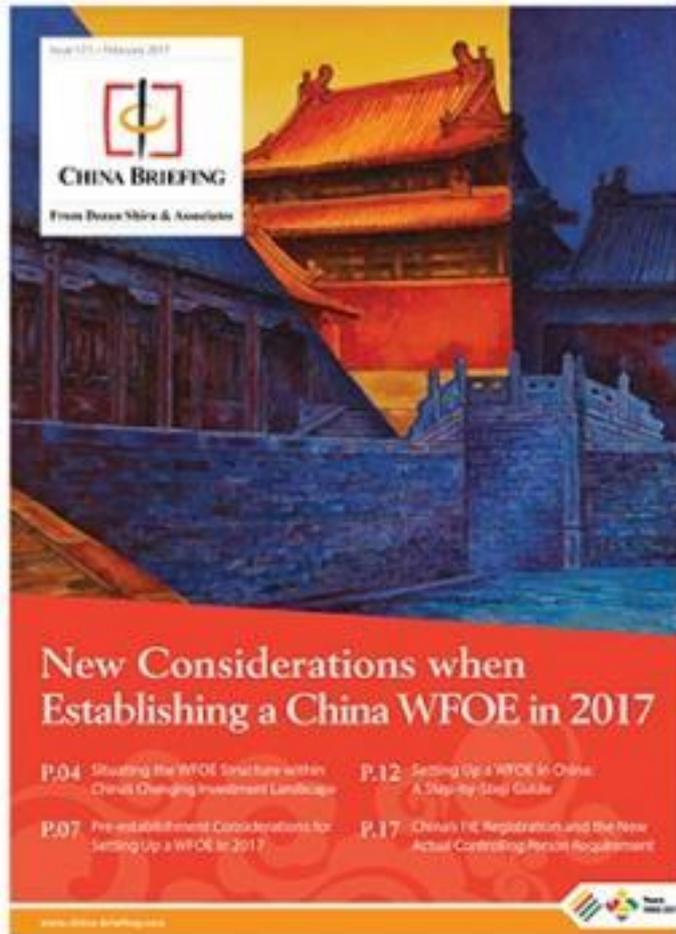


New Considerations When Establishing a China WFOE

June 20, 2017





[Available for Download](#)



Section 1:

WFOE Overview

Section 2:

Pre-Investment Considerations

Section 3:

WFOE Establishment Process





DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

WFOE Overview



**Years
1992-2017**

Wholly Foreign Owned Enterprise (WFOE)

Legal Status	Pros	Cons
<ul style="list-style-type: none"> ➤ Distinct legal entity (i.e. limited liability company), liabilities separate from parent company ➤ Can conduct a full range of business activities within FDI restrictions and as specified in business scope 	<ul style="list-style-type: none"> ➤ Can conduct a broad range of business activities within specified business scope ➤ Can sign contracts and collect/disburse payments in RMB ➤ Can issue special tax invoices in RMB (Fapiao) ➤ Can directly employ staff 	<ul style="list-style-type: none"> ➤ Registered capital requirement (minimum for select industries) ➤ Lengthy establishment process ➤ Cash flow and funding
Establishment Process	General Taxes	Registered Capital
<p>4-7 Months <i>WFOE with a manufacturing scope or requiring special licensing may take longer</i></p>	<p>Corporate Income Tax (CIT) 25%; annual <i>(prepaid quarterly)</i></p> <p>Value Added Tax (VAT) 6% (services); monthly 17% (most goods), monthly</p>	<p>Required <i>amount may vary by business activities of Company</i></p>



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

Pre-Investment Considerations



**Years
1992-2017**

Holding Company

Considerations

- Company may choose to establish a holding company for various reasons, including, but not limited to:
 - Legal / corporate structuring
 - Tax structuring
- Establishment of holding company should be conducted prior to WFOE registration or additional tax considerations may apply
- Common holding company locations include Hong Kong and Singapore for potential reduced dividend withholding taxes, ease of doing, etc.



