CHINA

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1. INTRODUCTION

a. Forms of Legal Entity

Three main categories of legal vehicles exist in China: Limited Liability Company (including Wholly Foreign Owned Enterprise ("WFOE") and Joint Venture), Partnership and Representative Office (although the Representative Office is not a legal person). A foreign company (other than a foreign company operating in the bank/insurance/finance service line) may not operate in branch form in China.

Limited partners of Partnerships and shareholders of Limited Liability Companies may forfeit their equity contributions but are not responsible for the obligations and debts of the companies themselves.

Under prevailing Chinese regulations, the legal nature (i.e. whether it is a legal entity or a contractual relationship) of a China Business Trust ("CBT") and its tax treatment (i.e. whether it is transparent for China tax purposes) are not entirely clear. Although it is not uncommon to encounter the use of a CBT historically within a multinational structure, few taxpayers are currently setting them up due to the uncertainties and the additional pressures of BEPS and OECD tax reforms. Taxpayers with CBTs should discuss and agree the relevant treatments with the competent authorities regularly (e.g. annually). However, any discussions and agreements on the treatment with the competent authorities may just be verbal and it is unlikely that the competent authorities would issue any written rulings or advice in this regard.

Foreign investment in certain industries in China may be restricted. Some industries do not admit foreign investors at all, others may permit <50% foreign investment, and others may not require any local investment, but local governments may request certain levels of local participation[1].

b. Taxes, Tax Rates

China's standard corporate income tax ("CIT") rate is 25%, but certain regimes may reduce such rate to 2.5%, 5% or 15% (e.g. high tech companies). The regime previously qualifying for a 5% rate (e.g. company with annual taxable income no more than RMB1 million) was lowered to 2.5% effective from January 2021 and the regime previously stipulating 10% (e.g. company with annual taxable income more than RMB1 million but no more than RMB3 million) was lowered to 5% from January 2022.

Limited Liability Companies are subject to CIT. Partnerships are not liable for income tax on their own income; rather, the partners of Partnerships are responsible for Chinese income tax at their own applicable tax rates on their income received from the Partnerships.

In addition to income taxes, China imposes standard Value Added Tax ("VAT") at rates that vary from 3%-13%, depending on activities and incomes[2]. Unlike CIT, both Limited Liability Companies and Partnerships would be liable for VAT and surcharges on their receipts subject to VAT. Owners of immovable properties in China would also be subject to property taxes including Real Estate Tax and Urban Land Use Tax. Further, China imposes Land Appreciation Tax ("LAT") at a rate of 30-60% on gains arising from direct transfers of immovable property (including land use rights). Indirect transfers of immovable property should technically not be subject to LAT in China; although on some rare occasions, certain local PRC tax authorities have sought to impose LAT even on indirect transfers of immovable property if they deem the transaction is a tax avoidance arrangement. M&A activity may also implicate other types of transfer taxes, such as Stamp Duty and Deed Tax (only on transfers of immovable property), amongst others.

1 Note that such requests may be tied to local regulatory approvals. In such cases, foreign investors may wish to consider whether the terms of the equity participation - preferred or common, voting or non-voting, term, and exit provisions. Local laws that may override the terms of equity participation should also be considered carefully, along with any implications of potential governmental ownership of the investor.

2 Careful analysis should be made when considering a toll manufacturing business or a contract manufacturing business (versus a full-risk manufacturing model), as the VAT costs of such operating arrangements can be prohibitive.

c. Common divergences between income shown on tax returns and local financial statements

In China, there are several discrepancies between accounting profits and taxable profits. Regarding M&A transactions, the common divergences are as follows:

- Permanent adjustments: entertainment expense exceeding certain specified thresholds, certain management fees, certain bad debt, government fines (such as tax penalties, etc.) etc.;
- Temporary adjustments: accrual expenses, annual limited staff welfare fee, inventory reserve, provisions, unrealised gains/ losses, etc.

In groups of Chinese companies, dividends distributed from a China subsidiary to a China parent company will not create taxable profits for such parent.

2. RECENT DEVELOPMENTS

A series of Covid-19 tax and social welfare policies were issued and implemented in early 2020 by the state government, most of which expired during 2021. However, following ongoing Covid-19 developments in China during March/April 2022, similar policies could be reactivated by the government in the upcoming months.

- Tax measures

a. Protective treatments and supplies

Equipment expenditures, which are incurred to increase production capacity by companies engaged in the production of key supplies for epidemic prevention and control, are allowed to full CIT deduction in a single year and apply for full refund of incremental retained VAT on a monthly basis. Allowances and bonuses obtained by individuals participating in the epidemic control and prevention and medicines and medical supplies given out to individuals for the purpose of prevention of coronavirus COVID-19 will be exempt from Chinese Individual Income Tax (“IIT”).

b. Donations

In the tide of many companies and individuals actively making donations of money and goods to help fight against COVID-19, the Chinese government also guaranteed exemptions for the donors.

These exemptions cover goods donated through charity organisations, government authorities, or directly donated to the hospitals leading coronavirus containment which are entitled to VAT and Surtax exemption.

In addition, the donations made by enterprises or individuals through qualified organisations or government authorities can be fully deducted for CIT and IIT purposes.

c. Losses carried forward

In order to cushion the impact to businesses and the economy, the Chinese government is also working hard to reduce the tax burden on all sectors.

For industries that were significantly affected during the outbreak, especially for transportation, catering, accommodation and tourism, the ability to offset CIT losses incurred in 2020 will be extended from five years to eight years (i.e. losses incurred in 2020 will be able to be utilised up to and including the 2028 annual filing).

d. VAT on Small Scale Taxpayers

Going further, China's State Council has also decided to exempt VAT for small scaled taxpayers in Hubei province (where Wuhan is located) and reduced the VAT collection rate from 3% to 1% for small scale taxpayers in other areas, from 1 March 2020 and the monthly minimum threshold of taxable income will be increased from RMB 10,000 to RMB 15,000 from 1 April 2021.

- Social measures

The Chinese government provides a lot of Social Security deferral payment and subsidies. They responded by deferring payments and subsidised the small and medium sized enterprises' rates and the Social Security payments.

