

# 中国税务

PRC TAX SERVICES

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题目二：香港与内地税制比较  
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**中国税务**  
PRC TAX SERVICES



## 在中国营商的涉外税务问题

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## 派遣外籍员工来华工作的税务案例

### PRC Tax Case of International Assignment



某香港公司派遣一位外籍员工到上海工作3年，该员工是美国公民，太太和子女都在加拿大工作及居住。该员工及公司在签订合同前都希望知道以下相关的税务规定。

**[1] 香港、大陆、美国、加拿大各自行使什么管辖权？**

**[2] 该员工应该在什么地方纳税？**

**[3] 香港公司应作什么安排？**

**[1] (a)** 根据香港税务条例规定，该员工和香港公司签订了劳动合同，他应该在香港纳税。根据中国个人所得税法及实施条例规定，该员工在中国境内履行劳动合同，他应该在大陆纳税。同一收入在香港和大陆都要纳税。根据加拿大税法规定，该员工因为家庭成员在加拿大工作及生活，作为税务居民，他应该要在加拿大缴纳所得税。因为该员工拥有美国国籍，根据美国联邦税法规定属于美国税务居民，他也要在美国缴纳所得税。

**[1] (b)** 该员工同时是美国和加拿大的税务居民。根据美国与加拿大签署的双边税收协定，双方决定居民管辖权的时候，住所排序优于家庭联系排序，家庭联系排序优于国籍排序。因此，根据双边税收协定由加拿大联邦税务局行使税收管辖权。

# 在中国营商的 涉外税务问题

## Issues of International Taxation in China Business

A Hong Kong company wants to assign an employee to work as the general manager in its subsidiary in China under a 3-year secondment contract. The employee is a US national. He owns a house in Canada. His wife and children are all working and living in Canada. The employee and the Hong Kong Company have to find out the following tax implication before signing the contract for the cross-border assignment:

**[1] What taxing rights the following jurisdictions should exercise: Hong Kong, Mainland China, US and Canada?**

**[2] Where he should pay the taxes?**

**[3] What should the HK Company do?**

**[1] (a)** Under the Hong Kong tax rules, the employee is liable to salaries tax because of the legal relation created between the Hong Kong Company and the employee under the employment contract. The employee is liable to tax regardless of where he exercises his employment and where he gets paid. Under the tax law in China, the employee is liable to income tax because he exercises his employment in Mainland China. The income is taxable irrespective of where he receives the payment. The same income is subject to tax under different source rules in Hong Kong and China respectively. He will also have tax liabilities in the US and Canada that exercise a claim to the income under their residence rules. Under the tax laws in the US, the employee is subject to tax on worldwide income since he is a US national. Under the tax laws in Canada, the employee is also subject to tax on worldwide income because he has family ties with Canada. Accordingly, the employee is a tax resident for both countries.

**[1] (b)** The employee is a tax resident for both the US and Canada. His tax status shall be determined by considering the following the factors in the tax treaty concluded between the US and Canada, in descending order. Since the employee has a permanent home in Canada, he is deemed to be the resident of Canada. In addition, the employee also has his center of vital interests in Canada because his wife and children live in the country. Nationality only ranks third and that will not count in accordance with the rules in the tax treaty between the two countries.





**[2]** 由于该员工在中国工作，他应该在中国纳税。根据香港税务条例规定，该员工可以获得豁免薪俸税，如果他能够符合以下条件：

- (a) 他在境外工作发生了纳税义务而且因此交纳了税款；
- (b) 向税务局出示税务申报及已经缴纳税款的完税证明文件。由于该员工属于加拿大的税务居民，税务居民境外收入可以在加拿大国内获得抵免 (Tax credit)。

**[3]** 根据中国与香港两地避免双重征税安排第5条的规定，倘若一方企业派遣员工在另一方提供劳务的时间在任何十二个月期间超过了183天，该企业被认为在另一方设立了常驻机构，因此需要依照规定在另一方缴纳所得税。为了避免缴纳中国的所得税，香港公司应该安排该员工直接与其国内的子公司签订劳动合同。通过以上安排，香港公司避免了常驻机构的税务问题，该员工也无须负有缴纳薪俸税的义务。但是，因为中国的社会保障水平比香港低而税率比香港高，香港公司在报酬吸引力与税务负担方面需要平衡公司与员工双方的利益。

