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Assessing the Tax Administration Law of the People's Republic of China

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I. INTRODUCTION

As part of its effort to develop a socialist market economy,[1] the People's Republic of China (PRC or China) has sought to obtain revenue through taxes rather than through receipt of profits from state enterprises.[2] In the early 1990s, the Chinese government undertook comprehensive reform of the tax system developed in the 1980s. These reforms, which encompassed many facets of taxation, included abolishing the contract system of assessing taxes, eliminating differential tax rates between foreign and domestic enterprises and state-run and private enterprises, altering the distribution of tax revenues between central and local governments, and revising the value-added and individual income taxes.[3] The government recognized that the tax system's weaknes-

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1. Some economists characterize the PRC's economy as a "socialist market economy." *See CPC Decision on Socialist Market Economy*, Xinhua News Agency, Nov. 15, 1993, *available in* WL, ALLNEWS Database.

2. *See Taxation of Domestic, Foreign-Funded Enterprises to Be Unified*, Xinhua General News Service, Feb. 20, 1992, *available in* LEXIS, ASIAPC Library, Xinhua File (Wang Bingqian, State Councillor and Finance Minister, stating that with the implementation of economic reforms and the establishment of new enterprises, existing regulations were not sufficient to safeguard the state's interest in protecting tax revenues); *see also* Interview with Jin Xin, Director of the State Taxation Administration, *reprinted* in Liao Ping, *Official Discusses Adapting Taxation to Reform*, BEIJING LIAOWANG, Sept. 21, 1992, *and in* Fed. Broadcast Info. Service-China-92-223, (FBIS-CHI-92-223), Nov. 18, 1992, at 35, 36 [hereinafter Interview with Jin Xin] ("Since reform and opening up, China has carried out 'taxation instead of profits delivered to the state.' ").

3. Yu Nai, *Tax Reform Pays Dividends, Causes Trivial Inflation*, May 31, 1994, *reprinted in* FBIS-CHI-94-105, June 1, 1994, at 60, 61; *see also* Individual Income Tax Law of the People's Republic of China, (Sept. 10, 1980) (amended Oct. 31, 1993), *translated in*

ses stemmed from the substantive provisions of the various laws, and sought to remedy severe problems of rampant evasion, ignorance of tax obligations,[4] physical attacks on tax collection agents,[5] bribery,[6] and interference in tax administration by local authorities.[7] Consequently, in 1992 the Standing Committee of the National People's Congress enacted the Law of the People's Republic of China to Administer the Levying and Collection of Taxes (Tax Administration Law).[8] Thereafter, the State Council promulgated the detailed Implementing Regulations for the Tax Administration Law.[9]

This Article evaluates the PRC's Tax Administration Law. Part II discusses the factors that influenced the enactment of the Tax Administration Law and the Implementing Regulations, including: (1) reliance on taxes rather than delivery of profits to raise governmental revenue; (2) tax evasion; and (3) lack of due process and uniformity. Part III examines the Tax Administration Law's general principles, procedures for tax administration and collection, tax investigations, and penalty provisions. Part IV concludes that the Tax Administration Law cannot function effectively until China trains sufficient administrative and judicial personnel and alleviates "tax illiteracy" among its citizenry.

[Taxation & Customs] China Laws for Foreign Business (CCH) ¶¶ 30-500.

4. Zou Qingli, *Taxes Are Everyone's Concern: Increase All People's Awareness of Paying Taxes*, Beijing Xinhua Domestic Service, Apr. 24, 1994, *reprinted in* FBIS-CHI-94-109, June 7, 1994, at 42, 43 (stating that, previously, "as tax revenues had no direct bearing on the interests of units or individuals, the overwhelming majority of people knew only vaguely 'the need to pay taxes by everyone,' a concept rather prevalent in Western developed countries.").

5. *See infra* notes 163-66 and accompanying text.

6. *See infra* notes 46-47 and accompanying text.

7. *See generally* Interview with Jin Xin, *supra* note 2, at 35 (stating that "some individual localities have instituted their own rules and regulations and have randomly promulgated some measures of tax reduction and remission which run counter to the central authorities' unified policies").

8. Law of the People's Republic of China to Administer the Levying and Collection of Taxes (Sept. 4, 1992), *translated in* [Taxation & Customs] China Laws for Foreign Business (CCH) ¶¶ 39-620 [hereinafter Tax Administration Law].

9. Detailed Rules for the Implementation of the Law of the People's Republic of China to Administer the Levying and Collection of Taxes (Aug. 4, 1993), *translated in* [Taxation & Customs] China Laws for Foreign Business (CCH) ¶¶ 39-622 [hereinafter Implementing Regulations].

II. THE DEVELOPMENT OF THE TAX ADMINISTRATION LAW AND THE IMPLEMENTING REGULATIONS

A. *Tax v. Profit*

An impetus for overhauling China's tax administration system is the increased importance of tax revenue in a socialist market economy.[10] This shift "represents a profound revolution and a monumental structural readjustment of the original state-controlled distribution system."[11] From 1958 to 1978, forty percent of governmental revenue derived from taxes.[12] By 1985, tax revenues increased to ninety-five percent of total governmental revenue.[13] The Chinese government asserts that its most recent tax reform efforts have been successful. *Beijing Review*, a government-sponsored publication, indicated that by February 1994, governmental revenues were thirty-two percent higher than February 1993. Notwithstanding this increase, the head of the Ministry of Finance, under which the State Administration of Taxation operates, conceded that problems persisted.[14]

B. *Tax Evasion*

The Tax Administration Law gives authorities greater powers to enforce rules against tax-dodging.[15] Rampant tax evasion is a major obstacle to the development of China's tax system. For example, in 1988, at a national conference on tax evasion, reports indicated that fifty percent of China's state and collective

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10. As part of the tax reform measures undertaken during the 1980s, all taxable (i.e. profitable) state enterprises were obligated to pay income taxes rather than deliver profits to the state. Li Jinyan, *China's Tax System: An Evaluation*, 17 DENV. J. INT'L L. & POL'Y 527, 532 n.14 (1989). By the mid-1980s, state enterprises were paying not only an income tax, but an adjustment tax, commodity tax, value-added tax, business tax, resource tax, salt tax, municipal maintenance and construction tax, land tax, house tax, vehicle and ship license tax, and wage adjustment or bonus tax. Lu Tinggang & Yang Jiliang, *Profit Distribution and Tax Reform in China*, 13 INT'L TAX J. 65, 65-66 (1987).

11. Li Ning, *New Tax System Operates Smoothly*, BEIJING REV., Sept. 19-25, 1994, at 26.

12. A.J. Easson & Li Jinyan, *The Evolution of the Tax System in the People's Republic of China*, 23 STAN. J. INT'L L. 399, 409 n.40 (1987).

13. *Id.*

14. Han Guojian, *Tax Reform Proceeds Smoothly*, BEIJING REV., Apr. 11-17, 1994, at 5, 6.

15. Daniel Chang, *Deep in the Heart of China, The Tax Man Cometh: How a "Donation" Led to Open Revolt in Renshou*, World Paper, Sept. 1993, at 13, *available in* LEXIS, News Library, WPAPER File.

enterprises, and eighty percent of individual businesses, avoided paying taxes.[16] Unfortunately, in 1993, after the enactment of the Tax Administration Law, fifty to sixty percent of state-run entities and more than ninety percent of private businesses still reportedly engaged in tax evasion.[17] Individuals appropriate seventy percent of the money siphoned off by tax evasion.[18] Tax evasion is not simply a phenomenon of the 1990s; as early as ten years ago, reports of tax evasion by local governments surfaced.[19] Nor is tax evasion unique to Chinese individuals and entities. Approximately thirty percent of foreign nationals surveyed in sixteen areas in China had "under-declared their total incomes and the length of their stay in China" to reduce their taxes.[20]

C. Due Process and Uniformity

Additional goals of the Tax Administration Law include creating uniformity in the application of the various tax laws and reducing arbitrary tax administration. After the PRC was founded in 1949, different levels of taxation authorities established a variety of tax collection administration systems.[21] Various tax statutes, administrative orders, and regulations contained tax administration provisions.[22] The tax administration laws, piecemeal nature was

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16. *Tax Evasion is Huge, at Times Violent, Problem in China*, Xinhua General Overseas News Services, Aug. 19, 1988, *available in* LEXIS, ASIAPC Library, Xinhua File. Jilin Province reported that forty percent of state and collective enterprises and seventy percent of individual households avoided paying taxes owed. *Jilin Commentary on Strengthening Tax Management*, Changchun Jilin Provincial Service, Jan. 3, 1989, *reprinted in* FBIS-CHI-89-003, Jan. 5, 1989, at 56. China's biggest reported case of tax evasion for 1989 occurred in Guangdong Province, where a private businessman evaded $240,000 in taxes: *11.7 Billion Yuan Collected from Private Sector*, Beijing Xinhua, Dec. 22, 1989, *reprinted in* FBIS-CHI-89-248, Dec. 28, 1989, at 28. Overall, private businessmen avoided paying $430,000,000 in taxes. *Id.*

17. *Corporate Tax Evasion Rampant in China, Paper Says*, Japan Economic News Wire, May 12, 1993, *available in* LEXIS, ASIAPC Library, JEN File. Tax evasion is estimated at one-eighth of the Chinese national budget. *Id.*

18. *Id.*

19. *See* Marlowe Hood, *China Learns a Capitalist Lesson: Tax Evasion Goes with the Game*, WALL ST. J., Nov. 12, 1985, at 32. The central government's Audit Administration reported that a county in Shangxi Province declared a $315,000 deficit for 1983, when the county actually had a $118,000 surplus. *Id.*

20. *China—Foreigners—Tax Evasion Government Urged to Check Tax Evasion by Foreign Nationals*, Xinhua News Agency, Dec. 21, 1994, *available in* LEXIS, ASIAPC Library, Xinhua File.