Additional Resources



[Download](#)



[Download](#)



[Download](#)



Additional Resources

Registered Capital

Overview

- Tax free and contributions can be made as cash contributions or in-kind contributions
- Generally no minimum registered capital requirements (except in certain industries)
- Must be paid in a foreign currency and injected by the parent company of the WFOE
- Amount, foreign currency used to pay, and timeframe for injection (e.g. within 10 years) will be specified in the WFOE Articles of Association (AOA)
- Will be paid into Foreign Capital Account and then converted to the RMB Basic Account
 - Limitation of 2 “petty cash” conversions of USD 50,000 per month
 - If conversion exceeding “petty cash” limit is required (e.g. large asset purchase), special approval with supporting transaction documents may be required by bank
- Registered Capital is the limitation of liability for the WFOE

Total Investment to Registered Capital Ratio

Total Investment (US\$)	Registered Capital/ Total Investment
Less than or equal to 3 million	At least 7/10 of total investment
3 million – 10 million	At least 1/2 of total investment
10 million – 30 million	At least 2/5 of total investment
More than 30 million	At least 1/3 of total investment



ASIA BRIEFING

Investor Tools

[Registered Capital and Total Investment Calculators](#)



ASIA BRIEFING

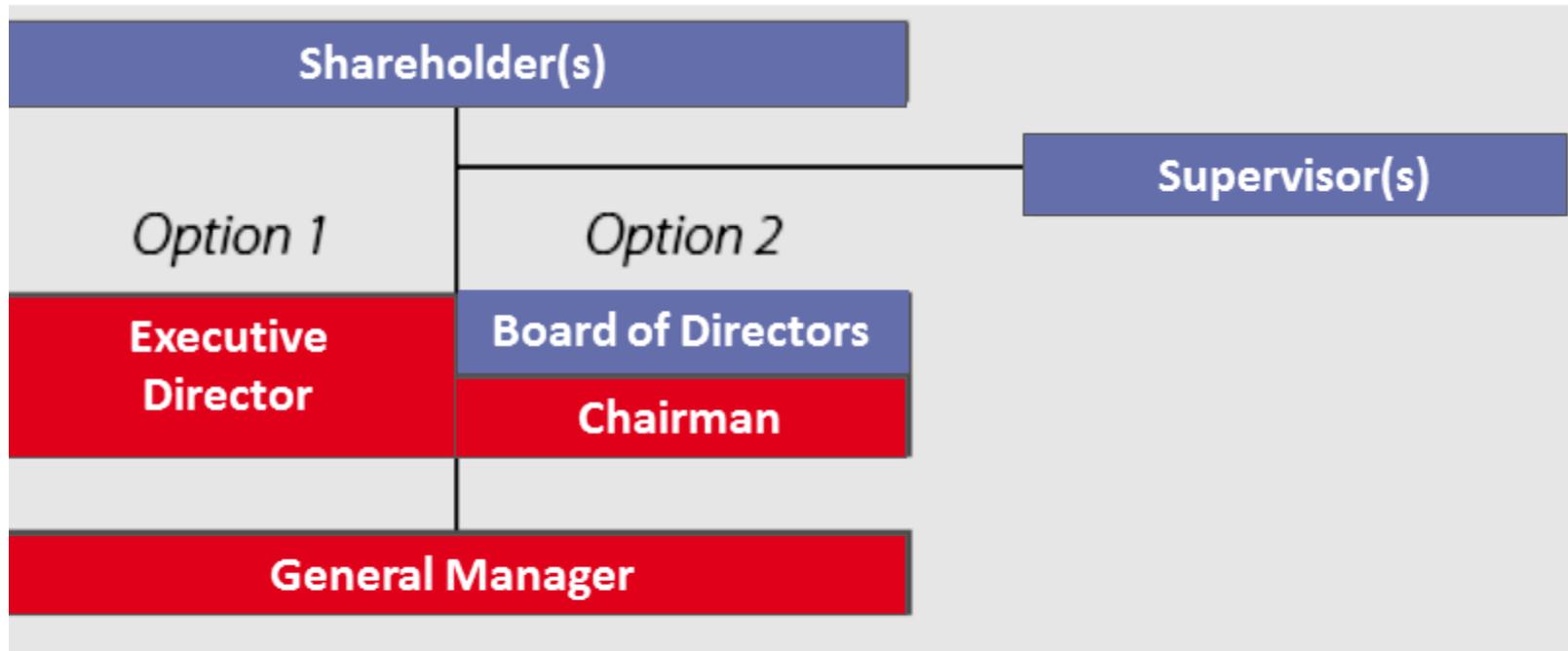
Investor Tools

Business Scope

Overview

- Business activities will be specifically defined in the WFOE Articles of Association (AOA) and made publically available through the WFOE Business License
- Permitted business activities will be in accordance with:
 - *Market Access Negative List (“Negative List”)* and *Catalogue for the Guidance of Foreign Investment (“Foreign Investment Catalogue”)*; providing general guidance
 - Other industry or business activity specific regulations; providing specific guidance
 - Local Administration for Industry and Commerce (AIC), the business registration authority, may require specific wording or phrasing; providing implementation practices
- WFOE will only be able to conduct business activities and issue special VAT invoices (“*fapiao*”) with its specified business scope
- Business scope can be amended; however, certain business scope amendments may be difficult (e.g. expanding a trading company to a manufacturing company)