**[2]** The second question is where the employee should pay the tax. The employee should pay income tax in China because he exercises the employment in China. The employee will get tax exemption in Hong Kong if the following conditions are met:

- (a) he incurs liabilities for income tax elsewhere outside Hong Kong and tax is paid accordingly;
- (b) he can produce the tax payment certificate to the Hong Kong Inland Revenue Department to substantiate his exemption claim. Since the employee is a tax resident of Canada, he is entitled to a tax credit on tax already paid in China when he reports his income to the tax authority in Canada. Tax credits are used to relieve the resident taxpayer from double taxation.

**[3]** Where the employee who works for the Hong Kong company stays in China for a period or periods aggregating more than 183 days in any 12-month period, the Hong Kong company is considered to have a permanent establishment in China, and it will be subject to tax on PRC-source income in accordance with the double tax arrangement made between HK and China. In order that the Hong Kong Company should avoid the exposure to PRC corporate income tax liabilities, the employee should enter employment contract with the PRC subsidiary directly. The employee can continue its employment with the Hong Kong Company after completing the assignment in China. This option can eliminate the employee's Hong Kong salaries tax liabilities as well. But the level of social security in China is very low but the effective tax rate in China is very high, as compared with that in Hong Kong. A proper balance has to be struck between the tax burden and attractiveness in designing the remuneration package for the assignment in China.





## 非税务居民在中国的纳税问题 PRC Tax Issues for Non-residents

### 特许权使用费 (案例一)

**问：**假设一上海外资企业支付软件使用费100元（不考虑汇率）给一间美国公司。所得税、营业税的计算方式如下（所得税率和营业税率分别是10%和5%）：

营业税： $100 \times 5\% = 5$   
 所得税： $(100^*) \times 10\% = 10$ ；  
 税款总额= 营业税+所得税 =  $5 + 10 = 15$

**答：**答案如下。

备注：

**[1]** \*旧所得税法可以扣除营业税，即 $100 - 5 = 95$ 。

**[2]** 根据中美双方签订的税收协定，美国公司取得的使用费按10%税率征税。如果是香港公司，可以享受协定优惠，按7%税率征税。

**[3]** 依照法律规定或者合同约定对收款人直接负有支付义务的境内单位或个人为扣缴义务人。

**[4]** 适用汇率为扣缴日中国人民银行公布的汇率中间价。

### 租金收入 (案例二)

**问：**境内租户支付租金100（不考虑汇率）给境外业主。所得税、营业税的计算方式如下（所得税率和营业税率分别是10%和5%）：

**答案一：**

营业税： $100 \times 5\% = 5$   
 所得税： $(100^*) \times 10\% = 10$ ；\*旧税法可以扣除营业税。  
 税款总额= 营业税+所得税 =  $5 + 10 = 15$

**答案二：**

如果业主没有在中国境内从事仓库租赁业务，而且委托独立代理人管理和交易，则适用10%税率；如果业主在境内有办事处等管理机构，则该业主活动在中国构成常设机构，该租金为经营利润，从租金扣除成本费用后按25%的税率，缴纳企业所得税。

# 在中国营商的 涉外税务问题

## Issues of International Taxation in China Business

### Royalty Payment (Case 1)

Suppose that a wholly foreign owned enterprise pays a royalty of 100 (exchange rate is not considered) to a US Company. The income tax and business tax are computed in the following way (the income tax and business tax rates are 10% and 5% respectively) :

Business tax :  $100 \times 5\% = 5$   
 Income tax :  $(100^*) \times 10\% = 10$  ;  
 Total tax = business tax + income tax =  $5 + 10 = 15$

**A :** The answers are set out below.

**[1]** The old income tax rules allow the deduction of business tax. That is,  $100 - 5 = 95$ .

**[2]** Under the tax treaty signed between the two governments, the US company is liable to a 10% income tax on the royalty. Note that if the recipient is a Hong Kong resident company, it can enjoy a 7% concessionary rate on the royalty it received from the PRC company.

**[3]** The tax law says that the resident company or individual shall be the tax withholding agent who has the obligation to make payment to the payee situated outside China.

**[4]** The applicable exchange rate is the middle rate between the buying and selling rates as announced by the People's Bank of China on the day the remittance is made.

