



TaxNewsFlash

United States



No. 2020-247
April 21, 2020

Revenue procedures, FAQs: Relief for nonresidents remaining in United States (COVID-19)

The IRS today released advance versions of two revenue procedures that provide relief for certain individuals who remain in the United States beyond a specified number of days because of the coronavirus (COVID-19) pandemic.

[Rev. Proc. 2020-20](#) [PDF 62 KB] provides relief for certain nonresident individuals who, but for COVID-19-related emergency travel disruptions, would not have been in the United States long enough during 2020 to be considered resident aliens under the “substantial presence test” or to become ineligible for treaty benefits on services income.

Rev. Proc. 2020-20:

- Offers relief under the “substantial presence test” and establishes procedures to apply the medical condition exception to exclude up to 60 consecutive days spent in the United States during a time period starting on or after February 1, 2020, and on or before April 1, 2020, with the specific start date to be chosen by each individual
- Provides procedures for an individual to exclude those days of presence in order to claim benefits under an income tax treaty with respect to dependent personal services income.

[Rev. Proc. 2020-27](#) [PDF 52 KB] reflects that the Treasury Secretary has determined that the global health emergency caused by the outbreak of COVID-19 is an adverse condition that precludes the normal conduct of business globally. Therefore, relief is being provided to any individual that reasonably expected to become a “qualified individual” for purposes of claiming the foreign earned income exclusion under section 911 but left the foreign jurisdiction during the period described by this revenue procedure.

Lastly, the IRS released a set of “frequently asked questions” (FAQs) providing that certain U.S. business activities conducted by a nonresident alien or foreign corporation 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 United States but for travel disruptions arising from the COVID-19 emergency.

Text of the FAQs:

Question 1: Will a nonresident alien or foreign corporation, not otherwise engaged in a USTB, be treated as engaged in a USTB as a result of services or other activities conducted by one or more individuals temporarily present in the United States if, but for COVID-19 Emergency Travel Disruptions, those services or other activities would not have been conducted in the United States?

Answer: A nonresident alien, foreign corporation, or a partnership in which either is a partner (Affected Person) may choose an uninterrupted period of up to 60 calendar days, beginning on or after February 1, 2020, and on or before April 1, 2020 (the COVID-19 Emergency Period), during which services or other activities conducted in the United States will not be taken into account in determining whether the nonresident alien or foreign corporation is engaged in a USTB, provided that such activities were performed by one or more individuals temporarily present in the United States and would not have been performed in the United States but for COVID-19 Emergency Travel Disruptions. For purposes of these FAQs, an "individual temporarily present in the United States" means an individual who is present in the United States on or after February 1, 2020, and on or before April 1, 2020, and is a nonresident alien, or a U.S. citizen or lawful permanent resident who had a tax home as defined in section 911(d)(3) outside the United States in 2019 and reasonably expects to have a tax home outside the United States in 2020. In addition, to determine the nonresident status of an alien, the relief provided in Rev. Proc. 2020-20 is applicable.

Question 2: If a nonresident alien or foreign corporation is engaged in a USTB (taking into account the application of the treatment in Question 1) but otherwise does not carry on such USTB through a PE under an applicable income tax treaty, will the nonresident alien or foreign corporation be treated as conducting business through a PE due to services or other activities conducted by individuals temporarily present in the United States that would not have been conducted in the United States but for COVID-19 Emergency Travel Disruptions?

Answer: During an Affected Person's COVID-19 Emergency Period, services or other activities performed by one or more individuals temporarily present in the United States will not be taken into account to determine whether the nonresident or foreign corporation has a PE, provided that the services or other activities of these individuals would not have occurred in the United States but for COVID-19 Emergency Travel Disruptions.

Read a related IRS release—[IR-2020-77](#).

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to be applied to any specific reader's particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners,

or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)