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# CHINA

## International Estate Planning Guide

IBA Private Client Tax Committee

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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 People's Republic of China, which came into effect on 1 January 2021.

#### 2. Legal capacity

##### a. Being a testator

Based on Article 1143 of the Civil Code of the People's Republic of China, wills made by persons with no civil capacity, or with limited civil capacity, shall be void. For a will to be legally effective, the testator must possess full civil capacity.

According to the Civil Code, the legal requirements for full civil capacity are as follows:

- they must be 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 their own labour, they 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 using 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 in order to make 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 recorded by video. In practice, a Chinese notary office usually carries a standard will that many practitioners deem to be incomplete. If a testator would like a customised will, it is imperative to involve both a lawyer and a 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, in the presence of the other witness (or witnesses), which contains the signatures of the testator and all of 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. A dictated will must then be signed by all of 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 each page of the will, specifying the date.

e. Will in the form of an 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 the 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, which 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 they are capable of doing so, after the emergency situation has been 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, in regard to the format of wills, the laws of the testator's regular residence when drawing up the will or the place of the deceased, the nationality laws or the laws of the place in which the will is conducted shall apply and, thus, such a will shall be valid.

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

For matters related to the management of an estate, the rules applicable to 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 in the following circumstances:

- a will made by a person with no civil capacity or limited civil capacity;
- a will that does not manifest the genuine intention of the testator or was 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. It should also be noted that 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. However, if the will was made in a country that is a signatory to the Hague Apostille Convention (such as the United States, the United Kingdom, Japan or South Korea), an Apostille certificate alone will suffice and consular legalisation is not required. Sometimes, a kinship certificate is also required by the competent PRC authorities in order to enforce a foreign will.

c. *Lex causae* and foreign law

If the *lex causae* is foreign law, a will must first be valid as per the applicable foreign law and must be subject to 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 the applicable foreign law, the will must be notarised in that country and must undergo PRC consular authentication. Alternatively, an Apostille certificate must be obtained if the relevant country is a contracting party to the Hague Apostille Convention.

B. Will substitutes (revocable trusts or entities)

The Civil Code confirms that natural persons can establish a testamentary trust. However, there are no supporting systems and implementation rules on testamentary trusts, so this type of vehicle still lacks operability, in practice, in the PRC.

II. Estate administration

A. Overview of administration procedures

1. Person in charge of the estate

The PRC Civil Code created the role of an 'estate administrator' for the first time. According to Article 1145 of the Civil Code, an 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 villagers' committee in the place where the decedent was domiciled before their death shall act as the estate administrator.

If there is a dispute over the determination of the estate administrator, any interested party may apply to the court so that it can deal with 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 components that make up the estate;
- to report on the situation/status of the estate to the inheritors;
- to take necessary measures to prevent damage to or loss of the estate;
- to deal with any outstanding credits and/or 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 the applicable legal provisions or as agreed. Meanwhile, the estate administrator shall perform their duties in accordance with the law and shall bear civil liability for any damage caused to the inheritors, legatees or creditors, either intentionally or due to gross negligence.

## 3. Obligation of notice

After the opening of a succession process, 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 their death or the residents or village committee in their 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, such a notification is carried out in writing, an oral recording, public announcement, via telephone, telegram or email.

## 4. Liquidation of debts

The successor to an estate shall pay all of the taxes and debts payable by the decedent according to the actual value of the estate, unless the successor voluntarily decides to pay an amount in excess of this limit. The successor who rejects such an 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 requirements exist simultaneously, the taxes and debts payable by the decedent shall first be liquidated by the forced heir. Where the assets of statutory succession are not enough to pay off the taxes and debts owed, the remaining debts shall be liquidated by the testamentary inheritor and legatee in proportion to the value of the estate acquired by the heir.

## 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 of the People's Republic of China.

### 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:

1. First in order: spouse, children, parents.

2. Second in order: siblings, paternal grandparents, maternal grandparents.

When succession opens, the first-order successor(s) shall inherit to the exclusion of the successor(s) who are second in order. The second order successors shall inherit in the absence of any first-order successors.

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

'Parents' include 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, as well as step siblings who supported or were supported by the decedent.

### 3. Forfeiture of inheritance

Circumstances in which the heir forfeits their right to inherit are listed in Article 1125 of the Civil Code and are limited to:

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

In the event that an inheritor who commits any of the acts specified in the last three items listed above shows true repentance, if the decedent expresses forgiveness or lists the inheritor as an inheritor in his or her will afterwards, such inheritor shall not lose the right of succession. However, a legatee who commits any of the acts specified above shall lose the right to legacy.

