Tax Guide for India Residents doing business in Qingdao
印度居民来青岛投资税收指南
青岛，东接日韩面向亚太地区、北接蒙俄、南连东盟、西接上合组织和“一带一路”沿线国家，区位优势突出。2018年6月10日，习近平总书记在上合组织青岛峰会上宣布，中国政府支持在青岛建设中国-上海合作组织地方经贸合作示范区（以下简称“上合示范区”），开启了青岛拓展提升与上合组织国家地方经贸合作的新篇章。

为充分发挥税收职能作用，深度服务国家战略，国家税务总局青岛市税务局精准对接上合示范区服务需求，精心打造市场化、法治化、国际化的营商环境，精诚服务市场主体发展，着力优化“一带一路”相关税收政策咨询与服务，与中国-上海合作组织地方经贸合作示范区管理委员会联合安永（中国）企业咨询有限公司青岛分公司，编写和翻译了《印度居民来青岛投资税收指南》（以下简称《指南》）。《指南》全面介绍了中国的税收制度、中国与印度的税收协定及相互协商程序等国内、国际税收法规，并突出阐述了上合示范区特色优势以及青岛市税务局对印度居民来青岛投资的纳税服务举措等。

希望通过该指南，为印度居民来青岛投资经营提供切实可行的税收指引，助力地方经贸合作，促进投资贸易便利化，为打造新时代对外开放新高地增添税收力量。

国家税务总局青岛市税务局 局长
本手册是根据截止2021年4月30日前有效的法律、法规、部门规章及可获得的信息资料编制而成。如有错漏或政策改动，请以有权机关最新发布的文件为准。

本手册是为提供一般信息的用途编制，并非旨在成为可依赖的会计、税务或其他专业意见，并且不得用于其他商业用途。

请注意本手册所配图片与文字内容无关。

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4.2.2 投资促进
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4.2.4 投资管理
4.2.5 相关法律责任
2018年6月10日，国家主席习近平在上海合作组织成员国元首理事会第十八次会议上正式宣布：“中国政府支持在青岛建设中国—上海合作组织地方经贸合作示范区”，标志着上合示范区的正式成立。

2019年7月24日，中央全面深化改革委员会第九次会议审议通过了《中国—上海合作组织地方经贸合作示范区建设总体方案》，指明了上合示范区的目标定位和发展路径。2019年9月20日，国务院批复《中国—上海合作组织地方经贸合作示范区建设总体方案》。2019年10月20日，商务部、山东省人民政府联合印发了《中国—上海合作组织地方经贸合作示范区建设总体方案》的函，上合示范区有了“指导手册”和“操作指南”。

第一章 上合示范区简介
上合示范区坐落于沿海开放城市青岛，位于胶州湾北岸，总面积108平方公里。东接日韩面向亚太地区，西接上合组织国家，南连东盟，北接蒙俄。距离空港—青岛胶东国际机场10公里，海港—青岛前湾港15公里；铁路港—上合多式联运中心15公里，到青岛主城区车程仅15分钟。海陆空铁多式联运高效衔接，统筹海港、陆港、空港、铁路联运功能，能更好发挥青岛市在“一带一路”新亚欧大陆桥经济走廊建设和海上合作中的作用。

上合示范区深刻领悟习近平总书记关于在青岛建设上合示范区、旨在打造“一带一路”国际合作新平台重要指示要求的深刻内涵、内在逻辑，深刻把握建设上合示范区的重要政治意义，服务国家对外开放大格局，强化地方使命担当，秉持“以和促合、以义相合、以诚润合、尚合求合”的合作理念，发扬“敢闯敢试、立说立行、善作善成”的上合示范区精神，加快落实上合组织青岛峰会重要成果，深度融入“一带一路”建设。近期目标是立足与上合组织国家相关城市间交流合作，通过建设区域物流中心、现代贸易中心、双向投资合作中心和商旅文交流中心，打造上合组织国家面向亚太市场的“出海口”，形成与上合组织国家间交流合作集聚的示范区。中远期目标是努力把上合示范区建成与上合组织国家相关地方面向双向投资贸易制度创新的试验区、企业创业兴业的聚集区、“一带一路”地方经贸合作的先行区，打造新时代对外开放新高地。

上合示范区以规划为引领，以物流为先导，以贸易为主导，以项目为突破口，聚力建设国际物流、现代贸易、双向投资、商旅文化交流、海洋合作“4+1”中心，推动上合示范区建设全自发力、加速起势，充分发挥上合示范区在青岛口岸海陆空铁综合交通枢纽的区位优势，统筹海港、陆港、空港、铁路联运功能，更好发挥青岛市在“一带一路”新亚欧大陆桥经济走廊建设和海上合作中的作用，按照“物流先导、贸易拓展、产能合作、跨境发展、双园互动”模式运作，着力推进绿色化建设，力争在国家开放新格局中发挥更大作用。
第二章 中国税收制度

2.1 税制综述

2.1.1 税收法律体系

目前，中国现行税法体系由税收实体法和税收征收管理的程序法构成。

中国实行以间接税和直接税为主体的税制结构，税收实体法共有18个税种，具体如下：

<table>
<thead>
<tr>
<th>主体税</th>
<th>非主体税</th>
</tr>
</thead>
<tbody>
<tr>
<td>商品和劳务税类（间接税）</td>
<td>财产和行为税类</td>
</tr>
<tr>
<td>增值税、消费税、关税</td>
<td>企业所得税、个人所得税、土地增值税</td>
</tr>
</tbody>
</table>

现行税种中，以国家法律的形式发布实施的有：企业所得税、个人所得税、车船税、环境保护税、烟叶税、船舶吨税、车辆购置税、耕地占用税和资源税；除此之外其他各税种都是经全国人民代表大会授权，由国务院以暂行条例的形式发布实施的。这些法律法规共同组成中国的税收实体法体系。

除税收实体法外，中国对税收征收管理适用的法律制度，是按照税收管理机关的不同分别规定的：

（1）由税务机关负责征收的税种的征收管理，按照全国人大常委会发布实施的《税收征收管理法》及各实体税法中的征管规定执行。

（2）海关机关负责征收的税种的征收管理，按照《海关法》及《进出口关税条例》等有关规定执行。

2.1.2 征收和管理

2.1.2.1 税务机构设置与职能

2018年，根据中国经济社会发展及推进国家治理体系和治理能力现代化的需要，对国税地税征管体制进行了改革。现行税务机关设置是中央政府设立国家税务总局（正部级），原有的省及省以下国税地税机构两个系统通过合并整合，统一设置为省、市、县三级税务局，实行以国家税务局为主与自（自治区、直辖市）人民政府双重领导管理体制。此外，另由海关总署及下属机构负责关税、船舶吨税税收管理和受托征收进口环节增值税、消费税等税收。

目前，我国的税收分别由税务、海关等系统负责征收管理。

（1）税务系统即国家税务总局系统，负责征收和管理的税种有：增值税、消费税、车辆购置税、企业所得税、个入所得税、资源税、城镇土地使用税、耕地占用税、土地增值税、房产税、车船税、印花税、契税、城市维护建设税、环境保护税和烟叶税，共16个税种。

（2）海关系统负责征收和管理的税种有：关税、船舶吨税，同时负责代征进口环节的增值税和消费税。

2.2 主要税种概述

请注意，由于篇幅限制本章节仅主要列示了主要税种的部分规定，欲了解具体准确的规定，请参照相关法律渊源或咨询专业人士。

企业所得税的纳税人，是指在中国境内设立并在中国境内取得所得的企业和其他取得收人的组织（以下简称“企业”），包括居民企业和非居民企业。
印度居民来青岛投资税收指南

<table>
<thead>
<tr>
<th>纳税人</th>
<th>判定标准</th>
</tr>
</thead>
<tbody>
<tr>
<td>居民企业</td>
<td>依法在中国境内成立的企业</td>
</tr>
<tr>
<td>非居民企业</td>
<td>依照外国（地区）法律成立但在实际管理机构在中国境内的企业</td>
</tr>
<tr>
<td>转让财产所得</td>
<td>(1) 不动产转让所得按照不动产所在地确定；</td>
</tr>
<tr>
<td></td>
<td>(2) 动产转让所得按照转让动产的企业或者机构、场所所在地确定；</td>
</tr>
<tr>
<td></td>
<td>(3) 权益性投资资产转让所得，按照被投资企业所在地确定。</td>
</tr>
<tr>
<td>股息、红利等权益性投资所得</td>
<td>分配所得的企业所在地</td>
</tr>
<tr>
<td>利息所得、租金所得、特许权使用费所得</td>
<td>负担、支付所得的企业或者机构、场所所在地，或者按照负担、支付所得的个人的住所地确定。</td>
</tr>
<tr>
<td>其他所得</td>
<td>国务院财政、税务主管部门确定</td>
</tr>
</tbody>
</table>

企业所得税的征税范围是企业的生产经营所得、其他所得和清算所得，具体列示如下：

<table>
<thead>
<tr>
<th>纳税人</th>
<th>征税范围</th>
</tr>
</thead>
<tbody>
<tr>
<td>居民企业</td>
<td>境内所得+境外所得</td>
</tr>
<tr>
<td>非居民企业</td>
<td>境内所得+与所设机构、场所有实际联系的境外所得</td>
</tr>
<tr>
<td>其他所得</td>
<td>国务院财政、税务主管部门确定</td>
</tr>
</tbody>
</table>

在上述征税范围的划分中，对所得来源地的确定依据如下规则：

<table>
<thead>
<tr>
<th>所得来源地</th>
<th>所得来源地</th>
</tr>
</thead>
<tbody>
<tr>
<td>销售货物所得</td>
<td>交易活动发生地</td>
</tr>
<tr>
<td>提供劳务所得</td>
<td>劳务发生地</td>
</tr>
</tbody>
</table>

2.2.1.2 应纳税额的计算

（1）应纳税额与应纳税所得额的计算公式

\[
\text{应纳税所得额} = \text{应纳税所得额} \times \text{适用税率} - \text{减免税额} - \text{抵免税额}
\]

应纳税所得额=收入总额-不征税收入-免税收入-各项扣除-以前年度亏损

其中，适用税率情况如下：

<table>
<thead>
<tr>
<th>税率</th>
<th>适用范围</th>
</tr>
</thead>
<tbody>
<tr>
<td>25%</td>
<td>(1) 居民企业</td>
</tr>
<tr>
<td>20%</td>
<td>(2) 在中国境内设有机构、场所且所得与机构、场所有关联的非居民企业</td>
</tr>
<tr>
<td>15%</td>
<td>(1) 国家重点扶持的高新技术企业</td>
</tr>
<tr>
<td></td>
<td>(2) 西部鼓励类产业企业、横琴新区、平潭综合实验区和前海深港、海南自由贸易港、上海自贸区临港新片区</td>
</tr>
</tbody>
</table>
### 预提所得税

<table>
<thead>
<tr>
<th>税率</th>
<th>10%</th>
</tr>
</thead>
</table>

#### (2) 收入总额

收入总额包括以货币形式和非货币形式从各种来源取得的收入，包括销售货物收入、提供劳务收入、转让财产收入、股息红利等权益性投资收益、利息收入、租金收入、特许权使用费收入、接受捐赠收入和其他收入。

#### (3) 不征税收入

不征税收入包括财政拨款、依法收取并纳入财政管理的行政事业性收费、政府性基金和国务院规定的其他不征税收入。

#### (4) 免税收入

免税收入包括国债利息收入，符合条件的居民企业之间的股息、红利等权益性收入，中国境内设立机构、场所的非居民企业从居民企业取得与该机构、场所有关联的股息、红利等权益性投资收益以及符合条件的非营利组织的收入。

#### (5) 减免税额和抵免税额

减免税额和抵免税额依照中国税法的相关规定确定，主要税收优惠事项将在下一章单独介绍。

#### (6) 亏损弥补

企业发生的亏损，准予以后年度的年度结转，以后年度的所得弥补，但有一定的时间限制。

#### (7) 扣除项目

企业实际发生的与取得收入有关的、合理的支出，包括成本、费用、税金、损失和其他支出，可以按照税法规定扣除。企业所得税法及其实施条例对不得税前列支的项目、限额列支的项目等事项做出了详细规定，具体事项应查询法规细则以保证税务处理的合规性。

### 2.2.1.3 申报及缴纳

#### (1) 自行申报

企业所得税按年计征，分期预缴，年终汇算清缴。

月份或者季度终了之日起15日内，向税务机关报送预缴企业所得税纳税申报表，预缴税款。企业在报送企业所得税纳税申报表时，应当按照规定报送财务会计报告和其他有关资料。年度终了之日起5个月内，向税务机关报送年度企业所得税纳税申报表，并汇算清缴，结清应缴应退税款。

#### (2) 源泉扣缴

对非居民企业在中国境内未设立机构、场所，或者虽设立机构、场所但取得的所得与其所设机构、场所没有实际联系的，应缴纳的所得税，实行源泉扣缴，以支付人为扣缴义务人。税款由扣缴义务人在每次支付或者到期应支付时，从支付或到期应支付的款项中扣缴。

扣缴义务人应当自扣缴义务发生之日起7日内向扣缴义务人所在地主管税务机关申报和解缴代扣税款。

### 源泉扣缴计算公式:

\[
\text{应纳企业所得税应纳税额} = \text{应纳税所得额} \times \text{实际征收率} (10%)
\]

其中应纳税所得额的计算主要适用项目如下:

<table>
<thead>
<tr>
<th>项目</th>
<th>适用情况</th>
</tr>
</thead>
<tbody>
<tr>
<td>收入全额计税（不含增值税）</td>
<td>股息、红利等权益性投资收益和利息收入、租金收入（经营租赁）、特许权使用费所得，担保费</td>
</tr>
<tr>
<td>差额计税</td>
<td>(1) 转让财产所得：扣除已经按照规定扣除的折旧、消耗，准各金等后的余额</td>
</tr>
<tr>
<td></td>
<td>(2) 融资租赁所得：扣除设备、物品价款后的余额</td>
</tr>
</tbody>
</table>
2.2.2 个人所得税

2.2.2.1 纳税义务人与征税范围

个人所得税的纳税义务人，包括中国公民、个体工商户、个人独资企业和合伙企业等。根据不同情况，其纳税义务人被划分为居民个人和非居民个人，具体如下表所示：

<table>
<thead>
<tr>
<th>纳税义务人</th>
<th>判定标准</th>
<th>征税范围</th>
</tr>
</thead>
<tbody>
<tr>
<td>居民个人（负无限纳税义务）</td>
<td>1. 中国有住所的个人 2. 中国无住所，但一个纳税年度内在中国境内居住累计满183天的个人</td>
<td>境内所得和境外所得</td>
</tr>
<tr>
<td>非居民个人（负有限纳税义务）</td>
<td>无住所且一个纳税年度内在中国境内居住累计不满183天的个人</td>
<td>境内所得</td>
</tr>
</tbody>
</table>

其中，所得及对应征收方式如下：

<table>
<thead>
<tr>
<th>征税方式</th>
<th>税目</th>
<th>计征方式</th>
</tr>
</thead>
<tbody>
<tr>
<td>混合征收</td>
<td>(1) 工资、薪金所得</td>
<td>按月、按次预扣预缴；年终合并汇算清缴。</td>
</tr>
<tr>
<td></td>
<td>(2) 劳务报酬所得</td>
<td>非居民个人取得工资、薪金所得、劳务报酬所得、稿酬所得、特许权使用费所得，按月或者按次分项计算个人所得税。</td>
</tr>
<tr>
<td></td>
<td>(3) 稿酬所得</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(4) 特许权使用费所得</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(5) 经营所得</td>
<td>按年计算，按季预缴，自行申报</td>
</tr>
<tr>
<td></td>
<td>(6) 财产租赁所得</td>
<td>按月计算，代扣代缴</td>
</tr>
<tr>
<td></td>
<td>(7) 利息、股息、红利所得</td>
<td>按次计算，代扣代缴</td>
</tr>
<tr>
<td></td>
<td>(8) 财产转让所得</td>
<td>无须征收个人所得税</td>
</tr>
<tr>
<td></td>
<td>(9) 偶然所得</td>
<td>无须征收个人所得税</td>
</tr>
</tbody>
</table>

混合征收制下，外来投资者需要准确判定纳税人的所得适用税目，以确定计税方法。

2.2.2.2 应纳税所得的计算

（1）税率
### 印度居民来青岛投资税收指南

#### 税率

<table>
<thead>
<tr>
<th>形式</th>
<th>范围</th>
<th>提示</th>
</tr>
</thead>
</table>
| 3%-45%的七级超额累进税率 | 居民个人的综合所得 | 个人所得税率表按月计算。
| 3%-45%的七级超额累进税率 | 非居民个人工资、薪金所得，劳务报酬所得，稿酬所得，特许权使用费所得，按月换算应纳税额。
| 5%-35%的五级超额累进税率 | 经营所得 | ——
| 20%的比例税率 | 财产租赁所得 | 个人出租住房税率为10%
| 20%的比例税率 | 利息、股息、红利所得 | ——
| 20%的比例税率 | 财产转让所得 | ——
| 20%的比例税率 | 偶然所得 | ——
| 3%-45%的七级超额累进预扣率 | 居民个人工资、薪金所得预扣预缴 | 与居民个人综合所得适用税率完全一致。
| 3%-45%的七级超额累进预扣率 | 非居民个人工资、薪金所得，劳务报酬所得，稿酬所得，特许权使用费所得 | ——
| 三级超额累进预扣率 | 居民个人劳务报酬所得预扣预缴 | ——
| 20%的比例税率 | 居民个人稿酬所得预扣预缴 | ——
| 20%的比例税率 | 居民个人特许权使用费所得预扣预缴 | ——

#### 预扣率

（2）应纳税所得额

征税范围内的应纳税所得额计算方式如下：

<table>
<thead>
<tr>
<th>应纳税所得额</th>
<th>计算公式</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) 居民个人</td>
<td>每月收入额-5000元</td>
</tr>
<tr>
<td>(2) 非居民个人</td>
<td>每月收入额×(1-20%)×70%</td>
</tr>
</tbody>
</table>

### 第二章 中国税收制度

#### 应纳税所得额

<table>
<thead>
<tr>
<th>应纳税所得额</th>
<th>计算公式</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) 居民个人</td>
<td>每月收入额-5000元</td>
</tr>
<tr>
<td>(2) 非居民个人</td>
<td>每月收入额×(1-20%)×70%</td>
</tr>
</tbody>
</table>

### 财产转让所得

转让财产的收入额减除财产原值和合理费用。
中国的个人所得税实行综合与分类相结合的税制。
工资、薪金所得、劳务报酬所得、稿酬所得和特许权使用费所得汇总起来按综合所得计征缴纳，
应纳税额=应纳税所得额×对应的七级超额累进税率-对应的速算扣除数。
经营所得应纳税额=应纳税所得额×对应的五级超额累进税率-对应的速算扣除数。
其他类型的所得应纳税额=应纳税所得额×对应的税率。
个人年度应纳税额为上述所有类型所得应纳税额的合计数。

2.2.2.1 报税及缴纳
(1) 自行申报纳税
自行申报纳税，是由纳税人自行在税法规定的纳税期限内，向税务机关申报取得的应税所得项目
和数额，如实填写个人所得税纳税申报表，并按照税法规定计算应纳税额，据此缴纳个人所得税的一种方法。

有下列情形之一的，纳税人应当依法办理纳税申报：
- 取得综合所得需要办理汇算清缴。
- 取得应税所得没有扣缴义务人。
- 取得应税所得，扣缴义务人未扣缴税款。
- 取得境外所得。
- 因移居境外注销中国户籍。
- 非居民个人在中国境内从两处以上取得工资、薪金所得。
- 国务院规定的其他情形。

(2) 全员全额扣缴申报纳税
全员全额扣缴申报，是指扣缴义务人应当在代扣税款的次月15日内，向主管税务机关报送其支付
所得的所有个人的有关信息、支付所得数额、扣除项目和数额、扣缴税款的具体数额和总额以及其他
相关涉税信息资料，具体地：
- 扣缴义务人向居民个人支付工资、薪金所得时，应当按照累计预扣法计算预扣税款，并按月
办理扣缴申报。
- 扣缴义务人向居民个人支付劳务报酬所得、稿酬所得、特许权使用费所得时，按次或按月预
扣预缴税款。
- 非居民个人取得工资、薪金所得、劳务报酬所得、稿酬所得和特许权使用费所得，有扣缴义务
人的，由扣缴义务人按月或者按次代扣代缴税款，不办理汇算清缴。

2.2.3 增值税
2.2.3.1 纳税义务人与征税范围
在中华人民共和国境内销售或者进口货物、销售劳务、服务，无形资产和不动产的单位和个人，
为增值税的纳税人。依据销售额大小，增值税纳税人划分为一般纳税人和小规模纳税人，增值税小规模
纳税人标准为年应征增值税销售额500万元及以下。年应税销售额未超过规定标准的纳税人，会计核算
健全，能够提供准确税务资料的，可以向主管税务机关办理一般纳税人资格登记，成为一般纳税人，
年应税销售额超过该标准的，应向主管税务机关办理一般纳税人资格登记，但国家税务总局另有规定
的除外。

下表列示一般纳税人的税收规定。

2.2.3.2 应纳税额的计算
(1) 税率
下表列示了适用于一般纳税人的增值税税率：

<table>
<thead>
<tr>
<th>税率</th>
<th>适用范围</th>
</tr>
</thead>
<tbody>
<tr>
<td>13%</td>
<td>销售或进口货物（除适用低税率和零税率的外）；提供应税劳务；提供有形动产租赁服务</td>
</tr>
</tbody>
</table>
| 9%   | 提供交通运输服务、邮政服务、基础电信服务、建筑服务、不动产租赁服务、销
售不动产、转让土地使用权、销售或进口不可抵扣货物 |
增值税

**第2章 中国税收制度**

当自贸易协定进口增值税专用发票之日起15日内缴纳税款。

### 2.2.3.4 发票管理制度

作为经济活动中开具、收取的收付款项凭证，世界各国均有不同形式的“发票”存在，在中国，发票受到税务机关的严格监控，与纳税人的申报纳税、财务凭证管理紧密相关。企业必须重视发票管理工作，避免承担不必要的经济甚至法律处罚。

#### (1) 发票类型要和经营行为匹配

1. **增值税专用发票**（有纸质版及电子版）
2. **增值税普通发票**（有纸质版及电子版）
3. **机动车销售统一发票**

#### (2) 领用发票

纳税人在提交申请后，税务机关根据纳税人经营范围和规模，向纳税人申请领用发票的种类、数量及方式，税务机关根据税收法律法规相关规定核定。

#### (3) 开具发票

一般纳税人可开具专用发票。自2020年2月1日起，增值税小规模纳税人（其他个人除外）发生增值税应税行为，需要开具增值税专用发票的，可以自愿使用增值税发票管理系统自行开具。选择自行开具增值税专用发票的小规模纳税人，税务机关不再为其代开增值税专用发票。

#### (4) 取得发票

一般纳税人可接受专用发票。纳税人自办理税务登记至认定或登记为一般纳税人期间，未取得生产经营收入，未按照销售额和征收率简易计算应纳税额申报缴纳增值税的，其在此期间取得的增值税

### 2.2.3.3 申报及缴纳

- **增值税的申报期限**：
  1. 固定期限：分别为1日、3日、5日、10日、15日、1个月或者1个季度。
  2. 不能按照固定期限纳税的，可以按次纳税。

- **纳税人以1月或者1个季度为1个纳税期的，自期满之日起15日内申报纳税，纳税人进行货物、劳务、服务、无形资产或者不动产的销售额

### 2.2.3.2 应纳税增值税计算

应纳税增值税计算采用扣税法，计算公式为：

\[
\text{应纳增值税税额} = \text{当期销项税额} - \text{当期进项税额}
\]

### 2.2.3.1 增值税税率

<table>
<thead>
<tr>
<th>税率</th>
<th>适用范围</th>
</tr>
</thead>
<tbody>
<tr>
<td>6%</td>
<td>增值电信服务、金融服务、提供现代服务（租赁除外）、生活服务、销售无形资产（转让土地使用权除外）</td>
</tr>
<tr>
<td>零税率</td>
<td>纳税人出口货物；跨境销售国务院规定范围内的服务、无形资产；其他零税率政策</td>
</tr>
</tbody>
</table>

#### 2.2.3.3 申报及缴纳

- **一般项目**（价格+价外费用）
- **特殊销售**
  - **差额**
  - **混合销售**
  - **兼营**
- **不可抵扣**
- **可抵扣**
- **可抵扣的进项税**
- **不可抵扣的进项税**
- **进项税转出**
扣税凭证，可以在认定或登记为一般纳税人的后抵扣进项税额。

- 受票方应向开票方提供开具发票所需的信息，包括企业名称、统一社会信用代码等。
- 发票的认证、抵扣
  - 增值税一般纳税人取得2017年1月1日及以后开具的增值税专用发票、海关进口增值税专用缴款书、机动车销售统一发票、收费公路通行费增值税电子普通发票，取消认证确认、稽核比对、申报抵扣的期限。纳税人进行增值税纳税申报时，应当通过本省（自治区、直辖市和计划单列市）增值税发票综合服务平台对上述扣税凭证信息进行用途确认。
  - 发票的保管、缴销
    - 发票应按规定保管，存根联和发票登记簿应保存5年。期满后经税务机关查验销毁。
    - 专用发票有更严格的保管要求，企业需设专人保管并按照相关规定进行管理。
    - 使用发票的单位和个人应当妥善保管发票。发生发票丢失情形时，应当于发现丢失当日书面报告税务机关。
    - 注销税务登记时需缴销已领用的空白发票。

2.2.4 消费税

2.2.4.1 纳税义务人和征税范围

消费税是调节消费政策、引导消费结构进而引导产业结构的重要手段。在中国境内生产、委托加工和进口条例规定的消费品的单位和个人，为消费税的纳税义务人。委托加工环节消费税的纳税人是委托方，扣缴义务人是受托方。消费税主要分布于3个环节——生产、委托加工、进口，大多数在指定环节一次性缴纳，除另有规定外批发、零售环节不再缴纳。

消费税的征税范围由两个因素决定：一是须为应税消费品，另外还需要满足在对应的征税环节，两个条件同时满足，才需要征收消费税，否则不需要。

目前，在中国有15类应税消费品，列示如下:

- 烟：包括卷烟、雪茄烟和烟丝
- 酒：包括白酒、黄酒、啤酒和其他酒
- 高档化妆品
- 贵重首饰及珠宝玉石
- 超豪华小汽车
- 卷烟
- 木制一次性筷子
- 实木地板
- 电池
- 涂料：施工状态下挥发性有机物（VOC）含量不低于420g/ml

上述应税消费品对应的应税环节如下:

<table>
<thead>
<tr>
<th>项目</th>
<th>生产销售</th>
<th>委托加工或进口环节</th>
<th>批发环节</th>
<th>零售环节</th>
</tr>
</thead>
<tbody>
<tr>
<td>“金银铂钻”首饰</td>
<td>√</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>超豪华小汽车</td>
<td></td>
<td>√</td>
<td></td>
<td></td>
</tr>
<tr>
<td>卷烟</td>
<td>√</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>其他应税消费品</td>
<td>√</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
目前消费税存在从价计征、从量计征和从量从价复合计征三种计税方式，计算公式如下：
从价计征：应纳税额 = 销售额 × 比例税率
从量计征：应纳税额 = 销售数量 × 定额税率
复合计税：应纳税额 = 销售额 × 比例税率 + 销售数量 × 定额税率
其中，销售额为纳税人销售应税消费品向购买方收取的全部价款和价外费用（例如违约金、赔偿金、延期付款利息、包装费、包装物租金、运输装卸费等。）
税率的一般规定列示如下：
<table>
<thead>
<tr>
<th>税率形式</th>
<th>对应税目</th>
<th>税率</th>
</tr>
</thead>
<tbody>
<tr>
<td>比例税率</td>
<td>雪茄烟</td>
<td>36%</td>
</tr>
<tr>
<td></td>
<td>烟丝</td>
<td>30%</td>
</tr>
<tr>
<td></td>
<td>其他酒</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>高档化妆品</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td>贵重首饰及珠宝玉石</td>
<td>5%，10%</td>
</tr>
<tr>
<td></td>
<td>鞭炮焰火</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td>小汽车</td>
<td>1%-40%</td>
</tr>
<tr>
<td></td>
<td>摩托车</td>
<td>3%，10%</td>
</tr>
</tbody>
</table>

### 第二章 中国税收制度

<table>
<thead>
<tr>
<th>税目</th>
<th>卷烟</th>
<th>白酒</th>
</tr>
</thead>
<tbody>
<tr>
<td>高尔夫球及球具</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>高档手表</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>游艇</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>木制一次性筷子</td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td>实木地板</td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td>电池</td>
<td>4%</td>
<td></td>
</tr>
<tr>
<td>涂料</td>
<td>4%</td>
<td></td>
</tr>
<tr>
<td>啤酒</td>
<td>220元/吨，250元/吨</td>
<td></td>
</tr>
<tr>
<td>黄酒</td>
<td>240元/吨</td>
<td></td>
</tr>
<tr>
<td>成品油</td>
<td>1.2元/升，1.52元/升</td>
<td></td>
</tr>
<tr>
<td>卷烟</td>
<td></td>
<td></td>
</tr>
<tr>
<td>白酒</td>
<td>20%+0.5元/500克</td>
<td></td>
</tr>
</tbody>
</table>
特别地，将特定的外购或委托加工收回的应税消费品用于连续生产特定的应税消费品时，外购或委托加工收回的应税消费品已缴纳的消费税可以从最终产品应缴纳的消费税中予以抵扣。

2.2.4.3 申报及缴纳

消费税纳税义务发生时间与纳税期限与增值税规定基本相同。

纳税地点主要有以下几种情况：
- 纳税人销售的应税消费品，以及自产自用的应税消费品，除国务院财政、税务主管部门另有规定外，应当向纳税人机构所在地或者居住地的主管税务机关申报缴纳。
- 委托加工业务，由受托方向所在地主管税务机关代收代缴消费税税款，特别地，委托加工的应税消费品，由委托方向其机构所在地或者居住地主管税务机关申报缴纳。
- 进口的应税消费品，由进口人或者其代理人向海关申报缴纳。
- 进口人到外县（市）销售的应税消费品，代销自产应税消费品的，于应税消费品销售后，由机构所在地或者居住地主管税务机关申报缴纳。
- 纳税人销售的应税消费品，因质量等原因由购买者退回时，经所在地主管税务机关审核批准后，可退还已征收的消费税，但不能自行直接抵减应纳税款。
- 纳税人直接出口的应税消费品办理免税后，发生退关或者国外退货，复进口时已予以免税的，可暂不办理补税，待其转为国内销售的当月申报缴纳消费税。

2.2.5 关税

2.2.5.1 纳税义务人和征税范围

关税纳税人为进口货物收货人、出口货物发货人、进出境物品的所有人（多种推定，如携带人、收件人、寄件人等）。关税的征税对象为进出境的货物（贸易性）和物品（个人）。

2.2.5.2 应纳税额的计算

按不同计税方式，关税应纳税额的计算方式如下：

<table>
<thead>
<tr>
<th>计税方式</th>
<th>应纳关税税额</th>
</tr>
</thead>
<tbody>
<tr>
<td>从价计征</td>
<td>应税进（出）口货物数量×单位完税价格×税率</td>
</tr>
<tr>
<td>从量计征</td>
<td>应税进（出）口货物数量×单位货物税额</td>
</tr>
<tr>
<td>复合计征</td>
<td>应税进（出）口货物数量×单位完税价格×税率+应税进（出）口货物数量×单位货物税额</td>
</tr>
<tr>
<td>滑准税</td>
<td>应税进（出）口货物数量×单位完税价格×滑准税率</td>
</tr>
</tbody>
</table>

（1）税率

自2002年1月1日起，中国进（出）口税则设有最惠国税率、协定税率、特惠税率、普通税率、关税配额税率等税率。对进（出）口货物在一定期限内可以实行暂定税率。部分进（出）口货物设置出（进）口税，与进（出）口暂定税率一致，出（进）口暂定税率优先适用于出口税则中规定的出（进）口税。

（2）关税完税价格

《海关法》规定，进（出）口货物的完税价格，由海关以该货物的成交价格为基础审查确定。成交价格不能确定时，完税价格由海关依法估定。

进（出）口货物的完税价格包括货物的货价、货物运抵我国境内起卸前的运输及其相关费用、保险费。在成交价格不符合规定或者成交价格不能确定的情况下，海关依次采取如下估价方法：

（1）相同货物成交价格估价方法。
（2）类似货物成交价格估价方法。
（3）倒扣价格估价方法。
（4）计算价格估价方法。
（5）其他合理方法，以客观估价的数据资料为基础审查确定进（出）口货物完税价格的估价方法。

2.2.5.3 申报及缴纳

我们将关税相关的征收管理项目整理归纳如下：
<table>
<thead>
<tr>
<th>征税管理项目</th>
<th>内容</th>
</tr>
</thead>
<tbody>
<tr>
<td>关税征收</td>
<td>(1) 申报时间：进口货物自运输工具申报进境之日起14日内；出口货物除海关特准的外，应在运抵海关监管区后，装货的24小时以前。 (2) 纳税期限：在海关填发税款缴款书之日起15日内向指定银行缴纳。 (3) 因不可抗力或者在国家税收政策调整情形下，不能按期缴纳税款的，经依法提供税款担保后，可延期缴纳，但最长不得超过3个月。</td>
</tr>
<tr>
<td>关税强制执行</td>
<td>(1) 征收关税滞纳金 关税滞纳金金额=滞纳关税税额×滞纳金征收比率(万分之五)×滞纳天数； (2) 强制征收 如纳税义务人在规定期限届满之日3个月仍未缴纳税款，经直属海关关长或者其授权的隶属海关关长批准，海关可以采取强制扣缴、变价抵缴等强制措施。</td>
</tr>
<tr>
<td>关税退还</td>
<td>如遇下列情况之一，可自缴纳税款之日起1年内，书面声明理由，连同原纳税收据向海关申请退税，并加计同期银行活期存款利率计算的利息： (1) 已征进口关税的货物，因品质或规格原因，原状退货复运出境； (2) 已征出口关税的货物，因品质或规格原因，原状退运复运进境，并经海关办理进口退还的国内税收； (3) 已征出口关税的货物，因故未装运出口，申报退关。</td>
</tr>
</tbody>
</table>

