alliuris

The Alliuris Tax Guide

ALLIURIS | ALLIANCE OF INTERNATIONAL BUSINESS LAWYERS

alliuris

Imprint

Published by ALLIURIS A.S.B.L.
Avenue Ptolémée 12, bte 1,
B-1180 Brussels
Belgium

Office

Alliuris Group
Luisenstr. 5
30159 Hannover
Germany

Fon ++49 511 30756-0
Fax ++49 511 30756-10
Email info@alliuris.org
Web www.alliuris.org

Editors of this publication

Editor:
Co-editor: Ulrich Herfurth, Hannover
Photos: Fotolia/ Shutterstock
Layout: Alliuris

Introduction

The Alliuris Group

Medium sized companies in Europe and around the world are faced with ever increasing competition. They therefore need to develop their skills and strengths and their connections in the European and worldwide markets. ALLIURIS members can greatly assist companies in their cross-frontier business.

The ALLIURIS Group is composed of independent, medium sized law firms in Europe, Asia, the USA and South America, who specialise in European and international business law. The experience of the firms covers all areas of civil and commercial law to enable them to fulfil all the requirements of the medium sized company.

Member firms are conversant with the requirements of international clients; the partners are experienced in understanding the differing approach of foreign clients to legal matters and are able to respond to their needs and questions; lawyers often speak several languages and many have undergone their legal education in several countries.

Clients with interests outside Europe receive similar support. ALLIURIS enjoys widespread professional connections within its global network.

Today ALLIURIS counts for more than 36 offices and 450 lawyers in Europe and other major markets in the world.

The Alliuris Tax Group

Whenever you enter into a business transaction you will have a financial partner? The state. It is important to optimise the net result of your activities and to make the right choice from the available legal and business models. We provide support to you in relation to

- corporate tax in the country of establishment
- income tax and international inter-company pricing
- VAT or turnover tax problems with the state or customers
- real estate taxation in the country of the site
- inheritance tax on assets abroad
- other special taxes and related problems

Due to these challenges, Alliuris formed a tax group that deals with these points. In the following we are going to introduce to you our member firms and their tax specialists and expertise.

The Alliuris Advantage

Alliuris One

One point of contact for your cross border deals. Alliuris will give you a single point of contact who will be a partner in a member firm. That lawyer will manage your work and report to you – ONE e-mail address, ONE telephone number and the full range of Alliuris members are at your service.

Alliuris Local

You need a lawyer with knowledge local to the place you are doing business in and who can deliver in a way you can understand by reference to the place you know. Representation in the jurisdiction you are doing business in from trusted lawyers delivered to you in your language by your lawyer.

Alliuris Excellence

One lawyer cannot be excellent everywhere. Alliuris provides a centre of excellence in every jurisdiction.

Alliuris Information

What is going on in your sector where you want to do business? Alliuris can source the market information you need.

Alliuris Contacts

How do you know who you need in the country you are operating in and how do you get to them? Alliuris can source the trusted local contacts you need.

alliuris

Taxation in Spain

Contributed by Marco Legal S.A.P., Barcelona / Madrid

1. Corporate Income Tax

Corporate Income Tax (hereinafter CIT) is levied on companies established in Spain (resident taxpayers). Resident legal entities are taxed on their worldwide income. Non-residents are subject to taxation for this tax solely for the income accrued or paid on Spanish territory.

1.1. Tax residence for Companies

A company is deemed to be a tax resident in Spain and subject to Corporate Income Tax (hereinafter CIT) on its worldwide income when it is an entity incorporated under Spanish law and/or has its legal headquarters or its effective place of management in Spain. In addition, Tax authorities may presume that an entity which has its residency in a tax haven or in a country with no income taxation is a tax resident in Spain if any of the following circumstances take place:

- The majority of its assets are directly or indirectly located in Spain.
- A majority of its rights may be exercised in Spain.
- The main activity of the entity is carried out in Spain.

This presumption does not apply if business reasons justify the effective performance of operations and the exercise of management in such foreign jurisdiction.

CIT rates:

- General tax rate is 25 per cent.
- For some newly created companies a reduced 15 per cent tax rate could apply for two fiscal years and on their tax base up to EUR 300.000 and a 20 per cent tax on any excess in these two periods.

1.1.1. Permanent Establishment

In the absence of a Double Taxation Avoidance Treaty (DTAT), the internal legislations will determine when an individual or company operates in Spain through a Permanent Establishment (PE).
In particular, management offices, branches, offices, factories, workshops, warehouses, shops or other establishments; mines, oil or gas wells, quarries, farm, forestry facilities, livestock farms, or any other site where natural resources are collected; and construction, installation, or assembly sites whose duration lasts more than six months will be considered PEs and consequently, CIT is triggered/implemented for the following incomes:

- Income from economic activities or operations undertaken by PE.
- Income derived from assets of PE.
- Gains or capital losses arising from the assets used by PE.

1.1.2. Tax credits

Deduction for research and development and technological innovation.

Within this deduction we can distinguish between two types of activities: research and development (R & D) and technological innovation.

- R & D activities

The base of the tax credit is constituted by the amount spent on/ invested in R & D and for investment in tangible fixed assets, excluding buildings and “plots of land”.

Generally, the tax credit percentage will be 25 per cent of incurred expenses in the tax period of this item. Furthermore, if the expenses are higher than the average amount spent in the previous two years, a 25 percent rate is applied until the amount of the average of the last two periods. A 42 percent is applied on excess expenditure of this average.

Regardless of these deductions, an additional 17 percent may also be applied on staff costs relating to qualified researchers assigned exclusively to R & D entities

In addition, an 8 percent can be applied for investments made in tangible fixed assets (excluding buildings) and intangible assets that are exclusively assigned to R&D activities.

Finally, an additional deduction of 8 per cent could apply on investments in property, plants and equipment and intangible assets, excluding land and buildings.

- Technological innovation activities.

A 12 per cent tax credit can be requested for technological innovations.

Reserve of Capitalization

Taxpayers may reduce their tax base by 10 per cent or increase their net equity in a given year if they create a non-distributable reserve corresponding to the tax base reduction and retain this in their balance sheet for five consecutive fiscal years.

The reduction is calculated as 10 per cent of the difference between: (1) The net book value of the company at the beginning of the year (excluding the preceding year’s accounting result) and (2) The net book value at the end of the financial year after deducting negative adjustments. Up to maximum limit of positive taxable base before using any tax loss carried forward. Any amount exceeding this limit will be carried forward to the following two years.

Tax credits and deductions for businesses with employees with disabilities

The tax credit provided is EUR 9.000 for each disabled worker and which may increase to a maximum of EUR 12.000 in the event of a serious/ considerable disability.

Job creation

The application of a tax credit of EUR 3.000 is applied to those entities that hire and retain their first employee under the age of thirty at the time of his or her employment.

Notwithstanding the above provisions, the entities who employ fewer than 50 employees could also apply for an additional tax credit if the hired employee was previously unemployed.

This amount is calculated as being 50 percent of the lower tax rate in the two following situations:

- Amount of unemployment benefit the worker had pending at the time of recruitment.
- Amount corresponding to 12 monthly payments of unemployment benefits that have been agreed.

1.1.3. Special tax regimes

Restructuring transactions

Under the special restructuring transactions regime, asset transfers carried out through such transactions do not have tax implications, either from a direct, indirect, or other Spanish tax perspective for all the parties involved. Tax impact will arise when a subsequent transfer that cannot be protected by the special restructuring regime takes place.
The transactions that can be taxed under this regime are mergers, global transfers, spin-offs of business units/majority interests, splits, share to share transactions, contributions of business units, and contributions of assets (this last transaction is not fully tax protected).

Consolidation regime

Spanish Economic Interest Groupings (hereinafter SEIGs) that meet certain requirements will not be subject to Spanish CIT on the part of the taxable income that corresponds to members resident in Spain for tax purpose. This part of the positive or negative taxable income shall be deemed to be the profits/losses of the SEIG members. The proportional part of tax credits and payments in advance will also be assigned to the Spanish tax resident members of the SEIG where they are subject to CIT.

Transfer pricing

Transfer pricing in Spanish law includes the arm's length principle (e.g. the value that in normal market conditions would have been established between unrelated parties) and the requirement of documenting all related party transactions when the amount of the transactions exceeds EUR 250.000. The arm's length principle applies to all transactions carried out by taxpayers with related parties. Calculation of the market value by taxpayers must be done through the application of one of the following transfer pricing methodologies: comparable uncontrolled price (CUP) method, cost plus (CP) method, resale price method (RPM), profit split method (PSM), or transactional net margin method (TNMM).