### Rental Income (Case 2)

A resident leaseholder pays a rental of 100 (excluding exchange rate issues) to the landlord situated outside China. The income tax and business tax are computed in the following way (the income tax rate and business tax rate are 10% and 5% respectively).

**Answer one :**

Business tax:  $100 \times 5\% = 5$   
 Income tax:  $(100^*) \times 10\% = 10$  ; The old tax rules allow the deduction of business tax from the gross income.  
 Total tax = business tax + income tax =  $5 + 10 = 15$

**Answer two :**

If the landlord does not carry on any business in China, and he appoints an independent agent to act for it, then the 10% income tax applies. If the landlord has set up an office in China, the activities will constitute a permanent establishment, and the rental is considered to be business profits. It shall pay income tax at 25%, which is computed with reference to the difference between the gross rental income and the deductible expenses.



## 股息、红利收入 (案例三)

**问：**我们用英属处女（维京群）岛（BVI）公司作为外商独资企业的投资者。新税法对这公司架构有什么影响？

**答：**BVI不是主权国，没可能和中国签订双边税收协定。从2008年1月1日起，中国税务机关在外商独资企业派发股息的时候会向BVI公司徵收10%的所得税，法律规定由独资企业代扣代缴。

**问：**BVI公司可不可以享受减税规定？

**答：**如果符合下列条件的，BVI公司也可以将股息税率由10%降低到5%：在香港经营业务而有办理商业登记的，及向香港税务局申请取得“香港特区居民身份证证明书”。要注意，香港税务局要收到被投资方所在地税务机关出具的《关于请香港特别行政区政府税务主管当局出具居民证明的函》，才会发出有关证明。

## Dividend and Bonus Issue (Case 3)

**Q:** We have used a BVI company to invest in a wholly foreign owned enterprise in China. What impact of the new PRC corporate income tax law will have on this company structure?

**A:** BVI is not a sovereign state, and therefore it cannot sign tax treaty with China. As from 1st January 2008, the PRC tax authority will impose a 10% income tax on the dividends that is payable by the WFOE to the BVI company. The WFOE has the legal obligation to withhold the income tax.

**Q:** Is there any tax concession that the BVI Company can enjoy?

**A:** Where the conditions below are satisfied, the BVI company can enjoy the reduction in the tax rate from 10% to 5%: it carries on business in Hong Kong with a business registration certificate; and it has obtained from the Hong Kong tax authority a "Certificate of Tax Resident Status in the Hong Kong Special Administrative Region". To be noted is that the Hong Kong tax authority will not issue the certification before it has received a "request for the issue of certification for tax resident status" from the tax authority in the city or district where the WFOE is located.

## 劳务费收入 (案例四)

**问：**深圳市合资企业在上海市开发房地产项目，向境外建筑设计公司支付劳务费¥1000万，该境外公司应该在什么地方申报？如何确定其纳税义务？

**答：**答案如下。

**[1]** 境外公司在项目所在地（上海市）办理“临时税务登记”，境内发包公司在签订合同30天内向机构登记所在地（深圳市）办理代扣税款登记；根据规定，境内付款方需要履行代扣代缴义务。

**[2]** 如果符合双边税收协议规定，境外公司可以申请免税；如果按规定要纳税的，按年度计算、分季度预缴税款、年终汇算清缴（多除少补），合同完毕后结清税款。

**[3]** 外国公司派驻员工到中国工作一年内超过183天，该外国公司可被认定在境内设立了常驻机构而产生缴纳所得税的义务。

**[4]** 如果该境外公司的员工在中国境内停留时间在连续12个月内不超过183天的，可以根据双边税收协定申请免税待遇。

## Service Income (Case 4)

**Q:** A Sino-foreign equity joint venture enterprise set up in Shenzhen and has a property development project in Shanghai. The JV enterprise pays a design fee of RMB10 million to a non-resident architectural design firm. Where should the non-resident declare the income tax? How the tax liabilities are determined?

**A:** The answers are set out below.

**[1]** The non-resident design firm should apply for a temporary tax registration in Shanghai where the property development project is located. The domestic property development company should apply for a "tax registration as withholding agent". According to the PRC tax rules, the resident payer shall assume the legal obligation to withhold and pay the income tax for the non-resident recipient.

