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SETTING UP BUSINESS IN

# CHINA

# 2022

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## General Aspects

China is situated in East Asia, bordered on its east by the Pacific Ocean. The total area of the country is 9.6 million square kilometers, and the popu- lation is 1.37 billion. China is a country with an ancient civilization and a recorded history of over 4,000 years. The largest developing country in the world, China enjoys social stability, and a steadily developing economy. 56 ethnic nationalities live in China, all enjoying equal rights guaranteed by the Constitution and the legal system.

China is divided into 23 provinces, five autonomous regions, four municipalities under the direct jurisdiction of the Central Government, and two special administrative regions. The Capital of the People's Republic of China is Beijing.

## Legal Forms of Business Entities

| Legal form | Feature | Remarks |
|---|---|---|
| **Sole Proprietorship** | A type of company that has been legally set up inside China and is invested by a PRC natural person. The investor owns the company and all its proper- ties. The owner of the company is liable for an unlimited capacity for its debts to the extent of his personal property. | |
| **Partnership** | Is a profit-making organization established within the territory of China according to the Law of China on Partnership Enterprises with their partners associated under a partnership agreement, each making capital contributions, carrying out business operations, distributing profits, undertaking risks and bearing unlimited and joint liability for the partner- ship enterprise's debts.<br>The regime of Limited Partnership consists of two kinds of partners: general partners and limited partners. General partners shall execute and manage the firm's affairs and shall bear unlimited liabilities for the debts of the firm. Limited partners would typically be financial investors and shall be prohibited from taking an active managerial role in the firm, limited to the amount of their capital contributions to the limited partnership. | The amended Partnership Law, came into effect 1st June 2007.<br>Administrative measures for the establishment of partnership enterprises in China by Foreign Enterprises or Individuals, which came into 1st March 2010, allows the establishment of Foreign- invested Partnerships. |
| **Representative Offices (RO)** | A Representative Office (RO) can be set up by a foreign company to render preparatory services such as liaison, coordination on behalf of its parent company. It is important that a representative office cannot engage in any direct profitmaking activities, except for certain industries, such as law, accounting and audit services. | Administrative regulations on registration of resident Representative offices of Foreign Enterprises which came into effect on 1st March, 2011, regulate the establishment of offices and their business activities. |

Below are forms of Limited Companies:

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| **Equity Joint Venture (EJV)** | A limited liability Chinese legal entity formed by one or more Chinese parties and one or more foreign parties under the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures. | Generally, at least 25% of the joint venture's shares should be held by foreign investor(s). The joint venture will be managed by a board of directors appointed by each side after getting agreement.<br>Investors in an equity joint venture share profits and losses strictly in accordance with their respective contributions to the registered capital of the venture. |
| **Co-Operative Joint Venture (CJV)** | A wholly foreign owned enterprise is 100% owned by foreign investors. The establishment of a wholly foreign-owned enterprise is governed by the Foreign-Founded Enterprise Law. The branches of foreign enterprises and representative offices of foreign enterprises are excluded here. | |
| **Wholly Foreign Owned Enterprise (WFOE)** | Sometimes referred to as a contractual joint venture. The establishment of a co-operative joint venture is governed by the Law of the People's Republic of China on Chinese-Foreign Co-operative Joint Ventures.<br>It may be formed as a legal person with limited liability, or an entity similar to a partnership. The Chinese and foreign parties shall share earnings or products, undertake risks and losses in accordance with the agreements prescribed in the contractual joint venture contract. | The second amendment of the 'RULES FOR THE IMPLEMENTATION OF THE LAW OF THE PEOPLE'S REPUBLICOF CHINA ON FOREIGN-CAPITAL ENTERPRISES Important Notice' was made on 19th February 2014.<br>The amendment of 'Law of the People's Republic of China on Foreign Capital Enterprises' was made on 3rd September 2016. |

## Organizational Questions

| Subject | Information |
|---|---|
| **Restriction on amounts that can be taken out of the country** | The person leaving China with a cash equivalent amount of USD 5,000 or less (including USD 5,000), need not apply for approval before leaving China.<br>The person leaving China with the cash equivalent amount ranging from USD 5,000 to USD 10,000 (including USD 10,000) should apply to the bank for the relevant approval.<br>The person leaving China with the cash equivalent amount more than USD 10,000 should apply to the competent SAFE for the relevant approval. |
| **Local Borrowing** | There is no restriction for foreign invested companies to borrow money from the banks located in China. However, the foreign loan is limited to the difference between the total investment and registered capital. FIE's registered capital should be contributed in accordance with the time schedule specified by the relevant authority. |

