



Globally active

Doing Business in China –
A brief introduction to the most important Chinese regulations for foreign managers

Dr. Alexander Theusner | Robert A. Seebeck | 26. February 2016

Agenda

Introduction

Rödl & Partner

01

Overview of the Chinese Company Law

02

Manager Liability in China

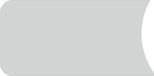
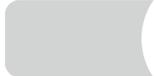
03

Protecting your Rights

04

Overview of the Chinese Labour Law

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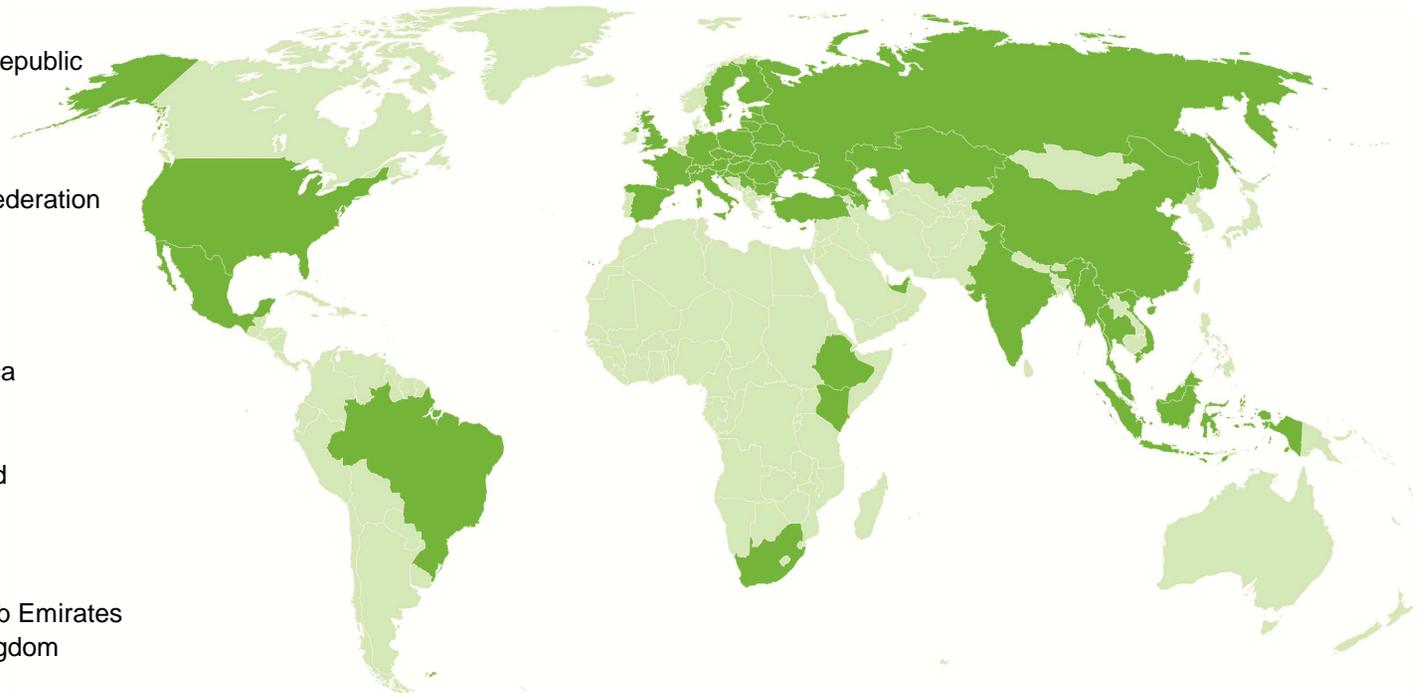
-  **05** Overview of Chinese Accounting Practices
-  **06** Tax Declaration & VAT Invoices
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-  **08** Reform of the Customs Administration

