ²	10	10
Ethiopia	5	5	7	5
Finland	10	5 ²	10	10 ¹⁰
France	10	5	10	10
Georgia	10	0/5 ¹¹	10	5

	<i>Dividends</i>		<i>Interest¹</i>	<i>Royalties</i>
	<i>Individuals, companies</i>	<i>Qualifying companies</i>		
	<i>(%)</i>	<i>(%)</i>	<i>(%)</i>	<i>(%)</i>
Germany	10	5/15	10	6/10
Greece	10	5 ²	10	10
Hong Kong	10	5 ²	7	5/7 ¹²
Hungary	10	10	10	10
Iceland	10	5 ²	10	10 ¹⁰
India	10	10	10	10
Indonesia	10	10	10	10
Iran	10	10	10	10
Ireland	10	5 ²	10	10 ¹³
Israel	10	10	7/10 ¹⁴	10 ¹⁰
Italy	10	10	10	10 ¹⁰
Jamaica	5	5	7.5	10
Japan	10	10	10	10
Kazakhstan	10	10	10	10
Korea (Rep.)	10	5 ²	10	10
Kuwait	5	5	5	10
Kyrgyzstan	10	10	10	10
Laos	5	5	10	10
Latvia	10	5 ²	10	10
Lithuania	10	5 ²	10	10
Luxembourg	10	5 ²	10	10 ¹³
Macau	10	5 ²	7	5/7 ¹⁵
Malaysia	10	10	10	10/15 ¹⁶
Malta	10	5 ²	10	10 ¹⁰
Mauritius	5	5	10	10
Mexico	5	5	10	10
Moldova	10	5 ²	10	10
Mongolia	5	5	10	10
Montenegro ¹⁷	5	5	10	10
Morocco	10	10	10	10
Nepal	10	10	10	15
Netherlands	10	5	10	10
New Zealand	15	0/5	10	10
Nigeria	7.5	7.5	7.5	7.5
North Macedonia	5	5	10	10
Norway	15	15	10	10
Oman	5	5	10	10
Pakistan	10	10	10	12.5
Papua New Guinea	15	15	10	10
Philippines	15	10 ⁷	10	10/15 ¹⁶
Poland	10	10	10	10 ¹⁰

	<i>Dividends</i>		<i>Interest¹</i>	<i>Royalties</i>
	<i>Individuals, companies</i>	<i>Qualifying companies</i>		
	<i>(%)</i>	<i>(%)</i>	<i>(%)</i>	<i>(%)</i>
Portugal	10	10	10	10
Qatar	10	10	10	10
Romania	0/3 ¹⁸	0/3 ¹⁸	0/3 ¹⁴	3
Russia	10	5	0	6
Saudi Arabia	5	5	10	10
Serbia ¹⁷	5	5	10	10
Seychelles	5	5	10	10
Singapore	10	5 ²	7/10 ¹⁴	10 ¹³
Slovak Republic ¹⁹	10	10	10	10
Slovenia	5	5	10	10
South Africa	5	5	10	10 ¹⁰
Spain	10	10	10	10 ¹³
Sri Lanka	10	10	10	10
Sudan	5	5	10	10
Sweden	10	5 ²	10	10 ¹³
Switzerland	10	5	10	9
Syria	10	5 ²	10	10
Tajikistan	10	5 ²	8	8
Thailand	20	15 ²	-/10 ²⁰	15
Trinidad and Tobago	10	5 ²	10	10
Tunisia	8	8	10	5/10 ²¹
Turkey	10	10	10	10
Turkmenistan	10	5 ²	10	10
Ukraine	10	5 ²	10	10
United Arab Emirates	7	7	7	10
United Kingdom	10	5/15 ²²	10	10 ³
United States	10	10	10	10 ¹⁰
Uzbekistan	10	10	10	10
Venezuela	10	5 ⁷	5/10 ¹⁴	10
Vietnam	10	10	10	10
Zambia	5	5	10	5
Zimbabwe	7.5	2.5 ²	7.5	7.5

1. Many of the treaties provide for an exemption for certain types of interest, e.g. interest paid to public bodies and institutions, banks or financial institutions, or in relation to sales on credit or approved loans. Such exemptions are not considered in this column.
2. The rate generally applies with respect to participations of at least 25% of capital or voting power, as the case may be.
3. The lower rate applies to dividends paid to a company that holds directly at least 25% of the capital of the dividend-paying company for an uninterrupted 12-month period at least preceding the date on which the distributions are made.
4. This treaty was concluded between China (People's Rep.) and the former Socialist Federal Republic of Yugoslavia and continues to apply to Bosnia and Herzegovina.
5. The higher rate applies to royalties arising from the use or the right to use trademarks.

6. The lower rate applies to royalties in the case of the use, or the right to use, industrial, commercial or scientific equipment.
 7. The rate generally applies with respect to participations of at least 10% of capital or voting power, as the case may be.
 8. The rates under the treaty are 4% and 10% (from 1 January 2019 the general rate of 15% was reduced to 10% see paragraph 10 of the treaty's final protocol). The 4% rate applies to interest derived from loans granted by banks, insurance companies and other financial institutions. However, by virtue of a most favoured nation clause, the rates are further reduced as follows:
 - 4% on interest beneficially owned by:
 - an enterprise carrying on a lending or finance business with unrelated parties (excluding back-to-back loans, the rate for such interest is limited to 10%); or
 - an enterprise selling machinery or equipment on credit (excluding back-to-back loans, the rate for such interest is limited to 10%); and
 - 5% on interest derived from bonds or securities that are regularly and substantially traded on a recognized securities market.
- For further information see the activation treaties Chile-Italy and Chile-Japan. Further details, including the updated text of article 11, can also be found in the Chinese State Administration of Taxation (SAT) Public Notice [2018] No. 37 dated 1 July 2018 and Circular No. 50/2018 issued by the Chilean tax administration.
9. The rate of 2% applies to the royalties for the use of, or the right to use, industrial, commercial or scientific equipment.
 10. In the case of royalties from payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial, or scientific equipment, withholding tax is imposed on 70% of the gross amount.
 11. The 0% rate applies if the participation is at least 50% with a minimum investment of more than EUR 2 million; the 5% rate applies if the participation is at least 10% with a minimum investment of more than EUR 100,000.
 12. A rate of 5% applies to royalties arising from the leasing of aircraft and ships.
 13. In the case of royalties from payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment, withholding tax is imposed on 60% of the gross amount.
 14. The lower rate applies to payments to a financial institution in the treaty with Romania, a bank in the treaty with Venezuela, or a bank or financial institution in all other treaties.
 15. The 5% rate applies to royalties arising from the leasing of aircraft and vessels. This rate was introduced by way of the 2016 amending protocol.
 16. 10% for payments for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process (or know-how or copyright of any scientific work in the case of the treaty with Malaysia), or for the use of, or the right to use, industrial, commercial or scientific equipment or information (the treaty with the Philippines provides that the contract giving rise to the royalties from the Philippines must be approved by the Philippine competent authorities); 15% for payments for the use of, or the right to use any copyright of literary or artistic work (or scientific work in the case of the treaty with the Philippines) including cinematographic films, or tapes for radio or television broadcasting.
 17. This treaty was concluded between China (People's Rep.) and the Federal Republic of Yugoslavia.
 18. Dividends paid to the other contracting state or a political subdivision, local authority or administrative - territorial unit thereof, or any entity wholly or mainly owned (i.e. more than 50%) by the other contracting state are exempt.
 19. This treaty was concluded by the former Czechoslovakia.
 20. The 10% rate applies to interest paid to a financial institution (including an insurance company); otherwise the domestic rate applies.
 21. 5% for royalties paid for technical or economic studies or for technical assistance; 10% for royalties paid for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films, or films or tapes for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific experience.
 22. The rate of 5% applies to dividends paid to a company which holds directly or indirectly at least 25% of the capital of the dividend-paying company. The rate of 15% applied to dividends which are paid out of income or gains derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income or gains annually and whose income or gains from such immovable property is exempted from tax.

7. Anti-Avoidance

7.1. General

General anti-avoidance rule

The EITL introduced general anti-avoidance rules (GAARs) effective from 1 January 2008. The tax authorities are authorized to make adjustments to arrangements that may result in a reduction of tax payable and are made without any justifiable commercial or business reason.

Under the implementation rules on special tax adjustments, which apply retrospectively from 1 January 2008, the following are the targets of a GAAR investigation:

- abuse of treaties;
- abuse of the corporate structure;
- use of tax havens for the avoidance of taxes; and
- other business arrangements without bona fide commercial purposes.

The tax authorities are required to follow the principle of “substance over form”, and take the following factors into account in the application of GAARs:

- form and substance of the arrangements;
- time of establishment and duration of the arrangement;
- form of implementation;
- inter-relationship between the steps and components of the arrangement;
- changes in financial situations affected by the arrangement; and
- tax consequences of the arrangement.

In December 2014, the SAT published administrative guidelines on the GAAR that apply from 1 February 2015. The guidelines address issues such as the features of a tax avoidance arrangement and the methods of the tax adjustments. Specific anti-avoidance rules (SAAR) on transfer pricing, controlled foreign companies, thin capitalization, etc., have preference over the GAAR. Treaty provisions (e.g. on beneficial ownership and the principle purpose test) have preference over the domestic rules.

Further, China has concluded exchange of information agreements with Argentina, the Bahamas, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man, Liechtenstein, Jersey and San Marino.

On 6 July 2017, China signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

Anti treaty shopping and “beneficial owner”

The SAT issued Public Notice [2018] No. 9 on the determination of “beneficial owner” for the purposes of claiming treaty benefits in respect of dividends, interest and royalties. A “beneficial owner” is referred to as a person who is in possession and has the power to dispose of the income or the rights and assets from which the income is derived, and is generally supposed to carry on a substantial business. An agent or a conduit company may not be regarded a beneficial owner.

“Beneficial ownership” must be determined on the basis of factors and factual circumstances. In determining “beneficial ownership”, the pass-through obligation regarding the income received, business activities, tax liability and other contractual arrangements will be examined. Further, some safe harbour rules are provided, such as for a

listed company of a contracting state which is by definition a beneficial owner of dividends derived from China, and the same applies to fully owned, direct or indirect subsidiaries, provided that the dividends stemmed from the shareholding of the listed company.

The granting of treaty benefits may be suspended if the competent tax authorities are unable to make a decision on the beneficial ownership due to the complexities of the case, but once the beneficial owner is ascertained, the overpaid taxes must be refunded.