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| **Visa Information** | Expatriates based in Mainland China can apply for Visas through their local Public Security Bureau (PSB). For individuals based outside of Mainland China, Visa information can be obtained from the Chinese Embassy or Chinese Consulate.<br>**Resident Visa** is issued to an expatriate, who comes to China for employment and his accompany family members. A resident visa normally is valid for one year or two years issued for legal rep. of those enterprises with a good standing.<br>**Business Visa (F Visa)** is issued to an expatriate, who is invited to China for a visit, an investigation, a lecture, to do busi- ness, scientific-technological and culture exchanges, short-term advanced studies or internship for a period of no more than six months. Zero/single/double-entry visa or multi-entry visa can be issued with a validity under six months (180 days)<br>**Student Visa (X1 Visa)** is issued to an expatriate, who comes to China for study, advanced studies or intern practice for more than six months. If the expatriate, who comes to China to study or intern practice for a period of less than six months shall apply for an X2 visa. Term of validity for student visa is granted in accordance with the duration of study in China. The final decision is determined by the school in case of discrepancy between the Admission Confirmation and an earlier school letter.<br>**Tourist Visa (L Visa)** is issued to an expatriate, who comes to China for sightseeing or visiting family members or for other personal affairs. |

## Employment

| Topic | Feature |
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| **Labour Market** | China is the biggest developing country with the largest population in the world.<br>The labour force for 2009 amounted to 813.5 million. With 39.5% labour contributed in agriculture, 27.2% labour contributed in industry and 33.2% labour contributed in services.<br>The Labour cost in China is comparatively lower than the cost in United States, Europe, Japan and other developed countries. |
| **Employment permit** | Expatriates working in China should apply for employment permit with labour bureau before applying for resident visa issued by The Exit-Entry Administration of the Ministry of Public Security. |
| **Labour Regulations** | The Standing Committee of the National People's Congress passed the new Labour Contract Law ("Labor Contract Law") on 29<br>June 2007, which became effective on 1 January 2008 and the amendment of the 'Labour Contract Law' was effective on 1st July 2013. The Labour Contract Laws applies on all enterprises, private and non- economic entities in China.<br>Under the Labour Contract Law, written labour contracts are mandatory required documents to establish labour relationships. There are four types of labour contracts, including:<br>Contracts with fixed period of service;<br>Contracts with unfixed period of service;<br>Contracts where the period of service equal to the period required to complete the tasks; and<br>Collective contract.<br>The Labour Contract Law contains details on compulsory limits on probation period under different circumstances. It also pro- vides details on situations where the employers and employees may terminate the contracts and the relevant compensations. |

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| **Social Security System** | The Social Security System includes social insurance, social welfare, the special care and placement system, social relief and<br>housing fund services. The social insurance is the core of the system. It is a mandatory and non-profit system, which adminis- tered by Ministry of Human Resources and Social Security.<br>All enterprises must register with the local social insurance institution, participate in social insurance schemes and pay social insurance premiums monthly. The portion of premium payable by individual workers will be withheld and deducted from their salary and paid to the relevant authorities by the enterprises.<br>Employers and employees must participate in five social insurance schemes, including: unemployment insurance, old age pen- sions, medical treatment, work-related injuries and maternity care. The premiums for pension, medical and unemployment in- surance are jointly contributed by the enterprise and the employee; while the premiums for work-related injuries and maternity care insurance are the sole responsibilities of the enterprise.<br>Apart from these mandatory subsidies, employers must provide living subsidies and medical treatment allowances for all PRC employees. These schemes must be paid out of an employee bonus and welfare fund, which is created from the employer's after-tax profits. For details, please refer to Appendix C.<br>Start from the end of 2011, all the expatriates who work in Beijing are requested to contribute the social insurance premium. |

