



GLOBAL EXPANSION GUIDEBOOK

TAX

China



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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CHINA



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RESIDENCE AND BASIS FOR TAXATION

A resident enterprise is an enterprise established in China under the laws of China or an enterprise that is established under the laws of a foreign country (region) but that maintains its place of effective management in China.

Domestic

A resident enterprise is subject to enterprise income tax in China on its worldwide income.

Foreign

A non-resident enterprise is subject to enterprise income tax in China only if:

- It has derived China-sourced income by an establishment or place in China, or it has income incurred outside China but effectively connected with its establishment or place in China or
- It has derived China-sourced income even if it does not have an establishment or place in China, or the income is not effectively connected with its establishment or place in China.

TAXABLE INCOME

Domestic

The taxable income of a resident enterprise is the balance of its annual gross revenue less all applicable deductions and losses.

Foreign

The taxable income of a non-resident enterprise is either the balance of its China-sourced gross revenue less all applicable deductions when the income is derived by or effectively connected with its establishment or place in China, or the gross revenue derived from China when the income is not effectively connected with its establishment or place in China.

TAX RATES

The standard enterprise income tax rate is 25 percent, with a few preferential tax rates applicable to qualified enterprises including those applicable to small enterprises.

The standard withholding income tax rate for non-resident enterprises is 10 percent, which may be reduced by applicable tax treaties. The withholding income tax on dividends may be deferred upon re-investment in China.

TAX COMPLIANCE

A resident enterprise must report and pay enterprise income tax on an annual basis, with quarterly provisional tax filings. The annual enterprise income tax return is due by May 31 of the following year. A non-resident enterprise may have to file an income tax return on its own if it has an establishment or place in China or may be subject to tax withholding by a withholding agent as applicable.

ALTERNATIVE MINIMUM TAX

Not applicable for this jurisdiction.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

Tax holidays are available to certain encouraged industries, such as basic infrastructure projects, environmental protection and energy and water conservation projects and software enterprises.

Tax rulings

There is no established procedure for advance tax rulings.

Tax incentives

Preferential tax rates are available to certain encouraged enterprises, such as High and New Technology Enterprises and encouraged investment in West China as well as certain encouraged industries in certain selected areas.

Tax exemption or deduction is applicable when an enterprise has generated certain encouraged types of revenue, such as revenue from agriculture, forestry and technology transfer. China encourages research and development (R&D) by offering bonus deduction on R&D expenses and allows accelerated depreciations to manufacturing enterprises. Depending on locations, there may also certain local tax incentives available in form of fiscal subsidy, subject to the negotiations with the local authorities.

CONSOLIDATION

Consolidated tax filing of multiple enterprises is not allowed unless otherwise prescribed by the State Council. However, if a foreign company has more than 2 establishments in China, it may elect to have the main establishment in China make a consolidated tax filing for other establishments if it satisfies the conditions imposed by the PRC tax authority.

PARTICIPATION EXEMPTION

Dividends received by a resident enterprise from another resident enterprise are exempt from enterprise income tax, except for dividends paid by a publicly listed enterprise to a shareholder that has continuously held the shares for less than 12 months.

CAPITAL GAIN

Capital gain is included in taxable income and is not otherwise differentiated from other types of income.

DISTRIBUTIONS

The part of the distribution equivalent to retained earnings is treated as a dividend; the remaining part is treated as return of capital, with any exceeding amount being treated as capital gain.

LOSS UTILIZATION

Loss can be carried forward for 5 years in general, and may be extended in limited scenarios, for example, 10 years for certified High and New Technology Enterprises.

TAX-FREE REORGANIZATIONS

Reorganizations (eg, equity purchases, asset purchases, mergers or splits) may be subject to "Special Tax Treatment" (tax deferral) upon meeting certain substantive and procedural conditions. Additional restrictions are applicable to cross-border reorganizations.

ANTI-DEFERRAL RULES

The general anti-avoidance rule (GAAR) of the enterprise income tax law may be cited by the Chinese tax authorities to make adjustments on transactions that do not have reasonable business purposes.

A classic application of the GAAR is in the context of an indirect transfer. The transfer of shares of an offshore intermediate company that holds significant assets in China may be recharacterized as a direct transfer of the equity in the underlying China operating company if the indirect transfer is found no reasonable business purpose. It may then give rise to the China capital gain taxes.

CFC

If an offshore company is established in a low-tax jurisdiction (with an effective income tax rate below 12.50 percent) and is "owned or controlled" by Chinese residents (enterprises and/or individuals), the Chinese resident shareholders must include in their taxable income the profits of the offshore company even if the offshore company has not actually distributed any profits without reasonable business needs.

Thin-Capitalization Rule

If the ratio of debt to equity received by an enterprise from related parties exceeds the prescribed limit (currently 2 to 1 for non-financial enterprises and 5 to 1 for financial enterprises), the excess interest expense cannot be deducted for income tax purposes, unless the interest rate is considered arm's length.

FOREIGN TAX CREDITS

Foreign income tax paid by directly or indirectly owned foreign subsidiaries of a resident enterprise may be credited against the resident enterprise's income tax payable in China, subject to certain limitations.

Any unused foreign tax credit may be carried forward for 5 years.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

Income from direct or indirect transfers of real property located in China is considered income sourced in China.

TRANSFER PRICING

Related party transactions must be conducted on an arm's-length basis. Otherwise, the Chinese tax authorities may make an adjustment within 10 years.

Enterprises reaching certain thresholds must prepare contemporaneous transfer pricing documentation, including a country-by-country report as applicable.

WITHHOLDING TAX

Dividends, royalties, interest, rents, etc.

Chinese payers have the legal obligation to withhold tax when remitting dividends, royalties, interest, rents and other payments to foreign recipients.

Service fees

Service fees are subject to income tax in China if the foreign recipient has created an establishment or place (or a Permanent Establishment in a tax treaty context) in China. Where applicable, a Chinese payer of service fees may also be designated as the withholding agent by the PRC tax authority.

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

There is no capital duty in the PRC upon capital contribution. China has also abolished registration fee based on the amount of registered capital of an enterprise. Stamp duty and transfer taxes (value-added tax) may be imposed on asset and equity transfers as applicable.

EMPLOYMENT TAXES

Employers must withhold Individual Income Tax when paying salaries and wages to employees. Mandatory social insurance and housing fund contributions are deductible for Individual Income Tax purposes.

OTHER TAX CONSIDERATIONS

R&D expenses may have a bonus deduction, including R&D service fees paid to a foreign R&D service provider.

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