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### **Mr. Alfred K K Chan**

Postgraduate Diploma in Chinese Law, MA, AHKSA,  
ATIHK, ACMA, CPA

### **陳國基先生**

中國法律文憑，英國管理會計師公會會員，香港稅務學會會員  
香港執業會計師，國際會計碩士



**Mr. Chan** has more than 20 years of commercial experiences in cross-border business between Hong Kong and Mainland. Mr. Chan is also the owner of K K Chan & Company, Certified Public Accountants.

**陳先生**擁有超過20年的中港商業經驗，陳先生是“中國稅務及投資顧問有限公司董事”，及“陳國基會計師事務所東主”。

### **Recently Published Article 最近發表文章**

The article "Taxation of Representative Offices in the PRC", written by Mr. Alfred Chan in April 2004, analyses the crux of the relevant legal and tax provisions from an academic viewpoint. Mr. Chan 's article, in abbreviated bilingual version, was published in Hong Kong. The full text in English was published in Europe. Copies are available free of charge to interested parties.

在“中國常駐代表機構的稅務問題”文章內，陳國基先生對經常查詢的法律和稅務規定作出學術分析。中英文雙語撮要版本於2004年4月在香港發表，英語版全文在國外刊登。歡迎查詢索取相關資料。

# 外商投資企業出資有關事項

## Capital contribution and related issues for foreign investment enterprises

### 出資方式及出資要求

外國投資者可以用外幣出資，也可以用實物、工業產權、非專利技術、土地使用權作價出資。貨幣資金一般作運營資本使用。以實物、工業產權、非專利技術出資的，必須進行評估作價，並依法辦理轉移財產權或使用權手續。以工業產權、非專利技術出資的，除國家對於採取高新技術成果有特別規定以外，不得超過公司註冊資本的20%。股東繳納全部出資後，必須經法定的驗資機構驗資並出具證明。

如果以企業本身銷售產品為實物作價出資，有關行為視為銷售，出資者需要按章繳納增值稅。

### 外商投資企業出資期限規定

根據《中外合資經營企業各方出資的若干規定》，合營合同中規定一次性繳清出資的，合營各方應當在營業執照簽發之日起6個月內繳清，合營合同中規定分期繳付出資的，合營各方第一期出資，不得低於各自認繳出資額的15%，並應當在營業執照簽發之日起3個月內繳清。

對分期出資的企業，最終出資期限按照國家工商行政管理局和對外經濟貿易合作部聯合下發的[1994]工商企字305號文規定執行：

### Requirement for capital contribution

Foreign investor may contribute their capital in the form of foreign currency, goods, industrial property rights, non-patented technology, land use rights. Cash contributions are used as working capital. Capital contribution other than cash should be subject to value appraisals, and the transfer of the legal ownership in accordance with the law. In respect of industrial property rights and non-patented technology, the amount should not exceed 20% of the whole amount of the registered capital, subject to special provisions of the State on high-technological achievements. All forms of capital contributions should be examined by statutory examining bodies, which have the authority to issue capital examination reports.

If the investor transfers its own trading stock to the new company in consideration for the share in the company, such transfers are taxable transactions. The investor should pay VAT in accordance with the legal requirements.

### Provisions on the capital contribution for Foreign Invested Enterprises

According to the "Certain provisions on the contribution of capital by the parties to the Sino-foreign equity joint venture enterprises", the amount of the registered capital should be paid up within 6 months upon the issue of the business license if the joint venture contract provides that capital amount is to be paid in one lump sum. If the capital is to be paid by installments, the first installment, being no less than 15% of the total amount of the registered capital, should be paid up within 3 months upon the issue of business license.

The payment of capital by installments should adhere to the following schedule as per Circular (1994) Gong Shang Qi Zi 305 jointly promulgated by the State Administration of Industry and Commerce and the MOFTEC:

#### 註冊資本 Registered capital

#### 最長出資期限 Maximum period allowed to contribute capital

1 ≤ 50萬美元 Below USD 500,000	1年 One year
2 >50萬美元，≤100萬美元 From USD 500,000 to ≤ USD 1 million	1年半 1.5 years
3 >100萬美元，≤300萬美元 From USD 1 million to < USD 3 million	2年 2 years
4 >300萬美元，≤1000萬美元 From USD 3 million to ≤ USD 10 million	3年 3 years
5 >1000萬美元 Over USD 10 million	由審批機關根據 實際情況審定 To be approved by the approval authority

中外合作經營企業合作各方出資期限、及外資企業適用上述規定。

The provisions for the capital contribution also apply to parties to the Sino-foreign cooperative joint venture and wholly foreign owned enterprises.