Indirect transfer of equity/assets

With effect from 3 February 2015, SAT Public Notice [2015] No. 7 on the indirect transfer of shares or other taxable properties applies. The regulation states that an arrangement executed by a non-resident enterprise, which indirectly transfers the shares or other properties in a Chinese enterprise (without reasonable commercial purposes in order to avoid enterprise income tax in China) must be recharacterized as a direct transfer with reference to article 47 of the EITL.

The regulation defines “reasonable commercial purposes”, and provides safe-harbour rules for inter-company organization (SAT Public Notice [2015] No. 7).

Payments to non-residents

The SAT issued an announcement on 18 March 2015 (SAT Public Notice [2015] No. 16) concerning the transfer pricing rules on services and royalty payments to overseas related parties.

7.2. Transfer pricing

Enterprises are required to conduct business transactions with their related companies at arm's length. The tax authorities are empowered to make reasonable adjustments under the domestic law if such transactions are not conducted at arm's length and the amount of tax payable in China is reduced as a result. The transfer pricing rules incorporated in Guo Shui Fa [2009] No. 2 are replaced and updated by the SAT through SAT Public Notice [2017] No. 6.

Related parties

The EITR set out a broad range of criteria for determining what is to be considered “related” for tax purposes. An enterprise, organization or individual are deemed to be “related” with another enterprise if one of the following relationships is present:

- direct or indirect control with respect to capital, business operations, purchases and sales, etc.;
- direct or indirect common control by a third party; and
- any other relationships arising from mutual interest.

According to article 2 of SAT Public Notice [2016] No. 42, two parties are regarded as being related if one of the following situations occurs:

- (1) the total direct or indirect shareholding by one party in the other, or by a common third party in both, exceeds 25%; in an indirect shareholding, if a party holds more than 25% of the shares in an intermediary, which in turn holds shares in a subsidiary, the full percentage of shareholding of the intermediary in the subsidiary is regarded as the shareholding percentage of the first party in the subsidiary. In the case of two natural persons who are spouses, relatives or siblings or because of custodianship or family maintenance are related to each other, and hold equity

interests in the same enterprise, the percentages of the shares held by them should be aggregated in computing the related-party relationship;

- (2) one party owns shares in another party or a common third party owns shares in both parties of less than 25%, but a loan granted by one party to the other constitutes 50% or more of the paid-in capital or one party guarantees 10% or more of the total debts of the other (loans or guarantees granted by independent financial institutions are excluded);
- (3) one party owns shares in another party or a common third party owns shares in both parties of less than 25%, but the normal production and business operations of one party are only possible if patents, know-how, trademarks, copyrights or other intellectual property are provided by the other party;
- (4) one party owns shares in another party or a common third party owns shares in both parties of less than 25%, but purchases, sales, receipt or provision of services, etc. of one party are controlled by the other party. "Control" means that one party may take decisions in respect of financial and business policies of the other party and derive benefits from the other party's business operations;
- (5) more than half of the board members or the senior management (including the secretary of the board of directors, managers, deputy managers, financial controllers or other personnel prescribed by the articles of association of listed companies) of one party are appointed or assigned by the other party or concurrently serve as directors or senior management of the other party, or more than half of the directors or senior management of both parties are appointed or assigned by a common third party;
- (6) two natural persons who are spouses, relatives by lineal consanguinity, siblings or because of custodianship or family maintenance are related to each other have one of the relationships described above under (1)-(5); and
- (7) two parties effectively have common interests in other ways.

Arm's length principle

The "arm's length principle" is defined as the principle adopted by unrelated parties when conducting business transactions based on fair transactional prices and normal business practices.

Transfer pricing methods

An appropriate method of adjustment is selected and applied by the tax authorities, depending on the type, nature and outcome of an audit. The methods of adjustment prescribed for transfer pricing of tangible property are:

- comparable uncontrolled price method;
- resale-price method, only where products are not substantially changed by processing (e.g. changes of design, performance, structure and trademark). In addition, the profits to be earned by the reseller must be determined reasonably;
- cost-plus method;
- profit split method;
- transactional net margin method; and
- other justified methods. Other methods proposed by the enterprise (asset valuation methods such as the cost method, market method and income method) may also be allowed, although approval must be obtained from the relevant tax authorities.

Transfer pricing documentation

A resident enterprise assessed on the actual profit basis or a non-resident enterprise having a site or establishment in China is required to report on related-party transactions and to prepare transfer pricing documents if the prescribed conditions are fulfilled. The contemporaneous documentation consists of a master file, local file and special issue file. A multinational enterprise with a consolidated revenue of the preceding year that exceeds CNY 5.5 billion is also required to submit a country-by-country report (SAT Public Notice [2016] No. 42).

The master file must be completed within 12 months after the accounting year of the ultimate holding company while the local file and special issue file must be completed within 6 months of the following year in which the related-party transactions take place. Upon the request of the tax authority, the documentation must be submitted within 30 days and drafted in the Chinese language. The retention period of the documentation is 10 years.

On 12 May 2016, China signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country reports.

Advance pricing agreement

Subject to certain conditions, a taxpayer may apply for an unilateral, bilateral or multilateral APA. On 11 October 2016, SAT updated the rules on APAs which provide for the procedure consisting of six steps and information to be submitted when applying for an APA (SAT Public Notice [2016] No. 64). The SAT also publishes annual reports on APAs which provide a guide to enterprises interested in entering into an APA with the Chinese tax authority and as a reference for competent authorities of other countries.

7.3. Thin capitalization

If the debt-to-equity ratio of an enterprise exceeds a prescribed standard, the interest on the excess debt may not be deducted in computing taxable income.

The standard debt-to-equity ratios are:

- 5:1 for financial service enterprises; and
- 2:1 for non-financial enterprises.

Non-deductible interest may not be carried over to the following years; it is recharacterized as dividends and subject to income tax.

Failure to pay up the capital contribution (registered capital) may also affect the deduction of interest on loans. The SAT issued a ruling on 4 June 2009 ([2009] No. 68) stating that a portion of interest on loans taken out by an enterprise is not deductible for the purposes of enterprise income tax if the investors of the enterprise have not paid up the full amount of capital contribution. The portion of interest which is not deductible is the amount of interest attributable to the difference between the capital amount actually paid up and the amount of capital contribution which should have, but has not, been paid within the prescribed time limit.

7.4. Controlled foreign company

A portion of income from an overseas controlled enterprise must be included in the taxable income of the resident enterprise controlling the first enterprise if the overseas enterprise is established in a jurisdiction where the tax burden is obviously lower

than 50% of the standard rate of 25%, i.e. 12.5%, and if the overseas enterprise does not distribute or insufficiently distributes its profits without justifiable operational reasons.

With effect from 1 September 2014, resident enterprises that have incorporated, participated in or disposed of an existing interest in foreign companies are required to complete the “Information Form on Foreign Participation of Resident Enterprise” to provide information on foreign participation and foreign income in the following circumstances:

- direct or indirect participation in a foreign company exceeds 10% or more of share capital or share capital with voting rights of the foreign company;
- direct or indirect participation in a foreign company is increased from less than 10% to 10% or more; and
- direct or indirect participation in a foreign company is decreased from 10% or more to less than 10%.

The participation and income must be calculated in accordance with the Chinese accounting rules, and the form must be filed together with the annual corporate income tax return (SAT Public Notice [2014] No. 38).

8. Value Added Tax

8.1. General

Value added tax (VAT) is governed by the Provisional Regulations on Value Added Tax of the People's Republic of China, which came into effect on 1 January 1994 and were revised in 2008. The revised Regulations apply from 1 January 2009.

For many years, VAT co-existed with business tax. VAT was imposed at all stages of manufacturing, distribution and sale, as well as on import of goods on the value added by each taxpayer, whereas business tax was imposed on services, except processing and repair services, which were subject to VAT. This bifurcated indirect tax system was considered inefficient as business tax was a tax without input tax credit and the overlapping of VAT and business tax created an unfair tax burden on taxpayers. Business tax was officially abolished on 1 December 2017, although it has effectively not applied since 1 May 2016.

8.2. Taxable persons

Entities and individuals engaged in supplying or importing goods, or rendering services, must be registered with the tax authority for VAT purposes.

Taxpayers are classified as “general taxpayers” or “small-scale taxpayers” that are subject to separate rules.

An enterprise is treated as a “small-scale taxpayer” for the purposes of VAT if its annual business revenue is less than CNY 5 million (SAT Public Notice [2018] No. 18). Small-scale taxpayers are taxed at a low VAT rate and have no right to claim input tax credit nor to issue special VAT invoices.

The threshold for registration as a general taxpayer is annual business revenue of CNY 5 million. General taxpayers are taxed at the normal rates of VAT, are entitled to input tax on purchases and must issue special VAT invoices.

If the threshold for a small-scale taxpayer is exceeded, the taxpayer must apply for general taxpayer status, and the tax authorities grant such a status if the taxpayer has a fixed business site, and has prepared and maintained accounting records in accordance with the national accounting laws and regulations, on the basis of which tax information can be provided.

Foreign companies that sell goods or render services in China without having an establishment in China are liable to VAT. The VAT payable by such companies is withheld by the company's customers or agents.

Individuals are not liable for VAT if their monthly turnover is less than a prescribed threshold amount. The regional and provisional tax authorities may determine the local thresholds within the ranges of CNY 5,000 to CNY 20,000 for the sale of goods, and the same amounts for rendering taxable services (or CNY 300-500 per payment on a daily basis if the VAT liability is determined per payment). Organizations (non-enterprises) that have elected for treatment as a small-scale taxpayer, including taxpayers that do not have frequent taxable transactions, are not treated as general taxpayers.

8.3. Taxable events

VAT is levied on the supply of goods and services.

Supply of goods is considered to be the transfer of ownership of goods for consideration in cash, property or other economic benefits. The VAT legislation also sets out various transactions which are deemed to be a supply of goods, such as consignment sales and the use of taxable goods for private consumption. Other transactions subject to VAT include the sale of personal property, transfer of individual business assets to third parties, the sale of futures, and approved financial leasing.

Taxable supply of services include processing, repair or maintenance, transportation, telecommunication, modem services (e.g. broadcasting, production, publication and showing of films, and television services), construction and real estate services, financial services, lifestyle services, asset management services, etc.

The importation of goods and services is taxable, but services purchased from overseas are subject to VAT withholding, which means that the recipient of services must withhold the VAT.

8.4. Taxable amount

VAT is levied on the value of the consideration for the supply of goods and services. Consideration is the price paid for goods or services, including any additional fees received.

