

USIG Country Note

China

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Table of Contents

- I. [Summary](#)
 - A. [Types of Organizations](#)
 - B. [Tax Laws](#)
- II. [Applicable Laws and Regulations](#)
- III. [Relevant Legal Forms](#)
 - A. [General Legal Forms](#)
 - B. [Public Benefit Status](#)
- IV. [Specific Questions Regarding Local Law](#)
 - A. [Inurement](#)
 - B. [Proprietary Interest](#)
 - C. [Dissolution](#)
 - D. [Activities](#)
 - E. [Discrimination](#)
 - F. [Control of Organization](#)
 - G. [Annual Inspection and Information Disclosure](#)
- V. [Tax Laws](#)
 - A. [Income Tax Exemption](#)
 - B. [Deductibility of Charitable Contributions](#)
 - C. [Indirect Taxes: Business Tax, Value Added Tax, and Import Duties](#)
 - D. [Other Taxes](#)
 - E. [Double Tax Treaties](#)
 - F. [Foreign Organizations and Grants](#)
- VI. [Knowledgeable Contacts](#)

I. Summary

A. Types of Organizations

The People's Republic of China (PRC) is a civil law country [1] with three legal forms of Social Organizations (SOs), which is the Chinese term for nongovernmental, not-for-profit organizations (NPOs):

- Social Associations (SAs) (社会团体, *shehui tuanti*), which are the equivalent of membership associations; [2]
- Civil Non-enterprise Institutions (CNIs) (民办非企业单位, *minban fei qiye danwei*) which are similar to service providers; and
- Foundations (基金会, *jijinhui*).

In addition to these legal forms, there are also NPOs registered as for-profit businesses and unregistered NPOs. Some unregistered NPOs gain legal status by attaching themselves to another legal entity, such as a Social Organization or a Public Institution, which includes universities and research institutes. NPOs registered as businesses and unregistered NPOs are both technically not NPOs in a legal sense, but they are voluntary, nongovernmental, not-for-profit, self-governing organizations in an operational sense. They are mission-driven not-for-profit organizations founded by and governed by private individuals. Many are funded by foreign governments and embassies, international organizations and foundations, and are required to justify the not-for-profit nature of their activities in their reports to funders.

Together, these three legal forms of NPOs and the informal NPOs are the closest equivalent to nongovernmental, not-for-profit organizations. A substantial portion of the legal NPOs – in particular, SAs and Foundations – were either created by the government or have close ties with a particular government agency, and are often referred to as government-organized NGOs (GONGOs). In contrast, the informal NPOs generally are more independent.

A fourth type of organization, the Public Institution or Public Service Unit (事业单位, *shiyedanwei*), is a quasi-government agency, generally formed by the government and staffed with government employees. Public universities, research institutes, and hospitals fall in this category. They are discussed in this Note because they frequently receive grants from foreign donors and are subject to some of the same tax rules as NPOs. There are plans to carry out a [reform of Public Institutions](#) by privatizing a portion of them and turning them into SOs.

Civil Affairs authorities who oversee NPOs use the term *minjian zuzhi* (民建组织), which literally means “popular” organizations, or organizations “from the people”. There is no good English-language equivalent for this term but it is often used synonymously with civil society organization (公民社会组织 *gongminshehui zuzhi*; nongovernmental organization, 非政府组织, *feizhengfu zhuzhi*; or not-for-profit organization, 非盈利组织, *feiyingli zuzhi*). This “*minjian zuzhi*” category covers Social Associations, Civil Non-enterprise Institutions, and Foundations but not Public Institutions. The agency within the Ministry of Civil Affairs charged with supervising and registering these organizations – the NPO Management Bureau (民间组织管理局 *minjian zuzhi guanli ju*) – also uses the same term.

Trade unions, religious organizations, and political parties (including the Communist Party, the ruling party in China, and the eight small “friendship” parties that function under the rule of the Communist Party) are governed by separate laws and are beyond the scope of this Note. [3] Similarly, certain not-for-profit organizations such as the Chinese Red Cross enjoy special status and are governed by their own laws. In addition, specific rules governing various kinds of not-for-profit organizations may apply in certain provinces and cities. These rules may be, but are not always, available in Chinese on the websites of the local civil affairs authorities or the website of the Ministry of Civil Affairs based in Beijing (<http://www.mca.gov.cn>). This Note focuses primarily on national legislation.

Finally, governing legislation on Chinese not-for-profit organizations is in the process of intensive review and possible revision, so local experts should be consulted if more information is sought on these regulations. The key regulations under review include the Regulations on the Registration and Administration of Social Organizations (1998); Interim Regulations on the Registration and Administration of Civil Non-enterprise Institutions (1998); Regulations on the Management of Foundations (2004); and other documents. In addition, a Charity Law has undergone redrafting and reconsideration since 2006 and was expected to be issued in 2009, but [passage has been taken longer than expected in the State Council](#). [4]

B. Tax Laws

Income Tax: In practice, donations, state subsidies, and some other forms of income are tax exempt. According to the Public Welfare Donations Law, contributions to legal NPOs are in theory deductible from income tax, with limits depending on the type of taxpayer, the type of beneficiary, and the use of the contribution. [5] In reality, though, there is little familiarity with income tax deductibility for donations among both the tax authorities and donors, a problem that is compounded by the absence of a comprehensive and coherent tax system tailored specifically to NPOs. Contributions to informal NPOs, moreover, are not tax deductible.