3. SHARE ACQUISITIONS

a. Tax Attributes

China does not restrict the use of net operating losses or other tax attributes upon a direct or indirect transfer of the shares of a Chinese company. However, in the case of an indirect transfer, the existence of tax assets on the books of a Chinese company may affect the share transfer tax analysis (see below).

b. Tax Grouping

China does not provide for group taxation of related Chinese entities. Each Chinese entity shall file income tax returns separately except for branches which calculate their portion of income tax based on certain factors within the company.

c. Tax Relieved Reorganisations

Deferral of CIT may be achieved with respect to the transfer of an asset or equity if:

- The transferor and transferee are Chinese companies, related via 100% direct equity ownership;
- The transfer occurs at net book value;
- Neither party recognises gain or loss under Chinese GAAP methods;
- The transaction is executed for a reasonable business purpose that is not primarily for the purpose of reducing, eliminating or deferring tax payment;
- The original business activities of the assets/equity being transferred should remain unchanged for a minimum period of 12 months following the transfers[3];

3 Cai Shui (2014) No. 109. and Cai Shui (2009) No.59

- The ratio of acquired, merged or divided assets or equity complies with the requirement (e.g. the assets/equity transferred are not lower than 50% of the total assets of the transferor enterprise/equity interests of the acquired enterprise), and in the case of a restructuring, the consideration paid for equity complies with such required ratio of 85%; and
- In the case of a transfer of a Chinese resident enterprise by a non-Chinese resident enterprise to its wholly-owned non-Chinese resident enterprise, the transferor is required to provide a written undertaking to the relevant PRC tax authorities that the transferor will not transfer the equity of the transferee within a period of three years following such initial transfer.

d. Purchase Agreement

In the context of an indirect transfer of the equity interests in a Chinese resident enterprise (see below), the tax exposures and tax reporting duties should be evaluated[4]. A buyer typically should seek legal protection in the purchase agreement to ensure that the seller will:

(i) Timely complete the appropriate reporting;

(ii) Provide a copy of all correspondence (including reporting acknowledgement notices, tax returns and tax payment receipts where applicable) with the PRC tax authority for the buyer's records and support of its tax cost base upon future transfer; and

(iii) Indemnify the buyer for any tax, interest and penalties imposed on the buyer in relation to the indirect transfer of the Chinese enterprise in case the seller fails to pay its own tax liabilities.

e. Transfer taxes on equity transfers (including mechanisms for disclosure and collection)

China imposes a 10% withholding tax ("WHT" or "STT") on the gains resulting from dispositions of "Chinese taxable property" by a non-Chinese tax resident enterprise which does not have a taxable establishment in China . Shares/equity interests/convertible bonds in Chinese resident entities, immovable properties in China and assets belonging to Chinese permanent establishments constitute "Chinese taxable property" such that their direct transfers are subject to STT.

Similarly, if equity interests of a company that owns Chinese taxable property are transferred, China may recharacterise (and impose CIT on) such an indirect transfer as a direct transfer of the Chinese taxable property if the transfer is not clearly supported by a "reasonable business purpose" and the company that owns the Chinese taxable property lacks sufficient economic substance[5].

4 Announcement of the SAT [2015] No.7 ("Circular 7", replacing Circular 698 re. indirect share transfer tax)

5 Article 1, Circular 7.

In determining whether a transfer has "reasonable business purpose", the tax authorities adopt a "green zone", "red zone", and facts and circumstances ("Seven Factors Test") approach as follows:

i "Green Zone" (Safe Harbor[6]): no recharacterisation of an indirect transfer may occur if:

- The initial acquisition and current sale are of a public listed company on the open market;
- A direct transfer of the Chinese assets by the non-resident seller would be exempt under the double tax treaty between China and the jurisdiction in which the non-resident seller is tax resident;
- The transfer is part of a group internal restructuring that involves each of the following:
  - The transferor and transferee are related by at least 80% common equity ownership (directly or indirectly[7]);
  - Indirect relation via "chains" of entities is determined by multiplying the equity ownership; and
  - If more than 50% of the value of the overseas enterprise being transferred is attributable to the immoveable property in China, the "common equity ownership" between the transferor and transferee will need to be increased to 100% (instead of 80%);
  - The PRC tax liability on any subsequent indirect transfer shall not be reduced as compared to a situation where such internal restructuring did not take place; and
  - Consideration for the transfer is wholly paid in the form of the equity of the transferee or an enterprise in which the transferee owns a controlling interest (i.e. cashless and debtless).

ii "Red Zone"[8]: an indirect transfer is automatically recharacterised as a direct transfer if each of the following is the case:

- 75% or more of the value of the equity of the overseas enterprise is (directly or indirectly) attributable to taxable assets in China;
- At any time within the preceding year before the indirect transfer, either at least:
- 90% of the gross assets of the overseas enterprise (excluding cash) comprise direct or indirect investments in China; or
- 90% of the gross income derived by the overseas enterprise is sourced directly or indirectly from China;
- The overseas enterprise conducts limited functions and bears minimal risks and generally lacks economic substance; and
- The income tax payable overseas for the indirect transfer is lower than the taxes which would be paid in China upon a direct transfer of the taxable assets in China.

6 Part 1, Article 4, SAT Announcement 7 (2015).

7 Although no legal definition for this has been set forth, equity ownership is generally understood to be measured by equity control with voting rights.

8 Article 4, Circular 7; generally speaking, the "red zone" is used to recharacterise transactions exclusively involving "shell companies."

iii Seven Factors Test: the existence of a reasonable commercial objective for a transaction which is not in the red or green zone is determined by taking into account the following actual circumstances:

- Whether the primary value of the equity of the overseas enterprise is, directly or indirectly, attributable to taxable assets in China;
- Whether the overseas enterprise's assets primarily comprise direct or indirect investments in China, or whether its income is derived mainly, directly or indirectly, from China;
- Whether the overseas enterprise and its subsidiaries and branches which directly and indirectly hold taxable assets in China perform enough functions and take on enough risk to demonstrate that the enterprise structure has economic substance;
- The duration of existence of shareholders, business model and the relevant organisation structure of the overseas enterprise;
- The amount of income tax payable overseas for the indirect transfer of taxable assets in China;
- From a commercial point of view, whether the non-Chinese resident transferor's indirect investment and indirect transfer of Chinese taxable assets could be replaced by a direct investment and direct transfer;
- The applicability of a tax treaty or arrangement with China for income derived from indirect transfer of taxable assets in China; and
- Any other relevant factors.

In summary, an indirect transfer of a Chinese enterprise may be recharacterised as a direct transfer of the Chinese enterprise if the primary equity or asset value or incomes are attributable to China, the offshore companies which hold the Chinese company lack economic substance, and/or the indirect transfer is tax advantageous to the transferor. The preponderance of the factors in each case will determine whether recharacterisation occurs.

Voluntarily Reporting and Documents Required

All parties to the transaction, including the transferee, transferor, or Chinese resident enterprise whose equity has been indirectly transferred, may voluntarily report the transfer to the relevant tax authorities where the Chinese resident enterprise is located. For an indirect equity transfer involving multiple Chinese resident enterprises in different locations, the reporting party may select one of these involved locations to perform the reporting.

The reporting party must provide:

- Copies of the transaction agreement (both English and Chinese translations);
- Structure charts before and after the transfer;
- Financial statements of the offshore entities who directly or indirectly hold the equity interests of the Chinese resident enterprise for the past two fiscal years;
- An articulation of why the transfer should not be recharacterised, in particular, whether the transaction has "reasonable business purposes"; and
- Other materials as requested by the PRC tax authorities.

If such voluntary reporting occurs within 30 days after the signing of the transaction agreement, penalties on the transferee for not fulfilling the withholding obligation (if any) may be mitigated or exempted. Otherwise, the transferee could be subject to a penalty of 50% to 300% of the tax payable, in addition to settling the unpaid/unwithheld tax.

