



Film Financing and Television Programming

A Taxation Guide



For more than a decade, the KPMG Film Financing and Television Programming Taxation Guide has been recognized as a valued reference tool for industry professionals, filled with information drawn from the knowledge of the KPMG International global network of member firm media and entertainment Tax professionals. The 2022 edition is a fundamental resource for film and television producers, studio and streaming production executives, tax executives, finance executives, and attorneys, involved with the commercial side of production.

Doing business across borders can pose major challenges and may lead to potentially significant tax implications, and a detailed understanding of the full range of potential tax implications can be as essential as the actual financing of a project. The Guide helps industry executives assess the many issues surrounding cross-border business conditions, financing structures, and issues associated with them, including development costs and rules around foreign investment. Recognizing the role that tax credits, subsidies, and other government incentives play in production financing, the Guide includes a robust discussion of relevant tax incentive programs in each country.

Each chapter focuses on a single country and provides a description of commonly used financing structures, as well as their potential commercial and tax implications for the parties involved. Key sections in each chapter include:

Introduction

A thumbnail description of the country's industry contacts, regulatory bodies, and financing developments and trends.

Key Tax Facts

At-a-glance tables of corporate, personal, and value-added (VAT) tax rates; normal nontreaty withholding tax rates; and tax year-end information for companies and individuals.

Financing Structures

Descriptions of commonly used financing structures in production and distribution, and the potential commercial tax implications for the parties involved. This section of each chapter covers rules surrounding co-productions, partnerships, equity tracking shares, sales and leaseback, subsidiaries, and other tax-efficient structures.

Tax and Financial Incentives

Details regarding the tax and financial incentives available from central and local governments as they apply to investors, producers, distributors, and actors, as well as other types of incentives offered.

China

Corporate Tax

Explanations of the corporate tax in the country, including definitions, rates, and how they are applied.

Personal Tax

Personal tax rules from the perspective of investors, producers, distributors, artists, and employees.

Streaming Tax Considerations

Provides a look at the unique tax issues that need to be addressed in this evolving segment of the industry. With considerations such as identifying tax collection and reporting obligations in a variety of jurisdictions, understanding international tax implications is essential for streaming providers.

KPMG and Member Firm Contacts

References to KPMG and other KPMG International member firms' contacts at the end of each chapter are provided as a resource for additional detailed information.

Please note: While every effort has been made to provide up-to-date information, tax laws around the world are constantly changing. Accordingly, the material contained in this publication should be viewed as a general guide only and should not be relied upon without consulting your KPMG or KPMG International member firm Tax advisor.

Production opportunities are not limited to the countries contained in this Guide. KPMG and the other KPMG International member firms are in the business of identifying early-stage emerging trends to assist clients in navigating new business opportunities. We encourage you to consult a KPMG or KPMG International member firm Tax professional to continue the conversation about potential approaches to critical tax and business issues facing the media and entertainment industry.

We look forward to helping you with your film and television production ambitions.

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The following information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

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China

Introduction

In China, the government traditionally monopolizes the film industry so that only state-owned film studios may engage in the production and distribution of films. However, with China's accession to the World Trade Organization (WTO), the restrictions over film production and distribution are being slowly relaxed.

China became a member of the WTO at the end of 2001, but it did not make any commitments to open up the film production sector to foreign investors. However, China has undertaken to import 20 films a year for release on a revenue-sharing basis immediately after its accession to the WTO. This may expose state-owned film studios to greater competition.

The film industry is regulated by the State Administration of Radio, Film, and Television (SARFT). To promote the film industry, the SARFT issued the Provisional Rules on Operation Qualifications for Entry into Film Production, Distribution, and Exhibition (Film Market Entry Rules) on October 29, 2003, which was later superseded by a revised version on November 10, 2004. According to this set of rules, effective December 1, 2003, foreign investors may incorporate a film production company in the form of an equity joint venture or cooperative joint venture with Chinese film production companies. Nonetheless, the Chinese film production companies are required to have controlling interests in the equity joint venture or cooperative joint venture.

