Individual Income Tax Liabilities for Expatriates in China

Description

For foreigners lured into China labor market, there are many things for them to ponder over before heading to China soil. One of the critical things that need to be clearly addressed is the tax implication of working in China, namely, whether you need to pay individual income tax in China, and how and how much you need to pay China individual income tax.

For those expats who have been working in China, it has probably been a period of caution after China started strengthening its administration of taxation on foreigners in 2010. We have been approached for advice by expats who are being audited in respect of their individual income tax records by local tax authority.

We hereby summarize the basic legal framework governing expats individual income tax liabilities in respect of their salaries, wages and similar remuneration for their employment carried out in China. Individual income tax liabilities in respect of other types of income derived from property sale, royalty or other activities other than employment are not covered herein. We will at your request provide related information.

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No.	Time period of stay in China by expats	Income sourced inside China		Income sourced outside C	
		paid or borne by domestic entity	paid and borne by foreign entity	paid or borne by domestic entity	paid and b foreign ent
1.	Less than 90 or183 days	Yes	exempted	No	No
2.	More than 90 or183 days but less than 1 year	Yes	Yes	No	No
3.	More than 1 year but less than 5 years	Yes	Yes	Yes	exempted
4.	More than 5 years	Yes	Yes	Yes	Yes

- â€œ**Yes**â€• means China government will collect the individual income tax; â€œ**Exempted**â€• means you donâ€™t have to pay the tax though you are legally obliged to; â€œ**No**â€• means you are not subject to such tax.
- l â€œ**Less than**â€• shall not include the number immediately following after it; â€œ**more than**â€• shall include the number immediately following after it.

I Basic Terms

Before moving to explain the table above, I would like to introduce some basic concepts that are essential to understand individual income tax implications in China.

- **Resident Taxpayer**

According to China Individual Income Tax Law (the â€œ**Law**â€•), a resident taxpayer refers to a person who is subject to Chinese individual income tax to the fullest extent by reason of his domicile within China or by reason of his stay in China for a prescribed period.

According to the Implementation Rules for the Law (the â€œImplementation Rulesâ€•), a foreigner may be deemed to have a domicile in China if he or she habitually resides in China by reason of household registration (hukou in Chinese), family, economic interests and etc.. But in practice, it is never clear to determine whether a foreigner should be considered a Chinese resident, even though the foreigner with their family may have bought a home and lived in China for many years.

Though without a domicile in China, a foreigner who has lived in China consecutively for more than five years (inclusive) shall be treated as a resident under the Law, provided however that he or she lives in China for a full calendar year (to be explicated later) in each of these consecutive five years.

- **China Sourced Income**

Literally, China Sourced Income means that the income is derived from China or is deemed to arise in China. Pursuant to the Implementation Rules, in the case of income of salaries, wages and other similar remuneration paid for employment exercised in China, regardless of where the employment is established and where such salaries and wages are paid, inside or outside China, such income shall be deemed as China sourced income.

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This is a critical point in analyzing an expatâ€™s liability for China individual income tax, as China sourced income will be always subject to China income tax, unless clearly exempted, even though such income may be physically paid to the employee in a foreign country. On the other hand, income sourced outside China shall be taxed by Chinese authority only in certain circumstances (to be elaborated below).

This is also the case in Sino-foreign income tax treaties. For example, if you look at Article 14 (dependant personal service) and Article 22 (elimination of double taxation) in the China-USA income tax treaty, you will arrive at the same conclusion.

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