

## LB&I International Practice Service Process Unit – Audit

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<b>Unit Name</b>	Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income
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# Process Overview

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

### Process Description

This unit focuses on calculating the Foreign Earned Income Exclusion (FEIE) for a partner in a partnership with foreign earned income.

A U.S. citizen or a resident alien of the United States is taxed on his or her worldwide income. However, a U.S. citizen or resident alien who works and lives abroad may qualify to exclude some or all of his or her foreign earned income under IRC 911. The maximum foreign earned income exclusion per taxpayer is \$92,900 for 2011, \$95,100 for 2012, \$97,600 for 2013, \$99,200 for 2014 and \$100,800 for 2015 (indexed annually for inflation). The FEIE is available only for compensation for personal services performed in a foreign country or countries, and is claimed on IRS Form 2555/2555-EZ. The source of a partner's income is determined at the partnership level. Therefore, a partner in a U.S. professional service partnership who performs all of his or her services abroad may have a significant portion of income that is sourced in the United States, and thus, that portion is not eligible for the FEIE.

A guaranteed payment received by a partner is considered foreign earned income if it was paid for services performed in a foreign country, regardless of whether the partnership has any profits. See IRC 707(c) and Rev. Rul. 81-300 and 81-301.

A partner in a U.S. or foreign partnership is considered to be a self-employed individual for U.S. income tax purposes. In addition to the foreign earned income exclusion, such an individual may also be able to deduct foreign housing expenses in excess of a base amount and subject to a limit. The base amount is equal to 16% of the maximum foreign earned income exclusion, computed on a daily basis, multiplied by the number of qualifying days within the tax year. The IRC limits the housing expenses eligible for the housing deduction to 30% of the maximum foreign earned income exclusion, computed on a daily basis, multiplied by the number of days in the qualifying period that fall within the tax year.

 **CAUTION:** Not all overseas locations are “foreign countries.” For example, Antarctica, U.S. possessions and territories, and certain other locations are not foreign countries. See Treas. Reg. 1.911-2(g) and (h); *Arnett v. C.I.R.*, 473 F.3d 790 (7<sup>th</sup> Cir. 2007); *Specking v. C.I.R.*, 117 T.C. 95 (2001).

# Process Overview (cont'd)

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

### Process Description

 **CAUTION:** Some U.S. treaties may adjust U.S. and foreign source income for FTC and earned income purposes. For example, a partnership with a U.S. partner resident in France could elect to reclassify what actually was U.S. source income as foreign/French source for purposes of the U.S. FTC. However, the Technical Explanation to the U.S.-France income tax treaty limits the resourcing under the treaty by stating that “if one or more of the partners resident in France is a U.S. citizen, this provision [Art. 24(2)(d)] may not be used to reduce the U.S. tax below what the U.S. taxpayer’s liability would be before taking into account the foreign earned income exclusion of section 911.” Thus, a taxpayer may not get a double benefit by taking a foreign tax credit that may be available, even under a treaty, that is attributable to amounts excluded from gross income under IRC 911(a). See Treas. Reg. 1.911-6(a) and Rev. Rul. 79-199.

 **TREATY IMPLICATION:** Contact the Treaties PN if the relevant treaty provides any special sourcing rules.

### Example Circumstances Under Which Process Applies

- An examiner is assigned a case involving a partner in a partnership who is a U.S. citizen and is excluding foreign earned income. The examiner must determine if the income was eligible for exclusion and if the excluded amount was properly calculated.

# Determination of Process Applicability

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

In order to exclude foreign earned income, an individual must meet certain criteria.