### 2.2.6 其他税种及费用

#### 2.2.6.1 其他主要税种

(1) 城市维护建设税

城市维护建设税是对从事经营活动，缴纳增值税、消费税的单位和个人征收的一种税，属于一种附加税。缴纳增值税、消费税单位和个人为城建税的纳税义务人。城建税本身没有特定的课税对象，其征管方法也完全比照增值税、消费税的有关规定。

城建税采用地区差别比例税率，共分三档：

<table>
<thead>
<tr>
<th>档次</th>
<th>纳税人所在地</th>
<th>税率</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>市区</td>
<td>7%</td>
</tr>
<tr>
<td>2</td>
<td>县城、镇</td>
<td>5%</td>
</tr>
<tr>
<td>3</td>
<td>不在市、县城、镇（如开采海洋石油资源）</td>
<td>1%</td>
</tr>
</tbody>
</table>

应纳税额=（实纳增值税税额+实纳消费税税额）×适用税率
（2）印花税

印花税是以经济活动和经济交往中，书立、领受应税凭证的行为为征收对象征收的一种税。印花税的纳税人，是中国境内书立、使用、领受印花税法所列凭证，并依照履行纳税义务的单位和个人，包括内外资企业，各类行政（机关、部队）和事业单位，中、外籍个人。

印花税应税凭证，凡由双方或多方以上当事人共同书立的应税凭证的，其当事人各方都是印花税的纳税人，应就其各自持有的凭证金额履行纳税义务，但目前证券交易印花税单边征收，即只对卖出方征收证券交易印花税，对买入方（受让方）不再征税。

依据不同的应税凭证，适用不同的税率，具体如下:

<table>
<thead>
<tr>
<th>税率</th>
<th>应税凭证</th>
<th>税率</th>
</tr>
</thead>
<tbody>
<tr>
<td>比例税率</td>
<td>借款合同</td>
<td>万分之0.5</td>
</tr>
<tr>
<td></td>
<td>购销合同，建筑安装工程承包合同，技术合同</td>
<td>万分之3</td>
</tr>
<tr>
<td></td>
<td>加工承揽合同，建筑安装工程承包合同，货物运输合同，产权转移书据，记载资金的营业账簿</td>
<td>万分之5</td>
</tr>
<tr>
<td>定额税率</td>
<td>其他营业账簿；权属，许可证照</td>
<td>每件5元（自2018年5月1日起对按件贴花的其他账簿免征印花税。）</td>
</tr>
</tbody>
</table>

应纳税额=计税金额×比例税率

应纳税额=凭证件数×固定税额（5元）

印花税由纳税人自行贴花、汇贴或汇缴、委托代征三种方式，须在书立或领受时就地贴花。

（3）房产税

房产税是以房屋为征税对象，按照房屋的计税余值或租金收入，向产权所有人征收的一种财产税。房产税的纳税义务人是征税范围内的房屋产权所有人，包括国家所有和集体、个人所有房屋的产权所有人、承典人，代管人或使用人。征税对象为房屋，但不包括农村的房屋。

房产税应在房产所在地缴纳。房产不在同一地方的纳税人，应按房产的坐落地点分别向房产所在地的税务机关纳税，并采取按年计算、分期缴纳的征收方法。

（4）城镇土地使用税

城镇土地使用税是以国有土地或集体土地为征税对象，对拥有土地使用权的单位和个人征收的一种税。城镇土地使用税的纳税义务人，是使用城市、县城，建制镇和工矿区土地的单位和个人，包括外商投资企业和外国企业及驻在机构。

城镇土地使用税的征税范围是：城市、县城、建制镇和工矿区范围内属于国家所有和集体所有的土地，不包括农村集体所有的土地。

城镇土地使用税按定额税率，单位税额有较大差别，计税依据是实际占用的土地面积。全年应纳税额=实际占用土地面积（平方米）×适用税额

城镇土地使用税实行按年计算、分期缴纳的征收方法。具体纳税期限由省、自治区、直辖市人民政府确定。纳税地点为土地所在地。

（5）土地增值税

<table>
<thead>
<tr>
<th>计税方法</th>
<th>计税依据</th>
<th>税率</th>
<th>税额计算公式</th>
</tr>
</thead>
<tbody>
<tr>
<td>从价计征</td>
<td>房产计税余值（原值扣除10%~30%）</td>
<td>1.2%</td>
<td>全年应纳税额=应税房产原值×（1-扣除比例）×1.2%</td>
</tr>
<tr>
<td></td>
<td>工业用地 建筑原价的50~60% 计算余值</td>
<td>1.2%</td>
<td>全年应纳税额=应税房产原值×（50~60%）×（1-扣除比例）×1.2%</td>
</tr>
<tr>
<td></td>
<td>商业和其他用地 建筑原价的70~80%计算余值</td>
<td>1.2%</td>
<td>全年应纳税额=应税房产原值×（70~80%）×（1-扣除比例）×1.2%</td>
</tr>
<tr>
<td>从租计征</td>
<td>房屋租金</td>
<td>12%（个人为4%）</td>
<td>全年应纳税额=租金收入×12%（个人为4%）</td>
</tr>
</tbody>
</table>
第二章 中国税收制度

土地增值税是对有偿转让国有土地使用权、地上建筑物及其附着物并取得收入的单位和个人征收的一种税。土地增值税的纳税义务人是转让国有土地使用权、地上建筑物及其附着物并取得收入的单位和个人，包括外资企业和外国个人。

土地增值税是对转让国有土地使用权及其地上建筑物和附着物的行为征税，具体列举如下：

### 基本征税范围
1. 转让国有土地使用权，包括出售、交换和赠与；
2. 地上的建筑物及其附着物连同国有土地使用权一并转让；
3. 存量房地产的买卖

### 不属于征税范围
1. 不包括国有土地使用权出让行为；
2. 不包括未转让土地使用权、房地产权的行为，如房地产的出租。

应纳税额 = 增值额 × 适用税率 - 扣除项目金额 × 速算扣除系数
其中税率为四级超率累进税率。

纳税地点与房产所在地主管税务机关一致。

(6) 契税
契税是在中华人民共和国境内转移土地、房屋权属，承受的单位和个人。契税的纳税义务人，是境内转移土地、房屋权属，承受的单位和个人，包括内外资企业、事业单位、国家机关、军事单位和社会团体。个人包括中国公民和外籍人员。

契税的计税依据为不动产的价格，实行3%-5%的比例税率。

纳税人在签订土地、房屋权属转移合同的当天，或者取得其他具有土地、房屋权属转移合同性质凭证的当天，为纳税义务发生时间。纳税人应当自纳税义务发生之日起10日内，向土地、房屋坐落地税务机关办理纳税申报。

(7) 车辆购置税
车辆购置税是对在中华人民共和国境内购置应税车辆的单位和个人征收的一种税。车辆购置税的征税范围为汽车、有轨电车、汽车挂车、排气量超过一百五十毫升的摩托车。

车辆购置税的计税依据为车辆的销售额，实行10%的比例税率。

纳税义务发生时间为纳税人购置应税车辆的当天，即纳税人取得应税车辆所有权或管理权的当月。纳税人购置应税车辆，应当向车辆登记地的主管税务机关申报缴纳车辆购置税。

(8) 资源税与环境保护税
资源税的纳税义务人是指在中华人民共和国领域及管辖海域开采应税资源的矿产品或者盐的单位和个人。

资源税以应税产品的销售额或者销售数量为计税依据，从价定率或者从量定额的办法计征。资源税纳税义务发生时间为纳税人销售应税产品的当天，按月计算，按季申报缴纳。

环境保护税是对在中国领域以及管辖的其他海域直接向环境排放应税污染物的企事业单位和其他生产经营者征收的一种税。环境保护税的纳税人是在中华人民共和国领域和中华人民共和国管辖的其他海域直接向环境排放应税污染物的企事业单位和其他生产经营者。

环境保护税税目包括：大气污染物、水污染物、固体废物和噪声4类，采用定额税率。

环境保护税纳税义务发生时间为纳税人排放应税污染物的当月，按月计算，按季申报缴纳。
终了之日起15日内缴纳的，不能按固定期限计算缴纳的，可以按次申报缴纳；自纳税义务发生之日起15日内缴纳的，应税大气污染物、水污染物的纳税地点为排放口所在地，应税固体废物、应税噪声的纳税地点为废物、噪声产生地。

(9) 增值税

耕地占用税是对占用耕地建房或从事其他非农业建设的单位和个人，就其实占用地的耕地面积征收的一种税，它属于对特定土地资源占用课税。耕地占用税的纳税义务人，是占用耕地建设建筑物、构筑物或者从事非农业建设的单位和个人。应税大气污染物、水污染物的纳税地点为排放口所在地，应税固体废物、应税噪声纳税地点为废物、噪声产生地。

耕地占用税按地区不同实行差别定额税率：每平方米5~50元。

耕地占用税以纳税人实际占用的耕地面积为计税依据，按照规定的适用税额一次性征收。

应纳税额=实际占用耕地面积(平方米)×定额税率

耕地占用税的纳税义务发生时间为收到自然资源主管部门办理占用耕地手续的书面通知的当日。

(2) 社会保险费

社会保险是指国家通过立法，多渠道筹集资金，对劳动者在因年老、疾病、失业、工伤、生育等减少劳动收入时给予经济补偿，使他们能够享有基本生活保障的一项社会保障制度。社会保险主要包括养老保险、医疗保险、失业保险和工伤保险等项目。社会保险费由参保单位、参保人员按规定缴纳的社会保险资金。外商投资企业和职工按照相关法律规定，均应缴纳社会保险费。

其中，单位的缴费基数以本单位参保职工个人缴费基数之和确定；参保职工个人缴费基数以本人上年度月平均工资收入确定。个人缴费基数以上年度全省全口径城镇单位就业人员月平均工资的60%和300%进行保底封顶。

目前，青岛市2021年企业社会保险费缴纳比例如下：

<table>
<thead>
<tr>
<th>社保分类</th>
<th>单位缴费比例</th>
<th>个人缴费比例</th>
</tr>
</thead>
<tbody>
<tr>
<td>养老保险</td>
<td>16%</td>
<td>8%</td>
</tr>
<tr>
<td>医疗保险</td>
<td>9.5%</td>
<td>2%</td>
</tr>
<tr>
<td>失业保险</td>
<td>0.7%</td>
<td>0.3% (农民工不缴纳)</td>
</tr>
<tr>
<td>工伤保险</td>
<td>按照行业类别划分，分别为0.05%、0.1%、0.18%、0.23%、0.28%、0.33%、0.4%、0.48%不缴纳</td>
<td></td>
</tr>
</tbody>
</table>

自2020年1月1日起，生育保险和职工医保实行统一征缴，生育保险基金并入职工医保基金，不再单独征收生育保险费。

(2) 教育费附加和地方教育费附加

<table>
<thead>
<tr>
<th>税费</th>
<th>征收对象及缴纳人</th>
<th>税款计算</th>
<th>申报及缴纳</th>
</tr>
</thead>
<tbody>
<tr>
<td>教育费附加和地方教育附加</td>
<td>负有缴纳增值税、消费税义务的单位和个人为纳税义务人。</td>
<td>以纳税人实际缴纳的增值税、消费税税额为计税依据。教育费附加和地方教育费附加费率分别为3%和2%</td>
<td>分别与增值税、消费税同时缴纳。</td>
</tr>
</tbody>
</table>
### 2.3 税收优惠

#### 2.3.1 扶持高新技术企业、科技创新产业

<table>
<thead>
<tr>
<th>优惠税种</th>
<th>具体优惠</th>
<th>政策依据</th>
</tr>
</thead>
<tbody>
<tr>
<td>企业所得税</td>
<td>国家需要重点扶持的高新技术企业，减按15%的税率征收企业所得税。</td>
<td>企业所得税法</td>
</tr>
<tr>
<td>企业所得税</td>
<td>(1) 经认定的技术先进型服务企业，减按15%的税率征收企业所得税。</td>
<td>财税[2017]79号</td>
</tr>
<tr>
<td>企业所得税</td>
<td>(2) 经认定的技术先进型服务企业发生的职工教育经费支出，不超过工资薪金总额8%的部分，准予在计算应纳税所得额时扣除；超过部分，准予在以后纳税年度结转扣除。 (根据财税[2018]51号，自2018年1月1日起，本条的享受主体为所有企业)</td>
<td>财税[2017]79号</td>
</tr>
</tbody>
</table>

企业所得税优惠

自2015年10月1日起，全国范围内的居民企业转让5年以上非独占许可使用权取得的技术转让所得，纳入享受企业所得税优惠的技术转让所得范围。居民企业的年度技术转让所得不超过500万元的部分，免征企业所得税；超过500万元的部分，减半征收企业所得税。

企业所得税优惠

自2015年10月1日起，全国范围内的居民企业转让5年以上非独占许可使用权取得的技术转让所得，纳入享受企业所得税优惠的技术转让所得范围。居民企业的年度技术转让所得不超过500万元的部分，免征企业所得税；超过500万元的部分，减半征收企业所得税。

企业所得税优惠

自2015年10月1日起，全国范围内的居民企业转让5年以上非独占许可使用权取得的技术转让所得，纳入享受企业所得税优惠的技术转让所得范围。居民企业的年度技术转让所得不超过500万元的部分，免征企业所得税；超过500万元的部分，减半征收企业所得税。

企业所得税优惠

自2015年10月1日起，全国范围内的居民企业转让5年以上非独占许可使用权取得的技术转让所得，纳入享受企业所得税优惠的技术转让所得范围。居民企业的年度技术转让所得不超过500万元的部分，免征企业所得税；超过500万元的部分，减半征收企业所得税。

企业所得税优惠

自2015年10月1日起，全国范围内的居民企业转让5年以上非独占许可使用权取得的技术转让所得，纳入享受企业所得税优惠的技术转让所得范围。居民企业的年度技术转让所得不超过500万元的部分，免征企业所得税；超过500万元的部分，减半征收企业所得税。

企业所得税优惠

自2015年10月1日起，全国范围内的居民企业转让5年以上非独占许可使用权取得的技术转让所得，纳入享受企业所得税优惠的技术转让所得范围。居民企业的年度技术转让所得不超过500万元的部分，免征企业所得税；超过500万元的部分，减半征收企业所得税。

企业所得税优惠

自2015年10月1日起，全国范围内的居民企业转让5年以上非独占许可使用权取得的技术转让所得，纳入享受企业所得税优惠的技术转让所得范围。居民企业的年度技术转让所得不超过500万元的部分，免征企业所得税；超过500万元的部分，减半征收企业所得税。

企业所得税优惠

自2015年10月1日起，全国范围内的居民企业转让5年以上非独占许可使用权取得的技术转让所得，纳入享受企业所得税优惠的技术转让所得范围。居民企业的年度技术转让所得不超过500万元的部分，免征企业所得税；超过500万元的部分，减半征收企业所得税。

企业所得税优惠

自2015年10月1日起，全国范围内的居民企业转让5年以上非独占许可使用权取得的技术转让所得，纳入享受企业所得税优惠的技术转让所得范围。居民企业的年度技术转让所得不超过500万元的部分，免征企业所得税；超过500万元的部分，减半征收企业所得税。
第二章 中国税收制度

2.3.3 支持集成电路产业和软件产业发展

<table>
<thead>
<tr>
<th>优惠税种</th>
<th>具体优惠</th>
<th>政策依据</th>
</tr>
</thead>
<tbody>
<tr>
<td>企业所得税</td>
<td>国家鼓励的集成电路线宽小于28纳米（含），且经营期在15年以上的集成电路生产企业或项目，第一年至第十年免征企业所得税；国家鼓励的集成电路线宽小于65纳米（含），且经营期在15年以上的集成电路生产企业或项目，第一年至第五年免征企业所得税，第六年至第十年按照25%的法定税率减半征收企业所得税；国家鼓励的集成电路线宽小于130纳米（含）的集成电路生产企业，第一年至第五年免征企业所得税，第三年至第五年按照25%的法定税率减半征收企业所得税；国家鼓励的集成电路线宽小于130纳米（含）的集成电路生产企业，</td>
<td>财税[2012]27号</td>
</tr>
<tr>
<td></td>
<td>国家鼓励的重点集成电路设计企业和软件企业，自获利年度起，第一年至第五年免征企业所得税，接续年度减按10%的税率征收企业所得税。</td>
<td>财税[2012]27号</td>
</tr>
<tr>
<td></td>
<td>第一年至第二年免征企业所得税，第三年至第五年按照25%的法定税率减半征收企业所得税。</td>
<td>财税[2016]49号</td>
</tr>
<tr>
<td></td>
<td>国家鼓励的集成电路设计企业和软件企业的职工培训费用，应单独进行核算并按实际发生额在计算应纳税所得额时予以扣除。</td>
<td>财政部 税务总局 发展改革委 工业和信息化部公告2020年第45号</td>
</tr>
</tbody>
</table>

符合条件的软件企业按照《财政部 国家税务总局关于软件产品增值税政策的通知》（财税[2011]100号）规定取得的即征即退增值税款，由企业专项用于软件产品研发和扩大再生产并单独进行核算，可以作为不征税收入，在计算应纳税所得额时从收入总额中减除。
自2018年5月1日至2020年12月31日，对动漫企业增值税一般纳税人销售其自主研发生产的动漫软件，按照13%的税率征收增值税后，对其增值税实际税负超过3%的部分，实行即征即退政策。增值税一般纳税人销售其自主研发生产的软件产品，按13%税率征收增值税后，对其增值税实际税负超过3%的部分实行即征即退政策。

### 2.3.4 支持制造业发展

<table>
<thead>
<tr>
<th>优惠税种</th>
<th>具体优惠</th>
<th>政策依据</th>
</tr>
</thead>
</table>

企业在2018年1月1日至2020年12月31日期间新购进的设备、器具，单位价值不超过500万元的，允许一次性计入当期成本费用在计算应纳税所得额时扣除，不再分年度计算折旧。

《财政部 税务总局关于设备、器具扣除有关企业所得税政策的通知》(财税〔2018〕54号)规定的税收优惠政策凡已经到期的，执行期限延长至2023年12月31日。

制造业企业开展研发活动中实际发生的研发费用，未形成无形资产计人当期损益的，在按规定据实扣除的基础上，自2021年1月1日起，再按照实际发生额的100%在税前加计扣除；形成无形资产的，自2021年1月1日起，按照无形资产成本的200%在税前摊销。

### 2.3.5 支持金融保险业发展，支持企业上市、挂牌

<table>
<thead>
<tr>
<th>优惠税种</th>
<th>具体优惠</th>
<th>政策依据</th>
</tr>
</thead>
<tbody>
<tr>
<td>企业所得税</td>
<td>对投资者从证券投资基金分配中取得的收入，暂不征收企业所得税。</td>
<td>财税[2008]1号</td>
</tr>
<tr>
<td>企业所得税</td>
<td>对合格境外机构投资者、人民币合格境外机构投资者取得来源于中国境内的股票等权益性投资资产转让所得，暂免征收企业所得税。</td>
<td>财税[2014]79号</td>
</tr>
<tr>
<td>个人所得税</td>
<td>对个人转让上市公司股票取得的所得暂免征收个人所得税。</td>
<td>财税字[1998]61号</td>
</tr>
</tbody>
</table>
个人从公开发行和转让市场取得的上市公司股票，持股期限超过1年的，股息红利所得暂免征收个人所得税。个人从公开发行和转让市场取得的上市公司股票，持股期限在1个月以内（含1个月）的，其股息红利所得全额计入应纳税所得额；持股期限在1个月以上至1年（含1年）的，暂按50%计入应纳税所得额。上述所得统一适用20%的税率计征个人所得税。

2.3.6 鼓励扩大再生产、再投资

<table>
<thead>
<tr>
<th>优惠对象</th>
<th>具体优惠</th>
<th>政策依据</th>
</tr>
</thead>
<tbody>
<tr>
<td>新购进的专门用于研发的仪器、设备，单位价值不超过100万元的，允许一次性计入当期成本费用在计算应纳税所得额时扣除；不再分年度计算折旧；单位价值超过100万元的，可缩短折旧年限或者采取加速折旧的方法。</td>
<td>财税[2015]101号</td>
<td></td>
</tr>
<tr>
<td>在2018年1月1日至2020年12月31日期间新购进的设备、器具，单位价值不超过500万元的，允许一次性计入当期成本费用在计算应纳税所得额时扣除；不再分年度计算折旧。</td>
<td>财税[2018]54号</td>
<td></td>
</tr>
<tr>
<td>符合条件的担保机构从事中小企业信用担保或者再担保业务取得的收入（不含信用评级、咨询、培训等收入）3年内免征增值税。</td>
<td>财政部 税务总局 公告2021年第6号</td>
<td></td>
</tr>
<tr>
<td>企业持有的单位价值不超过5000元的固定资产，允许一次性计价当期成本费用在计算应纳税所得额时扣除，不再分年度计算折旧。</td>
<td>财税[2014]75号</td>
<td></td>
</tr>
</tbody>
</table>

国债、地方政府债利息收入免征增值税。
<table>
<thead>
<tr>
<th>印度居民来青岛投资税收指南</th>
<th>企业所得税法</th>
<th>个人所得税</th>
<th>增值税</th>
</tr>
</thead>
<tbody>
<tr>
<td>居民企业直接投资于其他居民企业取得的投资收益免征企业所得税。</td>
<td>企业所得税法</td>
<td>个人所得税</td>
<td>增值税</td>
</tr>
<tr>
<td>创业投资企业采取股权投资方式投资于未上市的中小企业高新技术企业2年（24个月）以上，符合条件的，可以按照其对中小企业高新技术企业投资额的70%，在股权持有满2年的当年抵扣该创业投资企业的应纳税所得额；当年不足抵扣的，可以在以后纳税年度结转抵扣。</td>
<td>财税[2014]116号</td>
<td>财政部税务总局海关总署公告2019年第39号</td>
<td>个人所得税</td>
</tr>
<tr>
<td>全国范围内的有限合伙制创业投资企业采取股权投资方式投资于未上市的中小企业高新技术企业满2年（24个月）的，该有限合伙制创业投资企业的法人合伙人可按照其对未上市中小企业高新技术企业投资额的70%抵扣其合伙人来自有限合伙制创业投资企业分得的应纳税所得额；当年不足抵扣的，可以在以后纳税年度结转抵扣。</td>
<td>财税[2015]116号</td>
<td>财政部税务总局海关总署公告2019年第39号</td>
<td>个人所得税</td>
</tr>
<tr>
<td>企业或个人以技术成果投资入股到境内居民企业，被投资企业支付的对价全部为股票（权）的，企业或个人可选择适用递延纳税优惠政策。经向主管税务机关备案，投资入股当期暂不征税，允许递延至转让股权时，按股权转让收入减去技术成果原值和合理税费后的差额计算缴纳所得税。</td>
<td>财税[2016]101号</td>
<td>财政部税务总局海关总署公告2019年第39号</td>
<td>个人所得税</td>
</tr>
<tr>
<td>对境外投资者从中国境内居民企业分配的利润，境内直接投资所有非禁止外商投资的项目和领域暂不征收预提所得税。</td>
<td>财税[2018]102号</td>
<td>国家税务总局公告2018年第53号</td>
<td>个人所得税</td>
</tr>
<tr>
<td>个人以非货币性资产进行投资，纳税人一次性缴税有困难的，可合理确定分期缴纳计划并报主管税务机关备案后，自发生上述应税行为之日起不超过5个公历年度内（含）分期缴纳个人所得税。</td>
<td>财税[2015]41号</td>
<td>国家税务总局公告2018年第53号</td>
<td>个人所得税</td>
</tr>
<tr>
<td>自2019年4月1日起，同时符合以下条件的纳税人，可以向主管税务机关申请退还增量留抵税额：</td>
<td>财政部税务总局海关总署公告2019年第39号</td>
<td>个人所得税</td>
<td>增值税</td>
</tr>
<tr>
<td>1.自2019年4月税款所属期起，连续六个月（按季纳税的，连续两个季度）增量留抵税额均大于零，且第六个月增量留抵税额不低于50万元；</td>
<td>财政部税务总局海关总署公告2019年第39号</td>
<td>个人所得税</td>
<td>增值税</td>
</tr>
<tr>
<td>2.纳税信用等级为A级或者B级；</td>
<td>财政部税务总局海关总署公告2019年第39号</td>
<td>个人所得税</td>
<td>增值税</td>
</tr>
<tr>
<td>3.申请退税前36个月内未发生骗取留抵退税、出口退税或虚开增值税专用发票情形的；</td>
<td>财政部税务总局海关总署公告2019年第39号</td>
<td>个人所得税</td>
<td>增值税</td>
</tr>
<tr>
<td>4.申请退税前36个月内未因偷税被税务机关处罚两次及以上；</td>
<td>财政部税务总局海关总署公告2019年第39号</td>
<td>个人所得税</td>
<td>增值税</td>
</tr>
<tr>
<td>5.自2019年4月1日起未享受即征即退、先征后返（退）政策的。</td>
<td>财政部税务总局海关总署公告2019年第39号</td>
<td>个人所得税</td>
<td>增值税</td>
</tr>
</tbody>
</table>
2.3.7 实现股权激励，促进自主创新项目

<table>
<thead>
<tr>
<th>优惠种类</th>
<th>具体优惠</th>
<th>政策依据</th>
</tr>
</thead>
<tbody>
<tr>
<td>非上市公司授予本公司员工的股票期权、股权期权、限制性股票和股权奖励，符合规定条件的，经向主管税务机关备案，可实行递延纳税政策，即员工在取得股权激励时可暂不纳税，递延至转让该股权时纳税；股权转转时，按照股权转让收入减除股权取得成本以及合理税费后的差额，适用“财产转让所得”项目，按照20%的税率计算缴纳个人所得税。</td>
<td>财税[2016]101号</td>
<td></td>
</tr>
<tr>
<td>上市公司授予个人的股票期权、限制性股票和股权奖励，经向主管税务机关备案，个人可自股票期权行权、限制性股票解禁或取得股权奖励之日起，在不超过12个月的期限内缴纳个人所得税。</td>
<td>财税[2009]167号</td>
<td></td>
</tr>
<tr>
<td>个人因股权激励、技术成果投资入股取得股权后，非上市公司在境内上市的，处置递延纳税的股权时，按照现行限售股有关征税规定执行。</td>
<td>财税[2015]116号</td>
<td></td>
</tr>
<tr>
<td>全国范围内的高新技术企业转化科技成果，给予本企业相关技术人员的股权奖励，个人一次性缴纳税款有困难的，可根据实际情况自行制定分期缴税计划，在不超过5个公历年度内（含）分期缴纳，并将有关资料报主管税务机关备案。个人获得股权奖励时，可参考财税[2005]35号规定，按照“工资薪金所得”项目有关规定计算确定应纳税额。</td>
<td>国家税务总局公告2016年第29号</td>
<td></td>
</tr>
</tbody>
</table>
| 下列跨境应税行为免征增值税：
  （一）工程项工程境外的建筑服务
  （二）工程项工程的工程监理服务
  （三）工程、矿产资源在境外的工程勘察勘探服务
  （四）会议展览地点在境外的会议展览服务
  （五）存储地点在境外的仓储服务
  （六）标的物在境外使用的有形动产租赁服务
  （七）在境外提供的广播影视节目的播映服务
  （八）在境外提供的文化体育服务、教育医疗服务、旅游服务
  （九）为出口货物提供的邮政服务、收派服务
  （十）向境外单位销售的完全在境外消费的电信服务
  （十一）向境外单位销售的完全在境外消费的知识产权服务 | 国家税务总局公告2016年第29号 |
第二章 中国税收制度

2.3.9 有关创业投资企业和天使投资个人的税收优惠政策

<table>
<thead>
<tr>
<th>优惠税种</th>
<th>优惠对象</th>
<th>适用条件</th>
<th>具体优惠</th>
<th>政策依据</th>
</tr>
</thead>
<tbody>
<tr>
<td>企业所得税</td>
<td>向境外单位提供完全在境外消费的技术性服务的企业</td>
<td>税收优惠政策的70%在税收优惠后非居民企业从境外投资于初创科技型企业满2年</td>
<td>免征企业所得税的70%</td>
<td>财税[2018]55号</td>
</tr>
<tr>
<td>个人所得税</td>
<td>向境外单位提供完全在境外消费的技术性服务的个人</td>
<td>税收优惠政策的70%在税收优惠后非居民个人从境外投资于初创科技型企业满2年</td>
<td>免征个人所得税的70%</td>
<td>财税[2018]55号</td>
</tr>
</tbody>
</table>

（十二）向境外单位销售的完全在境外消费的物流辅助服务（仓储服务、收派服务除外）
（十三）向境外单位销售的完全在境外消费的鉴证咨询服务
（十四）向境外单位销售的完全在境外消费的专业技术服务
（十五）向境外单位销售的完全在境外消费的商务辅助服务
（十六）向境外单位销售的宣传服务
（十七）向境外单位销售的完全在境外消费的无形资产（服务除外）
（十八）向境外单位销售的货物、无形资产和不动产
（十九）向境外单位销售的货物、无形资产和不动产
（二十）向境外单位提供完全在境外消费的金融服务

企业所得税

公司制创业投资企业

采取股权投资方式直接投资于种子期、初创期科技型企业满2年（24个月，下同）

按照投资额的70%在投资满2年的当年抵扣公司制创业投资企业的应纳税所得；当年不足抵扣的，可以在以后纳税年度结转抵扣。

有限合伙制创业投资企业

采取股权投资方式直接投资于初创科技型企业满2年

法人合伙人可以按照对合伙创投企业投资额的70%抵扣法人合伙人从合伙创投企业分得的所得；当年不足抵扣的，可以在以后纳税年度结转抵扣。

个人合伙制创业投资企业

采取股权投资方式直接投资于初创科技型企业满2年

个人合伙人可以按照对合伙创投企业投资额的70%抵扣个人合伙人从合伙创投企业分得的所得；当年不足抵扣的，可以在以后纳税年度结转抵扣。

个人所得税

公司制创业投资企业

采取股权投资方式直接投资于种子期、初创期科技型企业满2年（24个月，下同）

按照投资额的70%在投资满2年的当年抵扣公司制创业投资企业的应纳税所得；当年不足抵扣的，可以在以后纳税年度结转抵扣。

有限合伙制创业投资企业

采取股权投资方式直接投资于初创科技型企业满2年

法人合伙人可以按照对合伙创投企业投资额的70%抵扣法人合伙人从合伙创投企业分得的所得；当年不足抵扣的，可以在以后纳税年度结转抵扣。

个人合伙制创业投资企业

采取股权投资方式直接投资于初创科技型企业满2年

个人合伙人可以按照对合伙创投企业投资额的70%抵扣个人合伙人从合伙创投企业分得的所得；当年不足抵扣的，可以在以后纳税年度结转抵扣。
天使投资个人采取股权投资方式直接投资于初创科技型企业满2年，按照投资额的70%抵扣转让该初创科技型企业股权取得的应纳税所得额；当期不足抵扣的，可以在以后取得转让该初创科技型企业股权的应纳税所得额时结转抵扣。

若投资多个初创科技型企业，对其中办理注销清算的初创科技型企业，天使投资个人对其投资额的70%尚未抵扣完的，可自注销清算之日起36个月内抵扣天使投资个人转让其他初创科技型企业股权取得的应纳税所得额。

2.3.10 个人所得税税收优惠

<table>
<thead>
<tr>
<th>优惠对象</th>
<th>具体优惠</th>
<th>政策依据</th>
</tr>
</thead>
<tbody>
<tr>
<td>居民个人</td>
<td>下列各项个人所得，免征个人所得税：</td>
<td>中华人民共和国主席令第5号</td>
</tr>
<tr>
<td>从中</td>
<td>(一) 省级人民政府、国务院部委和中国人民解放军以上单位，以及外国组织、国际组织颁发的科学、教育、技术、文化、卫生、体育、环境保护等方面的奖金；</td>
<td></td>
</tr>
</tbody>
</table>
第⼆章中国税收制度
第三章中印税收协定及相互协商程序

签订双边税收协定主要⽬的在于避免对个⼈和企业所得双重征税和防⽌偷漏税。签订双边税收协定，有利于税法体系的完善，避免税收的流失和重复征收，保障外国居民在中国的税收公平。

印度居民赴中国投资需要了解中印两国的税收协定，以降低投资的税收风险和成本。

1994年7⽉18⽇，中国政府与印度政府在新德⾥签订《中华⼈民共和国政府和印度共和国政府关于对所得避免双重征税和防⽌偷漏税的协定》(以下简称"1994年协定")和《中华⼈民共和国政府和印度共和国政府关于对所得避免双重征税和防⽻偷漏税的协定议定书》(以下简称"1994年协定议定书")两份⽂件，于1994年11⽉19⽇⽣效，并于1995年1⽉1⽇执⾏。

1994年协定共⼆⼗九条，主要包括协定的适⽤范围、缔约国⼀方居民在缔约国另⼀方各类所得的征税⽅法、消除双重征税⽅法、税收⽆差别待遇、协商程序以及情报交换等六部分。1994年协定议定书共三条，包括税收定义、免税、情报交换等规定。