## 最低資本要求 Minimum amount of registered capital

公司類型 Type of company	行業 Industrial sectors	註冊資本額 Registered capital
有限責任公司 Limited company	製造業 Manufacturing	RMB 500,000
	商品批發業 Wholesaling	RMB 500,000
	商品零售業 Retailing	RMB 300,000
	服務業 Provision of service	RMB 100,000
股份有限公司 Joint stock limited company	非上市 (non-listed)	RMB 10,000,000
	上市 (listed)	RMB 50,000,000
外商投資股份有限公司 Foreign invested joint stock limited company	非上市 (non-listed)	RMB 30,000,000
	上市 (listed)	RMB 50,000,000



除了特定行業另有規定以外，外商投資企業並沒有最低的註冊資本要求，但註冊資本與投資總額的比例（包括增加資本額），應當遵守如下規定：

Subject to provisions for specially regulated industry sectors, foreign invested enterprises are not required to have a minimum amount of registered capital. Instead, the law imposes a ratio between the amount of registered capital and the amount of total investment (also applying to the increase in capital), to prevent any arrangement for thin-capitalization.

### 投資總額 Total amount of investment

### 註冊資本/投資總額 Ratio of registered capital to total investment

1	<=300萬美元 Less than USD 3 million	7/10
2	>300萬美元，<=1000萬美元； (其中投資總額在420萬美元以下的，註冊資本不得低於210萬美元) Between USD 3 million to less than 10 USD million (within which total investment below USD 4.2 million, the registered capital being no less than USD 2.1 million)	1/2
3	>1,000萬美元，<=3,000萬美元 (其中投資總額在1250萬美元以下的，註冊資本不得低於500萬美元) Between USD 10 million to less than USD 30 million (within which total investment below USD 12.5 million, the registered capital being no less than USD 5 million)	2/5
4	>3,000萬美元 (其中投資總額在3,600萬美元以下的，註冊資本不得低於1,200萬美元) Over USD 30 million (within which total investment below USD 36 million, the registered capital being no less than USD 12 million)	1/3

行業 Industry	內資 Domestic Co	外資(WTO) FIE under WTO	外資(CEPA) FIE under CEPA
1 書籍、刊物印刷 Printing works for books & magazines	人民幣200萬 RMB 2 million	人民幣1,000萬 RMB 10 million	與WTO要求一樣 Same as left
2 圖書、報紙、期刊零售 Retail distribution of books, newspapers, and magazines	人民幣30萬 RMB 300,000	人民幣500萬 RMB 5 million	與WTO要求一樣 Same as left
3 進出口貿易 *(外資將在2004年12月取得國民待遇) Import & export trading *(National treatment will be given to Foreign investors in December 2004)	人民幣100萬 RMB 1 million	人民幣5,000萬* RMB 50 million*	人民幣2,000萬* RMB 20 million*
4 貨運代理 Freight forwarding agent	人民幣500萬 RMB 5 million	美金100萬 USD 1 million	人民幣500萬 RMB 5 million

## 投資者可以用關係公司或股東出資嗎？

不可以。同時必須證明資金是由投資者直接匯入中國境內，否則不能通過驗資。

## 國有資產出資規定

國有資產評估管理辦法規定，以國有資產投資的中方投資者，還需提供以下文件：

- 中方投資者的主管部門對投資中外合營企業的意見；
- 國有資產評估機構出具對國有資產的評估報告；
- 國有資產管理部門對上述資產評估報告出具的確認書。

如沒有按照法律程序評估國有資產，則有關出資行為便不合法。



## Is it possible for the related parties of the foreign investor to contribute capital?

No. Foreign investors must produce evidence of directly remitting cash into China. Otherwise, it cannot fulfill the requirement for capital examination.

## State Assets as capital contribution

According to the Provisions on the Administrative Method for the Appraisal of State Assets, if the assets to be transferred to the FIE belong to state assets, the following requirements must be complied with: -

- A written consent to the proposed transfer from the competent supervising department of the Chinese party, who is one of the shareholders of the FIE;
- An asset appraisal report issued by authorized institutions who are appointed to conduct the asset appraisals;
- A confirming report given by the State Assets Administration in respect of the appraisal report issued by the authorized institutions.

Where the procedures for state asset appraisal in accordance with the law are not followed, the transfer of assets to the FIE will be unlawful.

## 外國投資者出資比例

如果全部外國投資者在合營企業的出資比例低於25%，該外商投資企業仍然可以取得批准予以註冊，但不可以享受外商投資企業的稅務優惠。如果外商投資企業的經營範圍是屬於外商不能持有控制性股權的產業，外國投資者在合營企業的出資比例不得超出有關規定。根據中國入世承諾的時間表，可以增加相對控股比例，國內法規會允許改變出資比例。

## 投資者身份

合營企業外國投資者的主體可以是公司、企業、個人。中方投資者的主體只可以是公司、企業、不可以是個人，但法律另有規定除外。一些特定行業的中方投資者必須是國有企業。

## 外商投資者可以用人民幣出資嗎？

國家外管局匯發[2003]30號文件規定：如果以貨幣出資，外商投資者可用自由兌換的貨幣出資，或者從外商投資企業獲得的人民幣稅後利潤出資。經外匯局核准，還可以下列方式作為向外商投資企業的出資：

1. 外商投資企業將發展基金、儲備基金（或資本公積金、盈餘公積金）等轉增本企業資本；
2. 外商投資企業的未分配利潤、應付股利及其應付利息等轉增本企業資本；
3. 外商投資企業外方已登記外債本金及當期利息轉增本企業資本；
4. 外國投資者從其已投資的外商投資企業中因先行回收投資、清算、股權轉讓、減資等所得的財產在境內再投資。



## Foreign ownership in FIE

In case that the total foreign ownership in the FIE falls below 25%, the Chinese government will still approve its registration. However, the FIE so formed shall not enjoy the preferential tax concessions available to the FIE in general. If the FIE operates in a sector where foreign majority ownership is not permitted, the percentage foreign ownership in that FIE shall be limited in accordance with the Chinese law. The law on the relative foreign ownership will be amended in accordance with the commitment the Chinese government made to the WTO members.