Management Structure



 *Legal representative candidate*

NOTES:

1. In addition to above noted positions, the company will be required to appoint an authorized representative (of the parent company) and said position cannot be changed during the incorporation process.
2. Above positions will be specified in the WFOE Articles of Association and recorded for public record.



DEZAN SHIRA & ASSOCIATES

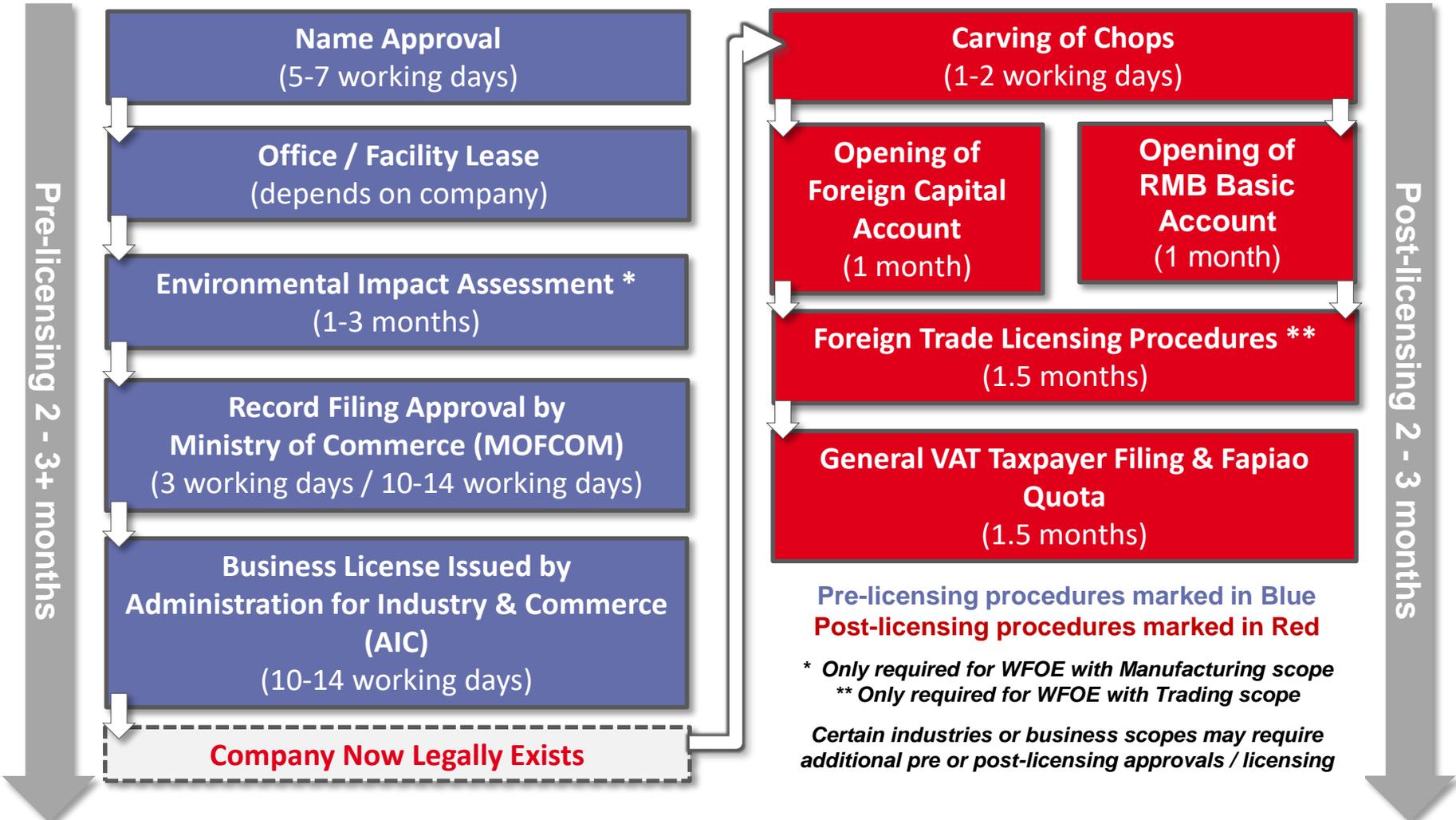
Your Partner for Growth in Asia

WFOE Establishment Process



**Years
1992-2017**

WFOE Establishment Process



Registered Name

WFOE Name Formula (Common)

