
China

International Estate Planning Guide

Individual Tax and Private Client Committee

Contact:

Tian Xu
Jackie Yang
Lloyd G Roberts III

Eiger
Shanghai

xu.tian@eiger.law
jackie.yang@eiger.law
lloyd.roberts@eiger.law

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I. Wills and disability planning documents

A. *Will formalities and enforceability of foreign wills*

1. APPLICABLE LAWS

In the People's Republic of China (PRC), the main governing law for will issues is the Civil Code of the PRC (the 'Civil Code'), which came into effect on 1 January 2021.

2. LEGAL CAPACITY

a. Being a testator

Under Article 1143 of the Civil Code, wills made by persons with no civil capacity, or with a limited civil capacity, shall be void. The testator must possess full civil capacity for a will to be legally effective. According to the Civil Code, the legal requirements for full civil capacity are as follows:

- a citizen aged 18 or over: for a citizen who has reached the age of 16 but not yet the age of 18, if his or her main source of income results from his or her own labour, the citizen shall be regarded as a person with full civil capacity; and
- the mental status of this person is healthy.

b. Serving as a witness

Many types of wills require a witness. In accordance with Article 1140 of the Civil Code, the following persons may not act as a witness to attest a will:

- persons with no civil capacity or with limited civil capacity, or persons with no witness capacity;
- heirs and legatees; and
- persons whose interests are related to those of the heirs and legatees (the creditors/debtors/partners of the heirs/legatees shall also be regarded as persons whose interests are related to the heirs and legatees).

3. THE FORMALITY OF A WILL

A will can only be legitimately produced by one of the following methods:

a. Notarised will

A notarised will is a will made by a testator through a notary office. If a testator wishes to make a notarised will, then the notary office shall review the relevant property certificates mentioned in the will, such as real estate ownership certificates. If the testator does not speak Chinese, it should be determined whether the notary officer is at first willing and able to arrange a translator for making a notarised will. In practice, not all notary officers are willing to make a notarised will for a foreign national who does not speak Chinese. The entire notarisation process is to be video recorded. In practice, a Chinese notary office usually carries a standard will that many practitioners find incomplete. If a testator would like a customised will, it is imperative to check with both a lawyer and notary office.

b. Testator-written will

A testator-written will is a will made in the testator's own handwriting and signed by the testator, specifying the effective date of the will.

c. Dictated will

A dictated will is a will written on behalf of a testator, which must be witnessed by at least two witnesses, one of whom writes the will specifying the effective date of the will with the witness of the other witness (or witnesses), and contains the signatures of the testator and all the witnesses.

In accordance with the Civil Code, the establishment of a dictated will legally requires at least two witnesses to witness the whole process. One of the witnesses must write down the dictated will according to the testator's oral statement, specifying the date of the will. This dictated will must then be signed by all the witnesses and the testator.

d. Printed will

A printed will is a new form of will, which must be witnessed by at least two witnesses. The testator and the witnesses shall sign on each page of the will, specifying the date.

e. Will in the form of an audio or audio or video recording

A will made in the form of an audio or video recording shall be witnessed by two or more witnesses. The testator and witnesses shall record their names or portraits, and the date in the audio or video recording.

f. Nuncupative will

According to the Civil Code, a testator may, in an emergency situation, make a nuncupative will that must be witnessed by at least two witnesses. If the emergency situation is resolved, and if the testator is able to make a will in handwritten form or in the form of an audio or video recording, the testator shall make a new will that meets the aforesaid requirements, and the former nuncupative will shall be declared invalid. If the testator fails to make a new will in handwritten form or in the form of an audio or video recording, while he or she is capable of doing so after the emergency situation is resolved, the nuncupative will made by the testator is automatically invalidated.

4. THE ENFORCEABILITY OF FOREIGN WILLS

a. Determination of *lex causae*

To determine the enforceability of a foreign will, the first step is to determine the *lex causae* for the foreign will.