Indirect Taxes: NPOs that engage in nursing, medical, educational, cultural, or religious activities or activities in which services are performed by the disabled are exempted from the Business Tax on the sale of services. However, informal NPOs that are registered as businesses are required to pay the Business Tax, which currently stands at 5.5 percent.

The PRC also subjects most goods and services to VAT and imposes customs duties on imports. Certain goods are exempt from VAT and customs duties, including goods donated by international organizations as well as goods donated by persons outside China to specified national-level Social Organizations.

II. Applicable Laws and Regulations

- [Constitution of the People's Republic of China \(1982, as revised\), esp. Article 35](#)
- [Regulations on the Registration and Administration of Social Organizations \(issued by the State Council, October 25, 1998\)](#)
- [Interim Regulations on the Registration and Administration of Civil Non-enterprise Institutions \(issued by the State Council, October 25, 1998\)](#)
- [Interim Regulations on the Registration and Administration of Public Institutions \(issued by the State Council, October 25, 1998\)](#)
- [Public Welfare Donations Law \(adopted by the Standing Committee of the National People's Congress, June 28, 1999\)](#)
- [Trust Law of People's Republic of China \(adopted by the Standing Committee of the National People's Congress, April 28, 2001\)](#)
- Non-State Education Promotion Law of the People's Republic of China (adopted by the Standing Committee of the National People's Congress, December 28, 2002)
- [Regulations on the Management of Foundations \(issued by the State Council, March 8, 2004\)](#)
- Provisions on the Administration of Names of Foundations (issued by the Ministry of Civil Affairs, June 23, 2004)
- [Accounting System for Civil Not-for-Profit Organizations \(issued by the Ministry of Finance, August 18, 2004\)](#)
- [Measures of Annual Inspection of Private Non-enterprise Entities \(issued by the Ministry of Civil Affairs, April 7, 2005\)](#)

- Measures for the Information Disclosure of Foundations (issued by the Ministry of Civil Affairs, January 12, 2006)
- [Measures for the Annual Inspection of Foundations \(issued by the Ministry of Civil Affairs, January 12, 2006\)](#)
- [Law of the People's Republic of China on Individual Income Tax \(1980, as amended\), Art. 6: and Detailed Rules for the Implementation of the Individual Income Tax Law of the People's Republic of China \(revised in 2005\), Art. 24](#)
- [Provisional Regulations of the People's Republic of China on Enterprise Income Tax \(1993\), Art. 6, and Detailed Rules for the Implementation of the Provisional Regulations of the People's Republic of China on Enterprise Income Tax \(1994\), Art. 12](#)
- Notice of the Ministry of Finance and the State Administration of Taxation on the Policies and Relevant Management Issues Concerning the Pre-tax Deduction of Public Welfare Relief Donations (January 18, 2007)
- Enterprise Income Tax Law of the People's Republic of China, Arts. 9, 26 (promulgated by the National People's Congress March 16, 2007, effective January 1, 2008)
- Regulation on the Implementation of the Enterprise Income Tax Law of the People's Republic of China (issued by the State Council, 2007), Arts. 51, 52, 53, 84, 85
- Measures for the Administration of Donations for Disaster Relief (issued by the Ministry of Civil Affairs, April 28, 2008)
- Select Opinions of the General Office of the State Council on Accelerating and Promoting the Reform and Development of Trade Associations and Chambers of Commerce (September 24, 2007)
- Notice of the General Office of the Ministry of Health on the Provisions on the Administration of the Representative Agencies of Overseas Foundations whose Businesses are under the Charge of the Ministry of Health (March 27, 2008)
- Notice of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange Donated to or by Domestic Institutions (No. 63 [2009]) [[English](#)] [[Chinese](#)] [6]

III. Relevant Legal Forms

A. General Legal Forms

Four legal forms of NPOs are relevant to foreign grantmakers: the Social Association (*shehui tuanti*); the Civil Non-enterprise Institution (*minban fei qiye danwei*); the Foundation (*jjinhui*); and the quasi-governmental public institution (*shiye danwei*).

Social Associations (SAs): SAs constitute the earliest form of legal NPOs in the PRC and are essentially membership associations of various kinds. Many industry and professional associations fall into this category. They are formed to advance “the common desires of their members” [Regulations on the Registration and Administration of Social Organizations (RRASA)], and may be formed for mutual benefit or public benefit.

SAs are subject to joint oversight by (1) their registration and administration agency, generally the Ministry of Civil Affairs in Beijing or a provincial, municipal, or local civil affairs bureau or office; and (2) a professional agency responsible for the organization, generally a line ministry or other state agency at the national, provincial, municipal, or local level with jurisdiction over the SO's sphere of activity. As with all NPOs, the Civil Affairs bureaucracy carries out a “multi-level management system” [分级管理, *fenji guanli*] in which SOs with nationwide activities or impact are regulated at the national level, while SAs with regional or local activities or impact are regulated at the provincial, city, or county level.