Trade Name + Industry + (Geographical Name) + Company Type

Dezan Shira Management Consulting (Shenzhen), Ltd.

Other Name Formula Options (Less Common)

Geographical Name + Trade Name + Industry + Company Type

Shenzhen Dezan Shira Management Consulting, Ltd.

Trade Name + (Geographical Name) + Industry + Company Type

Dezan Shira (Shenzhen) Management Consulting, Ltd.

NOTES:

1. *Prior to WFOE registration, name reservation may be reserved for 6 months and renewed for another 6 months.*
2. *Local implementation may vary and certain locations may require all registration documents to be prepared before name registration.*
3. *Certain investor information, such as estimated registered capital amount and/or HQ appointed representative, may need to be disclosed at this point.*

Office / Facility Lease

Requirements

- 1 year or longer lease agreement signed in the name of the WFOE
- Commercial Property
- Unique address (cannot share an office address with another company)

Documentation (Select Documents)

- Copy of Real Estate Certificate affixed with Company Chop
- Copy of Business License of the Office Building Developer
- Map of Office Segmentation
- Lease Agreement
- AIC form to be affixed with Company Chop
- Other possible supplementary documents

Environmental Impact Assessment (for manufacturing company only)

Overview

- Evaluation carried out by qualified institutions with certificate issued by the environmental protection department of the State Council
- According to *Catalogue for Classified Administration of Environmental Impact Assessment*, manufacturing projects can be classified as having:
 - “Significant” impact on environment; requiring a “Statement”
 - “Moderate” impact on environment; requiring a “Report”
 - “Small” impact on the environment; requiring a “Registration Form”
- Authorities will require information on:
 - Raw materials to be used and means for storage
 - Equipment and machinery
 - Measures for environmental protection
 - Consumption and disposal of hazardous materials

MOFCOM Record Filing / Approval

Record Filing

- Applicable if business scope is NOT restricted by the *Negative List* and is not subject to special administration measures for foreign investment access
- Streamlined documentation requirements for MOFCOM and AIC Business License application
- 3 working days to complete

Approval

- Applicable if business scope is restricted by the *Negative List*, and is not restricted by the *Foreign Investment Catalogue* or subject to the special administration measures for foreign investment access
- More extensive documentation requirements for MOFCOM and AIC Business License application
- 20-30 working days to complete

MOFCOM Record Filing / Approval

Controlling Person

- Foreign listed company
- Foreign natural person
- Foreign government agency (including funds controlled by government)
- International organization
- Domestic listed company, domestic natural person
- State-owned enterprise (SOE)
- Collective enterprise

Control Type

- Equity ownership
- Contractual control over the foreign entity's decision-making body
- Rights over enterprise's operation and management, personal nomination, financial conditions, technology, or other aspects

AIC Business License Application

5-in-1 Business License

- New 5-in-1 Business License includes the following:
 - Business License
 - Organization Code
 - Tax Registration Certificate
 - Social Security Registration Certificate
 - Statistics Bureau Registration Certificate

Documentation

- WFOE Articles of Association
- 1 year lease agreement
- Parent Company Board Resolution

NOTE: AIC Business License application should be submitted within 30 days of MOFCOM confirming completion of record filing / approval

WFOE Business License

Company Name

*Trade Name + Industry +
(Geographical Name) + Company Type*

Dezan Shira Management
Consulting (Shenzhen), Ltd.

