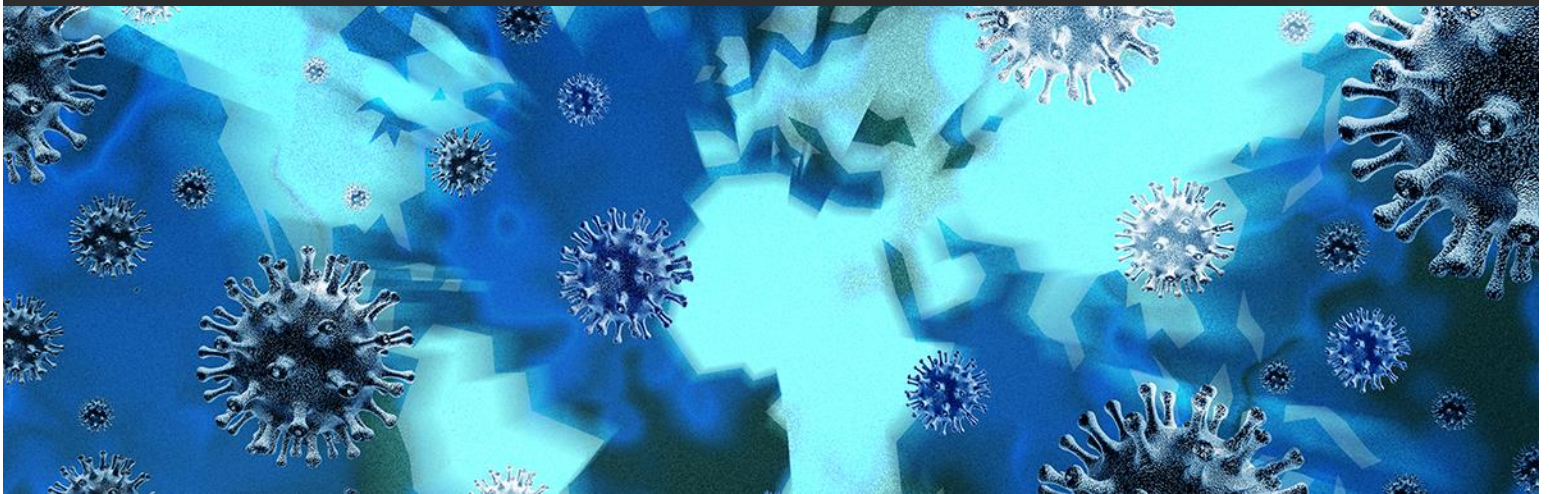


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



April 2020

IRS Provides Procedural Relief to Non-U.S. Individuals Unable to Leave the United States and U.S. individuals Working Abroad Unable to Return to Their Foreign Residence Country Due to COVID-19

Relief to Non-U.S. Individuals Unable to Leave the United States due to COVID-19

Rev. Proc. 2020-20 provides temporary relief for foreign individuals who did not anticipate becoming a U.S. resident in 2020 and losing certain tax-treaty related qualifications due to Coronavirus Disease 2019 (COVID-19) related travel restrictions or travel difficulties.

Generally, nonresident individuals who are neither citizens nor lawful permanent residents but who meet a “substantial presence” test (as described below) for a given calendar year are treated as U.S. residents for U.S. federal income tax purposes for that year. Such individuals are generally required to file U.S. federal income tax returns for the year and are subject to the U.S. federal income tax on their worldwide income for the year regardless of whether it is U.S. or foreign source income.

An individual meets the substantial presence test if the individual was present in the United States for (i) at least 31 days during the tested calendar year, and (ii) more than 183 days counting the sum of (i) the

number of days of U.S. presence in the tested calendar year; (ii) one-third of the number of days of U.S. presence in the preceding calendar year; and (iii) one-sixth of the number of days of U.S. presence in the second preceding calendar year.