2. Personal Income Tax

Personal Income Tax (hereinafter PIT) is a direct tax levied on the different kinds of income of an individual, an ordinary partnership, a non-juristic body of person or an undivided estate, considered as taxpayer in Spain (tax resident in Spain).

2.1. Spanish tax residence

Despite the specific rules determined through a concrete DTAT, the Spanish legislation establishes that residency in Spain is determined on a calendar year basis. Individuals are considered residents for tax purposes if;

- They spend more than 183 days in a calendar year in Spain.
- If the center of their vital interests is located in Spain. It is presumed that the center of their vital interests is located in Spain if the individual's family lives in Spain.

A resident or non-resident whose tax residence is in Spain and renounces his Spanish tax residence is nonetheless considered a Spanish tax resident for the following four years if the new tax residence is located in a tax haven.

2.2. PIT rates for Spanish Residents

Tax residents in Spain are obliged to pay for PIT, which is calculated as follows: Total tax liability could vary depending on the Autonomous Communities rates, which in turn could vary from one region to other. The following table show general rates that can be increased with the Autonomous Communities rates.

Net Tax	Rate
EUR	%
Up to 12.450	19%
12.450 to 20.200	24%
20.200 to 35.200	30%
35.200 to 60.000	37%
Over 60.000	45%

Dividends, interest and capital gains are computed under these concrete rates:

Saving Tax Base	
Net Tax	Rate
EUR	%
Untill 6.000	19 %
To 6.000 until 24.000	21 %
To 24.000 until 50.000	21 %
To 50.000 until (…)	23 %

3. Non Resident Income Tax

Income obtained by non-residents is subject to a Non-Residents Income Tax (hereinafter NRIT). This tax is generally subject to a final rate of 24 per cent (19 per cent for EU residents).
However, other rates may apply depending on the type of income.
Owning properties in Spain is also considered an income and would be taxed by applying:

- 2 per cent of the cadastral value of the property listed on the receipt of Property Tax (hereinafter PT).
- per cent for those properties whose cadastral value has been revised or amended).

Capital gains are calculated as the difference between the transfer price of an asset and its acquisition price. This difference is taxed at a general rate of 19 per cent.

4. Wealth Tax

Wealth tax is applied individually on the personal assets of individuals and is calculated based on their/its value.
Taxpayers are subject to Wealth Tax once all the exemptions, tax allowance and deductions have been applied, and the result is still positive. Nevertheless those who possess more than 2.000.000 Euros must present a Wealth Tax declaration, even though the result is negative.
While tax residents are subject to Wealth Tax for their worldwide wealth, non-residents only have to pay for the assets owned in Spanish territory.
Both residents and non-residents are entitled to a general allowance of EUR 700.000. (This allowance could vary depending on the Autonomous Communities).
Only residents are entitled to and additional EUR 300.000 exemption on their main domicile.

General tax rates are the following:

Net Base EUR	Gross Tax Payable EUR	Remainder of Net Base EUR	Rate %
€ 0.00	€ 0.00	€ 167.129,45	0.2
€ 167.129,45	€ 334,26	€ 167.123,43	0.3
€ 334.252,88	€ 835,63	€ 334.246,87	0.5
€ 668.449,75	€ 2.506,86	€ 668.499,76	0.9
€ 1.336.999,51	€ 8.523,36	€ 1.336.999,50	1.3
€ 2.673.999,01	€ 25.904,35	€ 2.673.999,02	1.7
€ 5.437.998,03	€ 71.362,33	€ 5.347.998,03	2.1
€ 10.695.996,06	€ 183.670,29	Until (...)	2.5

5. Inheritance and Gift Tax

Inheritance and Gift Tax (hereinafter IGT) is levied on the acquisition by individuals of assets (whether tangible or intangible) by virtue of inheritance (mortis causa), donation (“inter vivos”) or specific life insurance policies.
Although GT is a national tax; Autonomic Communities have legislated some aspects with a direct impact on the final liability. Indeed, many regions have approved lower tax rates, reductions and other benefits that significantly reduce the tax burden.
In Addition, the Foral Region of Navarre and the Basque Country have a wide right to self-regulate IGT resulting in a significant difference in taxation from that of the mainstream Spanish tax laws.

IGT Rates

The general taxable base (each Autonomic Community could vary it) is taxed (both for gift and inheritance tax purposes) by application of the following progressive scale:

Up to	EUR	Remaining	%
€ 0.00	€ 0,00	€ 7.993,46	7,65
€ 7.993,46	€ 611,50	€ 7.987,45	8,5
€ 15.980,91	€ 1.290,43	€ 7.987,45	9,35
€ 23.968,36	€ 2.037,26	€ 7.987,45	10,20
€ 31.955,81	€ 2.851,98	€ 7.987,45	11,05
€ 39.943,26	€ 3.734,59	€ 7.987,46	11,90
€ 47.930,72	€ 4.685,10	€ 7.987,45	12,75
€ 55.918,17	€ 5.703,50	€ 7.987,45	13,60
€ 63.905,62	€ 6.789,79	€ 7.987,45	14,45
€ 71.893,07	€ 7.943,98	€ 7.987,45	15,30
€ 79.880,52	€ 9.166,06	€ 39.877,15	16,15
€ 119.757,67	€ 15.606,22	€ 39.877,16	18,70
€ 159.634,83	€ 23.063,25	€ 79.754,30	21,25
€ 239.389,13	€ 40.011,04	€ 159.388,41	25,50
€ 398.777,54	€ 80.665,08	€ 398.777,54	29,75
€ 797.555,08	€ 199.291,40	excess	34,00

The resulting gross tax should be further increased by application of certain additional coefficients, which take into account the acquirer’s net wealth prior to the acquisition, as well as his or her relationship with the donor/deceased (as per the groups described in Section 4.1.)

Donee's pre-existing wealth (EUR 000)	Group (family relationship)		
	I and II	III	IV
0-403	1	1,5882	2
404-2.007	1,05	1,6676	2,1
2.007-4.020	1,1	1,7471	2,2
4.020+	1,2	1,9059	2,4

6. Other Taxes

6.1. Value added tax (VAT)

Spanish VAT applies to the following transactions;

- The supply of goods or services made or rendered in Spain by a taxable person.
- The intra-Community acquisition of goods from another EU Member State by a taxable person.
- The importation of goods from outside the EU, regardless of the status of the importer.
- Reverse charge on goods and services received by a taxable person in Spain.

There are three different types of rates;

- The ordinary rate of 21 per cent, applied on regular supplies of goods and services.
- A reduced rate of 10 per cent that is mainly applied on food and agricultural products not included in the "super reduced", healthcare products, transports e.g.
- Super reduced rate of 4 per cent applied on basic necessities (e.g. bread, milk).

The Canary Islands are excluded of VAT rules and a specific tax is applied instead of VAT, (the Canary Island General Indirect Tax) with an ordinary rate of 7 per cent.

6.2. Transfer Tax

The Transfer Tax rate varies from 5 per to 10 per cent, depending upon the autonomous community, is generally levied on "inter vivos" transfers, including real estate transfers and real estate leases that are exempt from VAT.

6.3. Stamp duty

Stamp duty is levied on three different kinds of legal documents;

- Notary instruments and records documenting transactions that have an economic value and need to be registered in public registries (e.g. company, land, and industrial property registries). The general rate is between 0.75 per cent and 1.5 per cent, depending on the autonomous community and the taxable event.
- Commercial documents. Mainly bills of exchange and documents with similar function.
- Administrative documents, such as preventive annotations practiced in public records, if they concern a right or valuable interest. The tax rate in these cases is 0.50 per cent.

Stamp duty is incompatible with transfer tax and capital duty, but compatible with VAT.

6.4. Capital duty

1 per cent capital duty is levied on capital reductions and company dissolutions, to be paid by the shareholders. Capital duty is incompatible with transfer tax and stamp duty in certain cases, but it is compatible with VAT.

+++

Marco Legal

Abogados & Economistas

Av. Diagonal 453bis, 4a Pl.
ES-08036 Barcelona
Fon + 34 93 2388888
Fax + 34 93 2388881

Po Castellana 114Esc 16
ES-28046 Madrid
Fon +34 91 564600
Fax +34 91 7452111

Mail info@marcolegal.com
Web www.marcolegal.com

Written by Mariano Roca

alliuris

Taxation in Germany

Contributed by Herfurth & Partner, Hanover, Germany

alliuris

0. Preamble

This tax guide is intended to give a brief introduction on G~~g~~erman tax law.

1. Corporate Income Tax

Corporate Income Tax (hereinafter CIT) is levied on corporations ~~companies~~ with their main office or effective place of management in Germany (resident taxpayers). Resident legal entities are taxed on their worldwide income. Non-residents are subject to taxation for this tax solely for the income accrued on German territory.

