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第一部分 Part One

中国的税收协定介绍 Introduction to Double Tax Agreement in China

中国目前大概与 96 个国家（地区）签订了双边税收协定，其内容基本上参照“经济合作发展组织”《税收协定范本》的有关规定。

China has by far entered into double tax agreements (the DTA) with about 96 countries (and regions). The contents of those DTA's are basically modeled on that of the “Model Tax Convention” of the OECD.

中国境内常驻机构的所得税纳税问题

Taxation of permanent establishments in China

一、“常设机构”一语是指企业进行全部或部分营业的固定营业场所。

First, The term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

“常设机构”特别包括：管理场所、分支机构、办事处、工厂、作业场所、矿场油井或气井、采石场或者其它开采自然资源的场所。

The term "permanent establishment" includes especially: a place of management, a branch, an office, a factory, a workshop and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

二、“常设机构”一语还包括：

Second, the term "permanent establishment" likewise encompasses:

(一) 建筑工地，建筑、装配或安装工程，或者与其有关的监督管理活动，但仅以该工地、工程或活动连续六个月以上的为限；

(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 6 months;

(二) 一方企业直接或者通过雇员或者雇用的其它人员，在另一方为同一个项目或者相关联的项目提供的劳务，包括咨询劳务，仅以在任何十二个月中连续或累计超过六个月的为限。

(b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if such activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 6 months within any twelve-month period.

[解释：在以上第二点中，协定双方按照在对方的活动时间或者派驻人员的停留时间划分税收征收管辖权。]

Note that in the second paragraph, the signing parties divided the tax jurisdiction with reference to the period of activities or stay by personnel on the other side.]

三、尽管有以上条款的规定，“常设机构”一语并不被认为包括：

Third, notwithstanding the preceding provisions, the term "permanent establishment" shall be deemed not to include:

- (一) 专为储存、陈列或者交付本企业货物或者商品的目的而使用的设施；
- (二) 专为储存、陈列或者交付的目的而保存本企业货物或者商品的库存；
- (三) 专为另一企业加工的目的而保存本企业货物或者商品的库存；
- (四) 专为本企业采购货物或者商品，或者搜集信息的目的所设的固定营业场所；
- (五) 专为本企业进行其它准备性或辅助性活动的目的所设的固定营业场所；
- (六) 专为本款第（一）项至第（五）项活动的结合所设的固定营业场所，但这种结合所产生的该固定营业场所的全部活动应属于准备性质或辅助性质。

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

属人管辖原则限制：常驻机构
Restriction on source jurisdiction principle:
Permanent establishment



参考文章：
<http://www.china-tax.net/pub/Article4.pdf>

四、非独立代理人 Fourth, dependent agent

当一个人（除适用下条款规定的独立代理人以外）在一方代表另一方的企业进行活动，有权并经常行使这种权力以该企业的名义签订合同，这个人为该企业进行的任何活动，应认为该企业在该一方设有常设机构。除非这个人通过固定营业场所进行的活动限于以上条款的规定，按照该款规定，不应认为该固定营业场所是常设机构。

Where a person - other than an agent of an independent status to whom the following paragraph applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, has and habitually exercises an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those paragraphs as mentioned above which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

五、独立代理人 Fifth, independent agent

一方企业仅通过按常规经营本身业务的经纪人、一般佣金代理人或者任何其他独立代理人在另一方进行营业，不应认为在该另一方设有常设机构。但如果这个代理人的活动全部或几乎全部代表该企业，不应认为是本款所指的独立代理人。

An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

六、控股公司 Sixth, company holding equity interests

一方居民公司，控制或被控制于另一方居民公司，此项事实不能使任何一方公司构成另一方公司的常设机构。

The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, shall not of itself constitute either company a permanent establishment of the other.

七、常驻机构的纳税义务 Seventh, income tax obligation arising from permanent establishment

根据“中华人民共和国企业所得税法”的规定，在中国境外设立或者被认定有“常驻机构”的非居民公司或个人，需要就该常驻机构取得的来源于中国境内的所得，交纳企业所得税。

According to the PRC Enterprise Income Tax Law, any non-resident companies or individuals that have set up, or are deemed to have set up, a permanent establishment in China shall have the legal obligation to pay corporate income tax on China-source income as earned by the permanent establishment.