### 4. 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 when distributing the estate. Successors who have made predominant contributions in regard to maintaining the decedent or have lived with the decedent may be given a larger share when distributing the estate. Successors who had the ability and were in a position to maintain the decedent but failed to fulfil 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 depends on the support of the decedent and who can neither 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 constitute separate ownership. This agreement shall be made in written form. Notarisation of such an agreement is recommended but is not compulsory.

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

#### 2. Partitioning the decedent's estate

Article 1153 of the Civil Code provides that when partitioning a decedent's estate, unless otherwise agreed upon, 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 the provision of labour services;
- the proceeds of a business, production operations or investments;
- income from intellectual property rights;
- property acquired from inheritance or presents, with the exception of certain property stipulated in the provisions of the third item in Article 1063 of the PRC Civil Code; and
- other property that should be deemed to be in joint possession.

'Other property' can, for example, include any proceeds that are generated after marriage from the separately owned property of a spouse (excluding fruits of labour and unearned increments) 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 PRC Civil Code.

b. Separately owned property

Property in the following cases shall belong to one party in 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 is deemed to be in the possession of one party.

4. Specific regulations regarding immovable property

The recent rapid growth in the value of immovable property in China has resulted in an increase in marriage-related property disputes. Therefore, the PRC People's Supreme Court has defined Article 29 of Interpretation I and Article 8 of Interpretation II on the Application of the Part on Marriage and Family under the PRC Civil Code as follows:

- where a party's parents make monetary contributions for both parties concerned to purchase 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 full monetary contribution for the couple to purchase housing property after they are married and the parents have expressly stated that such contributions constitute a gift solely to their own child, the housing property shall be governed by such agreement. In the absence of any such clear agreement, when dividing marital joint property upon divorce, the People's court may award ownership of the housing property to the child of the contributing party. The court shall then decide whether that party shall pay compensation to the other party (and the corresponding amount) after weighing any

applicable factors, including the duration of cohabitation, any minor children from the marriage, the fault of the divorce, any respective family contributions and the market value of the housing property at the time of the divorce; and

- where a housing property purchased during marriage is funded partially by one spouse's parents or both parties' parents and the relevant parents have expressly stated that their respective monetary contributions are a gift solely to their own child, the housing property shall be governed by such agreement. If no clear agreement exists, when dividing marital joint property upon divorce, the People's court, based on the parties' claims, as well as the source and proportion of each monetary contribution, and after considering the cohabitation situation, marital minor children, the fault of the divorce, each party's family contributions and the housing property's market value at the time of the divorce, may award the housing property to one party and order that party to pay reasonable compensation to the other party.

#### 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 tenancy, the person living or jointly operating a business with the tenant when he or she was alive may lease the housing in accordance with the original lease contract, according to Article 732 of the PRC Civil Code.

##### 2. Survivorship accounts

The concept of survivorship accounts is not common 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 in accordance with 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 not common in the PRC. Banks do not provide these types of accounts to manage a decedent's assets. The relevant account used to deal with the decedent's assets is usually used according to the instructions provided for the will executor or the estate administrator.

#### III. Trust, foundations and other planning structures

##### A. Common techniques

##### 1. Trusts

According to PRC Trust Law (TL), a trust refers to a vehicle established by 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 the 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 transferred into the trust, and such property must be property that is lawfully owned by the settlor. A trust must be in writing

and must contain trust contracts, testaments or other documents specified by the applicable laws and administrative regulations.

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

- the purposes of the trust;
- the names and addresses of the settlor and trustee;
- the names of the beneficiary or beneficiaries;
- the scope, types and status of the assets in 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 managed by the trust, the remuneration payable to the trustee, the manner of appointing another trustee, the procedure for the termination of the trust, etc, shall all be stated clearly in the relevant documentation.

Where the applicable 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 TL, a trust shall be deemed invalid in the following circumstances:

- the purpose of the trust constitutes a violation of the applicable 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 especially for the purpose of taking legal action or for recovering debts;
- the beneficiary or beneficiaries cannot be determined; and
- other circumstances stipulated by the applicable laws or administrative regulations.