Special transactions are only taxed on "margins". For example, developers of real estate may deduct the value of land use rights from sale proceeds in calculating their VAT liability.

A taxpayer is subject to VAT on the difference between sale proceeds and acquisition price when an immovable property is disposed of. If the taxpayer is unable to provide the original invoice of immovable property proving the acquisition price, other documents, such as the payment certificate of deed tax, which states the taxable amount of deed tax on the transaction, may be used (SAT Public Notice [2016] No. 73).

The taxable value for imports is the customs value plus customs duty (*see* section 9.4.), consumption tax (*see* section 9.5.) and insurance and freight costs.

8.5. Rates

The following rates apply from 1 April 2019:

- the standard rate of 13% (Circular [2019] No. 39), which applies to the supply of most taxable goods and certain taxable services such as repair, maintenance and processing services;
- the rate of 9% (Circular [2019] No. 39) applies to goods that are treated as essential such as grain, utilities, animal feed, pesticides, gas, books, digital products, and transportation, postal, basic telecommunication, construction and real estate services;
- the rate of 6% applies to modern services (including research and development, technical services, information and logistic services, consulting services), as well as to financial services and lifestyle services such as funeral services and hairdressing;
- the rate of 3% applies to supplies by small-scale taxpayers (no credit on input VAT may be claimed), as well as to the supplies of used goods other than fixed assets, self-produced electricity/running water/cement/bricks, pawned goods or tax-free goods and goods on consignment; and
- exports are generally (not in all cases) zero rated.

In certain cases, a general taxpayer may use the “simplified method” to calculate the VAT tax liability. Under this method, output VAT is paid at a reduced rate of 3% and the supplier is not allowed to claim input VAT credits in relation to that transaction. VAT regulations provide further rules on the application of the method. Once a general taxpayer opts for the simplified method, the choice may not be reversed within a period of 36 months.

From 1 January 2018, asset management services, such as trust products, open security investment funds and old age pension products, will be subject to 3% VAT (Circular [2017] No. 56).

VAT rates for specific goods and services may also be determined separately and from time to time by the MOF and SAT in notices or announcements.

8.6. Exemptions

Exempt supplies include:

- supplies by small and low-profit enterprises with an average monthly turnover not exceeding CNY 100,000 (Circular [2019] No. 13);
- agricultural products produced and sold directly by farmers;
- certain materials used for agricultural purposes, such as forage;
- certain goods for medical and health use, such as contraceptive means;
- imported instruments and equipment for scientific research and experiments, educational goods or equipment given by foreign governments or international organizations;
- imports of key equipment, components and raw materials by enterprises, universities and research institutions under major science and technology programmes;
- imported materials and equipment for contract processing, assembly and compensation trade;
- aid goods given by foreign governments or international organizations;
- charitable donations (SAT Public Notice [2015] No. 102);

- the transfer of all or part of the assets (along with related receivables, debts and labour force) to another entity or individual, in connection with an asset restructuring by way of a merger, spin-off or sale and exchange (SAT Public Notice [2011] No. 13);
- no-interest loans between enterprises within a group are exempt from VAT from 1 February 2019 to 31 December 2020 (Circular [2019] No. 20);
- acquisition of an enterprise; and
- sale of residential property owned by an individual that is occupied by the owner for more than 2 years except for “high-end” properties in Beijing, Shanghai, Guangzhou and Shenzhen.

The main exempted services are:

- medical services provided by hospitals and clinics (subject to limitations);
- services provided by museums, temples, mosques and similar institutions;
- transfer of copyright by individuals;
- international transportation;
- interest on bank deposits, government debts, and interbank businesses;
- life insurance policies of more than 1 year, insurance compensations received by the insured person;
- from 1 February 2019 to 31 December 2020, the services listed in the national medical services price project (Circular [2019] No. 20);
- trading of QFII financial products; and
- transfer of technology.

From time to time, the MoF and SAT issue circulars to exempt certain supplies. For example, the production and distribution of domestically produced anti-HIV drugs are exempt from VAT between 1 January 2019 to 31 December 2020 (Circular [2019] No. 73).

Interest on loans valued at less than CNY 1 million to small and low-profit enterprises and sole traders will not be subject to VAT for the period between 1 December 2017 and 31 December 2019.

Input tax credit may not be claimed for VAT paid on acquisitions related to the exempt or non-taxable supplies above.

Export

The zero rate applies generally to exports, and taxes paid on inputs are fully or partially refunded when the goods are exported. For budgetary reasons, China does not refund 100% input tax on the export of some products, and the State Council determines the refund rates which vary from 16% (fully refunded) to 3%. In practice, the VAT for exports may be either exempted or refunded in the following three ways: the “exempt and refund” method for trading companies; the “exempt, set-off and refund” method for manufacturers that export their products directly; and the “exempt” method for VAT-exempt goods and small-scale enterprises where export is not subject to VAT and there is no VAT refund.

The refund rates are adjusted from time to time, and the most recent adjustments were made by Circular [2018] No. 123.

Subject to conditions, certain exported services are exempt from VAT at the stage of export. Typically, the services provided outside China are exempt from VAT. Some exported services are zero rated, such as production and distribution services for radio, film and television programmes and technology-related services (Circular [2015] No. 118). With effect from 1 May 2015, the VAT exemption also applies to most services provided outside China (SAT Public Notice [2016] No. 29).

Export of retail goods through the cross-border e-commerce comprehensive pilot zone is exempted from VAT and consumption tax if the exported goods have undergone customs procedures and are registered with the special platform with regard to the date of export, amount and price, etc. (Circular [2018] No. 103).

A notice (Cai Guan Shui [2015] No. 9) provides for the exemption from VAT for some agricultural, forestry and fishery products.

8.7. Non-residents

Non-resident suppliers who have no establishment in China may not register for VAT purposes with the tax authorities in China. Generally, non-residents are required to pay VAT through their agents in China. If there is no agent, the purchaser or importer must remit VAT.

The input tax incurred by a non-resident may not be recovered.

Imports of services are subject to VAT withholding, not a reverse charge. The recipient of the supply must withhold the VAT from the price and the parties must take this VAT withholding into account in their contract on services and in their accounting systems.

A “tax-free shopping” scheme applies to foreign visitors (including citizens from Hong Kong, Macau or Taiwan) who have stayed in China for no more than 183 days. They may receive a rebate of 11% on the price of consumer goods purchased within 90 days before departure. A minimum purchase of CNY 800 is required and certain goods are not eligible for the refund.

9. Miscellaneous Taxes

9.1. Capital duty

There is no capital duty in China.

9.2. Transfer tax

9.2.1. Immovable property

9.2.1.1. Deed tax

Contracts for the purchase and sale, mortgage, bequest and transfer, or rental of real property are subject to deed tax. The rates range from 3% to 5% of the acquired value stated in the relevant document.

Where the area of the residential property purchased by an individual is not more than 90 m² and the property is the sole residential property of the individual, the deed tax charged is generally 1%. Where a second residential property is acquired for family living purposes, the rate of deed tax remains 1% if the size of the second property is also less than 90 m². However, the tax rate for the second residential property is set at 2% if the area is over 90 m². However, this 2% rate for a second home does not apply in Beijing, Shanghai, Guangzhou and Shenzhen.

Exemption applies to certain transactions such as transactions in a reorganization in the period between 1 January 2018 and 31 December 2020 (Circular [2018] No. 17).

9.2.1.2. Land appreciation tax

Land appreciation tax is imposed on the transfer of land-use rights, buildings on land and things attached to the land and buildings. The tax is levied on the increase in value of the real property, i.e. the gain on the transfer of real property, at progressive rates as follows:

- 30% if the value increase is less than 50%;
- 40% if the value increase is more than 50% but less than 100%;
- 50% if the value increase is more than 100%; and
- 60% if the value increase is more than 200%.

There are exemptions for self-occupied residential houses, inherited property, donations, mergers, business reorganization, etc.

On the basis of a notice jointly issued by the MOF and SAT (Circular [2015] No. 5), a business restructuring in the period from 1 January 2015 to 31 December 2017 is exempt from land appreciation tax.

9.2.2. Shares, bonds and other securities

See section 9.4.

9.3. Stamp duty

All entities which write or obtain “specified documents” are liable to stamp duty. There are 13 categories of documents, 12 of which are subject to rates ranging from 0.005% to 0.1% on the value of the transaction. The remaining category (certificates for rights and licences) is subject to a flat rate of CNY 5 per document.

Transfers of shares in respect of purchases, sales, inheritances and gifts are subject to stamp duties. As from 24 April 2008, the stamp duties on transfers of A and B shares are levied at 0.1% of the value of the shares on the date of the transfer.

The documents on the transfer of preferred shares by virtue of the purchase and sale, inheritance and donation are subject to stamp duty at a rate of 0.1% as from 1 June 2014. The transferor is liable to pay the duty (Circular [2014] No. 46).

From 24 December 2015, financial leasing contracts, including sale-and-leaseback contracts, are subject to stamp duty at a rate of 0.05% of the total amount. The sale and repurchase of assets under a sale-and-leaseback arrangement are exempt from stamp duty (Circular [2015] No. 144).

There is an exemption of stamp duty for certain cases, such as contracts on loans granted by foreign governments under preferential terms, and rental contracts between real estate agents and individuals for residency purposes. Agreements on loans granted by financial institutions to domestic small enterprises are exempt from stamp duty if they were executed between 1 November 2011 and 31 October 2014 (Circular [2011] No. 105). The validity period has been extended to include arrangements executed to between 1 November 2014 and 31 December 2017 (Circular [2014] No. 78).

Any loan contracts concluded by financial institutions in respect of loans to small and low profit enterprises will also enjoy a stamp duty exemption for the period between 1 January 2018 and 31 December 2020 (Circular [2017] No. 77).

From 1 May 2018, stamp duty on capital accounts (which are subject to 0.05% stamp duty) is reduced to 0.025%, while other accounts (which are subject to stamp duty of CNY 5 per account) are exempt from stamp duty (Circular [2018] No. 50).

From 1 January 2019, local governments may, according to the local circumstances, reduce the stamp duty for VAT small-scale taxpayers (except stamp duty on securities) by up to 50% of the tax payable (Circular [2019] No.13).

9.4. Customs duty

Import and export duties are imposed on most imports and a limited number of exports. On 12 December 2017, the Customs Tariff Commission of the State Council published the customs duties that apply from 1 January 2018 (Shui Wei Hui [2017] No. 27).

At the end of each year, the Customs Tariff Commission of the State Council issues adjustments to customs duty tariffs that apply in the following year. For 2020, the adjustments and relevant tables of tariffs were announced on 23 December 2019.