# Taxation

| Direct Tax | Feature | Remarks |
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| **Individual Income Tax (IIT)** | Individual Income Tax Law (IIT Law) provides that the IIT shall be levied on the following income:<br><br>1. Wages and salary;<br>2. Compensation for personal service;<br>3. Income from authorship;<br>4. Royalties;<br>5. Income from operation;<br>6. interest, dividends;<br>7. Income from lease of property;<br>8. Income from transfer of property;<br>9. Contingent income.<br><br>IIT is levied on the first 4 categories of income (i.e. "comprehensive income") at the progressive rates from3% to 45%. Starting from 1st October 2018, a monthly standard deduction of RMB5000 for both local Chinese staff and expatriates is applied, besides, local Chinese is allowed an additional special deduction in calculating the amount of IIT payable on wages and salaries. For expatriates, they can choose to enjoy either additional special deduction or tax deductible fringe benefits. The fringe benefits policy has been extended to Dec 31, 2023.<br><br>Where a non-PRC domiciled individual working in the PRC receives wages and salaries from a foreign employer and the payment is not ultimately borne by an establishment in the PRC, his IIT exposure depends on the length of residence in the PRC in a year as follows: | 1. If a double taxation agreement applies, the applicable period is 183 days.<br>2. where he/she leaves China for more than 30 days in any year in which he/she resides in China for 183 days or more cumulatively, the computation of consecutive number of years for which he/she resides in China for 183 days or more cumulatively shall restart.<br><br>Special formula is adopted for calculating IIT liabilities for senior management working in China.<br><br>An individual will be required to file IIT returns with the local tax office and pay tax on a monthly basis. Generally speaking, the employer should act as the withholding agent for the employees within fifteen days after each month.<br><br>For detailed IIT rates please refer to Appendix A. |

| Stay in the PRC | Table Income |
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| Less than 90 days/183 days (Note1) | income sourced in China, except income paid by his/her overseas employer and not borne by the said employer's organization or workplace in China. |
| More than 183 days in a tax year for less than 6 consecutive years (Note 2) | Global salaries and wages, except income related to services outside the PRC and borne and paid by non-PRC entities |
| More than 183 days in a tax year for more than 6 consecutive years(note 2) | Global income |

| Tax | Feature |
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| **Corporate Income Tax (CIT)**<br><br>*Continue on page 8...* | China introduced the new Corporate Income Tax Law (CIT Law) on 16th March 2007. Effective from 1st<br>January 2008, all do- mestic enterprises and Foreign Investment Enterprises (FIE) including EJV, CJV and WFOE, are subject to Corporate Income Tax (CIT) at a unified tax rate of 25%.<br>Enterprises that enjoy a lower tax rate of 15%, such as those established in Special Economic Zones or Areas, provided that the enterprise is engaged in projects that fall within the catalogue for tax preferential treatment of each zone or area.<br>A foreign enterprise (FE) without an establishment in the PRC is subject to withholding tax at a rate of 10% on passive income (such as dividend, royalty, rental income, etc.) derived from the PRC.<br>The CIT law introduced a tax resident enterprise (TRE) concept where a FE with the place of effective management in China shall be considered as a TRE and subject to income tax in China on its worldwide income.<br>Furthermore, a non-TRE with an establishment or place in China shall be subject to China income tax on income derived by that establishment or place from sources within China and on income derived from sources outside China, which is effectively connected with such establishment or place.<br>Tax losses can be carried forward for 5 years but cannot be carried back. For enterprises which are seriously affected by COVID-19, the losses of 2020 can be carried forward for 8 years.<br>The calendar year is used as tax year. An enterprise may adopt its own accounting date with the approval of<br>the tax bureau. Accounts are to be prepared in Chinese or in Chinese with a recognised foreign language.<br>FIEs and FEs with establishments in the PRC should file CIT returns quarterly and make advanced payment of tax within fifteen days from the end of each quarter. An annual return together with audited accounts should be filed within five months after the tax year.<br><br>**Exemptions**<br>Previous tax holiday of 2 years' exemption and 3 years' 50% relief generally granted to long-term (10 years<br>or more)produc- tion-oriented foreign investment enterprises is no longer available.<br>Qualified Small and thin-profit enterprises can enjoy 20% corporate income tax rate. If the annual taxable income is less than RMB 100,000.00, the CIT rate is lowered to 5%(2.5% from Jan 1 2021 to Dec 31 2022), and the portion between RMB 100,000.00 and RMB 300,000.00, the CIT rate is lowered to 10%.<br>Qualified "New & high technology enterprise" can enjoy 15% corporate tax rate. And the losses carry-over and compensation period extended to 10 years. The recognition for "new & high technology enterprise" will be performed by special authority, and the procedure will be stricter.<br>Qualified R&D expenditure can apply for 75% super deduction before tax (100% for manufacturing industry).<br>For expenses incurred for research and development activities carried out by commissioned overseas parties, 80 percent of the actual amount of such expenses may be itemized as the principal's commissioned overseas R&D expenses. The commissioned overseas R&D expenses, to the extent of two-thirds of the domestic R&D expenses that meet the given conditions, may be eligible for the pre-tax super deduction for corporate income tax purposes in accordance with applicable rules. |