Registered Address

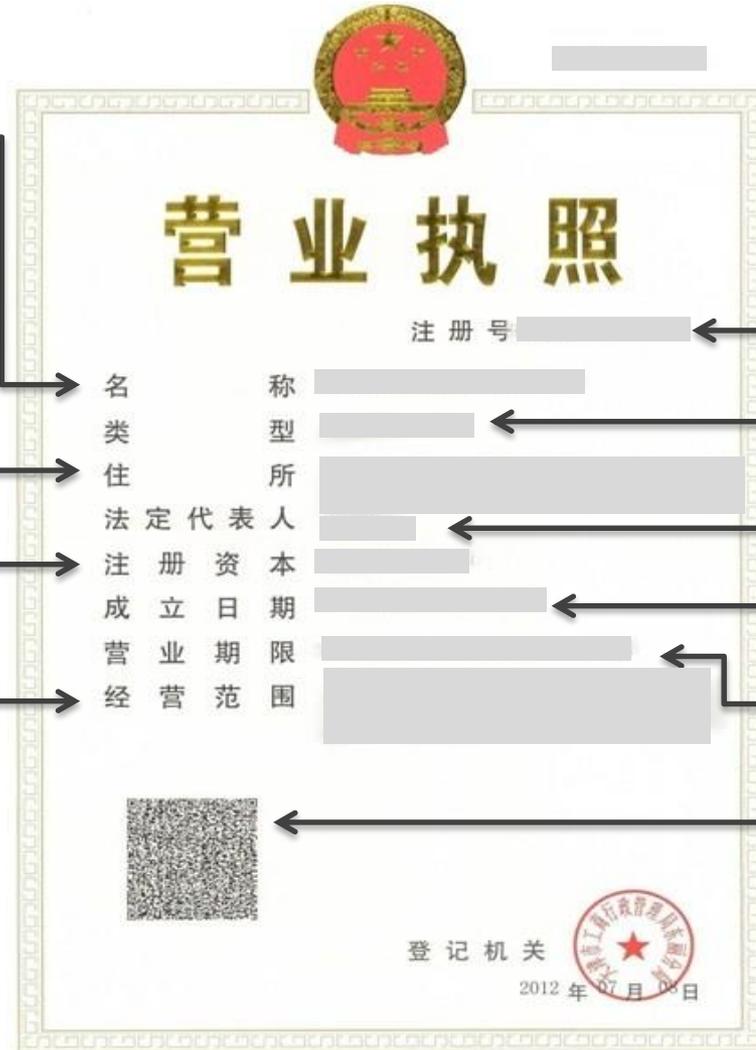
Commercial property

Registered Capital

Paid in capital not listed

Business Scope

*Will need to explicitly state
business activities of
company*



Registration Number

Company Type

WFOE will be an LLC

Legal Representative

Date of Incorporation

Term of Validity

WFOE will be 30 years

QR Code

*Linked to National
Enterprise Credit Registry*

Chops

Types Of Chops

- Company Chop *(required; cannot be duplicated)*
- Financial Chop *(required)*
- Invoice Chop *(required)*
- Contract Chop *(not required)*
- Legal Representative Chop *(not required)*

Bank may require Legal Representative Chop for registration purposes and company can sign documents in China in the name of the Legal Representative if Legal Representative is not in China

Chop Security

- Affixing a chop can make documents legally binding (even without internal approval)
- Lost or stolen chops can be difficult to replace / cancel
- Chops, in particular the Company Chop, should be held by a trusted employee or responsible third party

Bank Accounts

Foreign Capital Account

- Only used for the injection of Registered Capital; injections can only be in foreign currency (i.e. foreign currency type specified for registered capital in the WFOE Articles of Association)
- Registered Capital will need to be converted from Foreign Capital Account to RMB Basic Account to be spent
 - Limitation of 2 “petty cash” conversions of US\$ 50,000 per month
 - If conversion exceeding “petty cash” limit is required special approval with supporting transaction documents may be required by bank

RMB Basic Account

- Typically the primary bank account of the WFOE and only account the WFOE can withdraw and collect RMB from
- Typically used for automatic tax payments and employee-related social insurance contributions (i.e. some restrictions on such payments may apply to foreign banks)

Trade Licensing Procedures (for trading company only)

	Foreign Trader Registration Filing <i>Commerce Bureau</i>	5-8 Working Days
	Custom Registration Certificate Application <i>Custom Bureau</i>	5-8 Working Days
	Inspection and Quarantine License Registration <i>General Administration of Quality Supervision Inspection and Quarantine (AQSIQ)</i>	5-8 Working Days
	Customs IC Card Application <i>Customs Bureau</i>	21-28 Working Days
	Preliminary Foreign Trader Filing <i>State Administration of Foreign Exchange</i>	2-3 Working Days