In accordance with the Law on the Application of Laws to Foreign-related Civil Relations of the People's Republic of China, for the format of wills, the laws of the testator's regular residence when drawing up the wills or the place of deceased, the nationality laws or the laws of the place in which the wills are conducted shall apply and such wills shall be valid.

For the effects of a will, the nationality laws or the laws of the testator's regular residence when drawing up the wills or the place where the decedent passed away shall apply.

For matters related to the management of an estate, the place in which the estate is located shall apply.

b. *Lex causae* and PRC law

If the *lex causae* is PRC law, a foreign will shall be void under the following circumstances:

- a will made by a person with no civil capacity, or limited civil capacity;
- a will that cannot manifest the genuine intention of the testator, or made by a testator under duress or as a result of fraud; or
- a will that has been forged.

Where a will has been tampered with, the affected part shall be void. Other than the above-listed situations, a foreign will shall normally be enforceable if the *lex causae* is PRC law. For a foreign will to be enforceable in the PRC, the will must be notarised by a notary office in the foreign country and authenticated by the PRC embassy or consulate in that country. Sometimes, a kinship certificate is also required by the PRC competent authorities in order to enforce the foreign will.

C. *Lex causae* and foreign law

If the *lex causae* is foreign law, a will must first be valid under foreign law and go through the foreign country's succession procedures to ensure the validity of the foreign will. If the foreign will is invalid under a foreign country's laws, then it cannot be enforced in the PRC. Furthermore, provided the foreign will is valid according to foreign law, the will must be notarised in that country and authenticated by a local PRC embassy or consulate.

B. *Will substitutes (revocable trusts or entities)*

For the first time, the Civil Code confirmed that natural persons can establish a testamentary trust. However, there are no supporting systems or implementation rules on the testamentary trust, so it still lacks operability in practice in the PRC.

II. Estate administration

A. *Overview of administration procedures*

1. PERSON IN CHARGE OF THE ESTATE

The new Civil Code created the role of an 'estate administrator' for the first time. According to Article 1145 of the Civil Code, the estate administrator can be determined as follows:

- an executor shall be the estate administrator after the commencement of succession;
- where there is no executor, inheritors shall promptly elect an estate administrator;
- where inheritors fail to elect an estate administrator, such inheritors shall jointly act as the estate administrator; and
- if there is no inheritor or the inheritors have abandoned the succession, the authority of civil affairs, or the village committee of the place where the decedent was domiciled before his or her death, shall act as the estate administrator.

If there is any dispute over the determination of the estate administrator, any interested party may apply to the court for the appointment of the estate administrator.

2. ESTATE ADMINISTRATOR RESPONSIBILITIES

According to the Civil Code, the main tasks of the estate administrator are as follows:

- to clear the estate and prepare a list of the estate;
- to report the situation of the estate to the inheritors;
- to take necessary measures to prevent damage or loss of the estate;
- to deal with the credits and debts of the decedent;
- to partition the estate according to the will or the provisions of the law; and
- to perform other acts necessary for the administration of the estate.

The estate administrator may receive remuneration in accordance with legal provisions or as agreed. Meanwhile, the estate administrator shall perform its duties in accordance with the law and shall bear civil liability for any damage caused to inheritors, legatees or creditors either intentionally or by gross negligence.

3. Obligation of notice

After the opening of a succession, a successor who has knowledge of the death of the decedent should promptly notify the other successors and the testamentary executor. If none of the successors know about the death of the decedent, or if there is no way to make the notification, the organisation to which the decedent belonged before his or her death, or the residents or village committee at decedent's place of residence, shall take charge of the notification, according to Article 1150 of the Civil Code.

There are, however, no provisions stipulating how the notification should be made. In normal practice, notification is done in writing, oral recording, public announcement, telephone, telegram or email.

4. Liquidation of debts

The successor to an estate shall pay all taxes and debts payable by the decedent up to the actual value of the estate, unless the successor voluntarily pays in excess of the limit. The successor who disclaims inheritance assumes no responsibility for the payment of taxes and debts payable by the decedent. The carrying out of a legacy shall not affect the payment of taxes and debts payable by the decedent (Articles 1159, 1161 and 1162 of the Civil Code).

