

## 2018 foreign income/housing exclusions: Residency/presence tests waived for several countries

In a recent Revenue Procedure, the IRS waived the residency and presence tests that apply for purposes of the foreign earned income and foreign housing cost exclusions under the tax code. Specifically, the waivers apply to certain U.S. individuals in the Democratic Republic of the Congo, Cuba, Iraq and Nicaragua, because of adverse conditions in those countries.

### Who's a qualified individual?

Section 911(a) and Sec. 911(c)(4) allow a "qualified individual" to exclude from taxation the individual's foreign earned income and the housing cost amount.

A qualified individual is one whose tax home is in a foreign country and who's either a:

- U.S. citizen (or, in certain situations, U.S. resident alien) who satisfies the IRS that he or she has been a bona fide resident of one or more foreign countries for an uninterrupted period that includes an entire tax year (bona fide foreign residence test), or
- U.S. citizen or resident who, during a period of 12 consecutive months, is present in one or more foreign countries for at least 330 full days (foreign physical presence test).

Under certain circumstances, the time requirements of the foreign residence test and presence test may be waived. If these requirements are waived, the taxpayer is treated:

- As having met the foreign residence requirement for the period during which he or she was a bona fide resident of the foreign country, or
- As having met the foreign presence requirement for the period during which he or she was present in the foreign country. (The taxpayer will be so treated even though the relevant time requirement hasn't been met.)

Three conditions must be met for the waiver to apply:

1. The taxpayer must have been a bona fide resident of, or present in, a foreign country for a period of time.
2. Before the taxpayer meets the time requirements for the foreign residence test or the foreign presence test, he or she must leave the foreign country during a period in which the IRS determines, after consultation with the State Department, that individuals had to leave the foreign country because of war, civil unrest or similar adverse conditions in that country, which prevented their normal conduct of business.
3. The taxpayer must establish to the IRS's satisfaction that he or she could reasonably have been expected to meet the time requirements but for the war, civil unrest or similar adverse conditions.

### Which countries are included?

For 2018, the Secretary of the Treasury, in consultation with the Secretary of State, has determined that war, civil unrest or similar adverse conditions precluded the normal conduct of business in the following countries beginning on the specified date:

- The Democratic Republic of the Congo: December 14, 2018,
- Cuba: January 4, 2018,
- Iraq: September 28, 2018, and
- Nicaragua: July 6, 2018.

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For example, an individual who left the Democratic Republic of the Congo on or after December 14, 2018, will be treated as a qualified individual with respect to the period during which that individual was present in, or was a bona fide resident of, the Democratic Republic of the Congo if the individual establishes a reasonable expectation that he or she would have met the tax code requirements but for those adverse conditions.

To qualify for relief under the tax code, an individual must have established residency, or have been physically present, in the foreign country on or before the date that the Secretary of the Treasury determines that individuals were required to leave the foreign country. For example, individuals who were first physically present or established residency in the Democratic Republic of the Congo after December 14, 2018, aren't eligible to qualify for the exception provided in the tax code for tax year 2018.

## **Impact incorporated**

If you believe you might be affected by these latest waivers, contact your CPA. He or she can help you fully understand their impact on your tax filings and perhaps file an amended return. •