## Capacity of Investors

The capacity of the foreign party in the FIE can be companies, enterprises, or individuals. The capacity of the Chinese party in the FIE can only be companies or enterprises to the exclusion of individuals, subject to the provision of the law to the contrary. The Chinese party in the FIE for certain particular industry sectors must be state owned enterprises.

## Can foreign investors use Reminbi as capital contribution ?

The Circular No. 30 (2003) issued by the State Administration of Foreign Exchange provides that if the capital contribution is in the form of cash, the foreign investor may contribute freely convertible foreign currency to the foreign investment enterprise, or the after-tax profits received from FIE's. Upon approval, the capital contribution may take the following forms: -

1. The capitalization of the development funds, the saving funds (or the capital reserve, surplus reserve) of the FIE;
2. The transfer to the capital account of the unappropriated profits, dividends payable, and the interest payable on outstanding dividends;
3. The principle of the duly registered foreign currency loans, and the interest payable for current period on the loans;
4. The re-invested amounts from the return of capital prior to the termination of the foreign investment enterprise, and the amount realized from the liquidation, the transfer of equity interests, and the reduction of capital in the foreign investment enterprise within the Chinese territories.

# 中國的公司與企業

## PRC company and enterprise

### What is the difference between a Company and an enterprise?

Legally there are several differences between the two. An enterprise means foreign investment enterprises (FIE) in China. There are state owned enterprises in China but we do not include them into the comparison here.

### 一間公司和一個企業有什麼分別？

分別如下："企業"是指"外商投資企業"，或者是指"國有企業"。在以下的比較中，我們不包括比較"國有企業"。

"公司"是根據"中華人民共和國公司法"或者根據"外商投資股份有限公司暫行規定"而設立，包括有限責任公司及股份有限公司，一個企業可根據以下法律而設立：

1. 中外合資經營企業法；
2. 中外合作經營企業法；
3. 外資企業法。

以上三種企業，亦稱為"三資企業"。



A PRC company is incorporated under the PRC company law, or the "Tentative Provision for the Establishment of the Foreign Investment Joint Stock Limited Liability Company". There are two types of companies: one is limited liability company; the other is joint stock limited liability company;

An enterprise is incorporated under one of the following laws:-

1. The PRC Law for Sino-foreign Equity Joint Venture Enterprises;
2. The PRC Law for Sino-foreign Cooperative Joint Venture Enterprises;
3. The PRC Law for Wholly Foreign Owned Enterprises.

The three types of enterprises are called foreign investment enterprises.

▶ 一間公司可以永久存續，沒有法定經營期限，而一個企業則必須在公司章程中規定其法定經營期限。

A company may have perpetual continuity while an enterprise must have a definite period of operating life in years, as stated in the Articles of Association.

▶ 一間中國公司必須最少有兩位股東(股份有限公司要5位)，而一個外資企業則可以只有一位股東，即一般人稱呼的外商獨資企業；但是中國公司法有特別規定，可以允許只有一個股東的"國有獨資公司"存在。

A PRC company must have at least 2 shareholders (5 in the case of a joint stock limited liability company) with the exception of a wholly state owned company. A wholly foreign owned enterprise can have one shareholder.

▶ 一間公司是一個"法人"，三資企業也是"法人"；但是中外合作經營企業的雙方或各方合作者，可以依照法律不註冊成為獨立"法人"，各自在一定的範圍內獨立承擔責任。

A company has a status of a legal person while a Sino-foreign cooperative joint venture may not possess the status of a legal person if the joint venture parties agree to have such arrangement. Each party assumes its own legal responsibility independently.

▶ 法律沒有要求一間公司的股東之間訂立股東協議和合同，而法律規定中外合資和中外合作企業的股東之間，需要訂立協議書和合同，作為成立的要件之一。

A company is not required to have a shareholder agreement while the law requires that an equity joint venture or a cooperative joint venture must have a shareholder (or JV) agreement, as a pre-requisite for incorporation.

▶ 除了個別城市以外，中國公民自然人不能成為中外合資，中外合作企業的股東，中國公民只可以成為一間公司的股東。相反，非中國公民則可以成為三資企業的股東。

Except in certain cities, the FIE laws do not allow Chinese citizens to become the shareholder of an FIE in the capacity of natural persons. Chinese citizens are allowed to be shareholders of a company. In contrast, foreign nationals can act as the shareholders in an FIE.

▶ 外商投資企業(即三資企業)的最高權力機構是董事會，而一間公司的最高權力機構是股東大會。

The highest authority is the board of director for a foreign investment enterprise. For a company the highest authority is the general meeting of the shareholders, who make the decision on the appointment of directors.