The requirements for registering as a SA, particularly a national-level SA, are set quite high and it is difficult to get SA status without some kind of government support. As a result, many SAs have some sort of government background and are perceived as GONGOs, rather than independent NPOs.

Civil Non-enterprise Institutions (CNIs): CNIs are "social institutions established by enterprises, institutions, social organizations, or other social forces as well as individual citizens using non-state assets and conducting non-profit-making social service activities" [Interim Regulations on the Registration and Administration of Civil Non-enterprise Institutions].

Private schools, private not-for-profit research institutes, and private not-for-profit hospitals are often registered as CNIs. CNIs, like SAs and foundations, are subject to the joint oversight of a registration and administration agency (generally Ministry of Civil Affairs or provincial or local civil affairs authority) and a professional agency such as a government ministry or agency at the provincial or local level.

It is generally easier to register as a CNI than a SA, and more independent NGOs have been able to register as CNIs, especially at the local level. In recent years, more informal NPOs registered as businesses have been able to register as CNIs.

Foundations: A foundation is a not-for-profit organization that promotes public benefit undertakings through grants and donations. Its assets are donated by individuals, legal persons, or other organizations [Regulations on the Administration of Foundations (RAF), Article 2].

Foundations, like SAs, are regulated by both a registration and administration agency, usually the Ministry of Civil Affairs in Beijing or a provincial, municipal, or local Civil Affairs bureau or office, and by a professional agency such as the relevant government ministry or agency at the national, provincial, municipal, or local level. In laws and regulations issued prior to the 2004 Foundation Regulations (such as the Public Welfare Donations Law), the term "social organization" included foundations. [\[7\]](#)

The 2004 Regulations on the Administration of Foundations distinguish between public fundraising (hereafter "public") foundations (公募基金会, gongmu jijinhui) and non-public fundraising (hereafter "private") foundations (非公公募基金会, feigongmu jijinhui). The biggest distinction between these two categories is that the former is allowed to engage in public fundraising whereas the latter is not. Private foundations are generally funded by a major gift from a corporation or family. In recent years, with the rapid increase of wealthy entrepreneurs and the emergence of tax laws encouraging individual and corporate giving, private foundations have grown very quickly and now rival their public foundation counterparts in numbers. In 2004, there were no private foundations. In 2011, the number of private foundations exceeded 1000, which is about the same number as public foundations.

Generally speaking, public foundation status is difficult to obtain and most of them are GONGOs. These include some of China's best-known foundations such as the China Youth Development Foundation, the Soong Ching Ling Foundation, and the China Foundation for Poverty Alleviation. Only a few independent foundations are registered as public foundations. In 2010, Jet Li's One Foundation made news by becoming one of the few private foundations to get public foundation status. The Nanjing-based Amity Foundation is another example of a relatively independent public foundation.

Public Institutions: Public Institutions are "social service organizations sponsored by state organs or other organizations using state-owned assets that engage in educational, science and technological, cultural, medical, and other activities for the purpose of social benefit" [Interim Regulations on the Registration and Administration of Public Institutions (IRRAPI), Article 2]. Thus, they are commonly more closely linked to the state than are the other types of NPOs. Public schools and universities, scientific research institutes, and public social care institutions are generally public institutions. [\[8\]](#)

B. Public Benefit Status

Chinese law distinguishes between NPOs that have a public benefit purpose and those that serve other purposes. The Public Welfare Donations Law confers public benefit status on two categories of organizations: “public welfare social organizations” and “public welfare nonprofit public institutions” (also translated as “institutional work units”). NPOs with public benefit status are eligible for tax deduction or exemption in theory [Public Welfare Donations Law, Ch. 4]. However, the reality is quite different as China lacks a comprehensive, coherent and detailed set of tax regulations for NPOs. As a result, tax bureaus and NPOs themselves are often not familiar with these preferential tax provisions and receiving tax deductions or exemptions requires going through additional procedures for both the NPO and the individual or enterprise making the donation. NPOs with public benefit status are also subject to stricter government supervision [Public Welfare Donations Law, Chapters 3-5]. [9]

According to Article 10 of the Public Welfare Donations Law, “public benefit social organizations” are legally established foundations, charitable organizations, and other social organizations founded to promote public benefit undertakings. Article 3 lists the activities which qualify as “public benefit undertakings”: [10]:

1. Disaster relief, poverty alleviation, assistance to the handicapped, and assistance to social organizations in needy circumstances;
2. Education, scientific, cultural, public health, and athletic undertakings;
3. Environmental protection and construction of public facilities; and
4. Other public benefit undertakings promoting social development and progress.

“Public benefit nonprofit institutions” are legally established educational institutions, scientific research institutions, health institutions, cultural institutions, public sports institutions, social welfare institutions and others that carry out public benefit undertakings and are not-for-profit.

It appears that all foundations, some social organizations, and most public institutions have public benefit status. CNIs can also obtain public benefit status and accept donations under the Public Welfare Donations Law in theory. It is important to recall that informal NPOs registered as businesses or that are unregistered are not eligible for tax exemption even though operationally they are nonprofit and have a public benefit purpose. Some of China’s best-known independent public benefit NPOs fall into this category.