After reviewing the reporting documents (a period of approximately one to two months, although this could be longer depending on the capacity of the tax authorities), the tax authorities will notify the reporting party if they would like to obtain more information in order to further assess and determine whether the transfer should be recharacterised as a direct transfer or if they have concluded that the transfer is taxable in China. Conversely, if the tax authorities consider the transaction is not taxable in China, they will remain silent and will not issue any formal written notification/conclusion. In the case of a taxable indirect transfer, penalties and interest should not apply to the taxpayer unless the tax payable remains unpaid after the time specified by the tax authorities for payment.

Stamp duty of 0.05% on the consideration is payable by each party to the agreement with respect to direct transfers of a Chinese enterprise. Generally speaking, stamp duty is not levied on indirect transfers of Chinese enterprises, even if they are recharacterised as direct transfers, unless the transfer agreement is executed in China. That said, we are aware of certain (less common) cases where certain aggressive tax authorities have sought to levy stamp duty in cases where the indirect transfer of a Chinese enterprise is recharacterised as a direct transfer.

f. Share Purchase Advantages

Given the steep rise in land and property values, particularly in large cities in China and more types of taxes being levied on direct transfers of land and property, an equity transfer of a Chinese company is often preferable considering the higher tax costs arising from an asset purchase[9]. Further, compared to an asset purchase, an equity transfer would be less costly, less time consuming and less administratively burdensome. On the other hand, an equity transfer will not step up the basis in the assets for the company being transferred for either Chinese tax or financial reporting purposes (see below for tax basis in the case of asset acquisition).

g. Share Purchase Disadvantages

Historical liabilities (tax and otherwise), contracts, and other agreements are typically retained by the entity whose equity is being transferred.

4. ASSET ACQUISITION

a. Purchase Price Allocation

In an asset acquisition, the tax authorities will typically review the contract value prior to final tax settlement and if the tax authorities consider the value to be not at arm's length, they may require an asset valuation report for tax assessment purposes.

b. Tax Deferred Reorganisations

The applicable tax deferral regime for an asset deal is listed above. Both parties to any such transaction shall submit written filing materials, as a recordal filing, to the tax authorities in charge together with its annual CIT filings following the completion of the transfer to demonstrate that the transaction complied with the requisite criterion for entitlement to the tax deferred treatment. No pre-approval from the tax authorities is required to benefit from the tax deferral treatment.

9 Note that, if the tax authorities believe a share transfer was affected solely for the purpose of tax avoidance, they may treat the share transfer as an asset transfer and impose LAT on it.

c. Depreciation and Amortisation

Depreciation is generally calculated and tax deductible on a straight line basis with respect to assets having useful lives in excess of one year. According to guidance from the tax authorities, different types of fixed assets are subject to specified minimum depreciation periods and accelerated depreciation methods may be adopted for certain specified assets.

Amortisation of intangible assets (other than goodwill) is calculated and tax deductible on a straight line basis over a period of at least ten years. The amortisation period of intangible assets may make reference to the period governed by law or contract. Goodwill amortisation may not be deducted for Chinese CIT purposes.

d. Transfer taxes, VAT

Both parties to the agreement would be subject to stamp duty (as discussed above). Further, the seller will be subject to VAT. The applicable VAT rates vary depending on the types of assets being transferred. The buyer, if registered as a general VAT payer, is allowed to claim input VAT credit on the asset purchase against the output VAT calculated under the general method (as opposed to the simplified method where no input VAT credit is allowed).

e. Asset Purchase Advantages

The tax basis of the acquired assets will be adjusted to the asset purchase value and the buyer will not inherit the historical liabilities of the seller.

f. Asset Purchase Disadvantages

If the non-resident shareholder of the Chinese resident enterprise would like to liquidate the company and withdraw the investment from China after the asset acquisition, additional tax costs (such as WHT on dividends and capital gains) and administrative costs may incur. The additional costs should be considered beforehand and be factored into the costs of the transaction.

5. ACQUISITION VEHICLES

a. Domestic Acquisition Vehicle

The most common Chinese legal entities used in acquisitions are the Limited Liability Company and the Partnership.

Setting up an acquisition vehicle in China can be time consuming (generally at least three to six months), as the company must register with various Chinese authorities, including Ministry of Commerce (MofCom), Administration for Industry and Commerce (AIC), State Tax Administration (STA), State Administration for Foreign Exchange (SAFE), Bank, Customs, Statistic Bureau, Financial Bureau, Police, Labor Bureau, Housing Fund Center and etc. before it can carry out business operations in China.

Some acquirors have used “shell companies” that have previously been engaged in business in China. Aside from the due diligence costs in assessing whether the “shell company” has any historical liabilities, such an acquiror should also schedule a minimum of six weeks to complete the share transfer procedures. Licenses and registrations of the “shell company” should be reviewed by the acquiror’s lawyers to ensure they are appropriate and legally valid for carrying out the intended business operations going forward.

The shareholding of a Chinese entity should be carefully considered, especially with respect to (a) tax treaty relief on future dividends repatriation (i.e. reduction of withholding tax rates) and (b) whether the foreign shareholder satisfies the beneficial ownership requirements necessary to qualify for claiming tax treaty relief under the applicable tax treaty with China. Broadly, this would require the foreign recipient to have substantive economic substance in the foreign jurisdiction in which it is a tax resident (see the section “Substance Requirements for Recipients” below for further discussion of the beneficial ownership test).

b. Foreign Acquisition Vehicle

Historically Hong Kong, the BVI, and the Cayman Islands have been the common choices of holding company jurisdictions for investments in China due to (1) the lower Chinese WHT on dividends from China to Hong Kong under the double tax treaty arrangement between China and Hong Kong, (2) the preferential treatment in these jurisdictions on off-shore revenues, and (3) the legal feasibilities regarding confidentiality of the ultimate shareholder identifications. However, with the implementation of the Common Reporting Standard between China and acts such as the Notice of the Economic Substance Act in the BVI and the Cayman Islands, investors are considering other options when selecting their holding company jurisdictions for future Chinese investments.

c. Partnerships and joint ventures

Partnerships usually will be chosen by individual investors considering the tax efficiency on dividend and equity incentive plans. For special industries such as financial, publishing, agriculture, etc., joint ventures are the only permitted vehicles for foreign acquirors entering into Chinese market.

d. Strategic vs Private Equity Buyers

There are no particular differences in the considerations strategic vs private equity buyers have in terms of the Chinese Tax Regime.

6. ACQUISITION FINANCING

a. General Comments

China maintains strong restrictions on foreign exchange, such that funds entering or exiting China must be approved by the SAFE, and the management of the funds must comply with the approved arrangements and approved usage of the bank accounts.

For example, assume a Chinese entity has set up one RMB basic account and other foreign currency accounts like a EUR capital account, a USD settlement account, a HKD foreign loan account. Its capital account will only be used to receive the paid in capital from the shareholder up to its registered capital amount. Its settlement account can only be used to receive and make payments related to its daily foreign currency business transactions. Its loan account can only be used to receive the registered loan principal. Its RMB basic account is responsible for other daily transactions in RMB. For any foreign exchange activities, the company must file applications to the bank/SAFE by providing a list of requisite documents.

