



# BDO KNOWS:

## GLOBAL EXPATRIATE SERVICES



## FOREIGN EARNED INCOME EXCLUSION (FEIE)

### INTERNAL REVENUE CODE (IRC) SECTION 911

U.S. citizens and green card holders continue to be subject to U.S. individual income tax whether or not they reside in the U.S. and are required to report worldwide income on their annual U.S. Individual Income Tax Return (Form 1040). Therefore, there is the potential for double taxation on income that is also being taxed in a foreign jurisdiction.

The IRC attempts to offer relief for such duplicate taxation through the FEIE. U.S. citizens and in some cases green card holders who live and work abroad for greater than one year could potentially qualify for the FEIE defined in IRC Section 911. There are two tests under which a taxpayer can qualify for the FEIE: the Physical Presence Test (PPT) or the Bona Fide Residence (BFR) test. The IRC also includes a foreign housing exclusion if qualified foreign housing expenses in the foreign country exceeds a specific threshold for that country/location(city).

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## PHYSICAL PRESENCE TEST

Under the PPT, a taxpayer who is a U.S. citizen or resident alien (green card holder) must have shifted his/her *tax home* abroad AND spend at least 330 full days out of 365 days in any 12 consecutive month period outside the U.S. in any foreign country or countries. Any portion of a day in the U.S. counts as an entire day. The testing period starts on the taxpayer's first official day in the foreign country. The PPT allows the taxpayer to spend up to 35 days in the U.S. for any reason in the 12 consecutive month period following the assignment start date. Under PPT taxpayers are allowed to "slide" the 12 consecutive month period backward or forward to maximize the exclusion amount. Taxpayers should consult their tax advisor to apply the mechanics of the slide rule principal.

## BONA FIDE RESIDENCE TEST

If the taxpayer exceeds 35 days in the U.S. during any 12 consecutive month period under the PPT, then he/she may consider using the BFR test in order to qualify for the FEIE. The BFR test ONLY applies to U.S. citizens, and certain resident aliens who are citizens of a country that has an income tax treaty with the U.S. and the treaty must contain a non-discrimination clause.

To qualify for the FEIE under the BFR test, the taxpayer must have a tax home abroad for an uninterrupted period that includes an entire *calendar* year. The U.S. income tax return that is typically due on April 15 or June 15 following the close of the tax year, can be extended past October 15 by filing Form 2350 to allow the taxpayer to meet the qualification under the BFR test. While the actual number of days spent in the U.S. during the calendar year under the BFR test is less relevant than under the PPT, wages allocable to days the taxpayer works in the U.S. generally cannot be excluded for purposes of the FEIE under either test (PPT or BFR test).

## TAX HOME DEFINED

U.S. Revenue Ruling 73-529 highlights the definition of a tax home under IRC Section 162(a) as:

- ▶ The location where the individual has a regular or principal place of business
- ▶ If the individual has no regular or principal place of business, then the regular place of abode in a real and substantial sense
- ▶ If neither above category applies, then the individual is considered an itinerant worker and the 'home' is wherever the individual happens to be working.

## TAX BENEFITS

A taxpayer who qualifies for the FEIE can exclude up to \$104,100 in 2018 (indexed each year) from taxable income on Form 1040 for income earned for services performed outside the U.S. The FEIE is prorated based on the number of days in the qualifying period.

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