IV. Specific Questions Regarding Local Law

A. Inurement

Chinese law generally prohibits inurement for all NPOs except private schools, which are regulated by the Law to Promote Private Education (see below).

The Regulations on the Registration and Administration of Social Organizations prohibit any action to “usurp, divide in secret or misappropriate the assets” of a social organization [Art. 29]. All of a social organization's income must be devoted to the activities addressed in the organization's governing statute or constitution, and may not be divided among members. All donations and subsidies must be used in conformity with the organization's

purposes and the agreements made with donors. In addition, employees' compensation must be set with reference to the salaries set for employees of the supervising governmental agency or other unit, which means they generally mirror the salaries of civil servants.

Article 27 of the Regulations on the Management of Foundations, and Article 21 of the Interim Regulations on the Registration and Administration of Civil Non-enterprise Institutions, are almost identical to Article 29 of the Regulations on the Registration and Administration of Social Organizations. A 2005 Ministry of Civil Affairs notice on civil non-enterprise institutions' accountability and self-governance further requires that all CNIs comply with the Accounting System for Civil NPOs issued in August 2004, thereby securing additional protection against inurement in the case of CNIs.

All of the income of a public institution must be devoted to activities that advance its purposes [Interim Regulations on the Registration and Administration of Public Institutions, Art. 15]. The public institution must use all donations and subsidies in conformity with the purposes of the organization and the agreements with donors.

The Public Welfare Donations Law sets forth similar provisions regarding inurement [Public Welfare Donations Law, Arts. 17, 18, and 23].

There is one exception to the general rule against inurement: the founders of a private school are permitted to receive a "reasonable return" on their investment [Law to Promote Private Education, Art. 51].

The legal framework does not generally contain rules that govern financial transactions or "self-dealing" between NPOs and their founders, donors, directors, officers, employees, or family members.

B. Proprietary Interest

The Accounting System for Civil NPOs (effective January 2005) specifically states that "resource providers do not have ownership of [NPOs]" [Art. 2(3)]. Though the law and regulations do not explicitly prohibit a donor from making a conditional donation, various regulations limit how an NPO can use its property and income, which may imply that donors cannot revoke their contributions.

The Public Welfare Donations Law provides that if the recipient changes the nature and use of the donated property without the consent of the donor, and refuses to abide by competent authority's order to cure the violation of the donor's instructions, the authorities can transfer the property to another NPO with the same or similar purposes, after consulting the donor [Art. 28].

The regulations do not address whether members of a mutual benefit social organization can receive their contributions back when they cease being members.

The founders of a private school may retain a proprietary interest in the property they contribute to a school. During the existence of the school, however, they are entitled to claim only a "reasonable return," and they cannot revoke their contribution or receive their property back [Law to Promote Private Education, Art. 36]. It is not yet clear whether they can recover their property upon dissolution of the private school.

C. Dissolution

Chinese law is largely silent on what happens to the assets of an NPO upon its dissolution. One reason for this is the close link between the state and many NPOs. The state has formed virtually all public institutions and most Social Associations (SAs) and foundations that exist today. In practice, the assets of a dissolved NPO generally are transferred to another NPO or to the state.

For SAs, the Regulations on the Registration and Administration of Social Associations provide that “[t]he remaining assets of a canceled social association shall be disposed of in accordance with the relevant provisions of the State” [Art. 25]. The relevant governmental agencies have opined that the assets should not be returned to members or donors. [11] Further, the Standard Form of Statutes of Social Associations, issued by the Ministry of Civil Affairs, provides that remaining assets should be used to support undertakings similar to those of the dissolved organization, under the supervision of the relevant government authorities [Standard Form of Statutes of Social Associations, Art. 25].

The Interim Regulations on the Registration and Administration of Civil Non-enterprise Institutions are silent in this regard, but officials generally treat CNIs in the same manner as SAs. [12]

For foundations, the Regulations on the Administration of Foundations provide that “[t]he remaining assets of a canceled foundation shall be used for public benefit purpose designated in its constitution, or, when it is not feasible to do so, donated to public benefit organizations whose nature and purpose are similar to the one in question by the registration and administration agency” [Art. 33].

Because public institutions are established with state-owned assets, the state typically acquires remaining assets upon dissolution, even in the absence of explicit provisions for their return.

Private schools may be an exception. The Law to Promote Private Education provides that the remaining assets will be disposed of according to related laws or regulations, which have not been issued yet [Art. 59]. It is possible that the rules will allow founders to recover the property they contributed, but only to the extent of its original value.

D. Activities

1. General

An NPO must limit its activities to those set forth in its constitution or statutes [Regulations on the Registration and Administration of Social Associations, Arts. 29, 33; Interim Regulations on the Registration and Administration of Civil Non-enterprise Institutions, Arts. 21, 25; Regulations on the Administration of Foundations, Arts 27, 42].

Different types of NPOs are able to qualify as legal persons, provided that they follow the appropriate registration procedures. As such, all NPOs have the power to engage in activities of legal persons, except to the extent the law provides otherwise.

2. Economic Activities

Conducting commercial activities cannot be the principal purpose of an NPO. The law does not distinguish between “related” and “unrelated” commercial activities.

