

# **Manivest Asia Limited**

# Guide For Setting Up Wholly Owned Foreign Enterprises in China

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# Introduction

# **Global trend**

Although there are a few methods to establish a business in China by foreign investors, Wholly Owned Foreign Enterprise, or WOFE is the most used nowadays.

In the past, the WOFE in China was mainly used for those encouraged industries, determined by the Central Government for attracting more capitals from outside China, in addition to those foreign owned WOFE which would not affect the mainstay industries in China with government protection.

As China entered the World Trade Organization (WTO) in 2001, the Chinese government enticed foreign companies to invest in China with tax and tariff incentives, as well as subsidies and administrative convenience. Hence, WOFE plays an important role in China's economic development, which is shown by China's rapid and exponential growth in its economy.

With low production and manpower cost, enormous domestic consumption market which provides infinite potential business opportunities in China, many foreign enterprises enter China to attain an advanced position in the China market. WOFE, obviously, is the most efficient, beneficial and direct way for those foreign investors who want to grasp or occupy a pioneer position of the global market through China's influences.

In this little booklet, we shall tell you the most frequent asked questions about setting up and maintenance of WOFE. If you have additional questions which you cannot find an answer in this booklet, please call us. We are always happy to answer your questions.

# A Word of Caution

The reader should note that laws and regulations in China change rapidly. We endeavor to ensure the Information in this booklet is valid as at the date when this booklet goes to print. The information in this booklet applies to WOFE in China in general, however, regulations may varies from city to city and even from town to town. Therefore, you are advised to call us for the latest information.

The legal system of China is similar to the European Civil Law system. There may be

numerous regulations and implementation notices relating to a particular subject. Investors should always check out for the latest development in those laws and regulations and consult experienced professionals before deciding on their investment plans.

This booklet is complied for the information of clients of Manivest and does not constitute a formal legal advice and should not be considered as such.

# Advantages of setting up WOFE in China

- Autonomy operate your own business independently and freely in China without having to consider the involvement of the Chinese partners and have full control of human resources and greater efficiency in operations, management and decision making on business strategies
- Tax incentive enjoy "Special Tax Exemption period" provided by the Chinese government and lower your global tax burden
- Transaction in RMB be able to bill, invoice and transact with your customers in RMB (Yuan)
- Trade freely in/outside China no import / export licence required for your own products
- Profit repatriation able to convert RMB (Yuan) profits to US dollars for remittance to your parent company outside of China
- Legal protection- easier to protect your know-how, technology, trademark and intellectual properties in China

# How can Manivest help?

Manivest can help the investors to:

- Prepare pre-establishment documents (minutes, power of attorney etc.) arrange translation, notarization and certification from various authorities. Engage Registration Agent and supervise registration work.
- Draft the necessary project proposal, feasibility study report for the approval of your project.
- Engage auditors for the examination of capital injection, issuing capital verification report and annual audit matters.
- Locate suitable business address and arrange for leasing.
- Set up office, including the arrangement of telephone, fax and broadband, as well as acquiring machinery and furniture for the office
- Employ local staff and complete formalities in accordance with labour laws
- Complete post-establishment registration work

- Open bank accounts in China
- Assist in the operation your business or improve your business expansion in China

# Why choose Manivest?

Having served the Asian market for over 22 years, the directors and management of Manivest are professionals in the offshore and onshore industry .Through our offices in Hong Kong, Shanghai and Macao, as well as our associates in other Asian cities, we offer a full range of comprehensive corporate and taxation services to professional advisors and their clients.

# Manivest's range of service

Manivest offers the following services:

- Formation of corporate and business structures in major cities of China
- Incorporation of companies/structures in other onshore/offshore jurisdictions
- Full corporate management services
- Value added services and various business process outsource services for WOFE
- Arrangement of registered office, business office, mail redirection and business center (available in selected locations only)
- Accounting and re-invoicing services
- Tax and asset planning services
- Asset protection and preservation advisory services
- Business establishment services
- Market exploration services
- Trademark registration

# Which businesses would be likely to have easier access to China?

Nowadays in China, some businesses are still protected by the government, even though the government has already made great achievements in attracting and encouraging foreign investments from reforming and opening-up. To minimize burdens when establishing a legal presence in China, we recommended these four encouraged businesses, which are likely to have easier access to China.

- Consulting service company
- Trading company
- Manufacturing company
- High-tech enterprise

# **Consulting Service Company**

Consulting service company is one of the most encouraged businesses in China, as the demand for professional consulting services, such as accounting, insurance, tourism, education and management consultation, are continuing to increase in China. Many leading overseas consulting firms have opened WOFE in China and offering consulting services. Establishing a consultancy firm is easy and simple, as the requirement for capital is low.

The minimum requirement of registered capital in the incorporation of consulting services company is USD 140,000.

# **Trading Company**

Trading businesses, identified as Foreign Invested Commercial Enterprises (FICEs), now present tremendous business opportunities in China. As China is committed to WTO, many new regulations have been set up to liberalize China's distribution and retail sector for foreign companies trading in China, for example Measures for the Administration of Foreign Investment (effective from 1 June 2004, in the Commercial Sector).