Warner China Film HG Corporation, incorporated in December 2004, was the first China-foreign equity joint venture established in China for film production. However, the attempt to allow foreign investment in film production was suspended shortly thereafter. In July 2005, the PRC Ministry of Culture, the SARFT, and several other government agencies jointly issued a circular, *Opinions on Foreign Investment in Culture Related Areas* (Opinions), which prohibits foreign investors from establishing or investing in film production companies in China. The prohibition of foreign investment in the film production industry is reemphasized under the prevailing National Foreign Investment Catalogue Guide, which provides guidance on the industries that encourages, restricts, or prohibits foreign investments under the current Chinese regulatory framework. As a result, foreign investors may only participate in the cooperation of films with Chinese film production companies on a project basis, and the majority of the co-operations are in the form of joint production, assisted production, or contracted production.

Foreign investments are also prohibited in the Chinese film distribution industry, except for Hong Kong and Macau investors,¹ which are permitted to establish wholly owned subsidiaries in China for the distribution of China-made films, owing to the supplementary provisions to the Film Market Entry Rules issued by the SARFT on March 7, 2005 and effective from January 1, 2005.

Currently, the production, distribution, releasing/showing, importation, and exportation of films in China are subject to approval by the relevant authorities, mainly the SARFT.

¹ For the purpose of regulating the investments from outside jurisdictions/areas into mainland China, Hong Kong, Macau, and Taiwan are treated as separate jurisdictions from mainland China.

China

Key Tax Facts

Highest effective corporate income tax rate	25%
Highest personal income tax rate	45%
Business tax*	Replaced by VAT, effective May 1, 2016*
Value-added tax (VAT)*	Generally 13%*, 9%*, and 6%*
<i>Normal nontreaty withholding tax rates:</i>	
Dividends	10%
Interest	10%
Royalties	10%
Tax year end	December 31

*China used to have two turnover tax regimes, Business Tax (BT) and Value Added Tax (VAT). Since 2012, China has been undergoing a tax reform, replacing BT with VAT starting with selected locations and industries. With the expansion of China's VAT system to the last three industries (i.e., real estate and construction services, financial services, and lifestyle services) effective from May 1, 2016, BT has been entirely replaced by VAT nationwide. The VAT rates of 11% and 6% are introduced as a result of the VAT reform. Moreover, the VAT rates of 17% and 11% were decreased to 16% and 10%, respectively, in May 2018. In early March 2019, the Chinese government announced a further reduction in the headline VAT rate from 16% to 13%, together with a reduction of its 10% VAT rate to 9%, which has been effective since April 2019.

Film Financing

Financing Structures

Foreign investors may participate in cooperation of films with Chinese film production companies. The main cooperation models include joint production, assisted production, and contracted production.

Co-production

Currently, film co-production projects may only be undertaken in China in one of the following manners:

- **Joint production:** The Chinese investor and foreign investor jointly participate in the funding and production of a film in China. They also share potential rewards and risks associated with the exploitation of the rights over the film. The production project does not constitute a separate legal person in China. Instead, it is treated as an unincorporated cooperative joint venture with the Chinese investor and the foreign investor retaining their individual identities.
- **Assisted production:** The foreign investor is solely responsible for providing the capital and carrying out the production of a film in China. The Chinese participant provides assistance by way of equipment, instruments, and labor services. The foreign investor solely enjoys the rewards and bears the risks associated with the exploitation of the rights over the film, while the Chinese participant is compensated by the foreign investor for the assistance provided; or
- **Contracted production:** The foreign investor is solely responsible for providing the capital. It engages a Chinese party to carry out certain production or filming in China. The foreign investor solely enjoys the rewards and bears the risks associated with the exploitation of the rights over the film, while the Chinese contractor is compensated by the foreign investor for undertaking the production of the film.

China

Approvals from the SARFT and the relevant permit/license should be obtained for co-production of films with Chinese partners. The Chinese partner is required to apply to the SARFT on behalf of both parties for such permit/license, which is known as the “China-Foreign Film Co-production Permit.” The permit is only valid for a period of two years.