As interpreted by the State Administration of Industry and Commerce, the authority responsible for commercial activities, social organizations, civil non-enterprise institutions, foundations, and public institutions cannot themselves engage in for-profit businesses, but they can invest in commercial entities unless the State Council provides otherwise. [13]

An NPO's commercial activities are taxed on the same basis as a commercial corporation unless the law stipulates otherwise. Exceptions to this rule are rare. Enterprises owned solely by public schools, for example, are exempted from a substantial part of the business

tax and VAT. The income of scientific research institutes and higher educational institutions, if derived from the transfer of technology, is exempted from business tax. [\[14\]](#)

3. Political Activities

No formal legal rules restrict NPO involvement in the legislative process. Organizations commonly debate legislative proposals through the mass media and communicate their opinions to the National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC), an advisory body that meets at the same time as the NPC, as well as to provincial and municipal legislatures.

Though no explicit rules exist, NPOs are generally forbidden to engage in political activity surrounding an election, except for trade unions and certain affiliated organizations of the Chinese Communist Party.

E. Discrimination

The Constitution guarantees that all "Citizens of the People's Republic of China have the duty as well as the right to receive education" [The Constitution of the People's Republic of China, Art. 46]. Article 4 of the Constitution also guarantees, in formal terms, the equality of all national and ethnic groups in China, and prohibits any form of discrimination against minorities [The Constitution, Art. 4]. [\[15\]](#)

F. Control of Organization

It is possible for a Chinese NPO to be controlled by a for-profit entity. For-profit organizations commonly form or join social organizations, such as guilds and chambers of commerce. In formal terms, members control a social organization through the members' assembly, though members' authority may not be substantial in practice.

Many CNIs and private foundations were established by for-profit organizations. Founders of a CNI or a foundation are permitted to control it throughout its existence. Although it is not explicitly provided in the regulations, control may be established by the statute of a civil non-enterprise institution or a foundation. In practice, a public institution is wholly controlled by its founding organization, ordinarily a government agency.

In theory, a Chinese NPO could be controlled by an American charitable organization, which would have to be disclosed in the affidavit accompanying its establishment. According to the Regulations for the Administration of Foundations (2004), foreign individuals and organizations may establish foundations in China, and foreigners are eligible for the positions of president and officers of foundations as long as they reside in China no less than three months a year. Generally the only form of social organization that foreigners can legally join is a foreign chamber of commerce, such as the American Chamber of Commerce-People's Republic of China (AmCham China) and the British Chamber of Commerce in China. The discussions about the new regulations for social organizations indicate that foreigners may be permitted to join and perhaps to found certain kinds of social organizations.

G. Annual Inspection and Information Disclosure

The Measures for the Annual Inspection of Foundations issued by the Ministry of Civil Affairs in 2005 require that foundations and representative offices of overseas foundations provide their annual work report for the previous year to the relevant registration and administration organ for review. An annual work report shall include: financial statements, auditing reports, and information on donations, acceptance of donations, and offers of

funding, as well as any change in staffing or institution. The Measures for Annual Inspection of Civil Non-enterprise Units spell out similar requirements for CNIs.

The Measures for the Information Disclosure of Foundations issued by the Ministry of Civil Affairs in 2006 require foundations or representative offices of overseas foundations to disclose internal information and business undertakings to the general public. The following information shall be made generally available: (1) the annual work report of a foundation or representative office of an overseas foundation; (2) information on donation activities by the foundation; and (3) information on the welfare funding projects undertaken by the foundation.

V. Tax Laws

A. Income Tax Exemption

China has three categories of income tax: Enterprise Income Tax, Foreign Invested Enterprise and Foreign Enterprise Income Tax, and Individual Income Tax.

Under the Public Welfare Donations Law, the "state encourages the development of public benefit undertakings, and grants support and preferential treatment to public benefit social organizations and public benefit nonprofit institutions." This law establishes benefits relating to Enterprise Income Tax [Art. 24], Individual Income Tax [Art. 25], and Import Duties and VAT [Art. 26], but the specifics of the exemptions are set forth in other laws and regulations.

In January 2008, the revised Enterprise Income Tax of the People's Republic of China came into effect. Originally, the Enterprise Income Tax applied to all enterprises, whether or not they had legal personality, as well as to "all other organizations" with income [Interim Regulations on Enterprise Income Tax, Art. 2]. This was interpreted to include NPOs. Under Article 26 of the new amendments, legal not-for-profit organizations are exempt from income tax provided that they meet relevant provisions. Specifically, the income of "qualified not-for-profit organizations" is exempt from Enterprise Income Tax.

According to the Regulations on the Implementation of the Enterprise Income Tax Law of the People's Republic of China, the term "qualified not-for-profit organizations" refers to an organization that concurrently meets the following conditions:

1. It has completed registration for not-for-profit organizations according to law;
2. It engages in public interest activities or not-for-profit activities;
3. Income obtained is used entirely for the public interest or not-for-profit undertakings as registered, approved, or stipulated in the charter, with the exception of reasonable expenses related to the organization;
4. Properties and the benefits thereof are not to be distributed;
5. Pursuant to the registration, approval, or stipulations of its charter, the surplus properties of the organization after write-off shall be used for public interest or not-for-profit purposes or shall be donated via the administrative agency responsible for registration [usually the Ministry of Civil Affairs or local civil affairs bureau] to another organization of the same nature and with the same tenets, and shall be publicized to the general public;
6. No sponsor shall reserve or enjoy any property rights to the properties the sponsor gave to the organization in question; and

7. Expenses for the salaries and fringe benefits of staff members are controlled within prescribed limits, and none of the organization's properties shall be distributed in any disguised manner.