Foreign trading companies are encouraged to operate under the following business categories:

• Retailing company involving the sale of goods/merchandise for personal or household consumption either from a fixed location (e.g. store, kiosk, etc.) or

away from a fixed location and related subordinated services;

• Wholesaling company involving the sale of goods/merchandise to retailers to industrial, commercial, institutional, or other professional business users, or to other wholesalers and related subordinated services.

The minimum requirement of registered capital in the incorporation of retailing WOFE and wholesaling WOFE are RMB 300,000 and RMB 500,000 respectively. This creates a good business opportunity for some small and medium-sized foreign companies.

### Manufacturing Company

Long known as the world's factory, manufacturing company is an encouraged business pursued by the Chinese government with advantages of tax incentives, low labour costs and excellent infrastructures such as innovated technology and transportation. As a result, many foreign companies moved their production lines to China. For instance, the amount of contribution in China market in 2007 from the garment manufacturing sector according to the official figures by National Statistics Bureau, reached US \$ 150 billion and the figures tends to increase steadily.

Various local governments set up industrial zone and provide tax and other incentives to attract foreign investor to set up manufacturing companies in their cities. You should search and compare (shop around) to find the best cost-effectiveness solution for your manufacturing company. Manivest can help you to do the research in China.

However, some types of manufacturing industries are still protected by the government, for example books publishing, automobiles, medicines, salt, agricultural chemicals, pesticide, crude oil and petroleum. Foreign investors are not totally prohibited from engaging in these industries, but regulations and restrictions are enacted by the government to control the supply and production of these products<sup>1</sup>. The manufacturing companies are required to apply for various licences or approvals from various authorities.

Please note that the registration process, however, may be more complicated than other industries, as manufacturing plants may require additional certifications, such as environment evaluation certifications and reports.

The minimum requirement of registered capital in the incorporation of manufacturing company various from industry to industry.

<sup>&</sup>lt;sup>1</sup> Always check for the latest list of prohibited and restricted list of industries when you plan to establish a business in China.

# **High-tech Enterprise**

The demands of high-tech industry on the core components ( $\xi$ 撑要素或核心要素), for example software, technology, research and development (R&D) center, talents and equipment, are much higher in China. Enterprises in China, especially small and medium sized enterprises, are expected to enhance their ability in learning technology and in research and development (R&D) sector from co-operating with other foreign IT companies. The Chinese government has formulated several favorable policies and investment guidance to encourage foreign enterprises to establish strategic alliances with local enterprises. For example, Legend is one of high-tech enterprises in China which has established strategic alliance with world's leading IT companies IBM and Silicon.

Apart from taking enormous efforts in promoting the development of China's high-tech industry domestically and internationally, the Chinese government also imposes stringent policies for protecting the intellectual property rights of hi-tech products for wholly owned foreign high-tech enterprises in China. Such measures enhanced foreign investors the confidence to invest in China.

Various local governments also set up Hi-Tech Zone and provide tax and other incentives to attract foreign investor to set up hi-tech companies in their cities. You should search and compare (shop around) to find the best cost-effectiveness solution for your company. Manivest can help you to do the research in China.

Please note that all the above industries invested by the foreign investor must follow the "Catalogue for the Guidance of Foreign Investment Industries 2007" which is issued by the National Development and Reform Commission.

# Setting Up Wholly Owned Foreign Enterprise in Shanghai

Foreign enterprises can establish Wholly Owned Foreign Enterprises (WOFE) in Shanghai upon application and approval.

# **Characteristics of a WOFE**

Wholly Owned Foreign Enterprise (WOFE) is a limited liability company, the establishment of which is governed both by the Company Law of the People's Republic of China (PRC) and Law of the PRC on Enterprises Operating Exclusively with Foreign Capital (外資企業法).

A WOFE can engage itself in approved business activities and issue tax invoices on its own. It is a corporation and a tax resident. All shareholders of WOFE should not be Chinese nationals, save for Hong Kong and Macao residents.

### Name

The name of the WOFE is governed by "Regulations on the Management of name of Enterprises" (企業名稱登記管理規定). The proposed name should contain 4 components: (1) location; (2) enterprise name; (3) industry; (4) company limited. Please note that if over 50% registered capital come from foreign investors, the name can be formed as "enterprise name" + "industry" + "location" + "company limited", for example: ABC Trading (Shanghai) Company Limited.

There are certain restrictions on the use of company names:

- It should be in Chinese.
- Arabic numerals, foreign characters or alphabets are not allowed.
- It should not have content which contradicts national policies, damages social ethics, religions and culture.
- It should not have content which damages fair competition and misleads the public.
- Unless special approval is obtained, it should not contain the following restricted words : 中國(China)、中華(Chinese)、全國(National)、國家(State)。國際 (International) is a restricted word unless it is used to designate the industry in which the company is operating, e.g. ABC International Trading Company Limited (XXX 國際貿易有限公司).

The proposed name of WOFE must be approved by the Administrative Bureau for Industry and Commerce (工商局) before registration.