In general, there is no legal reserve requirement for the bank accounts including the requirement to maintain a minimum capital account balance. In order to manage the foreign exchange risk, currency hedging and currency preservation clauses are typically adopted in cross-border agreements. Under the PRC GAAP, Chinese company's accounts must be reflected in Renminbi (RMB).

Chinese companies are not allowed to provide loans to other companies within a group or other third parties unless the Chinese companies obtained a business license that specifically includes provision of loans in the business scope. However, Chinese companies can provide financing to other companies via an "entrustment loan" arrangement with a Chinese financial institution.

b. Equity

The Chinese Company Law regulates that the legal minimum registered capital for a normal company to be at least RMB30,000. Depending on the business scope to be applied for, the minimum capital requirement could be uplifted if the company is engaging in specific industry, (e.g. banking, insurance, freight forwarding, telecommunication, printing etc.). During the application for General VAT Payer in most regions in China, the tax authority prefer the registered capital to be no less than RMB500,000, however this is not compulsory.

c. Debt

i Limitations on debt and interest

Financial costs incurred during the usual course of business are generally deductible for CIT purposes, subject to tax thin capitalisation rules and transfer pricing requirements. The thin capitalisation rules operate to disallow the deduction of excessive interest expenses from related party loans (which exceeded the specified debt to equity ratio as noted below) for CIT purposes.

Interest paid to a related party is tax deductible to the extent the following debt to equity ratios are followed:

- 5:1 for financial institutions; and
- 2:1 for all other companies.

In the case of a specialised entity known as a "China Holding Company" that is set up to be the common owner of various Chinese investments, this ratio may be increased up to 6:1.

The above ratios should not apply if a company can prove that either (a) the financing is at arm's length (i.e. equivalent to the amount of loan and rates that can be borrowed from third party commercial financial institutions) or (b) the effective tax rate of the borrowing entity is not higher than that of the Chinese lending entity. Excessive interest is not deductible in the current and subsequent periods and might be recharacterised as dividends when paid.

According to the Chinese foreign exchange regulations and tax regulations, onshore and/or offshore loans from related parties or third parties can be undertaken but with certain limitations, i.e. offshore loans would be subject to the foreign debt quota, while related party financing is subject to the regulatory and tax thin capitalisation rules. After the foreign loan agreement is signed, the Chinese company must register the foreign loan with the SAFE before it can receive the loan principal. The foreign debt quota is generally calculated based on the Registered Capital (Paid-in Capital) of the Chinese borrower, see the table below for reference:

Paid-in Capital (X, unit in Million USD)	Maximum Foreign Loan (Y, unit in Million USD)
0 < X < 2.1	Y = 3/7 X
2.1 <= X < 5	Y = X
5 <= X < 12	Y = 1.5 X
12 <= X	Y = 2 X

d. Debt Pushdown

Other traditional debt push down methods might also be considered, such as setting up a new Chinese entity, funded with debt, to acquire the trade and assets of an existing Chinese entity; or acquiring another Chinese entity from the non-Chinese holding entity, while relevant tax costs such as VAT, CIT, stamp duty under each scenario must be considered.

e. Transfer Taxes, VAT

VAT (currently at 6%) will be levied on interest income received by the lender. However, the input VAT paid on interest expenses by the borrower would not be creditable against the borrower's output VAT payable. Local surcharges (ranging from 10-12% generally) would also be levied on the net VAT payable.

f. Hybrid Instruments

The concepts of hybrid instruments or indeed hybrid entities are not applicable in China.

g. Other Instruments

This section is left intentionally blank.

h. Earn-outs

Earn-out mechanisms have existed in China for many years. The instalment of contribution for earn-outs shall be subject to CIT at the time of the transaction. For earn-outs paid to non-Chinese tax resident enterprises, the Chinese entity has the obligation to report and withhold WHT on behalf of the non-resident at a 10% WHT rate.

7. DIVESTITURES

Overall, we would note that China treats a divestiture as a common asset transfer or equity sale and the tax treatment is therefore also referenced largely in sections 3 and 4 above.

a. Tax Free

Deferral of CIT may be achieved with respect to the divestitures if:

- The transferor and transferee are Chinese companies, related via 100% direct equity ownership;
- The transfer occurs at net book value;
- Neither party recognises a gain or loss under Chinese GAAP methods;
- The transaction is executed for a reasonable business purpose that is not primarily for the purpose of reducing, eliminating or deferring tax payment;
- The original business activities of the assets/equity being transferred should remain unchanged for a minimum period of 12 months following the transfers3;
- The ratio of acquired, merged or divided assets or equity complies with the requirement (e.g. the assets/equity transferred are not lower than 50% of the total assets of the transferor enterprise/equity interests of the acquired enterprise), and in the case of a restructuring, the consideration paid for equity complies with such required ratio of 85%; and

In the case of a transfer of a Chinese resident enterprise by a non-Chinese resident enterprise to its wholly-owned non-Chinese resident enterprise, the transferor is required to provide a written undertaking to the relevant PRC tax authorities that the transferor will not transfer the equity of the transferee within a period of three years following such initial transfer..

b. Taxable

Any gain (i.e. the fair market value after deducting booked cost) will be subject to CIT at 25% for Chinese entities. Further, for the assets, the Chinese entity will be subject to VAT, the applicable VAT rates (3% to 13%) vary depending on the types of assets being transferred.

c. Cross Border

The CIT levied on non-resident capital gains is 10% and VAT will not be applicable in most cases.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Chinese citizens holding registered permanent residence and Chinese registered legal entities will be subject to CIT/IIT on their global income, subject to the provisions applicable under the relevant double tax treaty ("DTT") the taxes paid in those countries may be creditable against the Chinese tax due.

b. CFC Regime

China has implemented controlled foreign corporation ("CFC") rules. CFC's will be regarded as Chinese tax residents and their income will be regarded as taxable income in China. A CFC is defined as any foreign enterprise established and controlled by a Chinese tax resident (both enterprises and individuals) in a country (region) where the effective tax rate is less than 12.5% and whose non-distribution or reduced distribution of profit is not due to reasonable operational requirements. Control means substantive control over shares/equity, funds, business operations, purchases and sales, etc. Income of such a company will be deemed distributed to any Chinese resident shareholder who directly or indirectly owns 10% or more of the voting shares in the foreign enterprise on any day of the tax year and Chinese resident shareholders who jointly hold 50% or more of the shares in such foreign enterprise. Indirect shareholding by Chinese resident shareholders at multiple levels shall be computed by multiplying the shareholding percentage of the respective levels; shareholdings in excess of 50% at any point in the middle shall be deemed to be 100% for calculation purposes.

The deemed income in the current year of such shareholder is equal to:

- The deemed dividend distribution by the CFC x the number of days of actual shareholding / the number of days in the CFC's tax year × the shareholding percentage

Under the CFC regulations, a shareholder will not be subject to taxes again for the actual receipt of dividends from a CFC to the extent that the dividends have been taxed to such shareholder under the CFC rules. However, the current rules do not address the tax treatment of share dispositions of companies whose dividends have been taxed to a shareholder but not distributed. Such a shareholder may have a reasonable basis to argue that its tax cost basis in the shares can be stepped up by the amount of deemed dividend which has been taxed, but this would ultimately be subject to case by case negotiations and agreements with the relevant PRC tax authorities. If the Chinese shareholder can provide documentary evidence to prove that (1) the foreign company is incorporated in the white list jurisdictions which include the United States, Britain, France, Germany, Japan, Italy, Canada, Australia, India, South Africa, New Zealand or Norway, (2) the income of the company is active income, or (3) the annual profit is lower than RMB5 million, the profits of such foreign enterprises that are not distributed or are subjected to reduced distribution, will be exempt from being deemed to be distributed dividends and exempt from being included in the current income of the Chinese resident enterprises[10].