The measures for determining whether a not-for-profit organization meets the required criteria are to be formulated by the competent departments responsible for finance and taxation of the State Council in collaboration with the other relevant ministries and agencies of the State Council.

The term "qualified income of the not-for-profit organization" does not include income of the not-for-profit organization arising from profit-making activities unless it is set forth by the competent department of finance or taxation of the State Council.

Although in theory all of an NPO's income is subject to Enterprise Income Tax, a 1997 Ministry of Finance and State Administration of Taxation circular provides a broad exemption to NPOs [Circular Concerning Related Issues of Collection of Enterprise Income Tax to Institutions and Social Organizations]. To implement this circular, the State Administration of Taxation adopted the Methods of Administration on the Collection of Enterprise Income Tax to Institutions, Social Organizations, and Civil Non-Enterprise Institutions. According to these two documents, an NPO's donations, financial support from the government, membership dues, and some other income are free from Enterprise Income Tax.

B. Deductibility of Charitable Contributions

Recent changes in tax legislation have increased the portion of taxable income that individuals and enterprises can deduct for public benefit donations to qualifying NPOs. Payers of Individual Income Tax can now deduct up to 30 percent of their taxable income for public benefit contributions to legal NPOs [Regulations for the Implementation of the Individual Income Tax Law, Art. 24]. Payers of the Enterprise Income Tax can deduct up to 12 percent of their taxable income [Enterprise Income Tax Law, Art. 53]. The Enterprise Income Tax Law has replaced the Regulations for the Implementation of the Foreign Invested Enterprise and Foreign Enterprise Income Tax.

According to the Regulations on the Implementation of the Enterprise Income Tax Law of the People's Republic of China, the term "public interest donations" as used in Article 51 of the EIT Law refers to donations made by an enterprise to "public interest social organizations" or the people's government at the county level or above, and its departments, for public interest undertakings as prescribed in the Public Welfare Donations Law.

The term "public interest social organizations" includes any foundation or charitable organization that meets the following conditions:

1. It is lawfully registered and has the status of a legal person;
2. It serves the purpose of promoting public interest and does not adopt profit-making as its purpose;
3. All of its assets and profits belong to the legal person;
4. Its proceeds and operational surplus are used primarily for the cause for which the legal person was established;
5. The surplus property after the termination of the enterprise is not distributed to any individual or profit-making organization;
6. The organization refrains from engaging in any business that does not relate to its purpose of establishment;
7. It has a sound financial and accounting system;
8. The donor does not participate in the distribution of the property of the social body in any way; and
9. Other conditions as prescribed by the departments of Finance and Taxation of the State Council in collaboration with the Civil Affairs departments of the State Council in charge of managing the registration of social organizations.

The more favorable regulations regarding tax deductibility of public benefit donations have had mixed results. Enterprises have taken advantage of these incentives to establish private foundations. The increase in the percentage of enterprise income eligible for tax deductibility in 2007 was one main factor behind the rapid growth of private foundations in 2008. Individuals, however, have not been as quick to take advantage of the tax laws due to poor implementation of the laws regarding deductibility on individual income taxes and a cultural perception that individuals should not benefit financially from public benefit donations.

C. Indirect Taxes: Business Tax, Value Added Tax, and Import Duties

China subjects certain sales of goods and services to Business Tax (which relates to provision of services) and VAT (which relates to sales of goods), and offers few exemptions.

The general Business Tax law exempts NPOs and other entities that engage in nursing, medical, educational, cultural, or religious activities, or activities in which services are performed by the disabled [Interim Regulations on the Business Tax, Art. 6].

Goods sold within China or goods imported from abroad are subject to VAT. The Interim Regulations on the Value Added Tax exempts from VAT goods for scientific research, experimentation, and education; antique books; and goods imported by organizations of the disabled to be used specifically for the disabled. Imported goods donated by foreign governments and international organizations are also exempt from the VAT under Article 16.

Goods donated by foreign governments and international organizations are also exempt from customs duties [Customs Law, Art. 56], though application may need to be made up to avail organizations of that exemption.

Certain donations are also exempt from customs duties and VAT [Public Welfare Donations Law, Art. 26]. In 2001, the Ministry of Finance, the State Administration of Taxation, and the Customs General Administration jointly issued the Interim Methods of Customs Duties Exemption of Donated Goods for the Purposes of Poverty Relief or Charity. This exemption applies to goods donated by people outside China that are accepted by the government or by "Social Organizations established with the permission of competent departments of the State Council, whose purposes are humanitarian, poverty relief or charity" [Public Welfare Donations Law, Art. 5]. The Customs General Administration enacted implementing rules, [16] under which the exemption applies only to several national-level social organizations, including the Red Cross Society of China, the All-China Women's Federation, the China Disabled People's Federation, the China Charity Federation, the China Primary Health Care Foundation, and the Soong Ching Ling Foundation. Most NPOs are excluded.