We are a success story from Germany

- Established in 1977 – expanding internationally since 1989
- One-stop service: legal, audit, tax and accounting
- Familiar with your culture and language
- Tailor-made solutions for internationally active companies

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- Italy
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- Lithuania
- Malaysia
- Mexico
- Moldova
- Myanmar
- People's Republic of China
- Poland
- Romania
- Russian Federation
- Serbia
- Singapore
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- Spain
- Sweden
- Switzerland
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- Ukraine
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- United Kingdom
- USA
- Vietnam



4,000 employees – 103 offices – 47 countries;
all locations including cooperation partners available at www.roedl.com/locations.html

Our experience in China

Our experience in China

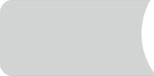
- Consulting German and European companies in China since the early 90s
- In the fields of auditing, tax, accounting and legal
- Clients in almost all provinces
- Offices in Guangzhou, Peking, Shanghai and Hong Kong
- Over 160 employees, German, Austrian and Chinese professionals (lawyers, auditors and tax consultants) in all locations
- Active business relationships with more than 600 Chinese subsidiaries of German parent companies

Our experience per sector:

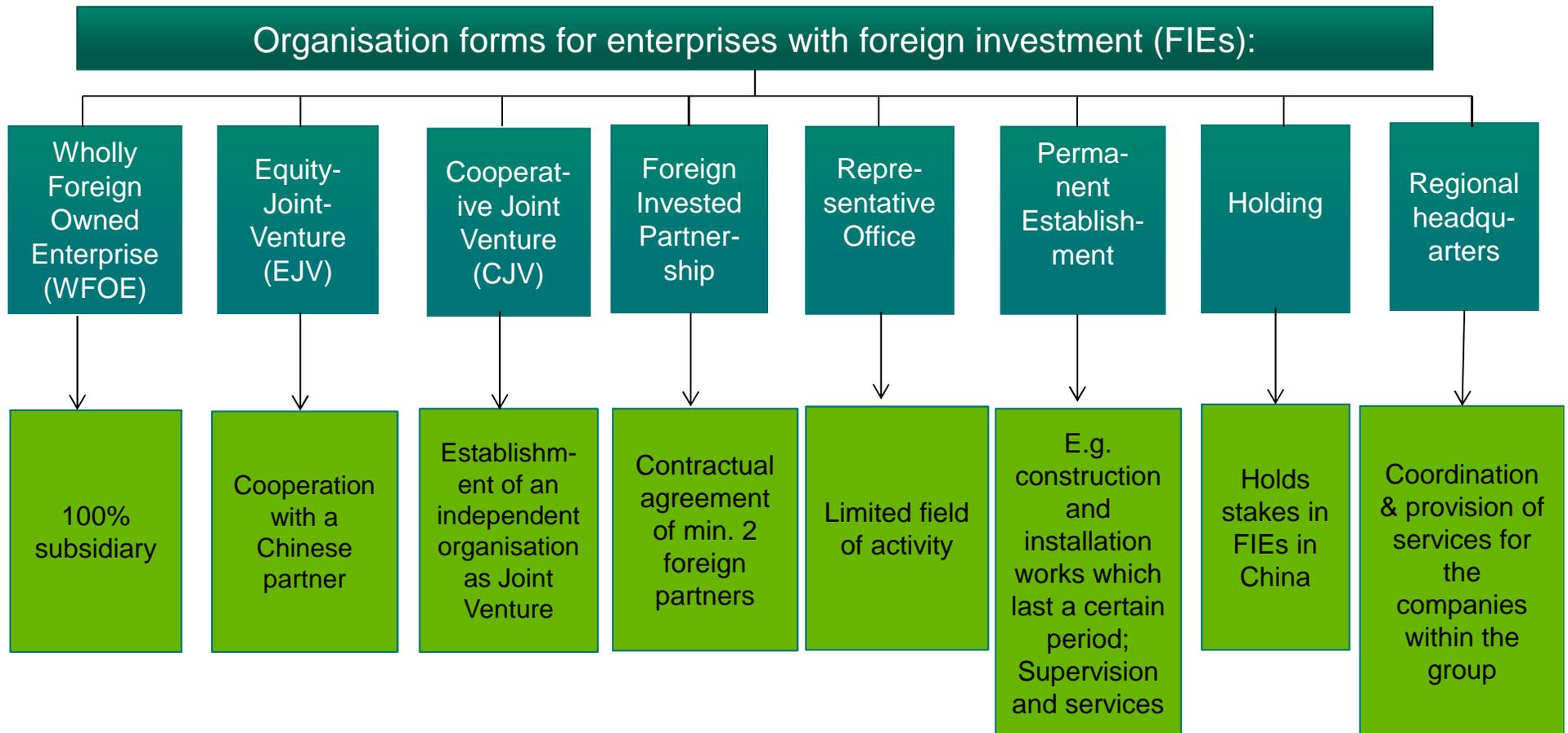
- Automotive
- Engineering
- Retail
- Consulting
- Pharmaceutical
- Consumer goods
- Plant construction
- Wholesale
- Chemicals