《关于修订1994年7⽉18⽇在新德⾬签署的〈中华⼈民共和国政府和印度共和国政府关于对所得避免双重征税和防⽻偷漏税的协定〉及议定书的议定书》(以下简称"2018议定书")于2018年11⽉26⽇在新德⾬正式签署。"2018议定书"对"1994协定及议定书"作出了修订，于2019年6⽉5⽇⽣效。

国家税务总局《关于发布<特别纳税调查调整及相互协商程序管理办法>的公告》[国家税务总局公告2017年第6号]⾃2017年5⽉1⽇起施⾏。2017年5⽉1⽇后的相关程序请参见公告。

中印两国税收协定的适⽤范围明确，包含适⽤的主体范围、客体范围和领⼟范围。

### 3.1 中印税收协定

#### 3.1.1 中印税收协定

签订双边税收协定主要目的在于避免对个⼈和企业所得双重征税和防⽻偷漏税。签订双边税收协定，有利于税法体系的完善，避免税收的流失和重复征收，保障外国居民在中国的税收公平。

印第安政府赴中国投资需要了解中印两国的税收协定，以降低投资的税收风险和成本。

1994年7⽉18⽇，中国政府与印度政府在新德⾬签订《中华⼈民共和国政府和印度共和国政府关于对所得避免双重征税和防⽻偷漏税的协定》(以下简称"1994年协定")和《中华⼈民共和国政府和印度共和国政府关于对所得避免双重征税和防⽻偷漏税的协定议定书》(以下简称"1994年协定议定书")两份⽂件，于1994年11⽉19⽇⽣效，并于1995年1⽉1⽇执⾏。

1994年协定共⼆⼗九条，主要包括协定的适⽤范围、缔约国⼀方居民在缔约国另⼀方各类所得的征税⽅法、消除双重征税⽅法、税收⽆差别待遇、协商程序以及情报交换等六部分。1994年协定议定书共三条，包括税收定义、免税、情报交换等规定。

#### 3.1.2 适用范围

中印两国税收协定的适用范围明确，包含适⽤的主体范围、客体范围和领⼟范围。
协定适用于中国居民和印度居民或同时属于双方居民的人。协定中明确了作为居民的“人”包括个人、公司和其他团体、组织，“缔约国一方”和“缔约国另一方”根据上下文指中国或者印度。

“缔约国一方居民”是指按照该缔约国法律，由于住所、居所、总机构所在地、注册所在地、管理控制所在地，或者其他类似的标准，在该缔约国负有纳税义务的人。

同时为双方居民的个人，在其身份确定应按以下规则确定：

(1) 应认为是其永久性住所所在缔约国的居民;如果在缔约国双方同时有永久性住所,应认为是与其个人和经济关系更密切（重要利益中心）所在缔约国的居民；

(2) 如果其重要利益中心所在国无法确定,或者在缔约国任何一方都没有永久性住所，应认为是其有习惯性居处所在国的居民；

(3) 如果其同时是缔约国双方都有,或者都没有习惯性居处,应认为是其国民所属缔约国的居民；

(4) 如果事同是缔约国双方有,或者不事是缔约国同的国家,缔约国双方主管当局应通过协商解决。

除个人以外的人同时为缔约国双方居民,缔约国双方主管当局应考虑其实际管理机构所在地、注册地或成立地以及任何其他相关因素，努力通过相互协商确定其在适用该协定时的居民身份。如未能达成一致，则该人不得享受本协定规定的任何税收减免优惠，但缔约国双方主管当局就其享受协定待遇的程度和方式达成一致意见的情况除外。

3.1.2.2 常设机构

中印税收协定适用于中国的个人所得税、企业所得税和印度的所得税及其附加。

由于中印两国协定税收种类有一定区别，针对印度居民在中国投资时中印两国税收的部门分税种，在印度可能无法实施抵免，这部分税收成本应当纳入投资财务评估的考虑范围之内。

3.1.2.3 常设机构的确定

在认定中国和印度两国的协定适用范围时，首先应考虑中国地域概念范围的领土，其次还要考虑能够有效实施两国税收法律的条件。

3.1.3 常设机构的认定

常设机构是指缔约国一方的居民企业在缔约国另一方进行全部或者部分营业的固定营业场所。常设机构的存在与否对于收入来源国的税收管辖权具有至关重要的影响，由于国际税收协定的主要功能是划分居住国与来源国对跨国收入的征税权，从而避免对跨国收入的双重征税。因此，国际税收协定通常采用的原则是，居住国企业在来源国有常设机构的，来源国的征税权不受限制的原则。

中印税收协定第五条规定了常设机构的概念、正面清单和负面清单。根据协定的规定，常设机构是指企业进行全部或者部分营业的固定营业场所。根据协定规定的正面清单，常设机构通常可以分为场所型常设机构、工程型常设机构、服务型常设机构及代理型常设机构四类。

中印税收协定第五条规定的常设机构的认定，应根据协定的规定，具体分析常设机构的概念、正面清单和负面清单。根据协定规定的正面清单，常设机构定义为能够有效实施两国税收法律的情形。在认定常设机构时，应考虑中国和印度两国的地域概念范围，首先应考虑中国地域概念的范围，其次还要考虑能够有效实施两国税收法律的条件。
配或安装工程场所开展相关活动，每个时间段都超过了30天，上述其他时间段均应计入该企业在该建筑工地、建筑、装配或安装工程场所开展活动的时间。

3.1.3.3 服务常设机构的认定

服务型常设机构是指缔约国一方企业通过雇员或者其他人员，在缔约国另一方提供第十二条（特许权使用费和技术服务费）所规定的技术服务以外的劳务，但仅以该性质的活动（为同一项目或相关联的项目）在缔约国另一方在有关纳税年度开始或结束的任何12个月内连续或累计超过183天的为限。

3.1.3.4 代理常设机构的认定

（1）非独立代理人的认定

中印税收协定第五条第五款对非居民企业的代理型常设机构作出了规定。代理人的活动使缔约国一方企业在缔约国另一方构成常设机构的，这类代理人是非独立代理人。

如果一人在缔约国一方代表缔约国另一方企业从事活动，并且:

（一）经常签订合同，或者按惯例签定的合同，经常在合同签订过程中发挥主要作用，该企业不对合同进行实质性修改，且该合同:

1. 以该企业的名义订立,或
2. 涉及该企业拥有或有权使用的财产的所有权的转让,或使用权的授予，或
3. 规定由该企业提供服务;或

（二）经常在首先提及的缔约国一方保存货物或商品的库存，并代表该企业定期从该库存中交付货物或商品，对于该人为该企业从事的任何活动，应认为该企业在该缔约国一方设有常设机构。

除非该人通过固定营业场所进行的活动限于第四款常设机构不应包括的情形，按照该款规定，不应认为该固定营业场所构成常设机构。

（2）独立代理人的认定

为了防止独代理人的活动被滥用，协定对独立代理人的独立性提出了要求，如果代理人的活动全部或者几乎全部代表一个企业，且该企业与代理人之间在商业和财务上有着密切依附关系的，不能构成独立代理人。如果代理人与该企业没有独立的商业关系，应认为该企业与代理人之间的活动构成常设机构。中印税收协定第五条第六款对独代理人作出了规定。独代理人是指专门从事代理业务的代理人，其不仅为某一个企业代理，也为企业代理其他业务的经纪人，一般佣金代理人属于独代理人。

为了防止独代理人受到操纵，协定对独代理人的独立性提出了要求，如果代理人的活动全部

3.1.4 不同类型收入的税收管辖

中印税收协定将两国居民取得的跨国收入区分为消极所得和积极所得进行征税权的划分，所谓消极所得是指，没有实施营业活动而获得的投资性所得，如利息、股息、特许权使用费。所谓积极所得是指，对于实质性经营活动而取得的所得，对于消极所得和积极所得，居住国的税收管辖权有很大区别，但对于来源国的税收管辖权影响不大。对于来源国的税收管辖权影响很大，同时，仅此常设机构的规定，来源国的税收管辖权在一定程度上被加以限制。按照中印税收协定的规定，消极所得包括利息、股息及特许权使用费；积极所得包括营业利润、不动产所得以及财产转让所得。个人劳务所得由于具有特殊性，从积极所得中分离出来单独规定，以下将分不同类型的所得对税收管辖权的划分进行介绍。

3.1.4.1 消极所得

中印税收协定规定的消极所得主要包括利息、利息以及特许权使用费。

根据中印税收协定第十条、第十一条、第十二条的规定，印度居民在中国设立常设机构取得的投资所得并入其常设机构的营业利润在在中国征收企业所得税，适用协定的营业利润条款；没有设立常设机构的来中国投资的企业，在中国缴纳企业所得税，但有一定程度的限制，如果印度居民企业（收款人）符合受益所有人，协定限定了中国政府适用的税率最高为10%。

第三章中印税收协定及相互协商程序

印第安税收协定及相互协商程序

综合印度居民来青岛投资税收指南
根据中印税收协定第七条第一款的规定，印度企业的利润应仅在印度征税，但该企业通过设在中国常设机构在中国进行营业的除外。如果该企业通过设在中国的常设机构在中国进行营业，其利润可以在印度征税，但应仅以属于该常设机构的利润为限。根据中印税收协定第七条第二款、第三款及第四款的规定，中国政府有权根据该常设机构的利润范围限定在该常设机构产生的利润，而且不包括企业总部或其他办事处对该常设机构支付的款项。同时，该常设机构有权扣除其自身进行营业发生的各项费用，且利润和费用的确定不局限于中国一地。

3.1.4.3 海运和空运所得

印度企业以船舶或飞机经营国际运输取得的利润，应仅在印度征税。上述条款的规定也适用于参与合伙经营、联合经营或者参加国际经营机构取得的利润。

3.1.4.4 不动产使用所得

根据中印税收协定第六条的规定，印度居民从位于中国的不动产而产生的所得，中国政府可以向印度居民征税。

“使用的形式包括出租、直接使用或者任何其他形式的使用”。“不动产”的界定按照财产所在地的法律规定确定，但协定规定了最小范畴，即“不动产”应当包括附属于不动产的财产，如住所和公园等使用性质的设施，地产的权利，不包括动产的实用权以及由于开采或有开采权开采地表水和地表水的水资源的权利。同时，协定明确规定船舶和飞机不属于不动产。

印度居民取得来源于中国的不动产使用所得，中国政府有权征税，本条款的规定仅限于不动产使用所得，对于印度居民转让中国不动产而产生的转让收益适用财产所得条款。

3.1.4.5 财产转让所得

(1) 不动产转让所得

转让不动产取得的收益可以由不动产所在国征税。如果印度居民转让位于中国的不动产产生的收益，中国政府有权向该不动产所在国征税。“不动产”的界定按照协定第六条的规定处理。

(2) 常设机构营业财产转让所得

转让企业常设机构用于营业的财产中的动产所取得的收益，可以由常设机构所在地征税。如果印度居民在中国设有常设机构，那么它转让营业财产中的动产产生的收益，中国政府有权向该常设机构征税。

(3) 股权转让所得

印度居民转让其在中国居民公司的股份取得的收益，在满足以下条件时，来源国有税收管辖权。中国政府有权向该印度转让方征税。

3.1.4.6 个人劳务所得

依国际税收协定规范惯例，中印税收协定对于艺术家、运动员、学生、教授、作家和其他特殊劳务收入和除上述之外的一般性个人劳务的征税权作出了规定，以下作简要介绍。

(1) 艺术家和运动员

根据中印税收协定第十七条艺术家和运动员的条款，印度艺术家和运动员在中国从事个人活动取得的所得，中国政府有权对此部分所得征税。

(2) 学生

根据中印税收协定第二十条学生条款，印度学生和企业实习生仅由于接受教育、培训的目的而停留在中国，其在中国取得的，为了维持生活、接受教育、学习、研究或者培训目的的款项，中国政府应予免税。

(3) 董事费

根据中印税收协定第二十一条董事费条款，印度居民担任中国居民公司的董事而取得的董事费和其他类似款项，中国政府有权对此部分所得征税权。

(4) 政府服务

根据中印税收协定第二十一条的服务条款，对中国政府支付给向其提供服务的个人的报酬，中国政府作为支付国独占征税权。上述所谓“报酬”的范围，是指除退休金以外的薪金、工资和其他类似报酬。

(5) 独立个人劳务

中印税收协定将个人劳务区分为独立个人劳务与非独立个人劳务作出规定。根据中印税收协定第十四条的独立个人劳务条款，印度居民个人以独立身份从事劳务活动取得的来源于中国的收入，除以下情形外，仅由印度政府征税，符合以下情形之一的，中国政府亦有权征税：

- 印度居民个人为从事独立个人劳务目的在中国设立了经常使用的固定基地；
- 印度居民个人在有关年度中连续或累计停留在中国超过183天。

印度居民来青岛投资税收指南
注意，符合第一种情形的独立劳务收入，中国政府仅有权对归属于该固定基地的所得征税；符合第二种情形的独立劳务收入，中国政府仅有权对上述连续或累计期间取得的所得征税。

此外，协定还对独立劳务活动进行了列举，包括独立的科学、文学、艺术、教育或教学活动，以及医师、律师、工程师、建筑师、牙医师和会计师的独立活动。

（6）非独立个人劳动

根据中印税收协定第十五条的非独立个人劳动条款，印度居民个人在中国受雇取得的收入，中国政府和印度政府均有权征税。同时，协定对来源国的征税权作出了限制，即印度居民个人在中国受雇取得的收入，同时满足以下三个条件的，中国政府无权征税：

- 印度居民个人在有关历年中在中国停留连续或累计不超过183天；
- 该项报酬并非雇主支付或代表雇主支付；
- 该项报酬不是由雇主设在中国的常设机构或固定基地负担。

此外，在印度居民企业经营国际运输的船舶或飞机上从事受雇的活动取得的报酬，应仅在印度征税。

协定通过对非居民所得的征税权在居民国与来源国之间进行划分，在很大程度上限制了来源国的征税权，能够有效避免双重征税。但协定并没有完全消除来源国的征税权，中国政府对印度居民来源于中国的收入在满足一些条件或者情形下仍然享有征税权。对于两国政府均有征税权的收入仍然存在着双重征税。因此，中印税收协定的无差别待遇条款规定了中印税收协定及相互协商程序，旨在通过协商程序解决税收争端，以避免双重征税。

根据中印税收协定规定，印度居民取得的所得，可以在中国征税的（仅由于该所得也被认定为中国居民取得的所得而按照协定规定允许中国征税的情况除外），印度应允许在对该居民的所得征收的税收中扣除，扣除额等于在中国直接缴纳或扣除的所得税额。但是，在这种情况下，该扣除额不应超过在计算扣除前归属于可在中国征税的所得的所得额数。需要特别注意的是，如果从中国取得的所得是印度居民公司支付给印度居民公司的股息，同时该印度居民公司拥有支付股息公司不少于10%的参与利润分配权利，则上述抵免规则中所指的抵免额也应包括支付该项股息公司就支付股息的利润缴纳的税收。

综上，印度居民应当特别关注在中国取得的收入按照协定被中国政府征收所得税后如何在印度进行抵免，并能够在国际上享受抵免优惠，从而降低税收成本。

3.1.6 无差别待遇原则（非歧视待遇）

中印税收协定的无差别待遇条款规定了中印两国之间在国际税收征管方面的国民待遇原则，即无差别待遇原则，主要内容包括以下四方面的内容：

- 国民无差别待遇，即印度居民在中国投资不应与中国国民在相同情况下负担或可能负担的税收或其他有关条件不同或比中国居民更多；
- 常设机构无差别待遇，即印度企业在印度设立的固定营业场所，如果按照协定规定构成了常设机构从而应享有纳税义务，其负担不应比中国居民企业的负担更多；
- 投资无差别待遇，即印度企业向中国企业提供贷款或特许权取得的利息、特许权使用费或其他类似款项，按照中国企业的应纳税所得额计算，应与中国向本国企业支付的款项按照同一标准进行扣除，以保证印度企业获得同样的贷款或技术转让条件，在税收上保证相同的竞争地位；
- 子公司无差别待遇，即印度企业在印度的子公司无论出资形式或比例如何，不应与中国其它同类企业在相同情况和相同条件下的负担或可能负担的税收或其他有关条件不同或比其更重。

第三章 中印税收协定及相互协商程序

注意，符合第一种情形的独立劳务收入，中国政府仅有权对归属于该固定基地的所得征税；符合第二种情形的独立劳务收入，中国政府仅有权对上述连续或累计期间取得的所得征税。

此外，协定还对独立劳务活动进行了列举，包括独立的科学、文学、艺术、教育或教学活动，以及医师、律师、工程师、建筑师、牙医师和会计师的独立活动。
### 3.2 税收协定相互协商程序

#### 3.2.1 相互协商程序概述

相互协商程序条款是税收协定中的一项重要条款，其意义在于缔约国一方居民与缔约国另一方税务当局产生争议时，允许一方居民可以寻求所在国政府的援助，有效地解决跨国税务争议，维护自身权益。该程序对于化解国际税务争议具有重要意义，是缔约国通过国际贸易过程中维护自身税务合法权益的重要途径。印度居民应当特别关注税收协定相互协商程序的相关规定，理解程序适用的范围、启动、效力等，并能够积极合法地运用这一程序，从而有效解决跨国税收争议。

#### 3.2.2 税收协定相互协商程序的法律依据

中印税收协定第二十五条程序条款为两国主管当局之间的协商解决机制提供了法律依据。中印税收协定对相互协商程序的规定如下：

- 当一个人认为，缔约国一方或者双方所采取的措施，导致或将导致对其不符合本协定规定的征税时，可以不考虑各缔约国国内法律的补救办法，将案情提交本人为其居民的缔约国主管当局；或者如果其案情属于第二十四条第一款，可以提交本人为其国民的缔约国主管当局。该项案情必须在不符合本协定规定的征税措施第一次通知之日起，3年内提出。
- 上述主管当局如果认为所提意见合理，又不能单方面圆满解决时，应设法同缔约国另一方主管当局相互协商解决，以避免不符合本协定规定的征税。达成的协议应予执行，而不受各缔约国国内法律法规的时间限制。
- 缔约国双方主管当局应通过协议解决在解释或实施本协定时发生的困难或疑义，也可以对本协定未作规定的消除双重征税问题进行协商。
- 缔约国双方主管当局在相互协商程序中，可以相互直接联系。为有利于达成协议，双方主管当局的代表可以进行会面，口头交换意见。

#### 3.2.3 相互协商程序的适用

根据中印税收协定相互协商程序条款规定，当另一方缔约国的措施导致或将导致对申请人不符合税收协定规定的征税行为时，申请人可以将案情提交至本人为其居民的缔约国主管当局。此处需要明确的是，税收协定中的“居民”一词所指的是税收居民身份。

#### 3.2.4 启动程序

3.2.4.1 申请时效及条件

相互协商程序是通过缔约国之间双边税务协定赋予缔约国纳税人的权利救济程序，制定该程序的目的是为保证税收协定的实施及有效消除国际双重征税。但需要注意的是，申请该救济程序的权利存在期限。根据中印税收协定第二十五条程序，当事人必须在不符合本协定规定的征税措施第一次通知之日起，3年内提出申请。

关于该期限的开始点，也就是纳税人有权申请启动协商程序的时间节点如何确定，中印税收协定并未给出明确的界定，该问题一般由各国通过国内法进行规定，详情请参照印度国内相关法律。

#### 3.2.4.2 税务机关对申请的处理

中印税收协定规定，主管当局如果认为所提意见合理，又不能单方面圆满解决时，应设法同缔约国另一方主管当局相互协商解决，以避免不符合本协定规定的征税。达成的协议应予执行，而不受各缔约国国内法律的时间限制。

#### 3.2.5 相互协商的法律效力

国际普遍认为相互协商程序应属于行政性的争议解决手段，换言之，其结果只对达成协议的主管当局产生约束，如果当事人对结果不满，其仍有权通过司法程序寻求救济。此外，相互协商程序是两国主管当局就特定问题进行的协商讨论，就效率而言，其得出的结论只能对该特定问题生效，而无普遍约束力。但是上述普遍性规则有可能因税收协定特殊条款的存在而产生例外。

如果两国主管当局进行协商讨论的问题上已产生了有效的税收和解或司法判决，那么两国主管当局在进行相互协商时，将只能基于此前认定的事实进行相应的纳税调整，而不能改变已生效的和解或判决。

### 第三章 中印税收协定及相互协商程序

3.2 税收协定相互协商程序

#### 3.2.1 相互协商程序概述

相互协商程序条款是税收协定中的一个重要条款，其意义在于缔约国一方居民与缔约国另一方税务当局产生争议时，允许一方居民可以寻求所在国政府的援助，有效地解决跨国税务争议，维护自身权益。该程序对于化解国际税务争议具有重要意义，是印度居民赴中国投资过程中维护自身税务合法权益的重要途径。印度居民应当特别关注税收协定相互协商程序的相关规定，理解程序适用的范围、启动、效力等，并能够积极合法地运用这一程序，从而有效解决跨国税收争议。

#### 3.2.2 税收协定相互协商程序的法律依据

中印税收协定第二十五条程序条款为两国主管当局之间的协商解决机制提供了法律依据。中印税收协定对相互协商程序的规定如下：

- 当一个人认为，缔约国一方或者双方所采取的措施，导致或将导致对其不符合本协定规定的征税时，可以不考虑各缔约国国内法律的补救办法，将案情提交本人为其居民的缔约国主管当局；或者如果其案情属于第二十四条第一款，可以提交本人为其国民的缔约国主管当局。该项案情必须在不符合本协定规定的征税措施第一次通知之日起，3年内提出。
- 上述主管当局如果认为所提意见合理，又不能单方面圆满解决时，应设法同缔约国另一方主管当局相互协商解决，以避免不符合本协定规定的征税。达成的协议应予执行，而不受各缔约国国内法律法规的时间限制。
- 缔约国双方主管当局应通过协议解决在解释或实施本协定时发生的困难或疑义，也可以对本协定未作规定的消除双重征税问题进行协商。
- 缔约国双方主管当局为达成第二款和第三款的协议，可以相互直接联系。为有利于达成协议，双方主管当局的代表可以进行会面，口头交换意见。

#### 3.2.3 相互协商程序的适用

根据中印税收协定相互协商程序条款规定，当另一方缔约国的措施导致或将导致对申请人不符合税收协定规定的征税行为时，申请人可以将案情提交至本人为其居民的缔约国主管当局。此处需要明确的是，税收协定中的“居民”一词所指的是税收居民身份。

#### 3.2.4 启动程序

3.2.4.1 申请时效及条件

相互协商程序是通过缔约国之间双边税务协定赋予缔约国纳税人的权利救济程序，制定该程序的目的是为保证税收协定的实施及有效消除国际双重征税。但需要注意的是，申请该救济程序的权利存在期限。根据中印税收协定第二十五条程序，当事人必须在不符合本协定规定的征税措施第一次通知之日起，3年内提出申请。

关于该期限的开始点，也就是纳税人有权申请启动协商程序的时间节点如何确定，中印税收协定并未给出明确的界定，该问题一般由各国通过国内法进行规定，详情请参照印度国内相关法律。

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如果两国主管当局进行协商讨论的问题上已产生了有效的税收和解或司法判决，那么两国主管当局在进行相互协商时，将只能基于此前认定的事实进行相应的纳税调整，而不能改变已生效的和解或判决。
3.2.6 仲裁条款
仲裁条款是OECD为提高相互协商程序的效率，确保税收协定的实施而制定的条款。其一般形式是：如果两国主管当局在一定时间内（通常为两年）无法就相互协商的事项达成一致，当事人可以请求将该事项提交仲裁。

3.3 中印税收协定争议的防范

3.3.1 中印税收协定争议
中印税收协定争议是指中国与印度因双方之间签订的税收协定条款的解释和适用而引发的争议，体现在两个不同的层面。第一个层面是跨国纳税人（印度投资者）与收入来源地国（中国）之间就中印税收协定条款的解释和适用引发的争议；第二个层面是跨国纳税人（印度投资者）与收入来源国（中国）之间基于中印税收协定条款的解释和适用争议进入相互协商程序后转化为中国与印度两个主权政府之间的税务争议。在第一个层面的税收争议中，印度投资者是直接利害关系方，是税收协定争议的主体之一，因此，印度投资者应当着重关注这一层面的税收争议，注重防范和避免争议的发生，增强税收协定争议的预防控制与管理能力。

3.3.2 适用协定争议的防范
适用中印税收协定争议的主要工作环节在于决策阶段。印度投资者应当在投资或经营决策阶段对中印税收协定的具体规定进行充分考察与准确理解，结合自身的投资项目或经营活动识别税务风险，合理地进行税务规划，严格按照中印税收协定的具体规定安排自身的投资、经营活动。印度企业作为跨国投资者应当特别注重建立税务风险的控制与管理机制，制定涉外税务风险识别、评估、应对、控制以及信息沟通和监督的相关工作制度，并基于对税务风险的综合评估来制定税务风险应对预警方案。此外，印度投资者应当结合在以投资或经营的业务模式设立专业的税务管理机构和岗位，配备专业素质人员，强化税务风险管理职能以及岗位职责。

4.1 外商投资法的变革
2019年3月15日，《中华人民共和国外商投资法》（以下简称《外商投资法》）通过表决，自2020年1月1日起施行。取代原有的《中华人民共和国中外合资经营企业法》、《中华人民共和国外资企业法》、《中华人民共和国中外合作经营企业法》，确立了中国新型外商投资法律制度的基本框架，奠定了中国对外开放、促进外商投资的基本国策和大政方针，对外商投资的准入、促进、保护、管理等作出了统一规定，是促进外商投资领域新的基础性法律，是对中国外商投资法律制度的完善和创新。

2019年12月26日，国务院总理李克强签署国务院令公布《中华人民共和国外商投资法实施条例》（以下简称《实施条例》），自2020年1月1日起施行。该实施条例作为细化外商投资法的主要法律制度，对于保障外商投资法有效实施具有重要意义。

上述法律法规的颁布施行，彰显了中国坚定推广高水平投资自由化便利化政策，保护外商投资合法权益，营造法治化、国际化、便利化营商环境，以内循环对外开放推动经济高质量发展，进一步扩大对外开放、积极促进外商投资的决心和信心。同时，从产权及知识产权保护、强化对涉及外商投资规范性文件制定的约束、促使地方政府守信践诺、完善外商投资企业投诉维权机制等多个方面建立了完整的保护制度，为外商投资中国提供了强有力的法治保障。与旧法规相比，新的外商投资法主要在以下六个方面发生了变化：

<table>
<thead>
<tr>
<th>方面</th>
<th>变化</th>
</tr>
</thead>
<tbody>
<tr>
<td>公司设立流程</td>
<td>废止全面审批及备案制度，适用“准入前国民待遇”与“负面清单”制度</td>
</tr>
<tr>
<td>企业决策机构</td>
<td>股东会或股东大会成为最高权力机构，表决机制，重大突发事件等公司治理发生根本性变化</td>
</tr>
</tbody>
</table>
外资比例限制

废止了之前外国合营者的投资比例一般不低于25%的规定

公積金的提取比例

统一适用《中华人民共和国公司法》的有关规定对公積金和任意公积的提取

利润分配比例限制

中外合资各方可根据《中华人民共和国公司法》的相关规定自行约定利润分配的比例和方式

股权转让条件

公司的股权转让将统一适用《中华人民共和国公司法》中优先购买权的相关规定

总的来看，新的外商投资法实行统一的外商投资管理制度，统一适用规范各类市场主体的法律法规。对于2020年1月1日起新设立的外商投资企业，其组织形式、组织机构及活动准则，统一适用《中华人民共和国公司法》、《中华人民共和国合伙企业法》等法律规定。对于2020年1月1日前依照外资三法设立的外商投资企业，在《外商投资法》施行后五年内（2020年1月1日至2024年12月31日）可以继续保留原企业组织形式。

依据外商投资法第章第四条的规定，在中华人民共和国境内（以下简称中国境内）的外商投资，适用该法律。外商投资法所称外商投资，是指外国的自然人、企业或者其他组织（以下称外国投资者）直接或者间接在中国境内进行的投资活动，包括下列情形：

- 外国投资者单独或者与其他投资者共同在中国境内设立外商投资企业；
- 外国投资者取得中国境内企业的股份、股权、财产份额或者其他类似权益；
- 外国投资者单独或者与其他投资者共同在中国境内投资新建项目；
- 法律、行政法规或者国务院规定的其他方式的投资。

外商投资法所称外商投资企业，是指全部或者部分由外国投资者投资，依照中国法律在中国境内经登记注册设立的企业。

依据外商投资法第一章第四条的规定，中国对外商投资实行准入前国民待遇和负面清单管理制度。准入前国民待遇，是指外商投资准入阶段给予外国投资者及其投资不低于本国投资者及其投资的待遇；负面清单，是指国家规定在特定领域对外国投资设限的准入特别管理措施。国家对负面清单之外的外商投资，给予国民待遇。负面清单由国务院发布或者批准发布。

特地地，中华人民共和国缔结或者参加的国际条约、协定对外国投资者准入待遇有更优惠政策的，可以按照相关规定执行。

4.2.2 投资促进

依据外商投资法，外商投资企业依法平等适用中国支持企业发展的各项政策。从投资促进角度出发，该法律围绕着关注外商投资需求、保证外商与内资企业待遇公平、开展区域性试点以及提高服务外商水平四个方面出台了一系列法律规定，用法律手段营造公平竞争营商环境。

- 关注外商投资需求。具体包括，制定与外商投资有关的法律、法规、规章，应当采取适当方式征求外商投资企业意见和建议。与外商投资有关的规范性文件、裁判文书等，应当依法及时公布。此外，中国根据国民经济和社会发展需要，鼓励和引导外国投资者在特定行业、领域、地区投资。外国投资者、外商投资企业可以依照法律、行政法规或者国院的规定享受优惠待遇。
- 保证外商与内资企业待遇公平。中国保障外商投资企业依法平等参与标准制定工作，强化标准制定的信息公开和社会监督，同时，国家制定的强制性标准平等适用于外商投资企业。此外，在政府采购方面，政府采购依法对外商投资企业在中国境内生产的产品、提供的服务等平等对待。在融资方面，外商投资企业可以依法通过公开发行股票、公司债券等其他方式进行融资。
- 开展区域性试点。一方面，中国积极与其他国家和地区、国际组织建立多边、双边投资促进合作机制，加强投资领域国际交流与合作；另一方面，根据需要设立特定区域，或者在部分地区实行外商投资试验性政策措施，促进外商投资，扩大对外开放。为外商投资提供便利。
- 提高服务外商水平。中国正不断健全外商投资服务体系，为外国投资者和外商投资企业提供法律法规、政策措施、投资项日信息等方面的服务。各地人民政府及其有关部门应当按照便利、高效、透明的原则，简化办事程序，提高办事效率，优化政务服务，进一步提高外商投资服务水平。有关主管部门应当编制和公布外商投资指引，为外国投资者和外商投资企业提供服务和便利。
第四章 中国外商投资法

4.2.3 投资保护

新的外商投资法在法律层面上强化了对外商投资合法权益的保护，主要包括但不限于如下政策：

- 中国对外商投资者的投资不实行征收，在特殊情况下，为了公共利益的需要，可以依照法律规定对外国投资者的投资实行征收或者征用。征收、征用应当依照法定程序进行，并及时给予公平、合理的补偿。

- 外国投资者在中国境内的出资、利润、资本收益、资产处置所得、知识产权许可使用费、依法获得的补偿或者赔偿、清算所得等，可以依法以人民币或者外汇自由汇入、汇出。

- 中国保护外国投资者和外商投资企业的知识产权，保护知识产权权利人和相关权利人的合法权益；对知识产权侵权行为，严格依法追究法律责任。中国鼓励在外商投资过程中基于自愿原则和商业规则开展技术合作。技术合作的条件由投资各方遵循公平原则平等协商确定。行政机关及其工作人员不得利用行政手段强制转让技术。

- 行政机关及其工作人员对于履行职责过程中知悉的外国投资者、外商投资企业的商业秘密，应当依法予以保密，不得泄露或者非法向他人提供。

- 如无特殊情况，地方政府依法对外国投资者、外商投资企业作出的承诺必须履行。

- 建立对外商投资企业投诉工作机制，及时处理外商投资企业或者其投资者反映的问题。

4.2.4 投资管理

外商投资法引入了全新的“负面清单”管理制度，信息报告制度、反垄断与安全审查制度，企业登记手续等管理制度，不仅宽限了外资企业赴华投资范围，同时简化了赴华投资企业办理手续，规范了必备的管理制度，主要规定如下：

- 外商投资准入负面清单规定禁止投资的领域，外国投资者不得投资。外商投资准入负面清单规定限制投资的领域，外国投资者进行投资应当符合负面清单规定的条件。外商投资准入负面清单以外的领域，按照内外资一致的原则实施管理。

- 建立外商投资信息报告制度。外国投资者或者外商投资企业按照规定需要向中国有关主管部门报送投资信息，需要合并的企业信息。
第五章
中国部分税务热点及风险提示

5.1 税务服务优化重要举措

5.1.1 税务行政处罚“首违不罚”

为更好服务市场主体，国家税务总局于2021年3月31日经国家税务总局公告[2021]6号发布了《税务行政处罚“首违不罚”事项清单》（以下简称“《清单》”）。

根据《清单》，对于发生《清单》中所列事项同时满足下列条件的，不予行政处罚：首次发生《清单》中所列事项且危害后果轻微；并且在税务机关发现前主动改正或者在税务机关责令改正的期限内改正。

《清单》共列举了10项事项，涵盖了资料报送、纳税申报和票证管理等多类型轻微税收违法行为，适用于纳税人、扣缴义务人、境内机构或个人。《清单》自2021年4月1日起施行。