10 Guo Shui Han [2009] No.37.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

None.

b. CbC and Other Reporting Regimes

The CbC reporting forms are required from the Chinese resident enterprise if:

- It is the ultimate holding company of a group with consolidated revenues of over RMB5.5 billion; or
- It is nominated as the CbC reporting entity.

If the ultimate parent company is a Chinese tax resident enterprise and the information may be relevant to national security, then part or all of the CbC reporting can be exempt based on the relevant regulation. The CbC reporting forms provided in the new related party transaction forms as well as the instructions are consistent with BEPS Action 13.

The annual CbC report filing requirement mainly applies to the ultimate holding company in China. However, a subsidiary of a multinational group in China may also be required to submit a CbC report in a transfer pricing investigation if its ultimate holding company is responsible for preparing the CbC report according to the regulation of the jurisdiction in which it resides and any of the following conditions are met:

- The multinational group has not provided the CbC report to the tax authority of any jurisdiction;
- Although the group has submitted the CbC report, the jurisdiction collecting the report does not have an exchange of information mechanism with China; or
- Although the group has provided the CbC report and the jurisdiction collecting the CbC report has an exchange of information mechanism with China, the CbC report has not been successfully exchanged with China.

The fundamental challenges for preparing a CbC report include:

- Reconciliation between global and local reporting, which may create potential data mismatch issues; and
- Data collection and extraction, which may create additional processes and accounting tasks for tax departments.

10. TRANSFER PRICING

Under article 110 of the Implementation Regulations of the Enterprise Income Tax Law ("EITIR"), the arm's length principle is defined as the principle adopted by unrelated parties when conducting business transactions based on fair transactional prices and normal business practices. The rules in the EITIR acknowledge the arm's length principle as the preferred basis to be adopted in related party transactions and this is consistent with the internationally accepted arm's length principle set out in the OECD Transfer Pricing Guidelines.

Article 109 of the EITIR provides that two enterprises are "related" if one enterprise has the following relationships with another enterprise:

- Direct or indirect control with respect to capital, business operations, purchases and sales; or
- Direct or indirect common control by a third party; or
- Any other relationships arising from mutual interest.

According to article 2 of Notice 42 year 2016, parties are considered related if one of the following situations occurs:

(i) One party holds 25% or more of the shares in the other party directly or indirectly, or a third party holds 25% or more of the shares in both parties directly or indirectly. When one party holds shares indirectly in the other party through an intermediary, as long as it holds 25% or more of the shares in the intermediary, its shareholding percentage in the other party will be computed based on the intermediary's shareholding percentage in the other party. When two or more natural persons who are spouses, direct blood relatives, siblings or have other foster or support relations jointly hold shares in the same enterprise, the shareholding percentage will be aggregated when determining the related party relationship.

(ii) One party holds shares in the other party or a third party holds shares in both parties and the shareholding percentage does not attain the percentage stipulated in the provisions of item (i), but the total amount of borrowed funds between both parties constitutes 50% or more of the paid-up capital of either party, or 10% or more of the total borrowed funds of one party is guaranteed by the other party (except for loans or guarantees between the party and an independent financial institution).

(iii) One party holds shares in the other party or a third party holds shares in both parties and the shareholding percentage does not attain the percentage stipulated in the provisions of item (i), but the conduct of manufacturing and business operations of one party requires the provision of patents, non-patented technologies, trademarks, copyrights or other concessions provided by the other party.

(iv) One party holds shares in the other party or a third party holds shares in both parties and the shareholding percentage does not attain the percentage stipulated in the provisions of item (i), but the business activities of one party, such as procurement, sales and acceptance of services, are controlled by the other party. Control for this purpose means that one party has the right to decide the financial and business policies of the other party and accordingly derive gains from the business activities of the other party.

(v) More than half of the directors of one party or more than half of the senior management personnel (including board secretary, managers, deputy managers, chief financial officer and other personnel stipulated in the company's articles of association of a listed company) of one party are appointed or designated by the other party or are appointed concurrently as the directors or senior management personnel of the other party, or more than half of the directors or more than half of the senior management personnel of both parties is appointed or designated by a third party.

(vi) Two or more natural persons who are spouses, direct blood relatives, siblings or have other foster or support relations are related to both parties in any of the ways stipulated in items (i) through (v).

(vii) Both parties have other common interests substantially.

Article 43 of the Enterprise Income Tax Law requires the taxpayers to submit reporting forms on the transactions between related parties together with the annual enterprise income tax return. The tax return and the reporting forms are due on 31 May of the following year. In addition to the annual reporting forms on related party transactions, Notice 42/2016 introduces a three tier documentation framework, as set out in the OECD's framework in BEPS Action 13. Transfer pricing contemporaneous documentation consists of a Master File, a Local File and a Special Issue File.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

The concept of hybrid entities is not applicable in China.

b. Use of Hybrid Instruments

The concept of hybrid instruments is not applicable in China.

c. Principal/Limited Risk Distribution or Similar Structures

Many multinational enterprises have multiple companies in China with each company performing only a single function, such as manufacturing, distribution, R&D, and services and with the claim that each of these entities is entitled to a limited return. Others have some or all of manufacturing, distribution, R&D, and services functions in one entity and still claim that each of these functions is entitled to only a routine return. The Chinese tax administration takes the view that when a group has multiple single function entities, they may have to be taken into consideration as a whole in order to properly determine the return the group companies should earn in China. Similarly, an entity with multiple functions may have to be reviewed in its entirely in order to properly determine its returns. While China generally respects the limited risk characterisation of sole function entities; determining an adequate return for such entities is a challenge.

Further, China has legislated a specific article in its transfer pricing rules to require that such entities should not bear risks or suffer from losses arising from strategic failures, capacity under-utilisation, or hold-up in the sales of products, etc., if they do not perform business strategy decision making, product R&D, or sales functions. Simply put, if their upside is limited, their downside should be limited too.

d. Intellectual property

Chinese tax regulations set out a number of provisions for intangible asset transactions which are more or less in line with the rules in the BEPS Action Plan.

To determine the allocation of profits arising from the use of intangible assets, China tax regulation also follows DEMPE concepts. Notice No. 6/2017 adds a sixth function, promotion, to the "DEMPEP" function. Although the promotion function may already be covered by the DEMPE function under the OECD framework, the introduction of this function alone indicates that the Chinese tax authorities attach great importance to the value created by Chinese companies through their marketing activities.

e. Special tax regimes

This section is left intentionally blank.