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Organization forms in the PR China

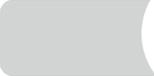
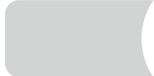


Organization forms / FIEs

Comparing Representative Office, WFOE and Partnership

	Representative Office	WFOE	Partnership
Minimum of the registered capital	<ul style="list-style-type: none"> ▪ Not required ▪ No legal entity 	<ul style="list-style-type: none"> ▪ Theoretically 1 RMB, in practice sufficient funds until the business starts generating profit ▪ Legal entity 	<ul style="list-style-type: none"> ▪ Not required ▪ No legal person
Business scope	<ul style="list-style-type: none"> ▪ Look for business contacts ▪ Marketing ▪ Gain market information (“liaison activities”) 	<ul style="list-style-type: none"> ▪ Trading ▪ Production ▪ Services, etc. 	For the allowed purposes related to foreign investments
Invoice billing	<ul style="list-style-type: none"> ▪ Not allowed: no income is allowed 	<ul style="list-style-type: none"> ▪ Allowed 	<ul style="list-style-type: none"> ▪ Allowed
Possibilities to sign contracts with employees	<ul style="list-style-type: none"> ▪ No: no (direct) labor relationship is allowed ▪ Exception: renting an office 	<ul style="list-style-type: none"> ▪ Yes 	<ul style="list-style-type: none"> • Yes
Taxation	<ul style="list-style-type: none"> ▪ Actual Income Method ▪ Cost plus Method ▪ Actual Revenue Method 	<ul style="list-style-type: none"> ▪ 25 % Corporation Income Tax 	<ul style="list-style-type: none"> • Partners are taxed with individual income tax at individual level

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The liabilities of managers in China

In general

- Directors, managers and legal representatives of an organization which is invested by foreign investors and registered in China, have the obligation to abide to the laws, regulations and the articles of the incorporation, and to comply with the business fidelity and prudence.
- Receiving bribes and other illegal income achieved by the abuse of their status as well as embezzlement of company property are not allowed.
- The director is responsible for all resolutions of the board of directors.
- Liability for damages against the enterprise

Note: There are no specific liabilities for foreign managers; basically the same level of duties applies as those for local managers.

The liabilities of managers in China

Liability of the company's organs

- **Liability from the violation of fiduciary duties:**

- Income acquired from acts breaching fiduciary duties belongs to the company;
- Compensation due to the company for the damage caused to the company.

- **Liability from behavior which violates the law or the articles of incorporation:**

- Compensation for the damage caused to the company.

- **Criminal liabilities:**

In principle, direct responsibilities against individuals can be incurred in individual cases:

The responsible person (for example the legal representative) will only be liable, according to the criminal law, when he actually commits the crime by her- of himself, organizes, leads or decides on the crime.