1.1. Taxable Income

The corporate tax rate is 15 %. A company under the CIT conducts a trade by law. Therefore such a company is subject to a trade tax additionally (see below under **7.**).

Tax	Rate	Example
	%	%
Income taxable		100,00
Corporate Income Tax	15%	15,00
Solidarity surcharge (calculation base: CGT)	5,5%	0,82
Local Business Tax (example,see below 6)	12,68 %	12,68
Total tax amount	28,5%	**28,5**

Dividends are taxed with personal income tax on the level of the shareholder.

1.1.1. Permanent Establishment

A permanent establishment can be a resident or an non-resident taxpayer.

1.1.2. Tax credits

A deduction for research and development and technological innovation is so far not existant but there are discussions on this topic in the federal parliament.

Tax credits and deductions for businesses with employees with disabilities

There is no tax deduction for employees with disabilities. But by law every company is obliged to recruit a certain percentage of employees with disabilities. Companies not meeting this requirement are obliged to pay a compensatory payment.

Job creation
Job creation is not benefited by tax credits or similar stimulus but by social law.

1.2. Special Tax Regime

1.2.1. Consolidation Regime

In the process of consolidation, a tax declaration has to be done, even for the assessment periods years back. The obligation of declaring the tax lies upon the receiver in insolvency.

1.2.2. Transfer Pricing

Transfer pricing is attributed with the following functions:

- Simplification of the internal cost allocation within the company.
- Control of the business efficiency of cost centres.
- Management of decentralised decisions in company units.
- Income determination for reporting, ascertainment of profits respectively determination of taxable income.

The pricing has to be appropriate. On the one hand the law requires an appropriate pricing to not constitute a hidden distribution of profits (so called verdeckte Gewinnausschüttung). On the other hand the requirement of dealing at arm's length has to be complied with.

The price comparison method, the resale price method, the cost plus method or a combination of these methods can be applied in determining the transfer prices.

The pricing process has to be documented. The documentation has to proof the serious effort of achieving an appropriate pricing. The records have to reflect the considerations that led to the pricing and make them comprehensible. Therefore the taxable person is obliged to state the reasons for the application of a certain price comparison method as well as the reasonability of the underlaying~~in~~ tax price.

2. Personal Income Tax

The personal income tax (hereinafter PIT) is a personal direct tax where solely an individual is liable for income tax. Even individuals who operate a business together in a partnership, are individually taxed on their income out of the partnership. The partnership itself is not the subject of PIT.

2.1. Residents

The PIT is levied on individuals with residence in Germany. An individual has a residence in Germany, when a place which is both determined and available for usual residence is established. ~~No residenceis established when~~ If the period of use of property is ~~targeted on~~ less than 6 months the stay is not considered as residence . ~~The~~ G~~g~~erman citizenship as such does not constitute a residence.

2.2. Non-Residents

An individual without a ~~no~~ residence in Germany is taxable on it's income accrued in Germany only (limited tax duty). Income accrued by artistic, sportive, entertainment or similar performances or exploitation rights of before mentioned performances is subject to a tax deduction at source of 15 % (*withholding tax*). Managers on the level of a board of directors/supervisory board members are subject to a 30 % tax deduction at source.

2.3. Cross-border-commuters (so called Grenzpendler)

Although they are non-residents, cross-border-commuters can apply for being treated as~~like~~ a resident instead as~~of like~~ a non-resident. In this case not only the income generated in Germany ~~generated but the whole income~~ is subject to G~~g~~erman taxation but the global income of the taxpayer~~.~~

2.4. Double Taxation Agreements (DTA~~T~~s)

Germany maintains Double Taxation Avoidance Agreements (DTA) with most jurisdictions around the world. Most of it follow the OECD model and grant ~~There are overriding rules of DTATs between countries existing that can lead to~~ a tax credit in the amount of the tax paid abroad ~~–~~(~~so called~~ setoff method / *Anrechnungsmethode*) or ~~tax~~ exempt foreign income from German taxation at all.~~ion~~ (~~so called~~ exemption method / Freistellungsmethode).

2.5. PIT Rates for German Residents

Tax residents in Germany are subject to the following PIT tax rates:

Net Tax 2017	Rate	Example
EUR	%	%
≤11.000	0%	
<11.000-18.000	25%	
<18.000-25.000	35%	
<25.000-31.000	35%	
<31.000-60.000	42%	
<60.000-90.000	48%	
<90.000-1.000.000	50%	
<1.000.000	55%	

3. Capital Gains Tax

For dividends, interest and capital gains tax rates are as below:

Tax	Rate	Example
	%	%
Income taxable		100,00
Capital gains tax (CGT) *Abgeltungssteuer*	25%	25,00
Solidarity surcharge (calculation base: CGT)	5,5%	1,37
Church tax for church-members Bavaria and Baden-Württemberg (calculation base: CGT) Rest of Germany (calculation base: CGT)	 8% 9%	 2,25
Total tax amount	26,38%-28,63%	**28,63**

4. Wealth Tax

There is no wealth tax in Germany – in fact wealth tax is still provided by law, but since many years this type of tax is not levied in Germany.~~.~~

5. Inheritance and Gift Tax (IGT)

The acquisition of assets through inheritance or as a gift or ~~The acquisition mortis causa, donation inter vivos,~~ purpose grants (transfer of assets under a certain condition) and certain assets of a foundation are subject to inheritance and gift tax. The IGT requires a classification of every single asset. There are assets that are classified as privileged and those that are not.

Businesses and its assets are priviliged: 85% of its value is not subject to IGT, provided the heir maintains te business for a period of five years and keeps on average 80% of the workforce (counted as the sum of salaries). The heir even can opt for a more favourable model: 100% of tax free assets provided the heir maintains te business for a period of seven years and keeps on average 100% of the workforce.
~~Inheritance with a value up to 26 Mio. EUR is privileged by 85 % of the asset not being subject to taxation. The privilege f~~For inheritance exceeding a value of 26 Mio. EUR te privilege gradually decreases. Whilst at 89,75 Mio. EUR there is a calculative privilege of still 15 %, at a value of over 90 Mio. EUR, the privilege abruptly and completely drops to 0 %. For the acquisition of assets exceeding the amount of 90 Mio. EUR solely an extension of payment of the tax due or a procedure that allows to not pay the tax due is left over. The deferred payment of taxes ~~procedure that allows to not pay the tax due,~~ is only accepted when ~~requires~~ the taxpayer is ~~to~~ not ~~be~~ able to pay the tax due out of his assets. ~~In addition to before mentioned it requires the maintaining of the total wages at a level of 700 % of the Minimum Total Wage for 7 consecutive years.~~
Family businesses enjoy an additional advantage: in case the shareholders cannot transfer their shares freely to third parties but only to other shareholders or members of the family and if the purchase price for such shares as reduced by 30% the business value for IGT is reduced accordingly.

Every successor is granted a tax exempt amount as below:

Relationship	EUR	tax-class
Spouse or life mate by law	500.000	I
Children and grandchildren of deceased parents, stepchildren, adopted children	400.000	I
Grandchildren	200.000	I
Parents, grandparents, siblings, sibling's children, step-parents, children/parents in-law, divorcee, separated life mate	100.000	II
Remaining persons	20.000	III

6. Trade Tax ~~/ Commercial Tax~~/ Local Business Tax

The local communities impose a tax on local business units. The owner of the business is subject to this business tax whether it is a physical or a legal person. ~~This is to be distinguished from the tax imposed on individuals. The person liable to pay the tax is the individual or if the business unit possesses legal capacity as a corporation, the corporation itself~~.

Each ~~The~~ local communit判y~~ies~~ ~~individually~~ determines its own ~~the amount of the~~ tax rate, but at a ~~cannot fall below a certain~~ minimum rate of ~~(~~7%~~)~~ and a maximum of some 17,15 % (München). ~~.~~For that reason the level of tax burden differ between local communities. As a rough guide the tax burden may be higher in urban areas and lower in rural areas. German law sets a cap for the sum of taxes for corporations – the total rate of corporate tax, solidarity charge

One-man businesses and business partnerships are privileged by a tax liberation of up to 24.500,00 EUR.

7. Value Added Tax (VAT)

German VAT follows the VAT scheme of the European Union and applies to the following transactions:

- The delivery of goods or services made or rendered in Germany by a taxable person.
- The intra-community acquisition of goods from another EU Member State by a taxable person.
- The import of goods from outside the EU, regardless of the status of the importer.
- Transfer of the tax liability to the recipient of performance (so called reverse charge).