The films produced under “joint production” may be released to the public in and outside of China upon obtaining the relevant releasing permit/license issued by the SARFT. The films produced under “assisted production” and “contracted production” may be brought out of China upon approval from the SARFT.

Partnerships

Since March 1, 2011, foreign companies and individuals have been allowed to establish foreign invested partnerships (FIP) in China in industries that do not have restrictions on foreign investments. Accordingly, such a partnership is not a feasible form for foreign investors to produce films in China.

Limited Liabilities Companies

There are, in general, three types of foreign-invested limited liability companies in China: namely Wholly Foreign Owned Enterprise (WFOE), China-Foreign Equity Joint Venture (EJV), and China-Foreign Cooperative Joint Venture (CJV).

For production of films in China, foreign investors are not allowed to set up a wholly owned subsidiary (i.e., WFOE) for such activities. The Film Market Entry Rules issued in 2004 by the SARFT allow foreign investors to establish EJVs or CJVs with Chinese film production companies, which are required to have the controlling interests of at least 51% of the registered capital of the EJV or CJV. However, the Opinions subsequently issued by the SARFT and several other government authorities in 2005 and the prevailing Foreign Investment Guide Catalogue prohibit the establishment of any foreign-invested film production companies in China, including EJVs and CJVs.

With regard to film distribution, foreign investors are prohibited from setting up or investing in film distribution companies in China, with the exception of Hong Kong and Macau investors who are allowed to establish wholly owned subsidiaries in China for distribution of China-made films.

Other Financing Considerations

Financial Incentives to Support Development of Film Industries

On May 31, 2014, several government authorities, including the SARFT, Ministry of Finance, State Administration of Taxation, People’s Bank of China, etc., jointly issued a notice regarding various financial and tax policies for film industries. The relevant policies provided in the notice are aimed at supporting the development and strengthening the competitiveness of China’s film industry. Some of the main financial policies are as follows:

- Special government fund:

A government fund dedicated to cultural industry will be set aside for the film industry and will offer support in the following ways: (1) promoting the use of high technology in film production, (2) supporting outbound investments and operations of Chinese film companies, (3) supporting construction of important industrial projects and high-technology core bases of the film industry, (4) supporting key and highly competitive films, and (5) strengthening construction of key film websites.

- Supportive financing policies:

The Notice encourages banking financial institutions to be innovative in offering new financing products and to gradually increase various forms of loan financing arrangements that meet the needs and fit the distinguishing features of the film industry.

Direct financing, such as initial public offerings, bonds issuance, bringing in private equity funds, or venture capital, is also encouraged and promoted.

China

Exchange Controls and Regulatory Rules

China is a foreign exchange controlled country, and any funds coming into and going out of China are subject to approval by the China State Administration of Foreign Exchange (SAFE) and their designated banks. Companies or individuals in China are generally required to submit certain documents to the SAFE or banks to obtain such approval.

Subject to approval from the SAFE or the banks, foreign investors may be allowed to remit funds to and open bank accounts in China for co-production of films with Chinese partners. In addition, foreign investors should also be able to receive distribution or box office income from China, provided the relevant China taxes have been duly settled.

Corporate Taxation

Chinese Resident Enterprises

General

A China resident enterprise is liable for Corporate Income Tax (CIT) on its worldwide income. A China-resident company, for CIT purposes, is defined as one that is incorporated in mainland China or has its effective management in mainland China if it is incorporated outside of mainland China.

Taxable income is calculated as the excess of revenue over deductible expenses. Tax losses may be carried forward for up to five years. Taxable income/losses are generally calculated on an accrual basis.

The standard CIT rate is 25%. A reduced income tax rate of 15% is available for companies that are engaged in developing technologies that support cultural industry and are recognized as high-tech companies by the relevant government authorities.

Certain enterprises in cultural industries can claim additional deduction on the research and development expenses for developing new technology, new products, and new processes.

Filing

Resident enterprises should file provisional CIT returns on a quarterly basis or, in rare cases, on a monthly basis. In addition, enterprises are also required to file an annual reconciliation based on the audited financial statements.