According to other rules made by the Customs General Administration, goods are exempted from Customs Duties and VAT if (1) they are imported by scientific research institutes or schools, (2) they are directly for scientific research or education, and (3) they cannot be produced in China.

Certain customs duties or taxes may also be exempted by special rules adopted after significant disasters, such as the 2008 earthquake in Sichuan Province.

D. Other Taxes

NPOs also qualify for exemptions from other taxes, including Real Estate Tax, Urban Land Use Tax, and Tax on Acquisition of Real Estate.

E. Double Tax Treaties

China and the United States have entered into a double-taxation treaty, but it does not specifically address the deductibility of contributions by U.S. residents and businesses to NPOs.

F. Foreign Organizations and Grants

There are few clear rules about the status of foreign associations in China, and their status is subject to case-by-case scrutiny and discretion of the Ministry of Civil Affairs and other competent authorities, such as the ministries governing professional work in specialized fields (i.e. Ministry of Health; Ministry of Education). However, the Regulations for the Management of Foundations (2004) govern the establishment and operations of representative bodies of foreign foundations.

According to these Regulations, a foreign foundation seeking to establish a representative body in China should provide the following documentation to the registration authority: a letter of application; proof of legal registration in its home country and a copy of its charter; proof of the identities and curricula vitae of the persons who will act as responsible persons in the representative body; proof of place of business; and a document attesting to the decision of the professional ministry or agency in China to permit it to establish a representative body in China.

Representative bodies of foreign foundations should engage in public benefit activities that are appropriate for the nature of public benefit enterprises in China. Foreign foundations assume civil legal liability for the actions of their representative bodies in China in accordance with Chinese law.

Representative bodies of foreign foundations may not engage in fundraising or accept donations within China. They are required to submit an annual work report to the organ in charge of registration of foundations and submit to an annual inspection. The annual report should be reviewed and approved by the foundation's relevant professional government or agency prior to submission. The annual work report should include a financial report; an audit report by a certified accountant; reports on fundraising activities, donations received and grants made; and information on staffing and organizational changes.

In 2010, the Yunnan provincial government issued the first-ever regulations for foreign NGOs asking to participate in the document filing system (备案, bei'an) with the provincial Civil Affairs and Foreign Affairs departments [Yunnan Province's Provisional Regulations Standardizing the Activities of Overseas Non-Governmental Organizations]. This experimental measure is seen as a step toward full registration with the intent of better regulating the activities of foreign NGOs in the province. However, implementation has taken time. As of September 2012, the Yunnan Civil Affairs website lists more than 30 foreign NGOs that have participated in the document filing system..

In 2010, new rules were released by the State Administration of Foreign Exchange governing the administration of foreign funds donated to or by domestic institutions [Notice of the State Administration of Foreign Exchange on Issues Concerning the Administration of Foreign Exchange Donated to or by Domestic Institutions, No. 63 [2009]].

The Notice requires that foreign exchange donations not contravene social mortality, harm public interest, or the lawful rights and interests of citizens [Art. 2]. It requires that donated foreign exchange be transacted through identifiable bank accounts for donated foreign exchange [Art. 3].

With respect to funds donated from abroad by foreign nonprofits, domestic "enterprises" (as the Notice terms them, though the term may apply to non-enterprise social organizations and other NPOs, whether registered or unregistered) receiving such funds shall file documentation with permitted banks to include [under Art. 5] an application; a copy of the domestic institution's business license; a notarized donation agreement with the purpose of the donation described (though the Notice does not make clear whether the notarization is required to take place in China or may take place abroad); a registration certificate for the overseas organization; and other raw materials that may be required.

Social organizations that are not required to register or have had their registration requirement waived may be subject to lesser requirements, involving an application but perhaps not the other documents required of enterprises [Art. 6 and Appendix 2]. [17] Other Chinese institutions receiving funds are subject to most of the more detailed requirements listed under Article 5, but not, it appears, the notarization requirement for the donation agreement, or the overseas organization's registration certificate [Art. 8].

Religious organizations accepting funds at the level of 1 million RMB or above must obtain permission from the State Administration for Religious Affairs (for national-level religious groups) and from the relevant provincial government (for local religious groups and sites) [Art. 8].

There has been a great deal of concern among NPOs, especially informal NPOs that are registered as businesses or unregistered, that this regulation would make it difficult or even impossible to get their funding from overseas organizations. Many informal NPOs, in particular, rely heavily on overseas funding. However, discussions with a number of informal NPOs in China suggest that while the new regulations have created more difficulties and red tape in securing and using overseas funds, it has generally not prevented NPOs from obtaining overseas funds transferred to their bank accounts. Implementation of the regulation has been uneven, with some banks having stricter requirements than others.

Foreign exchange is under relatively tight government control in the People's Republic of China. In general, foreign currency donated from abroad is to be exchanged for Chinese currency, *renminbi* (RMB), at a bank specified by Chinese law [Regulations on Foreign Exchange, Art. 10; Rules of Administration of Purchase, Sale and Payment of Foreign Exchange, Art. 9].

