

China -- Information on residency for tax purposes

Section I – Criteria for Individuals to be considered a tax resident

In general, individuals who have domicile in China, or though without domicile but have resided for one year or more in China are deemed to be residents in China. Domicile refers to habitual residence in China on account of domiciliary registration, family ties or economic interests. One year means 365 days in a tax year. The days on a temporary trip away from China, including a single trip not exceeding 30 days or combined trips not exceeding 90 days, shall not be deducted. Habitual residence is a legal criterion whereby a taxpayer is defined and it does not refer to actual residence or residence of an individual for a particular period of time. For example, China is the habitual residence for an individual who should come back to reside in China after staying, working, visiting families and touring in a place other than China.

Relevant tax provisions:

Article 1-- Individual Income Tax Law of the People's Republic of China

<http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=157488&flag=1>

Article 2 & 3—Regulations for the Implementation of the Individual Income Tax Law of the People's Republic of China

<http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=157773&flag=1>

Article 1— Notice of Provisions on Several Issues concerning the Collection of Individual Income Tax

<http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=1183&flag=1>

Under this item, jurisdictions should list the domestic legal provisions that determine whether an Individual is to be considered a tax resident of that jurisdictions. Such legal provisions may be articles of the relevant tax code (with hyperlinks to the provisions themselves, where possible), as well as any further regulations specifying the residency criteria (if available, with hyperlinks).

This section should ideally also provide further guidance for Individuals to determine whether they are a resident for tax purposes in the jurisdiction, presented either in narrative form or by means of hyperlinks to the relevant sections of the government or tax administration website or publications.

Section II – Criteria for Entities to be considered a tax resident

As a general rule, an entity is deemed to be a tax resident in China where it is incorporated in China in accordance with the laws of China or it is incorporated elsewhere but has the place of effective management in China. Above mentioned entity include enterprises, social organisations and other income generating organisations. Place of effective management refers to an establishment that exercises, in substance, overall management and control over the production and business, personnel, accounting, properties, etc. of an entity.

Relevant tax provisions:

Article 2 – Enterprise Income Tax Law of the People’s Republic of China

<http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=3468&flag=1>

Article 3 & 4 – Implementation Regulations of the Enterprise Income Tax Law of the People’s Republic of China

<http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=25088&flag=1>

Under this item, jurisdictions should list the domestic legal provisions that determine whether an Entity is to be considered a tax resident of that jurisdiction. Such legal provisions may be articles of the relevant tax code, as well as any further regulations specifying the residency criteria. Ideally, also a list of domestic Entity types that are in principle considered tax residents of the jurisdiction should be included. (if available, with hyperlinks).

This section should ideally also provide further guidance for the different types of Entities to determine whether they are a resident for tax purposes in the jurisdiction. It can be presented either in narrative form or by means of hyperlinks to the relevant sections of the government or tax administration website or publications.

Section III – Entity types that are as a rule not considered tax residents

The law of China does not treat sole proprietorship or partnership as a taxable person. Instead, taxable persons are the proprietors and partners rather than the proprietorship and partnership itself.

For the purposes of reporting under the terms of the Common Reporting Standard a reportable entity also includes entities that are typically tax transparent, e.g. partnerships.

Relevant tax provisions:

Article 1 – Enterprise Income Tax Law of the People’s Republic of China

<http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=3468&flag=1>

Article 3 – Guidance on Individual Income Tax Administration of Sole proprietorship and Partnership (Caishui [2000]91)

<http://hd.chinatax.gov.cn/guoshui/action/GetArticleView1.do?id=25201&flag=1>

This item should ideally provide a list of entity types that are considered fiscally transparent by the jurisdiction or are considered to have no tax residence by the jurisdiction based on other criteria, including a particular legal status or tax regime (such as trusts, foundations, partnerships, investment funds etc.), but are considered to have a nexus with the jurisdiction, in particular due to the fact that the entity was incorporated or is organised under the laws of the jurisdiction or has its place of effective management within the jurisdiction. Jurisdictions may wish to complement this section with further guidance on their domestic rules on the topic, either in narrative form or by inserting relevant hyperlinks.

Section IV – Contact point for further information

Chinese Competent Authority

Global Cooperation and Compliance Division, International Taxation Department,
State Administration of Taxation

No. 5, Yangfangdian Xi Lu, Haidian District, Beijing, P.R.China

Email: eoicompentauthority@chinatax.gov.cn

Under this header, jurisdictions would provide the contact details of the competent service within their tax administration, which can be contacted in case of further questions on tax residency.

EU Member States can furthermore refer to the Taxes in Europe Data Base maintained by the European Union, which contains a wide range of information on all taxes in the EU Member States, including on tax residency.