## What is something in common between a company and an enterprise?

1. Both of them must have a legal representative.
2. The PRC Company law shall apply to a foreign investment enterprise in the absence of any provision in the applicable FIE laws.
3. Both the company and an FIE have share capital, except that for Sino-foreign cooperative joint venture enterprises in certain cases.
4. Both a foreign investment enterprise and a company can be converted into a joint stock company under the PRC Company Law.

## 企業與公司之間有沒有共同點？

共同點如下：

1. 公司及企業都需要委任"法定代表人"，即董事長。
2. 除非外商投資企業有關法律另有規定，公司法亦適用外商投資企業。
3. 公司及企業都是法人，除了中外合作經營者選擇不註冊成為法人的企業以外。
4. 無論企業或公司，都可以根據法律轉為"股份有限公司"。





## 稅後利潤分配

1. 法定公積金按稅後利潤的10%的比例提取。公司法定公積金累計達到公司註冊資本的50%以上時，可以不再提取法定公積金。公司的法定公積金不足於彌補上一年度公司虧損的，在提取法定公積金和法定公益金之前，應當先用當年利潤彌補虧損。
2. 法定公益金按照稅後利潤的5%比例提取。公益金是專門用於企業職工福利設施的支出，如購建職工宿舍、托兒所、理髮室等。
3. 提取任意公積金。公司在提取法定公積金和法定公益金後，經股東大會決議，可以提取任意公積金。
4. 董事會可以從倘餘的利潤派發股息。

## 派發股息

在提取了"兩金"之後，董事會可以通過決議派發股息。中國實施外匯管制，為了將股息匯出中國大陸，有關的外資企業要供稅務機關出具的"所得稅完稅證"或者"免稅證"，註冊會計師出具的驗資報告和審計報告。中國稅法規定外商投資企業只需繳納所得稅，外商股息收入不需要納稅。



## Appropriation of after-tax profits

1. Capital reserve funds are set aside on the basis of 10% of the after-tax profits. When it accumulates to the level equal to 50% of the registered capital, the company can stop setting aside the capital reserve funds. When the company has incurred a loss, the profit for the year should first be used to make up for the losses incurred during previous years.
2. The PRC law requires the directors to transfer 5% of the after-tax profit to the staff provident funds, which are wholly set aside for the welfare of the company staff, such as building staff quarters, nurseries, and the barber's shops.
3. After the appropriation of the capital reserve and staff provident funds, the directors can allocate the profits to discretionary capital reserve funds.
4. The directors can declare dividends from the retained earnings after the appropriation of those funds, as mentioned above.

## Declaration of dividend

The board of directors should pass a resolution for the distribution of dividends after fulfilling the statutory obligation toward the two provident funds. To remit the dividends outside China, the PRC Company should obtain the "income tax payment certificate" or "income tax exemption certificate" issued by the local branches of the tax department, as well as the capital examination and audited report issued by China CPA firms. Note that PRC tax law does not impose income tax on the dividends distributed by the foreign investment enterprises to the foreign shareholders.

## 增值稅與營業稅的徵稅範圍有什麼分別？

在中國境內銷售或進口貨物，需要繳納增值稅，但是，轉讓不動產除外。在中國境內提供應稅勞務的單位與個人，需要繳納營業稅。但是，提供加工、修理、修配勞務除外。兩者的聯繫與區別在於對徵稅範圍的例外規定。



### Difference in the scope of VAT and Business Tax ?

VAT is payable on sale and importation of goods in the mainland of China, excluding the sale of immovable property. Business tax is payable upon the provision of services in the mainland of China, excluding the provision of services solely relating to processing, repairing and replacement. The relation and difference between VAT and business tax lies in the exception to the scope of taxes.

類別 Type of tax	增值稅 VAT	營業稅 Business tax
應稅行爲：銷售、進口有形物 (銷售不動產除外) Taxable activities: sales and importation of tangible goods within China, except for the sale of immovable property.	(1) 銷售貨物 (2) 進口貨物 (1) Sale of goods (2) Importing goods	銷售不動產 (例外) Sale of immovable property (exception)
應稅行爲：提供勞務 (加工，修理修配除外) Taxable activities: the provision of services within China (except for processing, repairing, and replacement services)	提供加工、修理、修配勞務 (例外) Provision of processing, repairing, and replacement services (exception)	(1) 提供勞務 (2) 轉讓無形資產 (1) Provision of services, (2) Transfer of intangible property

## 增值稅當事人有那些？

銷售貨物由賣方向買方代收代繳增值稅，進口貨物都是由海關向買方代收代繳增值稅，提供加工修理修配勞務的由受託者向委託者代收代繳增值稅。



### Who are the parties to the VAT?

In respect of the sale of goods, the seller is responsible for collecting the VAT from the buyer. In respect of importing goods, the customs is to collect the VAT from the importer. In respect of the provision of processing, repairing, and replacement services, the services provider is to collect the VAT from the service user.