- Criminal activities are for example: tax evasion, smuggling, corruption, bribe and fraud.

The liabilities of managers in China

Liability of the legal representative

- **Examples for direct administrative liabilities:**
 - The company conducts business activities which are beyond **the business scope of company** or violate the law;
 - The company conceals facts or provides false information to the responsible authorities;

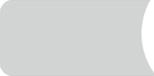
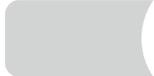
The liabilities of managers in China

Additional regulations for the legal representative

- **Travel bans**
 - When the declaration of tax or customs of the company does not correspond
 - Until the payment or the offer of a guarantee

- **Work prohibition**
 - In case of serious violations of law or revocation of the business license
 - No occupation as director, supervisor or senior manager within 3 years from the first day of the revocation of the business license

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Protecting your rights in China

Choice of Law	Type of Dispute Resolution	Place of Jurisdiction
<ul style="list-style-type: none">• Chinese law• Other national law (Swiss, German, English, etc.)• United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL)	<ul style="list-style-type: none">• State courts• Arbitration• Administrative and penal proceedings	<ul style="list-style-type: none">• Place of the court/body in charge



The most important criterion: Can your verdict be enforced?

Protecting your rights in China

Arbitration

- 156 countries have signed the New York Convention (*“Convention on the Recognition and Enforcement of Foreign Arbitral Awards”*)
- Decisions are made in one instance, no appeal instance
- Advantages:
 - Fast process
 - Arbitrators with practical experience in the relevant industry sector
 - Confidentiality (*“closed-door hearings”*)

Protecting your rights in China

Courts of Arbitration in China

- **Three major courts of arbitration:**
 - China International Economic and Trade Arbitration Commission (CIETAC) in Beijing with subsidiaries in Shanghai und Shenzhen
 - Shanghai International Arbitration Center (SHIAC)
 - Shenzhen Court of International Arbitration (SCIA)

- **Composition of the arbitral tribunal:**
 - In principle one or three arbitrators, depending on the agreement or case; also foreign nationals are admitted as arbitrators

- **Duration of proceedings:**
 - 8 to 12 months

- **Procedural rules**
 - Flexibility as to which procedural rules apply

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Overview of the Chinese Labour Law

Overview of the specifics of the Chinese Labour Law

Working hours

- 8 hours per day
- Max. 44 hours per week
- Min. 1 day off per week

Overtime

- Max. 3 hours/day and 36 hours/month
- Compensatory leave or overtime pay:
 - On weekdays 150%
 - On weekends 200%
 - On public holidays with up to 300% of the regular salaries

Maternity leave, parenting leave

- **NEW:** 98 to 158 (previously: 98) days (for multiple births 15 days more per child) for the mother, of which 15 days can be taken before the birth
- Parenting leave according to the local regulations

Others

- Continuing payment of salaries in cases of illness
- 5-15 days of vacation depending on the lifelong work time
- Special vacation according to local regulations, for example marriage or bereavements leave

Overview of the specifics of the Chinese Labour Law

Ending labor agreements

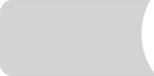
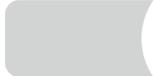
- Ending an employment contract by mutual agreement (“severance agreement”)
- Termination for convenience (with notice) by the **employee**
 - Notice period: 30 days
- Termination for default by the **employee**
 - Legal reasons, e.g. employer stops paying the salary or social insurance or provides for unsafe work environment
 - No notice period
- Termination with notice by the **employer**:
 - Notice period: 30 days
 - Legal reasons required, no termination for convenience
- Termination for default by the **employer**
 - Legal reasons, i.e. breach of the employment contract or company rules by the employee
 - Compensation
 - Double Compensation

Overview of the specifics of the Chinese Labour Law

Prohibition of dismissal, warnings and compensation

- Exclusion of dismissal
 - In certain circumstances if the employee has an occupational disease and during medical treatment
 - During pregnancy
 - 15 years working in the company and being less than 5 years away from retirement age
- Warnings
 - Company rules shall be taken into account
- Compensation
 - Upon termination by the employer
 - Upon expiration of a fixed-term contract
 - Basic rule: 1 month salary – but max. 3 times the local average salary – per year of employment with the company
 - Double compensation for unlawful dismissal by the employer!