After an estate is allocated, where statutory succession, testamentary succession and legacy simultaneously exist, taxes and debts payable by the decedent shall first be liquidated by the forced heir. Where the assets of statutory succession can not pay off the taxes and debts, the remaining debts shall be liquidated by the testamentary inheritor and legatee in proportion to the estate the heir acquired.

B. *Intestate succession and forced heirs*

1. OVERVIEW OF THE SUCCESSION REGIME

Testamentary succession in the PRC generally applies to forced heirs. If no valid will or legacy exists, the estate should be dealt with in accordance with the provisions of statutory succession, which are governed by the Civil Code.

2. FORCED HEIRSHIP

a. Order of succession

According to Article 1127 of the Civil Code, the estate of the decedent shall be inherited in the following order:

- first in order: spouse, children and parents; and
- second in order: siblings, paternal grandparents and maternal grandparents. When succession opens, the successor(s) first in order shall inherit to the exclusion of the successor(s) second in order. The successors second in order shall inherit in the absence of any successor first in order.

'Children' includes both legitimate and illegitimate children, adopted children and stepchildren who supported or were supported by the decedent.

'Parents' includes natural and adoptive parents, as well as step-parents who supported or were supported by the decedent.

'Siblings' includes both blood and half-siblings, adopted siblings and step-siblings who supported or were supported by the decedent.

3. FORFEITURE OF INHERITANCE

Cases where the heir forfeits his or her right to inherit are listed in Article 1125 of the Civil Code and are limited to:

1. intentional killing of the decedent;
2. killing any other successor in a dispute over the estate;
3. a serious act of abandoning or mistreating the decedent;
4. a serious act of forging, tampering with or destroying the will; and
5. a serious act of compelling or obstructing the decedent's making, alteration or withdrawal of a will by fraud or coercion.

In the event that an inheritor who commits any act specified in items (3)–(5) shows true repentance, if the decedent expresses forgiveness or lists the inheritor as an inheritor in his or her will afterwards, such an inheritor shall not lose the right of succession. However, a legatee who commits any act specified as aforementioned, shall lose the right to legacy.

4. ESTATE DEALT AS STATUTORY SUCCESSION

Under any of the following circumstances, the part of the estate affected shall be dealt with in accordance with statutory succession:

- where the inheritance is disclaimed by a testamentary inheritor or the legacy is disclaimed by a legatee;
- where a testamentary inheritor is disinherited or a legatee loses the right to legacy;
- where a testamentary inheritor legatee predeceases the testator;

- where an invalidated portion of the will involves part of the estate; or
- where no disposition is made under the will for part of the estate.

5. DETERMINING THE SHARES OF THE DECEDENT'S ASSETS

Successors in the same order shall generally inherit equal shares of an estate's assets. In cases where a successor is unable to work and has special financial difficulties, he or she shall acquire a share of the decedent's due consideration while distributing the estate. Successors who made predominant contributions to maintaining the decedent or who lived with the decedent may be given a larger share while the estate is distributed. Successors who had the ability and were in a position to maintain the decedent, but failed to fulfill their duties, shall be given no share or a smaller share of the estate.

An appropriate share of the estate may be given to a person, other than a successor, who depended on the support of the decedent and who neither can work nor has a source of income. An appropriate share can also be given to a person other than a successor who was largely responsible for supporting the decedent.

C. *Marital property*

1. OVERVIEW OF MARITAL PROPERTY REGIMES IN THE PRC

Marital property regimes in the PRC are mainly divided into jointly owned property and separately owned property. Prenuptial agreements have been traditionally frowned upon in Chinese culture, but because of an increased awareness of personal assets, more and more couples are accepting the notion of the division of premarital property.

In the course of a marriage, a couple may also produce an agreement to clarify which parts of their property are jointly owned and which shall constitute separate ownership. This agreement shall be made in written form. Notarisation of such an agreement is recommended but not compulsory.

