CTA – P5
Advanced Taxation Practice



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PRC Tax Resident

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PRC Tax Resident (稅務居民)

- "Resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

- If an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - closer to his personal and economic relations (centre of vital interests);
  - habitual abode;
  - nationality;
  - mutual agreement by the authorities of the Contracting States.

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- "Permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on. Includes especially:
  - a. a place of management;
  - b. a branch;
  - c. an office;
  - d. a factory;
  - e. workshop, and
  - f. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

- "Permanent establishment" likewise encompasses:
  - a building sit, or construction of installation project continue for a period more than six months; (the period may be varied between different Contracting States)
  - the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel in the other Contracting State for a period or periods aggregating more than six months within twelve-month period. (the new treaties signed by Hong Kong and China with other Contracting States after 2008 has changed to "a period or periods exceeding in the aggregate 183 days within any twelve-month period".)

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- "Permanent establishment" shall be deemed not to include:
  - the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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- Where a person is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise.

- If a person carries on business in that States independently as broker or general commission agent in the ordinary course of business, the enterprise shall not be deemed to have a permanent establishment.

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