VI. Knowledgeable Contacts

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[1] After more than 2,000 years with its own unique legal tradition, China began to embrace the civil law tradition of the western world early in the 20th century. During the Republic of China period (1912-1949), systematic legislation placed China firmly in the civil law family. Since the establishment of the People's Republic of China in 1949, the legal tradition in China has remained mainly civil law, though with significant characteristics of socialism. Thus there is no Civil Code in China at present, only General Principles of Civil Law.

[2] The standard translation for Social Associations has, in the past, been Social Organizations which is confusing because Social Organizations is also the term used for the broader concept of shehui zuzhi, which includes SAs, CNIs and foundations. We therefore use Social Associations instead because they most closely resemble what we know of as membership associations.

[3] In 2007, "Some Opinions of the General Office of the State Council about Accelerating and Promoting the Reform and Development of Trade Associations and Chambers of Commerce" encourage the separation of trade unions from the government.

[4] See "How to get the stalled Charity Law moving", *People's Daily*, September 7, 2011, English translation available at <http://hausercenter.org/chinanpo/2011/10/people%e2%80%99s-daily-on-how-to-get-the-stalled-charity-law-moving/>]

[5] For further information on tax laws applicable to NPOs in China, see Leon Irish, Jin Dongsheng, and Karla Simon, [China's Tax Rules For Not-For-Profit Organizations](#) (hereafter Tax Report). The paper also contains a lengthy discussion of the general legal rules applicable to all types of NPOs in China. See also Karla W. Simon, [Reform of China's Laws for NPOs: A Discussion of Issues Related to Shiye Danwei Reform](#), *Journal of Chinese Law* (June 2005).

[6] The Regulations on the Administration of Foundations (2004) were adopted to replace the 1988 Regulations on Foundations (issued by the State Council on September 27, 1988). Under the 1988 Regulations, foundations were a special category of social organization. Consequently, the term "social organization" in other laws and regulations has usually been used to include foundations. But the 2004 Regulations no longer describe foundations as a special category of social organization. Foundations may be in somewhat of a legal limbo, in theory if not in practice, because they are not discussed in the General Principles of Civil Law.

[7] English translations of some of these laws and regulations can be found on China Development Brief's website, <http://www.chinadevelopmentbrief.cn/?cat=3>

[8] One may question whether a public institution qualifies as an NPO at all, given that the government provides a public institution's original assets and exerts greater control over it than even over an ordinary NPO. Even so, a public institution is subject to certain taxes on the same basis as social organizations and civil non-enterprise institutions, and the Public Welfare Donations Law treats donations to institutions the same as donations to public benefit social organizations. Whatever category public institutions may belong in, they are regularly the recipients of foreign grants, and so they are included in this Note.

[9] Leon Irish, Jin Dongping and Karla Simon list some of the problems with China's tax system for NPOs in section 5 of their 2004 World Bank study, "China's Tax Rules for Not-for-Profit Organizations." These problems are still relevant today.

[10] Article 50 of the Trust Law also lists the extent of "public benefit purposes" in terms of public benefit trusts (or charitable trusts). It is nearly the same as Article 3 of the Public Welfare Donations Law.

[11] The Department of Politics and Law of the Office of Law of the State Council & the Bureau of Administration of Non-governmental Organizations of the Ministry of Civil Affairs (ed.), "Interpretation of the Regulations on the Registration and Administration of Social Organizations and the Interim Regulations on the Registration and Administration of Private Non-enterprise Units," Beijing: China Social Press, 1999, pp.58-59.

[12] *Id.* p.142.

[13] Article 6 and 7 of the Opinions on Several Issues Concerning Registration and Administration of Enterprises (June 29, 1999).

[14] See Tax Report, *supra* note 3.

[15] The Constitution also provides in formal terms for other rights and freedoms, including the freedom of speech, the press, assembly, association, procession and demonstration; the right to petition the state; the right to receive compensation for violation of civic (civil rights); the right and duty to work and to rest; the right to assistance from the state for the elderly, ill, or disabled; rights to pursue scientific, literary, and artistic creation; equal rights for women; the right to defense for accused persons; and the right for minority nationalities to use their national languages.

In recent years, Chinese public interest lawyers have sought to enforce and detail some of these rights and freedoms through legal action. In most of those cases, the courts have declined to hear such petitions or have rejected them, and a number of public interest lawyers have been arrested, detained, or discouraged from undertaking rights-based cases.

[16] Methods for the Implementation of the Interim Methods of Customs Duties Exemption of Donated Goods for the Purposes of Poverty Relief or Charity.

[17] These institutions include organizations participating in the Chinese People's Political Consultative Conference, longtime government-established national mass organizations with strong links to the Party and government, such as the All-China Federation of Trade Unions, Communist Youth League, Chinese Women's Federation, and similar groups. The groups exempt from registration based on decisions of the State Council include a range of long-standing social organizations with close ties to the Party and government, such as the Chinese Journalists Association, Soong Ching Ling Foundation, China Law Society, Red Cross Society of China, and others. Also subject to the reduced requirements are eleven artists' associations under the China Federation of Literary and Arts Circles and their provincial and municipal affiliates.