應稅行爲 Taxable activities	銷售貨物 Sale of goods	進口貨物 Importation of goods	提供加工修理修配勞務 Provision of processing, repairing, and replacement services
付款人 Payer	買方 Buyer	買方 Buyer	委託者 Service user
代收代繳人 Collector	賣方 Seller	海關 Customs	受託者 Service provider

## 何謂銷售貨物？

銷售貨物指有償轉讓貨物的所有權。"有償"包括從購買方取得貨幣、貨物或其他經濟利益。例如，以貨易貨，或以貨物入股屬於取得其他經濟利益。

## What is sale of goods within the VAT contents?

Sale of goods means the transfer of ownership for a consideration, which includes receipt of money, goods, or other economic benefits. For example, the exchange one good for another and the exchange of goods for shares in a company are economic benefits.

## 何謂視為銷售？

根據一般會計準則，未發生所有權轉移的交易不確認為銷售，但增值稅規則將其當作（視為）銷售處理。視為銷售包括：

- （一）將貨物交付他人代銷；
- （二）銷售代銷貨物；
- （三）納稅人將貨物從總公司移送外地分公司。

## What are deemed sales?

Deemed sales refer to the transactions which are not recognized as sales under the Chinese accounting rules, but they are treated as sales under the VAT sales regulations. These deemed sales transactions include:

1. the delivery of goods from the principle to the agent;
2. the sales of goods by the agent on behalf of the principle;
3. the transfer of goods from the head office to the branch located at other cities or counties.

## 如何計算增值稅銷售額？

增值稅規定銷售額為納稅人銷售貨物或者提供應稅勞務向買方收取的全部價款，及價外費用。但不包括銷售稅。價外費用包括手續費、延期付款利息、包裝費、運輸裝卸費、及其他性質的價外收費。以上對銷售額的規定與根據一般會計原則確定的銷售收入不同。

## How is the VAT sales amount ascertained?

The VAT sales amount is the total purchase price and all other and additional charges receivable from the purchasers by the taxpayer selling goods or providing taxable services, but excluding the VAT output tax. "Other additional charges" refer to all top-up charges receivable from the purchaser such as commission, late payment interests, packaging charges, loading and unloading charges, transportation charges, and other charges of various kind in addition to the selling price. Note that the definition of VAT sales amount differs from the sale revenue as defined under the accounting convention.

## 什麼是免徵增值稅項目？

某些產品銷售屬於應稅項目，但是法律有特別規定不徵收增值稅，為免稅項目。免稅項目包括

1. 銷售自產農業產品
2. 三來一補所需進口設備
3. 進料加工、來料加工復出口的原料、配件

## What are the VAT-exempt goods?

The sales of some categories of goods are subject to VAT, but the VAT regulations specifically exempt these items from VAT. VAT-exempt goods include the following: -

1. Sale of self-produced agricultural produces;
2. capital equipment used in the processing trade with supplied materials and compensation trade;
3. the materials, parts, and components imported for the manufacture of export goods.

## 如何確定貨物"銷項稅額" ?

銷項稅額計算如下：

⇒銷項稅額 = 銷售額 X 稅率

⇒銷售額 = 根據會計原則確認銷售額 + 視為銷售金額 + 價外費用 - 免徵增值稅銷售金額

## How is VAT amount determined?

The VAT amount is arrived at by the following formula: -

⇒VAT amount = VAT sales amount x tax rate

⇒VAT sales amount = sales revenue recognized under accounting rules + deemed sales + other additional charges - VAT-exempt sales.

## 如何確定"應納增值稅額" ?

銷售貨物應納稅額為：當期銷項稅額抵扣當期進項稅額後的餘額。計算公式為：

⇒應納稅額 = 當期銷項稅額 - 當期進項稅額

⇒當期銷項稅額 = 銷售額 x 稅率

⇒當期進項稅額 = 購貨額 x 稅率

進口貨物，應納稅額計算公式為：

⇒應納稅額 = 組成計稅價格 x 稅率

⇒組成計稅價格 = 關稅完稅價格 + 關稅 + 消費稅（如適用）

## How is VAT taxable amount determined ?

The VAT taxable amount for sale of goods for the current period is arrived at as follows: -

⇒VAT taxable amount = VAT sales amount - VAT purchase amount

⇒VAT sales amount = sales amount x tax rate

⇒VAT purchase amount = purchase amount x tax rate

For imported goods, the VAT taxable amount is calculated as follows:

⇒(Dutiable value + customs duty + consumption tax (if applicable)) x tax rate

## 增值稅率

### The VAT tax rate table

稅率 Tax rate	項目 Items	應稅行為 Taxable activities
17%	I 貨物 Goods	進口或者銷售貨物，以下第二項及第三項除外。 Sale of goods, import of goods other than the goods listed in categories II and III below.
13%	II 貨物 Goods	1. 糧食、食用植物油 2. 自來水、暖氣、冷氣、熱水、煤氣、石油液化氣、天然氣、沼氣、居民用煤炭制品 3. 圖書、報紙、雜誌 4. 飼料、化肥、農藥、農機、農膜 5. 國務院規定的其他貨物 1. Sale of grains, edible vegetable oil; 2. Sale of tap water, central heating, air-conditioning, hot water, coal gas, liquid petroleum gas, natural gas methane, and coal for residential use; 3. Sale of books, newspaper, magazines; 4. Sale of feed, chemical fertilizer, agrochemicals, agricultural machinery, agricultural film; and 5. Other goods specified by the State Council.
0%	III 貨物 Goods	納稅人出口貨物，國務院另有規定除外。 Goods exported by taxpayer, except for those as determined by the State Council.
17%	IV 應稅勞務 Taxable labor services	納稅人提供加工、修理、修配勞務。 Services provided on processing, repairing, and replacement by taxpayers.