Taxpayers with branches should calculate their taxable income and CIT liabilities on a consolidated basis. However, the head office and the branches should, in general, each file a separate monthly or quarterly provisional return and settle provisional CIT liabilities on a pro rata basis to their respective tax authority.

The monthly or quarterly provisional CIT returns should be filed and tax funds paid within 15 days after the end of a calendar month or quarter. An annual CIT reconciliation/return should be filed by the taxpayers and the branches, and the remaining tax funds for the year should be settled within five months after the end of a calendar year.

Non-Chinese Resident Enterprises

Nonresident enterprises should, in principle, only be liable for China CIT on China-sourced income, for example, royalties and dividends paid by Chinese resident enterprises. Where a foreign company carries out co-production of films in China, the foreign company may be liable for the China CIT on the relevant business profit if it is regarded as having a permanent establishment (PE) in China by virtue of the production activities carried out in China.

China

Amortization of Expenditure

Deduction and Amortization of Expenses

Taxpayers should be able to claim deductions on expenses, provided that the expenses are incurred in the ordinary course of business of the taxpayers and the amounts are reasonable. In addition, the expenses shall be substantiated by valid official tax invoices, which for the expenses incurred in China are called “Fapiao.” There are limits on the deduction of certain expenses, such as entertainment expenses, advertising and promotion expenses, and staff welfare expenses. Provisions for expenses, such as bad debts and inventory impairments, are generally not deductible for CIT purposes.

Depreciation charges on fixed assets are generally based on the minimum useful life provided under the CIT regulations, which generally range from 3 to 20 years depending on the nature of the assets. Taxpayers may determine reasonable residual value of an asset. The straight-line depreciation method is generally adopted. Accelerated depreciation is allowed for certain types of fixed assets.

Intangible assets – such as patent rights, proprietary technology, trademark rights, copyright, and land use rights – should be amortized using a straight-line method over their useful lives or period of use. The amortization period for an intangible asset regarded as an investment is the period of use specified in the relevant contract or agreement. Other intangible assets, for which there is no set period of use or which are developed by the enterprise itself, must be amortized over a period of at least 10 years. Film rights are the same as a copyright. Accordingly, costs incurred in connection with the production of a film should be capitalized as intangible assets and then be amortized when the film is exploited.

Related-party transactions must be carried out at arm’s length. Cost-sharing arrangements concerning the development or transfer of intangible assets, as well as shared services, are permitted under the arm’s length principle. It is possible to obtain an advance pricing agreement from the tax bureau. The tax bureau is entitled to make any necessary transfer pricing adjustments. Taxpayers must prepare and maintain transfer pricing documentation, some portions of which must be contemporaneous with the annual tax filing.

Losses

Tax losses may be carried forward for up to five years.

Due to the outbreak of COVID-19, the Chinese government announced a series of tax preferential policies to support the development of several industries, including the film industry. From January 1, 2020 to December 31, 2021, any tax losses incurred by a company engaging in the production, distribution, or broadcasting of films can be carried forward for up to eight years.

Withholding Tax

Nonresident enterprises are generally liable for the China WHT at 10% on certain China-sourced passive income, such as dividends, loan interests, royalties, etc. Certain tax treaties provide for a reduced WHT rate on certain types of income.

Where a foreign investor transfers film exploitation rights developed in a co-production in China to a Chinese resident, the foreign investor is liable for China WHT on the proceeds received for the transfer. Where the rights are effectively connected with a PE of the foreign investor, then such proceeds will have to be taken into account in computing the profits attributable to the PE.

Foreign Tax Relief

Chinese resident enterprises are generally entitled to a foreign tax credit on the foreign income tax paid related to foreign-sourced income, to the extent of the amount of Chinese tax that would have been paid had the income been earned in China. Any excess credit may be carried forward for up to five years.