Businesses have to add VAT (salestax, *Umsatzsteuer*) on their sales price, collect it from the customer and forward the amount to the tax office. On the other hand businesses can recollect salestax already paid to its suppliers (Vorsteuer). They calculate the VAT net amount monthly and pay only this amount to the state. Comsumers cannot deduct paid VAT, so that VAT is no effectivy charge for businesses but for consumers.
Imported goods are subject to Import Tax following the same regime as VAT.

The ordinary VAT rate is ~~of~~ 19 % and is applied on regular supplies of goods and services. A reduced rate of 7 %~~per cent~~ ~~that~~ is mainly applied on the delivery of for instance food, books, art objects, copyright law protected performances, theaters, operas, concerts, means of local transport and taxi rides up to 50 km distance.

A catalogue of turnovers is free from taxes, for example turnovers from export delivery, certain intra-community delivery, delivery of gold to central banks, lending and brokering of money, ~~the realization of~~ sportive and cultural events, certain volunteer activities etc. ~~Because of a s~~Small entrepreneurs with a ~~provision,~~ turnover~~s~~ not exceeding 17.500~~,00~~ EUR in the previous year and 50.000~~,00~~ EUR in the current year are exempted ~~free~~ from VAT, but they may opt to be taxed with VAT (and may deduct paid VAT then).~~.~~

8. Other Taxes

8.1. Transfer Tax

In Germany there is no specific or general transfer tax but the transfer of goods and services is subject to VAT, toll/customs/duty, insurance tax, amusement tax, air traffic tax, etc.

8.2. Real Estate Tax

Real Estate is subject to local real estate tax levied by the local community. The amount varies from community to community.

8.3. Real Estate Transfer Tax

The transfer of real estate is subject to Real Estate Transfer Tax (*Grunderwerbsteuer*). The tax rate assessed by the *Länder* varies from 3,5 % (i.e. Bavaria, Saxonia) to 6,5 % (Thuringia). It is applicable on any transaction, even on an option for an acquisition. If a shareholder sells more than 95 % of the shares in his company owning real estate then the transfer is subject to the tax as well.

8.4~~2~~. Stamp Duty

There is no stamp duty in Germany.

8.5 Capital Duty

Since 1991 there is no capital duty in Germany anymore.

+++

herfurth.partner
RECHT INTERNATIONAL

……

Herfurth & Partner

Rechtsanwaltsgesellschaft mbH

Luisenstraße 5
30159 Hannover

Fon +49 511 307560
Fax +49 511 3075610

Mail info@herfurth.de
Web www.herfurth.de

Written by Zeljko Thielker-Milosavljevic and Günther Stuff
……

alliuris

Tax Facts and Figures of PRC

Contributed by Jin Mao Partners,China

0. Preamble

This article has been prepared to provide the reader with an overview of taxes levied in the People's Republic of China (the "PRC"). The material contained in this publication was assembled on 1 January 2017 and, unless otherwise indicated, is based on information available at that time. It is not intended to cover exhaustively the subjects it addresses but rather to answer some of the important, broad questions that may arise for the reader. When specific issues arise in practice, it will be necessary to refer to the laws, regulations and interpretations of the PRC. Since the laws and regulations are still evolving and are not always uniformly interpreted, it is advisable to obtain appropriate professional advice.

The commentary in this article does not cover taxes levied in Hong Kong and Macau, which became Special Administrative Regions of the PRC on 1 July 1997 and 20 December 1999 respectively. Hong Kong and Macau continue to retain their own tax systems and the taxes applicable in Mainland China do not apply in Hong Kong and Macau.

1. Overview of PRC Taxes

The People's Republic of China levies a wide range of taxes including income taxes (corporate income tax and individual income tax), turnover taxes (value added tax and consumption tax), taxes on real estates (land appreciation tax, real estate tax, arable land occupation tax, and urban and township land-use tax) and other taxes such as deed tax, stamp duty, custom duties, motor vehicle acquisition tax, vehicle and vessel tax, resource tax, environmental protection tax, urban construction and maintenance tax, vessel tonnage tax and tobacco tax.

There is no capital gains tax as such in the PRC. Gains on the sale of fixed assets are taxable as ordinary income.

~~1.1.~~1.3. Tax Administration

China's major tax laws are passed by the People's Congress, and the implementation regulations are formulated by the State Council. The Ministry of Finance (MOF) and the State Administration of Taxation (SAT) are delegated to provide interpretation and implementation of the tax laws and regulations. Meanwhile the SAT is also responsible for supervising the enforcement of the tax collection at the local levels.

The tax administration of enterprises, including domestic enterprises, foreign investment enterprises (FIEs) and foreign enterprises (FEs), and individuals, including Chinese residents and foreign residents is administered by two separate lines of tax bureau, namely the local branches of the SAT and the local branches of the Local

Tax Bureau. Generally, value added tax (VAT) is administered by the local branches of the SAT whereas individual income tax (IIT) and other local taxes are administered by the local branches of the Local Tax Bureau.

CIT is mainly handled by the local branches of the SAT but some is administered by the local branches of the Local Tax Bureau. There are adjustments and variations adopted in the tax administration from time to time.

~~1.2.~~1.4. Investment Restrictions on Foreign Investors

Foreign companies or individuals can establish equity joint ventures, contractual joint ventures, wholly foreign-owned enterprises and foreign-invested partnership enterprises in China. Except for regulations governing the minimum registered capital for certain special industries, there is no restriction on the initial capital contribution ratio or the timing of capital instalment for foreign- invested enterprises (including those invested by Hong Kong, Macau and Taiwan investors).

Foreign investors shall assess whether their investment projects are restricted, prohibited or encouraged in China before they make the investment decisions:

- The “Market Access Negative List” is a set of measures that applies to both domestic and foreign investors. The restrictive measures for the restricted and prohibited sectors under this “Market Access Negative List” are applicable to both domestic and foreign investors. For instance, approval is needed for both domestic and foreign investors for the construction of large theme parks; the construction of golf courts and villas and the investment in specific sectors such as lottery and porn sectors are prohibited to both domestic and foreign investors. The “Market Access Negative List” is currently piloted in Shanghai, Guangdong, Tianjin and Fujian;
- The “Industry Catalogue Guide for Foreign Investment (the 2017 Catalogue)” lists out the additional restricted and prohibited categories for foreign investment via a negative list, including 35 restricted sectors and 28 prohibited sectors. In particular, for restricted sectors, there are specific restriction on the foreign/ domestic equity ratio and the combination of executive management;
- The 2017 Catalogue also sets out 348 sectors in the encouraged category: agriculture, forestry, animal husbandry and fishery; mining; manufacturing; the production and supply of electricity, heat, gas and water; transportation, warehousing and postal services; wholesale and retail; leasing and commercial services; scientific research and technical services; water, environment and public facility management; education; health and social undertakings; culture, sports and entertainment. Foreign investment under the encouraged category may enjoy tax incentives including duty exemption on the imported equipment.
- In principle, foreign invested projects that are not subject to the restrictive measures under the “Market Access Negative List” and not in the negative

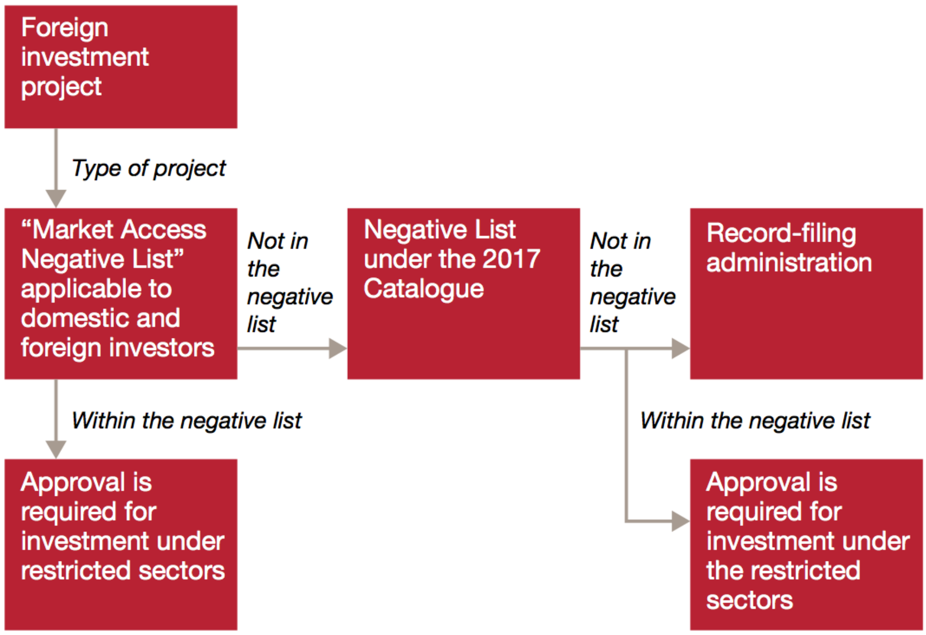
list under the 2017 Catalogue are only subject to the record-filing administration, which means that no pre-approval is required.