# **Approval Authorities**

The Ministry of Commerce of the PRC (中華人民共和國商務部) is the ultimate approving authority of foreign investments. Different cities have different requirements, regulations and threshold for approval. Taking Shanghai as an example, the following table illustrates the specific criteria in the approval of foreign investments in Shanghai:

	Amount of Investment	Category	Location	Approving Authorities		
1	Less than USD 30,000,000	Encouraged	Unrestricted	District or County		
	Less than USD 10,000,000	Permitted	Unrestricted	Government		
	Less than USD 30,000,000	Encouraged and	Located in			
		Permitted	municipal			
			Industrial Area			
2	Less than USD 30,000,000	All included,	See Table B below			
		except Restricted				
3	Less than USD	Encouraged and	Unrestricted	Shanghai Foreign Investment		
	100,000,000	Permitted		Commission		
		(the above two				
		categories are				
		not included)				
	Less than USD 50,000,000	Restricted	Unrestricted			
4	More than	All included,	Unrestricted	Minister of Commerce and		
	USD100,000,000	except		National Development and		
	/Projects specially	Prohibited		Reform Commission (Central		
	approved by the State			Government in Beijing)		

#### Table B: Approval authorities for Investment less than USD30,000,000 in Shanghai

Location	Approving Authorities
Pudong New Area	Government of Pudong New Area
Waigaoqiao Free Trade Zone	Administrative Commission of Waigaoqiao Free Trade Zone
Zhangjiang High-tech Park	Zhangjiang High-tech Park Office
Jinqiao Export Processing Zone	Administrative Commission of Jinqiao Export Processing Zone
Shanghai Chemical Industry Park	Administrative Commission of Shanghai Chemical Industry Park
Linhai New Urban District	Administrative Commission of Linhai New Urban District

Manivest will provide you with the latest information regarding the approval criteria of the city/ district where your WOFE is located. The Chinese government has produced a list of "Approved Investment Projects", which categorizes investment projects into four categories: encouraged, permitted, restricted and prohibited. Please note that the high-tech industry, electronic industry, and service industry are all encouraged for foreign investments.

### Application

Application is a three-step procedure.

**Step one**: Application for intended name to be used by the WOFE with the Shanghai Administrative Bureau for industry and Commerce

**Step two**: Application for the approval of the proposed investment in China from Foreign Economic Relation & Trade with submission of the approval of feasibility study, constitution (memorandum and articles of association)

A feasibility study will be prepared covering financing, site selection, technological process, equipments, raw material supply, market survey, economic results, foreign exchange, infrastructure facilities, etc.

Articles of Association should be prepared and submitted to the examination and approval authority. The examination and approval authority shall reply within 30 days on receipt of the feasibility study report and articles of association.

After the feasibility study report and articles of association have been approved, the applicant shall apply to the examination and approval authority, which shall issue the Approval Certificate within 3 days after receiving the application.

**Step three**: Registration with the Administration Bureaus for Industry and Commerce. The company may then register with Shanghai Administrative Bureau for Industry and Commerce within 30 days after receiving the Approval Certificate and apply for the business licence. Shanghai Administrative Bureau for Industry and Commerce shall issue the business licence within 10 working days to those projects approved by the examination and approval authority of Shanghai. The enterprise is deemed as established on the date when the business licence is issued.

The foreign enterprise may engage an agent authorized by Shanghai Municipal Foreign Economic Relations and Trade Committee to handle its application on its behalf.

### **Registered Address and Business Address**

Registered address is the official and legal address of a WOFE, which is attached to one of the administrative and tax district in Shanghai. It must be located in a non-residential building. A WOFE is not required to operate at its registered office. It can operate at another business address.

### Legal Representative

Legal representative is the only representative of the company in Shanghai, appointed by the board of directors. Local representative is not required. Normally, if the legal representative does not intend to stay and work in Shanghai for over 90 days (within a year), no employment visa is needed. In case that the legal representative is a foreigner and intends to stay in China for over 90 days in a year, employment visa is needed.

# **Capital and Shareholders**

A minimum of one shareholder, either a corporation or a natural person, who must not be Chinese national, is required. Capital must be of private nature, public offering of capital is not allowed.

China adopts a registered capital system. All registered capital has to be paid up in cash, physical assets or intangible assets. If injection of capital is not in the form of cash, valuation by a local "valuation professional" is needed, according to the regulations relating to the particular industry.

Strict capital injection requirement should be fulfilled. "Capital" includes not only registered capital but also promissory loans from the investor, parent company or financial institutions. Different regulations for different industries govern the minimum capital requirements and schedule of injection. Local auditors should be engaged to issue audit report on capital injection.

If capital is not injected according to the schedule, business licence and certificate granted may be withdrawn.

### **Directors**

A board of directors is not always required. For a small scale company, the general manager or legal representative is the CEO of the company and shall be treated as having the power of the directors of the company. There is no residential requirement for the directors.

# **Status of the Parent Company**

The Shanghai Government works on an "approval system" instead of a "registration system", that means, the application may be rejected without giving any reason. It is therefore important that the necessary requirements should be fulfilled and documents required by the government must be fully and accurately submitted. Some of the requirements are:

- (1) If the company documents are not in Chinese, certified translation by approved translator is required.
- (2) Notarization of statutory documents of the parent company may be required.