12. OECD BEPS CONSIDERATIONS

China has been actively participating in the BEPS project as a G20 member and a cooperative partner of the OECD. On 10 October 2015 (shortly after the OECD released its final package), the State Tax Administration ("STA") published via its official website the Chinese translation of the BEPS 2015 Final Reports, demonstrating a strong urge within the Chinese government to stay abreast of the development of the international tax systems. The STA also addressed a general plan of actions, including, but not limited to, refining the prevailing tax legislative framework to incorporate certain BEPS Actions it considers to be practical, constructing a risk management mechanism, etc. Regarding BEPS Actions 6 and 15, China is likely to implement Limitation on benefits ("LOB") and Principal Purpose Test ("PPT") clauses in its treaties, and China intends to sign the Multilateral Instrument. Also, effective from 1 May 2017, the STA Notice [2017] No. 6 has addressed the detailed new clarifications with respect to the authority of a local Tax Bureau to review and approve the nature and content of intercompany charges between a Chinese entity and an overseas related party. This has created additional difficulties for a Chinese entity in making payment for non-trade items to offshore related parties (e.g. service fees for off-shore services provided by a headquarter to a Chinese subsidiary). Applications for such payments are more challenging and the tax bureau may request far more supporting documents regarding the service substance, including internal correspondence, etc. The tax bureau will reject the issuance of a tax clearance certificate if such further information is not provided or is unsatisfactory, in which case the service fee may not be remitted out of China and will have to be written-off on the Chinese books (creating income) or cleared via other arrangements.

13. ACCOUNTING CONSIDERATIONS

Different GAAPs in different countries will generate diverse accounting treatments, identification of whether the transaction is a business combination is crucial. Whether the transaction is to be recognised as a business combination or an asset acquisition, determines different accounting treatments in various items, such as goodwill, acquisition related cost, deferred tax and etc. Under IFRS, "a business combination" refers to a transaction or other event in which an acquirer obtains control of one or more businesses, "business" refers to an integrated set of assets and activities capable of being conducted and managed in order to provide a return directly to investors or other owners, members or participants.

Under PRC GAAP, different accounting treatments are applicable to business combinations, which are 1) involving enterprises under common control, or 2) not involving enterprises under common control. The main differences come from whether the measurement method follows existing book values or fair values.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

The following cash payments are subject to approval of authorities in China following a detailed review of the supporting documentation supplied by the payer.

10% of a Chinese company's after-tax profits must be retained (not distributed) by the company as capital reserve until the balance reaches 50% of the registered capital. The remaining portion of the profits may be distributed after settlement of the WHT at 10% (or a lower rate under an applicable double tax treaty). After the WHT is paid and the tax clearance certificate is issued, the bank/SAFE will allow such a dividend to be remitted.

Royalties normally will be subject to 10% WHT (or a lower rate under an applicable double tax treaty), 6% VAT and 0.6-0.72% surcharges (calculated based on 10% to 12% of VAT payable).

Service fees normally are subject to 6% VAT and 0.6-0.72% surcharges. On-shore service fees in relation to provision of services in China for less than 183 days are required to make separate application for enjoying tax treaty benefits (if provided under an applicable double tax treaty) in order to exempt from CIT; on-shore service fees in relation to provision of services in China for more than 183 days will additionally be subject to CIT at 25% on the assessable profits. Generally speaking, deemed profit method would be used to calculate the assessable profits, that is, the deemed profit will be calculated by applying a deemed profit rate ranging from 15% to 50% as specified below:

- 15% - 30% for contracting engineering work, design and consultancy services. (In practice, 20% is used for 3rd party transaction and 30% is used for related party transactions.);
- 30% - 50% for management services; and
- No less than 15% for other services or business activities other than provision of services.

Interest payments normally will be subject to 10% WHT (or a lower rate under an applicable double tax treaty), 6% VAT and 0.6-0.72% surcharges.

The withholding VAT paid for the above items (other than that related to interest payments) can be claimed by the Chinese payer as input VAT credit against its output VAT payable, provided that the payor is registered as a General VAT Payer and special VAT invoices (fapiao) are obtained. The surcharges are not creditable for VAT purposes.

b. Substance Requirements for Recipients

The foreign recipients of dividends, interest and royalties from Chinese companies will be subject to the test for beneficial ownership discussed above in order to enjoy tax treaty relief (i.e. reduction in WHT rate under the applicable double tax treaty). A shareholder will likely be viewed as not having sufficient economic substance and thus not satisfy the "beneficial ownership" test, if it (1) is obliged to transfer majority (at least 50%) of the income to a person/entity in a third jurisdiction within 12 months after receipt of the income, (2) does not have substantive operating activities apart from investment holding, such as manufacturing, distribution, management, and has limited functions and risks, (3) is exempt from tax or subject to low effective tax on the relevant income, (4) has a back-to-back loan arrangement with similar terms in place, and/or (5) has a back to back royalty arrangement with similar terms in place.

c. Tax Rulings and Clearances

Apart from transfer pricing, China generally does not provide advance tax rulings and clearances. Further, many approval procedures in the past, including tax treaty relief claims, have been changed to recordal filing procedures. Therefore, taxpayers would no longer receive tax approval/clearances from the tax authorities for applying certain tax treatments (e.g. reduced WHT rate). However, the tax treatment adopted may be subject to audit/investigations by the tax authorities within the statute of limitation period.

15. MAJOR NON-TAX CONSIDERATIONS

This section is left intentionally blank.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends % **	Interest %	Royalties %	Footnote
Albania	10	10	10	
Algeria	5 / 10	7	10	[1]
Argentina*	10 / 15	12	3 / 5 / 7 / 10	[2] [3]
Armenia	5 / 10	10	10	[4]
Australia	15	10	10	
Austria	7 / 10	10	10	[5]
Azerbaijan	10	10	10	
Bahrain	5	10	10	
Bangladesh	10	10	10	
Barbados	5	10	10	
Belarus	10	10	10	
Belgium	5 / 10	10	7	[6]
Bosnia (Yugoslavia)	10	10	10	
Botswana*	5	7.5	5	
Brazil	15	15	15 / 25	[7]
Brunei	5	10	10	
Bulgaria	10	10	7 / 10	[8]
Cambodia	10	10	10	
Canada	10 / 15	10	10	[9]
Chile	10	10	10	
Croatia	5	10	10	
Cuba	5 / 10	7.5	5.0	[10]
Cyprus	10	10	10	
Czech	5 / 10	7.5	10	[11]
Denmark	5 / 10	10	7 / 10	[12] [13]
Ecuador	5	10	10	
Egypt	8	10	8	
Estonia	5 / 10	10	10	[14]

