



GMS Flash Alert



2018-132 | October 12, 2018

United States - Combat Zone Workers and Claiming Foreign Earned Income Exclusion

Earlier this year, U.S. President Trump signed into law the Bipartisan Budget Act of 2018 (the "Act").¹ Included in the Act is a provision that allows contractors or employees of contractors supporting the U.S. Armed Forces in designated combat zones, who might otherwise not qualify for the foreign earned income exclusion, to claim the exclusion beginning in tax year 2018.

WHY THIS MATTERS

Contractors or employees of contractors supporting the U.S. Armed Forces in designated combat zones may not qualify to claim the foreign earned income exclusion because they maintain an abode within the United States. However, the change introduced by the Act will provide tax relief for such qualifying individuals.

Background

U.S. citizens and resident aliens may only claim the foreign earned income exclusion if (1) their tax home² is in a foreign country, and (2) they meet either the bona fide residence test³ or the physical presence test⁴. Thus, prior to the enactment of this Act, only individuals with a tax home abroad were allowed to claim the foreign earned income exclusion. Due to the nature of certain types of business, an individual who does not have a regular or principal place of business will be deemed to have a tax home at the individual's regular place of abode. The regular abode of a worker in a combat zone is likely to be his home in the United States.

Section 911 Tax Relief for Combat Zone Contractors/Employees of Contractors

The Act provides an exception to this rule, allowing for individuals working in a combat zone supporting the U.S. Armed Forces to be considered to have a tax home abroad even if they have an abode in the United States. In order to qualify

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for this exception, a contract worker must be working in a combat zone. A combat zone is considered to be any area the president of the United States designates by executive order as an area in which the U.S. Armed Forces are engaging or have engaged in combat, such as the Kosovo area, the Arabian Peninsula, and Afghanistan.⁵

KPMG NOTE

Under the foreign earned income exclusion, a taxpayer may choose to exclude from U.S. taxable income foreign earned income up to \$103,900 for 2018 plus a housing amount that varies with location. (The exclusion amount for 2019 has not yet been determined.)

FOOTNOTES:

- 1 For the text and status of the Act, see the Government Printing Office website, [click here](#).
- 2 I.R.C. § 911(d)(3); Treas. Reg. § 1.911-2(b).
- 3 Treas. Reg. § 1.911-2(c).
- 4 Treas. Reg. § 1.911-2(d).
- 5 I.R.C. §122(c)(2). Examples of combat zone, IRS Notice 99-30, IRS Notice 2003-21, and IRS Notice 2002-17.

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