第二部分 Part Two

中国会计准则对 销售确认的规定 Accounting for Sale recognition in China

中国会计准则对销售确认的规定
会计准则第十四号（收入）对商品销售确
认的规定如下。

Accounting standard No. 14 lays
down the following rules on sales
recognition for the supply of goods.

一、收入 Revenue

收入，是指企业在日常活动中形成的、会导致所有者权益增加的、与所有者投入资本无关的经济利益的总流入。本准则所涉及的收入，包括销售商品收入、提供劳务收入和让渡资产使用权收入。企业代第三方收取的款项，应当作为负债处理，不应当确认为收入。

Revenue is the gross inflow economic benefits that arises from the daily ordinary activities of the enterprise, when the inflow gives rise to the increase in equity and bears no relevance to the capital contribution by the owners. The term revenue as referred to in this accounting standard, includes the amount received and receivable from the supply of goods, the supply of services, and the use by others of enterprise assets. Where the enterprise receives payment on behalf of a third party, it should be regarded as liabilities and not revenue.

二、销售商品收入 Income from supply of goods

销售商品收入同时满足下列条件的，才能予以确
认：

- (1) 企业已将商品所有权上的主要风险和报酬转
移给购货方；
- (2) 企业既没有保留通常与所有权相联系的继续
管理权，也没有对已售出的商品实施有效控
制；
- (3) 收入的金额能够可靠地计量；
- (4) 相关的经济利益很可能流入企业；
- (5) 相关的已发生或将发生的成本能够可靠地
计量。

Sales are recognized if the following conditions
are satisfied:

- (a) the entity has transferred to the buyer the
significant risks and rewards of ownership of
the goods;
- (b) the entity retains neither continuing
managerial involvement to the degree
usually associated with ownership nor
effective control over the goods sold;
- (c) the amount of revenue can be measured
reliably;
- (d) it is probable that the economic benefits
associated with the transaction will flow to
the entity; and
- (e) the costs incurred or to be incurred in
respect of the transaction can be
measured reliably.

商品所有权与占有权是有区别的。在大多数的情
况下，商品所有权的风险报酬在移交商品的时候
同时转移给买方。在以下的情形，商品所有权的
风险报酬在移交商品的时候是没有转移给买方的。

There are differences between ownership of
goods and the possession of goods. In most cases,
the transfer of risks and rewards of ownership
coincides with the transfer of the legal title or the
passing of possession to the buyer. In the following
cases, the transfer of the risks and rewards of
ownership occurs at a different time from the
transfer of legal title or the passing of possession.

根据中国法律，以下情况商品的所有权不变：

- 第 1，商品由总公司移送到外地的分公司，或者
货物在分公司之间转移。
- 第 2，双方订立了寄售合同，商品由委托方送到
受托（代理）方。
- 第 3，销售合同中含有“保留货权”条款，在未
付款之前，买方不能取得商品的所有权。
- 第 4，双方订立了“售后租回”的合同。
- 第 5，买卖双方订立了融资租赁合同，在没有支
付全部供款之前和行使购买权，买方不能
取得商品所有权。

According to the PRC law, the ownership of the
goods remains unchanged under the following
circumstances:

- First, the goods shipped from the head office to
the branch, or the goods transferred between the
branches.
- Second, the goods are shipped from the
principle to the agent under a consignment sale
agreement.
- Third, the sale agreement contains a “reservation
of title”, providing that the legal ownership shall
rest with the seller until the buyer has made the full
payment.
- Fourth, the buyer and the seller enter into a sale-
and-lease-back agreement for the goods.
- Fifth, the goods are sold under a finance lease
agreement. The buyer will not obtain title until
after making full payment and exercising option
to buy.



商品销售的其他规定 Other provisions for the supply of goods

企业应当按照从购货方已收或应收的合同或协议价款确定销售商品收入金额，但已收或应收的合同或协议价款不公允的除外。

The buyer and seller should report the revenue as per terms of the contract, except that the consideration received or receivable is not fixed at arm's length.