The import duties may be waived or reduced under certain incentives (*see*, for example, section 8.5.).

Import of retail goods up to CNY 2,000 through e-commerce (B2C) is exempt from customs duty (Circular by MOF, Customs and SAT [2016] No. 18).

In response to the imposition of tariffs by the United States on Chinese products, China has also imposed additional import duties on a range of products originating from the United States, including chemicals, coal and medical equipment.

China has concluded free trade agreements with a number of countries which reduce the duties for many products to zero. Further, China has economic cooperation agreements to that effect with Hong Kong, Macau and Taiwan.

9.5. Excise duty

Consumption tax is an excise tax, imposed in addition to VAT, on the manufacturers and importers of certain luxury goods including oil products, coal, high-grade cosmetic products, tobacco and alcoholic beverages. Tax rates range widely from 1% to 56%.

From 1 December 2016, 10% consumption tax is imposed on super luxury cars with a retail price, excluding value added tax, higher than CNY 1.3 million, in addition to the consumption tax imposed on their production or importation (Circular [2016] No. 129).

There are several exemptions for the import of goods and equipment that are crucial to the development of the Chinese economy.

A draft of the Consumption Tax Law was published at the end of 2019 for public consultation. Once enacted, the consumption tax will be codified.

9.6. Other taxes

9.6.1. Vehicle and vessel use tax

A vehicle and vessel tax law was passed on 25 February 2011 and became effective on 1 January 2012.

Vehicles and vessels used by enterprises in China are taxed according to the engine capacity of the vehicles or vessels. The maximum tax is CNY 4,500 per year per vehicle or vessel.

The following vehicles and vessels are exempt from the tax:

- non-motorcycles;
- tractors;

- fishing vessels;
- vehicles and vessels used by the army or armed police;
- vehicles and vessels used by the police;
- vessels subject to tonnage tax; and
- vehicles and vessels used by embassies and diplomatic bodies.

Further, energy-saving vehicles and vessels are half exempted and new energy vehicles and vessels are exempted from vehicle and vessel tax.

Foreign vessels leased by Chinese entities or individuals are not subject to vehicle and vessel tax.

9.6.2. Vehicle purchase tax

The Law on Vehicle Purchase Tax is in force from 1 July 2019. The law provides that an entity or individual purchasing a car, tram, trailers or motorcycle with emissions of more than 150 millilitres is subject to a one-off tax at 10% of the taxable price.

There are exemptions for various vehicles, including military vehicles, vehicles equipped with special machinery and public transportation. New energy vehicles are also exempt from the vehicle purchase tax in the period between 1 January 2018 to 31 December 2020 (Circular [2017] No. 172). The vehicles eligible for the exemption are listed in the “Catalogue of Vehicle Purchase Tax Exempt Types of Vehicles” and include full electric cars, hybrid plug-in cars and fuel cell cars. The qualified vehicles must pass the test for new energy vehicles, and the technical requirements and requirements for dealers related to product quality and after-sale services must be satisfied.

Purchase of a domestically manufactured car by a Chinese student returning from overseas or a foreign expert for own use is also exempt from vehicle purchase tax (Circular [2019] No. 75).

9.6.3. Environmental tax

On 25 December 2016, the People’s Congress passed the Law of Environmental Tax. The Law applies from 1 January 2018 and replaces the pollution fee currently levied by local governments. The Law, which contains 5 chapters and 28 articles, sets out the definition of taxable subjects, taxable objects, tax base, tax reduction and exemption or reduction, the manner of collection, etc. Under the Law, enterprises or other persons engaged in production or any other business operation that release polluting items into the environment are subject to the tax. The taxable polluting items include air pollution, water pollution, disposal of dangerous solid waste, disposal of other designated solid waste and noise pollution. The local governments may determine the concrete rates applicable to their regions within the prescribed range of rates, and the tax will be collected by the tax authority with the support of local environment protection departments.

On 1 January 2018, the Implementation Regulations of Environmental Protection Tax Law entered into force and on the same day, the fees on pollution were abolished.

CHINA (PEOPLE'S REP.)

This chapter is based on information available up to 15 January 2020.

Introduction

The People's Republic of China is a unitary state. For administrative purposes, China has 4 autonomous municipalities, 5 autonomous regions, 2 special administrative regions and 23 provinces. The Hong Kong and Macau Special Administrative Regions are not under the tax jurisdiction of China, and the same applies to Taiwan, which China considers to be a rebel province. Thus, tax treaties concluded by China are not applicable to Hong Kong, Macau and Taiwan.

Chinese and foreign individuals are subject to individual income tax (IIT). Capital gains are included in the computation of taxable income, unless provided otherwise, and not subject to a separate tax. See Corporate Taxation sections 8. for VAT.

IIT is levied under the Individual Income Tax Law (IITL), which was promulgated on 10 September 1980 and effective on the same date. The Ministry of Finance (MOF) is responsible for tax policy. The tax administration agency, a ministry-level government agency, is the State Taxation Administration (the name was changed from State Administration of Taxation (SAT) in 2019, but the commonly known acronym SAT will continue to be used in this chapter). The State Council and its departments, i.e. the MOF and the SAT, are authorized to issue circulars (jointly issued by the MOF and SAT, also known as *Cai Shui*), and public notices (issued by the SAT, also known as *Gong Gao*), for the purposes of interpretation and implementation of the laws and regulations.

Contributions to various social insurances are required.

The currency is the renminbi yuan (CNY).

1. Individual Income Tax

1.1. Taxable persons

The residence of individuals is determined principally on domicile or physical presence in China.

From 1 January 2019, an individual tax resident is any person who:

- is domiciled in China; or
- has resided in China for 183 days or more in a calendar year.

A person is regarded as domiciled in China if he “habitually” resides in China, as a result of household registration (*hukou*), family or economic interests.

An individual who is not domiciled in China can still be regarded as a resident if he has resided in China for 183 days or more in a calendar year. Residing means “physical presence”. A stay that lasts less than 24 hours does not count as a day and temporary absences of less than 30 days at one time will not be subtracted in computing the period of stay.

An individual who temporarily resides out of China due to education, employment, work, family visit or as a tourist, and who must return to China, is regarded as being domiciled in China.

An individual is a non-resident if he is not domiciled in China or has resided in China for less than 183 days in a calendar year. A non-resident individual is liable to tax in China only on his income derived from China. Special rules apply for expatriates who stay for less than 6 years or less than 90 days (*see further* section 1.2.1.).

Partnerships are not separate taxable persons, and tax is imposed on the partners individually. However, foreign partnerships and sole proprietorships deriving income from China may be subject to enterprise income tax.

There is no option for joint taxation for a family unit. However, some special additional deductions may be transferred between spouses.

1.2. Taxable income

1.2.1. General

Residents are generally subject to income tax on their worldwide income, which includes capital gains. However, special rules apply to expatriates depending on their duration of stay in China (*see* section 6.2.1.).

The IIT system is partially schedular. Only certain listed types of income are liable to tax. The types of taxable income are categorized and each category of income is computed separately. Some categories of income are taxed at progressive rates, while others are taxed at a flat rate.

There are nine classes of taxable income:

- (1) wages and salaries;
- (2) income from independent personal services;
- (3) income from author's remuneration;
- (4) income from royalties;
- (5) business income;
- (6) interest, dividends and bonuses;
- (7) income from property leases;
- (8) capital gains; and
- (9) incidental income.

Incidental income includes income from guarantees provided to entities or other individuals, transfer of real property as a gift (unless the transferee is a close family member such as a spouse, parent, child etc., a dependant or a recipient of an inheritance) and gifts given to individuals at promotional or advertising events, seminars, anniversaries with the exception of vouchers and coupons as price discounts (Circular [2019] No. 74).

From 1 January 2019, the income items 1 to 4 constitute so-called comprehensive income and are subject to tax at progressive rates ranging from 3% to 45% and business income (income item 5) is taxed at progressive rates ranging from 5% to 35%. Income items 6 to 9 are taxable at a flat rate of 20%.

Taxable income of a resident individual is calculated and taxed on an annual basis and that of a non-resident individual on a monthly basis (for example, for wages and salaries as the income is taxed on the basis of "as taxable income arises"). Nevertheless,

employers of resident individuals are required to withhold IIT on their salaries or wages on a monthly basis and the withheld taxes can be credited as advance payments in the final tax return.

The owner of urban real property and houses is subject to an annual property tax on an imputed value (*see Corporate Taxation section 5.2.*).

1.2.2. Exempt income

The following income is exempt from IIT:

- various monetary awards. From 1 July 2018 and subject to certain conditions, only 50% of the cash rewards received by technical staff involved in research and development for the practical application of their research results is taxable as wages or salaries (Circular [2018] No. 58);
- subsidies and allowances paid in accordance with uniform state stipulations;
- welfare benefits, pensions for the disabled and for survivors and relief payments;
- income from certain services rendered by redundant employees, subject to conditions;
- lump-sum payment on dismissal of employment, subject to conditions;
- job discharge fees, retirement wages and supplementary retirement fees paid to cadres and workers in accordance with uniform state stipulations;
- income exempted from tax as stipulated in international conventions to which the government is a party;
- interest on government bonds;
- interest on savings in a deposit account with a Chinese bank;
- compensation from insurance companies;
- family visit allowances paid to expatriates; and
- income approved for tax exemption by the State Council's financial departments.

The following income received by a foreign individual is, subject to conditions, temporarily exempt from IIT:

- reimbursement for house and accommodation;
- allowances for relocation or home moving;
- meals and laundry allowances;
- reasonable allowances for domestic or overseas business travelling;
- subject to approval of the tax authorities, allowances for language training and children's education;
- dividends derived by foreign individuals from FIEs or B shares; and
- salaries of foreign experts seconded by international organizations or provided under an agreement between China and a foreign country.

Some of these exemptions are also discussed in sections 1.3.1. and 1.5.

Tax may be reduced in respect of the following:

- income of the handicapped, elderly and members of revolutionary martyrs' families;
- heavy losses incurred due to severe natural disasters; and
- other tax reductions approved by the State Council's financial departments.

From 1 January 2019 to 31 December 2019, subsidies granted by Guangdong Province and Shenzhen Municipality to foreign experts (including experts from Hong Kong, Macau and Taiwan) working in the so-called Greater Bay Area are exempt from IIT (Circular [2019] No. 31).