# **Documents required for application**

The applicant should complete "Form for Establishing Wholly Owned Foreign Enterprise" and submit together with the following documents:

- An application duly signed by the chairman of the board or general manager of the foreign enterprise with the following details: name of the WOFE, name of the legal representative, scope of business, duration and address, etc;
- (2) Statutory documents of the parent company issued by the authorities of the country or region of origin; e.g. Constitution, Certificate of Incorporation, Business Certificate, Tax Certificate;
- (3) A letter issued by a bank which has business relations with the applicant certifying its financial and credit standing;
- (4) The list of Legal Representatives and their curriculum vitae.
- (5) A feasibility report

### **Time Required**

It normally takes 60 days from receiving instructions and full particulars and necessary documents from the applicant to issue the Approval Certificate. Thereafter, the Post-establishment Registration procedures take about 60 days.

# The Maintenance of Wholly Owned Foreign Enterprises

# **Post-establishment Registration Procedures**

Upon issuance of the Registration Certificate, the applicant is required to complete post-establishment registration procedures which mainly consist of:

- (1) Opening bank accounts
- (2) Registration with the tax department
- (3) Application of a "Enterprise Code" (企業代碼)
- (4) Preparation of statutory stationery, including company chops
- (5) Registration with the State Statistics Bureau
- (6) Registration with the Customs Office
- (7) Application for Employment Visa (For foreign representative)

# **Audit and Accounting**

Accounting records are required to be kept in Chinese or in another language with Chinese translation. Annual audit by a local auditor is required.

# **Annual Examination**

Annual examination is a system that is peculiar to corporations in China. The Shanghai Administrative Bureau for Industry and Commerce, together with other departments concerned (e.g. tax authority, customs, foreign trade) are authorised by law to conduct an annual examination of the enterprise. In brief, the objective of the examination is to investigate whether the enterprise abides to the laws, regulations and the conditions for granting its licences. In particular, the examination will concentrate on the following areas:

- (1) Registered capital whether the capital has been paid up according to the constitution and conditions for application and in the proposal.
- (2) Operations whether the company is still operating within the approved activities, at the approved location and within the approved scale and employees.
- (3) Registration details whether there are any changes in registration details.
- (4) Financial details whether the company is still a profitable enterprise, whether necessary tax and customs duties are paid and whether foreign exchange is used according to government policies and regulations.

The examination is in the form of a report to be completed by the enterprise concerned annually (together with the payment of an annual fee). The Shanghai Administrative Bureau for Industry and Commerce will examine the report and make necessary enquiries.

The annual examination will be conducted from March to June every year. Those enterprises unable to fulfill the requirements of the annual examination may have their business licences revoked.

#### How Manivest can help you

Having a proper system of corporate maintenance is necessary after a Wholly Owned Foreign Enterprises (WOFE) is successfully incorporated in China. We provide the following corporate maintenance services for our foreign investors in order to minimize risks, saving the time and cost.

#### **Accounting and Taxation Services**

Our internationally qualified accountants and professionals provide various accounting and assurance services to corporate clients. We assist in the tax compliancy, preparation of the tax return, monthly and quarterly VAT / tax filing, application for VAT rebate. We also provide tailor-made accounting services, computerized accounting services, on site accounting service and telephone enquiries services.

Through our professional knowledge and experience in international taxation, we are able to design the holding and operating structures for optimization of tax liabilities, as well as designing asset management scheme for corporations to minimize the risk, maintain the stability of return, and protect their wealth.

#### Human Resources Management Services

Manivest can assist our client in choosing the appropriate talents for their company. With our in-depth knowledge of China's legal system and the labour market, we could provide advisory services in human resources management for corporations. We could help our client to design appropriate human resources policies and system, and to draft employment contracts. We can also act as our client's corporate advisor in the application for our client's employee's social insurance, housing fund, working residence permit, as well as the termination of employment. We can also help in the renewal and application for modification of the condition of working visa for our client's foreign employees.

#### **Financial Management Services**

Good financial management and an efficient internal financial management system are crucial for a successful corporation. Manivest provides accounting and financial advisory services to help our corporate clients to train up their staffs in minimum time to become efficient tax and finance professionals. In addition, we also provide out-sourcing financial management services. Our services include foreign exchange monitoring and management and assets measurement and control services.

#### **Corporate Management Services**

We provide a variety of company statutory secretarial services for WOFE, including the change of shareholder, director, address, registered capital of the enterprise, and also upon termination and liquidation. Manivest also provides services in local litigation advisory and in the registration of trademark.

Besides assisting foreign investors to prepare a full set of corporation formation documents, we also assist them in the preparation of administration documents for operating in various industries which requires special licences to operate. We help our client to obtain licences such as licence for international cargo, finance, logistic and media production. We also help our client to prepare documentation for the joint annual inspection report which is required to be submitted to the China government from March to June every year.

#### **Office Setting Up Services**

Manivest can help our client to look for a suitable office, set up the office, arrangement of telephone, fax and broadband, and acquiring machineries and furniture for the office. Through our offices and staffs in Shanghai and Hong Kong, Manivest shall follow through the establishment process, thus saving time and trouble for the investors.

#### **Banking Services**

Manivest can help our client to set up the required bank accounts in China. The accounts would consist of, for example, a capital account, a basic account, and a general account. We provide professional advice in banking products, logistics of bank operation and fee, in order to maintain our client's bank accounts' good status. We also advise our clients in handling remittance procedures and the procedures involved in banking services operation, if necessary.

# Taxation of WOFE

Foreign enterprises with their head offices in China are taxed on their worldwide income. Tax credit is allowed for income taxes paid to other countries on certain incomes. Other foreign enterprises doing business in Shanghai and non-resident enterprises are taxed on income derived from China source only.

There are two systems of tax authorities in China, namely, National Tax Bureau and the Local Tax Bureau. In general, the National Tax Bureau is responsible for assessing and collecting taxes for enterprises and corporations, while the Local Tax Bureau is responsible for individual income taxes and property taxes.

The new Enterprise Income Tax Law, effective from 1 January 2008, stipulates that both local and foreign companies are to be taxed at 25%.

All currently eligible Foreign Investment Enterprises (FIEs), which have commenced the 2+3 tax holidays (2-years tax free incentive plus 3-years 50% exemption from taxation), will continue to enjoy the remaining unutilized tax holidays until expiry, but not later than 31 December 2013. However, the new law will not affect certain industry-specific preferential tax policies. We, Manivest, provide a comprehensive advisory in China tax to those who are planning to invest in China.

# **Major Taxes on WOFE**

WOFE doing business in China are liable to the following types of taxes:

- 1 Income Tax
- 2 Transaction Tax : Value added tax, Consumption tax, Business tax
- 3 Other taxes: Vehicle and vessel licence tax, Stamp tax, Property tax, Deed tax

In addition, custom duties are levied on imports and exports and individuals working in China are liable to individual income tax.

### Taxable Income – Income tax

#### Basis for computation of taxable income

There is some distinction between profits for accounting purposes and tax purposes. China is revising its accounting standards to adhere with the international accounting practice. In brief, China accounting standards are modeled on International Accounting Standards with minor difference. However, for certain categories of expenses, for example entertainment and traveling, certain restrictions are imposed by tax laws and regulations. There are maximum amounts allowable and for certain categories of expenses, for example depreciation, organisation expenses.

#### **Income Tax Rates for WOFE**

Under the new law, the general enterprise income tax rate of 25% will apply to WOFE. WOFE is a residential enterprise and is required to pay tax on their global income.

Tax Payer	Taxable income	Tax Rate
WOFE	Global income	25%
Special case I : Small Scale enterprises	Global income	20%
(annual income is less than		
RMB300,000)		
Special case II : Preferential	Global income	15%
Enterprises – Hi-tech enterprises,		
aviation, electronic, cutting-edge		
pharmaceutical, computer software (1)		
Withholding tax levied for Shareholder /	Dividends, interests and	Non-treaty nations
suppliers of WOFE	loyalty fees paid to	20%, treaty
	shareholders / suppliers	nations 5% to 15%

- (1) These types of enterprises must obtain approval from the National Technical Department or technical department in their respective provinces.
- (2) This is a withholding tax. The WOFE paying the money to the shareholder / supplier is required to withhold the tax for the government.

#### **Tax Year**

The tax year is calendar year but a foreign enterprise may apply to the tax authorities to adopt its own fiscal year as the tax year.

#### Depreciation

Fixed assets with a useful life of one year or more may be depreciated. Fixed assets with cost less than RMB 2,000 can be written off immediately. Straight-line method shall be applied according to the law. There are regulations providing the minimum useful lives for different categories of assets. Residual value should not be less than 10 %.

Assets	Minimum number of years
Premises, buildings and structures	20
Trains, ships, machinery and other production equipment	10
Electronic equipment, means of transportation other than	
trains and ships, appliances, tools and furniture relating to	5
production and business operations	

Accelerated depreciation may be allowed in special circumstances.

#### **Operating Loss**

Operating loss for enterprises carrying on business can be used to set-off taxable profits in the future years for up to five years.

# Taxable Income – Value Added Tax, Consumption Tax and Business Tax

#### Value Added Tax

WOFE engage in the business of selling commodities, repair and maintenance services or import and export business in China are subject to value added tax. The standard rate for value added tax is 17%, but the rate for certain basic commodities such as grain, cooking oil, running water, forage, fertilizer, pesticide, and farming machinery is 13%.

#### **Consumption Tax**

Production, processing and importation of the following 11 commodities in China are subject to consumption tax: tobacco, alcoholic drinks or alcohol, cosmetics, skin and hair care products, jewellery, fireworks, gasoline, diesel, automobile tire, motorcycle and motorcar. Consumption tax is calculated in accordance with quantity (e.g. gasoline) or according to the fixed scheduled rates (e.g. the rate for motorcar with its engine cylinder capacity under 2,200ml is 8%).

#### **Business Tax**

WOFE engage in transportation, post and telecommunication, finance and insurance, construction, art, sports, entertainment, and services, or transfer of intangible assets and immovable properties are subject to business tax. Business tax rate is 3% or 5%. But the tax rate for entertainment sector is 10% or 15%.

### **Taxable Income – Other taxes**

These taxes are levied on the taxpayers according to a fixed schedule. The scheduled rates may be amended from time to time, for current information, please check with the relevant authorities.

#### Vehicle and Vessel Tax

Vehicles owned and used by the WOFE are subject to Vehicle and Vessel Licence Tax.

#### Stamp Tax

Stamp taxes are levied on contracts made in China in respect of purchases and sales, processing, contracting, engineering project, asset leasing, transportation, storage and warehouse, loan, asset insurance, technology contract, transfer of property rights, accounting ledger, royalty licence. The minimum rate of a stamp tax is 0.005% and the maximum is 0.1%. royalty licence and accounting books (not including wage records) taxed on per piece basis, at RMB5.

#### **Property Tax**

The tax is levied at an annual rate of 1.2% on the original value of the real estate, after 20% is deducted therefrom. The tax rate is 12% if it is levied on the rental income.

#### **Deed Tax**

Purchaser or acquirer of land and building is subject to deed tax. The transfer of ownership of land and building refers to:

- The granting of land use right by the state (not including the transfer of management right of the rural collective land);
- (2) Transfer (including selling, bestowal and exchange) of land use right;
- (3) Sale and purchase of buildings;
- (4) Bestowal of buildings;
- (5) Exchange of Buildings.

The rate of deed tax is 1% to 5%.

### **Dividends**

Dividends received from local and foreign enterprises are taxable income.

# **Capital Gains**

For tax purposes, there is no distinction between capital gains and other types of revenue received in China. Therefore, foreign shareholders are subject to foreign enterprises income tax on capital gains at 20% (withholding tax) from the sales of their investments in foreign investment enterprise. No indexation allowances will be taken into account.

# Taxation on Dividends paid by WOFE to Its Parent

The parent company of a WOFE is a foreign company and is therefore a non-resident enterprise. A non-resident enterprise has to pay income come on the income received from China.

Tax Payer	Taxable income			Tax			
Withholding tax levied for	Dividends,	int	erests	and	Non-treaty	nations	20%,
Shareholder of WOFE	loyalty	fees	paid	to	treaty natio	ns 5% to	15%
	sharehold	ers					

This is a withholding tax. The WOFE paying the money to the shareholder is required to withhold the tax for the government.

# **Double Taxation Treaty**

China maintains over 86 double taxation treaties (DTT) with its trading partners. In general, China adopts a mixed model of OECD and UN, with emphasis on the right to tax when the income is derived from or in China. China also has double taxation arrangement (DTA) with Hong Kong and Macao. These DTAs are in fact DTTs which confers very favorable terms to Hong Kong companies.

	Hong	Singapore	Macao	Mauritius	Seychelles	USA
	Kong					
Dividend 股	10% / 5%	10% / 5%	10%	5%	5%	10%
息						
Interest	7%	10% / 7%	10% /	10%	10%	10%
			7%			
Royalties	7%	10%	10%	10%	10%	10%

Withholding tax rate applied to some of the countries.

# The Dissolution of a Wholly Foreign-Owned Enterprise

A Wholly Foreign-owned Enterprise ("WOFE") may be dissolved upon the expiration of the term<sup>2</sup> or when the WOFE suffers heavy losses due to mismanagement, force majeure, or when the WOFE becomes bankrupt or is lawfully closed because of a violation of Chinese laws or regulations, with the result that public interest has been harmed, or for any reasons specified in the WOFE's constitution.

In case if the WOFE does not dissolve properly, it can result in the following outcomes:

- The information of dissolved WOFE's legal representatives and shareholders will be recorded by the Industrial and Commercial Administration Bureau. They will be disqualified and will not be allowed to become directors, supervisors or managers in other WOFE(s).
- The unfavorable credit reports of the dissolved WOFE's legal representatives would be kept in government departments for at least seven years. The said legal representatives would also be punished and would be ordered to pay compensation to the relevant governmental departments.

# The Procedures of Dissolution

Dissolving a WOFE in China would typically involve the following eight steps:

- 1. Setup Liquidation Committee The WOFE is required to setup a liquidation committee for preparing liquidation application and reports. This consists of balance sheet, inventory records and financial evaluation report. Please note that the creditors must be informed in written form within ten days after the committee is setup.
- 2. **Publish a public announcement of the dissolved WOFE** The WOFE is required to publish an announcement of dissolution to the public in one national newspaper and also in another local (provincial or municipal level) newspaper.
- 3. **Submit liquidation reports to the authorities** The committee is required to submit liquidation application and reports which consist of a WOFE dissolution

<sup>&</sup>lt;sup>2</sup> There is no limitation under PRC law as to how long such a term must be, although WOFE's typically have a term of 15 to 25 years.

application form, foreign investment enterprise authorized certificates and business licence to relevant authorities (such as the Industrial and Commercial Administration Bureau or the Municipal Commission for Foreign Economic Relations and Trade) for their permission to dissolve the WOFE.

- 4. **Dissolution registration in Tax Bureau** After obtaining the permission-in-principle from the authorities, the pre-dissolved WOFE is required to apply for de-registration in the local Taxation Bureau and State Administration of Taxation Bureau. Please note that all tax payments are required to be settled before the dissolution registration.
- Dissolution registration in Customs The pre-dissolved WOFE is required to submit the dissolution application, customs registration certificates and business licence to the local Customs.
- 6. **Dissolution registration at the Industrial and Commercial Administration Bureau** - The committee is required to submit liquidation reports together with dissolution registration permissions from the Tax Bureau and Customs, to the Industrial and Commercial Administration Bureau.
- 7. **Bank account cancellation** The dissolved WOFE is required to cancel its bank account in China. A dissolution application, along with the dissolution permission from Industrial and Commercial Administration Bureau and other relevant documents must be submitted.
- 8. **Other actions for dissolution** The dissolved WOFE is required to inform other relevant government departments for the dissolution e.g. State Administration of Foreign Control, Quality and Technical Supervision Bureau, Census and Statistic Bureau, Finance Bureau and Public Security Bureau etc.

# **Time Required**

The length of time for dissolving WOFE mainly depends on the position and condition of the WOFE, for example its financial position and tax payment conditions. It normally takes 4 to 6 months in general to complete the whole dissolution process.

# **Audit Required**

Audit is required before and during process of dissolution. Unlike the usual audit performed by a Certified Public Accountant, the dissolution audit would be handled by the Tax Bureau, which requires the WOFE to provide relevant taxation documents and to cooperate with them closely.

# **Our Clients in China**

# **Our client: a US Logistic Company**

Our client, headquartered in Minnesota, USA, is a full service logistic management and consultation company with over 30 years experience. They provide a full range of services consisting of new security measures, customs modifications, ever-changing international conditions, and international shipping process approach apart from traditional logistic services. They mainly serve the American market.

#### Objective: deliver products and services to and from in China

Our client is expanding its business by entering into China to serve its current clients in China. However, they encounter problems in the following areas:

- setting up and operating a logistic management and consultation company in China
- meeting partners in the logistics field in China
- understanding the China market comprehensively

There is also time and cost issues for our client to consider, such as "How to invest and operate effectively and efficiently in China?"

#### Solution: Manivest's Wholly Owned Foreign Enterprise incorporation service

We provide comprehensive services of incorporation in logistic consulting WOFE in Shanghai consisting of:

- professional advice in pre-incorporation of logistic WOFE in China
- comprehensive fundamental report about investing in China
- providing registered address from relevant local authorities with the purpose of easy registration and tax incentives
- incorporating a logistics consulting WOFE
- assisting the investors in the operation of the WOFE, finding partners in the logistics sector in China, and sourcing local human resource, etc.
- various value-added services, such as assisting the filing of monthly tax return, application for motor licence, etc

# Our client: a Singapore Venture Capital investing into a livestock company

Our client is a leading venture capital company registered in Singapore. One of the projects of the company is to invest into agricultural and farming businesses in China. Its main strategic partners are:

- A company which is a sophisticated expert in the field of livestock or environment, which provides technical support.
- An European consortium with more than 90 companies in 14 countries, employing approximately 9,000 staff, and has been directly managing an asset of US\$25 billion, which provides the necessary capital.

#### Objective: to promote and develop eco livestock farming in China

Our client promotes and develops eco livestock farming in China with new bio-hi-technology systems and applications. The project aims to change the situation of livestock in China and to improve the awareness of brand names. The total investment capital of the project is over USD 1 billion, which is applied towards the construction of over 100 cultivating bases for cattle and sheep, and various bases for processing livestock products in 16 provinces, cities, and autonomous districts in China. The real challenge is the difficulty in finding a reliable advisor for their development in China.

Solutions: in view of the substantial size of the project and of the investment in China, the client needs an experienced advisor and corporate services company to provide:

- expertise advises in capital and company structures
- a professional capital structure proposal, including a cash flow analysis and an execution report
- liaison service with different local authorities to ensure the feasibility of such sizeable project
- services acquiring the approval of the project from the local authority
- good connection with different local government bodies to ensure that the project can be completed successfully

Manivest provides all of the above services.

# **Our client: a Taiwanese Computer Component Manufacturer**

Our client is a listed company headquartered in Taiwan, with an extensive worldwide network of subsidiaries, resellers, partners and suppliers, such as Intel, AMD and NVIDIA etc. Our client is recognized as an industry leading designer and manufacturer of small form factor (SFF) computers and accessories.

# Objective: to establish a legal presence for its sales and distribution services in China

The company wants to establish a legal presence in the personal computer (PC) market in China and to start developing its sales and distribution channels and networks, as well as brand building in China.

#### Solutions: Manivest's Wholly Owned Foreign Enterprise service

We provide comprehensive services in the incorporation of a typical trading WOFE in Shanghai, consisting of:

- strategic market research of the trend of distribution industry in China
- assisting in completing the registration procedure of premises between the client and owner
- incorporating a trading WOFE with wholesaling licence in China
- professional arrangement of capital injection and assistance of issue of a capital verification report
- various local resources support, such as banking, accounting and taxation recourse, etc.

### Our client: a Taiwanese information and technology company

Our client is a listed company headquartered in Taiwan. It is an information and technology company which specializes in designing, manufacturing, and researching and development of the technology of Auto-ID products, such as the barcode system. Currently, their main clients include Microsoft, Wal-Mart, Toshiba and NTT Docomo.

# Objective: searching for an opportunity to increase market share and profit, and to become the market leader in China

Our client has developed its business in China for many years and has already familiar with China's policies, market and culture. In recent years, it is looking for an opportunity to increase its market share and profit, with a view to position itself as the market leader in Auto-ID product market in China.