**[2]** If the conditions for tax exemption in the tax treaty are met, the non-resident design firm can apply for tax exemption. If the non-resident is liable for income tax, it shall submit a quarterly return and pay tax accordingly. It is also required to submit a yearly return to finalize its tax liabilities (top up any deficit and pay additional tax). The tax clearance is required after the completion of the construction project.

**[3]** A non-resident company that assigns employees to work in China for a period over 183 days in a year, it will be considered to have had a permanent establishment in China and therefore liable to PRC corporate income tax.

**[4]** Where the employees of the non-resident company stays in China over 183 days in any consecutive 12-month period, it can apply for tax exemption according to the relevant provisions in the bilateral tax treaties.



## 出售股份收入 (案例五)

**问：**某外国投资者将其上海市外资房地产企业40%股份出让给广州市国有企业，它应该在上海还是在广州纳税？

**答：**答案如下。

**[1]** 该外商投资者属于在中国没有常驻机构的非居民企业；该外商应该就来源于中国境内所得纳税，实行源泉扣缴，即以支付人（广州国有企业）为义务扣缴人；应纳税所得额 = 股权转让价减除股权成本，应纳税额 = 应纳税所得额 × 10%。

**[2]** 其他纳税义务：营业税（无），印花税0.05%。

## Disposal of Equity Interest (Case 5)

**Q:** A foreign investor wants to sell its 40% equity interest in a JV company situated in Shanghai to a state owned enterprise located in Guangzhou. At which city should the foreign investor pay the income tax? How is the tax amount computed?

**A:** The answers are set out below.

**[1]** The foreign investor is a non-resident enterprise without a permanent establishment in China. The foreign investor shall be liable to tax on PRC-source income, which is withheld at source. That is, the payer (the State Owned Enterprise in Guangzhou) shall withhold the income tax. The amount of taxable income shall be computed as follows: the gross amount of sales proceeds after deducting the cost of equity investment. The amount of tax payable shall be: taxable income × 10%.

**[2]** Other tax obligations: business tax (nil) and stamp tax at 0.05% on the gross amount.

## 出售境内房地产收入 (案例六)

**问：**外国投资者出让境内房地产有什么纳税规定？

**答：**答案如下。

**[1]** 新税法规定在转让收入总额中减去投资成本，然后按照净额缴纳百分之十的所得税。境内的买方在支付购买价款前需要依照法律规定，代扣代缴预提所得税。

**[2]** 其他纳税义务：营业税5%，土地增值税(增值额30%至60%)，印花税0.05%。

**[3]** 有关土地增值税的计算方法，请在以下网址查阅：

[http://www.china-tax.net/pub/China\\_Tax\\_on\\_disposal\\_landed\\_properties.pdf](http://www.china-tax.net/pub/China_Tax_on_disposal_landed_properties.pdf)

## Disposal of Landed Property (Case 6)

**Q:** What tax rules are in place for the disposal of landed properties in China by a non-resident investor?

**A:** The answers are set out below.

**[1]** The corporate income tax law provides that the cost of the property can be deducted from the gross amount of the sales proceeds before it pays a 10% income tax on a net basis. The resident buyer has an obligation to withhold the income tax in accordance with the income tax law.

**[2]** Other tax obligation includes business tax (5%), land appreciation tax (30% to 60% on the appreciated portion of the property), and the stamp tax (0.05%).

**[3]** For the detailed information about the computation of land appreciation tax, please check it out at the following website:

[http://www.china-tax.net/pub/China\\_Tax\\_on\\_disposal\\_landed\\_properties.pdf](http://www.china-tax.net/pub/China_Tax_on_disposal_landed_properties.pdf)

## 中国境内企业对境外公司非贸易项目支付的纳税规定

### PRC Tax Rules for Outbound Remittance Relating to Non-trade Items

#### 对外支付

对外支付可分为贸易支付与非贸易支付两种情形。除了关税和进口环节增值税以外，境内企业对外贸易支付不涉及缴税问题，付款与进口货物有直接关系。

相对而言，非贸易支付需要税务清理，付款人要提供税务机关出具给境外收款人的免税证明或者完税证明，才能付款（汇）给收款人。对任何非贸易支付的交易来说，境外收款人是义务纳税人，境内付款人是义务税款扣缴人。

#### Outbound Payments

Outbound payments comprise two categories: trade-related payments and non-trade payments. Except for duty and import VAT, the domestic company will not incur tax liability for outbound settlements on trading transactions, which is related to the imported goods.

