# GMS Flash Alert


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# United States – COVID-19: Waiver of Sec. 911 Time Requirements Announced

On April 21, 2020, the U.S. Department of the Treasury and the Internal Revenue Service (IRS) released Revenue Procedure 2020-27,[1] which provides that qualification for the foreign earned income exclusion and foreign housing cost amount (together, the "FEIE") from gross income under Internal Revenue Code (I.R.C.) section 911 will not be impacted as a result of days spent away from a foreign country due to the COVID-19 pandemic based on certain departure dates.

## WHY THIS MATTERS

The United States allows an exclusion from taxable income (subject to limitations) for income earned while the taxpayer's "tax home" is outside the United States. The taxpayer must meet one of two qualifying tests, and both tests require that the taxpayer be present, or reside, in a country outside the United States for a minimum period of time.  A mid-assignment relocation or repatriation could cause a taxpayer to fail either or both of the qualifying tests, resulting in a failure to qualify for the FEIE. Revenue Procedure 2020-27 (Rev. Proc. 2020-27) provides a waiver of the time requirements of these qualifying tests for an individual who had reasonably expected to meet them during 2019 or 2020, but failed to do so because the individual departed a foreign country on or after a specified date due to COVID-19-related circumstances.

The ability to claim the FEIE is an important tax planning and cost mitigation element of any outbound international assignment from the United States.  Rev. Proc. 2020-27 provides important clarification regarding situations in which the time requirements to qualify for the exclusion will be waived due to changes to an international assignment made as a result of the pandemic.

## Waiver of Section 911 Time Requirements

Under I.R.C. section 911, U.S. citizens and certain lawful permanent residents may elect to exclude from gross income a portion of foreign earned income and housing cost amounts during the period the individual is either a bona fide resident

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of a foreign country or countries for an uninterrupted period that includes an entire taxable year, or is physically present in a foreign country (or countries) for at least 330 full days during any period of 12 consecutive months.

### Changed Situation Due to COVID-19 Pandemic

As a result of the COVID-19 pandemic and the ensuing travel bans, border closings, and automatic quarantines announced by many countries, employers with U.S. employees working on assignment in certain countries may have temporarily or permanently repatriated those assignees back to the United States or relocated them to a third country. Absent the relief provided in Rev. Proc. 2020-27, these assignment changes could result in an assignee's failure to qualify for the FEIE.

### The "Similar Adverse" Condition and Rev. Proc 2020-27

Under the terms of section 911, an individual may be treated as having met the relevant qualifying test if the individual left the country during a period for which the Secretary of Treasury determines a condition of war, civil unrest, or similar adverse conditions precluded the normal conduct of business, if the individual can establish that, but for those conditions, the individual could reasonably have been expected to meet the eligibility requirements.

Rev. Proc. 2020-27 clarifies that absence from the foreign country due to the COVID-19 pandemic may be disregarded in determining whether an individual meets the FEIE qualifying tests under certain conditions. For 2019 and 2020, the COVID-19 Emergency will be considered an "adverse condition" that precluded the normal conduct of business for the period from December 1, 2019 to July 15, 2020, for the People's Republic of China (excluding Hong Kong and Macau) and for the period February 1, 2020 to July 15, 2020, for all other foreign countries. Thus, for purposes of qualifying for the FEIE, an individual who left China on or after December 1, 2019, or any other foreign country on or after February 1, 2020, but on or before July 15, 2020, will be treated as physically present in or a bona fide resident of that foreign country during that period.

### Qualifying for Relief

To qualify for this relief, an individual must have established residency, or have been physically present, in the foreign country on or before the above applicable dates. Individuals seeking to qualify for the FEIE because they could reasonably have been expected to have been present in a foreign country for 330 days but for the COVID-19 Emergency, and have met the other requirements for qualification, may use any 12-month period to meet the qualified individual requirement.

For example, consider an individual who was present in the U.K. on January 1 through March 1, 2020, who establishes that he reasonably expected to work in the U.K. for the entire calendar year. If the individual departed the U.K. on March 2, 2020, due to the COVID-19 Emergency, and returns to the U.K. on August 25, 2020, that individual will be considered to have met the physical presence test despite not having been present in the U.K. for 330 days. He will be considered a qualifying individual for the periods of January 1–March 1, 2020, and August 25–December 31, 2020, assuming the other requirements for qualification under section 911 are met.

## KPMG NOTE

Individuals who have already filed their 2019 U.S. federal income tax returns without the FEIE, but who will now qualify based on the conditions outlined in the Revenue Procedure, may file an amended return.

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## KPMG NOTE: In Summary

The ability to claim the FEIE is an important tax planning and cost mitigation element of a long-term outbound international assignment from the United States. Where the employee is tax equalized by the employer, the FEIE may help mitigate the overall tax cost of a U.S.-outbound assignment to the employer, and will have been factored into 2019 and 2020 budget forecasts, tax projections, tax equalization payments, and other cost and cash-flow projections.

Rev. Proc. 2020-27 provides relief for individuals and employers who have had to cut assignments short as a result of COVID-19. However, assignees and their employers will need to establish that the individual could reasonably have been expected to meet the eligibility requirements for the FEIE if the individual had not been required to leave the foreign country due to COVID-19. In addition, an individual must be able to demonstrate that he or she established residency, or was physically present, in the foreign country on or before the applicable dates. Documentation of the original intended assignment length and location, reason for the change in assignment length and location, date of the change, any ongoing amendments to the assignment terms, and travel records should be maintained and regularly updated as the situation evolves.

If you have any questions or concerns about how Rev. Proc. 2020-27 might apply to any of your assignees who left their assignment country earlier than anticipated due to the COVID-19 pandemic, consider consulting with your qualified tax professional or your usual KPMG contact.

## FOOTNOTE:

1 For Rev. Proc. 2020-27, see: https://www.irs.gov/pub/irs-drop/rp-20-27.pdf .

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