21. ZHONGGUO SHUIWU BAIKE QUANSHU [CHINA TAX ENCYCLOPEDIA] 495-96 (Jin Xin et al. eds., 1992).

22. *Id.* at 496.

not a significant problem until China implemented market reforms. With the implementation of market reforms and the concomitant emphasis on obtaining national revenue from taxes rather than profits, it became evident that the tax collection system was unsophisticated.[23]

As a result of the lack of uniformity in the tax laws, local governments and tax officials arbitrarily administer laws and maximize their personal and parochial benefit. For example, local governments may exceed their administrative authority by granting "tax breaks to local enterprises in a freewheeling way."[24] In addition, "leaders in some localities and departments lack an overall viewpoint and their selfish departmentalism is very serious. Very often they 'tamper with' the tax laws to benefit their local interests."[25] Instances of "tax cadres who fail to resist the lure of money and are lax in enforcing the law," as well as "[i]ncidents of abusing tax power for private gain" exist.[26]

At the expense of the central government, local governments profit from the lack of uniformity in the administration of the tax system. Local officials interfere with tax collection, refuse to remit taxes to the central government, evade taxes constantly, and search for revenge against those who report such evasion.[27] Consequently, local governments remit only forty percent of the taxes

23. *Id.*

24. Wang Yong, *No More Tax Breaks for State-Owned Enterprises*, CHINA DAILY (BUSINESS WEEKLY), Aug. 7-13, 1994, *reprinted in* FBIS-CHI-94-152, Aug. 8, 1994, at 30. This refrain has been heard for the last decade. *See also Fujian Province Report on 1984, 1985 Budgets*, FUJIAN RIBAO, May 13, 1985, *reprinted in* JPRS-CEA-85-071, Aug. 8, 1985, at 51 (quoting Zhou Baoyuan, Acting Director of the Fujian Provincial Department of Finance, stating at the Third Session of the Sixth Fujian Provincial People's Congress in April of 1985, "[l]ocal authorities must not reduce or exempt taxes on their own, in violation of the tax system.")

25. *Rectify the Tax Collection Order and Strictly Administer Tax Affairs in Accordance With Law*, RENMIN RIBAO, Jan. 6, 1989, *reprinted in* FBIS-CHI-89-006, Jan. 10, 1989, at 38 [hereinafter *Rectify the Tax Collection Order*].

26. *Id.*

27. *Stronger Supervision Over Taxation Urged*, Beijing Xinhua Domestic Service, Apr. 1, 1989, *reprinted in* FBIS-CHI-89-065, Apr. 6, 1989, at 36; *China's Tax Collections Rose 21% in August*, ASIAN WALL ST. J., Sept. 28, 1993, at 3. During the course of earlier tax reform efforts, structural problems developed through the government's use of a system of negotiated tax contracts, which allowed "factories to haggle with tax collectors, townships with counties, counties with provinces and provinces with Beijing. As a result, by the time tax payments reach Beijing, much of the money has been siphoned off." James McGregor, *China's Backward-Flowing Tax System Leaves Beijing up the Budgetary Creek*, WALL ST. J., Nov. 12, 1990, at A11.

collected in China to the central government.[28] The remaining sixty percent remains in the hands of local governments. Governments in the economically flourishing areas along China's coast have been particularly successful at increasing their tax revenue.[29]

Part of the problem is the division of power and responsibility between the central and local governments. Unlike many developed countries, where central government tax agencies directly collect tax revenue, China relies on local agencies to collect and then remit tax revenue to the central government.[30] The Director General of the State Administration of Taxation stated "[i]t is our long-term objective that the central government gradually will pick up 60% of the country's total [tax] revenue."[31] This is one of the major goals of tax reform and is necessary in funding development of infrastructure and in preventing excessive deficit spending.[32]

It was in this context that the PRC enacted the Tax Administration Law. The Tax Administration Law contains six chapters, in the following order: General Principles, Taxation Administration, Tax Collection, Tax Investigations, Legal Liability, and Supplementary Principles.

III. GENERAL PRINCIPLES OF THE TAX ADMINISTRATION LAW

The Tax Administration Law states its goals as strengthening tax collection administration, ensuring tax revenue, and protecting taxpayers' rights and interests.[33] The statute "shall apply to the administration of the levying and collection of the various types of

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28. *China Promises Foreign Ventures Refunds if Their Tax Bills Rise*, ASIAN WALL ST. J., Jan. 13, 1994, at 3 [hereinafter *China Promises*].

29. *Id.*

30. McGregor, *supra* note 27 ("In China, about 500,000 local-government workers collect taxes, and then—supposedly—pass the money to the State Administration of Taxation in Beijing."). A more recent statistic indicates China's tax agencies have a staff of 600,000. *See* Zou Qingli, *supra* note 4. As part of the reforms undertaken in the early 1990s, China has attempted to restructure the tax-sharing systems between local and central governments in order to increase the central government's share of tax revenues. *See Report: "Provinces Establish Their Own Local Tax Office,"* July 30, 1994, *reprinted in* FBIS-CHI-94-147, Aug. 1, 1994, at 49; *see also Separation of State, Local Tax Systems Nearly Complete*, Aug. 15, 1994, *reprinted in* FBIS-CHI-94-160, Aug. 18, 1994, at 27.

31. *China Promises*, *supra* note 28.

32. *Id.*

33. Tax Administration Law, *supra* note 8, art. 1.

taxes imposed by taxation authorities."[34] Taxation authorities may carry out the actual taxing powers (i.e., the granting of tax deductions, exemptions, and refunds) set forth in the various substantive tax statutes, but only according to law.[35] Where such statutes provide that the State Council may promulgate regulations, it must exercise the taxing powers in accordance with such regulations.[36]

The statute specifically prohibits organs, units, or individuals from arbitrarily deciding to levy, cease levying, decrease, exempt, or refund taxes.[37] This prohibition reflects the central government's effort to further define and control local governmental authority in the taxation arena.[38] A serious problem exists in

34. *Id.* art. 2. This broad statement indicates that the law will apply to most taxes unless they are specifically exempted. For example, the agricultural tax, pastoral tax, cultivated land usage tax, and deed tax may not fall completely under the Tax Administration Law. *Id.* art. 58. Furthermore, should the provisions of tax treaties and agreements between the People's Republic of China and another country conflict with the Tax Administration Law, the provisions of the tax treaty or agreement shall govern. *Id.* art. 59. *See generally* Li Zhihui, *China: A New Legislation for Tax Collection and Administration,* 11 APTIRC Bull. 311, 312 (1993).

35. Tax Administration Law, *supra* note 8, art. 3. The reference to "according to law" appears to include both the substantive tax laws and the Tax Administration Law. *See id.*

36. *Id.*

37. *Id.* This concept of acting within the bounds of the law is underscored by statements made in the Chinese legal press. *See* Sun Zhongxian & Yu Jianhua, *Caiqu Youxiao Cuoshi: Dali Zuzhi Shouru [Adopting Effective Measures: Organizing Revenue on a Large Scale]*, ZHONGGUO SHUIWU [CHINA TAXATION], Nov. 1993, at 6 (stating that the Tax Bureau of Wendeng City, Shandong Province, "in carrying out its work, insists on administering taxes according to the law, and is resolute in handling matters within the limits of its tax collection management authority.")

38. In rural areas, a number of reports have surfaced concerning local government abuse of taxing authority. For example, to protest heavy taxes, approximately 10,000 Renshou County farmers (Sichuan Province) attacked a government office, set up roadblocks, destroyed official homes and offices, attacked local officials with bricks and clubs, and burned five police cars. *Farmers Riot Reported in Sichuan,* Central News Agency, June 11, 1993, *available in* LEXIS, ASIAPC Library, CENEWS File; *see also China: Officials Inspected—Taxation in the Countryside,* Reuter Textline (China Daily), Dec. 14, 1994, *available in* LEXIS, ASIAPC Library, TXTRAN File; Raymond Whitaker, *China Cuts Back Taxes After Peasant Protests,* THE INDEPENDENT, June 22, 1993, at 11; Lena H. Sun, *China Eases Fee Burden on Restive Farmers: Action Follows Violent Protest by Peasants,* WASH. POST, June 22, 1993, at A14. This protest was in response to the imposition of an unauthorized local tax levied for the ostensible purpose of constructing a section of expressway. Chang, *supra* note 15, at 13. Other taxes and levies imposed upon farmers have included "newspaper subscriptions, insurance, housing construction, school renovation, marriage registration, public toilet construction and forest protection." *Id.* Jin Xin, director of the State Administration of Taxation, has stated that every year approximately 3,000 tax protests occur nationwide. *Id.* Other provinces have reported similar protests "against provincial government scams that finance industrial projects with

the separation of powers between national and local authorities. The Tax Administration Law specifically states that local governments shall support and assist taxation authorities in carrying out their duties in accordance with the law.[39] An officer from the economic section of the U.S. Consulate in Guangzhou recently observed:

> Currently, locally imposed, unrecorded out-of-budget fees are an important source of revenue for government authorities at the provincial level and below, which do not now have authority to levy taxes. By keeping these revenues off budget, the local authorities can gain some economic independence. One goal of reform is to regularize local government finances and absorb irregular out-of-budget revenues into official budgetary channels.[40]

In addition to requiring that local governments administer the tax laws in an even-handed manner, the Tax Administration Law states that

> [t]axation personnel must execute the law impartially They shall not demand or accept bribes, practice favouritism or fraud, neglect their duty, fail to collect or collect less than the amount of tax payable, abuse their powers of office by collecting excess amounts of taxation or deliberately create difficulties for taxpayers and tax withholding agents.[41]

In 1986, the PRC promulgated regulations regarding tax personnel (Tax Personnel Regulations), also known as "The Five Requirements," and "The Ten Forbiddens," to address the problem of corrupt tax officials.[42] The Tax Administration Law sup-

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increased taxes and 'voluntary' contributions from farmers," including Jilin, Heilongjiang, and Anhui Provinces. Uli Schmetzer, *Peasants in China Revolted by Higher Taxes*, CHI. TRIB., Jan. 14, 1993, at 18.