# 中國的勞動和社會保障規定

## Labor and Social Security Regulations

### 社會保險

社會保險費用是外商投資企業的主要經營成本之一，亦是三資企業僱主的法定責任。這些社會保險包括：養老、醫療、失業、工傷、及生育計劃保險。此外，僱主須為員工提供房屋公積金。中國的僱主須履行社會保障的責任，包括辦理社會保障登記證、按月繳納社會保險費、從應付工資中代扣代繳員工的個人社會保險費。行政機關可以依法處罰不履行社保責任的企業和法定代表人。

部份社會保險費的計算方法（如：養老及醫療保險）是按照上一年度的「平均工資」計算的。地方勞動及社會保障部每年會公佈平均工資的數據，有關數據一般在上半年公開發佈。

**例如：**2003年廣州市社會平均工資為人民幣2,092元，最高工資則為平均工資的300%（即人民幣6,276元），而最低工資則為平均工資的60%（即人民幣1,255元）。例如：一位經理的每月收入為人民幣10,000元，公司可只為他繳付以人民幣6,272元為計算基礎的社會保險。一位辦公室文員的收入為人民幣1,000元，公司則必須為其購買以人民幣1,255元為計算基礎的社會保險。

各地行政機關對執行社會保障有不一致的規定。第一，不同的繳費比例（僱主及員工）是根據生活水平及工資水平計算。第二，每個城市的社會保障規定也不完全相同。在上海，市政府不會要求僱主繳付工傷保險。如員工的戶口並不是在上海，僱主則須為其購買綜合保險（包括工傷保險）。在東莞和深圳，僱主須為員工繳付工傷保險。在深圳和



### Social Security

The contribution to various social security insurances is one of the major operating cost elements to foreign investment enterprises, and also the legal obligation of the employer. These obligations include the contributions to pensions, hospitalization, unemployment, work-related injury, and birth planning insurances. In addition, the employer has to make contribution to the housing provident funds for the employee. Employers in China shall fulfill the social security obligations for the employees, including the social security registration, making payment of social security every month, the withholding of employee's contribution and making payment on their behalf. The administrative body will impose fines on the enterprise and the legal representative for non-compliance.

Certain contributions like pension and medical insurances are computed on the basis of the "average wage" of the preceding year. Each year the local Department of Labor and Social Security will announce the amount of the said average wage in the first half of the year.

**For example,** the social average wage in Guangzhou for 2003 is RMB 2,092, the maximum amount of wage is 300% (RMB 6,276) of the average while the minimum is 60% (RMB 1,255). e.g. A manager is paid for RMB 10,000 per month, the company can buy him the social insurance on the base of RMB 6,272; An office clerk has the salary of RMB 1000, the company must buy him the social insurance on the basis of RMB 1,255.

The administrative practices are varied in the implementations of the social security contributions throughout the country. First, different contribution rates, both for the employer and employees, are used according to the living standards and wage levels. Second, it is also observed that the application of those rules is varied from city to city. In Shanghai, the municipal government has not required the employer to pay work-related injury insurance. For the employees without household registrations in Shanghai, the employer has to buy him a comprehensive insurance (including work-related injury). In both Dongguan and Shenzhen, the employer has to pay work-related injury insurance. In both Shenzhen and

北京，工傷保險的比例會按工業的種類和工作地方的危險性而有所不同。東莞則使用工資數額的一定比例。第三，僱主和員工同須繳付某些供款例如養老、住院等保險，而其他種類的保險，則須由僱主負責繳付，員工不用承擔。

以上社會保障有關規定，不適用於外籍駐華員工包括港澳台公司駐大陸員工。

## 個人所得稅

根據中華人民共和國稅法，僱主有義務從員工個人稅前收入中扣除個人所得稅，然後繳付給地方稅務局。在計算員工個人所得稅應納稅所得額的時候，除了法定的扣除額以外，可以從員工的稅前收入中扣除住房公積金和社會保險供款。

**例子：**深圳某公司一位經理的每月收入為人民幣5,000元。其住房公積金、社會保險及所得稅的扣除款項分別為人民幣650元(13%)、人民幣350元(7%)及人民幣1,600元。所得稅的計算方式如下：-

人民幣5,000元（稅前收入）- 650元 - 350元 - 1600元 = 人民幣2,400元（應納稅所得）

人民幣2,400元 x 15% - 125元（速算扣除數） = 人民幣235元（當月稅款）

Beijing, the applicable rates for work-related injury are varied depending on the type of industries and the level of risk at the workplace. In Dongguan, flat rates are adopted for work-related injury insurances. Third, both the employer and the employee have to pay certain types of contributions such as pension and hospitalization insurances. For some other types of insurances, only the employer has the obligation to do so.