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Overview of the specifics of Chinese bookkeeping

Obligation of bookkeeping

- Begins with the registration of the company and the issuance of the business license
- Obligation to set up the bookkeeping department or the assignment to an external accountant/agent
- Certification of the professional qualification of the bookkeeper

Overview of the specifics of Chinese bookkeeping

Obligation of bookkeeping (2)

- Fiscal year = calendar year (01. January – 31. December).
- Bookkeeping in Chinese and normally in RMB (Renminbi)
- Obligation of double entry bookkeeping
- Bookkeeping according to the chinese account system
 - ASBE (from 2002)
 - CAS (from 2006)

Overview of the specifics of Chinese bookkeeping

Reporting & Annual Financial Statement

- Obligation of monthly reporting for FIEs
- Annual financial statements until 30.4 of the following year with minimal following obligatory components:
 - Balance sheet
 - Profit and loss statement
 - Appendix/Notes
 - Cash Flow statement
 - Statements of Changes in Equity
- Obligation of Audit (regulations partly relaxed).

Overview of the specifics of Chinese bookkeeping

Duration of safekeeping

Accounting Documents

Original documents, vouchers etc.	15 years
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Bookkeeping

General ledger, subsidiary ledger	15 years
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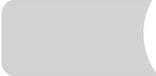
Daily ledger, journal, appendix to assets	15 years
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Financial Reports

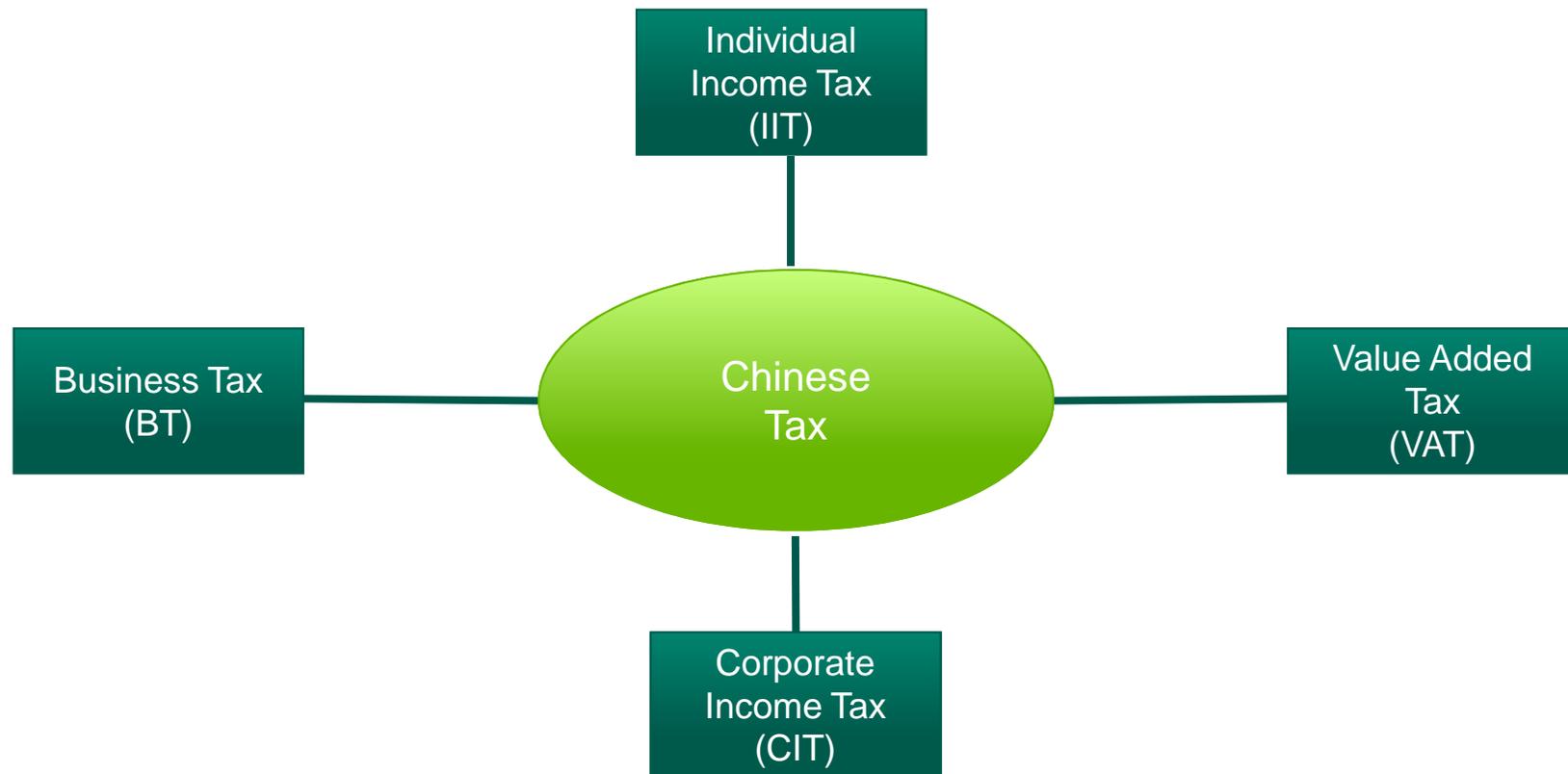
Monthly and quarterly reports	3 years
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Annual financial statements	endless
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Tax declaration