现金折扣 Cash discount

销售商品涉及现金折扣的，应当按照扣除现金折扣前的金额确定销售商品收入金额。现金折扣在实际发生时计入当期损益。

Where goods are sold with a cash discount terms, the enterprise should report the gross amount of sales revenue. Cash discount should be included in the income statement separately.

[注释 1： 现金折扣的买方需要交纳所得税。
Note 1: the buyer receiving the cash discount is under legal obligation to pay income tax.]

销售折扣 Sales discount

销售商品涉及商业折扣的，应当按照扣除商业折扣后的金额确定销售商品收入金额。

Where goods are sold at wholesale discount, the enterprise should include the after-discount amount into revenue.

企业已经确认销售商品收入的售出商品发生销售折让的，应当在发生时冲减当期销售商品收入。销售折让属于资产负债表日后事项的，适用《企业会计准则第 29 号——资产负债表日后事项》。

Where goods are sold and discount given afterwards, the discount should be included in the income statement. Where the discounts are given after the balance sheet date, the enterprise should make adjustments to the financial statement for the preceding year or current year in accordance with the provisions in the PRC accounting standard No. 29.

退货 Goods returned

企业已经确认销售商品收入的售出商品发生销售退回的，应当在发生时冲减当期销售商品收入。销售退回属于资产负债表日后事项的，适用《企业会计准则第 29 号——资产负债表日后事项》。

Where goods are sold and returned afterwards, the discount should be included in the income statement. Where the goods are returned after the balance sheet date, the enterprise should make adjustments to the financial statement for the preceding year or current year in accordance with the provisions in the PRC accounting standard No. 29.



劳务收入 Revenue from the Supply of Service

企业在资产负债表日提供劳务交易的结果能够可靠估计的，应当采用完工百分比法确认提供劳务收入。完工百分比法，是指按照提供劳务交易的完工进度确认收入与费用的方法。

Revenue should be recognized using the percentage of completion method when the outcome of a transaction involving the supply of services can be estimated reliably at the balance sheet. The percentage of completion method refers to the recognition of revenue and costs with reference to the stage of completion for a transaction involving the supply of services.

提供劳务交易的结果能够可靠估计，是指同时满足下列条件：

- (一) 收入的金额能够可靠地计量；
- (二) 相关的经济利益很可能流入企业；
- (三) 交易的完工进度能够可靠地确定；
- (四) 交易中已发生和将发生的成本能够可靠地计量。

The outcome of a transaction involving the supply of services is reliably estimated when the following conditions are satisfied:

- (a) the amount of revenue can be measured reliably;
- (b) it is probable that the economic benefits associated with the transaction will flow to the entity;
- (c) the stage of completion of the transaction at the balance sheet date can be measured reliably; and
- (d) the costs incurred for the transaction and the costs to complete the transaction can be measured reliably.

企业确定提供劳务交易的完工进度，可以选用下列方法：

- (1) 已完工作的测量。
- (2) 已经提供的劳务占应提供劳务总量的比例。
- (3) 已经发生的成本占估计总成本的比例。

The enterprise can determine the stage of completion involving the rendering of services, using the following methods:

- (a) surveys of work performed;
- (b) services performed to date as a percentage of total services to be performed; or
- (c) the proportion that costs incurred to date bear to the estimated total costs of the transaction.

企业应当按照从接受劳务方已收或应收的合同或协议价款确定提供劳务收入总额，但已收或应收的合同或协议价款不公允的除外。

The enterprise should report the gross amount of revenue received or receivable according to the contracted price in the service agreement, except that the contracted price is not determined at arm's length.

我們的服務

Scope of our Services

直接及間接對華投資

DIRECT AND INDIRECT INVESTMENT IN THE PRC

让渡资产使用权收入

Revenue arising from use by others of enterprise assets

让渡资产使用权收入包括利息收入、使用费收入等。

Revenue arising from use by other of enterprise assets includes interest and loyalty.

让渡资产使用权收入同时满足下列条件的，才能予以确认：

- (1) 相关的经济利益很可能流入企业；
- (2) 收入的金额能够可靠地计量。

The revenue from use by other of enterprise assets should be recognized if the following conditions are met:

- (a) the relevant economic benefit is likely to flow into the enterprise
- (b) the amount can be reliably measured.