The provisions for the above mentioned social security insurances shall not apply to the foreign nationals working in the PRC, and the resident staff who are employees of Hong Kong, Macau, and Taiwan companies.

## Individual Income tax

Under the PRC tax law, the employer has the withholding obligation to deduct from the gross pay the income tax, and pay them over to the local tax offices. The contribution to housing provident funds and the social security are deductible from the employee's gross pay, in addition to the statutory deduction for the income tax.

**Example:** A manager working for a Shenzhen company has a monthly income of RMB5,000. His housing provident fund, the share of his social security contributions, and statutory deductions for income tax are RMB650 (13%), RMB350 (7%), and RMB 1,600 respectively. His income tax liability is calculated in the following way: -

RMB5000 (income before tax) - 650 - 350 - 1600 = RMB2,400 (taxable income),

RMB2,400 x 15% - 125 = RMB235 (the monthly tax is 235, where 125 is the quick deduction number as provided under the PRC Individual Income Tax Law).

## 主要城市社會保障供款比例

Social security contribution rates for major cities

### 深圳市 Shenzhen (2003)

項目 Item	計費標準 Average wage	比例 Contribution	僱員承擔 Employer	員工承擔 Employee
養老 Pension	¥2,353 *	13%	8%	5%
醫療 Hospitalization	¥2,353	2%	2%	---
工傷 Work-related injury	¥2,353	0.3%	0.3%	---
失業 Unemployment	¥2,353	0.4%	0.4%	---
綜合醫療保險 * Comprehensive medical scheme	¥2,353	9%	7%	2%

\* 計費標準受上限（300%）及下限（60%）的規限。2002年深圳市的平均工資為人民幣2,152元。綜合醫療保險只適用於深圳市戶口員工。  
The average wage is subject to an upper limit (300%) and a lower limit (60%). The average wage for Shenzhen was RMB2,152 in 2002.  
The comprehensive medical scheme only applies to the employees who have a household registration in the Shenzhen city.

### 北京 Beijing (2003)

項目 Item	計費標準 Average wage	比例 Contribution	僱員承擔 Employer	員工承擔 Employee
養老 Pension	¥2,003	28%	20%	8%
醫療 Hospitalization	¥2,003	0.2% - 3%	0.2% - 3%	---
失業 Unemployment	¥2,003	2%	1.5%	0.5%
綜合醫療保險 Comprehensive medical scheme	¥2,003	11%	9%	2%

### 上海 Shanghai (2003)

項目 Item	計費標準 Average wage	比例 Contribution	僱員承擔 Employer	員工承擔 Employee
養老 Pension	¥2,467	29.5%	22.5%	7%
醫療 Hospitalization	¥2,467	---	---	---
失業 Unemployment	¥2,467	3%	2%	1%
綜合醫療保險 Comprehensive medical scheme	¥2,467	14%	12%	2%

### 法律法規關於工時和休息休假制度是如何規定的？

中國現行的法定標準工時制度就是每日8小時，每周40小時，即每周工作5天，每周有兩個休息日。關於法定休假日，按照《勞動法》的規定，元旦放假1日、春節放假3日、國際勞動節放假1日、國慶節放假2日。企業法定休假日以及法律、法規規定的其他休假節日期間，應當安排職工休假。

### What are the provisions for working hours and rest days in China?

In Mainland China, the statutory working time is 8 hours a day, 40 hours a week, 5 working days a week, and 2 rest days a week. Regarding the statutory leave, the PRC Labor law provides that the employee shall have 1 day off on the new year's day, 3 days off on the Chinese new year holidays, 1 day off on the international labor day, 2 days off on the national day. The Company should make arrangement for the employees to take leave on the statutory holidays and other rest days as prescribed under the law.

### 甚麼是最低工資？

法律規定最低工資的具體標準由各省、自治區、直轄市人民政府規定，但必須報國務院備案。目前各省、自治區制定的最低工資標準，一般是按不同地區，分別適用不同的標準；直轄市則一般在全市範圍內實行同一個標準。

### What are minimum wages?

The PRC law provides that the people's government of provinces, autonomous regions, and municipalities directly under the State Council lay down the level of the minimum wage. In setting the minimum wage level, different standards are adopted for different parts of the provinces and autonomous regions. Municipalities directly under the State Council adopt the same standards throughout the city.



## 向職工發放工資應當遵循哪些規定？

工資應當以貨幣形式按月支付給職工本人，工資必須以貨幣形式支付，而不得以實物形式支付。法定休假日和婚喪假期間，企業應當向職工支付工資。

企業安排職工延長工作時間，應當按照下列標準支付高於正常工作時間工資的加班工資，具體標準是：(1) 安排職工延長工作時間的，支付不低於工資的150%的工資報酬；(2) 休息日安排職工工作又不能安排補休的，支付不低於工資的200%的工資報酬；(3) 法定休假日安排職工工作的，支付不低於工資的300%的工資報酬。

## What rules are in place regarding the payment of salaries and wages?

Salaries and wages are payable in currency on a monthly basis. Non-cash payment in lieu of currency shall not be allowed. The staff and workers are entitled to pay during statutory holidays, marital leave, and personal leave for death in the family.