Under certain circumstances, days of presence in the United States are excluded (excluded days) from being counted for purposes of applying the substantial presence days (e.g., days of presence in the United States as a result of certain unexpected medical conditions or days of U.S. presence under a student visa subject to certain conditions).

Rev. Proc. 2020-20 expands the category of “excluded days” for certain unexpected medical conditions to apply to U.S. presence due to inability to leave the United States as a result of COVID-19. If the conditions of Rev. Proc. 2020-20 are met, the length of time during which a foreign individual can stay in the United States without becoming a U.S. tax resident may be extended.

Specifically, Rev. Proc. 2020-20 allows a foreign individual to exclude from the substantial presence test a single period of up to 60 consecutive calendar days selected by the individual starting on or after Feb. 1, 2020, and ending on or before Apr. 1, 2020, during which the individual is physically present in the United States on each day (the COVID-19 Emergency Period). Rev. Proc. 2020-20 applies only to foreign individuals who (1) were not U.S. residents at the close of the 2019 tax year, (2) are not lawful permanent residents (i.e., green card holders) at any point in 2020, (3) are present in the United States on each of the days of the individual’s COVID-19 Emergency Period, and (4) do not become U.S. residents in 2020 due to days of presence in the United States outside of the COVID-19 Emergency Period (Eligible Individuals).

Under Rev. Proc. 2020-20, the COVID -19 emergency will be considered a medical condition that prevented an Eligible Individual from leaving the United States on each day during the COVID-19 Emergency Period. Further, any days of presence in the United States during the COVID-19 Emergency Period will not be counted for purposes of determining the eligibility for treaty benefits with respect to income from employment or the performance of other dependent personal services within the United States.

Individuals who are not required to file IRS Form 1040-NR should retain all relevant records to support reliance on Rev. Proc. 2020-20 and be prepared to produce these records and complete Form 8843 if required by the IRS. Eligible Individuals who have a requirement to file IRS Form 1040-NR for 2020 must claim the COVID-19 Medical Condition Travel Exception by attaching a Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition, by the due date (including extensions) for filing Form 1040-NR.

Relief to U.S. individuals Working Abroad Unable to Return to Their Foreign Residence Country Due to COVID-19

Rev. Proc. 2020-27 provides that qualification for exclusions from gross income under Section 911 of the U.S. Internal Revenue Code of 1986, as amended from time to time (the Code) will not be impacted if, based on certain departure dates, days spent away from a foreign country is due to the COVID-19 emergency.

Section 911 of the Code allows “qualified individuals” (as defined below) who meet specified requirements as to residency or physical presence in a foreign country to elect to exclude from gross income all or a portion of their foreign earned income for the year and to exclude or deduct certain amounts related to foreign housing costs.

A qualified individual is generally a U.S. citizen or a green card holder who (i) has been a bonafide resident of a foreign country or countries for an uninterrupted period that includes an entire taxable year (the Bona Fide Residence Test), or (ii) during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days (the Physical Presence Test).

Rev. Proc. 2020-27 provides a waiver of the Bona Fide Residence Test or a waiver of the 330-days foreign country presence requirement under the Physical Presence Test for individuals who could reasonably have been expected to have been present in a foreign country for 330 days but for COVID-19.

Rev. Proc. 2020-27 applies with respect to U.S. individuals residing in China (excluding Hong Kong and Macau) as of Dec. 1, 2019; and globally, as of Feb. 1, 2020. The period covered by the Rev. Proc. ends on July 15, 2020, unless an extension is announced by Treasury.

As an example provided in Rev. Proc. 2020-27, an individual who arrived in China on September 1, 2019, and establishes that he or she reasonably expected to work in China until Sept. 1, 2020, but departed China on Jan. 10, 2020, due to the COVID-19 Emergency would be a “qualified individual” for the period from Sept. 1 through Dec. 31, 2019, and for the period from Jan. 1 through Jan. 9, 2020, assuming the individual has met the other requirements for qualification under Section 911.

For more information and updates on the developing COVID-19 situation, visit [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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