Other important aspects related to foreign investments include:

- Foreign investment in the Pilot Free Trade Zones (PFTZs) shall follow the PFTZ special administrative rules (i.e., the PFTZ Negative List). The State Council released the 2017 PFTZ Negative List, which takes effect from 10 July 2017 and is applicable to the current eleven PFTZs in China.
- Hong Kong, Macau and Taiwan investors shall also follow the 2017 Catalogue. If there are more favourable measures under the "Closer Economic Partnership Arrangement (CEPA) between Mainland China and Hong Kong", the Mainland – Macau CEPA or the "Economic Cooperation Framework Agreement", the relevant investors may follow these specific agreements.

~~1.2.1.~~ *Procedures for Foreign Investment in China*

(Note: set forth below is the general procedure for foreign investment under the "Market Access Negative List" that is currently implemented in Shanghai, Guangdong, Tianjin and Fujian and thus does not apply to other areas.)



1.5. Pilot Free Trade Zones

China has established eleven Pilot Free Trade Zones within designated areas of the following provinces and municipal cities: Shanghai, Guangdong, Tianjin, Fujian, Liaoning, Zhejiang, Henan, Hubei, Shanxi, Sichuan and Chongqing.

alliuris

2. Corporate Income Tax Law

2.1. Concept of Tax Resident Enterprise

Tax resident enterprise (TRE) is a concept in the corporate income tax (CIT) Law. TRE refers to an enterprise established according to the Chinese law or an enterprise established according to foreign laws but with its effective management located in China. TREs are subject to CIT on worldwide income while non-TREs only on China sourced income. Enterprises registered in China are always TRE. A FE with effective management in China may also be regarded as a TRE.

~~2.2.~~2.3. Tax Rate for TREs

The standard CIT rate is 25%. Lower tax rates are available for qualified enterprises (please refer to "Tax incentive policies" below).

2.3. Witholding Income Tax Rate for Non-TREs

Withholding income tax (WHT) rate for passive income derived by Non-TREs is 20% under the CIT Law and is reduced to 10% under the Detailed Implementation Regulations of the CIT Law.

This unilaterally concessionary WHT rate is applicable to dividend, interest, rental, royalty, and other passive income such as the gains from the sale or transfer of real estate property, land use right and shares in a PRC company. Dividends distributed by a FIE out of its pre-2008 profit are exempted from WHT.

WHT rates may be lower than 10% or exempted under a tax treaty.

2.4. Tax Incentive Policies

The CIT regime adopts the "predominantly industry-oriented, limited geography-based" tax incentive policy. Key emphasis is placed on "industry-oriented" incentives aiming at directing investments into those industry sectors and projects encouraged and supported by the State. The tax incentive policies mainly include:

alliuris

2.4.1. Tax Reduction and Other Treatments

CIT may be reduced or exempted on income derived from the following projects:

Projects/industries	CIT incentive[3]	Valid period
Agriculture, forestry, animal-husbandry and fishery projects	Exemption or 50% reduction	All years as long as it is engaged in these projects
Specified basic infrastructure projects[1]	3+3 years tax holiday	Starting from the first income-generating year
Environment protection projects and energy/water conservative projects[2]	3+3 years tax holiday	Starting from the first income-generating year
Qualified new/high tech enterprises established in Shenzhen, Zhuhai, Shantou, Xiamen, Hainan and Pudong New Area of Shanghai newly established after 1 January 2008	2+3 years tax holiday	Starting from the first income-generating year
Software enterprises	2+3 years tax holiday	Starting from the first profit-making year or 2017 whichever is earlier
Integrated circuits (IC) design enterprises	2+3 years tax holiday	Starting from the first profit-making year or 2017 whichever is earlier
IC production enterprises with a total investment exceeding RMB8 billion, or which produce IC with a line-width of less than 0.25um provided that its operation period exceeds 15 years	5+5 years tax holiday	Starting from the first profit-making year or 2017 whichever is earlier
IC production enterprises which produce IC with a line-width of less than 0.8um	2+3 years tax holiday	Starting from the first profit-making year or 2017 whichever is earlier
IC packaging/testing enterprises	2+3 years tax holiday	Starting from the first profit-making year or 2017 whichever is earlier
Enterprises which manufacture key parts or equipment used for the production of IC	2+3 years tax holiday	Starting from the first profit-making year or 2017 whichever is earlier
Qualified energy-saving service enterprises	3+3 years tax holiday	Starting from the first income-generating year
Encouraged enterprises in underprivileged areas of Xinjiang	2+3 years tax holiday	Starting from the first income-generating year
Projects involving clean development mechanism	3+3 years tax holiday	Starting from the first year during which the first disposal of certified emission reduction units takes place
Certified animation enterprises which produce self-developed animation products	2+3 years tax holiday	Starting from the first profit-making year or 2017 whichever is earlier

alliuris

Notes:

1. Including harbour, wharf, airport, railway, highway, city public transportation, electric power, water resources utilization projects, etc.
2. Including public sewage treatment, public refuse treatment, comprehensive development and utilization of methane, technologies alteration for energy-saving and emission reduction, seawater desalination projects, etc.
3. "2+3 years tax holiday" refers to two years of exemption from CIT followed by three years of 50% reduction of CIT; similarly, "3+3 years tax holiday" refers to three years of exemption plus three years of 50% reduction of applicable CIT.

For income derived by a TRE from the transfer of qualified technology in a tax year, the portion that does not exceed RMB 5 million shall be exempted from CIT; and the portion that exceed RMB 5 million shall be allowed a half reduction of CIT.

CIT is exempted on dividend derived by a TRE from the direct investment into another TRE except for the case that the investment income is from stocks publicly traded on the stock exchanges and the holding period is less than 12 months.

CIT is exempted on income derived by non-profit-making organizations from engaging in non-profit-making activities.

2.4.2. Reduced Tax Rate

Qualified new/high tech enterprises are applicable to the reduced CIT rate of 15%. An enterprise has to fulfil a set of prescribed criteria and be subject to assessment in order to be qualified as a new/high tech enterprise.

IC production enterprises with a total investment exceeding RMB8 billion, or which produce integrated circuits with a line-width of less than 0.25um are applicable to the reduced CIT rate of 15%.

Key software enterprises and IC design enterprises are eligible for a reduced CIT rate of 10%. An enterprise has to fulfil a set of prescribed criteria and be subject to an assessment in order to qualify as a key software enterprise or key IC design enterprise.

From 1 January 2009 to 31 December 2018, qualified technology- advanced service enterprises in 31 pilot cities engaging in outsourcing services (such as Beijing, Shanghai, Tianjin, Guangzhou, Shenzhen, etc.) are applicable to a reduced CIT rate of 15%.

From 1 January 2016 to 31 December 2017, qualified technology- advanced service enterprises in 15 innovative service development pilot areas (such as Shanghai, Tianjin, Guangzhou, Shenzhen, etc.) are applicable to a reduced CIT rate of 15%.

Enterprises established in the Qianhai Shenzhen-Hong Kong Modern Services Industry Cooperation Zone are applicable to a reduced CIT rate of 15% provided that the enterprise is engaged in projects that fall within the Catalogue for CIT Preferential Treatments of the zone.

Enterprises established in Zhuhai's Hengqin New Area are applicable to a reduced CIT rate of 15% provided that the enterprise is engaged in projects that fall within the Catalogue for CIT Preferential Treatments of the area.

Enterprises established in the Pingtan Comprehensive Experimental Zone of Fujian Province are applicable to a reduced CIT rate of 15% provided that the enterprise is engaged in projects that fall within the Catalogue for Encourage Industries of the zone.

From 1 January 2011 to 31 December 2020, encouraged enterprises in the Western Regions are eligible for a reduced preferential CIT rate of 15%.

Qualified small and thin-profit enterprises with an annual taxable income of RMB500,000 or less is applicable to the CIT rate of 10% from 1 January 2017 to 31 December 2019.

2.4.3. Reduction of Revenue

Where an enterprise uses resources specified by the State as its major raw materials to produce non-restricted and non-prohibited products, only 90% of the total income derived may be assessed as taxable total income.

2.4.4. Offset of Certain Venture Capital Investment

For a venture capital enterprise that makes an equity investment in a non-listed small-to-medium sized new/high tech enterprise for more than 2 years, 70% of its investment amount may be used to offset against the taxable income of the venture capital enterprise in the year after the holding period has reached 2 years. Any portion that is not utilized in that year may be carried forward and deductible in the following years.