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Jurisdiction	Dividends % **	Interest %	Royalties %	Footnote
Ethiopia	5	7	5	
Finland	5 / 10	10	7 / 10	[15] [16]
France	5 / 10	10	10	[17]
Gabon*	5	10	5 / 7.5	[18]
Georgia	0 / 5 / 10	10	10	[19]
Germany	5 / 10 / 15	10	6 / 10	[20] [21]
Greece	5 / 10	10	10	[22]
Herzegovina (Yugoslavia)	10	10	10	
Hong Kong	5 / 10	7	7	[23]
Hungary	10	10	10	
Iceland	5 / 10	10	7 / 10	[24] [25]
India	10	10	10	
Indonesia	10	10	10	
Iran	10	10	10	
Ireland	5 / 10	10	6 / 10	[26] [27]
Israel	10	7 / 10	7 / 10	[28] [29]
Italy	10	10	10	
Jamaica	5	7.5	10	
Japan	10	10	10	
Kazakhstan	10	10	10	
Kenya*	5	10	10	
Korea	5 / 10	10	10	[30]
Kuwait	5	5	10	
Kyrgyzstan	10	10	10	
Laos	5	10	10	
Latvia	5 / 10	10	10	[31]
Lithuania	5 / 10	10	10	[32]
Luxembourg	5 / 10	10	6 / 10	[33] [34]
Macao	10	7 / 10	10	[35]

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Jurisdiction	Dividends % **	Interest %	Royalties %	Footnote
Macedonia	5	10	10	
Malaysia	10	10	10 / 15	[36]
Malta	5 / 10	10	7 / 10	[37] [38]
Mauritius	5	10	10	
Mexican	5	10	10	
Moldova	5 / 10	10	10	[39]
Mongolia	5	10	10	
Montenegro (Yugoslavia)	5	10	10	
Morocco	10	10	10	
Nepal	10	10	15	
New Zealand	5 /15	10	10	[67]
Nigeria	7.5	7.5	7.5	
Norway	15	10	10	
Oman	5	10	10	
Pakistan	10	10	12.5	
Papua New Guinea	10	10	10	
Philippines	10 / 15	10	10 / 15	[40] [41]
Poland	10	10	7 / 10	[42]
Portugal	10	10	10	
Qatar	10	10	10	
Romania	3	3	3	
Russia	5 / 10	10	6	[43]
Saudi Arabia	5	10	10	
Serbia (Yugoslavia)	5	10	10	
Seychelles	5	10	10	
Singapore	5 / 10	7 / 10	10	[44] [45]
Slovakia (Czechoslovakia)	10	10	10	
Slovenia	5	10	10	
South Africa	5	10	7 / 10	[46]

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Jurisdiction	Dividends % **	Interest %	Royalties %	Footnote
Spain	5 / 10	10	10	[47]
Sri Lanka	10	10	10	
Sudan	5	10	10	
Sweden	10	10	7 / 10	[48]
Switzerland	5 / 10	10	9	[49]
Syria	5 / 10	10	10	[50]
Taiwan*	5 / 10	7	7	[51]
Tajikistan	5 / 10	8	8	[52]
Thailand	15 / 20	10	10	[53]
The Netherlands	5 / 10	10	6 / 10	[54] [55]
The Republic of Congo*	5 / 10	10	5	[56]
Trinidad And Tobago	5 / 10	10	10	[57]
Tunis	8	10	5 / 10	[58]
Turkey	10	10	10	
Turkmenistan	5 / 10	10	10	[59]
U.K.	5 / 10 / 15	10	6 / 10	[60] [61]
USA	10	10	7 / 10	[62]
Uganda*	7.5	10	10	
Ukraine	5 / 10	10	10	[63]
United Arab Emirates	7	7	10	
Uzbekistan	10	10	10	
Venezuela	5 / 10	5 / 10	10	[64] [65]
Vietnam	10	10	10	
Zambia	5	10	5	
Zimbabwe	2.5 / 7.5	7.5	7.5	[66]

* Countries in Highlight represent those who have signed DTT with China, but it has not yet taken effectiveness.

** In Chinese Corporate Income Tax Law, the standard With Holding Tax "WHT" rate on dividends will be 10%, as the lower one between DTT and local rule will be effective, any listed in this column more than 10% (such as 15%, 20% in DTT) will still be subject to 10% WHT on dividends when remitting out of China.

Footnotes	
1	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
2	Dividends - The 10% rate applies if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend).
3	Royalties - The 3% rate applies to royalties paid for the use of, or the right to use, any item of news; The 5% rate applies to royalties paid for the use of, or the right to use, any copyright of literary, artistic or scientific work; The 7% rate applies to royalties paid for the use of, or the right to use containers; The 10% rate applies to royalties paid in the other cases.
4	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends.
5	Dividends - The 7% rate applies if the beneficial owner is a company which holds directly at least 25 per cent of the voting shares of the company paying the dividends.
6	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which, prior to the moment of the payment of the dividends, has been holding, for an uninterrupted period of at least twelve months, directly at least 25 per cent of the capital of the company paying the dividends.
7	Royalty - The 25% rate applies if the royalty paid as a consideration for the use or the right to use trade marks.
8	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment.
9	Dividends - The 10% rate applies if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends.
10	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
11	Dividends – 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
12	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends.
13	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.
14	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends.
15	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
16	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.

Footnotes	
17	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends.
18	Royalties - The 5% rate applies to royalties on the studies, technical, financial, accounting or tax support.
19	Interest-The 0% rate applies if the beneficial owner is a company which holds directly or indirectly at least 50% of the capital of the company paying the dividends and has invested more than EUR2 million in the capital of the company paying the dividends and 5% rate applies if the beneficial owner is a company which holds directly or indirectly at least 10% of the capital of the company paying the dividends and has invested more than EUR100,000 in the capital of the company paying the dividends
20	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; the 15% rate applies if the dividends are paid out of income or gains derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income or gains annually and whose income or gains from such immovable property is exempted from tax.
21	Royalties - The 6% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.
22	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
23	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
24	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
25	Royalties - The 7% rate applies if the payments are any kind received as a consideration for rental of industrial, commercial or scientific equipment.
26	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
27	Royalties - The 6% rate applies if the payments are any kind received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment.
28	Interest - The 7% rate applies if it is received by any bank or financial institution; the 10% rate applicable for all other cases.
29	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.
30	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
31	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
32	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
33	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.

Footnotes	
34	Royalties - The 6% rate applies if the payments are any kind received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment.
35	Interest -The 7% rate applies to royalties on the bank or financing institution.
36	Royalties - The 15% rate applies if the payments are any kind received as a consideration for the use of, or the right to use any copyright of literary or artistic work including cinematographic films, or tapes for radio or television broadcasting.
37	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
38	Royalty - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.
39	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
40	Dividends - The 10% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10%t of the capital of the company paying the dividends.
41	Royalties - The 15% rate applies if the royalties arising from the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or tapes for television or broadcasting. And the 10% rate applies if the royalties arising from the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
42	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.
43	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends and this holding amounts to at least 80,000 Euros or its equivalent in any other currency.
44	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of company paying the dividends.
45	Interest - The 7% rate applies if the interest is received by any bank or financial institution.
46	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment.
47	Dividends - The 5% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend.
48	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the use of or the right to use industrial, commercial or scientific equipment.
49	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
50	Dividends-5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
51	Dividends - The 5% rate applies if the beneficial owner is a company which controls directly or indirectly at least 25% of the company paying the dividends.