#### Solutions: Manivest's company structure and planning service

We provide comprehensive services in company structure and planning in China consisting of:

- an integrated offshore and onshore company structure planning
- establishing a WOFE holding company in Hong Kong with relevant supporting service
- professional corporate and tax advisory services in setting up a trading WOFE
- legal advice in company law in connection with various establishment issues and providing advice in local practice and various tax issues

# Our client: an European cross-media studio

Our client is a Dutch based cross-media studio, specializing in visual communications and media-independent development in strategic concept and design. Having over 10 years of experience in the new media, it has acquired a leading position in the field of technology within design, with support from government subsidiaries in the Netherlands.

#### Objective: bringing the cross media concept into China

As the concept and market of cross media service in China is quite new but with potential, our client intends to develop this area in China and prefers to establish a legal presence in China.

#### Solutions: Manivest's incorporation in Wholly Owned Foreign Enterprise service

We provide comprehensive services in company structure planning and the incorporation of WOFE service in China, consisting of:

- a comprehensive company structure planning to lower global tax
- establish a WOFE holding company in Hong Kong with relevant supporting service
- incorporating a consulting WOFE
- arranging office premises and a WOFE's branch in Shanghai
- providing professional corporate and tax advisory services
- arranging the application of an expatriate's working permit, resident permit, and personal health inspection, etc.

# Our client: one of the top 10 Law Firm in China

Our client is founded in 1993 and is one of China's premier law firms, headquartered in Beijing and branch offices in Shanghai, Shenzhen and Guangzhou and an oversea office in Japan. Its attorneys closely follow the dynamic changes in Chinese domestic legal system and provide excellent and cost efficient legal services.

# Objective: searching for professional business alliances in China to take care of their foreign clients.

Our client plans to outsource its internal corporation and taxation departments to professional corporation service companies in order to minimize the operating costs in China. It is also looking for professional business alliances, which can provide incorporation services in both offshore and onshore, as well as taxation services.

# Solutions: Manivest's business process outsourcing service and corporate maintenance services

We provide comprehensive services of corporate maintenance and business process outsourcing in China to our client, consisting of:

- providing professional corporation and taxation advice on offshore and onshore companies
- business process outsourcing (BPO) services
- company structure planning
- setting up offshore tools and corporate maintenance services
- WOFE maintenance services
- accounting and taxation support

# **About Manivest**

#### Manivest. Originated in Asia, based in Asia, serving the World

Manivest, headquartered in Hong Kong, was established in 1987 as an affiliate of its associated accountancy firm, Horace Ho & Company - Certified Public Accountants in Hong Kong. Manivest was originally established as an International corporate services provider, supporting the operations and clients of Horace Ho & Company. Since then we have grown quickly and expeditiously, we are now specialized in company structure planning, international tax and assets planning, as well as establishing business operations in the Asian Region.

Today Manivest is one of the most well-known advisory group in providing corporate structuring, insolvency and taxation services in Asia, serving and supporting professional intermediaries and multi-national clients from all over the world with unfailing professionalism. Through our offices and associates in major Asian cities, we offer a full range of comprehensive business solutions to support professional advisors to make use of the planning vehicles available all over the world and to assist their clients in creating a presence in Asia.

#### **Our development**

We are a forerunner of China practice and consultancy services in onshore and offshore structures in China since early 90's and have achieved great success from acting as the reporting auditor of a pioneer project of "Transformation of State Owned Enterprises (SOEs) to Shareholding enterprises", engaged to transform the SOEs' accounting structures and standards to an international accounting standards and structures, as well as preparing the companies' invitations of tenders internationally.

In mid 90's, we began expanding our business in Taiwan and in 1999 - the year when Macao became a Special Administrative Region (SAR) of China - we were the first full-service corporate service firm in Macao capable of providing international corporate services.

In 2002, we expanded our China business in Shanghai to serve multinational clients and professional intermediaries from all over the world, interested in investing in China. Currently, our Manivest Shanghai office is a reputed professional consultancy firm in the corporate and tax fields, with good relationship with the TOP TEN law firms and CPA firms in Shanghai, China.

Manivest is listed as a firm by the Official Receiver of Hong Kong on the Panel T undertaking liquidation cases.

With over 22 years of international corporate services experience, we strongly commit to our belief: "Originated in Asia, based in Asia, serving the World".

#### Milestone

1987 – Manivest founded by Mr. Horace M K Ho, a practicing CPA, as an affiliate of

Horace Ho & Company, Certified Public Accountants in Hong Kong. Manivest was primary engaged in corporate services to the client of Horace Ho & Company.

- 1992 Development of China practice and consultancy services
- 1996 Development in Taiwan
- 1998 Establishment of Manivest's Macao office
- **2000** Ms Yvonne Fong joined Manivest Group after 10 years of services within trust and bank industry. Ms Fong is a Barrister-at-law qualified in Hong Kong.
- 2002 Opening of Manivest's Shanghai Representative Office and Ms Simone Kong, a practicing solicitor joined Manivest Group.
- 2004 Establishment of Manivest Xing Zhong (Shanghai) Consulting Company Limited in Shanghai.

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