During overtime, the employer should pay the employees in accordance with the following standards: (1) for normal overtime work, employer should pay the employee no less than 1.5 times the normal wage rate; (2) for work during rest days in the absence of arrangement for compensating leaves, the employer should pay the employee no less than 2 times the normal wage rate; (3) for work during the statutory holidays, the employer should pay the employee no less than 3 times the normal wage rate.



## 企業如果不能實行標準工時制度，是否可以實行其他工時制度，國家在這方面有哪些規定？

生產特點不能實行標準工時制度的，經勞動部門批准，可以實行其他工作和休息辦法，包括不定時工作制或綜合計算工時工作制。前者適用於高級管理層或司機等，後者適用於受氣候或季節因素影響的經營活動。

## What are the legal provisions for other alternatives if the Company cannot adopt the normal standard working time?

If the employers cannot adhere to the normal working time, they can adopt other alternative working time systems, subject to the approval of the local Labor Department. The alternative working system may be non-fixed working hour systems, which apply to the senior management or drivers, or the comprehensive working day system, which is used for business activities subject to weather and seasonal factors such as farming and finishing.

## 企業可以隨意安排職工加班嗎？關於延長工作時間有哪些規定？

企業不能強迫職工加班。企業安排職工加班，一般每日不得超過1小時，因特殊原因需要延長工作時間的，在保障職工身體健康的條件下延長工作時間不得超過3小時，但是每月不得超過36小時。因發生事故、自然災害、生產設備、交通、公共設施故障，影響到公眾利益等情況下，要緊急處理，安排職工加班不受上述限制。

## Can the employer force the employee to work overtime? What are the provisions regarding working hours for overtime?

The employer cannot force the employee to work overtime. The time for working overtime should not exceed 3 hours per day, subject to a ceiling of 36 hours in a month. The legal restrictions on employees working overtime shall not apply in situation of accidents, catastrophes, breakdown of production equipment, transportation, and public facilities where the public interests are in jeopardy.



# 我們的服務

## Scope of our Services

### 直接及間接對華投資

- 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；
- 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；
- 中國大陸稅務、會計、海關、外匯、公司法、勞動法規諮詢；
- 在WTO和CEPA框架下，外商進入大陸市場采用投資模式諮詢，協助外商投資者收購合併中國境內公司及企業。
- 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。

### DIRECT AND INDIRECT INVESTMENT IN THE PRC

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.

Post-incorporation compliance with requirements for accounting, taxation, customs, foreign exchange control and company corporate compliance, etc.

Providing consultation on PRC laws and regulations relating to tax, accounting, customs, foreign exchange, company, labor and social security.

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.

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.



## 中國稅務

## PRC TAX SERVICES

我們提供稅務諮詢和代理服務

We provide both tax consultation and agent services:

- 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；
- 稅務、外匯、會計、發票使用、開立和保管相關問題；
- 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；
- 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、行爲稅、及辦理境外公司臨時稅務登記；
- 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；
- 一般納稅人申請認定、申請出口退稅；
- 協助提起稅務行政復議、及訴訟。

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;

Providing consultation on issues relating to taxation, foreign exchange, accounting, use, issue and custody of tax invoices;

Providing consultation on the avoidance of double taxation on income under the PRC tax treaty framework including application for certificate of residency;

Providing services relating to 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;

Tax declaration and filing for PRC individual income tax for foreign nationals and residents of Hong Kong and Taiwan;

Providing assistance in application for recognition of general VAT taxpayer and certificate for export rebates.

Providing assistance in initiating administrative appeals and/or litigations for tax related cases.





### **Hong Kong 香港**

Unit 1506, 15/F, Wing On House,  
71 Des Voeux Road, Central, Hong Kong.

Tel. : (852) 2374 0067

Fax : (852) 2374 1813

Email : enquiry@china-tax.net

Website : www.china-tax.net

Contact : Mr. Alfred K K CHAN, Mr. Ulfred U

香港中環德輔道中71號永安集團大廈1506室

電話：(852) 2374 0067

傳真：(852) 2374 1813

電郵：enquiry@china-tax.net

網址：www.china-tax.net

聯繫：陳先生、余先生

### **Shenzhen 深圳**

Tel : 86755-82117595 Fax : 86755-82474745

Contact : Mr. Hinson LEE 86-13925275793

電話：86755-82117595 傳真：86755-82474745

聯繫：李先生 86-13925275793

### **Beijing 北京**

Tel.: 8610-63420936, 86-13911088241

Contact : Mr. William CHAN

電話：8610-63420936, 86-13911088241

聯繫：陳先生

### **America 美國**

Tel.: (212) 941-6694

Fax: (212) 941-1377

Contact : Mr. Wallace Lau

### **Germany 德國**

Tel.: 49 (0)30-32 60 23 51, 49 (0)173-646 88 88

Fax : 49 (0)30-32 60 23 52

Email: bgroeber@web.de

Contact : Mr Burghardt Groeber

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