On the contrary, non-trade payments involve tax clearances. The payer in China can remit the money (foreign currency) to the payees situated outside China only if it can show to the bank the tax exemption certificate or tax payment certificate as issued by the tax bureau to the non-resident payees. In respect of every transaction for non-trade items, the non-resident payee is the taxpayer while the resident payer is the tax-withholding agent.



## 非贸易付汇

“非贸易付汇”是指中国境内公司向境外非居民公司或者个人支付不属于国际收支项下经常帐中贸易结算的交易款项，包括股息、利息、特许权使用费、出售财产后的款项。

## 行政审批

非居民（境外）公司或者个人向中国境内公司收取股息、利息、特许权使用费、出售财产后的款项，需要享受税收协定条款规定的税收协定待遇的，应向主管税务机关提出享受税收协定待遇审批申请。

## 备案

非居民（境外）公司或者个人向中国境内公司收取劳务费或者需要享受税收协定条款规定的税收协定待遇的，无须审批。但是，境外纳税人或者扣缴义务人应向主管税务机关备案。收取劳务费或者需要享受税收协定条款规定的待遇包括：

- [1] 常设机构以及业务经营利润；
- [2] 独立个人劳务；
- [3] 非独立个人劳务；
- [4] 本段以上第[1]至[3]项，和上段所列需要审批的税收协定条款以外的其他税收协定条款规定的收入。

根据国家税务总局2009年19号文件的规定，对适用备案规定的对外付款交易，境外纳税人和境内义务扣缴人必须分别办理“临时税务登记”和“扣缴税款登记”。对不需要办理工商登记的境外纳税人，也适用办理税务登记的规定。

如果没有获得审批或者向税务机构备案，非贸易对外付款的纳税人不能享受税收协定的优惠税率或者待遇。



## Outbound Payments for Non-trade Items

The term "outbound payments for non-trade items" refers to the payment by the resident companies to non-resident companies or individuals that are not included as trade items under the current account that is a part of the balance of payments, including dividends, interests, royalty and the proceeds from the disposal of properties situated in China.

## Administrative Approvals

Non-resident companies or individuals (Companies or individuals situated outside China) who receive payment from PRC resident companies dividends, interests, royalty and the proceeds from the sale of properties situated in China, should apply for approval from the tax bureau in charge if they would like to enjoy the preferential treatments under the tax treaties.

## Record filings

Non-resident companies or individuals that receive from PRC-resident companies payment for the provision of services or wish to enjoy the benefits accorded under the tax treaties, are not required to obtain administrative approvals. However, the non-resident taxpayer or its tax-withholding agent should file the record with the tax bureau in charge. The payment for the provision of services and the tax benefits accorded under the tax treaties including the following:

- [1] Permanent establishment and business profits;
- [2] Independent services (contract work);
- [3] Dependent services (employment);
- [4] Other income not included in item 1 and 3 inclusive of this paragraph and that not included under the articles in the tax treaties other than those listed in the above paragraph, in respect of which administrative approvals are required.

Where the provision for record filing is applicable to certain taxpayers, the State Administration of Taxation, in the circular No. 19 (2009), provides that the non-resident taxpayer and resident withholding agent shall apply for a "temporary tax registration certificate" and "a certificate for withholding taxes" respectively. The tax registration is required even if the non-resident taxpayer is not required to apply for a business license from the local office of State Administration of Industry and Commerce.

Outbound payments for non-trade items will be subject to income tax at the full rate if the taxpayer or its resident agent does not obtain administrative approval or file the records with the tax bureau before the payments are made by the resident companies and/or individuals to non-resident payees.