2.4.5. Investment Tax Credit

Enterprises purchasing and using plant and machinery specified by the State for environmental protection, energy and water conservation, or production safety purposes may claim 10% of the investment in such equipment to offset against its CIT payable.

2.5. Tax Deduction and Other Treatments

Deprecation

Wear and tear allowances are granted on fixed assets and other capital assets used in the production of income. Production-nature biological assets are also classified as capital assets under the CIT regime and can also be depreciated. Generally, the straight-line method of depreciation is allowed.

Depreciation on fixed assets and production-nature biological assets is computed beginning from the month following that in which the assets are put into use and ceasing from the month following that in which the assets are no longer used.

Minimum depreciation periods for different kinds of assets are specified as follows:

Buildings and structures	20 years
Aircrafts, train, vessels, machinery, mechanisms and other production equipment	10 years
Appliances, tools, furniture, etc.	5 years
Means of transport other than aircrafts, trains and vessels	4 years
Electronic equipment	3 years
Production-nature biological assets in the nature of forestry	10 years
Production-nature biological asset in the nature of livestock	3 years

Accelerated Deprecation

Shorter tax depreciation life or accelerated depreciation is allowed for particular types of fixed assets due to advancement of technology or suffering from constant vibration or severe corrosion. Effective from 1 January 2014, certain fixed assets acquired on or after 1 January 2014 by companies in certain specified industries may be expensed-off in one lump sum in the year of acquisition or be depreciated with shorter appreciation life or under accelerated depreciation method.

Where shorter depreciation period method is applied, the minimum depreciation period shall not be less than 60% of the minimum depreciation period as prescribed in the CIT Law; where accelerated depreciation method is applied, double declining balance method or sum-of-years-digits method may be used.

Intangibles

Intangible assets are amortized by the straight-line method over a period of not less than ten years or the stipulated time limit set out in the contract or agreement under which use of the intangible asset is made available.

Purchased goodwill is not deductible until the enterprise is entirely transferred or liquidated.

Payments to Affiliates

Management fee of stewardship nature are not deductible. Services fees paid to affiliates in China or overseas may be deductible only if the service fee is charged at an arm’s length and beneficial to the service recipient. Royalties paid to affiliates in China or overseas may be deductible only if the royalties are charged at arm’s length and commensurate with the economic benefit obtained by the payer of the royalties.

Interest on Loans

Interest on loans is generally deductible. For interest expenses on borrowings from non-financial institutions by a non-financial institution, the portion that does not exceed the commercial rate is deductible.

Interest of capital nature has to be capitalized and depreciated or amortized.

The deductions of interest paid to related parties are subject to the thin capitalization rule under the CIT law (see further details described below).

Entertainment

60% of the actually incurred entertainment expense is deductible but the deduction shall not exceed 0.5% of the sales or business income of that year.

Commercial Insurance Premiums for Individuals

Commercial insurance premium paid for employees and individual investors of an enterprise is not deductible unless it is paid for safety insurance for workers conducting special types of works.

Advertising and Business Promotion Expenses

Advertising expenses and business promotion expenses are deductible up to 15% (30% for certain industries) of the sales (business) income of that year unless otherwise prescribed in the tax regulations. Any excess amount is allowed to be carried forward and deductible in the following tax years.

Asset Loss

Asset loss (including bad debt loss) may be deductible in the tax year, during which such loss is incurred, provided that supporting documents are submitted to the in-charge tax bureau before/during annual income tax reconciliation filing.

Charitable Donations

Charitable donations are tax-deductible up to 12% of the annual accounting profit.

Super Deductions

R&D expenses incurred by an enterprise for new technology, new products or new craftsmanship are deductible. An extra 50% of the actual expenses incurred by the enterprise is also deductible as an incentive. From 1 January 2017 to 31 December 2019, for qualified small and medium sized technology enterprises, the extra 50% deduction is increased to 75%.

Also as incentive, 200% of the actual salary expenses paid to handicapped staff are deductible.

Other Non-Deductible Expenses

Provisions for asset impairment reserves (e.g. bad debt provisions) and risk reserves are generally not deductible unless otherwise prescribed in the tax regulations. Financial institutions and insurance companies may deduct certain provisions and reserves subject to the caps specified in the relevant tax circulars.

Non-advertising in nature and non-charitable in nature sponsorship expense is non-deductible.

Inventory Valuation

Inventory of commodities, finished products, work-in-progress, semi- finished goods and raw materials of an enterprise must be valued according to costs. In computing the cost of inventories that are sold or used for delivery, the enterprise may choose one of the following methods: first-in first-out, weighted average or specific identification.

Loss Carryovers

Tax losses incurred by an enterprise may be carried forward for a period of up to five years, subsequent to the year of the loss.

Treatment of Dividends

Dividends between TREs are not taxable except for the case that the dividend is from stocks publicly traded on the stock exchanges and the holding period is less than 12 months.

Currency

CIT is computed in renminbi (RMB) currency. Income in foreign currency is converted into RMB for tax payment purposes.

Exchange gains or losses are generally taxable or deductible regardless whether realized or unrealized unless otherwise prescribed by the tax regulations.

Deemed Taxable Income

If an enterprise cannot submit complete and accurate documentation of its costs and expenses to enable its taxable income to be calculated, the Chinese tax authorities may assess a taxable income. Normally, a deemed profit percentage is applied to its gross income or turnover.

This deemed profit percentage will vary depending on the industry in which the enterprise operates and will usually be between 3% and 30% for TREs and between 15% and 50% for non-TREs.

Foreign Tax Credit

A TRE may credit against the PRC tax payable the foreign income tax already paid overseas in respect of income derived from sources outside the PRC based on a country-basket principle. However, the creditable amount may not exceed the amount of income tax otherwise payable in the PRC in respect of the non-China sourced income.

2.6. Corporate Restructuring

Generally, gains (or losses) of all corporate restructuring (including debt restructuring, share acquisition, assets acquisition, merger and spin-off) shall be subject to CIT (deductible for CIT purposes) when the transaction takes place. Fair value shall be used to determine the gains or losses. Restructuring transactions meeting certain prescribed conditions are eligible for concessionary treatment, i.e. the realization of the gain arising from the corporate restructuring may be deferred wholly or partly to later years, and the resulting tax liabilities may be effectively deferred.

2.7. Special Tax Adjustment

The CIT regime devotes a whole chapter to cover transfer pricing rules, and advance pricing arrangements, and introduce many new concepts for tax avoidance. This chapter is entitled "special tax adjustment".

Related Party Transactions

All enterprises are required to conduct revenue and capital transactions with related parties on an arm's-length basis. The Chinese tax authorities pay special attention to transfer pricing practices. If they determine a transaction is not at arm's length, they are empowered to disregard, vary or make adjustments to the related party transaction and adjust the taxable income of the enterprise.

Documentation of Related Party Transactions

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

Cost Sharing

Cost sharing is allowed in respect of intangible assets developed and shared among related parties, and for the provision and receiving of common services (generally limited to group procurement and group marketing strategies) if the sharing basis is at arm's length and is assessed and approved by the Chinese tax authorities.

Controlled Foreign Corporation Rules

A CFC is an enterprise established outside China by a TRE in China. CFC rules are introduced such that undistributed profits derived by CFCs located in low-tax jurisdictions with an effective income tax rate less than 12.5% may be taxed in China as a deemed distribution to the parent company in China. A group of countries is specifically exempted from the designation of low-tax jurisdictions (White List) by the Chinese tax authorities.

Thin-Capitalization Rule

Thin-capitalization rule is introduced to disallow interest expense arising from excessive related party loans. The safe harbour debt/equity ratio for enterprises in the financial industry is 5:1 and for enterprises in other industries is 2:1. However, if there is sufficient proof to show that the financing arrangement is at arm's length, these interests may still be fully deductible even if the ratios are exceeded.

General Anti-Avoidance Rules

There is a GAAR provision allowing the Chinese tax authorities to make adjustment to taxable revenue or taxable income where business transactions are carried out with the main purpose of reduction, exemption or deferral of tax payments. The Chinese tax authorities may commence, upon approval by the State Administration of Taxation, general anti-avoidance investigation if they suspect that an enterprise undertakes any of the following transactions: abuse of preferential tax treatments, abuse of tax treaties, abuse of corporate structure, use of tax havens for tax avoidance purposes or other arrangements that do not have a reasonable commercial purpose.

Interest Levy on Tax Adjustments

Tax adjustments made by tax authorities under the special tax adjustment chapter may be subject to interest levy at the base rate for loans announced by the People's

Bank of China plus an additional interest of 5%. The period for interest levy is from 1 June of the year following the tax year in which the transaction takes place to the day the underpaid tax is settled. Under certain specified conditions, the 5% additional interest may be waived.

