

## Tax Notes

# Good News: IRS Grants Residency and Other Relief for Those Affected by Travel Disruptions

By Peter D. Baum, CPA, Partner and Leo Parmegiani, CPA, Partner

The Treasury Department and the Internal Revenue Service (IRS) issued guidance on April 21 in the form of Revenue Procedures (Rev. Proc.) 2020-20, 2020-27 and Frequently Asked Questions (FAQs) which provide relief to individuals and businesses affected by travel disruptions arising from the COVID-19 emergency. The relief procedures are part of the agency's effort to ease tax complications stemming from the coronavirus pandemic.

### The Relief

The guidance provides that, under certain circumstances, up to 60 consecutive calendar days of United States presence that are presumed to arise from travel disruptions caused by the COVID-19 emergency will not be counted for purposes of determining U.S. tax residency (Rev. Proc. 2020-20). In addition, these same days will not be counted for purposes of determining whether an individual qualifies for tax treaty benefits for income from personal services performed in the U.S.

The guidance also stipulates that exclusions from gross income under Internal Revenue Code (IRC) §911 (foreign earned income exclusion) will not be impacted as a result of days spent away from a foreign country due to the COVID-19 emergency if the individual left the foreign country on certain departure dates (Rev. Proc. 2020-27).

Lastly, the IRS FAQs provides that certain U.S. business activities conducted by a nonresident alien or foreign corporation or partnership will not be counted for up to 60 consecutive calendar days in determining whether the individual or entity is engaged in a U.S. trade or business or has a U.S. permanent establishment, but only if those activities would not have been conducted in the U.S. but for travel disruptions arising from the COVID-19 emergency.

### Background

Under U.S. tax law, there are many tests and thresholds which determine the incidence of U.S. taxation. These determinations in large part focus on a person's physical presence in the U.S. either in his/her individual capacity or as a representative of a non-U.S. company. In the "normal" course of people's lives, these situations can be managed by their affirmative decisions to be present in the U.S. or not and, in some cases, in accordance with a comprehensive tax planning strategy. However, the "COVID-19 emergency" — as defined in the IRS guidance — may have affected their itinerary and travel plans for those non-U.S. citizens or permanent residents who had intended to leave the U.S. This could have impact on how the tests for U.S. tax residency and the foreign earned income exclusion apply, because they are, in part, mechanically based on the number of days present in the U.S. or the foreign country of employment, respectively.

Regardless of whether they were infected with the COVID-19 virus, individuals may have become severely restricted in their movements, including by order of government authorities. Individuals who do not have the COVID-19 virus and attempt to leave the U.S. may also face canceled flights and disruptions in other forms of transportation, shelter-in-place orders, quarantines, and border closures.

Thus, Treasury's guidance is vital to ensure that individuals and companies did not unwittingly or unintentionally trigger tax consequences that were not within their control and would have taken active steps to avoid if not for the COVID-19 emergency.

## Affected Taxpayers

The relief was granted to three categories of taxpayers:

1. Non-U.S. citizens, who are not U.S. permanent residents (nonresident aliens for tax purposes) and who would not meet the substantial presence test in 2020 but for the COVID-19 emergency;
2. U.S. citizens or permanent residents who cannot meet the foreign physical presence test for purposes of the foreign earned income exclusion because of the COVID-19 emergency; and
3. Non-U.S. companies that may have created a U.S. trade or business or permanent establishment under a U.S. income tax treaty because of an individual's movement being restricted by the COVID-19 emergency.

## Illustration

A citizen and resident of the United Kingdom arrived in New York on January 2, 2020 to investigate the establishment of the U.S. subsidiary for his employer, a U.K. PLC. He is the chief operating officer and makes decisions and signs contracts for the U.K. company on a regular basis. While present, the U.S. travel and confined restrictions prevented him from leaving the U.S. during the COVID-19 emergency. The executive did anticipate another trip later in 2020, but his scheduled departure date was April 15. He did not intend that he would spend enough days in the U.S. to be considered a U.S. resident under the substantial presence test; in fact, he had carefully considered his travel to make sure he did not meet that threshold. As a result of his continued confinement in New York, he began conducting day-to-day business for his U.K. employer, enter into agreements, and sign contracts.

In this fact pattern, the executive is personally in jeopardy of becoming a U.S. tax resident and subject to tax on a worldwide basis. In addition, his employer may be deemed to have created a permanent establishment and thus entered the U.S. tax net. By excluding up to 60 days in which the executive feels he is unable to leave the U.S. in applying those tests, the recent IRS guidance has offered relief to mitigate the implications of the extended unintended stay in the U.S.

## Contact Us

Clearly, there are endless situations whereby taxpayers can benefit from the new federal tax guidance for individuals and businesses affected by travel disruptions arising from the COVID-19 emergency. If you would like to discuss your unique fact pattern, please contact your client services team at PKF O'Connor Davies or either of the following:

Peter D. Baum, CPA  
Partner  
[pbaum@pkfod.com](mailto:pbaum@pkfod.com) | 914.341.7088

Leo Parmegiani, CPA  
Partner  
[lparmegiani@pkfod.com](mailto:lparmegiani@pkfod.com) | 646.699.2848

## About PKF O'Connor Davies

PKF O'Connor Davies, LLP is a full-service certified public accounting and advisory firm with a long history of serving clients both domestically and internationally. With roots tracing to 1891, twelve offices in New York, New Jersey, Connecticut, Maryland and Rhode Island, and more than 800 professionals, the Firm provides a complete range of accounting, auditing, tax and management advisory services. PKF O'Connor Davies is ranked 27th on *Accounting Today's* 2020 "Top 100 Firms" list and is recognized as one of the "Top 10 Fastest-Growing Firms." PKF O'Connor Davies is also recognized as a "Leader in Audit and Accounting" and is ranked among the "Top Firms in the Mid-Atlantic," by *Accounting Today*. In 2020, PKF O'Connor Davies was named one of the 50 best accounting employers to work for in North America, by *Vault*.

PKF O'Connor Davies is the lead North American representative in PKF International, a global network of legally independent accounting and advisory firms located in over 400 locations, in 150 countries around the world.

Our Firm provides the information in this e-newsletter for general guidance only, and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.