In order to support the prevention and control of the 2019 coronavirus (COVID-19) outbreak, the MOF, General Administration of Customs and SAT have issued several circulars to grant the following tax exemptions:

- contingent allowances and bonuses received by medical personnel and workers involved in epidemic prevention and control according to the standards set by the government are exempt from IIT (Circular [2020] No. 10);
- non-cash grants of medicine, medical products and preventive utensils provided by employers are not included in taxable income in computing IIT (Circular [2020] No. 10); and
- sole traders donating self-produced or contractually processed goods or purchased goods to hospitals through charitable organizations or the local governments at the county level are exempt from VAT, consumption tax, urban maintenance and construction tax, education surcharge and local educational surcharges ((Circular [2020] No. 9).

See section 1.7.1. for deductions for donations to aid COVID-19 prevention and control measures.

1.3. Employment income

1.3.1. Salary

Wages and salaries are normally paid on a monthly basis, and taxes are also computed and levied on a monthly basis under the “pay-as-you-go” system (*see* section 1.9.2.). Income averaging is allowed in order for monthly taxable income to be distributed evenly during a tax year, and to take into consideration the payment of bonuses.

Wages and salaries generally include allowances and subsidies paid by employers. However, the tax authorities have developed guidelines on the taxability of various allowances paid to foreigners working in China. For example, certain expenses paid directly or reimbursed by the employer are normally not taxed on the employee, including costs of housing or accommodation, travelling costs to return home on leave (limited to two trips a year), relocation or moving costs, local transportation, house-keeping expenses and meals.

Where an employee receives a cash “allowance” on a per diem or monthly basis, the allowance is normally included in the taxable income.

The payment of income tax by an employer on behalf of an employee is also regarded as taxable remuneration. The employee is taxed on the grossed-up amount.

From 1 January 2019, employment income constitutes part of comprehensive income and is aggregated with other comprehensive income (*see* section 1.2.1.). Subject to certain conditions laid down in Circular [2005] No. 9, year-end bonuses and other performance-related annual remuneration may, upon election, be calculated and taxed as a separate monthly salary in the period from 1 January 2019 to 31 December 2021 (Circular [2018] No. 164). From 1 January 2022, it will be compulsory to include year-end bonuses and other performance related remuneration in comprehensive income.

For crews of ocean-going ships, allowances for meals on board are not included as taxable employment income.

Losses and outgoings incurred in the course of gaining employment income are not deductible. Instead, a standard monthly deduction is allowed in calculating taxable income (see section 1.7.2.), as well as specific deductions for other expenses (see section 1.7.1.).

1.3.2. *Benefits in kind*

Employers are generally required to incorporate the value of a benefit into the calculation of the tax deduction from the employees' wages or salaries during the month in which the benefit is received. The taxable value is the cost incurred in the provision of the benefit (as substantiated by the relevant receipts/invoices), or the market value if so deemed by the tax authorities.

If the benefit received is in the form of a physical asset (dwelling, car, etc.), the amount of taxable income is calculated according to the price specified in the purchase documentation, or as determined by the tax authorities. The taxable value of the benefits may be incorporated into the taxation of employees' wages on an average monthly basis over the employees' required service period.

The benefit from acquiring a residential property from the employer at a low price (i.e. the difference between market price and the actual price paid) may be divided by 12 and taxed separately (Circular [2018] No. 164).

Certain benefits in kind received by a foreign employee (expatriate) are exempt and others are taxable (see section 6.2.1.).

1.3.3. *Pension income*

When an employee reaches pensionable age and receives an annuity from his former employer or an occupational annuity, the payment received may be taxed separately on a monthly or annual basis, depending on whether it is paid in monthly, quarterly or annual instalments.

In China, an individual can be insured for pension on three levels:

- *Compulsory old age insurance:* The pension income is exempt from IIT, whereas contributions to the old-age pension insurance and other social insurances (see section 3.), up to the limit prescribed by the government, are deductible unless the contributions are paid to non-resident pension funds or insurance companies.
- *Pension scheme set up by employer:* In addition to the mandatory pension insurance regulated by the government as described above, an enterprise may buy extra pension insurance for its employees. With effect from 1 January 2014, contributions paid by an employee to his personal account, in respect of a company's private pension scheme, are deductible for the purposes of IIT if such contributions do not exceed 4% of the average wage or salary on the basis of which the contribution is calculated; the contributions paid by employers to the personal account are exempt from IIT if the contributions are within the limits prescribed by the government. Accordingly, pension income received is taxable.
- *Private (commercial) pension purchased by taxpayer himself:* An individual may arrange his pension through a commercial pension insurance. Between 1 May 2018 and 1 May 2019, a pilot project on the tax-deferral treatment of commercial pension insurances is introduced in Shanghai, the Fujiang province (including Xiamen city) and the Suzhou Industrial Park (Circular [2018] No. 22). Contributions up to 6% or CNY 1,000 per month for individuals receiving wages and salaries are deductible and 75% of the pension payments are taxable at a flat rate of 10% when the pensions are received. Earnings generated by pension funds and distributed to individual accounts are exempt from IIT during the contribution period.

1.3.4. Directors' remuneration

Directors' remuneration is taxable as employment income if there is an employment relationship between the director and the company. In the absence of an employment relationship between the paying company and receiving individual, the directors' remuneration may be taxed as personal services fees. Directors are liable to tax regardless of whether the services are performed in China, or the duration of stay in China.

1.4. Business and professional income

Income from production and business is calculated differently from comprehensive income or passive income and is taxed at rates ranging from 5% to 35%.

Taxable income generally refers to the gross revenue of the tax year less allowable costs, expenses and losses related to the business. Deductible expenses include direct expenses incurred in the course of production and business operation, indirect expenses, sale expenses, and administrative and financial expenses.

Individuals carrying on an unincorporated business may be taxed on a deemed profit basis. The regime most notably applies to small entrepreneurs who are not able to keep accounting records. In that case, certain expenditure, for example donations to public welfare organizations (*see* section 1.7.1.), is not deductible from business income that is taxed on a deemed profit basis (Circular [2019] No. 99).

Business income derived by a foreign individual is subject to income tax in the same way as that derived by a Chinese national. However, in practice the taxation of business income derived by individuals is relevant primarily to Chinese nationals, and will not be discussed in detail in this survey.

From 1 January 2019, income from services performed in China constitutes part of comprehensive income and is aggregated with other comprehensive income (*see* section 1.2.1.) and taxable at progressive rates (*see* section 1.9.1.). Income from services refers to income earned by performing personal services that include the following activities: designing, decorating, installation, drafting, testing, medical treatment, law practice, accounting, consulting, lecturing, news reporting, broadcasting, interpretation, editing, calligraphy and painting, sculpture, cinema, audio recording, video recording, performance, advertising, exhibitions, technical services, intermediary services, agency, brokerage and other services.

1.5. Investment income

Individuals pay income tax at 20% on dividends received from sources inside and outside China.

With effect from 1 January 2013, dividends derived by individuals from companies listed on the Shanghai or Shenzhen Stock Exchanges are subject to tax at the following effective rates (Circular [2012] No. 85 and Circular [2015] No. 10):

- 10% if the underlying shares are held for a period of between 1 month and 1 year (i.e. the tax base of the dividends is reduced by 50% which results in an effective tax rate of 10%); and
- 20% if the underlying shares are held for less than 1 month (fully included in the tax base).

Dividends derived from listed companies are exempt from IIT if the underlying shares are held for more than 1 year (Circular [2015] No. 101).

The differentiated rates apply also to dividends or profits from Chinese depository receipts (CDRs) of innovative enterprises (Circular of the MOF, SAT and China Securities Regulatory Commission (CSRC) [2019] No. 52) and to dividends and bonuses distributed by small and medium-sized companies listed on the National Equities Exchange and Quotations (SAT Public Notice [2019] No. 78). The National Equities Exchange and Quotations is a Chinese over-the-counter system for trading the shares of a company limited by shares that is not listed on either the Shenzhen or Shanghai stock exchanges.

Dividends derived by a foreign individual from FIEs or B shares are exempt from IIT (Circular [1994] No. 20). From 1 January 2020, FIEs no longer include Sino-foreign equity joint ventures, cooperative joint ventures and wholly foreign-owned enterprises as legal forms of doing business by foreign investors. However, no official circular has been issued by the MoF and SAT to abolish Circular [1994] No. 20, so it is uncertain how the exemption will be applied in practice.

Dividends derived by Chinese individuals on H shares listed on the Hong Kong Stock Exchange through the Shanghai-Hong Kong Stock Connect and Shenzhen - Hong Kong Stock Connect are subject to 20% IIT. The companies issuing H shares must act as withholding agents and withhold tax on the basis of the shareholder's information, as provided by the China Security Depository and Clearing Company (Circular [2014] No. 81). The same 20% IIT applies to dividends derived by Chinese individuals from recognized investment funds in Hong Kong, and the tax is to be withheld by agents established in mainland China by Hong Kong investment funds (Circular [2015] No. 125).

Non-listed companies that convert undistributed profits, retained earnings and mandatory accumulation of profits to stocks for distribution to individual shareholders are required to withhold IIT on stock dividends (SAT Public Notice [2015] No. 80).

Interest is generally taxed at a flat rate of 20%. However, interest on savings (including an educational savings account, subject to a maximum amount) and interest on government bonds are tax exempt.

From 1 January 2019, royalties derived by individuals constitute part of comprehensive income (*see* section 1.2.1.) and are taxed at progressive rates (*see* section 1.9.1.). Fees paid to agencies or go-betweens in connection with transfers of technology by an individual are deductible in determining taxable royalties, provided that evidence for such services is presented.

Rental and leasing income is taxed at 10%, but a deduction is allowed as follows:

- 20% of rental income for a resident individual; and
- property tax and maintenance expenses of up to CNY 2,000 per payment for an overseas Chinese.

1.6. Capital gains

Capital gains are generally taxed as "income from transfer of property" and included in ordinary taxable income (*see further* Corporate Taxation section 1.4.). However, the following capital gains are exempt for resident individuals:

- gains from the disposal of shares of Chinese listed companies (with the exception of restricted shares; *see* below);
- gains from the disposal of shares listed on the Hong Kong Stock Exchange through the Shanghai-Hong Kong Stock Connect and Shenzhen-Hong Kong Stock Connect in the period between 5 December 2019 to 31 December 2022 (MoF Circular [2019] No. 93);

- gains from the trading of participations in Hong Kong investment funds realized by Chinese individuals through recognized investment funds until 31 December 2022 (Circular [2019] No. 93);
- gains from the transfer of CDRs of innovative enterprises for a period of 3 years from the date that the first CDR is approved (Circular of the MOF, SAT and CSRC [2019] No. 52); and
- gains on the disposal of residential property, subject to conditions, e.g. where such a property was self-occupied for at least 5 years.