The double tax treaty with Germany is in place since 1985, a new treaty was signed in 2014 but has not come into effect yet

Tax declaration

Corporate Income Tax (CIT)

- CIT rate generally at 25%
- Tax preferences, e.g. for high-tech and micro-enterprise are available
- Generally: Taxation based on the actual profit
- Deemed profit method for representative offices and project PEs
- Deadlines:
 - To be filed quarterly until 15th of the following quarter
 - Annual filing until 30 April of the following year (possibly later due date in certain regions of China)

Tax declaration

Individual Income Tax (IIT)

- Progressive tax rate of 3 - 45% for income from employment
- Normally handed in through the enterprise as withholding agent until the 15th of the following month
- Directors' fees are liable to IIT

Tax declaration

Value Added Tax (VAT) is levied on

Delivery of goods

Refinement

Repair and replacement
services

Import of goods

Also on certain services in the VAT pilot program.

Tax declaration

Different types of VAT tax payers:

Small scale tax payer		Annual turnover less than
	Production companies	RMB 500,000
	Trading companies	RMB 800,000
	Service companies	RMB 5m

General tax payers
<ul style="list-style-type: none"> • All other VAT tax payers excluding the small scale VAT tax payers • Can issue special VAT invoices • Input tax credit

VAT invoices

VAT

- VAT-rate for Small Scale Taxpayer: 3%
- VAT-rate for General Taxpayer:
 - Normal rate in commodity trade : 17%
 - VAT pilot program: 6-17%
- VAT liability exists from the moment payment is received, and is booked regularly at the moment when the turnover is realized
- Deadline: Monthly until 15th of the following month

VAT pilot program

Pilot industries	Applicable VAT tax rates for General Tax Payers
Transportation services	11%
Certain “modern“ services	
- Leasing of fixed assets	17%
- Others	6%
- Postal services	11%
Telecommunication services	
- Essential services	11%
- Value added services	6%

Business Tax is applicable for all other services!