税务行政处罚“首违不罚”事项清单：

<table>
<thead>
<tr>
<th>序号</th>
<th>事 项</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>纳税人未按照税收征收管理法及实施细则等有关规定将其全部银行账号向税务机关报送</td>
</tr>
<tr>
<td>2</td>
<td>纳税人未按照税收征收管理法及实施细则等有关规定设置、保管账簿或者保管账簿或者保管记账凭证和有关资料</td>
</tr>
<tr>
<td>3</td>
<td>纳税人未按照税收征收管理法及实施细则等有关规定设置、保管账簿或者保管记账凭证和有关资料等有关规定的期限办理纳税申报和报送纳税资料</td>
</tr>
<tr>
<td>4</td>
<td>纳税人未按照税收征收管理法及实施细则等有关规定设置、保管账簿或者保管记账凭证和有关资料等有关规定的期限办理纳税申报和报送纳税资料</td>
</tr>
</tbody>
</table>

5.1.2 便民办税缴费服务措施

5.1.2.1 快速响应群众诉求

（1）了解群众需求
通过征集纳税人缴费人需求及需求实现方式，加强纳税缴费人数需求管理工作。设立税费服务产品发布前体验期，通过各类税费服务产品发布前公开招募服务产品体验者检验工作，根据体检反馈的意见和建议改进完善服务产品。

（2）智能咨询响应
实施重大税费优惠政策“一政一讲、一号一谈”，增强税费政策和征管制度解读的及时性和针对性。提供“7×24小时”智能咨询服务，推广应用智能咨询，拓展纳税人咨询渠道，提升纳税人咨询服务体验。搭建“云税通”平台，开展远程方式辅助办理，实现线上帮办、协办，解决纳税人缴费人在业务办理过程中遇到的信息系统、业务操作等问题。

（3）改进服务评价
建立健全“好差评”常态化工作机制，完善“开展评价-差评处理-结果应用”的业务闭环管理模式，确保每项差评反映的问题都能够及时整改。
5.1.2.2 落实优惠政策直达快享

(1) 应用大数据分析

运用大数据监测减税降费政策落实情况，及时扫描分析应享未享和违规享受的疑点信息，使符合条件的纳税人缴费人应享尽享，对违规享受的及时提示纠正和处理。

(2) 优化享受方式

通过云平台大数据，主动甄别符合享受优惠政策条件的纳税人缴费人，推广税费优惠政策措施精准直达，扩大税收优惠政策资料备案改备查范围，除增值税即征即退、先征后退（返）、加计抵减以及自然人税收外的其他税收优惠备案全部改为留存备查。

5.1.2.3 优化办税体验

(1) 深化增值税发票电子化改革

依托全国统一的电子发票服务平台，为纳税人免费提供电子发票开具、交付、存储等基本公共服务。建立与发票电子化相匹配的服务模式，为纳税人开具、使用电子发票提供全天候的便捷和高效服务。

(2) 简并税收申报

调整完善财产行为税税收申报表，全面推行财产行为税合并申报，进一步精简申报资料，减少申报次数，减轻办税负担。

(3) 信息共享简并资料

推行税务证明事项告知承诺制，扩大实施告知承诺制的证明事项范围，进一步减少证明材料。简化服务便利化等事项对外支付税收备案流程，实现相关资料在同部门多处申报、共享，满足纳税人异地办理需求。完善资源环境税收跨地域应用功能，扩大免填表数据范围，优化资源环境税申报功能。

(4) 提速退税办理

简化出口退税涉税资料报送，简化退税办理流程，整合优化电子税务局留抵退税申请入口，明确填表指引，便利纳税人选择正确的表单进行申报，通过政务部门等多渠道获取信息，及时保障退税资金到位。财政、税务和国库部门密切合作，疏通退税渠道，确保符合条件的纳税人及时获得退税款，同时推行离境退税便捷支付。

5.1.3 优化税收执法方式

(1) 严格规范公正文明执法

依法依规征税收费，防止和制止收过头税费，全面深入推行行政执法公示、执法全过程记录、重大执法决定法制审核制度。健全完善税务机关权责清单，实施税务行政执行案例指导制度，持续规范行政裁量基准，推进简易处罚事项网上办理，推行重大税务案件审理说明理由制度试点。全面推进内控机制信息化建设，规范执法行为，减少执法风险。完善税务执法评估体系，通过税务网站集中对外公开和动态更新，增强税务执法的透明度、稳定性和公开度，持续打造公正公平的法治化税收营商环境。

(2) 强化分类精准管理

完善税务税收数据和风险管理体系，构建动态“信用+风险”新型管理方式，实时分析识别纳税主体特征，实现“无风险不打扰、低风险预提醒、中高风险严监控”。规范税收行为，促进公平竞争，努力做到对企业主体等最小化、监管效能最大化。

(3) 健全完善纳税信用管理制度

依法依规深化守信激励和失信惩戒，完善企业信用体系建设。坚持依法依规和包容审慎监管原则，推行信用分级分类管理，对信用状况良好和信用状况一般的纳税人，予以重点激励和正向激励，对信用状况差的纳税人，予以重点规范和重点监管。

(4) 推行预约办税

为节约纳税人和缴费人办税时间，提升办税体验，推行了预约办税服务，通过事前预约、线上线下服务的转变，实现预约转为服务手段升级。实现预约转为服务现场延伸，根据自身需求填写预约时段、办理信息等，成功预约并在相应时段在办税服务厅进行预约办理。办税服务厅工作人员根据预约情况，提前做好场地准备，确保预约服务的有序进行。
5.2 外籍人员派遣的中国税务影响

5.2.1 企业所得税
非居民企业派遣人员在中国境内提供劳务，可能引发非居民企业在中国境内承担税务风险。为防范此类税务风险，国家税务总局于2013年发布了《国家税务总局关于非居民企业派遣人员在中国境内提供劳务所得税有关问题的公告》（国家税务总局公告2013年第19号，以下简称“19号公告”），对这一问题作出了具体规定。

根据19号公告，非居民企业（以下简称“派遣企业”）派遣人员在中国境内提供劳务，如果派遣企业对被派遣人员的工作结果承担部分或全部责任和风险，通常考核评估被派遣人员的工作业绩，应视为派遣企业在中国境内设立机构、场所提供劳务；如果派遣企业属于税收协定缔约方企业，且提供劳务的机构、场所具有相对的固定性和持久性，该机构、场所构成在中国境内设立的常设机构。

1. 接收劳务的境内企业（以下统称“接收企业”）向派遣企业支付管理费、服务费性质的款项；
2. 接收企业向派遣企业支付的款项金额超出派遣企业代垫、代付被派遣人员的工资、薪金、社会保险费及其他费用；
3. 派遣企业并未将接收企业支付的相关费用全部发放给被派遣人员，而是保留了一定数额的款项；
4. 派遣企业负担的被派遣人员的工资、薪金未全额在中国缴纳个人所得税；
5. 派遣企业确定被派遣人员的数量、任职资格、薪酬标准及其在中国境内的工作地点。

主管税务机关在审查非居民企业派遣人员在中国境内提供劳务是否构成中国境内的常设机构时，会重点审阅以下材料：
1. 派遣企业、接收企业及被派遣人员之间的合同协议或约定；
2. 派遣企业及接收企业对被派遣人员的管理规定，包括被派遣人员的工作职责、工作内容、工作考核、风险承担等方面的具体规定；
3. 接收企业向派遣企业支付款项及相关账务处理情况，被派遣人员在中国境内所得的纳税资料；
4. 接收企业是否在计算抵扣税款、减免税款、关联交易或其他形式的支付时，按照派遣行为相关费用的情形。

因此，为降低非居民企业在华构成常设机构的税务风险，非居民企业应明确派遣人员的工作职责及薪酬计算方式，为中国境内设立的常设机构严格履行个人所得税的纳税义务，并妥善留存上述支持材料以备税务机关的检查。

5.2.2 个人所得税
财政部和国家税务总局于2019年发布了《关于在中国境内无住所的个人居住时间判定标准的公告》（以下简称“34号公告”）以及《关于非居民个人和无住所个人有关个税政策的公告》（以下简称“35号公告”），全面概括了新个税法下无住所个人个税的处理。

1. 无住所个人一个纳税年度内在中国境内累计居住满183天的，如果此前四年中在境内每年累计居住天数满183天且没有任何一年单次离境超过30天，该纳税年度来源于中国境内、境外所得应当缴纳个税；如果此前四年的任何一年在中国境内累计居住天数不满183天或者单次离境超过30天，该纳税年度来源于中国境内且由中国境内单位或者个人支付的所得，免予缴纳个税。前六年是指纳税人入职的前一年至前六年的连续六个年度，此前六年的起始年度自2019年（含）以后年度开始计算。

2. 在中国境内停留的当天满24小时的，计入中国境内居住天数，在中国境内停留的当天不足24小时的，不计入中国境内居住天数。
c) 具体计算方法为：数月奖金或股权激励乘以数月奖金或者股权激励所属工作期间境内工作天数与所属工作期间总公历天数之比。
d) 无住所个人一个年度内取得的境内外数月奖金或者股权激励包含归属于不同期间的多笔所得的，应当先分别按照本公告规定计算不同归属期间来源于境内的所得，然后加总计算当月来源于境内的数月奖金或者股权激励收入额。

- 无住所个人工资薪金所得收入额计算的方法：

1. 无住所个人为非高管人员，其取得的工资薪金所得按如下规定计算：
2. 若无住所个人为高管人员，其取得的工资薪金所得按如下处理：

- 见住所个人税款计算的规定

1. 关于居民个人税款计算的规定

a) 无住所居民个人取得综合所得，年度终了后，应按年计算个税；有扣缴义务人的，由扣缴义务人按月代收预扣税款；需要办理汇算清缴的，按照规定办理汇算清缴，年度综合所得应纳税额计算公如下（公式四）：

年度综合所得应纳税额 = (年度工资薪金所得 + 年度劳务报酬所得 + 年度稿酬所得 + 年度特许权使用费所得 - 减除费用 - 专项扣除 - 专项附加扣除 - 依法确定的其他扣除) × 适用税率 - 速算扣除数

b) 无住所居民个人为外籍个人的，2022年1月1日前计算工资薪金所得时，已经按规定减除住房补贴、子女教育费、语言训练费等八项津补贴的，不能同时享受专项附加扣除

2. 关于非居民个人税款计算的规定

a) 非居民个人当月取得工资薪金所得按照本公告规定计算出当月收入额，减去税法规定的减除费用后的余额，为应纳税所得额，适用月度税率表计算应纳税额。

b) 非居民个人一个年度内取得的数月奖金，单独按照本公告规定计算出当月收入额，不与当月其他工资薪金合并，按6个年度分摊计税，不减除费用，适用月度税率表计算应纳税额，在一个公历年度内，对每一个非居民个人，该计税办法只允许适用一次。计算公式如下（公式五）：

当月数月奖金应纳税额 = (数月奖金收入额 ÷ 6) × 适用税率 - 速算扣除数 × 6

c) 非居民个人一个年度内取得股权激励所得，单独按照本公告规定计算出当月收入额，不与当月其他工资薪金合并，按6个年度分摊计税，一个公历年度内股权激励所得应合并计算，不减除费用，适用月度税率表计算应纳税额，计算公式如下（公式六）：

当月股权激励所得应纳税额 = (本公历年度内股权激励所得合计额 ÷ 6) × 适用税率 - 速算扣除数 × 6

按照我国签订的避免双重征税协定、内地与香港、澳门签订的避免双重征税安排（以下称为“税收协定”）居民条款规定为缔约对方法案的个人（以下称“对方法案个人”），可以按照税收协定及财政部、税务总局有关具体规定享受税收协定，也可以选择不享受税收协定待遇计算纳税。
适用相关条款

<table>
<thead>
<tr>
<th>协定待遇</th>
<th>本公告相关规定</th>
</tr>
</thead>
<tbody>
<tr>
<td>境外受雇所得协定待遇</td>
<td>无住所个人为对方税收居民个人，且取得的工资薪金所得为在中国境内受雇取得的可不缴纳个人所得税。</td>
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<td></td>
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</tbody>
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<table>
<thead>
<tr>
<th>受雇所得条款</th>
<th>适用条件</th>
<th>工资薪金收入额计算应适用公式一相关规定</th>
</tr>
</thead>
<tbody>
<tr>
<td>对方税收居民个人担任中国境内企业董事的，但有关税收协定没有董事费条款的，该个人取得的董事费所得按中国税法规定缴纳个人所得税。</td>
<td>适用条件</td>
<td>工资薪金收入额计算应适用公式一相关规定</td>
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<tr>
<td>对方税收居民个人担任中国境内企业高层管理职务的，但担任中国境内董事，且有关税收协定的董事费条款中未明确表述包含企业高层管理人员的，该个人取得的董事费所得按中国税法规定缴纳个人所得税。</td>
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<td>适用条件</td>
<td>工资薪金收入额计算应适用公式一相关规定</td>
</tr>
</tbody>
</table>

- 无住所个人相关规定的规定

1. 关于境内居住时间的规定

无住所个人在一个纳税年度内首次申报时，应当根据雇佣合同约定等情况判断是否应为居民个人。一个纳税年度内在境内居住的天数以及在税收协定规定的期间内境内停留的天数，按照规定计算应缴纳的税款。

a) 无住所个人预先判定为非居民个人，因延长居住天数达到居民个人条件的，一个纳税年度内税款扣除方法保持不变，年度终了后按照居民个人的有关规定办理汇算清缴，但该个人在当年离境且按年度内不再入境的，可以选择在离境之前办理汇算清缴。

b) 无住所个人预先判定为居民个人，因缩短居住天数不能达到居民个人条件的，在不能达到居民个人条件之日起至年度终了15天内，应当向主管税务机关报告，按照非居民个人重新计算应纳税额，申报补缴税款，不加收税收滞纳金。需要退税的，按照规定办理。

c) 无住所个人一个纳税年度内首次申报时，应当根据雇佣合同约定等情况判断是否应为居民个人。一个纳税年度内在境内居住的天数以及在税收协定规定的期间内境内停留的天数，按照规定计算应缴纳的税款。

2. 关于境内雇主报告境外关联方支付工资薪金所得的规定

无住所个人在境内任职、受雇取得来源于境内的工资薪金所得，凡境内雇主与境外单位或者个人存在关联关系，将本应由境内雇主支付的工资薪金所得，部分或者全部由境外关联方支付的，无住所个人可以自行申请缓缴税款，也可以委托境内雇主代为申请缓缴税款。无住所个人未委托境内雇主代为申请缓缴税款的，境内雇主在支付工资薪金所得时应当按照规定向主管税务机关报告相关情况，包括境内雇主与境外关联方对无住所个人的工作安排，境外支付情况以及无住所个人的联系信息等。
第五章 中国部分税务热点及风险提示

5.3 技术服务费及特许权使用费

服务费和特许权使用费一直是税务机关反避税工作的重点。根据《中华人民共和国企业所得税法》及《中华人民共和国企业所得税法实施条例》，非居民企业在中国境内未设立机构、场所的，或者虽设立机构、场所但取得的所得与机构、场所没有实际联系的，应当就其来源于中国境内的所得缴纳企业所得税。其中，技术服务费属于提供劳务所得，按照劳务发生地确定。特许权使用费是指企业特许权使用费，包括专利权、非专利技术、商标权、著作权以及其他特许权的使用权取得的收入。

5.3.1 中国税收的一般规定

5.3.1.1 企业所得税

根据《企业所得税法》及《企业所得税法实施条例》，企业实际发生的与取得收入有关的合理的支出，包括成本、费用、税金、损失和其他支出，准予在计算应纳税所得额时扣除。在判定企业税前列支费用的合理性时，中国税务机关会考虑以下因素：

(1) 中国居民企业支付的特许权使用费是否与其取得收入相关且能取得实质性支持；
(2) 中国居民企业支付的特许权使用费是否符合独立交易原则；
(3) 纳税人是否能够提供有效的支持材料。

随着146号公告和国家税务总局公告[2017]6号（以下简称“6号公告”）的发布，中国税务机关对境内居民企业向海外关联方支付大额服务费及特许权使用费的关注度逐年提高。其中，以下种类的特许权使用费支付将受到税务机关的额外关注：

- 向避税地支付特许权使用费。
- 向不承担功能或只承担简单功能的境外关联方支付特许权使用费。
- 境内企业对特许权价值有特殊贡献或者特许权本身已贬值，仍然向境外支付高额特许权使用费。

根据6号公告，中国税务机关在审查支付给境外关联方的特许权使用费时将重点关注以下因素：

- 无形资产价值是否发生根本性变化；
- 按照营业常规，非关联方之间的可比交易是否存在特许权使用费调整机制；
- 无形资产使用过程中，企业及其关联方执行的功能、承担的风险或者使用的资产是否发生变化。

服务费和特许权使用费一直是各国税务机关反避税工作的重点。在税基侵蚀和利润转移(BEPS)项目成果不断推出的大环境下，针对特许权使用费等无形资产交易的调查调整显著增长。2014年7月，国家税务总局发布《关于对外支付大额费用从税务角度审查的通知》（税总办发[2014]146号，以下简称“146号公告”），强调加大反避税调查力度，防止企业通过对外支付费用转移利润。

5.3.1.2 增值税

根据财税[2016]36号文（以下简称“36号文”），在中国境内提供技术服务或销售无形资产应适用6%增值税率。在中国提供信息技术服务的公司，如软件服务、电路设计及测试服务、信息系统服务、业务流程管理和信息服务系统增值服务的销售收入，按照6%的增值税率缴纳增值税。

5.3.2 常见税务风险及建议

5.3.2.1 技术服务费与特许权使用费的界定

根据《通知》[2009]507号文件（以下简称“507号文”），税收协定特许权使用费条款定义中所列的有关工业、商业或科学经验的情报应理解为专有技术。在服务合同中，如果服务提供方提供服务过程中使用了某些专业知识和技能，但并不转让或许可这些技术，则此类服务不属于特许权使用费范围。但如果服务提供方提供的服务成果属于税收协定特许权使用费定义范围，并且服务提供方保留该服务成果的所有权，服务接受方对成果仅有使用权，则此类服务产生的所得，适用税收协定特许权使用费条款的规定。在转让或许可有专有技术使用权的服务中，服务方应提供支持材料，以证明该技术的使用权是否构成独立交易。在转让或许可有专有技术使用权的服务中，服务方应提供支持材料，以证明该技术的使用权是否构成独立交易。如果技术许可方对服务成果的使用权进行转让或许可，且服务接受方仅享有使用权，则此类服务产生的所得，适适用税收协定特许权使用费条款的规定。在转让或许可有专有技术使用权的服务中，服务方应提供支持材料，以证明该技术的使用权是否构成独立交易。如果技术许可方对服务成果的使用权进行转让或许可，且服务接受方仅享有使用权，则此类服务产生的所得，适适用税收协定特许权使用费条款的规定。在转让或许可有专有技术使用权的服务中，服务方应提供支持材料，以证明该技术的使用权是否构成独立交易。如果技术许可方对服务成果的使用权进行转让或许可，且服务接受方仅享有使用权，则此类服务产生的所得，适适用税收协定特许权使用费条款的规定。
- 企业及其关联方对无形资产进行后续开发、价值提升、维护、保护、应用和推广做出贡献是否得到合理补偿。

此外，6号公告还规定中国税务机关有权对不符合独立交易原则的关联方交易进行特别纳税调整，其中与特许权使用费相关的情形包括：

- 企业与其关联方转让或者受让不能带来经济利益的无形资产使用权而收取或者支付的特许权使用费。

- 企业向仅拥有无形资产所有权而未对其价值创造做出贡献的关联方支付的特许权使用费。
Tax Guide for India residents doing business in Qingdao
Qingdao enjoys outstanding geographical advantages. It is bounded by South Korea and Japan to the east facing the Asia-Pacific region, to the north by Mongolia and Russia, to the south by ASEAN, and to the west by Shanghai Cooperation Organization (SCO) member states and states along the route of the Belt and Road Initiative. On June 10, 2018, at the SCO Qingdao Summit, President Xi Jinping formally announced that the Chinese government supports the construction of the SCO Local Economic and Trade Cooperation Demonstration Zone (hereinafter referred to as “the Shanghai Cooperation Demonstration Zone”) in Qingdao. This opens up a new chapter for Qingdao to expand and enhance the local economic and trade cooperation with SCO member states.

In order to fully utilize taxation functions and serve the national development strategy in depth, State Taxation Administration Qingdao Tax Service precisely targets the service demand of the Shanghai Cooperation Demonstration Zone, strives to create a market-oriented and law-based international business environment, dedicating to serve the development of market entities, aiming to optimize taxation policy consultation and service related to the Belt and Road Initiative. The Qingdao Tax Service and the Shanghai Cooperation Demonstration Zone Management Committee have jointly commissioned Ernst & Young (China) Advisory Limited Qingdao Branch to prepare the Tax Guide for Indian Residents Doing Business in Qingdao (hereinafter referred to as “the Tax Guide”). The Tax Guide provides full introduction of the PRC tax regime, China-India double tax treaty and mutual agreement procedures, and other domestic and international tax laws and regulations. It highlights special advantages of the Shanghai Cooperation Demonstration Zone, as well as the tax service measures implemented by Qingdao Taxation Bureau targeting Indian residents doing business in Qingdao.

We hope that through the Tax Guide, we could provide feasible taxation guidance for Indian residents doing business in Qingdao, assist local economic and trade cooperation, promote investment and trade facilitation, and add tax power in the building of a highland of opening up in the new era.

Director general of Qingdao Tax Service, State Taxation Administration
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DISCLAIMER

The contents of this publication were prepared by 30 April 2021 in accordance with the effective laws, regulations and information available at that time. Please refer to the latest laws and regulations issued by relevant authorities for updates. The contents of this publication are for general reference purposes only, and are not intended to constitute a basis for accounting, tax or other professional advice. Please obtain specific advice from your consultant.
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CHAPTER 1 INTRODUCTION OF SHANGHAI COOPERATION DEMONSTRATION ZONE

In June 10, 2018, at the 18th meeting of the Council of the head from Shanghai Cooperation Organization (SCO) member states, President Xi Jinping formally announced that the Chinese government supports the construction of the SCO Local Economic and Trade Cooperation Demonstration Zone in Qingdao. This marks the formal establishment of Shanghai Cooperation Demonstration Zone. In July 24, 2019, the Central Committee for Comprehensively Deepening Reform passed the Overall Plan of the Construction of SCO Local Economic and Trade Cooperation Demonstration Zone (hereinafter referred to as “the Overall Plan”) at its 9th meeting. The plan pointed out the targeted orientation and development path of Shanghai Cooperation Demonstration Zone. In September 20, 2019, the Overall Plan was approved by the State Council. In October 20, 2019, the Ministry of Commerce and Shandong Provincial Government jointly released the Overall Plan in letters, which became the guidebook and instruction manual for
Shanghai Cooperation Demonstration Zone.
The Shanghai Cooperation Demonstration Zone is located in the coastal open city, Qingdao, on the north coast of Jiaozhou Bay, with a total area of 108 square kilometers. It is bounded by South Korea and Japan to the east facing the Asia-Pacific region, to the west by SCO member states, to the south by ASEAN, and to the north by Mongolia and Russia. It is 10 kilometers from Qingdao Jiaodong International Airport, 15 kilometers from Qingdao Qianwan Harbor, 15 kilometers from Shanghai cooperation multimodal transportation center, and 15 minutes’ drive from the main urban areas of Qingdao. The efficient connection of multimodal transportation by sea, land, air and rail coordinates the functions of harbor, inland port, airport and railways. Therefore, Qingdao can play a better role in the construction of the economic belt of the new Eurasian continental bridge under the Belt and Road Initiative, as well as in maritime cooperation.

It is deeply comprehended that the General Secretary of the Communist Party of China, Xi Jinping has given important instructions regarding the construction of Shanghai Cooperation Demonstration Zone in Qingdao, aiming to build a new platform for international cooperation under the Belt and Road Initiative. Shanghai Cooperation Demonstration Zone shall fully grasp the political significance of its construction, serve the overall situation concerning foreign affairs for the nation, and strengthen the sense of duty of fulfilling local missions. It should uphold the concept of “promoting cooperation with kindness, conducting cooperation with morality, enhancing cooperation with integrity, and advocating cooperation with cooperation”. It should carry forward the spirit of Shanghai Cooperation Demonstration Zone of “dare to try, walk the talk without delay, and achieve good results in good ways”. It shall accelerate the implementation of the important achievements of the SCO Qingdao Summit, and thereby deeply integrate into the building of the Belt and Road Initiative. The short-term goal is to exchange and cooperate with relevant cities of the SCO member states, to make the demonstration zone a part of the SCO facing the Asia-Pacific market through the construction of regional logistics center, modern trade center, two-way investment cooperative center, and business travel & culture exchange and development center. Based on the above, a concentrated demonstration zone of exchange and cooperation with relevant cities of the SCO member states will be established. The mid- to long-term goal is striving to build the demonstration zone into an experimental area for innovation of two-way investment and trade system with relevant regions of SCO member states, a gathering area for founding and develop-
2.1.1 The PRC tax legislation

In China, the prevailing tax legislation consists of substantive tax laws and procedural tax law of administration and collection. The substantive tax laws of China include the following 18 types of taxes, among which direct and indirect taxes play important roles:

<table>
<thead>
<tr>
<th>Goods and services taxes (Indirect taxes)</th>
<th>Value-added tax, consumption tax, customs duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income taxes (Direct taxes)</td>
<td>Corporate income tax, individual income tax and land appreciation tax</td>
</tr>
<tr>
<td>Property and conduct taxes</td>
<td>Real estate tax, vehicle and vessel tax, stamp duty and deed tax</td>
</tr>
<tr>
<td>Resource tax and environmental protection tax</td>
<td>Resource tax, environmental protection tax, and urban land use tax</td>
</tr>
<tr>
<td>Specific purpose tax</td>
<td>City maintenance and construction tax, vehicle purchase tax, cultivated land occupation tax, tobacco tax, vehicle tonnage tax</td>
</tr>
</tbody>
</table>

Among the prevailing tax legislation, the following are issued and implemented in the form of laws: corporate income tax, individual income tax, vehicle and vessel tax, environmental protection tax, tobacco tax, vehicle tonnage tax, vehicle purchase tax, cultivated land occupation tax and resource tax; with the exception of these taxes, all other taxes are issued and implemented by the People's Republic of China (PRC) State Council in the form of provisional regulations with authorization of the National People's Congress. Together, these laws and regulations constitute China's substantive tax legislation.

In addition to the substantive tax law, the legal system applicable to tax collection and administration in China is stipulated separately for different in-charge authorities:

1. For taxes levied by the tax authorities, the "Tax Collection and Administration Law " issued by the Standing Committee of the National People's Congress and regulations on tax liabilities stipulated in each substantive tax law should prevail in terms of the collection and management;
2. For taxes levied by the Customs, the “PRC Customs Law” and “PRC Regulations on Import and Export Duties" should prevail in terms of the collection and management.

2.1.2 Administration and Collection

2.1.2.1 Organizational structure of PRC tax authorities

In 2018, in accordance with China's economic and social development, the organizational structure of taxation authorities has been reformed by merging the provincial and municipal local taxation bureaus. Currently the Directorate of Taxes is headed by State Taxation Administration ("STA") directly under the central government and constituted by local tax authorities at provincial, municipal and county levels, respectively. The local tax authorities are under dual leadership and management system of STA and the provincial government. In addition, the General Administration of Customs and its subordinate authorities are responsible for the collection and administration of customs duty, vessel tonnage tax, import and export related value-added tax (VAT) and consumption tax, and other taxes.
2.1.2.2 The division of tax collection & management

In China, the taxes are collected and administered by the taxation authorities and the Customs authorities, respectively.

(1) The directorate of tax, which is headed by State Taxation Administration, is responsible for the collection and administration of the following 16 taxes: value-added tax, consumption tax, vehicle purchase tax, corporate income tax, individual income tax, resource tax, urban land use tax, cultivated land occupation tax, land appreciation tax, real estate tax, vehicle and vessel tax, stamp duty, deed tax, urban maintenance and construction tax, environmental protection tax and tobacco tax.

(2) The Customs authority is responsible for the collection and management of customs duties, vessel tonnage tax, as well as the collection of import & export related value-added tax and consumption tax on behalf of tax authorities.

2.2 The PRC tax liabilities

Please note that the following only illustrates the major taxes in relation to the business activities of foreign invested enterprises. Given the complexity of tax regime, please refer to the relevant tax laws and regulations for details or consult professionals.

2.2.1 Corporate Income Tax (CIT)

2.2.1.1 Taxpayers and taxable scope

Taxpayers subject to corporate income tax shall be enterprises within the People's Republic of China and other organizations that derive income within the People's Republic of China (hereinafter referred to as "Enterprises") and shall pay corporate income tax in accordance with the provisions of Law of the People's Republic of China on Corporate Income Tax. This Law shall not apply to wholly individual proprietorship enterprises and partnership enterprises. For the purpose of this section, enterprises include both resident enterprises and non-resident enterprises:

<table>
<thead>
<tr>
<th>Taxpayer</th>
<th>Criteria for determination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident enterprises</td>
<td>Enterprises that are incorporated in China in accordance with the Chinese law</td>
</tr>
<tr>
<td>Non-resident enterprises</td>
<td>Enterprises that are incorporated under the law of a foreign country (region) with effective management in China</td>
</tr>
<tr>
<td></td>
<td>Enterprises that are incorporated under the law of a foreign country (region) with an establishment or place in China</td>
</tr>
<tr>
<td></td>
<td>Enterprises that are incorporated under the law of a foreign country (region) without an establishment or place in China, but with income derived from China</td>
</tr>
</tbody>
</table>
Income subject to CIT purpose includes operating income, other income and liquidation income, detailed as the following:

<table>
<thead>
<tr>
<th>Taxpayer</th>
<th>Taxable scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident enterprises</td>
<td>Income derived in and outside China</td>
</tr>
<tr>
<td>Non-resident enterprises</td>
<td>Income derived in and outside China</td>
</tr>
<tr>
<td>Enterprises that are incorporated under the law of a foreign country (region) with an establishment or place in China</td>
<td>China-sourced income and foreign-sourced income that is effectively connected with the establishment or place in China</td>
</tr>
<tr>
<td>income gained effectively connected with the establishment or place in China</td>
<td>China-sourced income</td>
</tr>
<tr>
<td>income gained not effectively connected with the establishment or place in China</td>
<td>China-sourced income</td>
</tr>
<tr>
<td>Enterprises that are incorporated under the law of a foreign country (region) without an establishment or place in China</td>
<td>China-sourced income</td>
</tr>
</tbody>
</table>

The above-mentioned income, shall be determined in accordance with the following principles of the sourced place:

<table>
<thead>
<tr>
<th>Type of income</th>
<th>Source principle</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income from the sale of goods</td>
<td>In terms of places where the sales activities take place</td>
</tr>
<tr>
<td>Income from provision of services</td>
<td>In terms of places where the provision of services take place</td>
</tr>
<tr>
<td>Income from property transfer</td>
<td>(1) For the income derived from transferring real estate properties, it shall be determined in terms of the location of the real estate property. (2) For the income derived from transferring the movable properties, it shall be determined in terms of the location of the enterprise/organization/place that transfer the movable properties. (3) In the event of transfer of the equity investment assets, it shall be determined in terms of the location of the transferred enterprise.</td>
</tr>
<tr>
<td>Income from equity investment such as dividend and bonuses</td>
<td>In terms of the location of the enterprise distributing the dividend and bonuses</td>
</tr>
<tr>
<td>Income from interest, rents and royalty fee</td>
<td>According to the location of the enterprise, organization or place bearing or paying such income, or in accordance with the domicile of the person who is to bear or pay the proceeds</td>
</tr>
<tr>
<td>Income from other sources</td>
<td>Subject to the regulations of the competent finance and taxation departments under the PRC State Council</td>
</tr>
</tbody>
</table>
2.2.1.2 Calculation of taxable income

(1) Computation of tax
Income Tax Payable = Taxable income × Applicable tax rate - Tax deductions - Tax credits
Taxable income = Gross income - Non-taxable income - Tax exempted income - deductions - Carried-forward tax losses

Tax rate

<table>
<thead>
<tr>
<th>Tax rate</th>
<th>Applicable enterprises</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard rate</td>
<td>25% (1) Resident enterprises</td>
</tr>
<tr>
<td>Preferential tax rate</td>
<td>20%</td>
</tr>
<tr>
<td>(1) High &amp; new technology enterprises (HNTE)</td>
<td>(2) Enterprises among the encouraged industries and established in western regions, Hengqin New Area, Pingtan comprehensive experimental area, Qianhai Shenzhen-Hong Kong modern service industry cooperation zone, Hainan Free Trade Port and the Lin-gang Special Area of the China (Shanghai) Pilot Free Trade Zone (SHPFTZ)</td>
</tr>
<tr>
<td>(3) Technologically Advanced Service Companies (TASC)</td>
<td></td>
</tr>
<tr>
<td>Withholding tax rate</td>
<td>10%</td>
</tr>
<tr>
<td>(2) Non-resident enterprises with an establishment or place in China while the income gained is not effectively connected with the establishment or place in China</td>
<td></td>
</tr>
<tr>
<td>(3) National encouraged key integrated circuit (IC) design and software enterprises</td>
<td></td>
</tr>
</tbody>
</table>

(2) Gross income
Income obtained by enterprises from various sources in monetary and non-monetary terms shall be the total income, including:
- income from sales of goods;
- income from provisions of services;
- income from transfer of property;
- income from equity investment such as dividends and bonuses;
- interest income;
- rental income;
- income from royalties;
- income from donations;
- income of other sources.