2.8. CIT Filing and Payment

Tax Period

The tax year in the PRC is the calendar year.

Cosolidated CIT Filing

TREs in China are not allowed to file consolidated returns on a group basis unless otherwise prescribed by the State Council. Up to now, the State Council has not yet issued any regulation to allow group consolidated CIT filing.

However, a non-TRE having two or more establishments in the PRC may select one establishment for combined tax filing and payment upon approval by the in-charge tax authorities. That establishment must meet the following requirements:

- it assumes supervisory and management responsibility over the business of the other establishment(s); and
- it keeps complete accounting records and vouchers that correctly reflect the income, costs, expenses, profits and losses of the other establishment(s).

Tax Filing

Annual tax return has to be filed on or before 31 May following the end of a tax year (subject to local variation). Provisional reporting and payments have to be made on a monthly basis or quarterly basis which is determined by the in-charge tax authorities. Provisional payments shall be settled with 15 days following the end of each month/quarter.

3. **Individuals**

3.1. <u>Individual Income Tax</u>

Individuals domiciled in the PRC are subject to China individual income tax (IIT) on their worldwide income.

Foreign individuals residing in the PRC for less than one year are subject to IIT on their PRC sourced income only. Remuneration from foreign employers to individuals working in the PRC is exempt from tax if the individual resides in the PRC for less than 90 days in a calendar year, provided that the remuneration is not borne or paid by an establishment in the PRC. This 90- day period may normally be extended to 183 days if the individual is entitled to protection under a relevant tax treaty/tax arrangement.

Employees of foreign employers can reduce their IIT liability and be taxed based on the actual number of days residing in the PRC if certain criteria are met.

Individuals who do not domicile in the PRC but reside in the PRC between one to five years may, with approval, pay tax only on their PRC sourced income and non-PRC sourced income, the payment of which is borne by PRC establishments. They will be taxed on their worldwide income for each full year residing in the PRC from the sixth year onward.

3.2. Individual Income Tax Rate for Employment

Income from wages and salaries is taxed according to the following progressive rates, ranging from 3% to 45%:

Monthly taxable income * (RMB)	Tax rate %
1,500 or less	3
The part > 1,500 ≤ 4,500	10
The part > 4,500 ≤ 9,000	20
The part > 9,000 ≤ 35,000	25
The part > 35,000 ≤ 55,000	30
The part > 55,000 ≤ 80,000	35
The part > 80,000	45

* Monthly taxable income is calculated after a monthly standard deduction of RMB3,500. For foreign individuals working in China (including residents of Hong Kong, Taiwan and Macau), the standard monthly deduction is RMB4,800.

Where an individual's income tax liability is borne by the employer, the tax liability is calculated on a grossed-up basis and a different tax rate table will be used to reflect the tax-on-tax effect.

3.3. Employment Income

For IIT purposes, taxable income refers to "wages, salaries, bonuses, and year- end bonus, profit shares, allowances, subsidies or other income related to job or employment".

Certain employment benefits for foreign individuals could be specifically treated as not being taxable under the IIT law if certain criteria can be met. These include:

- employee housing costs (with supporting invoices) borne by an employer;
- reasonable home leave fares of 2 trips per annum for the employee (with supporting invoices);
- reasonable employee relocation and moving costs (with supporting invoices); and

- reasonable reimbursement of certain meals, laundry, language training costs and children's education expenses in the PRC (with supporting invoices).

Any cash allowance paid to cover expected work-related expenditures (such as an entertaining or travel allowance) will be fully taxable to an employee. IIT may be reduced by reimbursing specific work-related expenses incurred by an employee (which may include entertainment, health or social club fees, local travel, newspapers and journals, telephone costs, etc.) instead of paying an allowance. The expense reimbursement may not be subject to IIT if prescribed administrative procedures are followed.

3.4~~2~~. Income Other than Employment Income

3.4.1. Privately owned businesses; sole proprietorship enterprises; business on a contract or lease basis

Income earned by individuals from privately-owned businesses, sole proprietorship enterprises or from the operation of a business on a contract or lease basis is generally subject to IIT at progressive rates from 5% to 35%. The 35% marginal rate applies to annual taxable income (gross revenue less allowable costs, expenses and losses) over RMB100,000.

3.4.2. Authors Remuneration

Such income is taxed at a flat rate of 20%, applied to 70% of the taxable income.

3.4.3. Income from Labour Services

Such income is taxable at 20% if the taxable income (after allowable deductions) from a single payment does not exceed RMB20,000; 30% for the portion over RMB20,000 but not exceeding RMB50,000; and 40% for the portion exceeding RMB50,000.

3.4.4. Income from Interest, Dividend, Transfer of Property, Royalty Income, Rental Income etc.

Such income is normally taxed at a flat rate of 20%. However, IIT may be reduced or exempted for certain income meeting certain prescribed conditions.

3.4.5. Allowable Deductions

There are specific and complex tax rules to address the deductions available for income derived from the operation of privately-owned businesses, sole proprietorship enterprises and from the operation of a business on a contract or lease basis. Certain deduction caps are similar to those applicable to companies that are subject to corporate income tax. In addition, a monthly deduction of RMB3,500 is allowed to be deducted from the net income derived from these businesses.

The following deductions are provided for income from labour services, author's remuneration, rental income, and royalty income:

- If the amount received in a single payment is not more than RMB4,000, a standard deduction of RMB800 is allowed;
- If the amount received from a single payment exceeds RMB4,000, a deduction equal to 20% of the payment is allowed.

For transfer of property, the original cost plus reasonable expenses are deductible.

No deduction is allowed against income from interest, dividend or other income.

3.5. Tax Filing and Payment

IIT is normally withheld from wages or salaries by employers and paid to the tax authorities on a monthly basis. Individual income tax returns must be filed within 15 days following the end of each month.

3.6. Annual IIT Self Reporting Requirement

Starting from 1 January 2007, individuals under four circumstances are required to perform annual self-IIT reporting with the PRC tax authorities. Foreign individuals may be exempted from this obligation in certain situations.

4. Other Taxes

4.1. Value-added Tax

The sales or importation of goods, the provision of services and the sales of intangible properties and immovable properties are subject to VAT. For general VAT taxpayers, input VAT can be credited against output VAT.

The applicable VAT rate for general VAT taxpayers is set out in the following table, and the rate for small-scale VAT taxpayers is 3%.

Industries	Applicable Tax Rate %
Sales or importation of goods	17
Sales or importation of necessity goods (such as agricultural products, water and gas, etc.) (Note)	13 (before 1 July 2017) 11(from 1 July 2017)
Provision of repairs, replacement and processing services	17
Tangible movable property leasing services	17
Transportation services, postal services, basic telecommunications services, construction services, immovable property leasing services, sales of immovable properties, transfer of land use right	11
Value-added telecommunications services, financial services, modern services (except for leasing service), consumer services, sales of intangible properties (except for land use right)	6
Exportation of goods; Exportation of repair, replacement and processing services; International transportation service and spacecraft transportation services; Exported services that are completely consumed outside China, including: • Research and development services • Energy performance contracting services • Design services • Production and distribution services for radio, film and television programs • Software services • Circuit design and testing services • Information system services • Process management services • Offshore outsourcing services Transfer of technology	0

For taxpayers who are eligible for the above zero rates, generally they may be entitled to a credit or refund of the input VAT incurred. The VAT refund rate for exported services is the same as the applicable VAT tax rate. For exported goods, the VAT refund rates range from 0% to 17%. There is a prescribed formula for determining the amount of refund, under which full refund of input VAT are not available to many exported goods and the exporter will suffer different degree of export VAT costs.

In addition, a few types of qualified exported services may be applicable to the VAT exemption treatment. In that respect, the relevant input VAT incurred cannot be credited or refunded.

4.2. Consumption Tax

Consumption tax is levied on manufacturers and importers of specified categories of consumer goods, including tobacco, alcoholic beverages, high-end cosmetics, jewellery, fireworks, gasoline and diesel and certain petroleum products, motorcycles, automobiles, golf equipment, yacht, luxury watch, disposable chopsticks, wooden floorboard, battery and coating. The tax liability is computed based on the sales amount and/or the sales volume depending on the goods concerned. Consumption tax is imposed in addition to applicable customs duties and VAT.

4.3. Urban Construction and Maintenance Tax

Urban construction and maintenance tax is imposed at a certain rate on the amount of China's indirect taxes (i.e. VAT and consumption tax) payable by the tax-payer. Effectively, the taxpayers of indirect taxes are also the taxpayers of urban construction and maintenance tax. It is charged at three different rates depending on the taxpayer's location, 7% for urban areas, 5% for county areas, and 1% for other areas.