VAT invoices

Anti Counterfeiting System: VAT invoices, so-called “Fapiaos”

- Acquisition of the special VAT invoices only through the tax authorities
- Acquisition with limited quantities and limited maximum value amount
- Issuing time for Fapiaos: Generally in the moment turnover is realized in the bookkeeping

VAT invoices

Registrierungsnummer, Name und Stempel der zuständigen Steuerbehörde

Rechnungsnummer

9990981810

增值税专用发票

No 02737523

开票日期: Datum

Informationen des Käufers

名称: Name, Adresse, Telefonnummer, Information der Bank

纳税人识别号: Name, Adresse, Telefonnummer, Information der Bank

地址、电话: Name, Adresse, Telefonnummer, Information der Bank

开户行及帐号: Name, Adresse, Telefonnummer, Information der Bank

销货单位名称: Name, Adresse, Telefonnummer, Information der Bank

名称: Name, Adresse, Telefonnummer, Information der Bank

纳税人识别号: Name, Adresse, Telefonnummer, Information der Bank

地址、电话: Name, Adresse, Telefonnummer, Information der Bank

开户行及帐号: Name, Adresse, Telefonnummer, Information der Bank

收款人: 复核: 开票人: 销货单位: (章)

Stempel des Verkäufers

Verkaufsumsatz (ohne VAT)

VAT

Verkaufsumsatz (mit VAT)

VAT-Satz in %

Umsatzart/Warenbeschreibung

货物或应税劳务名称	规格型号	单位	数量	单价	金额	税率	税额
合计							
价税合计 (大写)					(小写)		

Information des Verkäufers

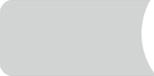
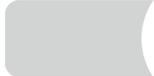
Anmerkungen

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Reform of the foreign exchange administration for commodity trade

Foreign exchange administration for commodity trade

Nationwide reform implemented from 1 August 2012 through SAFE, customs authorities and SAT

Key points

- Foreign exchange categories A, B und C
- Cancellation of the verification note for income in foreign currencies from the export
- No single-case examination for trade-related foreign exchange
- Tax refund process is simplified

Reform of the foreign exchange administration for commodity trade

Classification of the enterprises into the foreign exchange categories

Category A	Category B	Category C
<ul style="list-style-type: none"> ▪ Payment of foreign exchanges can be settled directly with the bank upon provision of customs documents or import invoices etc. ▪ Income of foreign exchange from export will not be examined individually 	<ul style="list-style-type: none"> ▪ Control of reception, payment, trade and payment terms of foreign exchanges etc. ▪ <u>Electronic data check</u> through banks 	<ul style="list-style-type: none"> ▪ Strict control of income, payment, trade and payment terms of foreign exchanges etc. ▪ Before the reception and payment of foreign exchange, individual registration at the foreign exchange authority is necessary

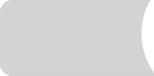
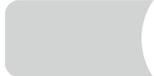
New foreign exchange administration for cross-border payments for services

Effective date: 01.09.2013

Main content

- **Simplification in cross-border payments for services**
 - Individual examination and permission are abolished
 - Direct processing through the foreign exchange bank
 - No examination of supporting documents (vouchers, documents and certifications) for small transactions with a value less than 50,000 US-Dollar
 - Documents should be kept for 5 years in case of an examination