39. Tax Administration Law, *supra* note 8, art. 5.

40. Lee A. Brudvig, *Tax and Fiscal Reform in China and Guangdong: Likely Effects on Local Governments, State-Owned and Foreign Enterprises*, E. ASIAN EXECUTIVE REP., Apr. 1994, at 7, 8. For an analysis of the tension between central and local governments taxation authority and its effect on foreign investors, see generally John S. Mo, *Taxation Power and Invalidity of Certain Local Tax Concessions in China*, 26 INT'L LAW. 933 (1992).

41. Tax Administration Law, *supra* note 8, art. 6.

42. *See* Zeng Zhi, *"Zhonghua Renmin Gongheguo Shuishou Zhengshou Guanli Fa" Shiyi, Diyi Zhang, Zongze (Xia)* [*"An Explanation of the Law of the People's Republic of China To Administer the Levying and Collection of Taxes," Part One, General Principles*], ZHONGGUO SHUIWU [CHINA TAXATION], Feb. 1993, at 26, 28. The Tax Personnel Regulations stipulate that as part of the First Requirement, tax personnel must diligently study Marxism, Mao Zedong philosophy, and Party policy, as well as "unceasingly raising

plements the principles set forth in the Tax Personnel Regulations. The Tax Administration Law may provide a strict scope of authority that is beneficial in establishing a corps of effective taxation personnel and assuring implementation of tax collection policies.[43]

Both the Tax Personnel Regulations and Article 6 of the Tax Administration Law perceive that China's untrained and corrupt tax personnel constitute a problem. Tax collection is largely conducted on a face-to-face basis because China's banking system is undeveloped and continually relies on cash transactions. Consequently, the front line tax collectors are susceptible to inveigling.[44] For example, a self-employed printer in Beijing stated, "The tax man comes to see me every three months. I take him out to lunch, give him a present and the bill goes down."[45] The extent to which corruption plagues the ranks of tax collectors is unclear because recent reports focus on corruption in general,[46]

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one's political consciousness, supporting the four basic principles, and thinking of serving the people with one's whole heart and mind." *Id.* Under the Second Requirement, tax personnel are urged to increase their professional knowledge and to raise the level of tax collection management. *Id.* The Third Requirement addresses the need to impartially uphold the law and operate according to law. *Id.* The Fourth Requirement provides that personnel must "present oneself in good order, carry oneself properly, be modest and prudent, polite, and collect taxes in a civilized way." *Id.* According to the Fifth Requirement, tax personnel were encouraged "to be upright and honest in performing official duty and never hesitate to struggle against illegal behavior." *Id.*

The Ten Forbiddens enumerate various actions that are prohibited, including:

> (1) Accepting gifts and invitations to eat; (2) purchasing goods for lower prices from those for whom one has the responsibility to oversee; (3) giving or receiving credit from those for whom one has the responsibility to oversee, or borrowing money or things from them; (4) using one's position to demand or accept bribes; (5) collecting taxes based on personal sympathies; (6) shielding or winking at those who evade taxes or who owe taxes; (7) taking advantage of one's authority to decrease or delay payment of one's taxes; (8) failing to issue a receipt, falsifying a receipt; (9) taking for private gain or embezzling tax funds; (10) arbitrarily withholding or confiscating cash, goods, or tools belonging to small peddlers, or arbitrarily levying fines on such persons.

Id.

43. *Id.*

44. *Roundup: Hainan to Upgrade Market Economic Reform*, Xinhua News Agency, July 9, 1994, *available in* LEXIS, News Library, Xinhua File (stating that Hainan Province is moving away from "relying on each individual tax official to be responsible for tax collection in a number of tax enterprises or firms, a practice deemed as the root of corruption among tax officials.").

45. *China's New Rich Accused of Massive Tax Evasion*, Reuter Library Report, Aug. 19, 1988, *available in* LEXIS, ASIAPC Library, REUWLD File.

46. *See Chinese Judge Hints at Crackdown on Corrupt Officials*, Japan Economic Newswire, July 30, 1993, *available in* LEXIS, ASIAPC Library, JEN File; *China Warns*

rather than corruption within the tax agencies themselves.[47] The media focuses on the tension among local authorities, central governmental tax authorities, and the taxpaying public.

One potential solution is increasing training and education of tax officials. China has over 500,000 tax collection personnel; however, less than a quarter of these officials are college graduates.[48] In 1992, working its way toward a solution, China opened the Changchun Taxation College in Jilin Province, the first institute of higher learning devoted to taxation.[49]

Consistent with past reform campaigns, Chinese legal commentators hold up tax authorities from specific localities as positive examples. These role models demonstrate leadership in the training and motivation of tax cadres, and implementing the tax laws.[50] For example, the tax bureau in an island county in Liaoning Province for the past several years has attempted to draw

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Corruption a Growing Threat, Agence France Presse, June 12, 1993, *available in* LEXIS, ASIAPC Library, AFP File; *Corruption Cases Handled*, Xinhua News Agency, Mar. 16, 1994, *available in* LEXIS, ASIAPC Library, Xinhua File; *Courts to Work for Reform, Development, Stability*, Xinhua News Agency, Jan. 6, 1995, *available in* LEXIS, ASIAPC Library, Xinhua File; *More Officials Charged with Bribery and Embezzlement*, Xinhua General Overseas News Service, Oct. 28, 1993, *available in* LEXIS, ASIAPC Library, Xinhua File. *See also* Joyce Barnathan, *Now, Even Peasants Hate Beijing: Usually the Party's Bedrock, They're Violently Protesting Taxes*, BUS. WK., July 5, 1993, at 47 (stating that central government officials threatening to punish local officials' skimming tax revenues collected from peasants); *China's Peasant Revolt*, WALL ST. J. EUR., June 25, 1993, at 6 ("[T]he government ordered local authorities to cancel 37 taxes imposed on peasants, including those on 'Movie Watching' and 'Toilet Improvements.' "); Hood, *supra* note 19 (stating that municipal authorities in Harbin imposed some forty-two taxes and fees on private businesses). By analogy, the central government has cracked down on loan corruption by bank officials, who were accepting bribes in exchange for illegally arranging loans amounting to millions of dollars. David Holley, *China Leans Heavily on Trouble-Shooter*, L.A. TIMES, July 31, 1993, at A10, A11. As part of the crackdown, the government publicized the trial of one bank officer who was sentenced to death for the illegal loans. *Id.* "But the government is unlikely to publicize any more trials, because it doesn't want outsiders to know how prevalent corruption in banking is, doesn't want to give the impression that China's economy is unstable." *Id.*

47. *But see supra* notes 44-45 and accompanying text; *China Nabs 3,637 Crooked Law Officials*, UPI, Feb. 15, 1995, *available in* LEXIS, ASIAPC Library, UPI File; *Six Executed for Counterfeiting Value Added Tax Invoice*, Xinhua News Agency, Oct. 27, 1994, *available in* LEXIS, ASIAPC Library, Xinhua File [hereinafter *Six Executed*] (reporting that a tax collection clerk for the Jiangyin City Tax Authority was executed for taking bribes of over 60,000 yuan).

48. *Taxation: First Taxation College Founded*, BBC Summary of World Broadcasts, May 27, 1992, *available in* LEXIS, ASIAPC Library, BBCSWB File.

49. *Id.*

50. *See* Sun Zhongxian & Yu Jianhua, *supra* note 37.

attention to tax collection matters. In 1993, it staged an art and literature soiree billed as the "Spring of Taxation," and toured the island giving performances.[51]

As part of the publicity effort, legal commentators have published profiles of officials who support implementation of tax reform. An editorial preface to a series of profiles on four such officials states:

> Currently, at a time when our country has already started to implement its new tax system, there is an even greater need of understanding towards tax collection work on the part of each level of government, related departments and a wide number of taxpayers to understand, support and cooperate in such work. The following four articles provide hope for our earnest expectations that in the new year many more "Gao Rongmiaos," [and] "Weng Zhaoshens" will emerge in large numbers in the motherland [52]

A. *Tax Administration*

The Tax Administration Law addresses various aspects of tax administration, including registration, accounting systems, and tax declarations. Tax registration is not a new requirement of China's tax system,[53] however, its importance as a means of ascertaining

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51. Lu Zhibo, *Nuli Chao'e Wancheng Shuishou Renwu Wei Haidao Jingji Jianshe Fuwu* [*Diligently Exceeding the Quota for Tax Collection Work in Service of Establishing the Island Economy*], ZHONGGUO SHUIWU [CHINA TAXATION], Nov. 1993, at 7.

52. Peng Huaxing, *"Shuiwu Xianzhang" Gao Rongmiao* [*"The Taxation County Chief" Gao Rongmiao*], ZHONGGUO SHUIWU [CHINA TAXATION], Feb. 1994, at 12. The first article profiles Gao Rongmiao, the head of a county in Sichuan Province. He is referred to as the "Taxation County Chief" because of his efforts in collecting tax revenue. *Id.* When Gao assumed office in 1993, he took the initiative in management of the tax bureau. *Id.* Under his guidance, the county created a small work group for coordinating tax collection administration, composed of representatives from the following groups, among others: the County People's Congress, the Public Safety Bureau, the courts, the Procurator, the People's Bank, the Finance Bureau, the Tax Bureau, and the Bureau of Industry and Commerce. *Id.* Work group meetings focused on how to solve the problem of tax revenue collection. The author of the profile observed that "[b]y doing this, it created a new situation where not only the county and party leaders placed importance on tax revenue, but also each level of society supported such work." *Id.* Others have commented on the need for cooperation between the tax authorities and other governmental agencies, including public security organs, procurators, and courts to support tax officials in the collection of taxes, and the administration and enforcement of tax laws. *Rectify the Tax Collection Order*, *supra* note 25, at 39.