Footnotes	
52	Dividends - 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends;
53	Dividends - The 15% rate applies if the recipient holds directly at least 25% of the shares of the company paying the dividends.
54	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
55	Royalties - The 6% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.
56	Dividends - The 5% rate applies if the beneficial owner is a company which controls directly or indirectly at least 25% of the company paying the dividends.
57	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
58	Royalties - The 5% rate applies if it is paid for technical or economic studies or for technical assistance and the 10% rate applies if it is paid for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematography films, or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific experience;
59	Dividends – 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
60	Dividends - The 5% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends; the 15% rate applies if the dividends are paid out of income or gains derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income or gains annually and whose income or gains from such immovable property is exempt from tax.
61	Royalties - The 6% rate applies if the payments are any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.
62	Royalties - The 7% rate applies if the payments are any kind received as a consideration for the rental of industrial, commercial or scientific equipment.
63	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
64	Dividends - The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25%t of the capital of the company paying the dividends.
65	Interest - The 5% rate applies if beneficial owner is a bank institution.
66	Dividends - The 2.5% rate applies if the beneficial owner is a company which controls directly or indirectly at least 25% of the company paying the dividends.
67	Dividends - The 5% rate applies if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend).

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The standard statute of limitations in China are as follows:

- China applies a three year statute of limitation for unintentional errors and five years if the amount of unpaid tax is CNY100,000 or more;
- A ten year statute of limitation applies to special tax adjustments, (e.g. transfer pricing, CFC, or the anti-avoidance rules); and
- No statute of limitation applies to tax evasion or defrauding of tax payments.

The statute of limitations should be considered when determining the period for which information is requested during tax due diligence processes.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	Overview of the Business	Chart showing equity structure of the business.
2	Tax Due Diligence	Overview of the Business	Chart showing organisational structure of the business.
3	Tax Due Diligence	Overview of the Business	Summary of key historical developments of the Covered Entity (i.e. incorporation, change of ownership, acquisitions, divestitures, restructuring, etc.).
4	Tax Due Diligence	Overview of the Business	Articles of association, business licenses, certificates of approval and capital verification reports of the Covered Entity. Also include licenses under application.
5	Tax Due Diligence	Overview of the Business	Explanation of the current business process adopted by the Covered Entity.
6	Tax Due Diligence	Overview of the Business	Number of employees by function.
7	Tax Due Diligence	General and Contractual Matters	Joint Venture Agreement.
8	Tax Due Diligence	General and Contractual Matters	Access to minutes of meetings of the shareholders for the Covered Period.
9	Tax Due Diligence	General and Contractual Matters	Significant contracts with customers.
10	Tax Due Diligence	General and Contractual Matters	Agreements with shareholders.
11	Tax Due Diligence	General and Contractual Matters	Land Use Right Certificate, Property Ownership Certificate and relevant purchase agreement.
12	Tax Due Diligence	General and Contractual Matters	Any recent appraisals of the Target's properties or facilities.
13	Tax Due Diligence	Financial Statement Information	Audited financial statements for the Covered Entity, including accountant's report for the Covered Period.
14	Tax Due Diligence	Financial Statement Information	Trial Balances with (detailed sub-ledgers) for the Covered Entity, including accountant's report (on a calendar year basis).
15	Tax Due Diligence	Financial Statement Information	Selling, administrative and other operating expenses broken down by significant components.
16	Tax Due Diligence	Financial Statement Information	Breakdown and nature of other receivables/payables.
17	Tax Due Diligence	Financial Statement Information	Breakdown and nature of other income and expenses.

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Nº.	Category	Sub-Category	Description of Request
18	Tax Due Diligence	Financial Statement Information	Breakdown and nature of non-operating income and expenses.
19	Tax Due Diligence	Financial Statement Information	Warranty and R&D expenses, if any.
20	Tax Due Diligence	Financial Statement Information	Details on any events considered by management to be unusual or non-recurring.
21	Tax Due Diligence	Related Company Transactions	List of related parties showing the relationship with the Covered Entity and business relationship with the Covered Entity (e.g. Customers or suppliers).
22	Tax Due Diligence	Related Company Transactions	Schedule of significant related party transactions for the Covered Period, showing the name of entity, nature, amounts, terms of trade, transfer pricing policy, etc.
23	Tax Due Diligence	Related Company Transactions	Agreements/contracts with related parties.
24	Tax Due Diligence	Related Company Transactions	Annual Report of Related Party Transactions (included in the annual EIT filing package).
25	Tax Due Diligence	Related Company Transactions	Group TP Policies, if available.
26	Tax Due Diligence	Related Company Transactions	TP Contemporaneous Documentation Report, if applicable.
27	Tax Due Diligence	Related Company Transactions	Details and documentation in relation to transfer pricing investigations or queries raised by the tax authorities regarding the inter-company transactions and charges.
28	Tax Due Diligence	Enterprise Income Tax	Tax Audit Report for the Covered Entity in the Covered Period, if applicable.
29	Tax Due Diligence	Enterprise Income Tax	Details of any EIT investigations or significant matters in dispute with tax authorities, if applicable.
30	Tax Due Diligence	Enterprise Income Tax	Annual EIT returns and the respective tax payment certificates.
31	Tax Due Diligence	Enterprise Income Tax	Confirmation issued by the tax authorities regarding the tax losses carried forward, if any.
32	Tax Due Diligence	Enterprise Income Tax	Confirmations issued by the tax authorities regarding the preferential tax treatments granted and relevant application documents.
33	Tax Due Diligence	Value Added Tax	VAT general taxpayer registration certificate of the entities concerned, their branch offices and representative offices.
34	Tax Due Diligence	Value Added Tax	Details of any VAT investigations or significant matters in dispute with tax authorities.
35	Tax Due Diligence	Value Added Tax	VAT returns (for both domestic and export sales) of December of each year during the Review Period and sample VAT payment certificates.
36	Tax Due Diligence	Value Added Tax	Analysis of transactions of VAT payable account.
37	Tax Due Diligence	Value Added Tax	Details, amount and percentage of raw materials imported and domestic purchased and specify the percentage of imported raw materials that were imported free from customs duty and import VAT.

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Nº.	Category	Sub-Category	Description of Request
38	Tax Due Diligence	Value Added Tax	Details and amount of service income that is subject to VAT.
39	Tax Due Diligence	Value Added Tax	Samples of VAT invoices issued to the customers and received from the suppliers.
40	Tax Due Diligence	Value Added Tax	Movement of inventory related to any deemed sales transactions.
41	Tax Due Diligence	Withholding Taxes	Analysis of remittance and accrued expenses payable to foreign parties with withholding tax implications, such as interest, rent, contractor's fee, and royalties.
42	Tax Due Diligence	Withholding Taxes	Documents or agreements in support of the above payment and expenses, such as, loan agreement and rental agreement.
43	Tax Due Diligence	Withholding Taxes	Resolutions on dividend repatriation
44	Tax Due Diligence	Withholding Taxes	Related withholding tax returns and withholding tax payment certificates.
45	Tax Due Diligence	Individual Income Tax	Sample copies of monthly IIT returns filed for the local and expatriate staff and the related tax payment certificates issued by the respective tax authorities.

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FOR MORE INFORMATION CONTACT:

Dennis Xu
+86 21 64477878
dennis.xu@hendersen.com