## 向中国进口及分销软件产品

### Distribution of Imported Software in China

您好！我们正在和一间美国公司讨论，和他们合作在中国分销软件产品。

第一个问题：在大陆设立公司有什么要求？朋友告诉我

- (a) 可以先在香港设立公司，之后在大陆设立分公司；
- (b) 或者我们直接在大陆设立公司；
- (c) 如果营业额不超过一定的金额，有没有其他形式的公司可以选择？我们不清楚应该选择那一个方案。

第二个问题：从税务方面看，我们营运的模式是——美国软件公司——香港公司——（或者有中国分销商）——最终用户。我们面对什么税务问题？例如增值税？我们业务只是销售软件。

第三个问题：如果我们采用互联网的营运模式，例如最终用户在网上下单购买软件，由我们经过电邮交付软件，税务方面有什么不同点？

回复第一个问题——假设你们的软件不涉及内容。

(a) 你们应该在中国大陆设立公司。香港公司的大陆分公司不能从事销售活动包括售卖软件。中国的公司作为分销商必须向“工业和信息化部”办理登记手续。没有办理的，中国公司不能进口软件产品。进口软件同时属于中华人民共和国技术进出口条例规管的范围，该条例将进口技术分为禁止类、限制类和允许类。进口商进口之前需要将有关合同向地方的“商务部”备案。如果你们用香港公司售卖该软件，每一个买家都必须向上述两个部门办理进口和注册手续，这个运作模式是不可行的。

## 进口内销 Domestic Sale and Import

Hello, I am discussing with a software vendor in US, on being their partner and distributing the software in mainland China.

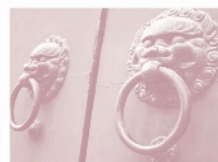
**Q [1]** What are the requirements and the procedures to set up a company in China? I heard from my friend that  
(a) I can set up a company in HK first, then to set up a branch in China;  
(b) I can set up a company in China directly; or  
(c) If the annual revenue is lower than a certain amount, there is another form of company I can set up there. I am confused. Can I know which option is correct and the details please?

**Q [2]** When it comes to the tax, for biz like this [US software >> my company >> (with or without reseller in China) >> end user company], what kind of tax I have to deal with? How about the VAT? Please note that my product involves software only.

**Q [3]** Anything difference regarding the tax if my biz model relies on the internet? e.g. resellers or end-users place order in our web and then we send the software to them through email.

We assume that the software products do not contain any contents. As to **[1]** (a), you should set up a company in China. The branch of a Hong Kong company cannot be engaged in any selling activities including the sale of software in China. Next, the PRC Company as a software distributor should complete the registration procedures with the Ministry of Industry and information technology. Without the registration, the PRC Company cannot import the software into China. The importation of technology also falls under the scope of the PRC Regulations for the Import & Export Technology. Imported technology is classified as prohibited, restricted and permitted category. Software contracts generally fall under the permitted category. The importer has to file the contract for the importation of software at the local office of the Ministry of Commerce before importation. If you use the Hong Kong Company to sell the software, every PRC buyer has to complete the registration procedure. It is not a workable solution.





(b) 设立一间分销公司的最少资本额是人民币五十万。可参考我们公司网站有相关资料。

(c) 如果年销售额不超过人民币八十万，大陆公司就是小规模纳税人，增值税的税率为销售额的百分之三。

回复第二个问题——假设软件的年销售额超过人民币八十万，大陆公司需缴交百分之十七的增值税。如果大陆公司自行开发软件产品，并拥有知识产权，且已被认定为“软件产品企业”，增值税的税负可减低至百分之三。但是，这项增值税的税务优惠不适用于销售进口软件产品。此外，进口软件产品时，增值税是按软件产品的内容价值缴交增值税，税率为百分之十七。

回复第三个问题——如果你在香港设立公司，通过互联网销售软件产品予大陆客户，你无需在大陆缴交税款，但是这里会有两个问题：大陆的买家因没有国内的购货发票而不能从其收入中扣除成本；因为没有报关单证，大陆公司无法对外付汇。需注意，由于你在香港经营业务，因此需在香港缴交利得税。



As to **[1]** (b), the capital requirement for setting up a PRC company to sell software is RMB500,000. You can obtain information about the procedures to set up the PRC Company from our website.

As to **[1]** (c), if the sales revenue of the PRC Company is not exceeding RMB800,000 in a year, then the PRC Company is regarded as a small-scale taxpayer and it pays VAT at 3% on the sales amount.

Reply to question **[2]**— Suppose that the annual sale amount of the PRC Company exceeds RMB800,000, the sales of software is subject to VAT at 17%. If the PRC Company develops the software itself and owns the relevant IP rights, the VAT liability can be reduced to 3%, subject to the fact that the company has been certified as a "software enterprise". However, that preferential VAT rate does not apply to the sales of imported software. In addition, VAT is payable at 17% at the time of importation on the value of the media that stores the software.