Where an aforementioned agreement is lacking, or the provisions in the agreement are not clear, the provisions of Articles 1062 and 1063 of the Civil Code shall apply to determine the jointly and separately owned properties.

2. PARTITIONING THE DECEDENT'S ESTATE

Article 1153 of the Civil Code provides that – unless otherwise agreed upon – while partitioning a decedent's estate, half of the joint property acquired by a spouse in the course of a marriage shall be first allotted to the surviving spouse as his or her own property. The remainder constitutes the decedent's estate.

If the decedent's estate is a component part of the common property of the whole family, that portion of the property belonging to the other members of the family shall first be separated at the time the property is partitioned.

3. DETERMINATION OF JOINTLY AND SEPARATELY OWNED PROPERTY

Where a spouse passes away without leaving a will, the following rules shall distinguish jointly owned property from separately owned property.

a. Jointly owned property

The following property acquired by both spouses in the course of their matrimonial life shall be dealt with as joint property, in accordance with Article 1062 of the Civil Code:

- wages, bonuses and remuneration for labour services;
- the proceeds of business, production operations or investments;
- intellectual property right income;
- property acquired from inheritances or presents, with the exception of such property as stipulated by the provisions of the third item of Article 1063 of the Civil Code; and
- other property that should be in joint possession.

'Other property' can include any proceeds that are generated after marriage from the separately owned property of a spouse (excluding fruits and unearned increment) and shall be determined as community property, according to Article 25 of the Interpretation of the People's Supreme Court on the Application of the Part on Marriage and Family under the Civil Code.

b. Separately owned property

Property in the following cases shall belong to one party of the couple, according to Article 1063 of the Civil Code:

- property that belongs to one party before marriage;
- compensation or indemnity obtained by one party for a personal injury;
- property in the possession of one party as determined by a will, or by an agreement or gift;
- articles for daily use, especially used by one party; and
- other property that should be in possession of one party.

4. SPECIFIC REGULATIONS REGARDING IMMOVABLE PROPERTY

The recent rapid growth in the value of immovable property in China has brought an increase in marriage-related property disputes. Therefore, the People's Supreme Court defined Article 24 of the Interpretation of the People's Supreme Court on the Application of the Part on Marriage and Family under the Civil Code as follows:

- Where a party's parents make monetary contributions for both parties concerned to purchase a housing property before they get married, the monetary contribution shall be deemed as a gift to their own child individually, unless the parents have expressly stated that the gift is for both parties.
- Where one spouse's parents make a monetary contribution for the couple to purchase a housing property after they are married, the case shall be handed in accordance with the prenuptial agreement; if there is no agreement, or the agreement is not clear, the case shall be handled according to the principle specified in item (iv) of paragraph 1 of Article 1062 of the Civil Code.

D. *Tenancies, survivorship accounts and payable on death accounts*

1. TENANCIES

During tenancies, the original housing lease contract shall continue to take effect if the housing is transferred due to an inheritance. If a tenant dies during the tenancy, the person living with the tenant

when he or she was alive may lease the housing in accordance with the original lease contract, according to Article 12 of the Administrative Measures for the Leasing of Commodity Housing.

2. SURVIVORSHIP ACCOUNTS

The concept of survivorship accounts is uncommon in the PRC. Banks do not provide these types of accounts to manage the assets of decedents. Accounts that deal with a decedent's assets are usually used according to the instructions of the will executor or the estate administrator.

3. PAYABLE ON DEATH ACCOUNTS

As with survivorship accounts, the concept of a payable on death account is also not common in the PRC. Banks do not provide these types of accounts to manage a decedent's assets. The account to deal with a decedent's assets is usually used according to the instructions of the will executor or the estate administrator.

III. Trust, foundations and other planning structures

A. *Common techniques*

1. TRUSTS

According to PRC trust law, a trust refers to that of the settlor, based on his or her faith in the trustee, entrusting his or her property rights to the trustee and allowing the trustee to, according to the will of the settlor and in the name of the trustee, administer or dispose of such property in the interest of a beneficiary or for any intended purposes.

