



# GMS Flash Alert

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## United States – Foreign Earned Income Exclusion Requirements Waived for Several Countries

On March 19, 2024, the U.S. Internal Revenue Service (IRS) released an advance copy of Revenue Procedure 2024-17, which concerns individuals who failed to meet the eligibility requirements of either the bona fide residence test or the physical presence test under U.S. Internal Revenue Code section 911(d)(1) – and thus would not be able to exclude foreign earned income and housing cost amounts from gross income – because war, civil unrest, or similar adverse conditions in a foreign country precluded the normal conduct of business and prevented individuals from satisfying these requirements.<sup>1</sup>

The Revenue Procedure released on March 19, 2024, does not list any countries for tax year 2024, but provides the following list of countries with the corresponding departure dates for which the eligibility requirements of section 911(d)(1) are waived for tax year 2023.

Country	Date of departure on or after	Country	Date of departure on or after
Ukraine	January 18, 2023	Haiti	July 27, 2023
Belarus	January 26, 2023	Niger	August 2, 2023
Sudan	April 20, 2023	Iraq	October 20, 2023

### WHY THIS MATTERS

Individuals who would otherwise qualify for the foreign earned income (FEIE) and foreign housing cost exclusions may lose the benefit of those exclusions if they leave a country prior to fulfilling the time requirements, which could affect the amount of tax they owe.

A special exception to the time requirements to qualify for those exclusions is allowed for persons who are forced to leave a country designated by the IRS due to war, civil unrest, or other adverse conditions.

## Context

The Revenue Procedure provides that the Treasury Department, in consultation with the Secretary of State, has determined that for tax year 2023, war, civil unrest, or similar adverse conditions precluded the normal conduct of business in the listed countries beginning on the dates specified above. Of the countries listed in the Revenue Procedure, **Belarus, Iraq, and Ukraine** are the only countries for which similar relief was granted for tax year 2022.<sup>2</sup> Interestingly, Israel was not included in the scope of the relief, though the IRS previously granted filing and payment relief to certain persons affected by the conflict in Israel beginning on October 7, 2023.<sup>3</sup>

## 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 war, civil unrest, or similar adverse conditions, 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 arrived in Haiti on January 1 and was present there until July 27, 2023, and who establishes that he reasonably expected to work in Haiti for the entire calendar year. If the individual departed Haiti on or after July 27, 2023, that individual will be considered to have met the physical presence test despite not having been present in Haiti for 330 days. He will be considered a qualifying individual for the periods of January 1-July 27, 2023, assuming the other requirements for qualification under section 911 are met.

However, the same individual would not qualify to utilize the benefits of the waiver if the date he was first physically present, or established bona fide residency, in Haiti was after July 27, 2023, which is the date on or after which the Secretary of the Treasury determined, after consultation with the Secretary of State, that individuals were required to leave Haiti because of war, civil unrest, or similar adverse conditions that precluded the normal conduct of business.

### KPMG INSIGHTS

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 2023 budget forecasts, tax projections, tax-equalization payments, and other cost and cash-flow projections.

Rev. Proc. 2024-17 provides relief for individuals and employers that have had to cut assignments short as a result of war, civil unrest, or similar adverse conditions.

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 war, civil unrest, or similar adverse conditions. 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.

## KPMG INSIGHTS (cont'd)

If you have any questions or concerns about how Rev. Proc. 2024-17 might apply to any of your assignees who left their assignment country earlier than anticipated due to war, civil unrest, or similar adverse conditions, consider consulting with your qualified tax professional or your usual KPMG contact.

### FOOTNOTES:

1 Rev. Proc. 2024-17 will appear in the *Internal Revenue Bulletin* 2024-15 for Monday, April 8, 2024. See <https://www.irs.gov/pub/irs-drop/rp-24-17.pdf>.

2 For prior coverage of the countries covered under IRS guidance related to section 911(d)(1) for the 2022 tax year, see [GMS Flash Alert 2023-054](#) (March 14, 2023). For more information on the FEIE, see chapter 1 of [U.S. Taxation of Americans Abroad](#), a publication of KPMG LLP (U.S.).

3 For prior coverage of the relief provided to certain taxpayers affected by the conflict in Israel, see [GMS Flash Alert 2023-192](#) (October 16, 2023).

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