Types of VAT Taxpayers

Small-Scale VAT Taxpayer

- Cannot use VAT input credits to offset VAT output credits (i.e. flat tax rate)
- Will need to apply to tax bureau to issue official VAT invoices (“*fapiao*”) on its behalf, with certain limitations

General VAT Taxpayer

- Can use VAT input credits to offset VAT output values, if applicable official VAT invoices (“*fapiao*”) are available for VAT input credits
- Not automatically granted – Company can voluntarily file for General VAT Taxpayer status during company establishment period or later
- Company must file for General VAT Taxpayer status if revenue is above threshold for Small-Scale VAT Taxpayer status
- Company must obtain General VAT Taxpayer status to be able to issue *fapiao*, which will typically be required from domestic Chinese clients

VAT Rates & Calculation

Small-Scale VAT Taxpayer

$$\text{VAT Payable} = \text{Sales} \times \text{VAT Rate}$$

$$\text{Sales} = \text{Sales including VAT} / (1 + \text{VAT Rate})$$

VAT Rate: 3%

General VAT Taxpayer

$$\text{VAT payable} = \text{Output VAT in the current period} - \text{Input VAT in the current period}$$

$$\text{Output VAT} = \text{Sales} \times \text{VAT rate}$$

$$\text{Input VAT} = \text{Sales (i.e. Purchases)} \times \text{VAT rate}$$

VAT Rate: 0-17%

e.g. most services = 6%; most goods = 17%

NOTE: Sales is the total amount of prices and other outlays received from the buyer, excluding output VAT. If the original price of the product(s) already includes VAT, the sales amount excluding VAT should be determined based on the formula: Sales = Sales including output VAT / (1 + VAT rate)

General VAT Taxpayer Fapiao Quota

Initial Quota

- Company will be allotted 25 *fapiao* for issuance per month
- Minimum value per *fapiao* will be minimum RMB 10,000 (before tax)



Quota Increase

- Company can apply for a temporary increase in *fapiao* quota and can apply for permanent increase in *fapiao* quota after 3 consecutive months of temporary increases
- Increase in *fapiao* quota will require an on-site inspection with interview from State Tax Bureau and proof of revenue for specified increase amount

Comparison of VAT Taxpayer Types

Example

Company polymer products achieved a tax-inclusive annual sales volume of RMB 2.34 million in 2013. In the same year, it paid RMB 0.25 million in input VAT for the purchase of raw materials and input goods. VAT payable would be calculated, respectively, as follows:

General VAT Taxpayer	Small-Scale VAT Taxpayer
VAT Payable = Output VAT – Input VAT	VAT Payable = Sales volume x Tax rate
Tax-inclusive sales volume / (1+17%) x 17% – RMB 0.25 million	Tax-inclusive sales volume / (1+3%) x 3%
RMB 2.34 million / 1.17 x 17% - RMB 0.25 million	RMB 2.34 million / 1.03 x 3%
RMB 0.34 million – RMB 0.25 million	
VAT Payable = RMB 90,000	VAT Payable = RMB 68,160



- Dezan Shira & Associates Offices
- Dezan Shira Asian Alliance Members

Our Global Presence

CHINA

Beijing
beijing@dezshira.com

Qingdao
qingdao@dezshira.com

Dalian
dalian@dezshira.com

Shanghai
shanghai@dezshira.com

Dongguan
dongguan@dezshira.com

Shenzhen
shenzhen@dezshira.com

Guangzhou
guangzhou@dezshira.com

Suzhou
suzhou@dezshira.com

Hangzhou
hangzhou@dezshira.com

Tianjin
tianjin@dezshira.com

Ningbo
ningbo@dezshira.com

Zhongshan
zhongshan@dezshira.com

HONG KONG

hongkong@dezshira.com

INDIA

Delhi
delhi@dezshira.com

Mumbai
mumbai@dezshira.com

SINGAPORE

singapore@dezshira.com

VIETNAM

Hanoi
hanoi@dezshira.com

Ho Chi Minh City
hcmc@dezshira.com

DEZAN SHIRA ASIAN ALLIANCE MEMBERS

Indonesia
indonesia@dezshira.com

Thailand
thailand@dezshira.com

Malaysia
malaysia@dezshira.com

The Philippines
philippines@dezshira.com

DEZAN SHIRA LIAISON OFFICES

Germany
germandesk@dezshira.com

Italy
italiandesk@dezshira.com

United States
usa@dezshira.com