With effect from 1 January 2010, gains on the transfer of restricted shares are subject to IIT at a rate of 20%. Restricted shares are shares that are non-tradable at the time that a state-owned enterprise was transformed to a limited liability company (mostly issued to state-owned enterprises and certain employees of listed companies before a public offering).

A non-cash contribution for the purposes of investment made by an individual is treated as both a disposal of such assets and an investment. The gains from the disposal are taxed as a “transfer of property” under the IITL (Circular [2015] No. 41).

1.7. Personal deductions, allowances and credits

1.7.1. Deductions

A taxpayer may generally not deduct any losses and outgoings incurred in the course of gaining employment income. However, specific deductions are allowed for a particular class or type of income (see sections 1.3. to 1.6.).

With effect from 1 July 2017, premiums paid by employees, sole proprietors or partners of a partnership to qualified commercial health insurance schemes are deductible up to an annual amount of CNY 2,400 (CNY 200 per month), for IIT purposes (Circular [2017] No. 39). See section 1.3.3. for deductions for pension contributions.

Subject to certain conditions, an individual investor who holds a direct equity investment in qualifying technology start-ups for at least 2 years may deduct 70% of the investment amount from his taxable income after the holding period of 2 years has expired. If the allowable deduction cannot be fully utilized in a tax year, the balance amount may be carried forward to the following tax years (Circular [2018] No. 55).

Payments made by individuals through designated non-profit organizations for public welfare purposes such as education and poverty alleviation are deductible in determining taxable income for IIT purposes if the calculation methods and conditions laid down in Circular [2019] No. 99 are followed.

Donations in cash or in kind for fighting the COVID-19 outbreak are fully deductible in computing IIT (Circular [2020] No. 99).

From 1 January 2019 and subject to the condition that the taxpayer provides the correct information as laid down in Circular [2019] No. 94, special additional deductions (also known as “itemized deductions”) are available as follows (Decree of the State Council [2018] No. 41):

Mortgage interest expenses

Interest on a mortgage loan is deductible for IIT purposes provided that the loan is granted by a commercial bank or housing fund and has been entered into in connection with the purchase of the first residential property. The deduction is limited to CNY 1,000 per month over a maximum period of 240 months. In the case of a married

couple, only one of the spouses can choose to apply the deduction. Where both spouses entered into a mortgage loan for a first residential property before marriage, the spouses have to choose one of the properties for deduction.

Housing rent

If an individual does not own his own dwelling in the place where he must work, the rent paid for housing in the city of his work is deductible as follows:

- up to CNY 1,500 per month in municipalities, cities at the provisional level and other cities designated by the State Council;
- up to CNY 1,100 per month in cities with a population of more than 1 million; or
- up to CNY 800 per month (CNY 9,600 per year) in cities with a population of less than 1 million.

This deduction cannot be claimed together with the above deduction for interest on a mortgage loan

Medical expenses

Medical expenses incurred on serious illnesses of up to CNY 80,000 per year are deductible provided that such expenses exceed CNY 15,000 on an annual basis and are borne by the taxpayer himself, i.e. they are not covered by medical insurance.

Children's education

Taxpayers who have children following pre-school education, or elementary school, middle school, high school, college or university education may claim a deduction of up to CNY 1,000 for each child per month. Each parent is entitled to deduct 50% of the amount or elect to allocate his 50% to the other parent for deduction. This deduction applies equally where the education takes place outside China.

Adult education

A fixed amount of CNY 400 per month is deductible for adults following an academic education, over a maximum period of 48 months. In cases where adults follow a vocational or technical professional education, a fixed amount of CNY 3,600 may be deducted from taxable income in the year of graduation. This deduction may be claimed by either the taxpayer himself as a deduction for adult education or by the taxpayer's parents as a deduction for children's education.

Care of elderly dependants

A fixed amount of CNY 2,000 per month is deductible for the support of elderly dependants, regardless of the number of dependants if the taxpayer is the only child. Where the dependants are supported by more than one taxpayer, the deductible amount may be divided among the taxpayers with a limit of CNY 1,000 per taxpayer. For the purposes of this deduction, elderly dependants are parents, or grandparents if the parents are not alive, aged 60 or above.

1.7.2. Allowances

A standard annual allowance of CNY 60,000 is granted to resident individuals in calculating taxable income.

1.7.3. Credits

There are no specific credits.

1.8. Losses

Losses incurred by individuals running a business may be carried forward for 5 years. No carry-back is allowed.

Losses on certain types of income may only be set off against the same type of income. Losses on securities may not be set off against the income derived from such securities.

There is no loss relief for other types of income.

1.9. Rates

1.9.1. Income and capital gains

With effect from 1 January 2019, the following rates apply to resident individuals on comprehensive income, i.e. employment income, income from services, author's remuneration and royalties:

<i>Taxable annual income (CNY)</i>	<i>Rate on excess (%)</i>
0 - 36,000	3
36,001 - 144,000	10
144,001 - 300,000	20
300,001 - 420,000	25
420,001 - 660,000	30
660,001 - 960,000	35
Over 960,000	45

Effective from 1 October 2018, the following tax rates apply to business income of individual entrepreneurs and partners of a partnership:

<i>Taxable income on an annual basis (CNY)</i>	<i>Rate on excess (%)</i>
0 - 30,000	5
30,001 - 90,000	10
90,001 - 300,000	20
300,001 - 500,000	30
Over 500,000	35

1.9.2. Withholding taxes

Withholding tax applies to comprehensive and non-comprehensive income. Tax is withheld by the payer and must be paid to the local tax bureau within the first 15 days after the month of withholding. Taxes withheld are usually offset against the final income tax liability, if any. The following rates apply:

Employment income (progressive rates of 3% to 45% (see section 1.10.1.) on a monthly basis, with the applicable quick deduction):

<i>Taxable income (CNY)</i>	<i>Rate on excess (%)</i>	<i>Quick deduction (CNY)</i>
0 - 36,000	3	0
36,001 - 144,000	10	2,520
144,001 - 300,000	20	16,920
300,001 - 420,000	25	31,920

<i>Taxable income (CNY)</i>	<i>Rate on excess (%)</i>	<i>Quick deduction (CNY)</i>
420,001 - 660,000	30	52,920
660,001 - 960,000	35	85,920
Over 960,000	45	181,920

Withholding is also required from employment income that is partially or fully paid by an FE situated outside China, which is related to an FIE, and to an FE whose employees receive employment income from a related enterprise abroad.

Personal services income (progressive rates ranging from 20% to 40%, with the applicable quick deduction):

<i>Taxable income (CNY)</i>	<i>Rate on excess (%)</i>	<i>Quick deduction (CNY)</i>
0 - 20,000	20	0
20,001 - 50,000	30	2,000
Over 50,000	40	7,000

Author's remuneration and royalties

A flat rate of 20% applies.

Other income

Dividends, interest and rental income are also subject to withholding tax at the applicable rates (see section 1.5.).

1.10. Administration

1.10.1. Taxable period

The tax year is the calendar year.

1.10.2. Tax returns and assessment

Taxpayers are generally required to file an IIT return before 30 June of the following tax year, except if certain conditions have not been fulfilled, for example, if the total taxable income does not exceed CNY 60,000.

Taxpayers are required to make a self-assessment and file a tax return in the following situations:

- the taxpayer derives comprehensive income from more than one place and his annual comprehensive income after special deductions exceeds CNY 60,000;
- the taxpayer derives income from services or author's remuneration or royalties and his annual comprehensive income after special deductions exceeds CNY 60,000;
- the taxes withheld are less than the tax payable; or
- the taxpayer applies for a tax refund.

However, from 1 January 2019 to 31 December 2020, a resident individual is exempt from the annual tax settlement if his annual comprehensive income does not exceed CNY 120,000 or if the amount of tax payable upon tax settlement is less than CNY 400. The exemption does not apply if the withholding agent has not withheld tax on the comprehensive income where such an obligation exists (Circular [2019] No. 94).

Each individual is treated as a separate taxable person, and there is no aggregation of income or joint taxation of spouses.

1.10.3. *Payment of tax*

Most major items of income, such as wages and salaries, are subject to withholding tax on a monthly basis or on a per-payment basis. Excess tax paid is refundable.

1.10.4. *Rulings*

There is no private advance ruling system. *See further* Corporate Taxation section 1.8.4. for public rulings.

2. Other Taxes on Income

2.1. *Urban maintenance and construction tax and education surcharge*

Depending on where the taxpayer is located, the rate of the urban maintenance and construction tax may be 7% in a city, 5% in a county or town, or 1% in the other remaining areas. The education charge is 3%. The tax and charge are based on the amounts paid for VAT and consumption tax and is levied on foreign invested enterprises, foreign enterprises and foreign individuals.

Local governments may impose a local additional education charge at a minimum rate of 2% on indirect taxes.

On 20 November 2019, the State Council approved the draft of the Urban Maintenance and Construction Tax Law. The charge of the draft tax remains the same as the Urban Maintenance and Construction Fee currently imposed by the interim regulation. Once approved by the National People's Congress, this fee will be codified as an official tax.

2.2. *Resource tax*

Resource tax is imposed on enterprises and individuals on an ad valorem basis on the mining and exploitation of natural resource products, including crude oil, natural gas, coal, other non-metal items, ferrous metals, non-ferrous metals, salt and water. *See further* Corporate Taxation section 3.2.

2.3. *Other*

There are no other taxes on income of individuals.

3. Social Security Contributions

The Social Security Law (SSL) was passed by the National People's Congress on 28 October 2010 and became effective on 1 July 2011.

Employees of urban employers are required to contribute to social insurance. The national law allows each local authority to set its own contribution rates within the range prescribed by the central government, thus the rates vary from city to city. The rates for Beijing are as follows:

- old-age pension insurance: 8%;
- medical insurance: 2% + CNY 3;
- unemployment insurance: 0.2%; and
- housing fund: 5-20% (usually 12%).

For all social security contributions, there is a maximum amount (ceiling) on which the premium is imposed.

With effect from 15 October 2011, foreigners employed by lawfully incorporated enterprises, foundations, law firms, accounting firms and other organizations in China must contribute to the above social insurances, except the housing fund. For these

mandatory contributions, it is irrelevant whether a foreign worker is recruited in China or seconded by the head office from abroad. As an exception, employees from Hong Kong, Macau and Taiwan are not required to participate in the social security system.