4.4. Educational Surcharge

Educational surcharge is imposed at 3% on the amount of China's indirect taxes (i.e. VAT and consumption tax) payable by the taxpayer. Effectively, the taxpayers of indirect taxes are also the taxpayers of educational surcharge.

4.5. Local Educational Surcharge

Local educational surcharge is levied at 2% on the amount of China's indirect taxes (i.e. VAT and consumption tax) payable by the taxpayer. Effectively, the taxpayers of indirect taxes are also the taxpayers of local educational surcharge.

4.6. Land Appreciation Tax

LAT is levied on certain gains realized from real property transactions at progressive rates from 30% to 60%, based on the "land value appreciation amount" which is the consideration received from the transfer or disposition of real property less the "total deductible amount".

For taxpayers engaged in a real estate development business, the "total deductible amount" includes:

- the amount spent on obtaining the land use right;
- costs of real property development and construction;
- finance expenses, such as interest, may be deducted in certain circumstances. Other real property development expenses (i.e. selling and administrative) are limited to 5% of the total amount expended to acquire the land use right and the costs of real property development and construction;
- taxes in connection with the transfer of real property (generally stamp tax); and
- for taxpayers engaged in a real estate development business, an additional deduction equal to 20% of the sum of the first two cost items noted above is allowed.

For disposal of used properties, the deductible amount includes the assessed value of the used building and the taxes incurred upon the disposal.

4.7. Customs Duties

Customs duty is levied on the importation of goods. It is collected by the customs authorities at the time of importation.

In general, customs duty is charged in either specific or ad valorem terms. For specific duty, a lump sum amount is charged based on a quantitative amount of the goods, e.g. RMB 100 per unit or per kg. Ad valorem duty is charged based on the customs value of the goods. Under the ad valorem system, the customs value of the goods is multiplied by an ad valorem duty rate to arrive at the amount of duty payable.

The applicable duty rate is generally determined based on the origin of the goods. The origin of a product also plays a part in determining the applicability of a number of other policies such as: quotas, preferential tariffs, anti-dumping actions, countervailing duty etc. For goods originated from WTO members, the most favoured nation (MFN) duty rate is generally applicable unless other policy, such as preferential tariff (e.g. under a free trade agreement), anti-dumping duty and countervailing duty, is applied. Preferential tariff (which is generally lower than the MFN duty rate) may be claimed by an importer if the goods are originated from a free trade agreement (FTA) member and such goods are covered by the FTA. Obviously, all other conditions stipulated in the FTA, such as the FTA rules of origin, direct consignment requirements and documentation requirements, must also be satisfied by the importer to claim such benefits.

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

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

Customs duty and VAT exemption may be allowed on importation of raw materials for contract processing or import manufacturing.

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

4.8. Stamp Tax

All enterprises and individuals who execute or receive “specified documentation” are subject to stamp tax. Rates vary between 0.005% on loan contracts to 0.1% for property leasing and property insurance contracts.

A flat amount of RMB5 applies to certification evidencing business licenses and patent, trademark or similar rights.

4.8. Real Estate Tax

Real estate tax is a tax imposed on the owners, users or custodians of houses and buildings. The tax rate is 1.2% of the original value of buildings. A tax reduction of 10% to 30% is commonly offered by local governments. Alternatively, tax may be assessed at 12% of the rental value.

4.9. Motor Vehicle Acquisition Tax

Motor vehicle acquisition tax at a rate of 10% of the taxable consideration will be levied on any purchase and importation of cars, motorcycles, trams, trailers, cart and certain types of trucks.

4.10. Deed Tax

Deed tax, generally at rates from 3% to 5%, may be levied on the purchase or sale, gift or exchange of ownership of land use rights or real properties. The transferee/assignee is the taxpayer.

4.11. Vehicle and Vessel Tax

Vehicle and vessel tax is a tax that is levied on all vehicles and vessels within the PRC. A fixed amount is levied on a yearly basis. Transport vehicles are generally taxed on a fixed amount according to own weight, with passenger cars, buses and motorcycles being taxed on a fixed unit amount. Vessels are taxed on a fixed amount according to deadweight tonnage.

4.12. Vessel Tonnage Tax

Vessel tonnage tax is levied on any vessel entering into a port inside the territory of the PRC from overseas and is collected by the customs authorities. The tax rates are categorized into preferential rates and ordinary rates depending on the nationality of the vessels.

The tax payable is computed based on the net tonnage multiplied by the applicable tax rate that is determined depending on the net tonnage and the term of tonnage tax license.

4.13. Urban and Township Land-Use Tax

Urban and township land-use tax is levied on taxpayers who utilize land within the area of city, country, township and mining districts. It is computed, on an annual basis, based on the space of area actually occupied by a taxpayer multiplied by a fixed amount per square meter that is determined by the local governments.

4.14. Arable Land Occupation Tax

Arable land occupation tax is levied on companies and individuals who build houses or carry out non-agricultural construction on arable lands. It is computed based on the space of area actually occupied by a taxpayer multiplied by a fixed amount per square that is determined by the local governments and is settled in a lump sum.

4.15. Environmental Protection Tax

China’s legislative body passed the Environmental Protection Tax Law (EPT Law) at the end of 2016. The EPS Law will become effective on 1 January 2018 and will replace the existing pollutant discharge fees. EPT will be collected from enterprises that directly discharge taxable pollutants (i.e. air pollutants, water pollutants, solid waste and noise pollution) within the territory of China. EPT will be calculated based on the volume of pollutants discharged, multiplied by the specific EPT tax amount.

4.16. Resource Tax

The exploitation of natural resources including crude oil, natural gas, coal, salt, raw metallic metals and non-metallic metals, etc. is subject to resource tax on a sales turnover or tonnage/volume basis. The range of tax rates are specified by the State Council. Starting from 1 July 2016, resource tax is collected on the usage of water in Hebei Province on a trial basis.

4.17. Tobacco Tax

Tobacco tax is levied on taxpayers who purchase tobacco leaves within the territory of the PRC. The tax is assessed at the rate of 20% on the purchasing value and shall be settled with the local tax bureau at the place of the purchase.

4.18. Cultural Business Development Levy

Companies and individuals engaged in entertainment and advertising businesses shall pay cultural business development levy at 3% on the relevant income.

5. Tax Treaties and Arrangements

Foreign tax relief (for PRC tax residents) and exemption or reduction in PRC tax (for foreign tax residents) may be offered under a tax treaty (or arrangement) to which the PRC is a party. Tax treaties may operate to reduce the amount of withholding income tax or CIT payable in the PRC by a FE or a foreign individual. A tax treaty may also operate to reduce the amount of overseas withholding or income tax payable by a resident of the PRC. As of 1 January 2017, the tax treaties with the following 99 countries and 2 Special Administrative Regions (SAR) are effective.

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

6. Foreign Exchange Administration

Foreign exchange transactions are administered by the State Administration of Foreign Exchange (SAFE) and its branches.

The regulatory administration on foreign exchange transactions by a FIE depends on whether the transaction is a current account item or a capital account item. Under the PRC Foreign Exchange Administration Regulations, current account items refer to ordinary transactions within the context of international receipts and payments, including balance of payments from trade, labour services, unilateral transfers, etc. Capital account items refer to items of increase or decrease in debt and equity due to inflow or outflow of capital within the context of international receipts and payments, including direct investment, all forms of loans, investment in securities, etc.

Generally, if a transaction falls under the category of current account items, a FIE can purchase and sell foreign currency through designated banks on the interbank foreign exchange trading system without prior approval of the SAFE. When a FIE has to make a payment in foreign currency, it can instruct its bank to pay from its foreign exchange account. In the meantime, it should provide supporting documents such as contracts, invoices and shipping documents to the bank.

Except for certain capital account transactions that require pre- approval by the State Administration of Foreign Exchange, many can be directly processed with the banks. However, from 2016, the Chinese government has enhanced the authenticity and compliance examination for certain foreign exchange transactions under the capital and current accounts so as to further regulate the foreign exchange market in China.

To speed up the process of RMB internationalization, companies in China are now allowed to use RMB settlement when conducting cross-border trade with overseas companies. Since 2011, the Chinese governmental authorities have also released several rules allowing certain specified capital account transactions to be conducted in RMB.

+++

Jin Mao Partners

13F Hong Kong New World Tower
300 Huaihai Zhong Road
200021 Shanghai

Fon +86 2163872000
Fax +86 2163353272

Mail info@jinmaopartners.com
Web www.jinmaopartners.com

Written by Jin Mao Partners