Reply to question **[3]** — If you set up a Company in Hong Kong and sell the software to buyers in China through the internet, there is no tax in China on your part. There will be two issues here: in the absence of a tax invoice, the buyer inside China incurs the costs and cannot get the deduction from its income; the PRC company could not make the payment in foreign currency in the absence of a customs declaration. Note that you have to pay profits tax for the business carried on in Hong Kong.



## 开拓健康食品内地市场

### Exploring the PRC Market for Health Foods

本人想开拓健康食品内地市场，但不知在何处找有关法律法规的限制和要求，以及有关手续和文件。请建议，谢谢！

答：建议如下。

**[1]** 根据《中华人民共和国食品安全法》、《中华人民共和国行政许可法》和有关规定，进口食品包括健康食品、食品添加剂、食品容器、包装材料和食品用工具及设备 etc 都要取得食品及药品监督机构的行政许可，才能进口、或者在境内生产及销售。

**[2]** 如果有关食品制品含有动物或植物成分的，根据《中华人民共和国进出口商品检验法》、《中华人民共和国进出境动植物检疫法》和《中华人民共和国国境卫生检疫法》的规定，进境前进口商需要将商品报送检验检疫，取得报检证明才能通关。

**[3]** 对于进口的食品，境外生产商或者代理人必须提供“原产地来源证明”及生产厂商在所在国的登记资料。未能提供产地来源证明的，需要提供所在国政府批准生产及销售的证明文件。

**[4]** 根据《中华人民共和国标准化法》及其实施条例、进口食品必须符合中国的国家标准（GB），未有国家标准的，进口单位必须提供输出国（地区）卫生部门或者组织出具的卫生评价资料，经口岸进口食品卫生监督检验机构审查检验并报国务院卫生行政部门批准。上述审查检验包括人体试食实验。

**[5]** 需要注意产品配方、生产工艺、品质标准、标签与说明书及有关证明文件中的外文，均应译为规范的中文；外文参考文献中的摘要、关键词及与产品保健功能、安全有关部分的内容应译为规范的中文（外国人名、地址除外）。

**[6]** 相关信息可以向国家食品药品监督管理局查询。

## 进口内销 Domestic Sale and Import

I would like to tap the PRC market for health foods. Please give me advice where I can get the information about the relevant law, regulations, and the procedures that I have to follow. Thank you.

See the recommendations below.

**[1]** Before you can import, or manufacture and sell the foods within China, you should obtain administrative approval from the State Food and Drug Administration in accordance with the PRC Food Safety Law, the PRC Administrative Licensing Law, and the relevant regulations for imported health foods, additives, food containers, packing materials, food making equipment.

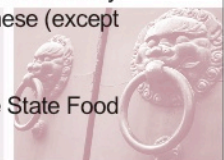
**[2]** Inspection and quarantine are required under the PRC Law for Inspection of Import and Export Commodities the PRC Law for Quarantine on Import and Export Animals and Plants and the PRC Law for Hygiene and Quarantine at National Frontiers, if the foods are made of animal and plants, or other materials and substance of animal or plant origins. The importer should complete the pre-inspection and quarantine declaration before it can proceed with the customs formalities.

**[3]** The information relating to the foreign manufacturer and the country of origin certificate for the product shall be made available to the approval authority in China. If you cannot produce the certificate of origin, then you should produce the approval document as issued by the government of the country where the foods are manufactured and sold.

**[4]** According to the PRC Standardization Law and its regulations, imported goods should meet the PRC national standard (GB). If there is no such national standard in place, the importer should produce information relating to the evaluation and testing reports as issued by the health authority from the country of sales. The testing reports shall be submitted to the Ministry of Health for purpose of obtaining the approval. The above-mentioned testing includes the conducting of human testing.

**[5]** All information about production technology, quality standard, label description and relevant certification should be translated from the foreign language to the Chinese language; the references, key words, functions and safety contents should be translated into standard Chinese (except for foreign names and addresses).