Where a trust is created in the form of a trust contract, the trust shall be deemed created when said contract is signed. Where a trust is created in any other form of writing, the trust is deemed created when the trustee accepts the trust.

2. LEGAL REQUIREMENTS FOR ESTABLISHING A TRUST

A trust can be created only for lawful trust purposes. There must be definite property under the trust, and such property must be property lawfully owned by the settlor. A trust must be in writing, and contain trust contracts, testaments or other documents specified by law and administrative regulations.

The following items shall be stated clearly in the written documents required for the creation of a trust:

- purposes of the trust;
- the names and addresses of the settlor and trustee;
- the beneficiary or beneficiaries;
- the scope, types and status of the assets under the trust; and
- the form and means through which the beneficiary gains benefits from the trust.

In addition to the items mentioned above, the period of the trust, the methods for the administration of the property under the trust, remuneration payable to the trustee, manner for appointing another trustee, the cause for termination of the trust and so on shall be stated clearly.

Where laws or administrative regulations require registration formalities for the creation of a trust, these formalities shall be adhered to accordingly.

3. INVALID TRUSTS

In accordance with the trust law, a trust shall be deemed invalid under the following circumstances:

- the purpose of the trust constitutes a violation of laws or administrative regulations, or impairs public interest;
- the property under the trust cannot be fixed;
- the settlor creates the trust with unlawful property or with property which, according to law, may not be used for creating a trust;
- the trust is created specially for the purpose of taking legal action or for recovering debts;
- the beneficiary or beneficiaries cannot be determined; or
- other circumstances stipulated by law or administrative regulation.

4. TESTAMENTARY TRUSTS IN THE PRC

Trust law offers a basic legal structure for trusts. It clearly states that a testamentary trust is one category of trusts permitted by law. Article 13 of the trust law provides that, for the creation of a testamentary trust, the provisions related to the will shall be observed. China's rapid economic development, as well as the rapid accumulation of family wealth, has provided great opportunities and challenges for the development of trusts in China. In recent years, trust companies and their trust products have been heatedly discussed and drawn the attention of both the general public and the wealthy class. Nevertheless, even against such a background, testamentary trusts are still a blank area in China. The reasons are as follows:

a. The financial licence system

According to Article 7 of the Measures for the Administration of Trust Companies, the establishment of a trust company shall be approved by the China Banking Regulatory Commission and a financial licence shall be obtained. Without prior approval from the China Banking Regulatory Commission, no unit or individual may engage in a trust business, and no operating unit is permitted to use the phrase 'trust company' in its name, unless otherwise provided by law.

Although Article 24 of the trust law provides that a natural person can become a trustee, in practice, a natural person trustee is very rare. The financial licence system imposes strict restrictions on the qualifications of trust companies. According to the latest government statistics, there are only 68 trust companies with financial licences in China, as of March 2021.

b. Few trust companies provide testamentary trusts

Few trust companies provide testamentary trust services in China. This is due to various factors, such as the lack of a systematic and well-developed legal system regarding trusts. For instance, a single tax system is applicable in countries such as the United Kingdom, United States and Japan. In the PRC, however, there are no accurate provisions on the taxing of trust products under the current tax system in China. In addition, the PRC Administration for Industry and Commerce also lacks clear guidance on the registration of trusts. Government policy is also a concern, and without positive guidance and encouragement from the government, most trust companies would not innovate new trust products such as testamentary trusts.

C. Reserved portions

Under the Civil Code, the reservation of a necessary portion of an estate shall be made in a will for a successor who neither can work nor has a source of income.

Furthermore, it is stipulated that at the time of the partitioning of the estate, the reserved portion shall be made for the share of an unborn child. The share reserved shall, if the baby is stillborn, be dealt with in accordance with statutory succession.