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| *Continuation of page 7* | Donation expenditures for charitable activities and public welfare, which are less than 12% of the total annual profits, are allowed to be deducted, and the excess part is allowed to be deducted within three years.<br><br>Disabled employees salary expenditure can apply for 100% super deduction off tax.<br><br>The portion of staff training expenses incurred by an enterprise which does not exceed 8% of the total wage amount is allowed to be deducted when tax; the excess is allowed to be carried forward to subsequent tax years for deduction.<br><br>The insurance premiums paid by enterprises for employer liability insurance, public liability insurance or any other liability insurance as required are allowed to be deducted for CIT purpose.<br><br>New equipment and appliances purchased by enterprises from January 1, 2018 to December 31, 2020, whose unit value does not exceed RMB 5 million, shall be allowed to be recorded as the cost of current period and deducted in full when tax, and such costs shall no longer be depreciated within certain years.<br><br>When a venture capital enterprise invests in the shareholdings of private small or medium-sized new and high tech enterprises for more than two years, 70% of the investment amount may be deducted from taxable income in the year that the two-year holding is completed. Unutilized deductions may be carried forward to future tax years.<br><br>**Incentives**<br>Tax incentives are provided to enterprises engaged in industries that are encouraged by the State (such as: agricultural, forestry, animal husbandry and fishery industries). Most of those industries are subject to full tax exemption, several others are allowed a 50% reduction on the normal 25% tax rate.<br><br>For qualifying major State-supported public infrastructure projects, qualifying environmental protection projects, water or energy saving projects, project involving clean development mechanism and qualified energy-saving service enterprises, will be granted from the first revenue producing year a three-year exemption followed by a three-year 50% reduction from the normal 25% tax rate.<br><br>The qualified transfers of technology by resident enterprises shall be exempted from income tax with a cap of RMB 5 million for income earned in a taxable year from the transfer of ownership of technologies and any excess shall be subject to a 50% reduction from the normal 25% tax rate.<br><br>Resource comprehensive utilisation enterprises shall only file 90% of the qualified products revenue for taxable calculation.<br><br>For environmental protection, water or energy saving and safety production, 10% of the equipment investment amount may be deducted from taxable income in the year. Unutilized deductions may be carried forward for up to five tax years. |

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| **Payroll Tax** | When an employee receives salary from an employer, the income is subject to Individual Income Tax in China. | For details, please refer to Individual Income Tax. |
| **Fringe Benefit Tax** | When an employee receives benefits from an employer, the taxable benefits are subject to Individual Income Tax in China. | For details, please refer to Individual Income Tax. |
| **Capital Gains Tax** | To enterprise, the earnings on transfer of shares or equity shall be subject to CIT in China.<br>If an enterprise sells real estate in China, it would be subject to CIT and land appreciation tax | |