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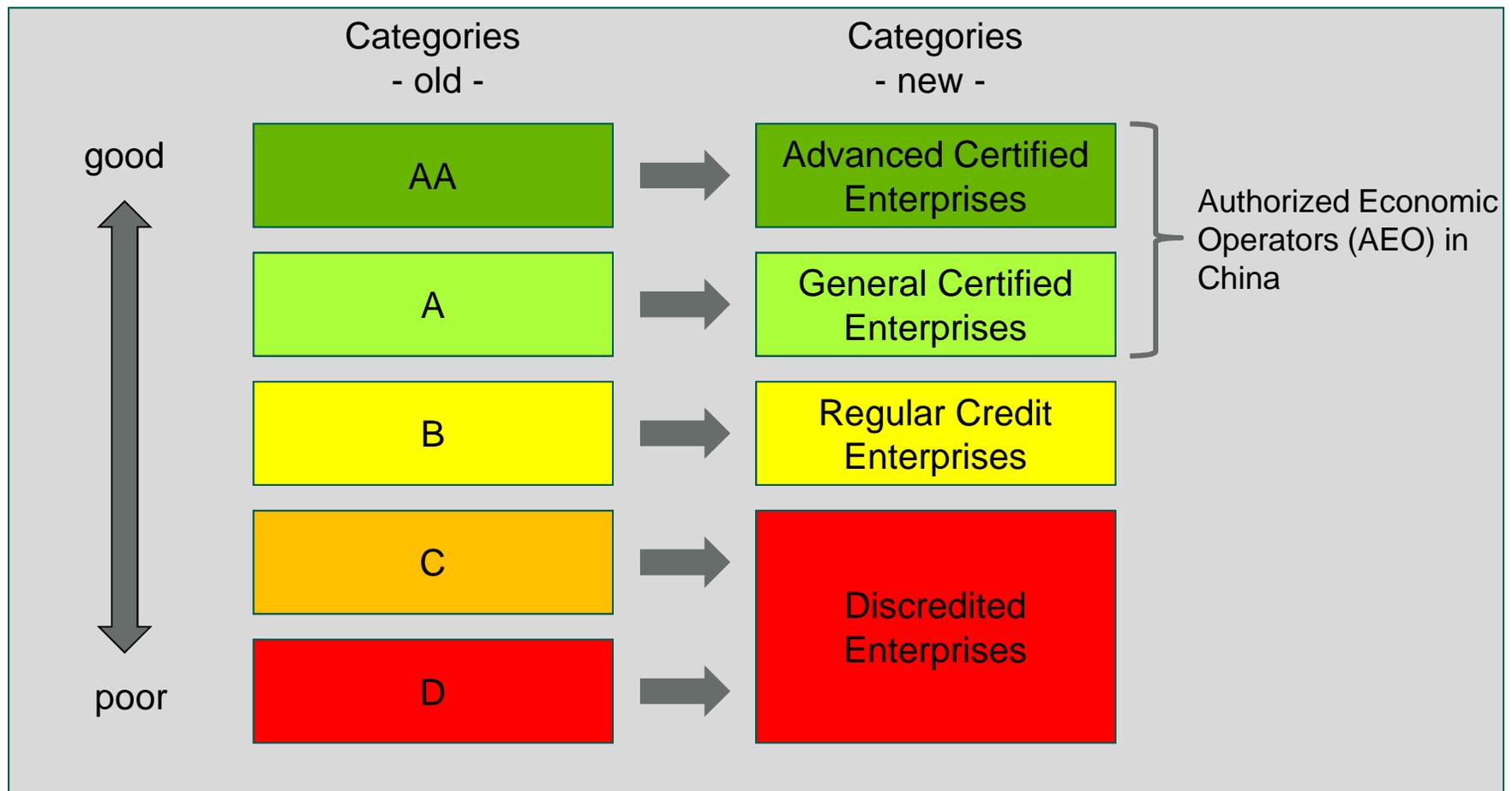
Reform of the Customs Administration

Announcement of the General Administration of Customs 2014 No. 81 (海关总署公告2014年第81号) (in force from 1. December 2014)

- Classification of the enterprises into 4 instead of 5 categories
- Introduction to a regular re-evaluation system
- Publication of the classification categories of the enterprises through the customs authorities

Reform of the Customs Administration

- Classification of the enterprises into 4 instead of 5 categories



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„Each and every person counts“ – to the Castellers and to us.

Human towers symbolise in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today. „Força, Equilibri, Valor i Seny“ (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage.