International Taxation in China: A Contextualized Analysis

Why this book?
Chinese tax law affects corporations engaged in cross-border transactions with China. It may also impact the development of the international tax regime as China is increasingly engaged in international tax reform efforts, such as the G20/OECD BEPS Project. Chinese tax law is thus important to taxpayers, tax professionals and policymakers worldwide. However, it is a challenge to find comprehensive information and insightful analysis of Chinese tax law in English. International Taxation in China: A Contextualized Analysis meets that challenge.

This book deals with the Chinese international tax regime, focusing on the enterprise income tax and tax treaties. First, it covers the standard topics: inbound and outbound rules, withholding taxes, transfer pricing, tax avoidance, and base erosion and profit shifting. It then sets forth the technical tax rules in their specific Chinese legal and institutional context, for example, the approach of Chinese courts to the interpretation and application of tax law and the crucial role played by the State Administration of Taxation, which are significantly different from the role of their counterparts in Western countries. Examples, tables and detailed footnotes are used to help explain the rules in the legislation and the law in practice. Throughout the work, the author seeks to shed light on the Chinese way of thinking about international taxation.

“In sum, this book is a mature work by a scholar at the top of her game. For anyone with an interest in Chinese international taxation, the book is rewarding on several levels; for anyone with a professional need to understand Chinese international tax policy and practice, the book should be your ‘go-to’ source.” (Preface by Brian J. Arnold)

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## Table of Contents

**Foreword**

**Preface**

**Abbreviations**

**Chapter 1: Introduction**

1.1. Purpose of this book

1.2. Structure and content
   - 1.2.1. Structure
   - 1.2.2. Overview and tax treaties
   - 1.2.3. Inbound rules
   - 1.2.4. Outbound rules
   - 1.2.5. Transfer pricing, GAAR and BEPS

1.3. Analytical approach
   - 1.3.1. An outsider’s approach
   - 1.3.2. Analysing the EIT as a legal transplant
     - 1.3.2.1. Evidence of legal transplant
     - 1.3.2.2. The common core of international taxation
     - 1.3.2.3. The local context
   - 1.3.3. Chinese insiders’ perspective
     - 1.3.3.1. Research sources
     - 1.3.3.2. Critical analysis
   - 1.3.4. (Implicit) comparative approach

1.4. Scholarly ambitions and practical aspirations
   - 1.4.1. Scholarly ambitions
   - 1.4.2. Practical aspirations

**Chapter 2: Enterprise Income Tax as a Policy Instrument**

2.1. Introduction

2.2. Technical design of the EIT
   - 2.2.1. Evolution
     - 2.2.1.2. Domestic EIT: 1984-2007
     - 2.2.1.3. EIT: 2008-today
   - 2.2.2. Architecture of the EIT
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2.3.</td>
<td>Chinese characteristics</td>
<td>22</td>
</tr>
<tr>
<td>2.2.3.1.</td>
<td>“Regulations” overpowering the “law”</td>
<td>22</td>
</tr>
<tr>
<td>2.2.3.2.</td>
<td>Open-ended drafting style</td>
<td>23</td>
</tr>
<tr>
<td>2.2.3.3.</td>
<td>Emphasis on source-based taxation</td>
<td>24</td>
</tr>
<tr>
<td>2.2.4.</td>
<td>Transplantation of foreign law</td>
<td>24</td>
</tr>
<tr>
<td>2.2.4.1.</td>
<td>Reasons for transplants</td>
<td>24</td>
</tr>
<tr>
<td>2.2.4.2.</td>
<td>Process of transplantation</td>
<td>25</td>
</tr>
<tr>
<td>2.2.4.3.</td>
<td>Elements of transplants</td>
<td>26</td>
</tr>
<tr>
<td>2.3.</td>
<td>Instrument of policy</td>
<td>27</td>
</tr>
<tr>
<td>2.3.1.</td>
<td>Overview</td>
<td>27</td>
</tr>
<tr>
<td>2.3.2.</td>
<td>Generating 20% of total tax revenue</td>
<td>27</td>
</tr>
<tr>
<td>2.3.3.</td>
<td>Promoting neutrality and fairness</td>
<td>28</td>
</tr>
<tr>
<td>2.3.4.</td>
<td>Promoting economic development</td>
<td>28</td>
</tr>
<tr>
<td>2.3.5.</td>
<td>International tax competitiveness</td>
<td>29</td>
</tr>
<tr>
<td>2.4.</td>
<td>Instrument of law</td>
<td>29</td>
</tr>
<tr>
<td>2.4.1.</td>
<td>“Law” in the EIT system</td>
<td>29</td>
</tr>
<tr>
<td>2.4.2.</td>
<td>Taxation by law</td>
<td>30</td>
</tr>
<tr>
<td>2.4.3.</td>
<td>Sources of law</td>
<td>31</td>
</tr>
<tr>
<td>2.4.3.1.</td>
<td>Hierarchy of EIT legislation</td>
<td>31</td>
</tr>
<tr>
<td>2.4.3.2.</td>
<td>Law by the legislature</td>
<td>31</td>
</tr>
<tr>
<td>2.4.3.3.</td>
<td>Administrative regulations by the State Council</td>
<td>32</td>
</tr>
<tr>
<td>2.4.3.4.</td>
<td>Ministerial rules by the SAT or MOF</td>
<td>32</td>
</tr>
<tr>
<td>2.4.3.5.</td>
<td>Informal rules by the SAT or MOF</td>
<td>34</td>
</tr>
<tr>
<td>2.4.4.</td>
<td>Legislative interpretation</td>
<td>35</td>
</tr>
<tr>
<td>2.4.4.1.</td>
<td>The issue of interpretation</td>
<td>35</td>
</tr>
<tr>
<td>2.4.4.2.</td>
<td>Interpretation by lawmakers</td>
<td>35</td>
</tr>
<tr>
<td>2.4.4.3.</td>
<td>Interpretation by the SAT/MOF</td>
<td>36</td>
</tr>
<tr>
<td>2.4.5.</td>
<td>Judicial interpretation</td>
<td>38</td>
</tr>
<tr>
<td>2.4.5.1.</td>
<td>Structure and powers of the courts</td>
<td>38</td>
</tr>
<tr>
<td>2.4.5.2.</td>
<td>Forms of judicial interpretation</td>
<td>38</td>
</tr>
<tr>
<td>2.4.5.3.</td>
<td>Tax litigation</td>
<td>39</td>
</tr>
<tr>
<td>2.5.</td>
<td>Tax administration</td>
<td>40</td>
</tr>
<tr>
<td>2.5.1.</td>
<td>The SAT</td>
<td>40</td>
</tr>
<tr>
<td>2.5.1.1.</td>
<td>Mandate</td>
<td>40</td>
</tr>
<tr>
<td>2.5.1.2.</td>
<td>“Caretaker” role of the EIT</td>
<td>41</td>
</tr>
<tr>
<td>2.5.1.3.</td>
<td>Consistency across the country</td>
<td>41</td>
</tr>
<tr>
<td>2.5.1.4.</td>
<td>Adjudicator of tax disputes</td>
<td>43</td>
</tr>
<tr>
<td>2.5.1.5.</td>
<td>Competent authority under tax treaties</td>
<td>43</td>
</tr>
<tr>
<td>2.5.2.</td>
<td>State versus local tax administration</td>
<td>44</td>
</tr>
<tr>
<td>2.5.2.1.</td>
<td>Responsibilities</td>
<td>44</td>
</tr>
<tr>
<td>2.5.2.2.</td>
<td>STBs under vertical control</td>
<td>44</td>
</tr>
</tbody>
</table>
2.5.2.3. Local tax administration under dual leadership 45
2.5.2.4. Modernization of the tax administration 45
2.5.3. Relationship with taxpayers 47
2.5.3.1. In-charge tax authority 47
2.5.3.2. Taxpayer services 48
2.5.3.3. Taxpayers’ reliance on tax authorities 48
2.5.4. Tax compliance 49
2.5.4.1. Tax registration 49
2.5.4.2. Accounting books and record keeping 50
2.5.4.3. Information reporting 51
2.5.4.4. Returns and payment of tax 51
2.5.5. Investigations and special tax adjustments 52
2.5.6. Late payment surcharge and penalties 52
2.5.6.1. Late payment surcharge and interest charges 52
2.5.6.2. Civil penalties 53
2.5.6.3. Criminal sanctions 53
2.5.7. Tax risk management 54

2.6. Dispute resolution 55
2.6.1. Overview 55
2.6.1.1. Nature of tax disputes 55
2.6.1.2. Dispute minimization 56
2.6.2. Administrative review 57
2.6.2.1. Formal process 57
2.6.2.2. Decentralized system 57
2.6.2.3. Procedures and evidence 59
2.6.2.4. Scope of review decision 59
2.6.3. Administrative litigation 60
2.6.3.1. Scope of jurisdiction 60
2.6.3.2. Nature of the process 61
2.6.3.3. Proceedings 62
2.6.4. CIMFRA (China) Ltd. v. Shaanxi Pucheng STB 63
2.6.4.1. Facts 63
2.6.4.2. The issue 64
2.6.4.3. Administrative review 64
2.6.4.4. Judgment of the Court of First Instance 65
2.6.4.5. Judgment of the Court of Second Instance 66
2.6.4.6. Takeaway points 68
2.6.5. Like throwing an egg against a stone? 69
2.6.5.1. Taxpayers’ uphill battle in court 69
## Chapter 3: International Aspects of the Enterprise Income Tax

3.1. Introduction 73
3.2. System design 73
  3.2.1. Architecture 73
  3.2.2. Basic principles 74
  3.2.3. Defining China’s share of international income 75
  3.2.4. Defining taxpayers 76
3.3. Tax jurisdiction 77
  3.3.1. Chinese residence 77
    3.3.1.1. Place of incorporation 77
    3.3.1.2. Place of effective management 77
  3.3.2. Chinese-source income 79
3.4. Inbound rules 80
  3.4.1. Taxation of non-resident companies 80
  3.4.2. Carrying on business in China 80
  3.4.3. Investing in China 81
  3.4.4. Straddling between business income and investment income 82
3.5. Outbound rules 82
  3.5.1. Taxation of Chinese resident companies 82
  3.5.2. Foreign tax credit 82
  3.5.3. CFC rules 83
3.6. International anti-avoidance rules 83
3.7. Computation of tax liability 84
  3.7.1. Overview 84
  3.7.2. Taxable income 85
    3.7.2.1. Revenues 85
    3.7.2.2. Deductions 86
    3.7.2.3. Cost of capital assets 88
    3.7.2.4. Asset losses 89
    3.7.2.5. Tax losses 90
  3.7.3. Tax rates and credits 90
  3.7.4. Tax incentives 91
4.6.5.2. Legal standard for reviewing administration acts 118
4.6.5.3. Effect of tax treaties 119
4.6.5.4. Considerations in treaty interpretation 119
4.6.5.5. Meaning of “use”, “right to use” and “equipment” 120
4.6.6. The Court of Second Instance 121
4.6.6.1. Appellant taxpayer 121
4.6.6.2. Respondent STB 122
4.6.6.3. Judgment 122
4.7. The Donghwa case 123
4.7.1. Overview and legislative provisions 123
4.7.2. Facts 123
4.7.3. Issue 125
4.7.4. Arguments of the Parties 125
4.7.4.1. No disputes regarding facts, applicable law and procedures 125
4.7.4.2. Characterization of income 126
4.7.5. Judgment 127
4.8. Takeaway points from PanAmSat and Donghwa 128
4.8.1. Limited scope of judicial review 128
4.8.2. Unpredictable purposive interpretation 129
4.8.3. Unfortunate reliance on treaty provision as a charging rule 131

Chapter 5: Tax Treaties: Major Provisions 133

5.1. Introduction 133
5.2. Scope of tax treaties 134
5.2.1. Territorial scope: “China” 134
5.2.2. Personal scope 134
5.2.2.1. “Person” 135
5.2.2.2. “Resident” of China 136
5.2.2.3. Resident of the other contracting state 137
5.2.2.4. Dual residence 137
5.2.2.5. Resident of a third country 138
5.2.2.6. “Nationals” 140
5.2.3. Taxes covered 140
5.2.3.1. “Chinese income taxes” 140
5.2.3.2. Taxes on capital 140
5.3. Distributive provisions: overview 141
5.3.1. Theoretical foundation 141
5.11.2. Foreign tax credit 163
5.11.3. Indirect foreign tax credit 164
5.11.4. Tax sparing 166
5.12. Anti-abuse rules 167
5.12.1. Overview 167
5.12.2. Beneficial ownership 167
5.12.3. Principal purpose test 171
5.12.4. Limitation of benefits 172
5.12.5. The domestic GAAR and DTAs 173
5.13. Special provisions 174
5.13.1. Non-discrimination 174
5.13.1.1. Scope 174
5.13.1.2. PE and deduction-based discrimination 174
5.13.1.3. Capital-ownership discrimination 175
5.13.2. Mutual agreement procedure 176
5.13.2.1. Bilateral dispute resolution process 176
5.13.2.2. Mutual agreement procedures in China 177
5.13.3. Exchange of information 178
5.13.3.1. Scope 178
5.13.3.2. Exchange of information in China 179
5.13.4. Assistance in the collection of taxes 181

Chapter 6: Non-Resident Companies Doing Business in China 183

6.1. Introduction 183
6.2. Carrying on business activities in China 183
6.2.1. Types of activities 183
6.2.2. Forms of business presence in China 184
6.2.2.1. Regulatory control 184
6.2.2.2. Representative offices 185
6.2.2.3. Branches 185
6.2.2.4. Contracted engineering projects and services 185
6.2.2.5. Cooperative joint ventures 186
6.2.2.6. Partnerships 187
6.2.2.7. Qualified foreign institutional investors 188
6.2.2.8. Digital commerce 188
6.2.3. Distinguished from passive investments 188
6.3. System design 189
6.3.1. Source-based taxation 189
6.3.2. Legislative scheme 190
6.3.3. Major policy objectives 191
6.3.4. Notable features
   6.3.4.1. “Business” undefined 192
   6.3.4.2. Higher jurisdictional threshold 193
   6.3.4.3. Deemed profits methods 194

6.4. Jurisdictional threshold 194
   6.4.1. Establishment or site 194
   6.4.2. Physical presence 194
      6.4.2.1. “Establishment” versus “site” 194
      6.4.2.2. “Establishment” 195
      6.4.2.3. “Site” 196
   6.4.3. Business agents 197
      6.4.3.1. Deemed establishment/site 197
      6.4.3.2. Types of agency agreements 198
      6.4.3.3. Activities of business agents 200

6.5. Permanent establishment under tax treaties 200
   6.5.1. Overview 200
   6.5.2. Fixed-place permanent establishment 201
      6.5.2.1. “Place of business” 201
      6.5.2.2. “Fixed” 202
      6.5.2.3. Business carried on through the place of business 203
      6.5.2.4. Specific inclusions and exclusions 204
   6.5.3. Building project permanent establishment 206
      6.5.3.1. Article 5(3) 206
      6.5.3.2. Scope of “project” 207
      6.5.3.3. Measuring time 207
   6.5.4. Service permanent establishment 209
      6.5.4.1. Services 209
      6.5.4.2. Services furnished in China 212
      6.5.4.3. The 183-day test 212
      6.5.4.4. Connected project 213
      6.5.4.5. Fragmentation 215
      6.5.4.6. Secondment arrangement 215
   6.5.5. Agency permanent establishment 217
      6.5.5.1. Overview 217
      6.5.5.2. Meaning of “agent” 218
      6.5.5.3. “Authority to conclude contract in the name of the enterprise” 219
      6.5.5.4. Frequency requirement 220
      6.5.5.5. Independent agent 220
   6.5.6. Insurance permanent establishment 221
   6.5.7. Subsidiary 222
6.6. Attribution of income 223
   6.6.1. Basic principles 223
   6.6.2. Domestic law 224
      6.6.2.1. Income earned by the establishment or site 224
      6.6.2.2. The actual functions and risk approach 226
      6.6.2.3. The effectively connected test 226
   6.6.3. Tax treaties 228
6.7. Computation of taxable income 230
   6.7.1. Basic principles 230
      6.7.1.1. Net profit 230
      6.7.1.2. Accounting principles 230
      6.7.1.3. The arm’s length principle 230
   6.7.2. Revenue inclusions 231
      6.7.2.1. Accrual basis of accounting 231
      6.7.2.2. Attribution of revenues 232
   6.7.3. Expense deductions 232
      6.7.3.1. General deductibility test 232
      6.7.3.2. Representative offices 235
      6.7.3.3. Petroleum projects 235
   6.7.4. Deemed profit methods 236
6.8. Administration 237

Chapter 7: Non-Resident Companies Investing in China 239

7.1. Introduction 239
7.2. Investing in China 240
   7.2.1. Overview 240
   7.2.2. Equity versus debt investments 240
   7.2.3. Equity investments 241
      7.2.3.1. Foreign direct investment 241
      7.2.3.2. Portfolio investments 242
      7.2.3.3. Divestments (exit from China) 243
   7.2.4. Debt investments 244
   7.2.5. Leasing and licensing 245
7.3. System design 245
   7.3.1. Withholding tax 245
   7.3.2. Legislative scheme 246
   7.3.3. Characterization of income 247
   7.3.4. Territorial source of income 248
   7.3.5. Timing of taxation 249
   7.3.6. Rates of withholding tax 249
7.3.6.1. Domestic rate 249
7.3.6.2. Treaty rates for dividends 249
7.3.6.3. Treaty rate for interest 251
7.3.6.4. Treaty rates for royalties 251
7.3.6.5. No treaty rate for capital gains 252

7.3.7. Policy issues 252

7.3.8. Notable features 253
7.3.8.1. Capital gains withholding tax 253
7.3.8.2. Rent and net basis election 254
7.3.8.3. No branch profits tax 254
7.3.8.4. Anti-abuse measures 255

7.4. Dividends 256
7.4.1. Source rule 256
7.4.2. “Dividends” defined 257
7.4.2.1. Domestic law 257
7.4.2.2. Tax treaties 259

7.5. Interest 259
7.5.1. Source rule 259
7.5.2. “Interest” defined 260
7.5.2.1. Domestic law 260
7.5.2.2. Tax treaties 261

7.6. Rent and royalties 261
7.6.1. Source rules 261
7.6.2. Common nature of rent and royalties 261
7.6.3. “Rent” defined under domestic law 262
7.6.3.1. Payments for the use of tangible property 262
7.6.3.2. Distinguished from service fees 264
7.6.4. “Royalties” defined under domestic law 264
7.6.4.1. Extensive meaning 264
7.6.4.2. Intangible property rights (intangibles) 265
7.6.4.3. Know-how and unpatented technologies 267
7.6.4.4. Other licensed rights 268
7.6.4.5. Technical services 269
7.6.4.6. Bundled transactions 270
7.6.5. “Royalties” defined under tax treaties 271
7.6.5.1. Broad meaning 271
7.6.5.2. Technical fees 272

7.7. Gains from transfer of property 273
7.7.1. “Taxable Chinese property” and source rules 273
7.7.2. Immovable property 274
7.7.2.1. “Immovable property” defined 274
7.7.2.2. Situs of property 275
7.7.3. Movable property and other property 275
7.7.4. Shares and equity investments: Overview 276
  7.7.4.1. Shares and their value 276
  7.7.4.2. Transfer (alienation) 277
7.7.5. Shares of land-rich companies 277
  7.7.5.1. Source determined by situs of immovable property 277
  7.7.5.2. Tracing share value to immovable property 279
7.7.6. Shares of substantial shareholders 280
  7.7.6.1. Shares of non-land-rich companies 280
  7.7.6.2. 25% shareholding 280
  7.7.6.3. Look-back period 282
7.7.7. Computation of gain 283
  7.7.7.1. Proceeds of transfer (alienation) 283
  7.7.7.2. Cost basis 283
7.8. Administration and enforcement 285
  7.8.1. General issues 285
  7.8.2. Withholding of tax from service fees 287
  7.8.3. Information reporting on indirect transfers 287

Chapter 8: Foreign-Invested Companies and Partnerships: Special Tax Issues 289

  8.1. Introduction 289
  8.2. Foreign-invested companies and partnerships 290
    8.2.1. Foreign-invested companies 290
      8.2.1.1. Traditional foreign-invested companies 290
      8.2.1.2. Special purpose foreign-invested enterprises 291
      8.2.1.3. Listed companies 292
    8.2.2. Foreign-invested partnerships 294
      8.2.2.1. Emerging form of investment 294
      8.2.2.2. General partnerships 294
      8.2.2.3. Limited partnerships 295
      8.2.2.4. Special general partnerships 296
  8.3. System design 297
    8.3.1. Taxation of foreign-invested companies and their shareholders 297
      8.3.1.1. General rules 297
      8.3.1.2. Special rules 297
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.3.1.3</td>
<td>Corporate reorganizations</td>
<td>298</td>
</tr>
<tr>
<td>8.3.1.4</td>
<td>Special reorganizations</td>
<td>300</td>
</tr>
<tr>
<td>8.3.2</td>
<td>Taxation of foreign-invested partnerships and non-resident partners</td>
<td>303</td>
</tr>
<tr>
<td>8.3.3</td>
<td>Hybrid entities</td>
<td>303</td>
</tr>
<tr>
<td>8.3.4</td>
<td>Tax policy issues</td>
<td>303</td>
</tr>
<tr>
<td>8.4</td>
<td>Foreign-invested companies: Special issues</td>
<td>304</td>
</tr>
<tr>
<td>8.4.1</td>
<td>Thin capitalization</td>
<td>304</td>
</tr>
<tr>
<td>8.4.1.1</td>
<td>Debt bias and capitalization of foreign-invested companies</td>
<td>304</td>
</tr>
<tr>
<td>8.4.1.2</td>
<td>The thin capitalization rule</td>
<td>306</td>
</tr>
<tr>
<td>8.4.1.3</td>
<td>Debt-to-equity ratio</td>
<td>307</td>
</tr>
<tr>
<td>8.4.1.4</td>
<td>Saving clauses</td>
<td>311</td>
</tr>
<tr>
<td>8.4.1.5</td>
<td>Constructive dividends</td>
<td>311</td>
</tr>
<tr>
<td>8.4.2</td>
<td>Limitations on tax-deductible charges</td>
<td>312</td>
</tr>
<tr>
<td>8.5</td>
<td>Foreign shareholders: Special issues</td>
<td>312</td>
</tr>
<tr>
<td>8.5.1</td>
<td>Distributions of corporate profits</td>
<td>312</td>
</tr>
<tr>
<td>8.5.1.1</td>
<td>Conditions for distribution</td>
<td>312</td>
</tr>
<tr>
<td>8.5.1.2</td>
<td>Withholding tax on dividends</td>
<td>313</td>
</tr>
<tr>
<td>8.5.2</td>
<td>Tax-free recovery of capital</td>
<td>314</td>
</tr>
<tr>
<td>8.5.3</td>
<td>Liquidation payments</td>
<td>315</td>
</tr>
<tr>
<td>8.5.4</td>
<td>Exit from investments in FICs</td>
<td>316</td>
</tr>
<tr>
<td>8.6</td>
<td>Partnerships</td>
<td>317</td>
</tr>
<tr>
<td>8.6.1</td>
<td>Flow-through entities</td>
<td>317</td>
</tr>
<tr>
<td>8.6.2</td>
<td>Income or loss of the partnership</td>
<td>319</td>
</tr>
<tr>
<td>8.6.2.1</td>
<td>The partnership as an accounting unit</td>
<td>319</td>
</tr>
<tr>
<td>8.6.2.2</td>
<td>Application of enterprise income tax rules</td>
<td>320</td>
</tr>
<tr>
<td>8.6.2.3</td>
<td>Allocation of income to partners</td>
<td>321</td>
</tr>
<tr>
<td>8.6.2.4</td>
<td>No allocation of partnership’s losses</td>
<td>322</td>
</tr>
<tr>
<td>8.6.3</td>
<td>Income of foreign partners</td>
<td>323</td>
</tr>
<tr>
<td>8.6.3.1</td>
<td>Character of income from a partnership</td>
<td>323</td>
</tr>
<tr>
<td>8.6.3.2</td>
<td>General partners</td>
<td>324</td>
</tr>
<tr>
<td>8.6.3.3</td>
<td>Limited partners</td>
<td>326</td>
</tr>
<tr>
<td>8.6.4</td>
<td>Partnership interest</td>
<td>326</td>
</tr>
<tr>
<td>8.6.4.1</td>
<td>Partnership interest as property</td>
<td>326</td>
</tr>
<tr>
<td>8.6.4.2</td>
<td>Tax basis</td>
<td>326</td>
</tr>
<tr>
<td>8.6.4.3</td>
<td>Transfer of partnership interest</td>
<td>327</td>
</tr>
<tr>
<td>8.6.5</td>
<td>Reorganizations</td>
<td>328</td>
</tr>
</tbody>
</table>
Chapter 9: Resident Companies Investing Overseas

9.1. Introduction 329

9.2. Outbound investments 329
9.2.1. “Going global” strategy 329
9.2.2. Earning foreign income directly 331
   9.2.2.1. Business projects 331
   9.2.2.2. Passive investments 331
9.2.3. Earning foreign income indirectly 331

9.3. System design 333
9.3.1. Legislative scheme 333
9.3.2. Residence-based taxation 335
   9.3.2.1. Taxation of foreign income 335
   9.3.2.2. Double taxation and foreign tax credit rules 336
   9.3.2.3. Tax deferral and CFC rules 337
9.3.3. Policy objectives 338
   9.3.3.1. Capital import neutrality 338
   9.3.3.2. Capital export neutrality 338
   9.3.3.3. China’s national tax interest 339
9.3.4. Notable features 339
   9.3.4.1. Consistent with the international norm 339
   9.3.4.2. Incomplete relief from international double taxation 340
   9.3.4.3. Potential Chinese double taxation 340

9.4. Double taxation 341
9.4.1. Chinese taxation of foreign income 341
9.4.2. Foreign tax on business income 342
9.4.3. Foreign withholding taxes on investment income 342
9.4.4. Economic double taxation of dividends from foreign subsidiaries 343

9.5. Direct foreign tax credit 344
9.5.1. Overview 344
9.5.2. Eligibility of taxpayers 344
9.5.3. Creditable taxes 344
   9.5.3.1. Nature of “income tax” 344
   9.5.3.2. Taxes on foreign-source income 345
   9.5.3.3. Taxes actually paid 346
   9.5.3.4. Foreign tax spared 347
9.5.4. Computation rules 347
   9.5.4.1. Jurisdiction-by-jurisdiction computation 347
   9.5.4.2. Allocation of common expenses 348
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.5.4.3</td>
<td>Grossing-up of foreign withholding taxes</td>
</tr>
<tr>
<td>9.5.5</td>
<td>Limitations</td>
</tr>
<tr>
<td>9.5.5.1</td>
<td>Limitation by Chinese tax rate</td>
</tr>
<tr>
<td>9.5.5.2</td>
<td>Limitation by jurisdiction</td>
</tr>
<tr>
<td>9.5.5.3</td>
<td>Excessive foreign taxes</td>
</tr>
<tr>
<td>9.5.5.4</td>
<td>Exceptions for foreign oil and gas activities</td>
</tr>
<tr>
<td>9.5.6</td>
<td>Simplified method</td>
</tr>
<tr>
<td>9.6.1</td>
<td>Dividends from foreign subsidiaries</td>
</tr>
<tr>
<td>9.6.2</td>
<td>Eligible foreign corporations</td>
</tr>
<tr>
<td>9.6.2.1</td>
<td>20% equity percentage</td>
</tr>
<tr>
<td>9.6.2.2</td>
<td>Lower-tier subsidiaries</td>
</tr>
<tr>
<td>9.6.3</td>
<td>Eligible foreign taxes</td>
</tr>
<tr>
<td>9.6.3.1</td>
<td>Foreign corporate income tax and dividend withholding taxes</td>
</tr>
<tr>
<td>9.6.3.2</td>
<td>Three-tier corporate cone</td>
</tr>
<tr>
<td>9.6.4</td>
<td>Limitation on credits</td>
</tr>
<tr>
<td>9.6.4.1</td>
<td>Per-jurisdiction limitation</td>
</tr>
<tr>
<td>9.6.4.2</td>
<td>Grossing-up foreign corporate income taxes</td>
</tr>
<tr>
<td>9.6.4.3</td>
<td>“Mixer”</td>
</tr>
<tr>
<td>9.7.1</td>
<td>Problem of tax deferral</td>
</tr>
<tr>
<td>9.7.1.1</td>
<td>Deferring Chinese tax</td>
</tr>
<tr>
<td>9.7.1.2</td>
<td>The “good” and “bad” deferrals</td>
</tr>
<tr>
<td>9.7.2</td>
<td>Guideposts of the controlled foreign corporation regime</td>
</tr>
<tr>
<td>9.7.3</td>
<td>Targeted foreign corporations</td>
</tr>
<tr>
<td>9.7.3.1</td>
<td>Non-resident corporations</td>
</tr>
<tr>
<td>9.7.3.2</td>
<td>Control by Chinese residents</td>
</tr>
<tr>
<td>9.7.3.3</td>
<td>Lower-tax jurisdictions</td>
</tr>
<tr>
<td>9.7.4</td>
<td>Targeted (tainted) income</td>
</tr>
<tr>
<td>9.7.4.1</td>
<td>Attributable income</td>
</tr>
<tr>
<td>9.7.4.2</td>
<td>Active business income exception</td>
</tr>
<tr>
<td>9.7.5</td>
<td>Bona fide commercial purpose exception</td>
</tr>
<tr>
<td>9.7.6</td>
<td>Attributing income to resident shareholders</td>
</tr>
<tr>
<td>9.7.6.1</td>
<td>Deemed dividends and foreign tax credit</td>
</tr>
<tr>
<td>9.7.6.2</td>
<td>Subsequent dividends</td>
</tr>
<tr>
<td>9.7.6.3</td>
<td>Subsequent sale of CFC shares</td>
</tr>
</tbody>
</table>
Chapter 10: Transfer Pricing

10.1. Introduction

10.2. The Chinese context of transfer pricing
10.2.1. A growing issue
10.2.2. China in the global value chain
10.2.2.1. Value chain analysis
10.2.2.2. Made in China
10.2.2.3. Sold in China
10.2.2.4. Created in China
10.2.3. Policy concerns

10.3. The transfer pricing regime
10.3.1. Overview
10.3.2. Transfer pricing rules
10.3.2.1. Statutory provisions
10.3.2.2. SAT guidance
10.3.2.3. Influence of the OECD Transfer Pricing Guidelines
10.3.3. Related-party relationships
10.3.3.1. 25% of equity
10.3.3.2. De facto tests
10.3.4. Transfer pricing transactions
10.3.4.1. Cross-border transactions
10.3.4.2. Permanent establishment
10.3.5. Information reporting
10.3.5.1. Burden of proof
10.3.5.2. Annual and country-by-country reporting
10.3.5.3. Contemporaneous documentation
10.3.5.4. Master file
10.3.5.5. Local file
10.3.5.6. Special documentation
10.3.6. Transfer pricing administration
10.3.6.1. In-charge tax authority
10.3.6.2. Audit targets
10.3.6.3. Power to demand information
10.3.6.4. Profitability monitoring systems
10.3.6.5. Joint Review Panel
10.3.7. Dispute resolution
10.3.7.1. Domestic processes 400
10.3.7.2. Mutual agreement procedure 400
10.3.8. The ZFC case 401
10.3.8.1. Overview and facts 401
10.3.8.2. Transfer pricing investigation 402
10.3.8.3. Choice of transfer pricing method 404
10.3.8.4. Transfer pricing adjustments 404
10.3.8.5. Administrative and judicial reviews 404
10.4. The arm’s length principle 405
10.4.1. Statements of the principle 405
10.4.2. Interpretation 407
10.4.2.1. Arm’s length price 407
10.4.2.2. Arm’s length profit 408
10.4.2.3. Value creation 409
10.5. Transfer pricing methods 410
10.5.1. Reasonable methods of adjustments 410
10.5.2. Comparability analysis 411
10.5.2.1. Scope 411
10.5.2.2. Comparables 412
10.5.2.3. Adjustments to comparables 413
10.5.3. Location-specific advantages 414
10.5.3.1. Concept 414
10.5.3.2. Relevance in comparability analysis 415
10.5.3.3. Relevance in profit allocation 416
10.5.4. Comparable uncontrolled price method 416
10.5.4.1. Comparing prices 416
10.5.4.2. High standard of comparability 417
10.5.5. Resale price and cost plus methods 418
10.5.5.1. Comparing gross margins 418
10.5.5.2. Resale price method 419
10.5.5.3. Cost plus method 420
10.5.6. Transactional net margin method 421
10.5.6.1. Comparing net profit margin 421
10.5.6.2. Enterprises without significant intangibles 422
10.5.6.3. Location savings 423
10.5.7. Profit splits 425
10.5.7.1. Two-sided method 425
10.5.7.2. Two ways of splitting 426
10.5.7.3. Increasing use of profit splits 427
10.5.8. Other methods 428
10.5.8.1. Legal basis 428
Chapter 11: GAAR and BEPS

11.1. Introduction 457
11.2. The problem of tax avoidance and BEPS 458
  11.2.1. Tax avoidance 458
  11.2.2. BEPS as cross-border tax avoidance 459
  11.2.3. Main causes of BEPS 462
    11.2.3.1. Globalization and tax planning 462
    11.2.3.2. Deficiencies in national tax laws 463
    11.2.3.3. Tax sovereignty and tax havens 464
    11.2.3.4. Gaps among national tax systems 466
    11.2.3.5. Double tax agreements and triple non-taxation 466
  11.2.4. Policy implications for China 471
    11.2.4.1. Tax revenue loss 471
    11.2.4.2. Inter-taxpayer fairness 471
    11.2.4.3. Inter-nation fairness 472
11.3. China and the BEPS Project 473
11.4. The GAAR 475
  11.4.1. Measure of last resort 475
  11.4.2. The rule 475
    11.4.2.1. Legislative provision 475
    11.4.2.2. Methods of GAAR adjustment 476
    11.4.2.3. Penalties 477
  11.4.3. Tax avoidance arrangements 477
    11.4.3.1. “Arrangement” and “series of transactions” 477
    11.4.3.2. Without reasonable business purposes 478
  11.4.4. Abuse 479
    11.4.4.1. Concept and types 479
    11.4.4.2. Abuse of corporate form 480
  11.4.5. Offshore indirect transfers: A Chinese BEPS problem 481
    11.4.5.1. Avoidance of Chinese capital gains tax 481
    11.4.5.2. Applying the GAAR 482
    11.4.5.3. Consequences of GAAR adjustment 485
    11.4.5.4. Interaction with tax treaties 485
11.5. Implementing the BEPS recommendations 487
  11.5.1. Overview 487
    11.5.1.1. The BEPS recommendations 487
    11.5.1.2. China’s prioritization of BEPS recommendations 487
11.5.2. Treaty-based measures 488
   11.5.2.1. Preventing treaty abuse 488
   11.5.2.2. Artificial PE status 491
   11.5.2.3. Multilateral instrument 494
11.5.3. CFC rules 494
11.5.4. Transparency and documentation 495
11.5.5. Transfer pricing 496
   11.5.5.1. Economic substance versus paper reality 496
   11.5.5.2. Profit split and value contribution methods 496
11.5.6. Location-specific advantages (LSAs) 497
   11.5.6.1. China’s innovative approach 497
   11.5.6.2. Divergent views from the BEPS Project on location rent 498
   11.5.6.3. Location rent: Local or not? 501
   11.5.6.4. Future direction 503
11.6. Conclusions 504

Appendix A: Consolidated EIT Law and EIT Regulations (in English and Chinese) 589

Appendix B: Overview of the Individual Income Tax 601

Appendix C: List of Chinese Double Tax Agreements/Arrangements 605

Appendix D: Rates of Withholding Tax under Tax Treaties 611

References 629

Index 629
This is the second time that I have had the opportunity to provide a foreword for a book by Jinyan Li. The first time was in 2003; I am pleased and honoured to be asked to say a few words about her latest book.

I have known Jinyan since 1991. She is a former colleague, a friend and a collaborator on several articles and projects, most recently on projects for the United Nations. Jinyan is a remarkable person and is at the peak of a remarkable career. She arrived in Canada from China in 1985 as a graduate student and only a few years later was teaching tax law with me at a Canadian law school. She was a prolific scholar from the outset – her first book, *Taxation of Foreign Investment in the People’s Republic of China* (with Alex Easson), was published in 1989, and a second, *Taxation in the People’s Republic of China*, in 1991. However, Jinyan did not want to be known solely as an expert on Chinese tax law; she was determined to become an expert in Canadian and international tax law as well, and in this she has succeeded brilliantly. She is recognized among the front rank of comparative tax researchers, the author of *International Taxation in the Age of Electronic Commerce: A Comparative Study* (2003) and a co-author of the leading text on Canadian income tax law (P.W. Hogg, J.E. Magee and J. Li, *Principles of Canadian Income Tax Law*, now in its 7th edition). Her expertise, particularly with respect to tax reform in China, has led to consultancies with the International Monetary Fund (IMF), the OECD and the United Nations.

The present book deals with international taxation in China, focusing almost exclusively on the enterprise income tax (EIT) and tax treaties. It is an excellent reference work for those unfamiliar with Chinese international tax, and the standard topics – technical aspects of the EIT and China’s treaties, inbound and outbound rules, withholding taxes, transfer pricing, tax avoidance, and base erosion and profit shifting (BEPS) – are thoroughly covered. The author also describes the approach of Chinese courts to the interpretation and application of tax law and the crucial role played by the State Administration of Taxation (SAT). The roles of Chinese courts and the SAT are significantly different from the role of their counterparts in Western countries, and it is critically important for investors in China and their professional advisers to understand how they operate.

But the book is not merely descriptive. The author has taken a comparative, contextual approach to her subject. China has had an income tax law
only since 1980, and the EIT is a “legal transplant” – that is, most of its technical features and principles have been borrowed directly from the international tax laws of other countries. However, the Chinese legal and institutional culture remains very distinct. Throughout the book, the author demonstrates how this cultural context affects the way the EIT works in practice (as she puts it, “any gap between tax rules on paper and tax rules in action may be quite significant”). She also explains in detail the tax policy aspects of the EIT, noting that with China’s rise as a world economic power, it is now in a position to influence developments in international tax, as well as to be influenced by them.

This book benefits from Jinyan’s long experience as a tax academic and reflects her mastery of both Chinese and international tax law. The book’s frequent comparisons of the Chinese approach to international tax with those of other countries and emphasis on the how the EIT and China’s tax treaties actually work in practice make it a valuable tool for tax professionals. It is well written and refreshingly free from academic jargon. In sum, this book is a mature work by a scholar at the top of her game. For anyone with an interest in Chinese international taxation, the book is rewarding on several levels; for anyone with a professional need to understand Chinese international tax policy and practice, the book should be your “go-to” source.

Brian J. Arnold  
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Toronto, Canada  
March 2016
Preface

Writing this book has been a most enjoyable experience. I am amazed by how much the Chinese tax system has matured and how sophisticated Chinese tax scholarship has become over the past two decades. I felt empowered to tackle the subject as a “hybrid”: a Chinese-educated, Canadian-trained and internationally exposed tax researcher. Writing this book has further made me realize that the world of international taxation may be quite simple at a high level but is very complex on the ground. After all, tax law is merely an instrument, and its functions differ based on the underlying cultural values, national interests and policy objectives of different countries. I could not believe my good fortune in being able to work with Chinese international tax materials and appreciating (at least I think) where they are coming from. I have tried to function as a “conduit” between the Chinese international tax system and those of the West.

Writing this book has also been a humbling experience. I learned how much more I need to learn. I am also in awe of the power of modern technologies that bring so much tax research information (both in Chinese and in English) to my fingertips. When I wrote my books on Chinese taxation in the late 1980s and early 1990s, I had to travel to China for research. This time, most of my “travels” were online.

This book deals with international taxation in China, focusing on the enterprise income tax (EIT) and tax treaties. This is largely because the international aspects of the individual income tax (IIT) are rather simplistic and are likely to be reformed in the near future. The international aspects of the EIT reflect the Chinese thinking on international taxation. Even though the base erosion and profit shifting (BEPS) initiatives will lead to some changes, these changes will reinforce the fundamental values and principles of the current system. For that reason, this book takes a contextual approach to presenting the technical materials.

This book covers the standard topics of international taxation. In order to situate the technical discussions, the book explains the Chinese context in terms of the meaning of tax law, the role of the courts, the functions of the State Administration of Taxation (SAT) and the investment and business environment for inbound and outbound transactions. To make the book accessible to readers, I have included examples, tables and a consolidated presentation of the EIT Law and EIT Implementation Regulations. Research sources and references are in the footnotes and appendixes.
The research conducted for this book is part of a larger tax transplant project (with Thaddeus Hwong) funded by the Social Sciences and Humanities Research Council (SSHRC) of Canada. A team of excellent student researchers assisted me in this project. Stephen Xiaoyi Ji, Christina Huaying Li, Leo Xin Xu and Robert Watkins assisted with research. Nicholas McIsaac and Patrick Egit edited earlier drafts of the manuscript and shared with me their enthusiasm and good humour. I owe special thanks to Murphy Lai Jiang, who carefully tracked down the Chinese original of each source cited in the footnotes, double checked the English translation and ensured compliance with IBFD publication style and formatting.

My understanding of the Chinese tax system has benefited greatly from the input of many individuals, including a number from the SAT, as among them JIN Dongsheng, LIAO Tizhong, TAN Heng, WANG Yukang, ZHANG Zhiyong and XU Shanda. It was enriched from reading the work of such scholars as CUI Wei, LIU Jianwen, LIAO Yixin, QIU Dongmei, TANG Gongliang and XIONG Wei. In addition, students who took my Chinese International Taxation course at the University of Sydney and Tsinghua University asked many challenging questions, which stimulated further research. State Shi, a practitioner of Chinese tax and a former student, kindly reviewed some of the draft chapters.

The best way to learn is to teach. Over the years, I have participated in the training of Chinese tax officials and consultancy missions with the IMF, the OECD, the Asian Development Bank and the United Nations. These were all extremely valuable learning opportunities for me, even though I was the “teacher” and “expert”. I learned to appreciate the Chinese way of thinking about taxation and international tax relations, the difference between “rule by law” and “rule of law” and the implications of this difference for the tax system. I also observed first-hand the impressive development of the tax system and tax talent in China. I want to thank Victor Thuronyi of the IMF for the opportunity of serving my first mission to China, in 1992.

I am privileged to have IBFD publish this book. I have been associated with a number of IBFD publications in the past and rely on its products in my research. Jane Kerr of IBFD has been extremely helpful in setting the framework and the “tone” for this book and, more importantly, in tolerating my repeated delays in finishing the manuscript. I want to thank her. I also want to thank an anonymous reviewer who provided constructive feedback on an earlier draft. Marek Kruk-Strzelecki, Werner Kapp and...
Chris McLaren did a wonderful job editing the manuscript and saving me from some embarrassing errors.

Any work of this nature and size is bound to have some errors. I remain solely responsible for them.

Brian Arnold is a mentor and friend. I thank him for giving me an opportunity to become his colleague in 1991 and introducing me to the wonderful world of international taxation, and I cannot thank him enough for writing the Foreword for this book. Neil Brooks supervised my doctoral dissertation and has been an inspiration and role model for me ever since. I want to dedicate this book to him.

My joy in writing this book is vicariously shared by my husband, Alex, and my daughter, Joan-Shiao, as my progress (or lack of it) was often part of our dinner conversations. They have been great cheerleaders. Without their love and support, I would not have had enjoyed it that much.

Jinyan Li
Toronto, Canada
April 2016
Sample chapter
Chapter 1

Introduction

1.1. Purpose of this book

This book is about international taxation in the People’s Republic of China (“China”).¹ It examines the international aspects of the enterprise income tax (EIT)² system and Chinese double tax agreements or arrangements (DTAs). It does not discuss in any detail the individual income tax (ITT), although DTA provisions concerning individual incomes are explained in chapter 5.

This book covers the standard topics of international taxation, ranging from tax jurisdiction to transfer pricing and base erosion and profit shifting (BEPS). It is intended to provide readers with a rich, contextualized analysis of technical and policy features of the Chinese domestic and treaty rules as well as a sense of their practical implications.

Readers of this book are assumed to be tax professionals, students, researchers or policy makers. Chinese international taxation is important for various reasons. The rise of China as a leading capital importer and capital exporter means that the Chinese tax treatment of cross-border transactions is a real, practical issue. China has transformed from being a norm-taker (an importer of international tax norms) to being a norm-shaker (a meaningful contributor to the reform of such norms, as evidenced in the G20/OECD BEPS Project). Such transformation makes it imperative for the international community to better appreciate where China is coming from, and perhaps more importantly, where China might be heading in terms of defining its claim over the international income tax base. After all, the Chinese international tax rules regulate not only the relationship between tax-

¹ This book does not cover Hong Kong, Macau or Taiwan, because they are regarded as “foreign” jurisdictions for purposes of domestic tax laws and tax treaties. China has entered into a tax arrangement with Hong Kong and Macau and negotiated one with Taiwan. For further discussion, see chs. 4 and 5.
payers and the Chinese government but also the relationship between China and other countries. In light of China’s rising economic (and political) influence and the Chinese approach to relationships, which is different from the Western approach in many respects, one ignores China at one’s peril.

1.2. Structure and content

1.2.1. Structure

There are 11 chapters in this book. Chapters 2 and 3 lay the foundation for the rest of the book. Chapters 4 and 5 discuss tax treaties and treaty interpretation. Chapters 6-9 examine the inbound and outbound rules. Chapters 10 and 11 analyse two main anti-avoidance rules – transfer pricing and the general anti-avoidance rule (GAAR) – and China’s efforts in reforming these rules in light of the G20/OECD BEPS recommendations.3

1.2.2. Overview and tax treaties

Chapter 2 discusses the EIT as a policy instrument in terms of its technical design, its role in raising revenue and regulating economic activities and its application by the State Administration of Taxation (SAT) and the courts. It also discusses the somewhat unique relationship between taxpayers and the tax authorities and processes of resolving tax disputes. More specifically, chapter 2 highlights the role of the SAT and Chinese courts in the EIT system. Chinese legal, institutional and cultural background is offered to emphasize the importance of Chinese context for applying those rules that may appear familiar to readers. It then presents the CIMFRA case4 to illustrate this point.

Chapter 3 provides an overview of the main features of the EIT in general and the international tax aspects in particular. It highlights the hybrid nature of the EIT: transplants of foreign rules and local Chinese features.

Chapter 4 presents a comprehensive review of the evolution of the treaty network, the relationship between tax treaties and domestic law, and treaty

3. For final BEPS reports prepared by the OECD and approved by G20 summit, see OECD, BEPS 2015 Final Reports (OECD 2015). China’s reaction to BEPS measures is discussed in ch. 10 and ch. 11.
4. For a discussion of the CIMFRA case, see ch. 2.
interpretation principles and practices. It discusses two important inter- national tax cases in China – *PanAmSat*\(^5\) and *Donghwa*.\(^6\)

Chapter 5 provides a high-level discussion of the provisions of Chinese DTAs and the SAT’s interpretation of these provisions. It also examines the anti-abuse rules in the DTAs and the SAT’s practices.

### 1.2.3. Inbound rules

Chapters 6 and 7 look at the inbound rules. As with chapters 8 and 9, they explain the substantive rules and identify the design features, legislative scheme and policy, notable Chinese characteristics, and the regulatory and business context for the application of these rules.

Chapter 6 focuses on non-resident enterprises doing business in China through a physical presence (such as a business establishment, project site or business agent). It provides an in-depth analysis of the permanent establishment and attribution of profit provisions of DTAs.

Chapter 7 is about withholding taxes on payments to non-resident enterprises. These payments include dividends, interest, royalties and certain service fees. In addition, Chinese-source gains from the transfer of property are subject to withholding tax. Treaty relief under articles 10, 11, 12 and 13 of DTAs is discussed. Chapter 7 also discusses anti-treaty abuse measures in the DTAs and the GAAR in the context of offshore indirect transfers.

### 1.2.4. Outbound rules

Chapter 8 focuses on the taxation of resident companies, including foreign-invested companies (FICs), and the tax treatment of foreign-invested partnerships (FIPs). FICs and FIPs are the dominant vehicles for foreign direct investment (FDI) in China. Technically, FICs are residents of China for EIT purposes. Because of the foreign equity ownership, FICs are subject to certain specific rules, most of which are anti-avoidance rules, such as transfer pricing rules, thin capitalization rules and the GAAR. FIPs are flow-through entities for EIT purposes, and the applicable tax rules are

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5. For a discussion of the *PanAmSat* case, see ch. 4.
6. For a discussion of the *Donghwa* case, see ch. 4.
currently less sophisticated. The chapter explores the taxation of the entities as well as the non-resident investors.

Chapter 9 discusses the taxation of resident companies earning foreign-source income. It notes the fact that the outbound rules are less sophisticated than the inbound rules. The main reason is that, until recently, China was a net capital importer and emphasized source-based taxation. The outbound rules examined in chapter 9 are the direct and indirect foreign tax credit rules and controlled foreign corporation (CFC) rules. The foreign tax credit rules provide relief from international double taxation, while the CFC rules prevent international tax avoidance. These rules are currently being strengthened in efforts to implement the BEPS recommendations. The chapter also presents the only court decision on transfer pricing – the ZFC case.  

1.2.5. Transfer pricing, GAAR and BEPS

Chapter 10 is devoted to transfer pricing. Transfer pricing is an area currently undergoing significant changes. The chapter explains the somewhat unique Chinese approach to transfer pricing. In addition to discussing the transfer pricing issues and the transfer pricing methods, this chapter discusses why the SAT regards location-specific advantages (LSAs) as relevant in transfer pricing assessment and how the SAT identifies, evaluates and allocates profits to intangibles. It also presents the proposed country-by-country (CbC) reporting measures. The discussions make reference to a Public Consultation Draft of Special Tax Adjustment Measures released by the SAT in September 2015.

Chapter 11 discusses the GAAR and its significance in the Chinese international tax system. It examines the design of the GAAR and the SAT's interpretation in specific tax avoidance scenarios. Some of the discussion revisits the importance of Chinese legal, institutional and cultural contexts, as the application of the GAAR is closely linked to these concepts.

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7. For a discussion of the ZFC case, see ch. 10.
Both chapters 10 and 11 address the issue of BEPS and China’s localization measures. Transfer pricing rules and the GAAR are the main legal instruments for the SAT to combat BEPS problems. At the time of writing (April 2016), the SAT has made bold moves in making China’s concerns known to the global community while taking concrete steps in protecting China’s tax base and national interest.

1.3. Analytical approach

1.3.1. An outsider’s approach

This book is written from the perspective of an “outsider” who has been studying Chinese tax law since the mid-1980s and played a very modest role in its development. This perspective is informed by the analytical framework of comparative law and legal transplants. It is shaped by the author’s innate instinct of looking at things in their context and in light of their original intent and purpose. This perspective has also benefited tremendously from three decades of teaching and writing about Canadian and international tax law.

The study of tax transplants or comparative tax law is relatively recent. Largely owing to language barriers and the complexity of tax laws, com-
parative tax law research is “torturous”.\textsuperscript{13} It is perhaps more so in respect of Chinese tax laws for both Chinese and non-Chinese speakers. For Chinese speakers, reading international tax materials is like reading a foreign language, because legal transplants resulted in the translation of a large amount of foreign rules and terms literally into Chinese. The words are familiar, but the concepts are foreign. For non-Chinese speakers, studying Chinese tax law is not easy because of the lack of materials published in English.

This book suffers much less from these barriers, although it is not immune to them.\textsuperscript{14} The author approaches the Chinese tax system with sufficient knowledge about foreign tax rules and understands the tax language, whether it is Chinese or English.

1.3.2. Analysing the EIT as a legal transplant

1.3.2.1. Evidence of legal transplant

The EIT is largely a legal transplant. “Legal transplant” is a term coined by Alan Watson to refer to the “moving of a rule or a system of law from one country to another, or from one people to another”.\textsuperscript{15} There is a rich body of literature documenting the evidence of legal transplants as the “most fertile source of legal change in the world”.\textsuperscript{16}

The idea of an income tax was transplanted into China in the late 1920s,\textsuperscript{17} but the first income tax law was enacted in 1980.\textsuperscript{18} China’s traditional tax
system\textsuperscript{19} originated in 2023 BC, when the first state was created. It was home-grown until after the first Opium War, in 1842.\textsuperscript{20} After the Opium Wars, Western influences became a factor and China introduced a toll charge (\textit{li jin}), stamp duties and customs duties. In 1928, income tax legislation was drafted, but never enacted, by the nationalist (or Guomindang) government. All taxes were abolished and replaced with a new system soon after the establishment of the People’s Republic. The function of taxation diminished when the socialist economic structure was entrenched and private ownership of property and entrepreneurship were limited. During the late 1970s, when China embarked on the path of economic reforms, taxation was revived when non-public actors were allowed to operate in the economy and some individuals were allowed to become rich. A reference to income tax was made in the 1979 Chinese-Foreign Equity Joint Venture Law.\textsuperscript{21}

The Chinese-foreign equity joint venture income tax (EJVIT)\textsuperscript{22} was introduced in 1980, and it is the seed of the current EIT. The EJVIT includes features found in income tax laws of other countries but is not a carbon copy of any specific country’s law. The structure of the EJVIT law and many key concepts reflect international tax norms.\textsuperscript{23} American tax scholars such as Harvey Dale, Oliver Oldman, Stanley Surrey, Richard Pomp and Jerome Cohen were among the early international experts who provided training to Chinese officials.\textsuperscript{24} Evidence of their teachings can be found in the EJVIT law. Subsequent income tax laws, especially the 2007 EIT Law, continue to include foreign tax principles, norms, concepts and rules. As such, the EIT is a hybrid of home-grown and transplanted rules.

\textsuperscript{19} Traditional taxes include land taxes and excises on salt, tea, liquor and other goods.
\textsuperscript{21} CN: 中华人民共和国中外合资经营企业法 [Law of the People’s Republic of China on Chinese-Foreign Equity Joint Ventures] 1979 (amended 1990, 2001). It states in article 8: “From the gross profit earned by an equity joint venture, after payment of the venture’s income tax in accordance with the provisions of the tax laws of the People’s Republic of China … the net profit shall be distributed to the parties to the venture in proportion to their respective contributions to the registered capital.”
\textsuperscript{22} EJVIT Law, \textit{supra} n. 18.
\textsuperscript{23} See Easson & Li, \textit{supra} n. 9.
Evidence of tax transplants goes beyond formal laws. The interpretation of domestic laws by reference to international tax norms and best practices is often adopted. One example is the Special Tax Adjustment Measures (Consultation Draft). This document reflects the international tax norms on transfer pricing, thin capitalization and controlled foreign corporation rules. China’s extensive tax treaty network also encourages the convergence of Chinese tax laws with those of other countries.

1.3.2.2. The common core of international taxation

The EIT contains tax rules that are viewed as “autonomous”, capable of being incorporated into any country’s corporate income tax system, and thus form a common core of an international tax regime. As explained further in chapter 2, the architectural design and technical features of the EIT are in line with the international norm. For example, a corporation is taxed as a separate person, a standard international norm. The scope of Chinese tax jurisdiction is defined by residence of the corporation and source of income. The transfer pricing provisions read similar to those found elsewhere.

1.3.2.3. The local context

Analysis of the EIT is insufficient and incorrect if it is done without due consideration of the Chinese local context. The transplantation of the common core of international taxation does not mean the transplants remain unchanged in China. Even if the transplants remain unchanged in form, they inevitably acquire some Chinese characteristics in reality, due to the cultural context in China.

As a policy instrument, the EIT is used to achieve objectives that are sensitive to China’s national interests. Because tax laws depend on general laws (such as corporate law, contracts, property law and administrative law), the application of the “common core” provisions of the EIT may be shaped by the unique Chinese legal context.

More importantly, the transplantation of the common core does not necessarily lead to convergence in the institutions or processes for tax law in general. This means that transplanted tax laws are formulated and administered by institutions through processes that are as divergent as before. As

25. Special Tax Adjustment Measures (Consultation Draft), supra n. 8.
discussed in more detail in chapter 2, the administrative system in China and the legal and institutional culture in China have not changed much.\textsuperscript{26} As such, the gap between tax rules on paper and tax rules in action may be quite significant. “Tax administration matters – a lot!”\textsuperscript{27} In China, this is particularly true.

### 1.3.3. Chinese insiders’ perspective

#### 1.3.3.1. Research sources

This book discusses Chinese international tax rules by relying on Chinese local materials. The Chinese perspective developed from synthesizing such materials informs the discussions and analysis throughout this book. The Chinese materials include legislative materials and secondary sources. Most of the materials are produced by the SAT. Other sources include journal publications, popular media reports and court cases.

The SAT is the primary source of information on Chinese international taxation. It plays a critical role in drafting tax law, making legislative interpretation, administering the tax legislation and resolving tax disputes. As such, the SAT’s publications provide valuable insights. During the past decade or so, the SAT has become increasingly transparent through the publishing of its views on its website (chinatax.gov.cn) and in print publications.\textsuperscript{28} As explained in more detail in chapter 2, the SAT’s “informal” views are often regarded as “law”, even if they do not have the formal status of legislation. More importantly, perhaps, under Chinese law, some of the SAT’s pronouncements do have the status of legislation and the force of law.\textsuperscript{29} This is a unique feature of Chinese tax law. These SAT measures give meaning to domestic legislation and treaty provisions and fill in legislative gaps.

Court cases are not a formal source of law. There are few tax cases in general. However, the four cases related to international taxation (i.e. CIMFRA, Donghwa, PanAmSat and ZFC) are fascinating, in that they

\textsuperscript{26} See ch. 2.  
\textsuperscript{28} In the SAT system, China Tax Press publishes books, China Taxation Magazines publishes: 中国税务 [journal China Taxation], 涉外税务 [journal International Taxation in China] and税务研究 [journal Taxation Research], and China Taxation Newspaper Publisher publishes 中国税务报 [China Taxation News].  
\textsuperscript{29} See ch. 2.
provide an inside view of the Chinese tax dispute resolution process. These cases also highlight the fact that transplanting foreign processes and institutions presents a greater challenge than transplanting technical tax rules.

Scholarly tax research in China is wide in coverage and huge in quantity. In spite of some excellent pieces, in general, as noted by a Western-trained researcher, “there is little professional writing that goes beyond the regurgitation of written rules”. However, some writings by Chinese researchers are impressive and insightful.

Views published on websites and blogs can also be informative, even though it is sometimes difficult to verify the authenticity of the sources. They are occasionally relied on in this book when no other research sources are available.

In addition to Chinese materials, this book benefits from the timely briefings in English about Chinese tax developments by professional firms, as well as thoughtful commentaries in English by tax practitioners in China.

1.3.3.2. Critical analysis

This book discusses Chinese international tax rules as they appear in legislation, as well as in practice. It situates the discussions in the Chinese context. Research materials are critically evaluated and analysed. Great care was taken in ensuring the accuracy of the sources.

This book does not take positions on controversial issues such as BEPS. Instead, it presents the issues as they are and explains the Chinese approach to such issues. It aims at informing readers and inviting them to draw their own conclusions.

1.3.4. (Implicit) comparative approach

This book is not about comparative taxation. It does not explicitly compare the Chinese international tax rules with those of another country or the international tax regime evidenced in the OECD or UN Model Tax

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Scholarly ambitions and practical aspirations

Convention. However, this book strives to make it easier for readers to compare the Chinese rules with the rules of their home jurisdiction or treaty rules by following the basic structure of international taxation (i.e. inbound rules, outbound rules, transfer pricing and anti-avoidance rules). Identifying similarities and differences through such comparisons makes it easier to understand the Chinese rules. As such, an implicit comparative approach is encouraged on the part of readers.

This book makes explicit comparisons in some areas to highlight, inter alia, the influence of international tax norms in China, the “openness” of Chinese law drafters to advanced foreign ideas and the possible direction of Chinese tax reform. Canada and the United States are used as comparators for the simple reason that the author is more familiar with these two jurisdictions, especially Canada. Such comparative discussions are meant to be illustrative only.

1.4. Scholarly ambitions and practical aspirations

1.4.1. Scholarly ambitions

This book aims at contributing to knowledge by providing a contextualized analysis of the Chinese international tax system. More specifically, it aims to add to the literature on comparative tax law in several ways. To begin with, it lends support to the school of thought in comparative law which maintains that the process of legal transplantation is indicative of the autonomy of law. Many international tax rules are incorporated into the EIT.

More significantly, this book shows that law, including corporate income tax law, is embedded in society and that, therefore, legal transplants can survive and thrive only if there is a fit between them and the environment of the borrowing country. The discussions in this book lend support to the claim that “law is deeply ensconced in a particular cultural context.” Throughout this book, the inherent logic of the transplanted rules, such as jurisdictional rules, foreign tax credit rules and transfer pricing rules, is

31. See OECD Model Double Taxation Convention on Income and on Capital (2014), Models IBFD; and United Nations Model Double Taxation Convention between Developed and Developing Countries (2011), Models IBFD.
33. Kahn-Freund, supra n. 16.
revealed, but, at the same time, the “local” modifications to suit China’s needs are discussed.\textsuperscript{34}

This book also shows the validity of the theory of co-evolution of the transplant and local culture: \textsuperscript{35}

“Legal irritants” cannot be domesticated; they are not transformed from something alien into something familiar, not adapted to a new cultural context, rather they will unleash an evolutionary dynamic in which the external rule’s meaning will be reconstructed and the internal context will undergo fundamental change.

The transplantation of corporate income tax in 1980 triggered a transformation of relationships between enterprises and the government in China. Transplanted tax rules, such as transfer pricing rules, unleashed an evolutionary process in China that led to a reimagination of the arm’s length principle that underlay transfer pricing rules.\textsuperscript{36} Similarly, the transplanted GAAR has been reconstructed from a tax shield (preventing abuse of the law) to a double-edged sword that protects the tax base by preventing abuse of existing law as well as filling in the legislative gaps.\textsuperscript{37}

What is also fascinating in terms of comparative tax law research is the potential boomerang effect of legal transplants. This book provides some evidence on that. Owing to China’s increasing influence on international tax governance (through the G20, UN and OECD), the reconstructed international tax rules may be returned to their place of origin – Western countries. An example is the Chinese reimagined transfer pricing rules. Interpreting the arm’s length principle to require arm’s length results, not just arm’s length prices, is gaining broader recognition.\textsuperscript{38}


\textsuperscript{36} See ch. 10.

\textsuperscript{37} See ch. 11.

1.4.2. Practical aspirations

This book aspires to be relevant to tax professionals and anyone who wishes to learn how tax rules actually work in China. Since tax policy is the most practical thing in taxation, this book explains the background and policy reasons for the design of certain tax rules in order to elucidate their meaning. It also presents the necessary regulatory context and business transactions before delving into a discussion of technical tax rules. Simple examples are used to illustrate the application of complex rules. However, this book is not intended to provide detailed technical commentaries. Instead, it aims to explain the tax rules in a way that enables readers to appreciate not only the meaning of current rules but also why they have been introduced and how they are applied.