

REPRESENTATIVE OFFICES

Legal status

Representative offices established in China by non-resident enterprises are regulated by several national regulations, as well as local policies, which supplement the national regulations. In general, representative offices may not conduct direct business activities. A representative office is permitted only to make business contacts and engage in general liaison activities for its head office services and products. Personnel employed by the representative office of a non-resident enterprise should not sign contracts on behalf of either the non-resident enterprise or third parties.

In recent years, more restrictions and requirements have been imposed on representative offices, e.g. the limitation on the number of registered representatives (essentially to set a limit of four foreign personnel who can be seconded to a representative office), and the requirement to complete annual reporting to the local industry and commerce authority.

Registration

Only a few types of representative offices (e.g., banking, securities, insurance) are required to obtain approval for establishment, the majority of representative offices do not need to obtain special approval. Instead, direct registration with the industry and commerce authorities is permitted. Some local industry and commerce authorities require an applicant company to submit application materials through designated agencies, and different registration authorities may require different documents.

Documents to be submitted generally include:

- a registration form for the representative office;
- a registration form for each of the representative office's foreign personnel (including the chief representative);
- a letter of creditworthiness from the foreign company's bank; and
- copies of the foreign company's incorporation certificate and business registration certificate.

The foreign company's incorporation documents, letter of creditworthiness, and appointment letter for the chief representative will need to be notarized and "consularized" by the Chinese embassy in the home jurisdiction of the foreign company before submission.

In addition to attending to the above registration, the non-resident enterprise must register the representative office and its foreign personnel with the local tax bureau, and a number of other government departments including the public security bureau (for residence permits) and with the local customs authority (for importation of personal belongings).

Taxation

In a wide range of circumstances, the representative office of a non-resident enterprise will be subject to both enterprise income tax and business tax on the basis that its activities either generate revenue, or through attribution, may be considered to generate revenue for the non-resident enterprise. The same rate of enterprise income tax that applies to equity joint ventures will generally apply to a representative office. Business tax is levied on gross revenue from the provision of certain categories of services and the assignment of certain assets. Where there is no evidence of actual revenue and costs,

income and revenue can be imputed to the representative office for enterprise income tax and business tax purposes on a “cost-plus” or “deemed profit” basis.

In certain limited circumstances, a non-resident enterprise’s representative office may be eligible for an exemption from enterprise income tax and business tax, depending on the nature and extent of its activities, but it is getting more difficult to obtain this.