5. FOUNDATIONS

In other countries and areas of the world, a foundation is an estate planning structure. The situation in China, however, is different. In accordance with the PRC Regulations on Administration of Foundations, a foundation must be established for a specific public welfare purpose. Furthermore, it is stipulated that the annual expenditure on public welfare undertakings shall not be less than 70 per cent of the total revenue collected in the previous year. Hence, a foundation established by endowment from a will is not applicable for estate planning purposes.

B. *Fiduciary duties (trustees, board members, directors etc)*

1. TRUSTEES

The trustee shall be a natural person or legal person with full civil capacity. Under PRC trust law, a trustee shall owe the following fiduciary duties to the settlor:

- The trustee shall abide by the provisions in the trust documents and handle the trust business for the best interests of the beneficiary. In administering the trust property, the trustee shall be careful in performing his or her duties, and fulfill his or her obligations honestly, in good faith, and in a prudent and efficient manner.
- Except obtaining remuneration according to the provisions of PRC trust law, the trustee shall not seek interests for him or herself by using the trust property.
- The trustee shall not convert the trust property into his or her own property.
- The trustee shall not conduct internal transactions between his or her own property and the trust assets, or between the trust assets of a different settlor unless it is otherwise stipulated in the trust documents, or is consented by the settlor or beneficiary, and the internal transaction is conducted at a fair market price.
- The trustee shall administer the trust property separately from his or her own property and keep separate accounting books.
- The trustee shall handle the trust business him or herself, but may entrust another person to handle such affairs on his or her behalf where the trust documents provide otherwise, or the trustee has to do so for reasons beyond his or her control.

2. DIRECTORS OF A FOUNDATION

As previously mentioned, a foundation fails to meet the purposes of estate planning under PRC law.

C. *Treatment of foreign trusts and foundations*

There are no special laws or regulations regarding foreign trusts and foundations. Foreign trusts are used by many Chinese high-net-worth individuals to structure their worldwide assets. Considering the

uncertainties and complications relating to real estate, foreign trusts and foundations are not a common method for estate planning in China.

IV. Taxation

A. Domicile and residency

1. GENERAL RULES

In accordance with Article 1 of the Law of the PRC on Individual Income Tax (IIT), individuals under the following two circumstances shall file IIT:

- Individuals domiciled in the PRC, or individuals who have no domicile in China but have resided in the country for 183 days or more in one tax year, shall pay IIT on income earned within or outside China.
- Individuals who have no domicile and do not reside in the PRC, or who have no domicile but have resided in China less than 183 days in one tax year, shall pay IIT on their income earned within China.

A tax year shall start on 1 January and end on 31 December each calendar year.

2. RULES FOR FOREIGN NATIONALS

Foreign nationals who have resided in China for less than six consecutive years, with the days of residence in each year amounting to 183 days or more, shall only pay tax on income sourced from China, which is subject to IIT in China. If a foreign taxpayer is out of China for more than 30 consecutive days in any of the years in which he or she has resided for 183 days or more, the number of consecutive years in each of which the individual has resided for accumulative 183 days or more within China shall be calculated anew.

Regarding employment income, for a foreign national who stays in China less than 90 days (or 183 days in cases where there is a bilateral tax treaty) in one calendar year, the income sourced from China (income related to the individual's employment in China), which is however paid by foreign employers and not borne by a Chinese entity, is exempt from IIT.

Specifically, we discuss the following circumstances:

- **Circumstance (A):** where the time of a foreign national's stay in China is not more than 90 days (or 183 days in cases where there is a bilateral tax treaty) in one calendar year.

IIT shall be calculated and paid only on the employment income falling within the period of work in China and paid or assumed by the employer in China.

If the foreign national is a director or a senior manager, the IIT shall be calculated and paid on the employment income paid or assumed by the employer in China, including those falling within the period of work overseas.

- **Circumstance (B):** where the time of a foreign national's stay in China is more than 90 days but less than 183 days in one calendar year.

The IIT shall be calculated and paid on the employment income falling within the period of work in China. No IIT shall be paid on the income obtained by the individual from wages and salaries falling within the period of work overseas.