| Indirect Tax | Feature |
|---|---|
| **VAT** | According to China Provisional Regulations for Value Added Tax ("Provisional Regulations"), VAT applies to individuals and enterprises on importation of movable goods into mainland China, sale of movable goods in mainland China and provision of processing and repairing services in mainland China.<br>Starting January 2009, China's VAT system changed from "production type " to "Consumption type" system where the VAT incurred on purchasing fixed assets are allowed to be credited in the current period.<br>Since Apr 1, 2019, VAT rates are as follows:<br>1. 13% - Basic rate<br>2. 9% - Transportation, Construction, Basic Telecommunications Services and Agricultural Products<br>3. 6% - Modern Service, Life Service, Financial Service<br>4. 0% - Export (pursuant to tax circulars issued subsequent to the Provisional Regulations. VAT export refund rates for export range from 0% to 16% depending on the specific nature of goods. Thus, VAT on export sale in effect does not apply 0% rate for certain items.)<br>VAT Payable:<br>VAT payable = Output VAT - Input VAT<br>during the period Output VAT = Taxable income x Tax rate<br>It is noted that not all input VAT paid is deductible or refundable in the determination of the amount of VAT payable.<br>Small-scale taxpayers as defined in the Provisional Regulations are subject to VAT at 3% on their taxable income without any deductions of input VAT. Moreover, small-scale taxpayers no longer distinguish between Commercial Enterprise and Industrial Enterprise. Since Apr of 2021, Small-scale taxpayers have increased their VAT threshold from RMB 100,000 yuan to RMB 150,000 per month, and are exempted from VAT below RMB 150,000.<br>The minimum annual sales income to qualify for VAT General Taxpayer is RMB 5 million.<br>Since October 30, 2017, Business Tax has been completely replaced by VAT<br>Because of the COVID-19, certain industries and enterprises could apply to enjoy some VAT preferential treatments |
| **Business Tax (repealed)** | On May 1, 2016, the pilot project of changing business tax into VAT was launched nationwide.<br>Since October 30, 2017, Business Tax has been completely replaced by VAT |

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| **Consumption Tax** | CT is levied on individuals or entities that manufacture or subcontract to process chargeable goods in the PRC or import into the PRC chargeable goods as specified in the PRC Provisional Regulations for Consumption Tax.<br>Chargeable goods include cigarette and tobacco, alcoholic drinks and alcohol, cosmetics, firecrackers and fireworks, product oil, motor vehicle tyres, motorcycle, motor car, golf balls and equipment, luxurious watches, yachts, disposable wooden chopsticks and wooden floorboards, precious jewellery, precious jade and stones and jewellery made with gold, silver and gold and silver mixed with alloys, battery and coating material.<br>Rates: 1% -40% depending on the chargeable goods. Export sale is exempt from CT. Some goods are taxed based on their volume, such as yellow spirits and beer. |
| **Urban Construction Tax and Education Surcharge** | Since December 2010, all foreign entities and individuals in China are liable for this new surcharge. The surcharge is calculated based on the turnover tax paid and the rates ranges from 6% - 12%. |
| **Stamp Duty** | Documents subject to stamp duty include contracts or documents in the nature of a contract in regard to purchase and sale transactions, contracted processing, survey and design contracts for engineering and construction, contracted construction projects, property leasing, goods transportation, warehousing, loans, property insurance, technical contracts; documents for transfer of property title; business account books; certificates and licences; and other taxable documents determined by the Ministry of Finance. |
| **Property Tax** | In Mainland China, the property tax comprises of Land Appreciation Tax and Urban Real Estate Tax.<br>China is likely to introduce a new property tax on residential housing to cool down real estate prices.<br>As a trial run, the levying of the Real Estate Tax on residential property has been launched in Shanghai and Chongqing since January 2011.<br>The taxable properties are limited to the second or subsequent properties or high-end properties purchased by an individual under the trial program. The rate ranges from 0.4%-0.6% in Shanghai and from 0.5%-1.2% in Chongqing.<br>The timetable to expand this new tax nationwide is not yet decided, as the government bodies, including: People Bank of China, Finance Ministry and State Administration of Taxation are still working out when to implement the tax. |
| **Land Appreciation Tax** | Land appreciation tax is levied on units and individuals on incomes derived from the transfer of state-owned land use rights, buildings and their attached facilities, and are assessed at a prescribed tax rate on the basis of the appreciation amount derived by the taxpayer from the transfer of real estate. The tax rate ranges from 30% to 60%. There are specific guidelines setting out the deduction items for calculating land appreciation tax. |
| **Urban Real Estate Tax** | Generally speaking, real estate owned by foreign invested companies and foreign nationals is taxed at the rate of 1.2% for selfuse purposes after making a one-off deduction of 10%-30% of the original value of the property, or at the rate of 12% or 4% for rental income. Urban real estate tax is generally assessed annually and paid in installments. |

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