



GMS Flash Alert

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United States - IRS Updates FAQs for Nonresidents Affected by COVID-19 Emergency

On June 12, 2020, the United States Internal Revenue Service (IRS) updated its Frequently Asked Questions (FAQs) related to nonresident alien individuals and foreign businesses with employees or agents that have been affected by the emergency travel disruptions as a result of the coronavirus (COVID-19) pandemic.¹ This update provides a newly-added section “General Information,” which clarifies withholding issues related to U.S.-source payments to nonresident aliens and foreign corporations, protective filings for U.S. tax returns, and the need for contemporaneous documentation to establish the period chosen as the COVID-19 Emergency Period. (For prior coverage of Revenue Procedure 2020-20, see GMS [Flash Alert 2020-187](#) (22 April 2020).)

WHY THIS MATTERS

The update makes clear that an affected person’s income earned during the 60-day COVID-19 Emergency Period is not subject to the 30-percent gross basis tax imposed under Internal Revenue Code sections 871(a) and 881(a). However, it emphasizes the need for affected individuals to retain contemporaneous documentation to establish this period as it relates to them, and that the relevant business activities conducted by them would not have been undertaken in the United States but for the COVID-19 emergency travel disruptions.

Background

On April 21, 2020, the IRS released Rev. Proc. 2020-20 to provide relief for certain individuals who remain in the United States beyond a specified number of days because of travel disruptions caused by the COVID-19 pandemic.² At the same time, the IRS provided a set of related FAQs.

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Rev. Proc. 2020-20 and the related FAQs established the COVID-19 Emergency Period – a single period of up to 60 consecutive calendar days selected by an eligible individual starting on or after February 1, 2020 and on or before April 1, 2020, during which the individual is physically present in the United States on each day. Rev. Proc. 2020-20 and the related FAQs provide that, subject to certain conditions, an affected person will not be treated as having a U.S. trade or business, or creating a permanent establishment in the United States by reason of services performed or other business activities temporarily conducted while present in the U.S. during their COVID-19 Emergency Period.

Update of the FAQs

As stated above, the new guidance provided in the “General Information” section of the FAQs provides that income earned during an individual’s COVID-19 Emergency Period is not subject to a 30-percent withholding tax. It emphasizes the need for affected individuals to retain contemporaneous documentation to establish this period as it relates to them, and that the relevant business activities conducted by them would not have been undertaken in the United States but for the COVID-19 emergency travel disruptions. Finally, the guidance notes that nonresident aliens and foreign corporations may make protective tax return filings, even if they believe they are not required to do so, and avail themselves of the benefits and protections of such filings, including deductions, statutes of limitations, and claiming tax treaty benefits.

The IRS is monitoring the effects of the COVID-19 emergency and may continue to update the FAQs as necessary and affected persons should check the FAQs for new updates.

FOOTNOTES:

1 See [FAQs for Nonresident Alien Individuals and Foreign Businesses with Employees or Agents Impacted by COVID-19 Emergency Travel Disruptions](#).

2 For the text of Rev. Proc. 2020-20, see <https://www.irs.gov/pub/irs-drop/rp-20-20.pdf>.

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