



GLOBAL EMPLOYER SERVICES COVID-19 ALERT

TREASURY AND IRS ISSUE CROSS-BORDER TAX GUIDANCE RELATED TO TRAVEL DISRUPTIONS ARISING FROM THE COVID-19 EMERGENCY

Since the start of the novel coronavirus (COVID-19) emergency, individuals and businesses have raised questions regarding how their tax residence would be impacted by cross-border travel disruptions including canceled flights, shelter-in-place orders, quarantines and border closings. On Tuesday, April 21, 2020, the Treasury Department and the Internal Revenue Service (IRS) issued guidance, outlined in IRS Newswire Issue Number 2020-77, that provides relief to individuals and businesses affected by travel disruptions arising from the COVID-19 emergency. The guidance includes Revenue Procedures (Rev. Proc.) 2020-20 and 2020-27, as well as two Frequently Asked Questions (FAQs).

REV. PROC. 2020-20 IMPACTS ON NONRESIDENT ALIENS (NRAs)

In Rev. Proc. 2020-20, the IRS provides relief to affected NRAs living in the United States. The IRS will presume, under certain circumstances, that up to 60 consecutive calendar days of their U.S. presence arises from COVID-19 travel disruptions and will not count this time period for purposes of determining U.S. tax residency under the substantial presence test (SPT) or whether the individual qualifies for certain income tax treaty benefits with respect to income from dependent personal services performed in the United States.

The IRS will consider the COVID-19 emergency a medical condition that prevented the individual from leaving the United States. Without this relief, some NRAs in the United States who are prevented from returning home as a result of COVID-19 might have been considered resident aliens under the SPT while others might not have been able to claim an income tax treaty benefit with respect to income from dependent personal services performed in the United States because of their extended stay. With this relief, these individuals can avoid having 60 days counted against them. The date when the 60-day period begins is chosen by each person, but it must start between February 1 and April 1, 2020.

To obtain this relief, eligible NRAs who are required to file a 2020 U.S. Nonresident Alien Income Tax Return (Form 1040-NR) must attach to their return Form 8843, Statement for Exempt Individuals and Individuals With a Medical Condition, claiming the COVID-19 medical condition travel exception. Eligible NRAs who are not required to file a 2020 Form 1040-NR do not need to file Form 8843, but the IRS has advised they should retain all relevant records to support their reliance on this Rev. Proc.

To claim an exemption from withholding on income from dependent personal services pursuant to a U.S. income tax treaty, an individual should certify that the income is exempt by providing their employer or other withholding agent Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual.

REV. PROC. 2020-27 IMPACTS ON U.S. CITIZENS AND GREEN CARD HOLDERS

In Rev. Proc. 2020-27, the IRS provides relief to eligible U.S. citizens and Green Card holders living and working abroad so that days spent away from the foreign country, due to the COVID-19 emergency, where the eligible individual was living and working will not prevent the individual from qualifying for the foreign-earned income exclusions under Internal Revenue Code (IRC) Section 911. This relief benefits individuals who reasonably expected to become "qualified individuals" for purposes of IRC Section 911 but who departed the foreign jurisdiction during the period described in the Rev. Proc. For 2019 and 2020, the Secretary of the Treasury, after consultation with the Secretary of State, has determined that for purposes of IRC Section 911(d)(4), the COVID-19 emergency is an adverse condition that precluded the normal conduct of business in the People's Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau (China) as of December 1, 2019, and globally as of February 1, 2020. The period covered by this Rev. Proc. ends on July 15, 2020, unless an extension is announced by the Treasury Department and IRS.

As a result, for purposes of IRC Section 911, an individual who left China on or after December 1, 2019, or another foreign country on or after February 1, 2020, but on or before July 15, 2020, will be treated as a qualified individual with respect to the period during which that individual was physically present in, or was a bona fide resident of, that foreign country if the individual establishes a reasonable expectation that he or she would have met the requirements of IRC Section 911(d)(1) but for the COVID-19 emergency.

FAQS' IMPACT ON FOREIGN BUSINESSES

In the FAQs, the IRS also provides relief to certain foreign businesses that have activities in the United States. In determining if a foreign corporation or NRA is engaged in a U.S. trade or business (USTB) or has a U.S. permanent establishment (PE), certain business activities will not be counted for up to 60 consecutive calendar days. It should be noted that this relief is only available if those activities would not have been performed in the U.S. if not for the COVID-19 travel disruption. The date when the 60 consecutive calendar day period starts is chosen by the foreign corporation or NRA, but must start between February 1 and April 1, 2020. The text of the two FAQs are as follows:

Question 1: Will a NRA or foreign corporation, not otherwise engaged in a USTB, be treated as engaged in a USTB as a result of services or other activities conducted by one or more individuals temporarily present in the United States if, but for COVID-19 Emergency Travel Disruptions, those services or other activities would not have been conducted in the United States?

Answer: A NRA, foreign corporation, or a partnership in which either is a partner (Affected Person) may choose an uninterrupted period of up to 60 calendar days, beginning on or after February 1, 2020, and on or before April 1, 2020 (the COVID-19 Emergency Period), during which services or other activities conducted in the United States will not be taken into account in determining whether the NRA or foreign corporation is engaged in a USTB, provided that such activities were performed by one or more individuals temporarily present in the United States and would not have been performed in the United States but for COVID-19 Emergency

Travel Disruptions. For purposes of these FAQs, an "individual temporarily present in the United States" means an individual who is present in the United States on or after February 1, 2020, and on or before April 1, 2020, and is a NRA, or a U.S. citizen or lawful permanent resident who had a tax home as defined in Section 911(d)(3) outside the United States in 2019 and reasonably expects to have a tax home outside the United States in 2020. In addition, to determine the nonresident status of an alien, the relief provided in Rev. Proc. 2020-20 is applicable.

Question 2: If a NRA or foreign corporation is engaged in a USTB (taking into account the application of the treatment in Question 1) but otherwise does not carry on such USTB through a PE under an applicable income tax treaty, will the NRA or foreign corporation be treated as conducting business through a PE due to services or other activities conducted by individuals temporarily present in the United States that would not have been conducted in the United States but for COVID-19 Emergency Travel Disruptions?

Answer: During an Affected Person's COVID-19 Emergency Period, services or other activities performed by one or more individuals temporarily present in the United States will not be taken into account to determine whether the NRA or foreign corporation has a PE, provided that the services or other activities of these individuals would not have occurred in the United States but for COVID-19 Emergency Travel Disruptions.

These Rev. Procs. and FAQs provide answers to questions that were raised at the onset of the COVID-19 emergency. We expect the Treasury Department and the IRS will continue to issue additional COVID-19 emergency related guidance as warranted, especially if an extension is granted to the end date of Rev. Proc. 2020-27 after July 15, 2020.

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