Need I pay the individual income tax in China?

Description

An American person had an issue regarding individual income tax with his employer. He approached me for advice on that.

It is a simple matter. The guy is hired by a newly established joint venture in HK and actually he is a minority partner in the joint venture also. The JV has business operation in China. The guy was sent to China for a few meetings for which he spent a few days in China. Upon receipt of his first month pay slip, he was indeed stunned to see that a big part, 45% of the total salary was deducted. The explanation given by the JV is that the deduction is made because of Chinese individual income tax.

The American guy was not ready for such a big cut that came out of blue. So is it correct to make this deduction in the case?

It must be a mistake.

Foreigners who don't have domiciles in China or who don't usually reside in China are generally not subject to Chinese individual income tax laws except that they are subject to this individual income tax only if and to the extent such income is received for his or her job or work performed within China. In regard of job or work performance carried out within China, it can be further broken down into two categories: the income earner works in China for more than 90 or 183 days; the income earner works in China less than 90 or 183 days. (Note: for those foreigners whose home countries have concluded a tax treaty on treatment of income taxes, usually 183 days applies; otherwise, 90 days applies.)

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For those foreigners of the first category, if the income they receive is paid by a foreign entity and is not assumed by Chinese businesses, such income though regarded as sourced from within China is exempted from individual income tax burden. In other words, these people will only pay Chinese individual income tax on their income paid by Chinese entities for their work or job performed in China.

For those foreigners of the second category, the income they receive will be subject to Chinese individual income tax no matter where the income is paid to them.

In the case in question, the American guy has performed his job in China only for a few days, belonging to the first category foreigners, his income for his work performed (only a very small percentage of whole monthly salary) in China and paid outside China is not subject to individual income tax at all.

There has been an entrenched mistake in understanding expat individual income tax in China because of linguistic problem. I have read tax analysis by a Chinese lawyer saying that a Japanese person dispatched by his company in Japan to China for marketing research work and working for more than 183 days is not subject to Chinese individual income tax laws because he was not hired by any Chinese entity. This mistaken understanding is given rise to because the writer arrived at this understanding based on reading only the Chinese version of relevant tax treaty in which the word "*shou gu*" in Chinese, a translation from other languages saying "employment is exercised", means

literally “hired by”. Such linguistic difference can leave to absurd legal advice. Expats seeking legal advice on such issues will be better served if they approach bilingual attorneys instead of those that can speak Chinese language only.

Date Created
September 2012
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