China

Indirect Taxation

Business Tax

Prior to 2012, companies and individuals, including foreign companies that provide services (other than repair and processing services) and transfer intangible assets/immovable properties in China, were liable for BT. However, as the Chinese government started to implement the VAT reform from 2012, BT continues to gradually be replaced by VAT for all the above-mentioned industries, services, and activities. Radio-, film-, and television-related services are subject to VAT effective from January 1, 2014.

Value-added Tax

Prior to 2012, VAT only applied to the sale of goods in China, importation of goods into China, and the provision of processing and repair services in China. The general VAT rate is 17%. In 2012, the Chinese government started to implement VAT reform, under which VAT would gradually apply to industries, services, and activities that were previously subject to BT. Effective May 1, 2016, BT has been entirely replaced by VAT for all industries nationwide.

As a result of the VAT reform, effective from January 1, 2014, radio-, film-, and television-related services, including production services, distribution services, and broadcasting services with respect to radio, film, and television programs, are subject to VAT at 6%.

VAT Exemption Treatment

On May 31, 2014, several government authorities, including the SARFT, Ministry of Finance, State Administration of Taxation, People's Bank of China, etc., jointly issued a notice regarding various financial and tax policies with the aim to support the development of Chinese film industries. Based on the Notice, from January 1, 2014 to December 31, 2018, the following revenue is exempt from VAT:

- Revenue for transfer of film copies (including digital copies) and film copyrights by a film production company
- Film distribution revenue by a film distribution company
- Revenue from box office of film theatres in rural areas.

In addition, a general VAT taxpayer may adopt the simplified VAT computation method for box office income by film theatres in urban areas.

On November 27, 2014, government authorities broadened the scope of which companies were eligible for the VAT exemption treatment by issuing a circular, Caishui [2014] 85 (Circular 85), where the above-mentioned revenue generated by the film group companies (including member companies) in production, distribution, or broadcasting of the films, film studios, and other film companies, whose establishment has been approved by the in-charge government authorities, could be exempted from VAT. Circular 85 also clarifies that the transfer of film copyrights includes both the transfer and the license of the copyrights.

Further, in February 2019, such VAT exemption treatment was extended from January 1, 2019 to December 31, 2023, according the notice jointly issued by Ministry of Finance and State Administration of Taxation, i.e., Caishui [2019] 17 (Circular 17).

VAT Zero-rated Treatment

On October 30, 2015, the Ministry of Finance (MoF) and the State Administration of Taxation (SAT) jointly issued a circular, Caishui [2015] 118 (Circular 118), which introduced the VAT zero-rated treatment for certain export services and was intended to replace the previous VAT exemption treatment. The VAT zero-rated treatment applies to the taxpayers exporting the radio, film, and television production and distribution services overseas and allows the taxpayers to avoid paying VAT and to claim full input credit or refund of VAT paid on purchases the taxpayers made in relation to providing those services.

China

This regulation was further replaced by the Caishui [2016] 36 (Circular 36), which emphasizes the eligibility of VAT zero-rated treatment on the export services by introducing a conception of “service fully consumed outside of China.” The VAT zero-rated treatment is applicable to export services of production and distribution of radio, film, and television fully consumed outside of China. The criteria of “fully consumed outside of China” includes (1) the service must be provided to an offshore party, and the transactions are not related to goods or real estate located in China; and (2) the intangible assets are deployed fully outside of China, and the transactions are not related to goods or real estate located in China.

Notwithstanding the above, the VAT zero-rated treatment does not apply to the taxpayers exporting the radio, film, and television broadcasting services overseas, which are still only entitled to the VAT exemption treatment.

Local Surcharges

Local surcharges are government charges imposed on the BT and VAT payers, and calculated at a certain percentage of the BT or VAT liabilities. Effective December 1, 2010, foreign invested companies and nonresident companies that are liable for BT and VAT are also liable for local surcharges.

The general local surcharges include Urban Maintenance and Construction Tax, Education Levy, and Local Education Levy, which in total is generally 6% to 12% of the BT or VAT liabilities. In addition, some cities also charge other types of surcharges.

Customs Duties

The importation of audiovisual products should be subject to prior approval of relevant authorities.