(3) Non-taxable income
Non-taxable income includes:
- competent government subsidy;
- administrative fees and government funds collected and included under governmental fiscal management in accordance with the law;
- other non-taxable income prescribed by the State Council.

(4) Tax-exempted income
The following income of enterprises is tax-exempted income:
- income from interests on state government bonds;
- income from equity investment income such as dividend and bonus between qualified resident enterprises;
- income from equity investment such as dividend and bonus that are obtained from resident enterprises by non-resident enterprises with establishments or places in China and have an actual relationship with such establishments or places;
- income of qualified non-profitable organizations.

(5) Tax deductions and credits
The tax deductions and credits are determined in accordance with the provisions of the Corporate Income Tax Law of the People's Republic of China on preferential tax treatments.
(6) Tax loss
Generally, the tax loss of an enterprise can be carried forward to offset its offset against its profits in future years for a maximum of five years.

(7) Deductions
Reasonable expenses that are actually incurred by an enterprise and are related to the income obtained by the enterprise, including costs, expenses, tax payments, losses and other expenditures are deductible in determining the taxable income of an enterprise.
The Corporate Income Tax Law and its implementation regulations provide detailed provisions on items that are non-deductible or subject to deduction limits, the depreciation of fixed assets and amortization of intangible assets, etc. Please refer to the relevant law and regulations for details.

2.2.1.3 Tax filing and payment

(1) Self-declaration
CIT shall be calculated for each tax year, and shall be prepaid on a monthly or quarterly basis. Enterprises shall submit a provisional CIT return to the tax authority within 15 days from the end of a month or quarter to make tax prepayment. Enterprises that submit the CIT returns shall enclose financial reports and other relevant information in accordance with provisions. Enterprises shall submit an annual CIT return to the tax authority within five months from the end of a year and make the settlement of the payable or refundable tax payment.

(2) Tax withheld at source
Non-resident enterprises with establishments or places in China that derive income not effectively connected with the said establishments or places, or non-residents without establishments or places in China but derive income sourced from China, shall be subject to source-based withholding of CIT in respect of their China-sourced income, with the payer being the withholding agent. The withholding agent shall submit a tax return of withholding CIT and complete the tax payment withheld within seven days from the day of withholding to the tax authority of the place where it is located. Source-based withholding formula:

\[
\text{Tax due for withholding of CIT} = \text{taxable income} \times \text{tax rate (10\%)}
\]

Please refer to the following computation of withholding taxable income.

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Applicable items</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross income (excluding VAT)</td>
<td>Dividends and bonuses, interest, rental income, royalty income, and guarantee fee</td>
</tr>
<tr>
<td>Balance between the income and accepted deductions</td>
<td>(1) Income from transfer of property: the balance of the gross income minus the net value of the property</td>
</tr>
<tr>
<td></td>
<td>(2) Income from financial leases: the balance of the entire rental income minus the price of the equipment</td>
</tr>
<tr>
<td></td>
<td>(3) Income from transfer of land use rights: the balance of the entire income minus the tax basis</td>
</tr>
<tr>
<td></td>
<td>(4) Transfer of equity: the balance of the entire income minus the equity's net value</td>
</tr>
</tbody>
</table>
Foreign investors may refer to the Announcement of the State Taxation Administration on Matters Concerning Withholding of Income Tax of Non-resident Enterprises at Source issued on October 17, 2017 (State Taxation Administration Announcement No. 37 of 2017) for specific matters such as the time of withholding obligation, foreign currency conversion, tax calculation method, in-charge tax authorities, and other specific matters related to withholding tax at source.

### 2.2.2 Individual Income Tax (IIT)

#### 2.2.2.1 Taxpayers and taxable scope

Taxpayers subject to individual income tax include Chinese citizens, individual investor of sole proprietorship enterprise, individual partner of partnership enterprises, as well as foreigners (include compatriots from Hong Kong, Macao and Taiwan). Please refer to the below table which summarizes the types of taxpayers and taxable scope.

<table>
<thead>
<tr>
<th>Taxpayer</th>
<th>Criteria for determination</th>
<th>Taxable scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident individuals (unlimited tax liabilities)</td>
<td>Individuals who have a domicile in China</td>
<td>Income derived from in and outside China</td>
</tr>
<tr>
<td></td>
<td>Individuals who do not have a domicile in China but have resided in China for an aggregate of 183 days or more within a single tax year</td>
<td></td>
</tr>
<tr>
<td>Non-resident Individuals (limited tax liabilities)</td>
<td>Individuals who do not have a domicile in China and have not resided in China</td>
<td>Income derived from China</td>
</tr>
<tr>
<td></td>
<td>Individuals who do not have a domicile in China but have resided in China for less than 183 days in aggregate within a tax year</td>
<td></td>
</tr>
</tbody>
</table>

The following income of an individual shall be subject to individual income tax:

<table>
<thead>
<tr>
<th>Combined taxation</th>
<th>Taxable income</th>
<th>Filing requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive taxation (applicable for resident individuals)</td>
<td>(1) Income from wages and salaries</td>
<td>Collected on a yearly basis. Withholding and prepayment on a monthly basis or based on each income item;</td>
</tr>
<tr>
<td></td>
<td>(2) Income from remuneration for personal services</td>
<td>Non-resident individuals: Withholding and prepayment on a monthly basis or based on each income item by the withholding agent</td>
</tr>
<tr>
<td></td>
<td>(3) Income from author's remuneration</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(4) Income from royalties</td>
<td></td>
</tr>
<tr>
<td>Categorical taxation (applicable for non-resident individuals)</td>
<td>(5) Income from business operation</td>
<td>Calculating and levying tax based on a yearly basis. Self-declaration and prepayment on a quarterly basis</td>
</tr>
<tr>
<td></td>
<td>(6) Income from lease of property</td>
<td>Calculating and levying tax based on a monthly basis by the withholding agent</td>
</tr>
<tr>
<td></td>
<td>(7) Income from interest, dividends and bonuses</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(8) Income from transfer of property</td>
<td>Calculating and levying tax based on each income item</td>
</tr>
<tr>
<td></td>
<td>(9) Incidental income</td>
<td></td>
</tr>
</tbody>
</table>

Under the combined taxation regime, foreign investors should classify the taxable income accurately to determine the applicable taxation method.
2.2.2.2 Calculation of taxable income

(1) Tax rate

<table>
<thead>
<tr>
<th>Type of rate</th>
<th>Type of income</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Progressive tax rates ranging from 3% to 45%</td>
<td>Consolidated income for resident individuals</td>
<td>For non-resident individuals, please refer to the table of CIT calculation rates and calculate CIT on a monthly basis</td>
</tr>
<tr>
<td>Progressive tax rates ranging from 5% to 35%</td>
<td>Income from business operation</td>
<td></td>
</tr>
<tr>
<td>Proportional tax rate of 20%</td>
<td>Income from lease of property</td>
<td>10% tax rate for personal rental housing</td>
</tr>
<tr>
<td>Progressive withholding rates ranging from 3% to 45%</td>
<td>Withholding and prepayment of resident individuals’ income from wages and salaries</td>
<td>Consistent with the applicable tax rates to the consolidated income of resident individuals</td>
</tr>
<tr>
<td>Progressive withholding rates</td>
<td>Withholding and prepayment of resident individuals’ income from remuneration for personal services</td>
<td></td>
</tr>
<tr>
<td>Proportional tax rate of 20%</td>
<td>Withholding and prepayment of resident individuals income from author’s remuneration</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Withholding and prepayment of resident individuals income from royalties</td>
<td></td>
</tr>
</tbody>
</table>
(2) The amount of taxable income

Taxable income, depending on the scope of taxation, is calculated as follows:

<table>
<thead>
<tr>
<th>Scope</th>
<th>Taxation methods</th>
<th>Computation of taxable income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income from wages and salaries</td>
<td>(1) Resident individuals: The consolidated income is collected on a yearly basis. Withholding and prepayment on a monthly basis or based on each income item; (2) Non-resident individuals: For income from wages and salaries: The monthly taxable income = Gross income - RMB 5,000 For income from remuneration for personal services and income from royalties: The monthly taxable income = Gross income × (1 - 20%) For income from author's remuneration: The monthly taxable income = Gross income × (1 - 20%) × 70%</td>
<td>Income from lease of property = Gross income - expense deduction of RMB 60,000 - special deductions - special additional deductions - other deductions specified under the law</td>
</tr>
<tr>
<td>Income from remuneration for personal services</td>
<td></td>
<td>Calculating and levying tax based on each income item</td>
</tr>
<tr>
<td>Income from author's remuneration</td>
<td>Withholding and prepayment on a monthly basis or based on each income item by the withholding agent</td>
<td>Income from transfer of property = The transfer proceeds - the original value of the property - any reasonable expenses</td>
</tr>
<tr>
<td>Income from royalties</td>
<td></td>
<td>Income from interest, dividends and bonuses</td>
</tr>
<tr>
<td>Income from business operation</td>
<td>Calculating and levying tax based on a yearly basis</td>
<td>Incidental income</td>
</tr>
</tbody>
</table>

Each income item which is not more than RMB 4,000:
The taxable income = Income - RMB 800

Each income item which is more than RMB 4,000:
The taxable income = Income × (1 - 20%)

Among them, Income = House rental income (excluded VAT) - Deduction items - Rental and VAT paid (sublease applicable) - Repair fees (limited to RMB 800 each time)

Income = House rental income (excluded VAT) - Deduction items - Rental and VAT paid (sublease applicable) - Repair fees (limited to RMB 800 each time)
China's individual income tax regime is a combination of comprehensive and categorical taxation. When calculating the taxable income from wages and salaries, income from remuneration for personal services, income from author's remuneration and income from royalties are paid according to the consolidated income, the formula is as follows:

The tax payable amount = The amount of taxable income × The corresponding seven levels of progressive tax rates - The corresponding sum of quick calculation deduction.

Tax payable of operating income = The amount of taxable income × The corresponding five levels of progressive tax rate – The corresponding sum of quick calculation deduction.

Other types of income tax payable = The amount of taxable income × The corresponding tax rate.

(1) Self-declaration and payment

Self-declaration is an approach to individual income tax filing and payment through which a taxpayer shall file the individual income tax return, truthfully filling in the taxable income items and amounts, to tax authorities within the payment period stipulated by tax laws and calculate the taxable income amount in accordance with tax laws and regulations and to pay the taxes accordingly.

Under any of the following circumstances, a taxpayer shall make tax declaration pursuant to the law:

- If the taxpayer derives consolidated income and needs to proceed final settlement and payment of tax;
- If the taxpayer derives taxable income but there is no withholding agent;
- If the taxpayer derives taxable income but the withholding agent does not withhold tax;
- If the taxpayer derives overseas income;
- If the taxpayer is to deregister his/her household registration in China for emigrating overseas;
- If a non-resident derives income from wages and salaries from two or more sources in China; or
- Any other circumstances stipulated by the State Council.

(2) Withholding and declaration of the individual income tax for all taxpayers and in full amount

As stipulated, a withholding agent shall, within 15 days of the next month after the taxes are held, report the basic information of the individuals with taxable incomes (hereinafter referred to as "individuals"), items and amounts of taxable incomes, amount of the withheld taxes and other tax-related information to the competent taxation authority. Specifically:

- When paying income from wages and salaries to a resident individual, a withholding agent shall calculate the withholding tax with the cumulative withholding method and withhold and declare tax monthly.
- When paying to a resident individual for remuneration of personal services, income from author's remuneration and income from royalties, the withholding agent shall withhold and prepay tax each time or monthly.
- Tax payable on income from wages and salaries, remuneration for personal services, author's remuneration, and royalties obtained by a non-resident individual shall be withheld and paid by the withholding agent, if any, on a monthly basis or based on each income item.

2.2.2.3 Tax filing and payment

(1) Self-declaration and payment

Self-declaration is an approach to individual income tax filing and payment through which a taxpayer shall file the individual income tax return, truthfully filling in the taxable income items and amounts, to tax authorities within the payment period stipulated by tax laws and calculate the taxable income amount in accordance with tax laws and regulations and to pay the taxes accordingly.

Under any of the following circumstances, a taxpayer shall make tax declaration pursuant to the law:

- If the taxpayer derives consolidated income and needs to proceed final settlement and payment of tax;
- If the taxpayer derives taxable income but there is no withholding agent;
- If the taxpayer derives taxable income but the withholding agent does not withhold tax;
- If the taxpayer derives overseas income;
- If the taxpayer is to deregister his/her household registration in China for emigrating overseas;
- If a non-resident derives income from wages and salaries from two or more sources in China; or
- Any other circumstances stipulated by the State Council.

(2) Withholding and declaration of the individual income tax for all taxpayers and in full amount

As stipulated, a withholding agent shall, within 15 days of the next month after the taxes are withheld, report the basic information of the individuals with taxable incomes (hereinafter referred to as "individuals"), items and amounts of taxable incomes, amount of the withheld taxes and other tax-related information to the competent taxation authority. Specifically:

- When paying income from wages and salaries to a resident individual, a withholding agent shall calculate the withholding tax with the cumulative withholding method and withhold and declare tax monthly.
- When paying to a resident individual for remuneration of personal services, income from author's remuneration and income from royalties, the withholding agent shall withhold and prepay tax each time or monthly.
- Tax payable on income from wages and salaries, remuneration for personal services, author's remuneration, and royalties obtained by a non-resident individual shall be withheld and paid by the withholding agent, if any, on a monthly basis or based on each income item.

2.2.3 Value-added Tax (VAT)

2.2.3.1 Taxpayers and taxable scope

Entities and individuals selling goods or importing goods to China, providing services of processing, repair and maintenance, selling services, intangible assets or real estates in China, shall be identified as taxpayers of value-added tax. VAT taxpayers are divided into general taxpayers and small-scale taxpayers. The threshold of a general taxpayer is that its annual taxable sales amount shall exceed RMB 5 million. Where a taxpayer whose annual taxable sales amount is below the prescribed threshold, it may also register as a general taxpayer after providing that it has sound accounting and auditing records and accurate taxation information.

The tax provisions for general taxpayers are listed below.
2.2.3.2 Calculation of taxable income

(1) Tax rate

The following table illustrates the VAT rates applicable to general taxpayers.

<table>
<thead>
<tr>
<th>Tax rate</th>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>13%</td>
<td>Selling goods or importing goods to China (Except where low and zero rates apply), providing taxable services of processing, repair and maintenance, providing leasing services of tangible property</td>
</tr>
<tr>
<td>9%</td>
<td>Providing transportation services, postal services, basic telecommunications services, construction services, real estate leasing services, sale of real estate, transfer of land use rights, selling or importing designated goods</td>
</tr>
<tr>
<td>6%</td>
<td>Providing value-added telecommunications services, financial services, modern services (except for leasing services), life services, sale of intangible assets (except for transfer of land use rights)</td>
</tr>
<tr>
<td>0%</td>
<td>Taxpayer exporting goods, cross-border sales of services and intangible assets within the scope of the State Council's regulations; Other zero rate policies</td>
</tr>
</tbody>
</table>

(2) Calculation of VAT payable

The calculation of the VAT payable is based on the deduction method, which is calculated as follows:

\[
\text{VAT payable} = \text{Output VAT} - \text{Input tax}
\]
2.2.3.3 Tax filing and payment
For taxable sales activities, the tax liability arises on the date on which the full payment is made, or the receipt of the payment is obtained. Should the invoice be issued in advance, the tax liability arises on the date when the invoice is issued. For imported goods, the tax liability arises on the date on which the import declaration is lodged. The tax liability for withholding VAT arises on the date on which the VAT taxable item takes place.

The Value-added Tax payment period:
(1) Fixed payment period: 1 day, 3 days, 5 days, 10 days, 15 days, 1 month or 1 quarter, respectively.
(2) Tax payment may be made on a transaction-by-transaction basis if a fixed period is not applicable.

Taxpayers applicable to tax filing period of one month or one quarter shall file a tax return and pay tax within 15 days upon the end of such period. Taxpayers who import goods shall pay tax within 15 days upon Customs issues the import VAT Payment Notice.

2.2.3.4 Invoice management system
In China, invoices are closely connected to tax filing and financial record management of taxpayers and subject to the stringent supervision by tax authorities. Enterprises should ensure proper invoice management to avoid unnecessary economic loss or even penalties.

(1) Invoice types should match with relevant business operations
- Special VAT invoice (Printed and electronic versions available)
- Ordinary VAT invoice (Printed and electronic versions available)
- Uniform invoice for the sales of motor vehicles,

(2) Purchase of invoice

Note: For intentional use of special VAT invoice for tax evasion/fraud where a crime is constituted, the tax authority shall, in accordance with the laws, recover such taxes and transfer the case to the judicial authority for investigation of criminal offenses.

- Taxpayers could apply Ukey, purchase tax control equipment from the competent tax authorities, and purchase printed or electronic blank invoices. For taxpayers who purchased electronic blank invoices, electronic seal is required. Only newly registered taxpayers could purchase electronic blank invoices.
- Taxpayers will determine the types, quantity and methods of invoices to be purchased based on the business scope and scale of the taxpayer. Competent tax authorities would examine and approve it in accordance with the relevant tax law and regulations.

(3) Issuance of invoice
- General taxpayers can issue special VAT invoices. Since February 1, 2020, a small-scale VAT taxpayer (excluding other individuals) may opt for issuance of a special VAT invoice.
- Invoices shall be accurately issued according to the prescribed time limit, sequence and columns simultaneously for all sheets and then be stamped with a special seal for invoices.
- Where certain invoices need to be cancelled due to purchase returns, red-inked invoices shall be issued as replacement in accordance with relevant provisions.

(4) Obtaining invoice
Where, during the period of pre-operation, an enterprise registered as a general taxpayer could obtain special VAT invoice and claim for credit at a later stage.
- Invoice recipients shall provide accurate information needed for issuance of invoice to the issuers, including name of enterprise, unified social credit code, etc.

(5) Invoice verification and credit
Where general VAT taxpayers obtain special VAT invoices, customs import special VAT payment receipt, uniform invoices for the sale of motor vehicles, electronic ordinary VAT invoices for tolls on toll roads issued on or after January 1, 2017, taxpayers shall confirm the use of the above-mentioned tax invoices/vouchers information through the integrated service platform for VAT invoices when performing VAT filings.

(6) Storage and disposal of invoice
- Invoices should be kept in accordance with relevant regulations for 5 years, and then be destroyed upon obtaining approval from competent tax authorities.
In China, invoices are closely connected to tax filing and financial record management of taxpayers and subject to the stringent supervision by tax authorities. Enterprises should ensure proper invoice management to avoid unnecessary economic loss or even penalties.

2.2.4 Consumption Tax

2.2.4.1 Taxpayers and taxable scope

Consumption Tax is an important means to implement China's consumption policy and guide the consumption structure and thus the industrial structure. Any institution and individual that produce, entrust the processing of or import the consumer goods specified in the regulations shall be taxpayers of Consumption Tax. The taxpayer of Consumption Tax in the process of entrusted processing is the entrusting party, and the withholding agent is the entrusted party. The consumption tax liability basically arises in three processes, which is production, entrusted processing and import.

The taxable scope of the consumption tax is determined by two elements: one is that the goods must be taxable consumer goods and the other is that the consumption tax is collected at the designated process. Only when the two conditions are met simultaneously can consumption tax be levied.

At present, there are 15 categories of taxable consumer goods in China, including:

- Cigarettes: including cigarettes, cigar, and cut tobacco
- Liquor: including liquor, yellow wine, beer and other alcoholic drinks
- High-grade cosmetics
- Valuable jewelry and gem and jade
- Firecrackers and fireworks
- Processed oil
- Motorcycle
- Car
- Golf ball and its equipment
- High-grade wristwatch
- Pleasure boat
- Throwaway wooden chopsticks
- Wooden floor
- Batteries
- Coatings

The taxable processes of the above taxable consumer goods are as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Production and sales, entrusted processing or importation process</th>
<th>Wholesale process</th>
<th>Retail process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gold, silver and platinum diamonds jewelry</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Ultra-luxury car</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Cigarettes</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Other taxable consumer goods</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2.2.4.2 Calculation of taxable income
The consumption tax shall be computed based on the goods’ value, volume or the combination of the value and volume (hereinafter referred to as the “compound tax”) in accordance with the following formula:

Ad valorem tax payable = Sales amount × Pro rata rate
Specific tax payable = Sales volume × Flat rate
Compound tax payable = Sales amount × Pro rata rate + Sales volume × Flat rate

The term "sales amount" refers to the total consideration and other charges receivable from the buyer for the taxable consumer goods sold by the taxpayer (e.g., penalties, late fees, damages, interest on deferred payment, packaging fees, rentals of packaging, unloading charges, etc.). The general provisions on tax rates are set out below:

<table>
<thead>
<tr>
<th>Type of tax rate</th>
<th>Corresponding taxable item</th>
<th>Tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pro rata rate</td>
<td>Cigar</td>
<td>36%</td>
</tr>
<tr>
<td></td>
<td>cut tobacco</td>
<td>30%</td>
</tr>
<tr>
<td></td>
<td>other alcoholic drinks</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>High-grade cosmetics</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td>Valuable jewelry and gem and jade</td>
<td>5%, 10%</td>
</tr>
<tr>
<td></td>
<td>Firecrackers and fireworks</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td>Car</td>
<td>1%-40%</td>
</tr>
<tr>
<td></td>
<td>Motorcycle</td>
<td>3%, 10%</td>
</tr>
<tr>
<td></td>
<td>Golf ball and its equipment</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>High-grade wristwatch</td>
<td>20%</td>
</tr>
<tr>
<td></td>
<td>Pleasure boat</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>Throwaway wooden chopsticks</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td>Wooden floor</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td>Batteries</td>
<td>4%</td>
</tr>
<tr>
<td></td>
<td>Coatings</td>
<td>4%</td>
</tr>
</tbody>
</table>
### Flat rate

<table>
<thead>
<tr>
<th>Goods</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beer</td>
<td>220 yuan/ton, 250 yuan/ton</td>
</tr>
<tr>
<td>Yellow wine</td>
<td>240 yuan/ton</td>
</tr>
<tr>
<td>Processed oil</td>
<td>1.2 yuan/liter, 1.52 yuan/liter</td>
</tr>
</tbody>
</table>

### Compound rate

<table>
<thead>
<tr>
<th>Goods</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cigarettes</td>
<td>Combination of the pro rata rate and flat-rate tax rate. For retail trade, the pro rata rate are 36% and 56%, respectively, corresponding to flat tax rates 0.003 yuan/Cigarette and 0.003 yuan/Cigarette. For wholesale trade, the pro rata rate is 11%, and the corresponding flat tax rate is 0.005 yuan/Cigarette.</td>
</tr>
<tr>
<td>Liquor</td>
<td>20%+0.5 yuan/500g</td>
</tr>
</tbody>
</table>

With regard to taxable consumer goods continuously produced with the taxed consumer goods purchased externally or processed on a commission basis, the buying price of the taxed consumer goods for external purchase, or the withheld consumption tax collected and paid on a commission basis for the taxed consumer goods may be deducted when consumption tax is calculated and levied.

### 2.2.4.3 Tax filing and payment

The tax filing due date is similar with that of VAT. The place of tax filing should be determined as follows:

- Taxpayers selling taxable consumer goods or producing taxable consume goods for self-use shall file the tax return and pay tax to the competent tax authorities at the place where the taxpayers' institutions or residences are located, unless otherwise provided by the competent public finance and tax departments under the State Council.
- As for taxable consumer goods sub-contracted for processing, the consumption tax shall be paid to the local competent tax authorities at the place where the sub-contractors are located. In particular, if the sub-contractor is a natural person, the consumption tax shall be paid by the commissioning party to their local competent tax authorities at the place where the commissioning party are located.
- For imported taxable consumer goods, the tax shall be reported and paid to the customs at the place where the imports are declared.
- Where taxpayers sell in other county (or city) or appoint agent to sell in other county (or city) self-produced taxable consumer goods, the taxpayers shall pay consumption tax to the tax authorities in the place where the taxpayer is located or resided after the taxable consumer goods are sold.
- If taxable consumer goods sold by taxpayers are returned by buyers due to quality and other reasons, the amount of consumption tax paid may be refunded upon approval by local competent tax authorities.
- Where, after tax exemption for direct exported taxable consumer goods has been completed by taxpayers, rejection by customs occurs and exported goods are returned from overseas, and if tax exemption is granted at the time of importation, the taxpayers may defer to pay back the tax upon approval by the local competent tax authorities and pay back Consumption Tax to the local competent tax authorities when the goods are transferred for domestic sale.
2.2.5 Customs Duty

2.2.5.1 Taxpayers and taxable scope
The consignees of imported goods, the consignors of exported goods and the owners of entry articles are obligatory customs duty payers. Customs duty are payable on imported or exported goods and articles.

2.2.5.2 Calculation of taxable income
The import and export duties may be levied by ad valorem or by quantity or by any other means as provided by the State.

<table>
<thead>
<tr>
<th>Calculation method</th>
<th>Payable Duties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Levied by ad valorem method</td>
<td>Quantity of Goods × Unit Dutiable Value × Tariff Rate</td>
</tr>
<tr>
<td>Levied by quantity</td>
<td>Quantity of Goods × Unit Duty Value</td>
</tr>
<tr>
<td>The combined levy method</td>
<td>(Dutiable Value × Tariff Rate) + (Quantity of Goods × Unit Duty Value)</td>
</tr>
<tr>
<td>Sliding Duty</td>
<td>Quantity of Goods × Unit Dutiable Value × Sliding Duty Rate</td>
</tr>
</tbody>
</table>

(1) Tariff rates
Since January 1, 2002, China’s import tariffs have included Most-favored Nation rates, agreement rates, preferential rates, ordinary rates, quota rates, etc. Temporary duty rates may be applied to imported goods for a temporary period. Some export goods are subject to export tax rates, which, like the import tax rates regulated in the provisions, are preferentially applied to the provisional export tax rates specified in the export tariff.

(2) Determination of dutiable value
Customs Law stipulates that the dutiable value for imported goods shall be reviewed and determined by the Customs on the basis of its transaction price, and the freight and related expense.

Where the transaction value of the import goods does not meet the requirements of certain provisions, or the transaction value is unable to be determined, Customs shall assess the dutiable value of the goods according to the following method in sequential order:
(1) Appraisal method for the transaction value of identical goods;
(2) Appraisal method for the transaction value of similar goods;
(3) Deductive method;
(4) Computed method;
(5) Method reasonably adjusted to circumstances. Assess and determine the duty-paid value based on objective and quantitative data and materials.
### 2.2.5.3 Tax filing and payment

<table>
<thead>
<tr>
<th>Administrative measures</th>
<th>Content</th>
</tr>
</thead>
</table>
| **Tax payment**         | 1. Filing due date: An obligatory duty payer of imported goods shall, within 14 days as of the day when the means of carriage declares for entry, submit a declaration to the customs office of the place of entry. An obligatory duty payer of export goods shall, unless approved otherwise by the customs office, submit a declaration to the customs office of the place of exit after the goods are delivered at the administrative area of customs 24 hours prior to the loading of goods.  
2. Tax payment period: An obligatory duty payer shall pay the duties in the designated bank within 15 days as of the day when customs issues a duty payment notice. |
| **Enforcement measure** | 1. Late payment penalty  
Amount of late payment penalty = the amount of tax in arrears × rate of late payment penalty (0.05%) × days of late payment  
2. Enforcement  
If a taxpayer that imports or exports goods or the guarantor thereof fails to pay the tax after three months upon the expiration of the stipulated tax payment period, the customs may, upon the approval of the director of customs office directly under the General Administration of Customs or the director of customs office at the lower level authorized thereby, take compulsory measures including withholding the tax from the deposit of the taxpayer, selling off the taxable goods to offset the tax. |

- **Tax refund**  
In case of any of the following circumstances, the applicant may, within 1 year from the date of payment of duty, apply to the customs for a tax refund with a written statement of reasons and the original tax payment receipt, and add the interest calculated from the interest rate on current deposits of banks for the same period:  
(1) Goods for which import duties have been paid are transported out of the territory without changing state due to quality or specification problems;  
(2) Goods for which export duties have been paid are transported into the territory without change due to quality or specification problems, and the domestic taxes refunded for export have been paid;  
(3) Goods for which export duties have been paid are not shipped for export for some reason, the goods shall be declared for customs withdrawal.  

- **Tax collection and recovery**  
(1) Tariff collection, which is not caused by the taxpayer's violation of customs regulations, is short or not levied, and the period of duty levying shall be within 1 year from the date of duty payment or the release of goods or articles;  
(2) Tariff recovery, which is caused by the taxpayer's violation of customs regulations, shall be levied within 3 years from the date of payment of duties or release of goods or articles, and a late fine of 0.05% shall be levied.  

- **Tax dispute**  
In case of a dispute, the taxpayer may apply to the customs for reconsideration, but at the same time, the customs duty shall be paid within the prescribed time limit on the basis of the amount of tax approved by the customs.
2.2.6 Other taxes and surcharges

2.2.6.1 Other taxes

(1) Urban maintenance and construction tax
Entities and individuals subject to VAT and consumption tax are urban maintenance and construction taxpayers. Urban maintenance and construction tax are separately and contemporaneously paid with VAT and consumption tax. Based on the actual consumption tax and VAT paid by the taxpayer, there are three levels of tax rates:

<table>
<thead>
<tr>
<th>Level</th>
<th>Location</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Urban area</td>
<td>7%</td>
</tr>
<tr>
<td>2</td>
<td>County or town</td>
<td>5%</td>
</tr>
<tr>
<td>3</td>
<td>Areas other than the urban area, county or towns</td>
<td>1%</td>
</tr>
</tbody>
</table>

Tax payable = (VAT payable + Consumption tax payable) × the applicable tax rate

(2) Stamp duty
The dutiable objects are vouchers in economic activities and economic intercourses. All entities and individuals who execute, use or receive the dutiable vouchers specified by relevant regulations within the territory of China are liable for stamp duty. Where the same voucher is executed by two or more parties and each party holds a copy, each party shall be responsible for affixing on its own copy the full amount of tax stamp.

The transferor in a share transfer document executed for trading, inheriting or donating preferred stocks via the Shanghai Stock Exchange, the Shenzhen Stock Exchange or the National Equities Exchange and Quotations shall calculate and pay the stamp duty for the trading of securities (shares) at 1‰ of the actual transaction value at the time of document establishment.

A flat tax rate consists of 4 levels based on different dutiable vouchers or fixed amount per document applies:

<table>
<thead>
<tr>
<th>Type</th>
<th>Taxable voucher</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flat rate</td>
<td>Loan contract;</td>
<td>0.05‰</td>
</tr>
<tr>
<td></td>
<td>Purchase and sale contract, Construction and installation contract, The technology contract;</td>
<td>0.3‰</td>
</tr>
</tbody>
</table>
Chapter 2 The PRC Tax Regime

(3) Real estate tax
Real estate shall be the taxation object. The scope of real estate tax shall cover real estate in cities, counties, administrative towns and industrial and mining districts, not including rural area. Taxpayers of real estate tax shall be the owners of real estate.

Real estate tax adopts two ad valorem methods based on property residual value and rental income:

<table>
<thead>
<tr>
<th>Method</th>
<th>Tax base</th>
<th>Rate</th>
<th>Calculation formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property residual value</td>
<td>Property residual value refers to the value after a subtraction of 10 to 30% from the original value of the property.</td>
<td>1.20%</td>
<td>Tax payable = original taxable property value × (1-deduction ratio) × 1.2%</td>
</tr>
<tr>
<td>Industrial underground buildings</td>
<td>The residual value shall be calculated based on 50 to 60% of the original price</td>
<td>1.20%</td>
<td>Tax payable = original taxable property value × (percentage ranging from 50 to 60%) × (1-deduction ratio) × 1.2%</td>
</tr>
</tbody>
</table>

Tax payable = tax base × flat rate
Tax payable = the number of taxable vouchers × fixed amount per document (RMB5)

There are three methods of tax payment: self-stamping, collective stamping or payment and delegated collection. Tax stamp shall be affixed to the taxable document at the time the document is executed or when it is received.
Real estate tax shall be calculated annually and paid by installments. The payment deadline shall be determined by the respective government at province, autonomous region or municipality directly under the Central Government.

<table>
<thead>
<tr>
<th>Commercial and other underground buildings</th>
<th>The residual value shall be calculated based on 70 to 80% of the original price</th>
<th>1.20%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax payable = original taxable property value × (percentage ranging from 70 to 80%) × (1-deduction ratio) × 1.2%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Rental income | Housing rent | 12% (4% for individual) | Tax payable = rental income × 12% (4% for individual)

Real estate tax shall be calculated annually and paid by installments. The payment deadline shall be determined by the respective government at province, autonomous region or municipality directly under the Central Government.

(4) Urban land use tax
The actual occupied area of the land shall be the taxation object. Urban land use tax shall be levied in cities, counties, administrative towns and industrial and mining districts, not including rural area. Taxpayers shall be the entities and individuals, including foreign invested enterprises and other foreign institutions located in China that use the said taxable areas. Urban land use tax shall be calculated based on the actual occupied area of the land. The tax adopts graded tax amount system. Annual tax payable = actual taxable land area occupied (square meters) × applicable tax rate. Urban land use tax shall be calculated annually and paid by installments to the competent tax authority where the land is located.

(5) Land appreciation tax
Taxpayers of land appreciation tax shall be the entities and individuals that transfer the right to use state-owned land, above-ground structures and their attached facilities within the territory of China with income from such transfer. Land appreciation tax shall be calculated based on the increased value (the balance of subtracting the sum of deductions prescribed in relevant laws and regulations from the income derived from the transfer of real estate) received by the taxpayer from the transfer of real estate at the corresponding tax rate.