**[6]** You can obtain relevant information from the State Food and Drug Administration.





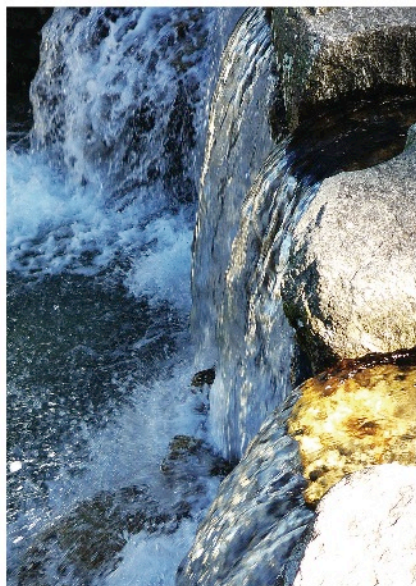
# 我们的服务

## Scope of Our Services

### 直接及间接对华投资

#### Direct and indirect investment in the PRC

- 设立中外合资经营企业、合作经营企业、外资经营企业、批发及零售贸易公司、驻华办事处、办理进料来料加工作业申请；
- 提供外商投资企业有关后续服务，包括公司登记变更、会计、税务、金融、与海关规定事项；
- 中国大陆税务、会计、海关、外汇、公司法、劳动法规范咨询；
- 在WTO和CEPA框架下，外商进入大陆市场采用投资模式咨询，协助外商投资者收购合并中国境内公司及企业；
- 协助大陆设厂外商选址、申请环保、进口设备检验检疫、海关备案审批、办理船务及清关程序；
- 查册及注册中国商标。
- 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.
- Searching and registering trade mark in Mainland China.





## 中国税务

### PRC tax services

我们提供税务咨询和代理服务。

- 提供最新中央、地方税法、行政法规及规章，包括企业所得税、增值税、营业税、消费税、城市房地产税、契税、及印花税等；
- 税务、外汇、会计、发票使用、开立和保管相关问题；
- 中国税收协定有关避免双重征税规定及咨询、申请税务居民证明；
- 提供省税方案建议，申请税务优惠审批、申报公司、企业所得税、增值税、营业税、消费税、行为税、及办理境外公司临时税务登记；
- 申报外籍员工、港澳台员工个人所得税、申请及变更税务登记；
- 一般纳税人申请认定、申请出口退税；
- 协助提起税务行政复议、及诉讼；
- 编写中国税务及投资特定范围研究报告；
- 举办与中国公司法、会计、税务、海关、外汇有关的培训讲座。

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;
- 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 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;
- 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.
- Preparing research report relating to investment and taxation in the PRC.
- Providing in-house training relating to the PRC Company Law, accounting, taxation, customs and foreign exchange.



## 联络我们 Contact Us

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Contact: Mr. Zhu / Mr. Xu (Mandarin)

### 北京 Beijing

Tel : 86-13911088241

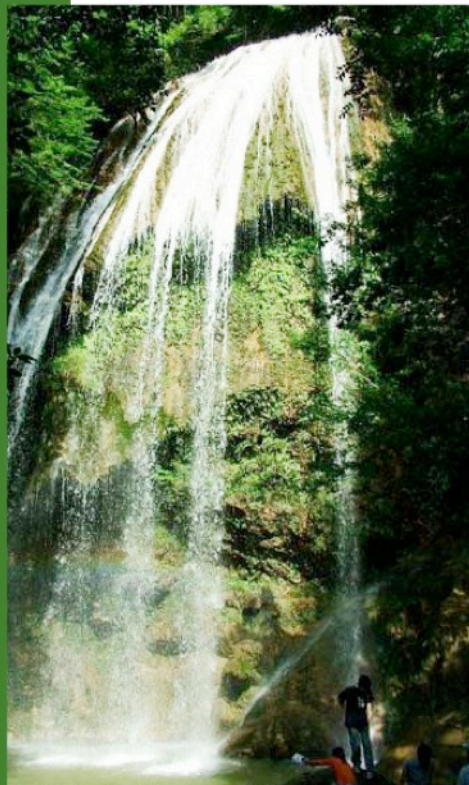
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Contact: Mr. Steven Leung



# 中国税务

## PRC TAX SERVICES

透视中国税务 助你发展业务



中國稅務及投資顧問有限公司  
ChinaTax&InvestmentConsultantsLtd