53. Zeng Zhi, *"Zhonghua Renmin Gongheguo Shuishou Zhengshou Guanli Fa" Shiyi, Di'er Zhang, Shuiwu Guanli (Shang)* [*An Explanation of the "Law of the People's Republic of China to Administer the Levying and Collection of Taxes," Tax Administration, Part*

the number of taxable enterprises and their respective trades or businesses has increased.[54]

Enterprises, their branches, units engaging in industrial and commercial undertakings, and units engaging in production and business operations, must apply for tax registration within thirty days of receiving a business license.[55] Under the statute, tax authorities issue tax registration certificates after investigating and verifying the materials submitted by the taxpayer.[56] Tax authorities must complete this review within thirty days after receipt of the tax registration form.[57] Taxpayers must present tax registration certificates in a number of tax matters,[58] including application for tax reductions, exemptions or refunds, and when purchasing invoices and certificates to operate businesses in other tax districts.[59]

Taxpayers engaging in production or business operations must provide the following information on the tax registration form:

1. name of entity, name of legal representative or owner and such person's residency card, passport or other identification document number;
2. address of residence and business operations;
3. economic nature or type of business;
4. type of entity and accounting system;
5. scope of production or business operations and method of operation;
6. registered capital, total investment amount, bank name and account number;
7 duration of the period of production and business operations, number of employees, business license

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One], ZHONGGUO SHUIWU [CHINA TAXATION], Mar. 1993, at 34.

54. *See id.*

55. Tax Administration Law, *supra* note 8, art. 9. Article 9 notes that thereafter, the statute refers to such entities as "taxpayers engaging in production and business operations." *Id.* The statute also provides that in the case of taxpayers other than those referred to above, the State Council shall prescribe tax registration procedures. *Id.* In the Implementing Regulations, however, the State Council provided that the tax registration procedure for individuals and for units not meeting the definition of taxpayer set forth in Article 9 of the Tax Administration Law shall be prescribed elsewhere. Implementing Regulations, *supra* note 9, art. 5.

56. Tax Administration Law, *supra* note 8, art. 9.

57. Implementing Regulations, *supra* note 9, art. 8.

58. *Id.* art. 12.

59. *Id.* art. 16.

number;

8. identity of person in charge of finance and tax matters; and
9 other relevant matters.[60]

In addition, the tax authorities may require a business to provide its license, relevant contracts, articles of association, letters of agreement, bank account documentation, residency certificate, passport or other legal identification, and other documents and materials.[61]

Taxpayers engaging in production or business operations must amend or cancel their tax registration within thirty days of any change in the facts stated in such registration.[62] Events necessitating amendment of tax registration include:

1. name change;
2. change in legal representative;
3. change in economic nature or type of business;
4. adding or eliminating branch enterprises;
5. change in place of residence or business;[63]
6. change in the scope of production or business operations or method of management;
7 change in amount of registered capital;
8. change in recorded affiliations;
9 change in the period of production or business operations;
10. change in banks or bank accounts; and
11. change in production or business operations' rights and changes in other aspects of tax registration.[64]

In situations where the Administrative Authority for Industry and Commerce has revoked a taxpayer's business license, as in the case

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60. *Id.* art. 6. For businesses with branch operations in another district, the branch office must also register the head enterprise's name, address, legal representative, scope of business, and name of the person in charge of finance. *Id.*

61. *Id.* art. 7. Article 7 does not specify in what circumstances the authorities may require the taxpayer to provide such materials.

62. Tax Administration Law, *supra* note 8, art. 10; *see also* Implementing Regulations, *supra* note 9, art. 9. Article 10 of the Implementing Regulations provides specific procedures for canceling tax registrations when taxpayers are involved in dissolution or bankruptcy. *Id.* art. 10..

63. Article 10 of the Implementing Regulations outlines the order in which taxpayers cancel and re-register in their new tax district. Implementing Regulations, *supra* note 9, art. 10.

64. Zeng Zhi, *supra* note 53, at 36.

of a dissolution or bankruptcy, affected taxpayers must cancel their taxation registration within fifteen days.[65] Prior to canceling their tax registration, taxpayers must settle all taxes they owe, pay any fines, and turn in canceled invoices and other tax certificates to the tax authorities.[66]

Article 11 of the Tax Administration Law requires that tax registration certificates comply with the law. It also prohibits transferring, loaning, altering, damaging, trading, or forging certificates.[67] In the past, many problems arose with numerous state-owned and collective enterprises lending their names to private businesses for tax registration purposes, thereby enabling the private businesses to obtain preferential tax treatment.[68] The Implementing Regulations provide that tax authorities shall conduct regular inspections and, if necessary, issue replacements of tax certificates.[69]

Besides specifying the procedures for tax registration, the Tax Administration Law sets forth certain accounting requirements. Taxpayers engaging in production and business operations, as well as tax-withholding agents, must establish account books[70] according to the regulations of the State Council's principal finance and taxation authorities, and must maintain their accounts in a legal and valid manner.[71] These taxpayers must report their financial

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65. Implementing Regulations, *supra* note 9, art. 10.

66. *Id.* art. 11.

67. Tax Administration Law, *supra* note 8, art. 11; *see also* Implementing Regulations, *supra* note 9, art. 15.

68. John Kohut, *China: Checks Called for Over Tax Evasion*, S. CHINA MORNING POST, Oct. 4, 1989, at 12. With the changes in the tax laws to remove the difference in tax treatment accorded different enterprises, the impetus for this form of tax fraud may have lessened. *See* Yu Nai, *supra* note 3.

69. Implementing Regulations, *supra* note 9, art. 14.

70. The term "account books" is defined as "general ledgers, detailed accounts, journals and other auxiliary account books." *Id.* art. 17.

71. Tax Administration Law, *supra* note 8, art. 12. Account books must be established within 15 days after issuance of the business license, and within 15 days of receipt of the tax registration certificate details of the same must be reported to the taxation authorities. Implementing Regulations, *supra* note 9, arts. 17, 19. For information about accounting standards, see Accounting Standards for Enterprises (Nov. 16, 1992), *translated in* [Taxation & Customs] China Laws for Foreign Business (CCH) ¶¶ 35-536 [hereinafter Accounting Standards]. *See also* Accounting System of the People's Republic of China for Foreign Investment Enterprises, (June 24, 1992), *translated in* [Taxation & Customs] China Laws for Foreign Business (CCH) ¶¶ 35-501; Accounting System for Experimental Shareholding Enterprises (May 23, 1992), *translated in* [Taxation & Customs] China Laws for Foreign Business (CCH) ¶¶ 35-505.

and accounting systems or methods to the tax authorities for their records.[72] In the event the taxpayers' systems of calculating taxes conflict with those of the tax authorities, the tax authorities will calculate taxes based on the latter.[73]

The Implementing Regulations exempt from the recording requirement some small-scale enterprises that are unable to maintain account books. These enterprises may appoint a registered accountant to maintain account books on their behalf. In some circumstances, taxpayers may maintain a book which contains actual receipts, vouchers, and a registry of sales and purchases.[74]

Taxpayers may use computer software to maintain their accounts. First, however, taxpayers must provide supervising tax authorities details about the software, manuals, and other relevant materials.[75] Those who use computer software to maintain accounts must nonetheless maintain hard copies of their records.[76] Taxpayers must maintain accounting records in the Chinese language, but foreign enterprises may also keep a duplicate set of records in a foreign language.[77] All enterprises must preserve accounting and tax records for ten years.[78]

The Tax Administration Law also addresses the printing of invoices.[79] Under Article 14, only enterprises designated by the tax authorities may print invoices.[80] The statute provides that the State Council will promulgate invoice management measures.[81] In 1993, pursuant to the Tax Administration Law, the State Council adopted the Administrative Measures of the People's Republic of China on Invoices, which deal with the administration of the printing, sale, use, protection and violation of use of invoices.[82]

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72. Tax Administration Law, *supra* note 8, art. 13.
73. *Id.*
74. Implementing Regulations, *supra* note 9, art. 18.
75. *Id.* art. 21.
76. *Id.*
77. *Id.* art. 22.
78. *Id.* art. 23.
79. *See generally* Zeng Zhi, *"Zhonghua Renmin Gongheguo Shuishou Zhengshou Guanli Fa" Shiyi, Di'er Zhang, Shuiwu Guanli (Zhong)* [*An Explanation of the "Law of the People's Republic of China to Administer the Levying and Collection of Taxes," Part Two*], ZHONGGUO SHUIWU [CHINA TAXATION], Apr. 1993, at 31.
80. Tax Administration Law, *supra* note 8, art. 14.
81. *Id.*
82. Administrative Measures of the Peoples' Republic of China on Invoices, *translated in* [Taxation and Customs] China Laws for Foreign Business (CCH) ¶¶ 39-615 (Dec. 12,

Fraudulent use and counterfeiting of invoices and tax receipts consistently plague Chinese tax officials.[83] Until now, cheating through the use of fake invoices and false receipts was easy because of tax authorities' lack of resources to track documents and compare taxpayers' reporting.[84] In response to cheating on value added tax payments, the government amended the Tax Administration Law in February of 1995, requiring enterprises to print value added tax receipts approved by the State General Administration of Taxation.[85] The government also is attempting to combat fraud in payment of the value added tax by establishing a computer network that will link tax bureaus nationwide.[86] In the future, the network will encompass other types of taxes.[87] Currently, under the Tax Administration Law, tax authorities may impose fines and confiscate illegal invoices, as well as any illegal gains earned through use of such invoices.[88]

Part of a taxpayer's and a tax withholding agent's obligation is to fulfill certain tax reporting duties by submitting tax

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1993) [hereinafter Administrative Measures on Invoices]. Under Article 3 of the Administrative Measures on Invoices, "invoices" are defined as "certificates of receipt and payment issued or received in the purchase or sale of commodities, provision or receipt of services, or by engaging in other business activity." *Id.*

83. *China Court Sentences 4 to Death for Selling Falsified Tax Receipts*, ORLANDO SENTINEL, Feb. 19, 1995, at A26 ("Businesses present fake receipts to tax collectors as evidence they have paid their taxes."). For reports concerning fraudulent use of invoices, see *Export Tax Refund Fraud Gangs Uncovered*, Xinhua General Overseas News Service, Apr. 24, 1993, *available in* LEXIS, ASIAPC Library, Xinhua File; *Three Company Employees Executed for Embezzling Funds*, Xinhua News Agency, July 28, 1994, *available in* LEXIS, ASIAPC Library, Xinhua File; *Three Executed in Heilongjiang in Crackdown on Forging, Stealing Tax Invoices*, BBC Summary of World Broadcasts, July 16, 1994, *available in* LEXIS, ASIAPC Library, BBCSWB File ("The vice-president of the Supreme People's Court said that crimes such as forging, selling and stealing bills [invoices] are seriously damaging the ongoing reforms of taxation and economic systems in China, causing a haemorrhage [sic] of state revenue."); *Six Executed, supra* note 47 (discussing the millions of yuan lost due to use of fake invoices in a recently uncovered scandal in Jiangsu province).