### 4. Testamentary trusts in the PRC

The TL 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 TL 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 in the country, has provided great opportunities and challenges for the development of trusts in China. In recent years, trust companies and trust products have been subject to heated debate and have drawn the attention of both the general public and the wealthy class. Nevertheless, even against such a background, testamentary trusts are still a developing area in China. The reasons for this are as follows:

#### a. The financial licence system

According to Article 8 of the Measures for the Administration of Trust Companies, the establishment of a trust company shall be approved by the National Administration of Financial Regulation (NFRA) and its agencies, and a financial licence shall be obtained. Without prior approval from the NFRA, 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 TL provides that a natural person can become a trustee, in practice, a trustee who is a natural person 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 67 trust companies with financial licences in China, as of June 2026.

#### 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 UK, the US and Japan. In the PRC, however, there are no provisions on the taxing of trust products under the current tax system in China. Government policy is also a concern, as without positive guidance and encouragement from the government, most trust companies have not moved to innovate by providing 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 another estate planning structure. The situation in China in regard to foundations, however, is different. In accordance with PRC Regulations on the Administration of Foundations, a foundation must be established for a specific public welfare purpose. Furthermore, it is stipulated that the annual expenditure of a foundation 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 appropriate for estate planning purposes.

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

##### 1. Trustees

A 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 in the best interests of the beneficiary. In administering the trust property, the trustee shall be careful in performing his or her duties, and will fulfil his or her obligations honestly, in good faith, and in a prudent and efficient manner:

- except for obtaining remuneration, according to the provisions in the PRC Trust Law, the trustee shall not seek to satisfy any of their own interests through the use of trust property;
- the trustee shall not convert the trust property into their 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 agreed to by the settlor or beneficiary, and the internal transaction is conducted at a fair market price; and
- 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 themselves, but may entrust another person to handle such affairs on their behalf where the trust documents provide otherwise or he/she has to do so for reasons beyond their control.

## 2. Directors of a foundation

As previously mentioned, a foundation cannot be used for estate planning purposes 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 vehicle 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 in the following two circumstances shall file individual income taxes:

- 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 individual income tax 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 for less than 183 days in one tax year shall pay individual income tax on any income earned within China; and
- 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 the foreign taxpayer is located outside 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 of which the individual has resided for an accumulative total of 183 days or more within China shall be calculated anew.

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

Specifically, the following situations shed light on the rules in practice.

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

The individual income tax applicable 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 individual income tax shall be calculated and paid based on the employment income paid or assumed by the employer in China, including any income falling within the period of work overseas.

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

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

However, for a senior manager, the individual income tax shall be calculated and paid based on all of their employment income, except for any income falling within the period of work overseas and not paid or assumed by the employer in China, which is the same as normal personnel, described in circumstance (C) below.

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

The individual income tax shall be paid based on all of 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 the days of residence in each amounting to an accumulative total of 183 days or more:

The individual income tax shall be calculated and paid based on all of 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 in China. 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 the consideration of the draft

provisions in the agenda. When and whether estate and gift taxes will be implemented in the PRC is unknown, but their introduction would potentially have a notable impact on the country, especially among the wealthier class.

A 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 Deed Tax Law of the PRC. There is currently no inheritance tax system in the PRC.

Forced heirs (spouse, children, parents, siblings, grandparents) do not need to pay deed taxes. Where the inheritor named in a will is not a forced heir, he or she shall pay the deed tax when inheriting the land and house of the decedent.

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

Tax amount payable = base for tax calculation × tax rate of approximately three to five per cent

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

- for the assignment and sale of the land use rights and the purchase/sale of houses, the base shall be the transaction price determined in the contract for the transfer of title of the land or house in question, including the currency payable and the price corresponding to physical objects and other economic benefits;
- 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; and
- for a gift of the land use right or of a house or any other transfer of the title to the land or house in question without a price, the base shall be determined by the tax authorities in accordance with the law and with reference to the market price for the sale of the land use right or the purchase and sale of the house.

If a taxpayer declares a significantly lower transaction price or swap price difference without justifiable reasons, the base shall be determined by the taxation authority concerned, according to the relevant law.

The deed tax amount rate is approximately three to five per cent, determined by the government of the provinces, autonomous regions or municipalities.

### C. Taxes on income and capital

#### 1. Subject to IIT payment

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

Regarding voluntary gifts of the ownership of immovable property, taxes on individual income shall not be paid in 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; and

- 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 above, 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 the transfer of immovable property is as follows:

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

If the original value of the house cannot 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 × the applicable fixed percentage (within one per cent to three per cent, as decided by the local tax bureau at the provincial level).