企业应当分别下列情况确定让渡资产使用权收入金额：

- (一) 利息收入金额，按照他人使用本企业货币资金的时间和实际利率计算确定。
- (二) 使用费收入金额，按照有关合同或协议约定的收费时间和方法计算确定。

The enterprise should recognize the revenue taking into consideration the following circumstances:

- (a) interest income is determined by reference to the actual interest rate and time period in which the enterprise monetary assets are used by others;
- (b) loyalty income is determined by reference to the time period and method of computation as per the signed agreement.

- Setting up PRC Sino-foreign equity joint venture enterprises, Sino-foreign cooperative joint venture enterprises, wholly foreign owned enterprises, wholesale and retail trading companies, representative offices for foreign enterprises. Setting up of processing trade factories in Mainland China.
- 設立中外合資經營企業、合作經營企業、外資經營企業、批發及零售貿易公司、駐華辦事處、辦理進料來料加工業務申請；
- Post-incorporation compliance with requirements for accounting, taxation, customs, foreign exchange control and company corporate compliance, etc.
- 提供外商投資企業有關後續服務，包括公司登記變更、會計、稅務、金融、與海關規定事項；
- Providing consultation on PRC laws and regulations relating to tax, accounting, customs, foreign exchange, company, labor and social security.
- 中國大陸稅務、會計、海關、外匯、公司法、勞動法規諮詢；
- Providing consultation on various entry modes of foreign investors into the PRC market within the framework of WTO and CEPA, assisting in merger and acquisition of domestic Chinese companies and foreign investment enterprises.
- 在 WTO 和 CEPA 框架下，外商進入大陸市場採用投資模式諮詢，協助外商投資者收購合併中國境內公司及企業；
- Assisting clients in locating suitable factory sites in the Mainland China, and obtaining licenses for environmental compliance, customs record filing, commodity inspection and quarantine for imported capital equipment, assisting in shipping and logistic services and customs clearance.
- 協助大陸設廠外商選址、申請環保、進口設備檢驗檢疫、海關備案審批、辦理船務及清關程序。
- Searching and registering trade mark in Mainland China.
- 查冊及注冊中國商標。

中國涉外稅務 PRC INTERNATIONAL TAX SERVICES

我們提供稅務諮詢和代理服務

We provide both tax consultation and agent services:

- Providing update information on PRC tax laws, administrative regulations and rules including corporate income tax, VAT, business tax and consumption tax, city property tax, deed tax and stamp tax;
- 提供最新中央、地方稅法、行政法規及規章，包括企業所得稅、增值稅、營業稅、消費稅、城市房地產稅、契稅、及印花稅等；
- Providing consultation on issues relating to taxation, foreign exchange, accounting, use, issue and custody of tax invoices;
- 稅務、外匯、會計、發票使用、開立和保管相關問題；
- Providing consultation on the avoidance of double taxation on income under the PRC tax treaty framework including application for certificate of residency;
- 中國稅收協定有關避免雙重徵稅規定及諮詢、申請稅務居民證明；
- Providing services relating to tax planning, application for granting of tax incentive, income tax, turnover tax, behavioral tax declarations and filing for PRC corporations, and application for temporary tax registrations for non-resident foreign investors;
- 提供省稅方案建議，申請稅務優惠審批、申報公司、企業所得稅、增值稅、營業稅、消費稅、行為稅、及辦理境外公司臨時稅務登記；
- Tax declaration and filing for PRC individual income tax for foreign nationals and residents of Hong Kong and Taiwan;
- 申報外籍員工、港澳台員工個人所得稅、申請及變更稅務登記；
- Providing assistance in application for recognition of general VAT taxpayer and certificate for export rebates.
- 一般納稅人申請認定、申請出口退稅；
- Providing in-house training relating to the PRC Company Law, accounting, taxation, customs and foreign exchange.
- 協助提起稅務行政復議、及訴訟；
- Providing assistance in initiating administrative appeals and/or litigations for tax related cases.
- 編寫中國稅務及投資特定範圍研究報告；
- Preparing research report relating to investment and taxation in the PRC.
- 舉辦與中國公司法、會計、稅務、海關、外匯有關的培訓講座。

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