For a senior manager, IIT shall be calculated and paid on all the employment income, except for that falling within the period of work overseas and not paid or assumed by the employer in China, which is the same as normal personnel in Circumstance (C) below).

- **Circumstance (C):** where a foreign national has resided in China for less than six consecutive years, with days of residence in each amounting to 183 days or more.

IIT shall be paid on all the income received by the individual from wages and salaries, except for the portion of the employment income falling within the period of work overseas and paid by the entity or individual overseas.

- **Circumstance (D):** where a foreign national has resided in China for at least six consecutive years with days of residence in each amounting to an accumulative 183 days or more.

IIT shall be calculated and paid on all the employment income received by the foreign national in China and overseas.

B. *Gift, estate, and inheritance taxes and deed tax*

There are currently no laws covering estate and gift taxes. The Interim Provisions of Estate Tax was drafted in 2004, but has not yet become effective. During the 18th National People's Congress in 2012, the deputies to the People's Congress (China's legislature) proposed to consider the draft provisions in their agenda. When and whether estate and gift taxes will be implemented in the PRC is unknown, but their introduction would potentially have a strong impact on the country, especially among the wealthier class.

Deed tax shall be paid if the ownership of land and houses is to be transferred within the territory of the PRC, according to the Interim Regulations of the PRC on Deed Tax. There is currently no inheritance tax system in the PRC.

Forced heirs (spouse, children, parents, siblings and grandparents) do not need to pay deed tax. Where the inheritor named under a will is not a forced heir, the individual shall pay the deed tax while inheriting the land and house of the decedent.

The formula for the calculation of the deed tax amount payable is as follows:

$$\text{tax amount payable} = \text{base for tax calculation} \times \text{tax rate at 3.5 per cent.}$$

The following bases are used to calculate the deed tax, which is regulated in Article 4 of the Interim Regulations of the PRC on Deed Tax:

- for the assignment of the right to use state-owned land, the sale of land use rights or the purchase and sale of houses, the base shall be the transaction price;

- for the gift of the land use right or of a house, the base shall be determined by the collection agency with reference to the market price for the sale of the land use right or the purchase and sale of the house; and
- for the exchange of the land use right or of a house, the base shall be the price difference between the exchanged land use rights or the houses, respectively.

If the purchase price mentioned in the preceding paragraph is obviously lower than the market price without justification, or if the price difference between the exchanged land use rights or houses is obviously unreasonable without justification, the base shall be determined by the collection agency with reference to the market price.

The deed tax amount rate is 3.5 per cent, determined by the governments of provinces, autonomous regions or municipalities. The tax amount should be paid in RMB.

C. *Taxes on income and capital*

1. SUBJECT TO IIT PAYMENT

IIT shall be paid on income from the transfer of property, according to Article 2 (8) of the Law of the PRC on IIT.

Regarding voluntary gifts of the ownership of immovable property, taxes on individual income shall not be paid under the following circumstances:

- the ownership of the immovable property is gratuitously transferred to the spouse, parents, children, siblings, paternal grandparents, maternal grandparents or grandchildren;
- the ownership of the immovable property is granted to the person who made the predominant contributions in maintaining the donor; or
- where the owner of the immovable property dies, the forced heir, testamentary inheritor and legatee acquire the ownership of the immovable property.

Apart from the aforementioned circumstances, the donee shall pay taxes on 'income from other sources specified as taxable by the department of finance under the State Council'.

2. COMPUTATION OF IIT

The formula for the calculation of the IIT payable arising from transfer of immovable property is as follows:

IIT payable = (the price of the house stated in the sales contract – original value of the house – taxation resulted from the title transfer – other reasonable expenses including the cost of house decoration, house mortgage interest, processing fees, notary fees etc) × tax rate of 20 per cent.

If the original value of the house can not be verified, IIT is collected on a deemed basis in accordance with the following formula:

IIT payable = the price of the house stated in the sales contract × applicable fixed percentage (within one per cent to three per cent, as decided by the local tax bureaus at the provincial level).