<table>
<thead>
<tr>
<th>Taxable scope</th>
<th>Not subject to taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Transfer of State land use rights, in forms of sale, exchange and gift; 2. The buildings on the ground and their attachments are transferred together with the State land use rights; 3. Purchase and sale of stock real estate.</td>
<td>1. Excluding concessions of State-owned land use rights; 2. Excluding non-transfer of land use rights, property titles, such as the lease of real estates.</td>
</tr>
</tbody>
</table>
Taxable amount = increased value × applicable tax rate – amount of deductible items × actuarial deduction factor

There are four levels of excess progressive tax rate.

The place of tax payment is the same as the competent tax authority where the property is located.

(6) Deed tax

Deed tax is a property tax levied on the transfer of land and house ownership in the People's Republic of China. Entities and individuals that are transferees of the land and the house within the territory are obligated to pay deed tax. The said entities refer to domestic and foreign enterprises, institutions, state agencies, military units and social organizations. The said individuals refer to Chinese citizens and foreign nationals.

Deed tax shall be calculated based on the price of the real estate and the applicable tax rate is 3%-5%.

The taxpayer's tax obligation occurs on the day when the contract for the transfer of ownership of land or housing is signed or on the day when the taxpayer obtains other documents of the nature of the contract for the transfer of right or ownership of land or housing. The taxpayer shall file a tax return at the tax office where the land or house is located within 10 days from the date when the tax obligation arises.

(7) Vehicle purchase tax

Vehicle purchase tax is a tax levied on units and individuals who purchase taxable vehicles within the territory of the People's Republic of China. The vehicle purchase tax is levied in a lump sum. No vehicle purchase tax shall be levied on the purchase of vehicles for which the vehicle purchase tax has been paid.

Units and individuals within the territory of the People's Republic of China who purchase automobiles, trams, automobile trailers and motorcycles with an exhaust capacity exceeding 150 milliliters (hereinafter referred to as "taxable vehicles") shall be taxpayers of vehicle purchase tax. Purchasing refers to the act of acquiring and using taxable vehicles by purchasing, importing, self-producing, receiving gifts, winning awards or other means.

The scope of taxable vehicles includes automobiles, trams, automobile trailers and motorcycles with an exhaust capacity of more than 150 milliliters. The tax rate of vehicle purchase tax is 10%. The amount of tax payable for vehicle purchase tax shall be calculated by multiplying the taxable price of the taxable vehicle by the tax rate. Taxpayers shall pay vehicle purchase tax before completing vehicle registration with the traffic administrative department of the public security organ. Taxpayers who purchase taxable vehicles shall file and pay vehicle purchase tax to the competent tax authorities in the place where the vehicles are registered. If a taxpayer purchases a taxable vehicle that does not require vehicle registration, it shall report and pay vehicle purchase tax to the competent tax authorities where the taxpayer is located. Vehicle and vessel tax is a tax levied on the owner or administrator of a vehicle or ship in the PRC. In the territory of the PRC, the owner or administrator of a vehicle or ship is an obligated taxpayer of the Vehicle and vessel tax. Vehicle tax is levied at different rates depending on the size of the vehicle or ship.

Taxable amount of vehicle tax = [taxable unit × standard tax ÷ 12] × (12 - time of tax obligation (month of acquisition) ÷ 1)

The tax liability for the vehicle is incurred in the month in which the title or management is transferred. The place of taxation for taxable vehicles is the place of the vehicle's registration. The taxable price of the taxable vehicle shall be declared and paid on a quarterly basis. The tax obligation arises on the date on which the taxpayer emits atmospheric pollutants, water pollutants is the place of emission, and the place of taxation for taxable resources is the place where the mineral is mined or where the salt is produced.

(8) Resource tax and Environmental protection tax

The taxpayers of resource tax are the entities and individuals who exploit the taxable mineral resources or produce salt in the territory of the People's Republic of China, including the sea areas under its jurisdiction.

The resource tax is calculated based on sales or volumes of taxable products, either at a fixed rate or at a fixed amount. If a resource taxpayer pays tax monthly or quarterly, the taxpayer must file a tax return within 15 days from the end of the filing period; if the tax cannot be calculated according to a fixed rate within a fixed period, the tax can be declared and paid by occurrence. The place of taxation is where the taxable pollutant is emitted.
15 days from the end of the filing period; if the tax cannot be calculated according to a fixed period, the tax can be declared and paid by occurrence. The place of taxation is where the mineral is mined or where the salt is produced.

Environmental protection tax is a tax levied on enterprises, institutions and other production operators that directly emit taxable pollutants into the environment in the Chinese territory and other sea areas within the jurisdiction.

The environmental protection tax covers four main categories: air pollutants, water pollutants, solid waste and noise, levied at a flat rate.

The environmental protection tax shall be calculated monthly, while the tax shall be declared and paid on a quarterly basis. The tax obligation arises on the date on which the taxpayer emits the taxable pollutant. The tax is payable within 15 days after the end of the quarter. If the tax cannot be paid within a fixed period, it can be paid by occurrence; the tax is payable within 15 days of the date on which the tax obligation is incurred. The place of taxation for taxable atmospheric pollutants, water pollutants is the place of emission, and the place of taxation for taxable solid waste, noise is the place of waste, noise generation.

(9) Cultivated land occupation tax

The cultivated land occupation tax is a tax levied from entities and individuals who occupy cultivated land to build houses or engage in other non-agricultural construction, on the area of cultivated land they occupy, and it is a tax on the occupation of specific land resources. The taxpayers who are obliged to pay taxes on the occupation of cultivated land are the entities and individuals who occupy the cultivated land for the construction of buildings and structures or for non-agricultural construction. The tax is levied on state-owned and collectively-owned cultivated land occupied by the taxpayer for the construction of buildings or structures or for non-agricultural construction.

The tax on the occupation of cultivated land is fixed at different rates according to the region: RMB 5 to 50 yuan per square meter.

The cultivated land occupation tax is calculated based on the area of cultivated land occupied by the taxpayer and is levied in accordance with the prescribed applicable tax amount.
At present, the social insurance contributions for 2021 in Qingdao are based on the following:

<table>
<thead>
<tr>
<th>Type</th>
<th>Entity contribution rate</th>
<th>Individual contribution rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension insurance</td>
<td>16%</td>
<td>8%</td>
</tr>
<tr>
<td>Medical insurance</td>
<td>9.5%</td>
<td>2%</td>
</tr>
<tr>
<td>Unemployment insurance</td>
<td>0.7%</td>
<td>0.3% (Migrant workers do not pay)</td>
</tr>
<tr>
<td>Work injury insurance</td>
<td>Eight rates based on the industry types: 0.05%, 0.1%, 0.18%, 0.23%, 0.28%, 0.33%, 0.4%, 0.48%</td>
<td></td>
</tr>
</tbody>
</table>

With effect from 1 January 2020, maternity insurance and employees’ medical insurance are unified, and the maternity insurance fund is merged into the employees’ medical insurance fund, and maternity insurance premiums are no longer collected separately.

(2) Education surcharges and local education surcharges

<table>
<thead>
<tr>
<th>Tax items</th>
<th>Taxation objects and taxpayers</th>
<th>Computation of tax payable</th>
<th>Computation of tax payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Educational surcharges and local educational surcharges</td>
<td>Entities and individuals who are liable or payment of VAT and consumption tax.</td>
<td>Educational surcharges are calculated on the amount of VAT and consumption tax paid by the taxpayer. The rates of educational surcharge and local educational surcharge are 3% and 2%, respectively.</td>
<td>The surcharges shall be paid simultaneously with VAT and consumption tax.</td>
</tr>
<tr>
<td>Cultural development fees</td>
<td>Entities who provide advertising services, entities and individuals who provide entertainment services.</td>
<td>The amount payable by taxpayers shall be calculated based on the sales proceeds (including total price and other charges) from the provision of advertising or entertainment services at a rate of 3%.</td>
<td>The cultural development fees shall be collected simultaneously with VAT by the STA.</td>
</tr>
</tbody>
</table>
2.3 Introduction of tax incentives

2.3.1 Incentives for supporting the development of high and new technology enterprises, science and technology innovative industry

<table>
<thead>
<tr>
<th>Type of tax</th>
<th>Tax incentives</th>
<th>Policy basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIT</td>
<td>A reduced CIT rate of 15% for recognized high and new technology enterprises (HNTE).</td>
<td>CIT Law</td>
</tr>
</tbody>
</table>

For the advanced technology service enterprises recognized, the CIT is levied at a reduced tax rate of 15%. The part of employee education expenses of the advanced technology service enterprises recognized not exceeding 8% of total wages and salaries is allowed to be deducted during the calculation of taxable income; and the part exceeding 8% is allowed to be carried forward and deducted in subsequent tax years. (According to Caishui [2018] No. 51, the implementation scope was extended to all enterprises since 1 January, 2018.)

2.3.2 Incentives for encouraging technology transfer, technology development

<table>
<thead>
<tr>
<th>Type of tax</th>
<th>Tax incentives</th>
<th>Policy basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIT</td>
<td>As of October 1, 2015, the income derived by a resident enterprise in China from a transfer of technology, namely transfer of a non-exclusive license with a term of five years or more, shall be eligible for the CIT incentives. The part of the annual income from transfer of technology derived by a resident enterprise within RMB 5 million shall be tax-exempt; and the remainder shall be subject to a 50% reduction in the CIT rate.</td>
<td>CIT Law Caishui [2015] No.116</td>
</tr>
<tr>
<td>Type of tax</td>
<td>Tax incentives</td>
<td>Policy basis</td>
</tr>
<tr>
<td>------------</td>
<td>----------------</td>
<td>--------------</td>
</tr>
<tr>
<td>CIT</td>
<td>Bonus deduction of the research and development expenses (R&amp;D expenses): Where the research and development expenses that are actually incurred in the research and development activities of enterprises and do not constitute intangible assets recorded into the current profit or loss, such expenses shall be deducted from the taxable income for the current year at 50% of the actual amount incurred in the current year and on an actual basis as required; if intangible assets are constituted, such expenses shall be amortized at 150% of the costs of the intangible assets before tax. The bonus deduction limit has been enlarged from 50% to 75% during the period from 1 January 2018 to 31 December 2020. The implementation period of the above-mentioned regulation has been extended to 31 December 2023 according to MOF/STA PN [2021] No. 6. From 1 January 2021, manufacturing enterprises are allowed to claim a 200% super deduction on eligible R&amp;D expenses actually incurred in the course of R&amp;D activities for CIT purposes. Alternatively, if R&amp;D expenses incurred are capitalized as intangible assets, such enterprises are allowed to amortize the intangible assets based on 200% of the actual costs incurred.</td>
<td>Caishui [2015] No.119 Caishui [2018] No.99 MOF/STA PN [2021] No. 6 MOF/STA [2021] No. 13</td>
</tr>
<tr>
<td>VAT</td>
<td>Technology transfer, R&amp;D and the related technology consulting and technical services provided by taxpayers shall be exempt from VAT. The imported instruments and equipment to be directly used in scientific research, experiments and teaching shall be exempt from VAT. During the period between January 1, 2019 and December 31, 2021, for national level and provincial level incubators of technology firms, university science parks, and coworking spaces registered with the State for records, real estate and land used by themselves, or provided by them to incubated entities free of charge, through leasing or by other means, will be exempt from real estate tax and urban land use tax; and the income derived from their incubation services offered to incubated entities will be exempt from value-added tax. For the purposes of this Circular, incubation services refer to the services of agency, operating lease, research and development (R&amp;D) and technology, information technology, certification and consulting provided to the incubated entities.</td>
<td>Caishui [2016] No.36 Provisional Value-added tax Regulations of the PRC Caishui [2018] No.120</td>
</tr>
</tbody>
</table>
2.3.3 Incentives for supporting the development of the integrated circuit and software industries

<table>
<thead>
<tr>
<th>Type of tax</th>
<th>Tax incentives</th>
<th>Policy basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIT</td>
<td>Encouraged IC manufacturing enterprises or projects producing products with IC line width equal to or less than 28nm with an operation period of 15 years or above can be granted with a ten-year CIT exemption. Encouraged IC manufacturing enterprises or projects producing products with IC line width equal to or less than 65nm with an operation period of 15 years or above can be granted with a “five-year exemption and another five-year half reduction tax holiday”. Encouraged IC manufacturing enterprises or projects producing products with IC line width equal to or less than 130nm with an operation period of 10 years or above can be granted with a “two plus three tax holiday”. Once an enterprise is included in the list of encouraged IC manufacturing enterprises producing products with IC line width equal to or less than 130nm, its losses incurred within the previous five years may be carried forward for a period of extra five years. The total period should not be longer than 10 years. Encouraged IC enterprises engaging in design, encapsulation, special purpose materials, testing and software enterprises are entitled to a “two plus three tax holiday” from their first profit making year. Encouraged key IC design and software enterprises can be granted with a five-year CIT exemption plus a reduced CIT rate of 10% for the years following from their first profit making year.</td>
<td>Caishui [2012] No.27 Caishui [2016] No.49 Caishui [2018] No.27 MOF/STA/N-DRC/MIIT PN [2020] No. 45</td>
</tr>
<tr>
<td>VAT</td>
<td>From May 1, 2018 to December 31, 2020, after the animation software developed and produced on its own by an animation enterprise that is a general VAT payer has been taxed for the VAT purpose at the rate of 16 percent, the portion of actual VAT burden in excess of 3 percent may be rebated immediately upon the payment. If general VAT taxpayers sell software products developed and produced by themselves, VAT shall be collected at a tax rate of 13% and the refund-upon-collection policy shall be applied to the part of VAT payable in excess of 3% of their actual tax burden.</td>
<td>Caishui [2011] No.100 Caishui [2018] No.38 Announcement of the Ministry of Finance, the State Taxation Administration and the General Administration of Customs [2019] No.39</td>
</tr>
</tbody>
</table>

The amount of VAT refunded immediately upon payment received by eligible software enterprises under the Circular of Ministry of Finance and State Taxation Administration on the VAT Policy on Software Products (Caishui [2011] No.100) shall be exclusively used by the enterprises for R&D and extended production of software products and be subject to separate accounting, and may be treated as non-taxable income to be deducted from the total income when calculating the taxable income.

Employee training expenses of integrated circuit design enterprises and eligible software enterprises shall be subject to separate accounting and be deducted as actually incurred when calculating the taxable income.

Software purchased externally by enterprises that meets the conditions of being recognized as fixed assets or intangible assets may be account-ed as fixed assets or intangible assets, and the depreciation or amortization of such software may be appropriately shortened down to a minimum of two years.

The depreciation period of the manufacturing equipment of integrated circuit manufacturers may be appropriately shortened down to a minimum of three years.

Employee training expenses of integrated circuit design enterprises and eligible software enterprises are entitled to a “two plus three tax holiday” from their first profit making year.
2.3.4 Incentives for supporting the development of manufacturing industries

<table>
<thead>
<tr>
<th>Type of tax</th>
<th>Tax incentives</th>
<th>Policy basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIT</td>
<td>For new purchases of fixed assets (including self-built) by all manufacturing enterprises, shorter depreciation periods or accelerated depreciation are permitted.</td>
<td>Caishui [2014] No.75</td>
</tr>
<tr>
<td></td>
<td>Enterprises are allowed to count on a lump-sum basis the costs of equipment and appliances that are newly bought between January 1, 2018 and December 31, 2020, into the costs and expenditures of the current period, and deduct such costs in full when the taxable income is calculated, provided that the unit value of such equipment and applicants is not exceeding RMB 5 million; and such costs will no longer be depreciated within certain years.</td>
<td>Caishui [2015] No.106</td>
</tr>
<tr>
<td></td>
<td>The implementation period of the above-mentioned regulation has been extended to 31 December 2023 according to MOF/STA PN [2021] No. 6. From 1 January 2021, manufacturing enterprises are allowed to claim a 200% super deduction on eligible R&amp;D expenses actually incurred in the course of R&amp;D activities for Corporate Income Tax (CIT) purposes. Alternatively, if R&amp;D expenses incurred are capitalized as intangible assets, such enterprises are allowed to amortize the intangible assets based on 200% of the actual costs incurred.</td>
<td>Caishui [2018] No.54 Announcement of the State Taxation Administration [2014] No.64 Announcement of the State Taxation Administration [2015] No.68 Announcement of the Ministry of Finance and State Taxation Administration [2019] No. 66 MOF/STA PN [2021] No. 6 MOF/STA [2021] No. 13</td>
</tr>
</tbody>
</table>

With a view to supporting the development of the aircraft maintenance industry, the tax authorities shall implement the policy of refunding upon collection as to the part exceeding 6% of the actually paid value-added tax on aircraft maintenance service. Since June 1, 2019, some advanced manufacturing taxpayers who meet the following conditions simultaneously may apply to the competent tax authorities for a refund of incremental VAT credit from July 2019 and subsequent tax declaration periods:

1. the incremental VAT credit is greater than zero;
2. the tax credit rating is Class A or B;
3. the taxpayer has not committed tax fraud, export refund fraud or issuance of false special VAT invoices within 36 months prior to its application for a VAT credit refund;
4. the taxpayer has not been penalized by the relevant tax authority twice or more within 36 months prior to its application for a VAT credit refund; and
5. the taxpayer does not enjoy the VAT preferential policies of “same time levy and rebate” or “levy first and refund later” since April 1, 2019.

Caishui [2000] No.102 Announcement of the Ministry of Finance and the State Taxation Administration [2019] No.84
### 2.3.5 Incentives for supporting the development of finance and insurance industry

<table>
<thead>
<tr>
<th>Type of tax</th>
<th>Tax incentives</th>
<th>Policy basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIT</td>
<td>For the time being, the income distributed to investors in securities investment funds shall be exempt from CIT.</td>
<td>Caishui [2008] No.1</td>
</tr>
<tr>
<td>VAT</td>
<td>Upon the approval of the State Council, the income derived from the transfer of the equity investment assets including stocks by qualified foreign institutional investors (hereinafter referred to as the &quot;QFIs&quot;) and RMB qualified foreign institutional investors (hereinafter referred to as the &quot;RQFIs&quot;) within China is temporarily subject to the CIT exemption.</td>
<td>Caishui [2014] No.79</td>
</tr>
<tr>
<td>IIT</td>
<td>Income obtained from the transfer of shares issued by listed companies shall not be taxed as income for the purposes of levying individual income taxes.</td>
<td>Caishuzi [1998] No. 61</td>
</tr>
<tr>
<td></td>
<td>For shares of listed companies obtained by individuals via public offerings and transfer market and held for more than one year, the proceeds from dividends and bonuses thereof shall temporarily be exempt from CIT.</td>
<td>Caishui [2015] No. 101</td>
</tr>
</tbody>
</table>

The following items are exempted from VAT:
1. Interest on national debts and local government debts
2. Interest collected by enterprise groups or core enterprises thereof and finance companies subordinate to such groups from the enterprise groups or entities subordinate to such groups at a rate not higher than the interest rate applicable to borrowings from financial institutions or a nominal interest rate of bonds paid in the unified borrowing and repayment business.
3. Qualified foreign institutional investors (QFII) entrust domestic companies to conduct securities trading in China.
4. Income of Individuals engaged in the transfer of financial instruments.
5. Qualified guarantee institutions are exempted from paying VAT on their income from the provision of credit guarantee for small and medium-sized enterprises or re-guarantee (excluding the income from credit rating, consulting, training and others) within three years.
6. Premium income gained by insurance companies from their personal insurance products with a term of not less than one year.
7. If the actual VAT burden on a pilot general taxpayer engaged in finance lease upon approval of the People's Bank of China, the China Banking Regulatory Commission, or the Ministry of Commerce for the tangible personal property finance leasing services and tangible personal property financing sale-and-leaseback services provided by it is more than 3%, the portion of actual VAT burden exceeding 3% shall be refunded upon collection thereof.

For the time being, the income distributed to investors in securities investment funds shall be exempt from CIT.

Upon the approval of the State Council, the income derived from the transfer of the equity investment assets including stocks by qualified foreign institutional investors (hereinafter referred to as the "QFIs") and RMB qualified foreign institutional investors (hereinafter referred to as the "RQFIs") within China is temporarily subject to the CIT exemption.
### 2.3.6 Incentives for encouraging expanded reproduction, reinvestment

<table>
<thead>
<tr>
<th>Type of tax</th>
<th>Tax incentives</th>
<th>Policy basis</th>
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<tbody>
<tr>
<td>CIT</td>
<td>For instruments and equipment purchased by enterprises in all industries for research and development, if their unit value is no more than RMB1 million, they may be included in the current costs and expenses on a one-off basis and deducted before the calculation of taxable income, and there is no need to annually calculate depreciation anymore; if their unit value is more than RMB1 million, their depreciation years may be shortened or the accelerated depreciation method may be adopted. Enterprises are allowed to count on a lump-sum basis the costs of equipment and appliances that are newly bought between January 1, 2018 and December 31, 2020, into the costs and expenditures of the current period, and deduct such costs in full when the taxable income is calculated, provided that the unit value of such equipment and applicants is worth up to RMB5 million; and such costs will no longer be depreciated within certain years. However, if the unit value is above RMB5 million, the equipment and appliances shall still be subject to applicable rules set out in the Implementing Regulations of the Law on Corporate Income Tax, the Circular of the Ministry of Finance and State Taxation Administration on Improving the Corporate Income Tax Policies Relating to the Accelerated Depreciation of Fixed Assets (Cai Shui [2014] No.75) and the Circular of the Ministry of Finance and State Taxation Administration on Further Improving the Corporate Income Tax Policies Relating to the Accelerated Depreciation of Fixed Assets (Cai Shui [2015] No.106). The implementation period of the above-mentioned regulation has been extended to 31 December 2023 according to MOF/STA PN [2021] No. 6.</td>
<td></td>
</tr>
<tr>
<td>CIT</td>
<td>Income from equity investment income such as dividend and bonus between qualified resident enterprises is tax-exempted income.</td>
<td></td>
</tr>
<tr>
<td>CIT</td>
<td>The income from transfer of non-monetary assets recognized by a resident enterprise (hereinafter referred to as the “enterprise”) that makes outbound investment of non-monetary assets may be included in the taxable income of the corresponding year by equal installments within five years, and the CIT shall be calculated and paid in accordance with the provisions.</td>
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</table>

- Caishui [2014] No.75
- Caishui [2018] No.54
- MOF/STA PN [2021] No. 6
- Caishui [2014] No.116
- Law of the People’s Republic of China on Corporate Income Tax (Revised in 2018)
- Implementing Regulations of the Corporate Income Tax Law of the People’s Republic of China (Revised in 2019)
Where a venture capital enterprise that makes an equity investment for two years (24 months) or more in an unlisted small or medium-sized high-tech enterprise satisfies the following requirements, in the year in which the two-year period expires, a deduction of 70% of the amount invested in the small or medium-sized enterprise can be made from its taxable income for the same year; if its taxable income exceeds 70% of the amount of the investment, the deduction may be carried forward to the following tax year(s).

Where a limited partnership venture capital enterprise in China makes equity investment in a non-listed small or medium-sized high-tech enterprise for not less than two years (24 months), its corporate partner may make a deduction of 70% of the amount invested in the non-listed small or medium-sized enterprise from its taxable income distributed from the venture capital enterprise for the current year; if its taxable income for the current year is less than 70% of the investment amount, the deduction may be carried forward to the following tax year(s).

Where an enterprise or individual (the “contributor”) contributes a technology to a domestic resident enterprise in exchange for an equity and the full consideration paid for the technology by the enterprise receiving the contribution (the “recipient”) are stock (equity) shares, the contributor may either continue to follow the relevant existing tax policy or opt for the preferential tax deferral policy.

Where the preferential tax deferral policy is opted for a contribution of technology in exchange of equity, upon filing a record with the competent tax authorities, payment of tax is not required for the time being in the current period of the contribution and is allowed to be deferred till the time of transfer of the equity acquired from the exchange, at which time income tax shall be calculated and paid on the basis of the balance of the equity transfer income minus the original value of the technology as well as any reasonable taxes and fees.

The policy under which profits received by an overseas investor from a resident enterprise in China will temporarily not be subject to the withholding tax, if such profits are used for direct investment in China, will be applicable to a larger extent, covering not only the encouraged category of foreign-invested projects but also all projects and fields from which foreign investments are not banned.

Where an individual makes investment with non-monetary assets, if taxpayers have difficulties in paying taxes in a lump sum, they may, after reasonably determining an installment payment plan and reporting the same to competent tax authorities for filing, pay individual income tax in installments within five calendar years (inclusive) after the date of the occurrence of the above taxable activities.
A taxpayer who meets all the following conditions may apply to the competent tax authority for a refund of incremental VAT credit:

1. As of the taxation period of April 2019, the incremental VAT credit is greater than zero for six consecutive months (or two consecutive quarters if the VAT is paid quarterly), and the sixth month's incremental VAT credit is not less than RMB500,000;
2. The tax payment credit rating is Grade A or Grade B;
3. No VAT credit rebate or export VAT rebate is obtained in a fraudulent manner and no special VAT invoice is falsely made out in 36 months prior to applying for a VAT rebate;
4. No punishments are imposed on it twice or more by a competent tax authority for tax evasion in the 36 months prior to applying for a VAT rebate; and
5. Neither of the policies of VAT rebate upon collection and tax refund (rebate) after collection is enjoyed as of April 1, 2019.

Announcement of the Ministry of Finance, the STA and the General Administration of Customs [2019] No.39

2.3.7 Incentives for equity incentive arrangements

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<thead>
<tr>
<th>Type of tax</th>
<th>Tax incentives</th>
<th>Policy basis</th>
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<tbody>
<tr>
<td>IIT</td>
<td>Stock options, equity options, restricted stock units and equity awards that are granted to employees by non-listed companies and satisfy the specified conditions (hereinafter referred to as the &quot;qualified stock options, equity options, restricted stock units and equity awards&quot;) are eligible for a tax deferral policy upon filing of a record with the competent tax authorities, meaning that the employees are not required to pay tax for the time being when receiving the equity incentives, but may defer the tax payment till the time of transfer of the equity received, at which time individual income tax shall be calculated and paid under the item &quot;income from transfer of property&quot; at the tax rate of 20% on the basis of the balance of the equity transfer income minus the cost for receiving the equity as well as any reasonable taxes and fees paid.</td>
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<td></td>
<td>For stock options, restricted stock units and equity awards granted by listed companies to individuals, upon filing a record with the competent tax authorities, the individuals may pay individual income tax within a period of not more than 12 months as of the exercise date in the case of stock options, the restrictions lapse date in the case of restricted stock or the award date in the case of equity awards.</td>
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Caishui [2016] No.101
Where, after the receipt by an individual of equity of a non-listed company as a result of stock incentives or his or her contribution of a technology, the non-listed company becomes listed domestically, the equity received by the individual that is subject to tax deferral shall be treated in accordance with the existing tax collection provisions on restricted stock.

For the equity incentives granted to the relevant technicians of high-tech enterprises in China for commercialization of technological achievements, where the technicians have difficulty paying individual income tax on a lump sum basis, they may develop by themselves installment plans in line with the actual situations and pay taxes in installments within five calendar years and report relevant materials to the competent tax authorities for the record.

The tax payable by an individual receiving equity incentives shall be calculated and determined by reference to the provisions of the Circular of the Ministry of Finance and the State Taxation Administration on Issues concerning the Imposition of Individual Income Tax on Incomes from Individual Stock Options (Cai Shui [2005] No. 35) under the item of “income from wages and salaries”. The taxable value of equity incentives shall be determined by reference to the fair market value of the equity when received.

Where a limited partnership venture capital enterprise in China makes equity investment in a non-listed small or medium-sized high-tech enterprise for not less than two years (24 months), its corporate partner may make a deduction of 70% of the amount invested in the non-listed small or medium-sized enterprise from its taxable income distributed from the venture capital enterprise for the current year; if its taxable income for the current year is less than 70% of the investment amount, the deduction may be carried forward to the following tax year(s).

The income derived by a resident enterprise in China from a transfer of technology, namely transfer of a non-exclusive license with a term of five years or more, shall be included in the income from transfer of technology accessible to CIT incentives. The part of the annual income from transfer of technology derived by a resident enterprise within RMB5 million shall be tax-exempt; and the remainder shall be subject to a 50% reduction in the CIT rate.
2.3.8 Tax exemption for cross-border services

<table>
<thead>
<tr>
<th>Type of tax</th>
<th>Tax incentives</th>
<th>Policy basis</th>
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<tbody>
<tr>
<td>VAT</td>
<td>The following cross-border taxable activities shall be exempted from Value-added Tax: 1) Construction services for engineering projects outside the territory. 2) Engineering supervision services for engineering projects outside the territory. 3) Engineering survey and exploration services for engineering and mineral resources outside the territory. 4) Conference and exhibition services for conferences and exhibitions located outside the territory. 5) Warehousing services with storage locations outside the territory. 6) Leasing services of tangible movable property where the leased object is used outside the territory. 7) Broadcast services of radio, films and television programs (works) provided outside the territory. 8) Culture and sports services, education and medical services and tourism services provided outside the territory. 9) Postal services, receiving and sending services and insurance services for export goods. 10) Telecommunications services that are provided to overseas entities and consumed entirely outside the territory. 11) Intellectual property services that are provided to overseas entities and consumed entirely outside the territory. 12) Logistics supporting services (excluding the warehousing services and the receiving and sending services) that are provided to overseas entities and consumed entirely outside the territory. 13) Authentication and consulting services that are provided to overseas entities and consumed entirely outside the territory. 14) Professional technique services that are provided to overseas entities and consumed entirely outside the territory. 15) Commercial assistance services that are provided to overseas entities and consumed entirely outside the territory. 16) Advertising services provided to overseas entities for advertising in locations outside the territory. 17) Intangible assets (excluding technologies) that are provided to overseas entities and are entirely consumed outside the territory. 18) Directly charged financial services that are provided for the currency capital financing and other financial activities between overseas entities and are irrelevant to goods, intangible assets and immovable property within the territory. 19) International transport services which fall under any of the required circumstances. 20) The following taxable activities that are eligible for zero-rated value-added tax policy but are subject to the simple tax calculation method or whose taxpayers waive the application of zero tax rate and choose tax exemption: (1) International transport services; (2) Space transportation services; (3) The following services that are provided to overseas entities and are entirely consumed outside the territory: A. Research and development services; B. Contract energy management services; C. Design services; D. Radio, film and television programs (works) production and distribution services; E. Software services; F. Circuit design and testing services; G. Information system services; H. Business process management services; and I. Offshore service outsourcing business. (4) Technologies that are transferred to overseas entities and are entirely consumed outside the territory.</td>
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2.3.9 Incentives for supporting the venture capital enterprise and individual angel investor

<table>
<thead>
<tr>
<th>Type of tax</th>
<th>Tax incentives</th>
<th>Policy basis</th>
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<tbody>
<tr>
<td>CIT</td>
<td>Where a venture capital enterprise of corporate nature has directly invested in the form of equity investment, in a technology-oriented enterprise at the seed or early stage (hereinafter referred to as the &quot;technology-oriented start-up&quot;) for two years (equivalently 24 months, the same below), 70 percent of the amount of its investment may be deducted from the taxable income obtained by this venture capital enterprise of corporate nature in the year when the equity has been held for two years; where the said taxable income of the current year is insufficient to offset the deductible amount, the remaining portion may be carried forward to forthcoming tax years.</td>
<td>Caishui [2018] No. 55</td>
</tr>
<tr>
<td>CIT&amp;IIT</td>
<td>Where a venture capital enterprise, with the nature of a limited liability partnership (hereinafter referred to as &quot;venture capital partnership&quot;), has directly invested in the form of equity investment in a technology-oriented start-up for two years, partners of this venture capital partnership shall deal with their own investment as follows, (1). The partner that is a legal person may deduct 70 percent of the amount of its investment in this venture capital partnership from the income it obtains from the venture capital partnership; where the said income of the venture capital partnership; where the said income of the current period is insufficient to offset the deductible amount, the remaining portion may be carried forward to forthcoming tax years. (2). An individual partnership may deduct 70 percent of the amount of its investment in this venture capital partnership from the business income he or she obtains from such venture capital partnership; where the said income of the current period is insufficient to offset the deductible amount, the remaining portion may be carried forward to forthcoming tax years.</td>
<td>Where an individual angel investor has directly invested in the form of equity investment, in a technology-oriented start-up for two years, 70 percent of the amount of his or her investment is deductible against the taxable income derived from the transfer of such start-up's equity; if the taxable income of the current period is insufficient to offset the deductible amount, the excess portion may be carried forward to be deducted from the taxable income derived from the transfer of such start-up's equity in the future. Where an individual angel investor has invested in several technology-oriented start-ups, and 70 percent of the amount of investment made by him or her in one technology-oriented start-up which is undergoing formalities for deregistration and liquidation has not been deducted in full yet, the remaining portion may be deducted from the taxable income derived by this individual angel investor from the transfer of other technology-oriented start-ups it has invested in, within 36 months of the settlement date for liquidation purposes.</td>
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2.3.10 Tax exemption regarding Individual Income Tax

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<tr>
<th>Type of tax</th>
<th>Tax incentives</th>
<th>Policy basis</th>
</tr>
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<tbody>
<tr>
<td>Income of resident individuals derived from China</td>
<td>The following categories of individual income shall be exempted from individual income tax: (1) Awards for achievements in science, education, technology, culture, public health, sports environmental protection, etc. granted by provincial people's governments, ministries and commissions under the State Council, units of the Chinese People's Liberation Army at or above the corps level, as well as foreign organizations and international organizations; (2) Income from interest on national debt obligations and other financial debentures issued by the State; (3) Subsidies and allowances given under uniform state regulations; (4) Welfare benefits, disability and death compensation, and relief payments; (5) Insurance indemnities; (6) Military severance pay, demobilization pay and decommissioning pay received by members of the armed forces; (7) Settling-in allowance, severance pay, basic pension or retirement pay, and full-pay retirement pension and living allowances (for qualified veteran cadres) given to public servants and workers under uniform state regulations; (8) Income of diplomatic representatives, consular officers and other personnel of foreign embassies and consulates in China, which is exempted from tax under relevant laws; (9) Tax-exempt income stipulated in international conventions to which the Chinese Government has acceded or in agreements which the Chinese Government has signed; and (10) Other tax-exempt income as stipulated by the State Council.</td>
<td>Order of the President of the People's Republic of China No.9</td>
</tr>
<tr>
<td>Foreign individuals</td>
<td>The following income is exempt from individual income tax for the time being: (1) Housing subsidies, food allowances, moving fees and laundry fees gained by individual foreigners in the non-cash form or in the form of being reimbursed for what they spend; (2) Travelling allowances at home and abroad gained by individual foreigners in accordance with rational standards; (3) The visiting relatives expense, language training expense and children education expense gained by individual foreigners, that part considered to be reasonable through examina- tion and approval by local tax authorities; (4) The incomes gained by individual foreigners from dividends and bonuses of enterprise with foreign investment; (5) The wage and salary incomes gained by foreign experts who conform with one of the following conditions may be exempt from individual income tax: (a) Foreign experts directly sent by the World Bank to work in China in accordance with a special loan agreement; (b) Experts directly sent by the United Nations’ Organizations to work in China; (c) Experts coming to work in China for the UN aid projects; (d) Experts sent by an aid-granting country to China to work specially for the project granted gratis by the country; (e) Cultural and educational experts coming to China to work for two years on the cultural exchange project under an agreement signed between two governments, with their</td>
<td>Cai Shui Zi [1994] No. 20</td>
</tr>
</tbody>
</table>
wages and salaries being borne by the country;
(f) Cultural and educational experts coming to China to work for two years on the international exchange projects of China's universities and colleges, with their wages and salaries being borne by the country concerned;
(g) Experts coming to work in China through a non-government scientific research agreement, with their wages and salaries being borne by the government organization of the country concerned.