84. Pei Jianfeng, *China: Info Net to Snare Tax Cheats*, Reuter Textline Business Week (China Daily Supplement), July 3, 1994, *available in* LEXIS, News Library, TXTNWS File ("China's taxation bureaux handle about 10bn [billion] invoices each year. Often, buyers and sellers are in different cities and hand in invoices at different times, which makes the task of checking the veracity of the documents that much more difficult.").

85. Law of the People's Republic of China to Administer the Levying and Collection of Taxes (Sept. 4, 1992) (amended Feb. 28, 1995), *reprinted in* China Law Library (Asia Law & Practice) 74 (Mar. 31, 1995).

86. Pei Jianfeng, *supra* note 84.

87. *Id.*

88. Tax Administration Law, *supra* note 8, art. 48.

declaration forms, financial statements, and any other materials required by the tax authorities within the applicable declaration period.[89] A taxpayer may obtain extensions on the reporting period if the relevant taxation authority approves.[90] In individual income tax cases, items of income are generally subject to withholding, and tax withholding agents must file monthly returns.[91] In all cases where taxes are withheld or collected, the taxpayer must receive a receipt showing "proof of tax payment."[92]

B. Tax Collection

Tax Administration Law provisions dealing with tax collection address a wide range of concerns, including transfer pricing, tax withholding, confiscation of goods, and detention of taxpayers.[93] Article 18 of the Tax Administration Law reiterates the tax authorities obligation to carry out their duties according to the law

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89. *Id.* art. 16. A tax withholding agent is an entity that withholds and collects tax payments on behalf of others. *Id.* *See* Individual Income Tax Law art. 9, (Sept. 10, 1980) (amended Oct. 31, 1993), *translated in* [Taxation and Customs] China Laws for Foreign Business (CCH) ¶¶ 30-500. As to who shall serve as withholding agent in connection with the payment of the Business Tax, see Provisional Rules of the People's Republic of China on Business Tax art. 11 (Nov. 26, 1993), *translated in* [Taxation and Customs] China Laws for Foreign Business (CCH) ¶¶ 31-739. Under Article 13 of the Implementing Regulations, tax withholding agents must be certified by the taxation authorities. Implementing Regulations, *supra* note 9, art. 13. Article 20 of the Implementing Regulations mandates that tax withholding agents keep a ledger setting forth the various categories of tax collected or withheld. Implementing Regulations, *supra* note 9, art. 20.

90. Tax Administration Law, *supra* note 8, art. 17; Implementing Regulations, *supra* note 9, art. 28 (explaining one basis for obtaining such an extension: the occurrence force majeure events).

91. 1993 Taxation and Investment in the People's Republic of China (International Bureau of Fiscal Documentation) § 27.2 (Supp. No. 5, Dec. 1993).

92. Tax Administration Law, *supra* note 8, art. 22; Implementing Regulations, *supra* note 9, art. 33. "Proof of tax payment" shall take the form of the various certificates, memos, revenue stamps, and other documentation used to verify tax payments. Implementing Regulations, *supra* note 9, art. 34.

93. Despite the reform in substantive and administrative tax laws, the central government remains plagued by tax collection difficulties. *See Tax Reform Goes Smoothly, Revenue Growth "Unexpected,"* Beijing Xinhua, Aug. 2, 1994, *reprinted in* FBIS-CHI-94-149, Aug. 3, 1994, at 30, 31 (Finance Minister Liu Zhongli stated that "central government revenues grew by 11.5 percent while local revenues rose by 39 percent in the first six months."); Liu Hong, *Official Views Improving Income Tax Collection*, Beijing Zhongguo Xinwen She, Aug. 6, 1994, *reprinted in* FBIS-CHI-94-152, Aug. 8, 1994, at 45 (Yi Yunhe, deputy director of the Income Tax Administration of the State Administration of Taxation, in discussing the effect of the revised Individual Income Tax Law, stating that, "[S]ources of personal income tax is [sic] not the question. The main problem at present is that the work of tax collection and management is lagging behind, which has resulted in serious personal income tax losses.").

and the accompanying regulations.[94] Specifically, tax authorities cannot exempt taxpayers from taxes, nor can they impose obligations to withhold or pay taxes, except as provided by law.[95] Correspondingly, under the Tax Administration Law, taxpayers must comply with the efforts of tax withholding agents to withhold taxes in accordance with the law.[96]

Notwithstanding the taxpayers' obligation to pay taxes when due, Article 20 of the Tax Administration Law provides for the grant of extensions "due to special difficulties."[97] In an apparent attempt to curb local abuses, however, only taxation bureaus at the county level or above may grant such extensions.[98] The maximum extension period is three months and authorities may impose fines on taxpayers failing to pay taxes by the extended deadline.[99] Overdue payment will not accrue during these approved extension periods.[100]

The Tax Administration Law allows taxpayers to apply for tax reductions or exemptions according to provisions specified in the substantive tax laws and regulations.[101] Article 21 specifically invalidates local governments' tax reduction and exemption decisions without statutory basis.[102] Article 23 grants tax authorities the right to specify the amount of tax owed where tax

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94. Tax Administration Law, *supra* note 8, art. 18.

95. Tax Administration Law, *supra* note 8, arts. 18, 19.

96. Tax Administration Law, *supra* note 8, art. 19. The above statements highlight the central government's concern with administering taxes in accordance with the law and its attempt to move away from the arbitrary practices that have undermined China's efforts to modernize its political, economic, and legal systems. In assessing the efforts to revamp China's taxation system, Xiang Huicheng, deputy director of the State General Administration of Taxation, remarked:

> [I]t is necessary to adhere to the principal of collecting taxes in accordance with the law and safeguarding the new law's authority. Tax offices at all levels should investigate, stop, report, and correct such practices as bending the state's tax laws and regulations without authorization. Any tax office that changes tax laws at will and fails to correct the mistakes will be reported.

Li Jianxing & Ding Jianming, *State Taxation Official Discusses New Taxation System*, Beijing Xinhua Domestic Service, Aug. 2, 1994, *reprinted in* FBIS-CHI-94-151, Aug. 5, 1994, at 29.

97. Tax Administration Law, *supra* note 8 art. 20; *see also* Implementing Regulations, *supra* note 9, art. 30. Neither the Tax Administration Law nor the Implementing Regulations define the term "special difficulties."

98. Tax Administration Law, *supra* note 8, art. 20.

99. *Id.*

100. Implementing Regulations, *supra* note 9, art. 30.

101. Tax Administration Law, *supra* note 8, art. 21.

102. *Id.*

declarations are not made or where account books are not established or are incomplete.[103] The amount of tax owed is based on a variety of methods, including comparison with similarly situated local taxpayers or comparison of costs of production, reasonable expenses, and profits.[104]

One major tax collection issue addressed by the Tax Administration Law is transfer pricing between affiliated business enterprises,[105] including foreign enterprises doing business in China.[106] With the advent of economic reform in the early 1980s, foreign enterprises increasingly began to invest in China. They often transferred profits so as to avoid showing a profit in the Chinese entity.[107] Enterprises also used subsidiaries to conceal profits.[108] These phenomena led to the passage of the PRC's Foreign Enterprises Income Tax Law, which, for the first time, addressed the problem of abuses in transfer pricing.[109] Article 24 of the Tax Administration Law addresses these problems. It permits tax authorities to make adjustments to reflect the actual amount of tax due if payments between enterprises do not comply with substantive provisions relating to business transactions between independent enterprises.[110]

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103. *Id.* art. 23; *see also* 1993 Taxation and Investment in the People's Republic of China, *supra* note 91, § 27.3.

104. Implementing Regulations, *supra* note 9, art. 35.

105. *See id.* art. 36 (qualifying the term "affiliated enterprises").

106. Tax Administration Law, *supra* note 8, art. 24.

107. Zeng Zhi, "Zhonghua Renmin Gongheguo Shuishou Zhengshou Guanli Fa" Shiyi, Disan Zhang, Shuikuan Zhengshou, [*An Explanation of the "Law of the People's Republic of China to Administer the Levying and Collection of Taxes," Part Three, Tax Revenue Collection*], ZHONGGUO SHUIWU [CHINA TAXATION] July 1993, at 27, 28.

108. Henny Sender, *Taxing Problem: Peking Grapples with Massive Tax Evasion*, FAR E. ECON. REV., Nov. 25, 1993, at 52 ("One convenient ruse is to set up subsidiaries. The parent may look like a financial disaster, but somewhere there is a unit, say a staff and workers welfare fund, in which earnings are carefully parked.").