From 1 January 2020, residents from Hong Kong, Macau and Taiwan hired and recruited by employers such as enterprises, public institutions, social organizations and individual economic organizations in mainland China are also obliged to participate in basic pension insurance, basic medical insurance, employment injury insurance, unemployment insurance and maternity insurance (Order of Human Resource and Social Security [2019] No. 41). Residents from these regions who have participated in social insurance in their home jurisdictions are exempt from the obligations of basic pension insurance and unemployment insurance in mainland China by presenting certificates issued by the relevant authorities. Other rules apply to non-employed residents and university students.

The social security insurances for foreigners from countries that have concluded a social security agreement with China must be determined according to that agreement.

See Corporate Taxation section 4.2. for contributions by employers.

4. Taxes on Capital

4.1. *Net wealth tax*

There is no net wealth tax.

4.2. *Real estate tax*

4.2.1. *Urban land use tax*

Urban land use tax is imposed on all units which use land located in cities and towns, including FIEs. The tax rates vary from CNY 1.5 to CNY 30 per square metre in large cities, from CNY 1.2 to CNY 24 per square metre in medium-sized cities, and from CNY 0.9 to CNY 18 in small cities. The rates for county towns and mining areas are from CNY 0.6 to CNY 12. In less developed inland areas and autonomous regions, reduced rates are used provided that permission is obtained from the local governments. As a general rule, local governments are allowed to adjust tax rates on the condition that the reduced rate is not lower than 30% of the lowest rate for county towns and mining areas.

Certain types of land are exempt from tax, including land used by state organs, armed forces and people's organizations, land used by non-profit units financed by the government, land occupied by religious temples, shrines, parks and places of historic interest, streets, squares and green areas of a city, and land directly used by units such as agriculture, forestry, animal husbandry and fisheries, and land for public use.

4.2.2. *House property tax*

House property tax is levied on property (houses and other buildings, but not land) by the local government authority of the city, town, county or municipality in which the property is situated. The tax is also levied on foreign individuals.

The tax rate is either 1.2% of the assessed value of the property or 12% of the annual rental income. The lease of real estate by individuals is subject to tax at a reduced rate of 4% if the lease payments conform to market prices, or it is let by an individual

or a social organization for residential use. However, a deduction of 10% to 30% (as determined by local governments) of the assessed value or rental income is allowed in arriving at the taxable base.

In general, the tax is payable by the owner of the property, or the mortgagee where the property is mortgaged. Where the property is owned by the state and used by a business unit, the latter pays the tax.

Certain properties are exempt from tax, such as public schools, hospitals, child care centres, parks, scenic areas, historic sites and buildings used for religious purposes.

Further exemptions may be provided by the MOF or local government authorities.

4.3. Other taxes

4.3.1. Stamp duty

All entities which write or obtain "specified documents" are liable to stamp duty. There are 13 categories of documents, 12 of which are subject to rates ranging from 0.005% to 0.1% on the value of the transaction. The remaining category (certificates for rights and licences) is subject to a flat rate of CNY 5 per document.

Transfers of shares in respect of purchases, sales, inheritances and gifts are subject to stamp duties. The stamp duties on transfers of A and B shares are levied at 0.1% of the value of the shares on the date of the transfer.

There is an exemption of stamp duty for certain cases, such as contracts on loans granted by foreign governments under preferential terms, and rental contracts between real estate agents and individuals for residency purposes. Agreements on loans granted by financial institutions to domestic small enterprises were exempt from stamp duty between 1 November 2011 and 31 October 2014.

5. Inheritance and Gift Taxes

There are no inheritance or gift taxes.

5.1. Taxable persons

Not applicable.

5.2. Taxable base

Not applicable.

5.3. Personal allowances

Not applicable.

5.4. Rates

Not applicable.

5.5. Double taxation relief

Not applicable.

6. International Aspects

6.1. Resident individuals

Individuals who are domiciled in China or have lived in China for 183 days or more in a calendar year are Chinese tax residents (*see further* section 1.1.).

6.1.1. Foreign income and capital gains

Residents are generally subject to income tax on their worldwide income, which includes capital gains. However, special rules apply to expatriates who have resided in China for 183 days or more but less than 6 consecutive years. Where a foreign individual stays in China for more than 183 days but less than 6 consecutive years, and derives income while temporarily out of China to perform duties for an overseas entity or employer or other income, such foreign income is not taxable unless it is economically borne by a Chinese person, e.g. if the overseas entity is reimbursed by the Chinese entity (*see also* section 6.2.1.).

Circular [2020] No. 3 defines what kind of income is regarded as income sourced outside China (i.e. foreign income). The circular also clarifies the calculation of tax payable on foreign income, double tax relief (*see* section 6.1.3.), and the tax treatment of foreign income received by seconded employees (*see* section 6.2.2.).

Capital gains derived from a foreign country must be included in the taxable income of the resident and taxed accordingly in China. A tax credit with limitation is granted for foreign tax paid on that foreign income. Capital gains on shares of Chinese listed companies derived by all individuals, and capital gains on the trading of participations in mainland China investment funds realized by Hong Kong individuals through recognized investment funds, are exempt.

6.1.2. Foreign capital

There is no net wealth tax. Property located abroad is not subject to property tax in China.

6.1.3. Double taxation relief

An ordinary tax credit is granted, both unilaterally and under tax treaties, for foreign tax paid on foreign income. The amount of credit is limited to the amount of Chinese tax otherwise payable on the foreign income. The credit is calculated and granted on a country-by-country and item-by-item basis. Excess credits may be carried forward for up to 5 years.

The following foreign taxes are not creditable in China (Circular [2020] No. 3):

- foreign income taxes incorrectly and unlawfully imposed or paid;
- foreign income taxes the imposition and collection of which contravene the provisions of tax -treaties or tax arrangements (with Hong Kong and Macau) concluded by China;
- interest, fines and penalties due to late payment or underpayment of foreign income taxes;
- foreign income taxes paid by the taxpayer, but which have actually been refunded or compensated by foreign tax authorities; and
- foreign income taxes on foreign income that is tax exempt in accordance with the IITL and its Implementation Rules.

However, foreign income taxes that are exempted or are reduced by a contracting state may be credited if the tax treaty with that contracting state contains a tax sparing credit provision. A certificate of residence is required to obtain tax treaty relief.

See Corporate Taxation section 6.3.5. for a list of tax treaties in force.

6.2. Expatriate individuals

6.2.1. Inward expatriates

Foreign income derived by an expatriate who is not domiciled in China is only taxable in China if the duration of the expatriate's stay in China has reached a certain level and the income is sourced in China or paid by a Chinese entity or individual. From 1 January 2019, the following rules apply:

- limited tax liability in respect of foreign income: where the stay is 183 days or more in a calendar year, tax is imposed on worldwide income; but where the stay in China is less than 6 years, foreign income is exempt, unless the income is sourced in China or paid by a company, enterprise or individual in China;
- no tax liability in respect of income sourced in China but paid by a foreign employer: where the stay is less than 90 days (consecutive or aggregated) and the individual is not domiciled in China, Chinese-source income paid by an employer outside China for services performed within China is exempt as long as the compensation is not borne by a Chinese establishment or site of the foreign employer; and
- full tax liability (taxation on worldwide income) in the case of 6 consecutive years of residence: where the stay is more than 6 consecutive years, tax may be imposed on worldwide income with no exceptions, unless a single period of absence from China of more than 30 days in a calendar year occurs to interrupt the consecutive period.

Special rules also apply to expatriates in respect of the following:

- taxation of allowances and deduction for travel expenses;
- exemption for dividends (*see* section 1.5.);
- exemption for capital gains from a transfer of shares of Chinese listed companies (*see* section 1.6.); and
- income attributable to duties performed outside China (*see* section 6.1.1.).

Generally, the following benefits provided to foreign employees working in China are exempt from IIT:

- provision of or reimbursement for reasonable expenses on accommodation, meals, relocation and laundry;
- allowances for reasonable business travel expenses within and outside China;
- reasonable home leave allowance up to two trips per calendar year; and
- allowances for employees' language training and children's education, subject to approval of the local tax authorities.

The exact amount exempted may be determined by the local government at the provincial level. From 1 January 2022, the exempt benefits in kind for foreign individuals will be abolished and foreign individuals working in China may enjoy the same special additional deductions as Chinese individuals.

From 1 January to 31 December 2019, tax subsidies are granted to high-level talents from overseas and talents in short supply in these cities in the Greater Bay Area, i.e. in the following cities: Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing (Guangdong Circular [2019] No. 2). The amount of the subsidy is the IIT paid by the qualified foreign workers less 15% of their taxable income. The subsidy is intended to limit their IIT burden to 15%.

6.2.2. *Outward expatriates*

Overseas Chinese are treated as residents in China as long as they are domiciled in China (*see* section 1.1.). As such, they are generally subject to the normal income tax rules as described in section 1., including the rates. They are eligible for a specific deduction from rental income (*see* section 1.5.).

Employment income or income from personal services derived by individuals resident in China who are seconded abroad for work is subject to withholding tax if such income is paid or borne by the foreign unit of a Chinese institution (which includes a Chinese domestic enterprise, other economic organization, foreign branch of a government department, subsidiary, embassy and representative office, etc.) which files the tax return and settles the tax payment in the capacity of a withholding tax agent (Circular [2020] No. 3).

According to Circular [2019] No. 97, from 1 January 2019 to 31 December 2023, only 50% of the employment income derived by a member of a cross-ocean crew is taxable for ITT purposes provided the sailing time of the crew at sea amounts to at least 183 days in a tax year (the aggregate number of days working on board).

Unrealized capital gains are not taxable.

6.3. *Non-resident individuals*

Non-resident individuals are individuals who are not domiciled in China or have resided in China for less than 183 days in a calendar year (*see* section 1.1. for residence rules).

6.3.1. *Taxes on income and capital gains*

A non-resident is generally subject to the normal income taxation rules described in section 1., except for final withholding tax on non-employment income. A non-resident individual is entitled to a standard monthly allowance of CNY 5,000 in determining taxable income. Furthermore, subject to a 30% ceiling, non-resident individuals may deduct their donations made through public welfare organizations from their Chinese-source income (*see* section 1.7.1.).

Non-residents are assessed only on income sourced in China, including capital gains. Special rules apply to expatriates who stay in China for less than 90 days in a year or less than 6 consecutive years (*see* section 6.1.1.).

Employment income derived by a Hong Kong or Macau tax resident from China is subject to IIT on the portion which is attributable to the working period in China, unless the tax agreement with Hong Kong and Macau does not allow the taxation.