The importer of audiovisual products is subject to VAT at 13% and import duty at the applicable rate. Import VAT and duty are collected by the Chinese customs authorities at the time of importation. Import duty is based on the c.i.f value of the imported goods, while VAT is based on the aggregate of the c.i.f value and import duty. The import duty rates depend on the international tariff codes and country/territory of origin of the imports. Import duty and VAT are payable within 15 days of import declaration.

For 2021, the following customs duty rates apply to the relevant goods imported from most favored nations:

Exposed and developed cinematographic film	5% for 35mm or wider, or otherwise 4%
Exposed and developed cinematographic film specifically for teaching purpose	0%
Exposed but not developed cinematographic film	6.5%
Undeveloped color cinematographic film	Ranges from RMB8.7/m ² to RMB232/m ²
Blank magnetic tapes	Zero rated
Recorded magnetic tapes	Zero rated
Blank optical media	Zero rated
Recorded optical media	Zero rated

China

The c.i.f value basically covers all the payments incurred up to the point of landing on the customs territory of China, including royalties for intellectual properties, which are contained in or connected with the imported goods. The c.i.f value should be based on the actual transaction price of the imports subject to verification of the PRC customs authorities. Where there is a “special relationship” between the overseas supplier and the importer, the customs authorities may seek to adjust the transaction price accordingly in arriving at the c.i.f value to help ensure that the correct value is used.

Effective from January 1, 2004, equipment, appliances, and materials imported for filming are eligible for VAT and customs duty exemption, provided that they will be exported within six months after importation and the taxpayer makes a deposit equivalent to the VAT payable at customs.

Personal Taxation

Resident Status

An individual is a resident in China for Individual Income Tax (IIT) purposes if:

- He or she habitually resides in China because of household registration, family ties, or economic reasons, or
- He or she resides in China for over 183 days on a cumulative basis in a tax year.

The term “habitually resides” is a legal criterion for determining whether an individual has residence or not, and it does not refer to “actually resides” or the place where he resides for a specified period. If an individual resides outside China for a reason such as studying, working, visiting of family, and traveling, and must return to China to reside at the conclusion of the period, then China is the place where he or she habitually resides.

IIT returns are generally filed and settled within 15 days after the end of a calendar month. Resident taxpayers who derive comprehensive income that has not had the correct withholding tax applied at the source during the tax year should perform an annual reconciliation filing. The annual reconciliation filing, to settle the tax due or claim a tax refund, should be performed between March 1 and June 30.

Artists (Self-employed)

IIT Implications

An artist’s income derived from his or her professional services will be considered as “personal service income” for IIT purposes. The personal service income will be classified as “Comprehensive Income” for resident taxpayers, where one set of progressive tax rates ranging from 3% to 45% on an annual basis will apply for determining the IIT. For nonresident taxpayers, the individual will be taxed at progressive rates ranging from 20% to 40% on one-off or monthly basis. In either case, 20% of the total personal service income can be deducted in determining the taxable amount.

A payer making a payment to an artist in respect of a performance in China is obligated to withhold and pay IIT to the Chinese tax authorities, regardless of whether the artist is a Chinese resident or not. Where the payer is not a Chinese entity or individual, the authorities may have to rely on voluntary disclosure by the artist.

Nonresident Artists

Subject to the relevant double tax treaties between China and the resident country of the artists, China may have the taxing rights on the income derived by artists for their services/performances carried out in mainland China.

Resident Artists

A China-resident artist is liable for IIT on the worldwide income. The individual may claim foreign tax credit on foreign-sourced income to the extent of the amount of IIT that would have been paid had the income been earned in China.

China

Employees

IIT Implications

An individual's income derived from employment services in China will be considered as "salaries and wages" under the category of "Comprehensive Income" for IIT purposes. The IIT rates operate on a progressive basis from 3% to 45%. The personal deduction amount for Comprehensive Income is RMB 5,000 per month (i.e., RMB 60,000 per year). An employer in China is obliged to withhold IIT payable by individuals, whether they are Chinese or foreign nationals, to whom it makes payments, including salaries, rent, and commissions.