109. Zeng Zhi, *supra* note 107.

110. The phrase "business transactions between independent enterprises" refers to business dealing between unrelated enterprises that are conducted using fair prices and in line with common business practices. Implementing Regulations, *supra* note 9, art. 37; Tax Administration Law, *supra* note 8, art. 24. *See generally* Zeng Zhi, *supra* note 107 (comparing the situation in China to that faced by other developing countries, where international tax avoidance is rampant). That article draws a parallel to Section 482 of the United States Internal Revenue Code, which deals with businesses under common control and which requires that such businesses allocate their income and losses as if they were independent entities. *Id.* Adjustments in purchase and sales transactions between affiliated enterprises will be made according to Implementing Regulations, *supra* note 9, art. 38. *See also* Implementing Regulations, *supra* note 9, arts. 39-41 (dealing with payments of other

Without enforcement, the tax collection provisions described above are ineffective. Articles 25 through 27 allow for the confiscation and disposal of taxpayers' property to satisfy tax obligations. These provisions are particularly significant given that tax authorities previously did not have the power to seize or detain assets of tax evaders.[111] Articles 25 through 27 of the Tax Administration Law contain provisions allowing for confiscation of taxpayers' property in various circumstances. First, where a taxpayer has not obtained a business license, and fails to pay taxes when ordered to do so, Article 25 permits tax authorities to seize products or goods worth the amount of taxes owed.[112] If the taxpayer subsequently pays the taxes owed, the authorities return the seized goods; if the taxpayer fails to pay, the authorities auction off the items.[113]

Second, tax authorities may take similar steps if they suspect that a taxpayer engaged in production and business operations is avoiding taxes.[114] Tax authorities may order payment before taxes are formally due. If during this period, the authorities observe obvious signs of diversion and concealment of the products, property, or income on which taxes are owed, tax authorities may order the taxpayer to provide a tax payment guarantee.[115] If the taxpayer cannot provide a guarantee, tax authorities at the county level or above may: (1) order the

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kinds between affiliated enterprises, such as interest, or wages or use fees).

111. Zeng Zhi, *"Zhonghua Renmin Gongheguo Shuishou Zhengshou Guanli Fa" Shiyi, Disan Zhang, Shuikuan Zhengshou* [*An Explanation of the "Law of the People's Republic of China to Administer the Levying and Collection of Taxes," Part Three, Tax Revenue Collection*], ZHONGGUO SHUIWU [CHINA TAXATION], August 1993, at 33.

112. Tax Administration Law, *supra* note 8, art. 25.

113. *Id.* The taxpayer must pay the taxes owed within fifteen days after the date of seizure. Implementing Regulations, *supra* note 9, art. 43. If the goods are perishable, tax authorities must auction them off. *Id.* In all cases, sale of the goods must be conducted in a commercially reasonable manner. *See* Implementing Regulations, *supra* note 9, art. 47.

114. Tax Administration Law, *supra* note 8, art. 26.

115. *Id.* The term "tax payment guarantee" includes a tax payment guarantor and security through unencumbered property belonging to the taxpayer. Implementing Regulations, *supra* note 9, art. 44. Notably, only unencumbered property can be used to guarantee tax payment. This suggests recognition of lien priorities. The term "guarantor" means "any citizen, legal person or other economic entity within Chinese territory able to provide a tax payment guarantee. Government agencies shall not be permitted to act as a tax payment guarantor." *Id.* Guarantors must fill out a guarantee statement, stating who is being guaranteed and the scope, duration, and other conditions of the guarantee. *Id.* art. 45. The statement is not valid until signed and sealed by all parties. *Id.*

taxpayer's bank accounts frozen up to the amount owed,[116] or (2) detain and seal up the taxpayer's goods or property to the extent of the amount owed.[117]

If the taxpayer subsequently makes payment, tax authorities must cancel the guarantee requirement.[118] If he does not, tax authorities may sell off the detained goods or order the bank to deduct the amount of tax owed from the taxpayer's bank account.[119] The Tax Administration Law does not contain a provision allowing for stay of such action and appeal to the judiciary pending resolution of tax disputes.[120] The statute does provide, however, that where authorities improperly have applied these tax revenue preservation measures, or where the taxpayer has paid the tax within the time limit, and the tax authorities failed to lift the tax preservation measures, tax authorities should admit responsibility and provide compensation for actual economic losses.[121]

Third, where a taxpayer engaging in production or business operations has failed to pay taxes when due, tax authorities can similarly confiscate goods or freeze bank accounts.[122] Article 27 also applies to tax withholding agents and guarantors.[123] In all cases involving confiscation of merchandise, goods, and other property, the tax authorities must provide a receipt and a detailed list of confiscated items.[124]

In addition, the Tax Administration Law requires either payment of taxes owed before a taxpayer may leave China, or a guarantee.[125] If the amount of tax owed remains unpaid or the

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116. The statute refers to "bank or other financial institution." Tax Administration Law, *supra* note 8, arts. 26, 27. The Implementing Regulations define "other financial institution" as "trust and investment corporations, rural credit cooperatives, urban credit cooperatives and other financial organisations whose establishment was approved by the People's Bank of China." Implementing Regulations, *supra* note 9, art. 49.

117. Tax Administration Law, *supra* note 8, art. 26.

118. *Id.*

119. *Id.*

120. *See infra* notes 130-38 and accompanying text.

121. Tax Administration Law, *supra* note 8, art. 26; *see* Implementing Regulations, *supra* note 9, art. 48.

122. Tax Administration Law, *supra* note 8, art. 27.

123. *Id.*

124. *Id.* art. 29. Additionally, two or more tax personnel must be present when the property is confiscated or sealed up, and the owner must be notified. Implementing Regulations, *supra* note 9, art. 46.

125. Tax Administration Law, *supra* note 8, art. 28; *see also* Implementing Regulations, *supra* note 9, art. 52.

taxpayer does not provide a guarantee, China may detain the taxpayer at the border.[126]

Whenever tax authorities discover that a taxpayer has paid excess taxes, they are obligated to refund the excess amount.[127] The taxpayer may request a refund if he uncovers the overpayment within three years.[128] If tax authorities determine within three years that a taxpayer or tax withholding agent has underpaid the amount of tax due to tax authorities' error, they may require payment of the amount due, but may not levy any penalties.[129] If underpayment is due to taxpayer or tax withholding agent error, tax authorities may demand payment within three years.[130] When the amount of tax owed exceeds 100,000 yuan, the tax authorities have ten years to seek payment.[131] The Implementing Regulations provide that in the case of tax evasion or fraudulently obtained tax rebates, tax authorities may seek payment of taxes for an unlimited time period.[132]

Where taxpayers believe certain collection or other administrative practices are unjust, they may appeal tax authorities' decisions, according to the Rules on Administrative Review of Taxation (Administrative Review Rules).[133] The Tax Administration Law, however, requires taxpayers, tax withholding agents, or guarantors to make payment of amounts owed before applying for review of a dispute.[134] The Administrative Review Rules provide that a taxpayer or other concerned party seeking review of administrative

126. Tax Administration Law, *supra* note 8, art. 28; *see also* Implementing Regulations, *supra* note 9, art 52.

127. Tax Administration Law, *supra* note 8, art. 30.

128. *Id.*

129. *Id.* art. 31.

130. *Id.* This provision does not specify whether penalties for late payment may be imposed.

131. *Id.*, Implementing Regulations, *supra* note 9, art. 54.

132. Implementing Regulations, *supra* note 9, art. 55. The statute does not specifically distinguish between the intent of the taxpayer in failing to pay taxes in Article 31 of the Tax Administration Law and Article 55 of the Implementing Regulations. Apparently, however, if some element of intentional misconduct is involved, no time limit applies for recovery.

133. Rules on Administrative Review of Taxation (1991) (amended Nov. 6, 1993), *translated in* [Taxation & Customs] China Laws for Foreign Business (CCH) ¶¶ 30-550 [hereinafter Administrative Review Rules]. The Administrative Review Rules were enacted to safeguard taxpayers' rights and to ensure that tax authorities exercise their powers according to law. *Id.* art. 1.

134. Tax Administration Law, *supra* note 8, art. 56; Implementing Regulations, *supra* note 9, art. 67.

actions may apply to the tax administrative review authorities (review authorities).[135] Review authorities are those above the tax authority.[136] The review authorities may investigate, conduct hearings, and make determinations.[137]

Administrative activities subject to review include: (1) levying taxes, approving tax reductions or exemptions, and imposing overdue payment fines; (2) requiring a guarantee; (3) freezing bank accounts or confiscating goods; and (4) detaining taxpayers at the border.[138] Taxpayers have a right of further appeal.[139] In some cases, they must exhaust administrative remedies;[140] in others, they may appeal either to a higher level of administrative authority or directly to the People's Court.[141]

C. *Tax Investigations*

Article 32 of the Tax Administration Law grants broad investigatory powers to tax authorities.[142] As part of their investigation efforts, tax authorities may examine accounting records, vouchers, and reporting forms; inspect taxable goods, property and merchandise; direct taxpayers or withholding agents to provide relevant documents and certification regarding tax payments and withholding; interview taxpayers or withholding agents; and examine bank accounts.[143] Moreover, Article 57 of

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135. Administrative Review Rules, *supra* note 133, art. 2.

136. *Id.* art. 10.

137. *Id.* art. 4.

138. *Id.* art. 9.

139. *Id.* art. 53.

140. *Id.* art. 31.