【Attention】According to Caishui [2018] No. 164:
1. During the period from January 1, 2019 to December 31, 2021, foreign individuals meeting the conditions for resident individuals may choose to enjoy either additional special deductions for individual income tax or the preferential tax-exemption policies on allowances for housing subsidies, language training expenses and children's education expenses, etc. in accordance with the Circular of the Ministry of Finance and the State Taxation Administration on Issues concerning Individual Income Tax Policies (Cai Shui Zi [1994] No.20), the Circular of the State Taxation Administration on Imposing and Exempting Individual Income Tax on Qualifying Subsidies Granted to Foreign Individuals (Guo Shui Fa [1997] No.54) and the Circular of the Ministry of Finance and the State Taxation Administration on Exempting the Hong Kong or Macao Housing Subsidies Received by Foreign Individuals from Individual Income Tax (Cai Shui [2004] No.29). After making such choice, foreign individuals cannot make changes within a tax year.
2. As of January 1, 2022, foreign individuals will no longer enjoy preferential tax-exemption policies on allowances for housing subsidies, language training expenses and children's education expenses and shall enjoy additional special deductions as required.

For shares of listed companies obtained by individuals via public offerings and transfer market and held for more than one year, the proceeds from dividends and bonuses thereof shall temporarily be exempt from individual income tax. For shares of listed companies obtained by individuals via public offerings and transfer market and held for not more than one month, the proceeds from dividends and bonuses thereof shall be included in the taxable income in full; where the shares are held for more than one month but not more than one year, 50% of the proceeds from dividends and bonuses thereof shall be included in the taxable income; the aforesaid income shall be subject to individual income tax at the rate of 20% on a unified basis.

For shares of listed companies obtained by individuals via public offerings and transfer market and held for more than one year, the proceeds from dividends and bonuses thereof shall temporarily be exempt from individual income tax.
3.1.1 Overview of China-India tax treaty
The main purpose of signing bilateral tax treaty is to avoid double taxation on personal and corpo-
rate income and to prevent tax evasion. The signing of bilateral tax treaty helps to the optimization
of the tax system and avoidance of tax loss or double taxation and ensures the fairness for foreign
residents in China.
In-depth understanding of the China-India double tax treaty could help Indian residents doing
business in China to mitigate the tax risks and costs of investment.
On July 18, 1994, in New Delhi, the Chinese government and the Indian government signed the
Agreement between the Government of the People's Republic of China and the Government of the
Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with
Respect to Taxes on Income (hereinafter referred to as the "China-India DTT") and the Agreement
and Protocol between the Government of the People’s Republic of China and the Government of
the Republic of India on Avoiding Double Taxation and Preventing Tax Evasion on Income (here-
inafter referred to as the "1994 Protocol"), which entered into force on November 19, 1994, and
was implemented on January 1, 1995.
The China-India DTT consists of twenty-nine Articles within six sections: the Scope of Application,
the Methods for the Elimination of Double Taxation, Non-discrimination in taxation, the Mutual
Agreement Procedure and the Exchange of Information. The 1994 Protocol contains three
Articles, including: tax definition, tax exemption, information exchange and other regulations.
The Protocol Amending the Agreement between the Government of the People’s Republic of
China and the Government of the Republic of India for the Avoidance of Double Taxation and the
Prevention of Fiscal Evasion with respect to Taxes on Income and the Protocol thereto signed at
New Delhi on July 18, 1994 was officially signed in New Delhi on November 26, 2018. The “2018
STA stipulated the Announcement of the State Taxation Administration regarding the Administra-
tive Measures for Special Tax Audits and Adjustments and the Mutual Agreement Procedure (STA
Announcement [2017] No.6) which came into force as of May 1, 2017. Please refer to the
announcement for detailed procedures of mutual agreement effective from May 1, 2017.

3.1.2 The Scope of Application
The scope of application of the China-India DTT is clearly stated, including the scope of subject,
object and territory.
3.1.2.1 Personal Scope
The China-India DTT shall apply to persons who are residents of one or both Contracting States.
For the purposes of China-India DTT, the term "person" includes an individual, a company or
organizations and any other body of persons; the terms "a Contracting State" and "the other
Contracting State" mean China or India as the context requires.
The term "resident of a Contracting State" means any person who, under the laws of that Contract-
ing State, is liable to tax therein by reason of his domicile, residence, place of head office, place of
incorporation, place of control and management or any other criterion of a similar nature.
An individual is a resident of both Contracting States, then his status shall be determined as
follows:
(1) He shall be deemed to be a resident of the Contracting State in which he has a permanent home
available to him; if he has a permanent home available to him in both Contracting States, he shall
be deemed to be a resident of the Contracting State with which his personal and economic relations
are closer (center of vital interests);
(2) If the Contracting State in which he has his center of vital interests cannot be determined, or if
Chapter 3 China-India Double Tax Treaty and Mutual Agreement Procedures

3.1.2.3 Territory Scope

The geographical concept of the territory of China and India must be satisfied when determining the territorial scope of China-India DTT between two countries. Moreover, it should meet the conditions for the effective implementation of the tax laws of the two countries.

3.1.3 Criteria of constituting a Permanent Establishment ("PE")

For the purposes of DTT, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on. Whether a PE is constituted has a crucial impact on the tax jurisdiction of the contracted state. The main function of China-India DTT is to divide the taxation rights for cross border income, thereby avoiding double taxation of cross border income. The international DTTs generally adopt the principle that the power of taxation of the host country with sourced income is less restricted if the enterprises of the home country constitute a PE in the host country, and vice versa. For Indian residents who invest or engage in business activities in China, whether a PE is constituted in China under the China-India DTT would have an important impact on their overall tax costs. As a result, it is necessary to understand the concept of PE and the specific provisions in the DTT after clarifying the applicable scope.

The concept of PE, positive list and negative list, are set out in Article 5 of China-India DTT. Under the terms of China-India DTT, a PE is a fixed place of business through which the business of an enterprise is wholly or partly carried out. According to the positive list stated in China-India DTT, PE can be divided into four main categories: fixed place PE, PE carrying out construction and installation, service PE and agency PE.

3.1.3.1 Constitution of a fixed place PE

Fixed place PE includes 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. In terms of the Article 5, paragraph 4, of China-India DTT, a PE shall be deemed not to include:

1. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
such manner as may be agreed upon by the competent authorities of the Contracting States.

tivated and any other relevant factors. In the absence of such agreement, such person shall not be
regard to its place of effective management, the place where it is incorporated or otherwise consti-

A person other than an individual is a resident of both Contracting States, the competent authorities
the Contracting States shall settle the question by the agreement.

(3) If he has a habitual abode in both Contracting States or in neither of them, he shall be deemed
resident of the State in which he has a habitual abode;

he has not a permanent home available to him in either Contracting State, he shall be deemed to be

(2) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the
purpose of storage or display;
(3) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the
purpose of processing by another enterprise;
(4) the maintenance of a fixed place of business solely for the purpose of purchasing goods or
merchandise or of collecting information, for the enterprise;
(5) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enter-
prise, any other activity of a preparatory or auxiliary character.

3.1.3.2 Constitution of a PE carrying out construction and installation

PE carrying out construction and installation refers to a building site or construction, installation
or assembly project or supervisory activities in connection therewith, but only if such site, project
or activities last more than 183 days.

For the sole purpose of determining whether the 183-day period referred to as above has been
exceeded,

(1) where an enterprise of a Contracting State carries on activities in the other Contracting State at
a place that constitutes a building site or construction, installation or assembly project and these
activities are carried on during one or more periods of time that in the aggregate do not exceed 183
days, and

(2) connected activities are carried on at the same building site or construction, installation or
assembly project during different periods of time, each exceeding 30 days, by one or more enter-
prises closely related to the first-mentioned enterprise, these different periods of time shall be
added to the period of time during which the first-mentioned enterprise has carried on activities at
that building site or construction, installation or assembly project.

3.1.3.3 Constitution of a service PE

Service PE refers to the furnishing of services other than the technical services specified in
Article 12 (Royalties and Technical Service Fees) by an enterprise of a Contracting State through
employees or other personnel in the other Contracting State, but only if activities of that nature
continue for the same or connected project within that Contracting State for a period or periods
aggregating more than 183 days within any twelve-month period commencing or ending in the
fiscal year concerned.

3.1.3.4 Constitution of an agency PE

(1) Definition of agents without an independent status

The constitution of an agency PE is subject to the paragraph 5 of Article 5 of China-India DTT. An
agent whose activities make an enterprise of a Contracting State to have a PE in the other Contract-
ing State shall generally be recognized as "agents without an independent status".

If a person is acting in a Contracting State on behalf of an enterprise of the other Contracting State
and, in doing so,

a) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of
contracts that are routinely concluded without material modification by the enterprise, and these
contracts are

(i) in the name of the enterprise, or
(ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by
that enterprise or that the enterprise has the right to use, or
(iii) for the provision of services by that enterprise; or

b) habitually maintains in the first-mentioned State a stock of goods or merchandise from which he
regularly delivers goods or merchandise on behalf of the enterprise, that enterprise shall be
deemed to have a permanent establishment in that State in respect of any activities which that
person undertakes for the enterprise, unless the activities of such person are limited to those men-
tioned in paragraph 4 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.

(2) Identification of agent of an independent status

In order to limit the tax jurisdiction of the host country, paragraph 6 of Article 5 of China-India
DTT provides definition for the independent agent. Paragraph 5 shall not apply where the person
acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on
business in the first-mentioned State as an independent agent and acts for the enterprise in the
ordinary course of that business. Agent of an independent status refers to the agent specialized in
the agency business, which is not only for a certain enterprise agency business, but also for other
enterprises to provide agency services, brokers, general commission agents belong to the indepen-
dent agent.
In order to prevent the abuse of the independent agent clause, China-India DTT regulates the inde-
pendence of the independent agent. When the activities of such an agent are devoted wholly or
almost wholly on behalf of an enterprise, and there is a close commercial and financial dependency
between the enterprise and the agent, he will not be considered as an agent of an independent status
within the meaning of this paragraph. A person or enterprise is closely related to an enterprise if,
based on all the relevant facts and circumstances, one has control of the other or both are under the
control of the same persons or enterprises. In any case, a person or enterprise shall be considered
to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent
of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the
aggregate vote or value of the company’s shares or of the beneficial equity interest in the compa-
ny) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the
beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote
and value of the company’s shares or of the beneficial equity interest in the company) in the person
and the enterprise or in the two enterprises.
Article 5, paragraph 7 of China-India DTT indicates whether the parent-subsidiary company
constitutes an agency PE. 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, or which
carries on business in that other Contracting State (whether through a PE or otherwise), shall not
of itself constitute either company a PE of the other.

3.1.4 Tax jurisdiction of different types of income
The China-India DTT divides the cross-border income earned by Chinese resident enterprises and
Indian resident enterprises into passive income and positive income. The passive income refers to
investment income derived from non-business activities, such as interest, dividends and royalties.
The positive income refers to the income derived from substantive business activities. There is no
significant difference on the tax jurisdiction of passive income and positive income from the
perspective of the home country, however, the impact on tax jurisdiction of the host country with
sourced income is significant. At the same time, the tax jurisdiction of the host country with
sourced income is limited to some extent due to the determination of PE. According to the
China-India DTT, passive income includes interest, dividends and royalties; positive income
includes operating profit, income from immovable property and income from the transfer of prop-
erty. The income from independent personal services is separated from positive income due to its
particularity. The following section will introduce the division of tax jurisdiction by different types
of income.

3.1.4.1 Passive income
The passive income under China-India DTT mainly includes dividends, interest and royalties.
According to Article 10, 11 and 12 of China-India DTT, the investment income derived by an
Indian resident enterprise from their PEs in China shall be subject to CIT in China, under business
profits provisions of the DTT. If no PE is constituted in China, withholding tax shall be levied on
dividends, interest, royalties and other China-sourced investment income. Since it is the invest-
ment income of Indian resident enterprises, China-India DTT states the jurisdiction of residence
principle, which means that India has the rights to levy tax on the investment income. At the same
time, China-India DTT also states the principle of income sourced jurisdiction with certain limita-
tions. China-India DTT limits Chinese government to levy a maximum tax rate of 10%, if Indian
resident enterprises (payees) are eligible for the criteria of beneficial owners.

3.1.4.2 Business Profits
According to Article 7, paragraph 1 of China-India DTT, the profits of an Indian enterprise shall
be taxable only in India unless the enterprise carries on business in China through a PE situated
therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed
in China but only so much of them as is attributable to that PE. According to Article 7, paragraphs
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2, 3 and 4 of China-India DTT, Chinese Government is enabled to limit the taxable scope of the profits generated by the PE in China, exclude payments made by the head office or other offices of the PE; Meanwhile, in determining the profits of a PE, the deduction of expenses which are incurred for the purposes of the business of the PE shall be allowed, whether in the Contracting State in which the PE is situated or elsewhere.

3.1.4.3 Shipping and Air Transport

Profits of an Indian enterprise from the operation of ships or aircraft in international traffic shall be taxable only in India. The above provisions shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

3.1.4.4 Income from Immovable Property

According to Article 6 of China-India DTT, income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

The provisions shall apply to income derived from the direct use, letting, or use in any other form of immovable property. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; Meanwhile, ships and aircraft shall not be regarded as immovable property.

Income derived by Indian residents from the use of immovable property in China shall be subject to the taxation jurisdiction of China. The provision is applicable to the income derived from the use of immovable property. Please refer to the provisions of Capital Gains for income derived from the transfer of Chinese immovable property by Indian residents.

3.1.4.5 Capital Gains

(1) Gains derived from the alienation of immovable property

Gains derived from the transfer of immovable property can be taxed in which the immovable property is located. The Chinese government shall have the right to levy taxes on the Indian residents which derive gains from the transfer of immovable property located in China. The determination of "immovable property" shall refer to the Article 6 of China-India DTT.

(2) Gains derived from the transfer of business property by the PE

Gains from the alienation of movable property forming part of the business property of a PE which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other Contracting State. If an Indian resident enterprise has a PE in China, the Chinese government shall have the right to levy taxes on gains derived from the transfer of movable property from its business property.

(3) Gains derived from the alienation of shares of a company

The income derived by an Indian resident from the transfer of shares in a Chinese resident company shall be taxed by the Chinese tax authorities if the following conditions are met: the property of Chinese resident company consists directly or indirectly principally of immovable property situated in China may be taxed in China.

3.1.4.6 Income derived from Personal Services

China-India DTT regulates taxation rights on artists, athletes, students as well as the special personal service, such as directors' fees and government service, and the taxation rights of general personal services except to the above. The following is a brief introduction.

(1) Artists and athletes

The Article 17 of China-India DTT indicates income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.
Chapter 3 China-India Double Tax Treaty and Mutual Agreement Procedures

(2) Students
According to the provisions of Article 21, a student, business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training shall be exempt from tax in that first-mentioned Contracting State on income received or derived by him for the purpose of his maintenance, education or training.

(3) Directors’ Fees
According to Article 16 of China-India DTT, directors’ fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

(4) Government Service
In accordance with Article 19 of China-India DTT, remuneration, other than a pension, paid by the Government of a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to the Government of that Contracting State or a political subdivision or local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.

(5) Independent Personal Services
China-India DTT divides personal services into independent personal service and dependent personal service. According to Article 14 of China-India DTT, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State except in one of the following circumstances, when such income may also be taxed in the other Contracting State:

- If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State;

- If his stay in the other Contracting State is for a period or periods exceeding in the aggregate 183 days in the calendar year concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other Contracting State.

State.

Moreover, China-India DTT defines independent personal services, including independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, dentists, lawyers, engineers, architects and accountants.

(6) Dependent Personal Service
According to Article 15 of China-India DTT, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State. Meanwhile, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:

- The recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned;

- The remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and

- The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

Notwithstanding the aforesaid provisions, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by an enterprise which is a resident of a Contracting State in international traffic shall be taxable only in that Contracting State.

3.1.5 Elimination of Double Taxation
China-India DTT to some extent limits the taxation rights of host country with sourced income and effectively avoids double taxation by dividing the rights of cross-border income between home country and host country with sourced income. However, China-India DTT does not eliminate the taxation right of the host country with sourced income completely. The Chinese government still has the right to levy tax on the China-sourced income by Indian residents under certain conditions.
or circumstances. Double taxation still exists on an income for which both governments have the rights of taxation. Therefore, China-India DTT set out tax credit regulations in order to further eliminate double taxation. In accordance with the provisions of China-India DTT, where a resident of India derives income, which may be taxed in China in accordance with the provisions of this Agreement (except to the extent that these provisions allow taxation by China solely because the income is also income derived by a resident of China), India shall allow as deduction from the tax on the income of that resident, a amount equal to the income-tax paid in China whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable, as the case may be, to the income which may be taxed in China. When a China-sourced dividend is paid by a Chinese resident company to an Indian parent company, which owns no less than 10% of the rights to participate in the profits of the Chinese company, the Indian parent company is enabled to credit the tax paid in China in respect of its profits out of which the dividend is paid.

In summary, residents of India should pay special attention to the taxation of China-sourced income and further credit in India, to mitigate the overall tax burden.

3.1.6 Non-discrimination

The non-discrimination clause of China-India DTT stipulates the principle of tax treatment and administration in domestic level in both China and India, namely the principle of non-discrimination treatment, which mainly covers the following four aspects:

- Non-discrimination treatment of nationals. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the other Contracting State are subjected in the first-mentioned Contracting State.

- Non-discrimination treatment of subsidiaries. An enterprise of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Contracting State are or may be subjected.

3.2 Mutual Agreement Procedures

3.2.1 Overview of Mutual Agreement Procedures

Mutual Agreement Procedure is an important clause in the China-India DTT. Its significance lies in the fact that if a resident of a Contracting State has a tax payment dispute with the tax authorities of the other Contracting State, the resident would be able to seek the help from the government of the other Contracting State, to effectively solve the cross-border tax disputes and guarantee his rights. This procedure is of great significance for resolving international tax disputes and is an important way for Indian residents to protect their legal tax rights in the process of investment in China. In order to effectively resolve cross-border tax disputes, Indian residents should pay attention to the relevant provisions in the Mutual Agreement Procedure of China-India DTT by understanding the scope, initiation, effectiveness, etc., and legally proceed the procedures.
3.2.2 The legal basis for Mutual Agreement Procedure

The Article 25 of China-India DTT stipulates the legal basis of Mutual Agreement Procedure between Chinese government and Indian government. The provisions of the China-India DTT on Mutual Agreement Procedure are as follows:

- Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

- The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Agreement. The agreements reached shall be implemented without any time limit in the domestic laws of the Contracting States.

- The competent authorities of the Contracting States shall endeavor to resolve by agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

- The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of paragraphs 2 and 3. When it seems advisable for reaching agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

3.2.3 The application of the Mutual Agreement procedure

In accordance with the provisions of the Mutual Agreement Procedure of the China-India DTT, an applicant may present his case to the competent authority of the state in which he is a resident, when the measures of the other Contracting State result in, or will result in, the taxation not in accordance with the provisions of China-India DTT. It is important to note that the term "resident" in China-India DTT refers to tax resident status.

3.2.4 Initiative procedure

3.2.4.1 Conditions of application

Mutual Agreement Procedure is a relief procedure granted to taxpayers of contracting states by the DTT entered into by the contracting states. The purpose of this procedure is to ensure the implementation of the DTT and the effective elimination of international double taxation. However, it should be noted that the right to apply for this procedure has time limitations. According to the Article 25 of China-India DTT, the case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of China-India DTT. As for the starting point of the period, in the other words, how to determine the starting point at which the taxpayer has the right to apply for the mutual agreement process, China-India DTT does not provide a clear boundary. This issue is generally regulated by each country through its domestic laws.

3.2.4.2 Processing of the application by the tax authorities

As stated in China-India DTT, the competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3.2.5 The legal effect of Mutual Agreement

It is generally accepted that the Mutual Agreement Procedure should be a dispute resolution between countries. In the other words, the result is only binding on the authorities that achieve an agreement. If the parties are unsatisfied with the result, they still have the right to seek help through judicial proceedings. In addition, the Mutual Agreement Procedure is a negotiation between the competent authorities of the two countries on a particular issue, in terms of effective-
ness, and thus the conclusions reached are valid only for that particular issue and do not have general binding force. Whereas the above general rules may be subject to exceptions due to the existence of special provisions in DTTs.

If negotiations between the competent authorities of the two countries have resulted in a tax settlement or judicial decision into force on the issue, the competent authorities of the two countries shall only make the corresponding tax adjustments based on the previously established facts and shall not alter the settlements or judgments which are already put into force.

3.2.6 Arbitration clause
The arbitration clause is a provision of the OECD which aims to improve the efficiency of the Mutual Agreement Procedures and ensure the implementation of the DTT. The general form is that if the competent authorities of the two countries are unable to reach an agreement on a matter of mutual agreement within a certain period (usually in two years), the parties could request to submit it to arbitration.

3.3 Dispute prevention of the China-India Double Tax Agreement
3.3.1 The dispute of the China-India Tax Agreement
The dispute of China-India DTT refers to the dispute between China and India over the interpretation and application of the provisions of China-India DTT, which is reflected in two levels. The first level is the dispute between the international taxpayer (Indian investor) and the host country with sourced income (China) over the interpretation and application of the provisions of China-India DTT; The second level of the disputes refers to tax disputes between two governments, i.e., China and India. The aforesaid tax disputes were transformed from disputes about the interpretation and application of China-India DTT provisions between the taxpayer (an Indian investor) and the host country with sourced income (China), which have been brought into Mutual Agreement Procedures. In the first level of tax agreement dispute, an Indian investor is a party with direct interest and is one of the main bodies of tax agreement dispute, therefore, India investors should focus on this level of tax agreement dispute, pay attention to prevent the occurrence of disputes and strengthen the risk control and management ability of DTT related disputes.

3.3.2 Mitigation of disputes in the application of China-India DTT
If there is a DTT related dispute between an Indian investor and the Chinese tax authority, it can be resolved by initiating a Mutual Agreement Procedure.

The key point of mitigating the disputes of China-India DTT is in the decision-making stage. Indian investors should fully investigate and accurately understand the Chinese tax law and the provisions of the China-India DTT at the stage of investment and decision making. Meanwhile, Indian investors should identify tax risks of its investment projects or business activities, make reasonable tax planning, and arrange investment and business activities strictly in line with the Chinese tax laws and China-India DTT. As investors in China, Indian enterprises should establish mechanisms for tax risk control and management, formulate relevant working mechanisms for the identification, assessment, response, control, communication and supervision of foreign-related tax risks, and set up warning plans in advance for tax risks based on the comprehensive assessment. In addition, Indian investors should have tax departments and positions based on their investment and business model and be equipped with professionals to strengthen the function of tax risk management and job responsibilities.
The Foreign Investment Law of the People's Republic of China (hereinafter referred to as the "FIL") was released on March 15, 2019, and came into effect from January 1, 2020, replacing the original Law of the People's Republic of China on Chinese-Foreign Joint Ventures, the Law of the People's Republic of China on Foreign Investment Enterprises and the Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures. It establishes the basic framework of China's new legal system for foreign investment, conforms with China's basic policy of opening up and encouraging foreign investment, and also makes unified provisions in the main aspects of foreign investment. FIL is the new basic law in the field of foreign investment in China, which demonstrates refinement and innovation of China's legal system for foreign investment.

On December 26, 2019, the State Council Premier Li Keqiang signed the State Council Decree promulgating the Implementation Regulations of the Foreign Investment Law of the People's Republic of China (hereinafter referred to as the "Implementation Regulations of FIL"), which also came into effect from January 1, 2020. As the main regulations and implementation rules for the FIL, the Implementing Regulations of FIL are of great significance for ensuring the effective implementation of the FIL.

The promulgation and implementation of the above-mentioned laws and regulations demonstrate China's determination to promote a high-level investment liberalization and facilitation, protect the legitimate rights and interests of foreign investors, build an adequate legal system, internationalize and facilitate the business environment, and promote high-quality economic development by further opening to the overseas investors. The above-mentioned laws and regulations also further enhance the degree of openness and promote the determination and confidence of foreign investors. At the same time, an investment protection system has been established in terms of property and intellectual property rights protection, strengthening the constraints on the formulation of normative documents involving foreign investment, promoting governmental integrity, and improving the mechanism for foreign-invested enterprises to file complaints and defend their rights. This system provides legal guarantee for foreign investors. Compared to the old laws, FIL has changed mainly as below:

<table>
<thead>
<tr>
<th>Issues</th>
<th>Changes</th>
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<tbody>
<tr>
<td>Company establishment process</td>
<td>Abolish the comprehensive approval and record filing system and apply the new system of &quot;pre-admission national treatment&quot; and &quot;negative list&quot;</td>
</tr>
<tr>
<td>Corporate decision-making department</td>
<td>The board of shareholders becomes the highest authority, and there are fundamental changes in corporate governance such as voting mechanisms and major voting matters.</td>
</tr>
<tr>
<td>Restrictions on the proportion of foreign capital</td>
<td>The previous requirement that foreign investors of joint ventures generally invest no less than 25% was repealed.</td>
</tr>
<tr>
<td>Withdrawal rate of accumulated fund</td>
<td>The requirements of the Company Law of the People's Republic of China shall be applied uniformly for the withdrawal of statutory and arbitrary accumulated fund.</td>
</tr>
<tr>
<td>Restrictions on the proportional distribution of profits</td>
<td>The parties to the Chinese-foreign joint venture have their rights to make decisions on the proportion and manner of profit distribution in accordance with the relevant provisions of the Company Law of the People's Republic of China.</td>
</tr>
<tr>
<td>Conditions for equity transfer</td>
<td>The relevant provisions of the Company Law of the People's Republic of China on the preemptive rights will be uniformly applied to the equity transfer by foreign investors.</td>
</tr>
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</table>
In general, the new FIL implements a unified foreign investment management system and unifies the regulations for various market participants. For newly established foreign-invested enterprises from 1 January 2020 onwards, the legal provisions of the Company Law of the People’s Republic of China and the Partnership Law of the People’s Republic of China shall apply uniformly to their organizational forms, organizational structures and operational guidelines. For foreign-invested enterprises established in accordance with the three old laws before January 1, 2020, the original form of enterprise organization may be maintained for five years after the implementation of the FIL (January 1, 2020 to December 31, 2024).

4.2 High-level introduction of the Foreign Investment Law
4.2.1 Definitions and the scope of application
In accordance with Article 2 of Chapter 1 of the FIL, this law shall be applicable to the foreign investment within the territory of the People's Republic of China (hereinafter referred to as "the territory of China"). For the purpose of the FIL foreign investment refers to the investment activity directly or indirectly conducted by a foreign individual, enterprise or other organization (hereinafter referred to as the "foreign investors"), including the following circumstances:
- A foreign investor establishes a foreign invested enterprise within the territory of China, independently or jointly with any other investor;
- A foreign investor acquires shares, equities, property shares or any other similar rights and interests of an enterprise within the territory of China;
- A foreign investor makes investment to initiate a new project within the territory of China, independently or jointly with any other investor; and
- A foreign investor makes investment in any other way stipulated by laws, administrative regulations or provisions of the State Council.

For the purpose of the FIL, a foreign invested enterprise refers to an enterprise that is incorporated under the Chinese laws within the territory of China and is wholly or partly invested by a foreign investor.

In accordance with the provisions of article 4 of chapter 1 of the FIL, China shall implement the management systems of pre-establishment national treatment and negative list for foreign investment. Pre-establishment national treatment refers to the treatment given to foreign investors and their investments during the investment access stage, which is not lower than that given to their domestic counterparts; negative list refers to special administrative measures for the access of foreign investment in specific fields as stipulated by Chinese government. China shall give national treatment to foreign investment beyond the negative list. The negative list will be issued by or upon approval by the State Council.

Specially, if more preferential treatment concerning access is offered to a foreign investor under any international treaty or agreement that the People’s Republic of China concludes or participates in, the relevant provisions in such treaty or agreement may prevail.

4.2.2 Investment promotion
In accordance with the FIL, all national policies on supporting the development of enterprises shall equally apply to foreign-invested enterprises in accordance with the law. From the perspective of investment promotion, the law has introduced relevant legal provisions from four aspects:
- Focusing on the needs of foreign investment, ensuring fair treatment between foreign and domestic invested enterprises, conducting regional pilot projects and improving the level of services provided for foreign investors, in order to create a fair business environment through legal measures.
- Focusing on the needs of foreign investors, including:
  - Seek comments and suggestions from foreign-invested enterprises in a proper manner when formulating laws, regulations and rules relating to foreign investment.
  - Normative documents and judgment documents relating to foreign investment shall be published in accordance with the law in due time.
  - China may, according to the requirements of national economy and social development, encourage and guide foreign investors to invest in specific industries, fields and areas. Foreign investors and foreign invested enterprises may enjoy preferential treatments in accordance with laws, administrative regulations or provisions of the State Council.
- Ensuring fair treatment between foreign and domestic invested enterprises, including:
China shall guarantee that foreign invested enterprises can equally participate in setting standards in accordance with the law. Besides, China should also enhance information disclosure and social supervision on standard setting.

The compulsory standards formulated by Chinese government shall equally apply to foreign invested enterprises.

China shall guarantee that foreign invested enterprises can participate in government procurement activities through fair competition. Products produced and services provided by foreign invested enterprises within the territory of China shall be treated equally in a government procurement.

Foreign invested enterprises may conduct financing through public offering of shares, corporate bonds and other securities or by other means.

Conducting regional pilot projects, including:

China shall establish multilateral and bilateral cooperation mechanisms for the promotion of investment with other countries, regions and international organizations, to enhance the international exchanges and cooperation in terms of investment.

China may, as needed, establish special economic area or carry out pilot polices and measures on foreign investment in specific areas, to promote foreign investment and expand opening-up.

Increasing the level of service provided for foreign investors, including:

China shall establish and improve the service system for foreign investment, and provide foreign investors and foreign invested enterprises with services and convenience.

Relevant competent departments shall prepare and publish guidelines for foreign investment and provide foreign investors and foreign invested enterprises with services and convenience.

4.2.3 Investment protection

The new Foreign Investment Law strengthens the protection of the legitimate rights and interests of foreign investment at the legal level, including but not limited to the following policies:

- China protects the intellectual property rights of foreign investors and foreign invested enterprises and protects the legitimate rights and interests of intellectual property rights holders and related rights holders; Intellectual property infringement activities will be punished in accordance with law.

- In the absence of special circumstances, local governments must fulfill the commitments made in accordance with the law to foreign investors and foreign invested enterprises.

- Foreign investors' capital contributions, profits, capital gains, asset disposal proceeds, intellectual property license fees, compensation or reimbursement obtained in accordance with law, and liquidation proceeds in China may be freely remitted in and out in RMB or foreign currency in accordance with law.

- China protects the intellectual property rights of foreign investors and foreign invested enterprises and guarantee that foreign invested enterprises can participate in government procurement.

- Chinese governmental authorities at all levels and relevant departments thereunder shall, under the principle of convenience, efficiency and transparency, streamline procedures for handling affairs, raise their efficiency and optimize government services, to further improve the services offered for foreign investment.

Relevant competent departments shall prepare and publish guidelines for foreign investment and provide foreign investors and foreign invested enterprises with services and convenience.

The new Foreign Investment Law strengthens the protection of the legitimate rights and interests of foreign investors; in special circumstances, the investments of foreign investors may be expropriated in accordance with the provisions of the law for the purpose of public interest. Any expropriation shall be carried out in accordance with legal procedures, and fair and reasonable compensation shall be paid in a timely manner.

- Foreign investors' capital contributions, profits, capital gains, asset disposal proceeds, intellectual property license fees, compensation or reimbursement obtained in accordance with law, and liquidation proceeds in China may be freely remitted in and out in RMB or foreign currency in accordance with law.