The following forms of income are treated as Chinese-source income regardless of where the payment is made:

- income earned by an individual from a position, employment or fulfilment of contract within China;
- income generated by carrying on business within China;
- income derived from the letting or leasing of property for use in China;
- income derived from the transfer of buildings, land-use rights or alienation of equity interest in Chinese enterprises or other economic organizations or the transfer of other movable property within China;
- income derived from royalties on technology used within China;

- author's remuneration or accidental income paid by Chinese enterprises, economic organizations or individuals; and
- interest, dividends and bonuses obtained from companies, enterprises, other economic entities and individuals located in China.

Capital gains on shares of Chinese listed companies derived by all individuals, and capital gains on the trading of participations in mainland China investment funds realized by Hong Kong individuals, are exempt from IIT (see section 1.6.).

Employment income derived by a non-resident is subject to withholding tax at the same progressive rates as for a resident employee on a monthly basis (i.e. the annual taxable income is divided by 12 and converted into monthly taxable income) as follows.

<i>Monthly taxable income (CNY)</i>	<i>Marginal tax rate (%)</i>	<i>Quick deduction (CNY)</i>
Up to 3,000	3	0
3,001 - 12,000	10	210
12,001 - 25,000	20	1,410
25,001 - 35,000	25	2,660
35,001 - 55,000	30	4,410
55,001 - 80,000	35	7,160
Over 80,000	45	15,160

Personal services income, authors' remunerations and royalties (which are taxed as comprehensive income together with employment income) are also subject to the above progressive rates on a monthly or per-payment basis.

A final withholding tax is imposed on the following gross income (with the exception of capital gains) at the applicable rates:

- dividends at 20% unless an applicable tax treaty provides otherwise;
- dividends distributed by Chinese domestic listed companies to Chinese domestic investment funds are subject to a 10% withholding tax, and listed companies are required to withhold the tax on distributions pertaining to Hong Kong investors (individuals or enterprises). If the distribution concerns interest on corporate bonds, the withholding tax is 7%. At the time that a Chinese domestic investment fund distributes the gains or income to Hong Kong investors, no withholding tax is imposed (Circular [2019] No. 94);
- interest at 20%, but the rate may be reduced under an applicable tax treaty (see Corporate Taxation section 6.3.5. for a list of tax treaties in force). Interest on deposits in a Chinese bank and interest on government bonds is exempt from IIT;
- capital gains on a transfer of shares at a rate of 20% on a net basis; and
- rental and leasing income at 20%.

Dividends derived by a foreign individual from FIEs or B shares are exempt from IIT (see section 1.5.).

See section 2.1. for urban maintenance and construction tax and education surcharge on foreign individuals.

From 1 January 2020, non-residents who want to claim treaty benefits (to apply treaty withholding tax rates) have to make a self-assessment in respect of their entitlement to the benefits, file a tax return to claim the benefits and maintain supporting documents in the event of a tax audit. Pre-examination and approval from the tax authority is not required (see Corporate Taxation section 6.3.).

6.3.2. Taxes on capital

There is no net wealth tax. Non-residents are subject to house property tax (see section 4.2.).

6.3.3. Inheritance and gift taxes

There are no inheritance or gift taxes.

6.3.4. Administration

If income received is subject to final withholding tax and the tax is properly withheld, there should be no filing requirements (see section 6.3.1.). Otherwise, the requirements for non-residents to file tax returns are the same as for residents. See section 1.10. for tax compliance and administration.

KEY FEATURES

Last reviewed: 1 March 2020

A. General information	
Sources of tax law	Enterprise Income Tax Law Implementation Rules of Enterprise Income Tax Law Individual Income Tax Law Implementation Rules of Individual Income Tax Law Provisional Regulations on Value Added Tax Circular [2016] No. 36 on value added tax
Main types of business entities	Limited liability company Company limited by shares (joint-stock company) Partnership Representative office
Accounting principles	Chinese accounting standards
Currency	Renminbi yuan (CNY)
Foreign exchange control	Yes, CNY is not free convertible and there are restrictions on capital account
Official websites	State Taxation Administration http://www.chinatax.gov.cn/ Ministry of Finance http://www.mof.gov.cn
B. Direct taxation: Companies	
1. Resident companies	
Residence	A company is resident in China if it has incorporation under Chinese law and effective management in China
Tax base	Worldwide
Corporate tax rates	25%; 20% for small-low-profit enterprises (only applicable to resident enterprises): 5% effective rate on the annual taxable profits less than CNY 1 million (only 25% of the taxable profits are taxed at 20%) and 10% effective rate on the annual taxable profits between CNY 1 and 3 million (only 50% of the taxable profits are taxed at 20%) 15% for qualified high and new technology enterprises (only applicable to resident enterprises)
Alternative minimum tax	No
Capital gains	Yes, part of business income (except in certain cases of merger and acquisition)
Loss carry-forward	Yes, for 5 years. It can be extended to 10 years for high and new technology enterprises and small to medium size scientific technology enterprises. 8 years for losses suffered in 2020 by transportation, hotel, restaurant and tourist businesses affected by the coronavirus
Loss carry-back	No
Unilateral double taxation relief	Yes, ordinary tax credit

2. Non-resident companies	
Corporate tax rates	25%
Capital gains on sale of shares in resident companies	Part of business income (except in certain cases of merger and acquisition)
Capital gains on sale of immovable property	Part of business income
Withholding tax rates	
Branch profits	No
Dividends	10% The tax may, subject to certain conditions, be deferred if received dividends or profits are re-invested in China
Interest	10%; 0% on state bonds and on bonds from the bond market derived by foreign investors.
Royalties	10%
Fees (technical)	No
Fees (management)	No
3. Specific issues	
Participation relief	Dividends received by a resident enterprise from another resident enterprise are exempt from corporate income tax if the underlying shares have been held for at least 12 months
Group treatment	No
Incentives	New high technologies Advanced technology services State debentures Approved agricultural, fishery, forestry projects Environmental protection projects Technology transfer Approved infrastructure projects Western regions Small and low-profit enterprises Relief for certain businesses affected by the coronavirus
Anti-avoidance	
Transfer pricing legislation	Yes
Thin capitalization legislation	Yes
Controlled foreign company legislation	Yes
General anti-avoidance rule (GAAR)	Yes
Other anti-avoidance legislation	Yes
C. Direct taxation: Individuals	
1. Resident individuals	
Residence	Individuals are resident if they are domiciled in China or reside in China for more than 183 days
Taxable income	Worldwide

Income tax rates	Comprehensive income (consisting of employment income, income from personal services, author's remuneration and royalties): top rate 45% (income over CNY 960,000 per year) Business income: top rate 35% (income over CNY 500,000 per year) Investment income: 20% for dividends and interest (dividends on shares of listed companies could be reduced to 10% and 0% depending on holding period and interest on savings is tax exempt)
Alternative minimum tax	No
Capital gains	20% 0% on sale of shares of listed companies or on the trading of participations in recognized Hong Kong investment funds and residential home self-occupied for more than 5 years
Unilateral double taxation relief	Yes, ordinary tax credit
Social security contributions	Old-age pension insurance Medical insurance Unemployment insurance Housing fund
2. Non-resident individuals	
Income tax rates	Comprehensive income (consisting of employment income, income from personal services, author's remuneration and royalties): top rate 45% (income over CNY 80,000 per month) Business income: top rate 35% (income over CNY 100,000 per year)
Capital gains on sale of shares in resident companies	20% on a net basis 0% on capital gains derived from the trading of participations in recognized Chinese investment funds realized by Hong Kong individuals
Capital gains on sale of immovable property	20% on a net basis
Withholding tax rates	
Employment income	General wage withholding applies
Dividends	20% 0% (dividends derived by foreign individuals from foreign invested enterprises and B shares are exempt from individual income tax)
Interest	20%; 0% on state bonds and on savings
Royalties	Part of comprehensive income and rates from 3% to 45%, top rate 45% on income above CNY 960,000 per year
Fees (technical)	No
Fees (directors)	Taxed as employment income if there is an employment relationship or as services (part of comprehensive income) in the rates from 3% to 45%

D. Indirect taxation: Value added tax (VAT)/Goods and services tax (GST)	
Taxable events	Supply of goods and services, importation
VAT/GST (standard)	13%
VAT/GST (reduced)	6% and 9% 3% applies to small-scale taxpayers without input tax credit (in the period of the outbreak of the coronavirus the rate of 3% has been reduced to 1% from 1 March to 31 May 2020) Small-scale taxpayer whose monthly turnover is less than CNY 100,000 is exempt from VAT
VAT/GST (increased)	No
Registration/deregistration threshold	No
VAT group	No
E. Other taxes	
Inheritance and gift taxes	No
Net wealth tax (individual)	No
Net wealth tax (corporate)	No
Real estate taxes	Urban land use tax Farmland use tax House property tax
Capital duty	No
Transfer tax	Land appreciation tax Deed tax
Stamp duty	Yes
Excise duties	Yes
Other main taxes	Resource tax and environment protection tax

CONTACT

BDO China Shu Lun Pan Management Company
4F. No. 61, East Nan Jing Dong Road
Huangpu District
200002 Shanghai
CHINA - PRC
Tel. +86 21 6339 1166
www.bdo.com.cn

International Tax Coordinator:
Gordon Gao
E-mail: gordon.g@bdo.com.cn

This publication has been carefully prepared, but should be seen as general guidance only and cannot address the particular needs of any individual or entity. The information contained within it is based upon information available up to the dates mentioned at the heading of each chapter. While every reasonable effort has been taken by the IBFD and BDO to ensure the accuracy of the matter contained in this publication, you should not act upon it, or refrain from acting, without obtaining specific professional advice: the information contained herein should not be regarded as a substitute for such. Please contact BDO to discuss these matters in the context of your particular circumstances. The IBFD and BDO accept no responsibility for any loss incurred as a result of acting on information in this publication.

BDO is an international network of independent public accounting, tax and advisory firms, the BDO Member Firms, which perform professional services under the name of BDO. Each BDO Member Firm is a member of BDO International Limited, a UK company limited by guarantee that is the governing entity of the international BDO network. Service provision within the BDO network is coordinated by Brussels Worldwide Services BV, a limited liability company incorporated in Belgium.

Each of BDO International Limited, Brussels Worldwide Services BV and the member firms of the BDO network is a separate legal entity and has no liability for another such entity's acts or omissions. Nothing in the arrangements or rules of the BDO network shall constitute or imply an agency relationship or a partnership between BDO International Limited, Brussels Worldwide Services BV and/or the member firms of the BDO network.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.

www.bdo.global