141. *Id.* arts. 32, 33. China has no tax courts per se. Some local courts, however, have established units to deal with tax issues. 1993 Taxation and Investment in the People's Republic of China, *supra* note 91, § 27.7. *See also* Chang, *supra* note 15, at 25. The first tax court was established in Haikou, the capital of Hainan Island Province. *Id.*

142. Prior to the enactment of the Tax Administration Law, tax investigations were conducted pursuant to the Temporary Provisions of the People's Republic of China to Administer the Levying and Collection of Taxes (Temporary Provisions). Zeng Zhi, *"Zhonghua Renmin Gongheguo Shuishou Zhengshou Guanli Fa" Shiyi, Disi Zhang, Shuiwu Jiancha [An Explanation of the "Law of the People's Republic of China to Administer the Levying and Collection of Taxes," Part Four, Tax Investigation]*, ZHONGGUO SHUIWU [CHINA TAXATION], Sept. 1993, at 28. The scope of the tax officials' investigatory powers, however, was unclear and undefined. *Id.* Further attempts were made to clarify and define these powers. *Id.* Due to the piecemeal nature of such efforts, however, they were not uniformly implemented. *Id.* The Tax Administration Law represents an effort to address these problems. *Id.*

143. Tax Administration Law, *supra* note 8, art. 32.

the Implementing Regulations allows authorities to conduct investigations at the taxpayer's business premises or require the taxpayer to submit records for examination. Where the taxpayer follows the latter route, they must prepare a detailed list of items, and return the items within three months.[144]

Taxpayers and withholding agents must cooperate with investigations.[145] If the inspecting authorities, however, fail to present a tax investigation certificate, the taxpayer may refuse to allow the inspection until authorities provide the certificate.[146] Furthermore, governmental departments and work units support and assist such efforts.[147] Tax authorities may make a record of their investigation, by using audio or video recordings, but in all cases they must maintain confidentiality.[148]

D. *Penalty Provisions*

If a taxpayer violates its obligations under the Tax Administration Law or the Implementing Regulations, the taxpayer is subject to certain liabilities. These penalties become progressively more severe depending on how egregious the violation. The Law stipulates that authorities at the county level may impose such penalties.[149] Article 37 of the Tax Administration Law deals with minor violations in reporting or record keeping requirements. Article 37 provides a compliance period within which taxpayers may remedy violations before authorities impose penalties.[150] Under Article 37, authorities may levy fines ranging from 2,000 to 10,000 yuan[151] if the taxpayer fails to provide tax declarations or comply with tax registration requirements within the set time limits, maintain account books and other accounting records, or supply

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144. Implementing Regulations, *supra* note 9, art. 57.
145. Tax Administration Law, *supra* note 8, art. 33.
146. Implementing Regulations, *supra* note 9, art. 60.
147. Tax Administration Law, *supra* note 8, art. 34.
148. *Id.* arts. 35, 36.
149. *Id.* art. 49.
150. *Id.* art. 37; *see also* Implementing Regulations, *supra* note 9, arts. 61-63.
151. The effectiveness of imposing fines as a means of deterring taxpayers from violating the tax laws remains unclear. *See Personal Income Taxing Tightened*, BEIJING REV., Apr. 25-May 1, 1994, at 6. According to Li Yonggui, Deputy Director of the State Administration of Taxation: "The present punishment, mainly through fines, has not been effective. Serious tax violators must be brought to court and sentenced according to the law." *Id.* Cooperation on the part of the court system, as with other governmental departments, is clearly an important component in ensuring effective implementation of the revised tax system. *See* Lu Zhibo, *supra* note 51.

information regarding financial and accounting methods.[152]

Article 40 of the Tax Administration Law mandates certain punishments for tax evasion by taxpayers and tax withholding agents. Tax evasion is defined as "the non-payment or under-payment of tax by the deliberate omission of revenue, fraudulent claiming of expenses or allowances, or a misrepresentation, concealment or withholding of material facts, or by the destruction or fraudulent alteration of business records."[153]

Where a taxpayer evades taxes by less than ten percent of the amount owed, or such amount is less than 10,000 yuan, authorities impose a fine of up to five times the amount owed.[154] If the amount evaded is ten percent or more of the amount of tax owed, *and* such amount is 10,000 yuan or more, *or* if the taxpayer has twice received administrative penalties for tax evasion, then, besides seeking payment of the tax owed, authorities shall assess fines according to the Supplementary Regulations of the Standing Committee of the National People's Congress on Punishment for Tax Evasion and Refusal to Pay Tax (Tax Evasion Regulations).[155] The Tax Evasion Regulations provide that offending taxpayers receive prison sentences or remain in custody for up to three years, and receive fines up to five times the amount of tax evaded.[156] This provision also applies to tax withholding

152. Tax Administration Law, *supra* note 8, art. 37; *see also id.* arts. 38 (discussing fines imposed on tax withholding agents) and 39 (discussing failure to make tax declaration, among other matters). Implementing Regulations art. 65 provides that where a taxpayer or withholding agent violates more than one of the provisions contained in the above mentioned articles, separate penalties may be assessed. Implementing Regulations, *supra* note 9, art. 65. One commentator, in discussing Article 37, has observed that in order to constitute a violation of the Tax Administration Law, "it is necessary to have *behavior* which violates the law. Law can only prescribe people's behavior, and not make them take responsibility for their thoughts, thus if there is no behavior, we cannot say that people are violating the law." Zeng Zhi, *"Zhonghua Renmin Gongheguo Shuishou Zhengshou Guanli Fa" Shiyi, Diwu Zhang, Falu Zeren [An Explanation of the "Law of the People's Republic of China to Administer the Levying and Collection of Taxes," Part Five, Legal Liability]*, ZHONGGUO SHUIWU [CHINA TAXATION], Oct. 1993, at 39, 40 (emphasis added). Notably, the author remarks on this principal, which is fundamental to the American legal system, in discussing the Tax Administration Law. This observation reflects changing perceptions of the role of law in China (i.e. the role of law is to regulate behavior rather than thought).

153. 1993 Taxation and Investment in the People's Republic of China, *supra* note 91, § 27.6; Tax Administration Law, *supra* note 8, art. 40.

154. Tax Administration Law, *supra* note 8, art. 40.

155. *Id.*

156. Supplementary Regulations of the Standing Committee of the National People's Congress on Punishment for Tax Evasion and Refusal to Pay Tax art. 1 (Sept. 4, 1992), *translated in* [Taxation & Customs] China Laws for Foreign Business (CCH) ¶¶ 39-610

agents.[157]

When the amount of tax evaded is thirty percent or more of the amount of tax owed and the amount is 100,000 yuan or more, the tax authorities impose a prison sentence ranging from three to seven years, and impose a fine of up to five times the amount of tax evaded.[158] In cases where violators repeatedly engage in acts of tax evasion, but in amounts less than those specified above, the tax authorities aggregate the violations and punish them according to the above provisions.[159] If the taxpayer evades taxes by transferring or concealing property, the tax authorities may fine, and in some cases, impose prison or custody sentences.[160] Based on the number of provisions addressing bribery or collusion on the part of tax officials, the Tax Administration Law evidences a strong concern about these kinds of behaviors.[161]

The Tax Administration Law also demonstrates concern regarding violence against tax authorities. Under Article 45 of the Tax Administration Law, if a taxpayer uses violence, causing serious personal injury or death, when refusing to pay taxes, authorities impose penalties in accordance with Tax Evasion Regulations. Article 50 of the Tax Administration Law provides that authorities impose liability under the Criminal Law where

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[hereinafter Tax Evasion Regulations].

157. *Id.*

158. *Id.* This provision does not state that it applies to tax withholding agents.

159. *Id.*

160. Tax Administration Law, *supra* note 8, art. 41; Tax Evasion Regulations, *supra* note 156, art. 2. *See* Tax Administration Law, *supra* note 8, art. 42 and Tax Evasion Regulations, *supra* note 156, art. 3 (regarding treatment of enterprises and their key personnel that transfer or conceal property to evade taxes); Tax Administration Law, *supra* note 8, art. 44 and Tax Evasion Regulations, *supra* note 156, art. 5 (regarding enterprises' fraudulently obtaining tax refunds). One commentator noted,

> If a state enterprise exports, it is entitled to a [tax] rebate. Almost Rmb 1 billion is believed to have been returned to enterprises based on fraudulent claims. That requires considerable effort and coordination; documents have to be obtained from export agencies, tax authorities and customs officials before the claim can be presented.

Sender, *supra* note 108. *See also China Bans Firms for Tax Fraud*, ASIAN WALL ST. J., Aug. 23, 1994, at 4 ("China rebates various taxes to exporters once the goods pass customs, but evasion using faked invoices or overstated values is widespread.").

161. *See* Tax Administration Law, *supra* note 8, arts. 43, 52-54 (bribery, collusion, neglect of duty by tax officials); Implementing Regulations, *supra* note 9, art. 70 (regarding tax officials' illegally taking confiscated goods); Tax Evasion Regulations, *supra* note 156, art. 4 (regarding criminal liability of taxpayers who bribe tax officials). *See also* Tax Administration Law, *supra* note 8, art. 55 (regarding unauthorized decisions by tax personnel in collection, exemption, and other matters).

people use violence or threatening means to obstruct tax personnel in the performance of their duties.[162]

Since 1987, more than 12,600 tax personnel have been beaten, twenty-two have died, thirty-six have been disabled, and 1,452 seriously injured from attacks occurring during the performance of their duties.[163] Additionally, 2,744 instances of violent resistance to tax collection efforts were reported in 1992, and 3,000 in 1993.[164] In one case, a "hapless collector in Guizhou Province was severely beaten and then relieved of a week's salary (about $7) and his watch."[165] In another instance, in Hubei Province, "special tax officer Fan Quanhe died an honorable death when he—while carry [sic] out his official duties—was stabbed in the heart by a tax evader armed with a butcher's knife."[166] The attacks against tax officials have not only been in the form of physical violence, but also in the form of public humiliation.[167]

The taxpayers' general attitude that their money is *theirs* and not subject to taxation may account for the violence against tax collectors. This lack of knowledge of the obligation to pay taxes results from the PRC's historic reliance on a profit delivery system, and the absence of an individual income tax system applicable to a large percentage of wage earners.[168] For example, in connec-

162. *See* Tax Administration Law, *supra* note 8, arts. 45, 50; *see also* Tax Evasion Regulations, *supra* note 156, art. 6. The State Administration of Taxation has also "urgently called for the setting up of a 'tax police force' to protect its employees as incidents of violence against tax collectors increase." *Chinese Tax Collectors Ask for Police Protection*, ASIAN ECON. NEWS, Nov. 28, 1994, *available in* WL, AECON File. Local tax bureaus also have established "taxation security bodies" at some tax collection points, which have "provided a reliable guarantee for promptly and effectively dealing with cases of violent resistance to taxation." Yojana Sharma, *China: Taxmen to Get Bodyguards*, Inter Press Service, Nov. 7, 1994, *available in* WL, INTERPS File (quoting China News Service).