- China protects the intellectual property rights of foreign investors and foreign invested enterprises and guarantees that foreign invested enterprises can participate in government procurement.

- Administrative authorities and their staff shall keep the commercial secrets of foreign investors and foreign invested enterprises known to them in the course of performing their duties confidential in accordance with the law and shall not disclose or illegally provide to others.

- In the absence of special circumstances, local governments must fulfill the commitments made in accordance with the law to foreign investors and foreign invested enterprises.

- Establish a complaint mechanism for foreign invested enterprises and deal with problems reflected by foreign-invested enterprises or their investors promptly.
### 4.2.4 Investment management

The Foreign Investment Law introduces a new "negative list" management system, information reporting system, anti-monopoly and security examination system, enterprise registration procedures and other management regulations, which not only broadens the scope of foreign investment in China, but also simplifies the procedures for enterprises investing in China and regulates the necessary management system. The main provisions are as follows.

- Foreign investors may not invest in areas where investment is prohibited under the negative list of foreign investment access. The negative list of foreign investment access regulates investment in areas where investment is restricted, and foreign investors should meet the conditions set out in the negative list when making investments. Areas outside the negative list for foreign investment access shall be managed in accordance with the principle of consistency between foreign and domestic investors.

- Establishing a foreign investment information reporting system. Foreign investors or foreign invested enterprises shall, in accordance with the principle of necessity, submit investment information to the competent department of commerce through the enterprise registration system and the enterprise credit information disclosure system, and shall not request the submission of investment information that can be obtained through the information sharing between departments.

- Establishing an anti-monopoly and security review system for foreign investment and conducting security reviews of foreign investment that affects or may affect national security. Foreign investors who participate in the concentration of undertakings by acquiring enterprises in China or other measures shall be subject to the examination of concentration of undertakings in accordance with the provisions of the Antimonopoly Law of the People's Republic of China.

- Project approval or record filing, industry licensing and business registration procedures administered by the market supervision authorities. If foreign investment project requires approval and record filing, it shall be carried out in accordance with the relevant regulations of the People's Republic of China; if foreign investors invest in industries or fields that require a permit in accordance with the law, they shall go through the relevant permit procedures. The competent authorities shall, in accordance with the conditions and procedures consistent with those for domestic capital, examine and approve the applications of foreign investors for permits, unless otherwise stipulated by laws and administrative regulations.

### 4.2.5 Relevant legal liability

The new Foreign Investment Law regulates specific penalties for foreign investors who make investments in violation of the regulations, foreign investors and foreign invested enterprises who do not submit information as required, and staff of administrative authorities who violate the regulations. Violations of laws and regulations by foreign investors and foreign invested enterprises will be included in the credit information system.
5.1.1 "Exempted First Offenses" from Tax Administration Perspective

To better serve the taxpayers and other market bodies, the STA released the “List of Items applicable to "Exempted First Offenses" from Tax Administrative Penalties” (hereinafter referred to as the “List”) via STA [2021] No.6 on 31 March 2021. According to the List, any of the following offenses committed for the first time whose harmful consequences are minor and which is corrected voluntarily before being identified by tax authorities or corrected within the time limit prescribed by tax authorities shall not incur administrative penalties.

The List covers 10 items in total with certain types of minor tax illegal acts (e.g., document reporting, tax filing and invoice management) and shall apply to taxpayers, withholding agents, domestic institutions or individuals. The List became effective from 1 April 2021.

List of Items of "Exempted First Offenses" from Tax Administrative Penalties

<table>
<thead>
<tr>
<th>No.</th>
<th>Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Failure of a taxpayer to report to tax authorities information on all of its bank accounts in accordance with the Law on the Administration of Tax Collection or the implementation rules thereof or other relevant regulations.</td>
</tr>
<tr>
<td>2</td>
<td>Failure by a taxpayer to establish or retain account books or retain accounting vouchers or any relevant information in accordance with the Law on the Administration of Tax Collection or the implementation rules thereof or other relevant regulations.</td>
</tr>
<tr>
<td>3</td>
<td>Failure by a taxpayer to file a tax return or submit any other tax related documents within the period prescribed by the Law on the Administration of Tax Collection or the implementation rules thereof or other relevant regulations.</td>
</tr>
<tr>
<td>4</td>
<td>Failure by a taxpayer to report to tax authorities the data of invoice issuance by it with a tax control device within the period prescribed by the Law on the Administration of Tax Collection or the implementation rules thereof, the Administrative Measures for Invoices or other relevant regulations, provided that there are no illegal proceeds.</td>
</tr>
<tr>
<td>5</td>
<td>Failure by a taxpayer to obtain invoices in accordance with the Law on the Administration of Tax Collection or the implementation rules thereof, the Administrative Measures for Invoices or other relevant regulations, who instead uses any other voucher in lieu of invoices, provided that there are no illegal proceeds.</td>
</tr>
<tr>
<td>6</td>
<td>Failure by a withholding agent to establish or retain account books on the taxes withheld and remitted or collected and remitted or retain accounting vouchers or any other relevant information on the taxes withheld and remitted or collected and remitted in accordance with the Law on the Administration of Tax Collection or the implementation rules thereof or other relevant regulations.</td>
</tr>
<tr>
<td>7</td>
<td>Failure by a withholding agent to file relevant information on the taxes withheld and remitted or collected and remitted within the period prescribed by the Law on the Administration of Tax Collection or the implementation rules thereof, or other relevant regulations.</td>
</tr>
<tr>
<td>8</td>
<td>Failure by a withholding agent to issue a tax receipt in accordance with the Administrative Measures for Tax Receipts.</td>
</tr>
<tr>
<td>9</td>
<td>Failure by a withholding agent to issue a tax receipt in accordance with the Administrative Measures for Tax Receipts.</td>
</tr>
<tr>
<td>10</td>
<td>Failure by a domestic institution or individual who contracts out any engineering works or labor services to a non-resident to report any related matter to tax authorities in accordance with the Interim Administrative Measures for the Tax Rules on Non-Residents Contracting Construction Projects and Providing Labor Services.</td>
</tr>
</tbody>
</table>
5.1.2 Measures for facilitating the handling of tax affairs and payment of fees

5.1.2.1 Quickly respond to the needs
(1) Understanding the needs
Strengthen the demand management of taxpayers and fee payers by collecting their demands and the feasible methods. Set up a pre-release experience period for tax service products and openly recruit service product experiencers to try the products before launching. Improve the service products according to the feedback and suggestions of the experiencers afterwards.

(2) Intelligent consultation response
Implement "one policy, one explanation, one measure, one communication" to enhance the timeliness and relevance of the interpretation of tax preferential policies and tax collection and administration systems. Provide "7x24 hours" intelligent consultation services and promote the application of intelligent consultation to expand taxpayers' consultation channels and improves taxpayers' consultation service experience. In order to realize online resolution of problems encountered by taxpayers in the process of business operation, such as information system and matters handling, tax bureau builds a "cloud taxation" platform and carries out remote auxiliary taxation service.

(3) Improvement of service evaluation mechanism
Establish and improve the normalized working mechanism of "seeking positive and negative comments". Moreover, improve the business closed-loop management pattern of "evaluating - negative evaluation processing - result applying", and ensure that each problem reflected by negative comments can be rectified in time.

5.1.2.2 Direct and fast access to preferential policies
(1) Application of big data analysis
Use big data to monitor the implementation of tax reduction and fee reduction policies, timely scan and analyze information on suspicious situations where policies are not enjoyed when it should or contrariwise. The aim is to make eligible taxpayers and fee payers enjoy all applicable preferential treatments, and conduct prompt correction of any non-compliance.

(2) Optimizing the access to enjoy policies

5.1.2.3 Optimizing taxation experience
(1) Implementing appointment service
In order to save time and improve taxation experience for taxpayers, the appointment service has processing with simple matters are integrated in the tax guide, so as to provide more convenient time, service measures such as tax matters classification, information pre-review and quick response. They should effectively help taxpayers through the service of responsible for keeping abreast of the queuing situation, anticipating the queuing time and making timely and effective responses. They should effectively help taxpayers through the service of active inquiry, familiar with the process, and finish the process in a timely manner. At the same time, service trade, while simplifying and consolidating relevant information. Strengthen information and treasury departments work closely together to keep the electronic tax refund channels functional and ensure the filing guidelines to facilitate taxpayers to choose the correct form. Through cooperating with the finance department, the refunds are guaranteed to be delivered in time. The finance, tax and treasury departments work closely together to keep the electronic tax refund channels functional and ensure the filing guidelines to facilitate taxpayers to choose the correct form.

(2) Sharing and simplifying information
Implement the commitment system for informing tax certification matters, expand the scope of certification matters under the commitment system for informing, and further reduce certification materials. Simplify the process of taxation record filing for overseas payment projects including service trade, while simplifying and consolidating relevant information. Strengthen information sharing, improve third-party information sharing system, and gradually enrich the list of government information resources sharing. Deploy with the STA to synchronize sharing of tax filing information with banks, optimize the process of foreign exchange payment and formulate guidance manual of the electronic taxation bureau for it, guide taxpayers to conduct online processing, and meet the needs of taxpayers in foreign exchange payment business. Improve the application

Through the big data from cloud platform, it is possible to take the initiative to screen the taxpayers who meet the conditions of preferential policies, and to promote the precise and direct access to tax preferential policy measures. In addition, expand the scope of tax preferential policy from record filing to preparation for inspection. All tax incentives, except "Levy and Refund", "Refund after Collection", "Super-Deduction" of Value-added Tax and other tax preferential filing of individual taxation, shall be subject to the request of self-retention of supporting documents for future inspection purposes.

5.1.2.4 Optimizing taxation experience
(1) Optimizing the access to enjoy policies

Through the big data from cloud platform, it is possible to take the initiative to screen the taxpayers who meet the conditions of preferential policies, and to promote the precise and direct access to tax preferential policy measures. In addition, expand the scope of tax preferential policy from record filing to preparation for inspection. All tax incentives, except "Levy and Refund", "Refund after Collection", "Super-Deduction" of Value-added Tax and other tax preferential filing of individual taxation, shall be subject to the request of self-retention of supporting documents for future inspection purposes.
function of external data collection on resource and environmental tax, expand the scope of data exempted from filling, and optimize the function of resource and environmental tax declaration.

(4) Speeding up tax refund processing
Streamline the submission of related information for export tax refunds and simplify the tax refund process. Integrate and optimize the application portal of the electronic tax bureau and clarify the filling guidelines to facilitate taxpayers to choose the correct form. Through cooperating with the finance department, the refunds are guaranteed to be delivered in time. The finance, tax and treasury departments work closely together to keep the electronic tax refund channels functional and to ensure that eligible taxpayers receive tax refunds in a timely manner, while promoting convenient payment of departure tax refunds.

(5) Implementing appointment service
In order to save time and improve taxation experience for taxpayers, the appointment service has been implemented. In order to upgrade and realize the transformation of taxation service and handling procedures, tax bureau develops the service mode of prior appointment and online allocation. By filling in the information of appointment time and types of processing matters, taxpayers can successfully make an appointment and have priority processing in the tax service hall during the corresponding time period. Staff at the consultation desk of the tax service hall is responsible for keeping abreast of the queuing situation, anticipating the queuing time and making timely and effective responses. They should effectively help taxpayers through the service of "active inquiry, familiar with the process, and finish the process in a timely manner ". At the same time, service measures such as tax matters classification, information pre-review and quick processing with simple matters are integrated in the tax guide, so as to provide more convenient and quicker services to taxpayers entering the hall and shorten the waiting time.

(6) Improving the speed of handling export business
Optimize the "one spot" export tax refund function. Implement paperless documentary filing. Further simplify customs clearance and foreign exchange collection procedures. Strengthen the cooperation among the departments of bureau of commerce, the People's Bank of China, customs, tax bureau and other departments, strengthen data sharing and cooperation to help export enterprises speed up the processing, compress the time for document collection and organization, and ultimately improve the overall efficiency of export tax refund. The tax department should ensure that the average time for normal export tax refund process does not exceed 8 working days, and further compress the processing time for A-class taxpayers.

5.1.3 Improve approaches of tax collection and enforcement
(1) Strictly regulating fair and civilized enforcement
Relevant departments should collect taxes and fees in accordance with the laws and regulations and prevent the collection of excessive taxes and fees. Comprehensive and thoroughly implement system of public notice of administrative law enforcement, record the whole process, and legality examination of the major enforcement decisions. Optimize the list of rights and responsibilities of tax authorities, implement case guidance system of taxation administrative enforcement, continuously standardize the benchmark of administrative punishment, promote online processing of simple punishment matters, and implement pilot system for justification of major taxation cases. Moreover, it is necessary to comprehensively promote the construction of information technology of internal control mechanism, standardize tax enforcement behaviors and reduce enforcement risks. It is important to improve the database of taxation policies and regulations by publishing them centrally and uniformly through the taxation website and updating them dynamically. Finally, it is vital to enhance the certainty, stability and transparency of the basis for taxation enforcement, and to build a fair and equitable taxation environment based on the tax regulations.

(2) Reinforcing classification and precise management
Improve taxation big data, risk management mechanism and taxation management system. Build a new management pattern of dynamic "credit and risk", which aims to analyze and identify taxpayers' behaviors and characteristics in real time, and to realize "no disturbance without risk, pre-warning with low risk, strict monitoring with medium to high risk ". Through regulating the order of tax collection and promoting fair competition, tax authorities strive to minimize interference with market entities and maximize supervision efficiency.

(3) Build and improve the tax credit management system
Tax authorities shall deepen the incentive of trustworthiness and discipline of bad faith in accor-
dance with laws and regulations, in order to promote the construction of social credit system. Adhere to the principles of lawful and prudent supervision, further implement the relevant provisions of tax credit evaluation level repair, guide taxpayers to timely and proactively correct the breach of trust and improve the awareness of trustworthy tax payment. Strengthen the dynamic management of the information of major tax violation cases and the list of involved parties, provide the parties with credit repair methods to be removed from the list in advance, and guide the standardized and healthy development of market bodies.

5.2 Secondment arrangement

5.2.1 Corporate Income Tax implications
Station Taxation Administration (“STA”) Announcement [2013] No. 19 (“Bulletin 19”) has provided clarification and interpretation on the PE assessment in terms of cross-border secondment. According to Bulletin 19, the tax authorities shall adopt the “substance over form” principle and the home entity will be regarded as providing services through its staff in China if:
- The home entity normally reviews and appraises the performance of the secondees; and
- One of the following criteria is met:
  1. The host entity pays the home entity management fees or makes payments in the nature of service fees; or
  2. The payments made by the host entity to the home entity exceed the payments of salaries, social security contributions and other related expenses passed on by the home entity to the secondees; or
  3. The home entity retains certain amount of the secondment related payments made by the host entity; or
  4. The remuneration of secondees borne by the home entity has not been fully reported for PRC IIT purposes; or
  5. The home entity determines the number, job description, remuneration level and working location of the individuals to be assigned to the host entity.

In-charge tax authorities would generally review the following information related to such activities, as well as the economic substance and implementation of such arrangements, to determine the tax obligations of any non-resident enterprise:
6. The contract, agreement or arrangement concluded among the dispatching enterprise, the service-retaining enterprise and the dispatched employee;
7. The management rules of the dispatching enterprise or of the service-retaining enterprise regarding the dispatched employee, including the specific rules on job responsibility, job description, performance assessment, risk assumption, etc.;
8. The payments made by the service-retaining enterprise to the dispatching enterprise and the related accounting treatment, and the documentation on individual income tax declaration and payment of the dispatched employee; and
9. The fact whether the service-retaining enterprise covertly makes any payments related to the dispatch by means of offsetting transactions, waivers of claims, related-party transactions or in any other forms.

In light of the above, the home entity and the host entity shall properly prepare and well preserve the abovementioned supporting documents in order to mitigate potential tax risks.

5.2.2 Individual Income Tax implications
The Ministry of Finance (MOF) and the State Taxation Administration (STA) issued Announcement [2019] No. 34 in 2019, which is an Announcement regarding the determination of the length of residence for non-domiciled individuals (hereinafter referred to as "Announcement 34") and Announcement [2019] No. 35, Announcement on individual income tax (IIT) policies for non-resident and non-domiciled individuals (hereinafter referred to as "Announcement 35"), which summarizes the IIT treatments on non-domiciled individuals under the new IIT law.

- The rules in determining the length of residence for non-domiciled individuals are as below:
  1. If a non-domiciled individual resides in mainland China ("China") for 183 days or more in a tax year, he will be subject to PRC IIT on both China and non-China sourced income provided that the
1. If a non-domiciled individual resides in mainland China (“China”) for 183 days or more in a tax year, the Ministry of Finance (MOF) and the State Taxation Administration (STA) issued Announcement [2019] No. 34 in 2019, which is an Announcement regarding the determination of the length of residence for non-domiciled individuals (hereinafter referred to as “Announcement 34”) and Announcement [2019] No. 35, Announcement on individual income tax (IIT) policies for non-resident for non-domiciled individuals (hereinafter referred to as “Announcement 35”), which summarizes the IIT treatments on non-domiciled individuals under the new IIT law.

2. A stay in mainland China of 24 hours shall be counted as a China day while a stay in mainland China of less than 24 hours shall not be counted as a China day.

- Providing the rules to determine the source of income

### Income Type and the source of income

<table>
<thead>
<tr>
<th>Income Type</th>
<th>Source of income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wages and Salaries</td>
<td>China sourced wages and salaries refer to the wages and salaries earned by the individual attributable to China working periods</td>
</tr>
<tr>
<td>Several-month bonus and equity income</td>
<td>China sourced several-month bonus and equity income refer to the several-month bonus and equity income earned by the individual attributable to China working periods</td>
</tr>
<tr>
<td>Remuneration received by member of board of directors, member of supervisory board and senior management</td>
<td>For Individuals who act as members of board of directors, members of supervisory boards and senior management (hereinafter referred to as “Senior management”) of a Chinese resident enterprise, the directors’ fees, supervisors’ fees, wages and salaries and other remuneration (hereinafter referred to as “Senior management remuneration,” including several-month bonus and equity income) paid or borne by the Chinese resident enterprises, are China sourced income, regardless whether they are performing their duties in China</td>
</tr>
</tbody>
</table>

3. In addition, the determination of income source for several-month bonus and equity income is as follows:

a) A Several-month bonus or equity income received by non-domiciled individuals when they performed duties in China for previous periods that were during non-China working periods are considered to be non-China sourced wages and salaries.

b) Any several-month bonuses or equity income received by non-domiciled individuals after they have stopped performing duties in China and have left China but who have conducted work during previous periods that are listed as “China working periods” is considered as “China sourced wages and salaries.”

c) Calculation method: Total amount of several-month bonus or equity income times the number of China working days during the period attributable to China working periods.

d) When a non-domiciled individual receives, in one month, a few several-month bonuses and equity income that are attributable to several different periods, China sourced income should be calculated for each single income and then aggregated to be the monthly total China sourced income.

- The calculation method for taxable wages and salaries for non-domiciled individuals:
1. Where a non-domiciled individual is not in senior management, the wages and salaries received by the individual shall be calculated based on the methods below:

<table>
<thead>
<tr>
<th>China days in a tax year for the non-domiciled individual</th>
<th>Taxable Income</th>
<th>Calculation formula for current-month wages and salaries</th>
<th>Formula 1:</th>
</tr>
</thead>
</table>
| No more than 90 days | Wages and salaries paid or borne by domestic employer attributable to China working period | \[
\text{China sourced and non-China sourced wages and salaries} = \frac{\text{Current month China sourced wages and salaries}}{X} \times \text{China working days in the current month}
\] | \[
\text{Formula 1: }\frac{\text{Current month China sourced wages and salaries}}{X} \times \text{China working days in the current month}
\]

| More than 90 days but less than 183 days | Wages and salaries attributable to China working period | \[
\text{China sourced and non-China sourced wages and salaries} = \frac{\text{Current month China sourced wages and salaries}}{X} \times \text{China working days in the current month}
\] | \[
\text{Formula 2: }\frac{\text{Current month China sourced wages and salaries}}{X} \times \text{China working days in the current month}
\]

| No less than 183 days but less than 6 consecutive years of residency | All wages and salaries, except for the portion paid by overseas employer or individual and attributable to non-China working period | \[
\text{Current month China sourced wages and salaries} = \frac{\text{Current month China sourced wages and salaries}}{X} \times \text{China working days in the current month}
\] | \[
\text{Formula 3: }\frac{\text{Current month China sourced wages and salaries}}{X} \times \text{China working days in the current month}
\]

| No less than 6 consecutive years of residency | All China sourced and non-China sourced wages and salaries | \[
\text{All China sourced and non-China sourced wages and salaries are subject to PRC IIT.}
\] | \[
\text{No China sourced and non-China sourced wages and salaries are subject to PRC IIT.}
\]

2. Where a non-domiciled individual is in senior management, the wages and salaries received by the individual shall be computed

<table>
<thead>
<tr>
<th>China days for the non-domiciled senior management (in a tax year)</th>
<th>Taxable Income</th>
<th>Calculation formula for current-month wages and salaries</th>
<th>Formula 1:</th>
</tr>
</thead>
</table>
| No more than 90 days | Wages and salaries paid or borne by domestic employer | \[
\text{Current month wages and salaries paid or borne by domestic employer} = \frac{\text{Current month China sourced and non-China sourced wages and salaries}}{X} \times \text{China working days in the current month}
\] | \[
\text{Formula 1: }\frac{\text{Current month China sourced and non-China sourced wages and salaries}}{X} \times \text{China working days in the current month}
\]

| More than 90 days but less than 183 days | All wages and salaries, except for the portion not paid or borne by domestic employer and attributable to non-China working period | \[
\text{Current month China sourced and non-China sourced wages and salaries} = \frac{\text{Current month China sourced and non-China sourced wages and salaries}}{X} \times \text{Non-China working days outside China}
\] | \[
\text{Formula 3: }\frac{\text{Current month China sourced and non-China sourced wages and salaries}}{X} \times \text{China working days in the current month}
\]

| No less than 183 days but less than 6 consecutive years of residency | All wages and salaries, except for the portion paid by overseas employer or individual and attributable to non-China working period | \[
\text{Current month China sourced and non-China sourced wages and salaries} = \frac{\text{Current month China sourced and non-China sourced wages and salaries}}{X} \times \text{Non-China working days outside China}
\] | \[
\text{Formula 3: }\frac{\text{Current month China sourced and non-China sourced wages and salaries}}{X} \times \text{Non-China working days outside China}
\]

| No less than 6 consecutive years of residency | All China sourced and non-China sourced wages and salaries | \[
\text{All China sourced and non-China sourced wages and salaries are subject to PRC IIT.}
\] | \[
\text{No China sourced and non-China sourced wages and salaries are subject to PRC IIT.}
\]
-Defining the rules to compute tax liability for non-domiciled individuals

1. Rules to compute tax liability for resident individuals

a) Where a non-domiciled resident individual receives consolidated income, individual income tax shall be computed on an annual basis after year end. Where there is a withholding agent, the withholding agent shall perform pre-withholding on a monthly basis or per time. Where an annual reconciliation is required, the annual reconciliation shall be performed in accordance with relevant provisions and annual consolidated income shall be computed based on the formula below (Formula 4):

Annual consolidated income = (annual wages and salaries + annual income from remuneration for personal services + annual author’s remuneration + annual royalties – deductible expenses – special deductions – other deductions stipulated by laws and regulations) x tax rate – quick reckoning deduction

b) Where a non-domiciled resident individual is a foreign individual and the eight types of tax-exempt benefits, such as housing subsidies, children education, language training, etc. have been excluded from the taxable wages and salaries before 1 January 2022, special additional tax deductions cannot be claimed at the same time.

2. Rules to calculate tax liability for non-resident individuals

a) Wages and salaries received by non-resident individuals for the current month shall be calculated in accordance with the provisions in the announcement, and the monthly standard deduction of RMB5,000 should be deducted to reach the taxable income. Monthly tax rate table shall be applied to calculate the tax liability.

b) When a non-domiciled individual receives a several-month bonus, China sourced income should be calculated based on this announcement and PRC IIT should be calculated separately from their regular monthly salary. No deductions are allowed; it should be evenly divided into six instalments and IIT should be calculated using the monthly tax rates. This method should be used once a year and the formula (Formula 5) is as shown below:

\[
\text{Tax payable on several-month bonus received in a month} = \frac{\text{(several-month bonus ÷6)} \times \text{tax rate – quick reckoning deduction}}{6}
\]

Where a non-domiciled individual is a resident of the other contracting state, the individual can choose to receive relevant treaty benefits in accordance with the double tax treaty and other provisions stipulated by MOF and STA or choose not to receive the relevant treaty benefit when computing tax liability.

<table>
<thead>
<tr>
<th>Relevant clauses</th>
<th>Provisions in the double tax treaty</th>
<th>Relevant Provisions in the Announcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treaty benefit on overseas dependent personal services income</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-China sourced dependent personal services income received by a resident of that other contracting state can be tax exempt in China.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Where a non-domiciled individual is a resident of that other contracting state, wages and salaries can be tax exempt in China if treaty benefit on overseas dependent personal services income is applied. The individual can enjoy the treaty benefit at the time of pre-withholding (for resident individuals) or when the income is received (for non-resident individuals).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Formula 2 shall be adopted in computing taxable income of wages and salaries.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Treaty benefit on domestic dependent personal services income

**Dependent personal services**

Where a resident of that other contracting state resides in China for no more than 183 days in the contracting period based on the double tax treaty, China sourced dependent personal services income can be tax exempt in China if it is not paid or borne by the domestic resident employer or a permanent establishment.

- Where the non-domiciled individual is a resident of that other contracting state, wages and salaries can be tax exempt in China if treaty benefit on domestic dependent personal services income is applied. The individual can enjoy the treaty benefit at the time of pre-withholding (for resident individuals) or when the income is received (for non-resident individuals).
- Formula 1 shall be adopted in computing taxable income of wages and salaries.

### Independent personal services

Where the non-domiciled individual is a resident of that other contracting state, income from remuneration for personal services can be tax exempt in China if treaty benefit on independent personal services income is applied. The individual can enjoy the treaty benefit at the time of pre-withholding (for resident individuals) or when the income is received (for non-resident individuals).

### Directors’ fees

Directors’ fees or senior management remuneration received by a resident of that other contracting state can be taxed in China in accordance with relevant provisions for wages and salaries or income from remuneration for personal services if he meets the conditions stipulated in the double tax treaty.

- Where a resident of that other contracting state is a member of board of directors while the relevant double tax treaty doesn’t include the clause for directors’ fees, the senior management remuneration shall apply relevant provisions in the above clauses for dependent personal service and independent personal services or business profits.
- Where a resident of that other contracting state is a senior management but not a member of board of directors while the clause for directors’ fees in the relevant double tax treaty doesn’t include provisions for senior management, the senior management remuneration shall apply relevant provisions in the above clauses for dependent personal service and independent personal services or business profits.
- Where a resident of that other contracting state is a senior management, if the senior management remuneration can be taxed in China based on the clause for directors’ fees in the double tax treaty, it shall be taxed in accordance with provisions in 2-2) in the announcement.
The rules on the tax collection and management for non-domiciled individuals

1. Rules on the anticipated China days

When a non-domiciled individual performs tax filing for the first time in a tax year, the individual can estimate China days in the tax year and in the period stipulated by double tax treaties based on the terms in the employment contract, etc. and compute tax liability based on the estimated situation. If the actual situation differs from the estimated situation, the following provisions shall apply:

a) Where a non-domiciled individual is pre-determined as a non-resident but becomes a tax resident due to extended China presence, the withholding method will remain unchanged during the tax year. The individual should perform annual reconciliation filing after year end in accordance with relevant provisions for resident individuals. However, if the individual leaves China and is not expected to enter into China in the tax year, the annual reconciliation filing can be performed before he leaves China.

b) Where a non-domiciled individual is pre-determined as a tax resident but becomes a non-resident due to shortened China presence, the individual shall report to the in-charge tax authority and re-calculate tax liability based on the provisions for non-resident individuals from the day he will not qualify as a resident to the 15th day after year end. The underpaid tax liability shall be settled, and no interest surcharge will be imposed. If tax is overpaid, he can apply for tax refund.

c) Where a non-domiciled individual is pre-determined as non-resident and the China days is anticipated to be no more than 90 days in a year or 183 days in the contracting period based on the double tax treaty, the individual shall report to the in-charge tax authority and re-calculate tax liability on the wages and salaries for the previous months within 15 days after the end of the month when the actual China days exceeds 90 days or 183 days. The underpaid tax liability shall be settled, and no interest surcharge will be imposed. If tax is overpaid, he can apply for tax refund.

2. Rules on domestic employers reporting wages and salaries paid by overseas related parties

Where a non-domiciled individual earns China sourced wages and salaries during employment in China, if the domestic employer is related with an overseas entity or individual and the wages and salaries that should have been paid by the domestic employer are partly or wholly paid by the overseas related parties, the non-domiciled individual may file the tax liability on the overseas portion via self-declaration or authorize the domestic employer to file the tax liability. If the domestic employer is not authorized by the non-domiciled individual, the employer shall report relevant information to the in-charge tax authority within 15 days after the end of the month in which the income is paid, including the non-domiciled individual’s working arrangement made by the domestic employer and the overseas related parties, overseas payments and contact information of the non-domiciled individual, etc.

5.3 Cross-border service fee and royalty fees

In recent years, overseas payments regarding service fees and royalty have been one of the focus of tax authorities in various countries. Following the development of Base Erosion and Profit Transfer (BEPS), the PRC tax investigations and adjustments of cross-border service fee and intangible asset transactions (i.e. royalties) have been increased significantly. In July 2014, the State Taxation Administration issued the "Notice on Anti-avoidance Investigations for Large Overseas Payments" (Shuizongbanfa [2014] No. 146, hereinafter referred to as "Announcement No. 146"), and emphasized that PRC tax authorities should increase anti-tax avoidance investigations in order to prevent enterprises transferring profits through overseas payments.

5.3.1 PRC tax implications

5.3.1.1 Corporate Income Tax

According to relevant regulations of the Corporate Income Tax Law ("CITL"), the Corporate Income Tax Detailed Implementation Rules ("CITDIR") , the term “royalties” refers to income derived by an enterprise from the provision of the right to use patents, non-patented technologies, trademarks, copyrights, and other licensed rights. The source of “royalty income” should be determined according to the place where the enterprise, establishment or place of business that bears or pays the income is located. The standard WHT rate is 10%, unless the double tax treaty provides a preferential tax rate.

5.3.1.2 Value-added Tax and surcharges

VAT applies to the supply of taxable services and intangible assets ("IA") for consideration in China for consideration in
China at the rate of 6%. According to relevant regulations of Caishui [2016] No. 36 (“Circular 36”), the supply of taxable services includes “information technology service”, covering software service, electronic design and testing service, information system service, transaction process management service and information system appreciation service; the supply of IA refers to the transfer of ownership or use right of IA, which include know-how, trademark, copyright, goodwill and others.

5.3.2 General Tax risks and recommendations

5.3.2.1 Definition of service fees and royalties
According to Guoshuihan [2009] No. 507 (“Circular 507”), the term “information concerning industrial, commercial or scientific experience” of a DTT should be understood as proprietary technology, and generally refers to unpublicized information or documents with the nature of proprietary technology that is necessary to the production or process duplication of some product. In a service contract, if the service provider applies some specialized knowledge or technology in the course of providing the service but does not assign or license such technology, such service should not fall within the scope of royalties. However, if the achievement formed by the service provided by the service provider falls within the scope of royalties defined in the applicable DTT and the service provider still holds the ownership of the same achievement, while the service receiver only enjoys the right to use the achievement, the income derived from such service should be regarded as “royalties” and the royalties clauses of the applicable DTT should apply.

5.3.2.2 CIT deductibility of royalty fee
As noted above, a PRC entity is generally allowed to claim a tax deduction for reasonable expenses necessarily and normally incurred in the ordinary course of business in calculating its taxable income for CIT purpose. In determining the reasonableness and deductibility of the royalty fee paid, the China tax authorities would generally examine the following factors:

(1) Whether the royalty fee is incurred in relation to the generation of revenue and supported by substance;
(2) Whether the consideration (i.e. the amount of the royalty fee) is reasonable and is determined on an arm’s length basis; and
(3) Whether the supporting documents can be provided.

5.3.2.3 Anti-avoidance investigation against overseas royalty payment
With the issuance of Circular 146 and Bulletin 6, tax authorities have become increasingly focused on royalty payments made by resident enterprises to their overseas related parties. In particular, PRC tax authorities shall be focused on the following royalty payments:

- Royalties paid to entities located in tax havens;
- Royalties paid to overseas related parties that undertake no or little functions;
- Significant amounts of royalties paid for intellectual property to which the payer has made significant contribution;
- Significant amounts of royalties paid for intellectual property whose value has been impaired or declined.

According to Bulletin 6, it is advised that the PRC tax authorities shall pay particular attention to the following factors when reviewing intercompany royalties:

- Whether the value of the licensed intangibles has declined since the royalty was initially established;
- Whether price adjustment clauses are commonly found in third party contracts in the industry;
- Whether functions as well as assets and risks have changed; and
- Whether the licensee has performed development, enhancement, maintenance, protection, exploitation and promotion functions (DEMPEP) for which it has not been reasonably compensated.

In addition, Bulletin 6 stipulates that PRC tax authorities would be empowered to make special tax adjustment on transactions associated with the following royalty arrangements that are not carried out on an arm’s length principle:

- Where an entity makes royalty payments to overseas related parties without receiving the corresponding economic benefits but rather giving rise to a reduction of taxable income; or
- Where an entity that owns bare legal ownership but does not control financing functions or risks (much less DEMPEP functions) should not be entitled to any intangible-related profits at all.