A foreign national may be exempt from IIT on "salaries and wages" earned in China if, among other conditions, he or she is present in China not more than 90 days or, if a tax treaty applies, less than 183 days in a calendar year or equivalent period and no salaries or wages are paid/borne by any PRC entity. In addition, for a foreign national residing in China for over 183 days on a cumulative basis in a tax year, whereby being a tax resident in China and taxed on worldwide income, the current IIT law and regulations provide tax relief on the individual's overseas paid employment income to the extent relating to the number of days of services provided in China until he or she is considered to have resided in China for more than six consecutive years.

Social Security Implications

Chinese national individuals and foreign national individuals employed in China should participate in the China social insurance schemes that principally include pension/retirement, unemployment insurance, medical insurance, work-related injury insurance, and maternity insurance. In addition, Chinese national individuals should also participate in the housing fund scheme. For foreign national individuals, housing fund contribution is not mandatory according to the national laws and regulations, although in certain cities (e.g., Beijing) such housing fund is required for foreign national individuals.

Except for maternity insurance and work-related injury insurance, for which only employers are required to make the relevant contributions, both employers and employees are required to make contributions for the above-mentioned social insurance and housing fund. The bases and rates of contributions vary from city to city, but in general, the employer's contributions could be up to 42% of the salary, subject to a ceiling amount.

Digital Media

Regulatory Issues

License Requirements

Publication, production, copy, importation, and distribution of audiovisual products, including digital media, are highly regulated in China, and companies that are engaged in these activities shall apply for the respective licenses from the SARFT. In addition, importation of audiovisual products is also subject to content approval by the SARFT.

Restrictions on Foreign Investment

Foreign investments are restricted to different extents in the publication, production, copy, importation, and distribution of audiovisual products, including digital media. Wholly foreign owned subsidiaries (except for Hong Kong and Macau investors for certain activities) are generally prohibited from these activities:

- Publication:

Foreign investments are prohibited from publication of audiovisual products in China.

China

- **Production:**
Foreign investments are generally prohibited from production of audiovisual products, with the following exceptions:
 - Foreign entities or individuals may co-produce audiovisual products with Chinese publication companies.
 - Hong Kong and Macau service providers are permitted to set up a wholly owned subsidiary, EJV, or CJV in China to undertake production of audiovisual products.
- **Copy:**
Foreign investments can set up manufacturing entities in China to manufacture recordable disks. In addition, foreign investments are also allowed to set up an EJV or CJV in China to undertake copying of read-only disks and cassettes, with the Chinese partner having the controlling interests. Foreign investments are prohibited from setting up wholly owned subsidiaries in China to undertake copying of read-only disks and cassettes.
- **Importation:**
Foreign investments are prohibited in importation of audiovisual products.
- **Distribution:**
Foreign investments can set up a CJV in China to undertake the distribution of audiovisual products. The Chinese partner shall have the controlling interests (>51%) over the joint venture, and the operation duration of the joint venture shall not exceed 15 years. Such joint ventures are not allowed to undertake the importation of audiovisual products in China.

Tax Issues on Distribution of Digital Media

China Domestic Transactions

Distribution of audiovisual products (including digital media) in China is subject to VAT at 13%. Effective from January 1, 2013 to December 31, 2017, publishers of audiovisual products are eligible for 50% refund of VAT paid.

The current regulation is not clear on the VAT treatments for distribution of audiovisual products without physical medium, for example, via internet downloading. However, the general practice is that the VAT treatments should be the same, regardless of the form of distribution.

Cross-border Transactions

The tax treatments for cross-border distribution of audiovisual products through internet downloading are even more unclear.

When the distribution is through physical medium, the Chinese importer would carry out customs importation declaration and the customs authority would collect customs duty and import VAT (13%) on the products. However, if the distribution is through internet downloading, due to lack of mechanism to carry out customs declaration, the customs authority would, therefore, not be able to collect customs duty and import VAT. As such, the payment would be categorized as royalty and the tax authority would impose VAT (6%) and WHT.

China

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