163. Sharma, *supra* note 162. *See also* Daniel Southerland, *China's Economy May Renew Strife: Disgruntled Grain Farmers Could Spread Unrest in Countryside*, WASH. POST, June 28, 1989, at A1, A18 ("[F]rom 1985 to 1988 there were thousands of cases of peasants using force against tax collectors to avoid paying taxes "); *see also China Peasant Kills Self, Official in Tax Protest*, Reuters World Service, Jan. 12, 1994, *available in* LEXIS, ASIAPC Library, REUWLD File (regarding peasant who had not paid taxes for many years and who killed himself and a government official when forced to pay taxes).

164. Sharma, *supra* note 162.

165. Hood, *supra* note 19.

166. Zou Qingli, *supra* note 4, at 44.

167. Hood, *supra* note 19. Some tax officials have been accosted and paraded through the streets of small towns as objects of ridicule.

168. With the implementation of China's new tax laws at the beginning of this year, which widened the tax net to start at incomes of 800 yuan a month—an average worker's salary (the situation has become so tense that according to China's Economic Daily it has

tion with the revised Individual Income Tax Law, Jin Xin, head of the State Administration of Taxation, noted that "strict enforcement of the new law will take time since most Chinese individuals lack experience in paying taxes it is urgent to establish a strict and orderly tax-collection system."[169]

The authorities have turned to the historically favored methods of education and publicity to ameliorate this lack of awareness. During the 1980s, China launched widely-publicized periodic tax investigation campaigns aimed at uncovering tax evasion and informing the public of the widespread problem.[170] In 1994, China's official news agency, Xinhua, inaugurated a column dedicated to addressing tax issues: "Taxes Are Everyone's Concern."[171] The column chronicles exemplary taxpayers, provides cautionary examples of tax evasion, and explains the significance of tax revenues to China's modernization.[172] Authorities have held public events focusing on tax reform. The

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"seriously sabotaged tax collection and social security, bringing untold losses to state revenues." The Economic Daily also noted that after years of not having to pay any taxes to the state, "the fundamental cause of the resistance boils down to the fact that the concept of Chinese citizens paying taxes is *feeble.*" Sharma, *supra* note 162 (emphasis added).

169. Chen Qiuping, *New Tax Law Burdens Taxpayers Little*, BEIJING REV., Nov. 29-Dec. 5, 1993, at 5, 6. As of 1993, only one percent of Chinese people had sufficient income that payment of taxes was required. This figure is expected to increase and generate additional state revenues. *Id.* This increase, however, coupled with the growth in the number of other tax-paying entities, will add to the administrative difficulties faced by the tax authorities. In 1978, the total number of taxable entities was 1.62 million; however, by 1985, this number had risen to 7.2 million. *China to Battle Tax Evasion*, Xinhua General Overseas News Service, July 24, 1985, *available in* LEXIS, ASIAPC Library, Xinhua File. The number of registered companies in China has more than doubled from 487,000 in 1992 to 1,000,000 in 1994. Wu Naitao, *Corporation Law: Guarantee for Modern Enterprise System*, BEIJING REV., Apr. 4-10, 1994, at 14. A key factor in the success of the tax reform process will be the effectiveness of attempts to administer the various tax laws in the face of the rapidly growing number of taxpayers.

170. *China to Crack Down on Tax Evasion, Price Hike*, Xinhua General Overseas News Service, Oct. 5, 1986, *available in* LEXIS, ASIAPC Library, Xinhua File; *see also China to Crack Down on Tax Evasion*, Xinhua General Overseas News Service, Aug. 7, 1985, *available in* LEXIS, ASIAPC Library, Xinhua File; *China: Tax Evasion*, BBC Summary of World Broadcasts, Dec. 31, 1988, *available in* LEXIS, ASIAPC Library, BBCSWB File. Between 1985 and 1988, China conducted four such national examinations, which focused on state enterprises, administrative agencies, and collective factories. *New Campaign to Close Tax Loopholes*, Beijing Xinhua, Sept. 3, 1989, *reprinted in* FBIS-CHI-89-171, Sept. 6, 1989, at 34. Even today, the government continues to conduct such inspections. *China to Launch Effort to Inspect Income Taxes*, ASIAN WALL ST. J., Apr. 14, 1994, at 3.

171. Zou Qingli, *supra* note 4, at 42.

172. *Id.*

head of the State Administration of Taxation, Jin Xin, announced at a publicity drive in a Beijing shopping district, that tax authorities and government cadres would conduct a grassroots campaign to promote the new tax laws.[173] Nonetheless, in some cases, authorities have not effectively communicated critical information about newly enacted laws, and critics have described China's tax regulations as "a maze that is arbitrary and arcane even to many Chinese."[174] The Tax Administration Law provides a unified source of law governing the collection of taxes in China, however, public awareness of tax obligations remains a problem.

IV CONCLUSION

In the past fifteen years, as part of its goal of establishing a socialist market economy, China essentially has built up its tax system from the ground level. Passage of the Tax Administration Law, with the accompanying Implementing Regulations, is significant in demonstrating the continued development of China's legal system and refinement of its nascent tax statutes. Earlier substantive tax laws lacked an over-arching structure for ensuring uniform implementation and compliance. The Tax Administration Law is central to achieving a comprehensive system of taxation. Moreover, the Law itself provides uniformity and due process in tax administration.

While the Tax Administration Law, on its face, embodies the necessary provisions to address tax administration issues, other factors, such as public attitudes and the absence of effective implementation, remain obstacles to achieving compliance with the Law and the substantive tax statutes. As described above, China's reliance during the post-revolutionary era on obtaining revenue through a profit-delivery system, rather than through payment of taxes, engendered "tax illiteracy." Numerous accounts describe the extent of taxpayers' lack of awareness, and the resulting intentional or unintentional tax evasion.[175] More than a year and a half after

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173. *China's New Tax Laws Spur Education Drive*, ASIAN WALL ST. J., Jan. 25, 1994, at 4.

174. Leslie Chang, *Foreign Manufacturers in China May Bridle at Quiet But Costly Change to Tax Laws*, WALL ST. J. EUR., Oct. 18, 1994, at 8; *see also* Laurence Zuckerman, *China Changes Tax System But Fails to Give Details*, WALL ST. J. EUR., Jan. 3, 1994, at 8 (information about "promised" exemptions to certain commercial and income taxes was not made available at the time such taxes took effect).

175. *See supra* notes 15-20 and accompanying text.

the passage of the Tax Administration Law, the Chinese news agency Xinhua reported that China loses one-fourth of its tax revenue due to evasion.[176]

The magnitude of taxpaying units and China's immense size compound the problem. These two factors have tested governmental administration throughout China's history and, with China's growing population and economy, only will become more challenging. Clearly, mere passage of the Tax Administration Law is insufficient. In addition to the attitudinal problems, China lacks adequate mechanisms for implementation of the Tax Administration Law. Insufficient personnel,[177] lack of specialized training,[178] and inadequate physical resources remain problems.[179]

In addition to problems in the number and training of tax personnel, the judiciary is ill-equipped to address tax issues; for example, China has not created specialized tax courts.[180] Moreover, at times existing tax personnel lack sufficient physical resources to perform their jobs; they often lack suitable office space, transportation, and communication equipment.[181] Absence of a computerized network linking the various tax offices[182] and reliance on cash systems of payment represent major problems. This forces tax personnel to administer the tax laws on a face-to-face basis, making them susceptible to personal influence.[183]

Notwithstanding China's apparent commitment to formalized law in contrast to earlier reliance on party policy, China still must turn to old models to implement the Tax Administration Law and other new tax laws. For example, using the Chinese press to

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176. Zou Qingli, *supra* note 4, at 43. The estimated amount of annual tax revenue lost of 100 billion yuan "is more than the total annual revenues of treasuries at the county level, more than the total annual state power expense, or enough to pay for 80 Yanpu bridges, five Beijing-Kowloon Railways, or two Three-Gorge projects." *Id.* In February 1995, one report indicated that more than 50% of personal income tax revenue is still lost to evasion. Jane Macartney, *China Collects Record Income Taxes in 1994-Paper*, Reuter European Business Report, Feb. 20, 1995, *available in* LEXIS, NEWS Library, REUEUB File.

177. Some 600,000 people presently staff China's tax agencies; however, an estimated 300,000 more are needed. Zou Qingli, *supra* note 4, at 44.

178. *See supra* note 48 and accompanying text.

179. Zou Qingli, *supra* note 4, at 44.

180. *See supra* note 141.

181. Zou Qingli, *supra* note 4, at 44 (stating that "[t]ax collectors riding on bicycles often have to tail tax evaders riding motorcycles or driving automobiles").

182. *But see supra* note 86 and accompanying text.

183. *See supra* note 44 and accompanying text.

profile "heroes," such as governmental officials or exemplary taxpayers who have supported China's new tax system, is consistent with the methodology historically used by the PRC to instill consciousness of a given policy.[184] China continues to employ grassroots campaigns to increase awareness of the laws and tell cautionary tales of those who choose not to comply.

Until China establishes a fully trained corps of administrative and judicial personnel to implement its tax laws, and ameliorates the present state of "tax illiteracy" among its citizens, the Tax Administration Law will remain a comprehensive, well thought out piece of legislation whose full potential is yet unrealized.

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184. *See supra* note 170 and accompanying text; *see also supra* note 50 and accompanying text. Soon after passage of the Tax Administration Law, the *People's Daily* reported on efforts in Hebei province to implement the Tax Administration Law and crackdown on tax evasion and violence against tax agents. Li Jianxing, *Hebei Province Strikes Relentless Blows at the Unhealthy Trend of Refusing to Pay Taxes by Using Violence*, Renmin Ribao; Nov. 8, 1992, *reprinted in* FBIS-CHI-92-231, Dec. 1, 1992, at 37.

> In Ci County, when a tax collector tried to collect taxes from a self-employed business operator called Tan at a market. Tan refused and beat the tax collector with an electric police club after pushing him, causing injury The Handan Taxation Procuratorial Office, supported by the county party committee and government, tackled the case immediately and *heard the case at a rally attended by 10,000 people.* Tan was sentenced to one year's imprisonment.

Id. (emphasis added).