Criteria	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ The individual must have foreign earned income, i.e., compensation for personal services performed in a foreign country or countries.</li> <li>▪ The individual must have a tax home in a foreign country.</li> <li>▪ The individual must meet either the bona fide residence or physical presence test.</li> <li>▪ The individual must make a valid election to exclude his foreign earned income.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.911-3(a), (b), and (c)</li> <li>▪ Practice Unit, “Tax Home for Purposes of IRC Section 911,” DCN:JTO/CU/P_9.6_05(2013)</li> <li>▪ Practice Unit, “Bona Fide Resident for Purposes of Qualifying for IRC 911 Tax Benefits,” DCN:JTO/9431.06_14(2015)</li> <li>▪ Practice Unit, “IRC 911 Election and Revocation,” DCN:JTO/CU/C_9.6.5_08(2014)</li> </ul>	

# Summary of Process Steps

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

<a href="#">Step 1</a>	Determine if the individual is a qualified individual.
<a href="#">Step 2</a>	Determine the amount of foreign earned income.
<a href="#">Step 3</a>	Calculate the maximum amount of foreign earned income eligible for exclusion.
<a href="#">Step 4</a>	Determine the amount of disallowed expenses and/or deductions related to the excluded amount.
<a href="#">Step 5</a>	Calculate the foreign earned income exclusion amount.

# Step 1

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

### Step 1: Determine if the individual is a qualified individual.

A qualifying individual is one who has a tax home in foreign country and who is:

- A U.S. citizen who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year,
- A U.S. resident alien who is a citizen or national of a country with which the United States has an income tax treaty in effect and who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year, or
- A U.S. citizen or resident alien who is physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months.

The individual must also make a valid election in order to exclude his foreign earned income under IRC 911.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ The individual must have a tax home in a foreign country. The Practice Unit, “Tax Home for Purposes of IRC 911,” DCN:JTO/CU/P_9.6_05(2013), addresses this concept in detail.</li> <li>▪ Deducting expenses such as lodging and meals in a foreign country is inconsistent with having a tax home in that foreign country, unless traveling on business to other locations in a foreign country.</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRC 911(d)(1)</li> <li>▪ IRC 911(d)(3)</li> <li>▪ Treas. Reg. 1.911-2(b)</li> <li>▪ Practice Unit, “Tax Home for Purposes of IRC Section 911,” DCN:JTO/CU/P_9.6_05(2013)</li> </ul>	

# Step 1 (cont'd)

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

### Step 1: Determine if the individual is a qualified individual.

A qualifying individual is one who has a tax home in foreign country and who is:

- A U.S. citizen who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year,
- A U.S. resident alien who is a citizen or national of a country with which the United States has an income tax treaty in effect and who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year, or
- A U.S. citizen or resident alien who is physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months.

The individual must also make a valid election in order to exclude his foreign earned income under IRC 911.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ The individual must meet either the bona fide residence or the physical presence test.</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRC 911(d)(1)(A) and (B)</li> <li>▪ Treas. Reg. 1.911-2(c) and (d)</li> <li>▪ Practice Unit, “Bona Fide Resident for Purposes of Qualifying for IRC 911 Tax Benefits,” DCN:JTO/9431.06_14(2015)</li> </ul>	

# Step 1 (cont'd)

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

### Step 1: Determine if the individual is a qualified individual.

A qualifying individual is one who has a tax home in foreign country and who is:

- A U.S. citizen who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year,
- A U.S. resident alien who is a citizen or national of a country with which the United States has an income tax treaty in effect and who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year, or
- A U.S. citizen or resident alien who is physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months.

The individual must also make a valid election in order to exclude his foreign earned income under IRC 911.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ NOTE: The minimum time requirements applicable to the bona fide residence or the physical presence test may be waived if the individual must leave a foreign country because of war, civil unrest, or similar adverse conditions in that country. IRC 911(d)(4). The IRS publishes annually a list of the countries that qualify for the waiver in the Internal Revenue Bulletin.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.911-2(f)</li> <li>▪ Rev. Proc. 2015-25</li> </ul>	
<ul style="list-style-type: none"> <li>▪ The individual must make a valid election in order to exclude his foreign earned income. The Practice Unit, "IRC 911 Election and Revocation," DCN:JTO/CU/C_09.6.5_08(2014), addresses this topic in greater detail.</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRC 911(e)</li> <li>▪ Treas. Reg. 1.911-7(a)</li> <li>▪ Practice Unit, "IRC 911 Election and Revocation," DCN:JTO/CU/C_09.6.5_08(2014)</li> </ul>	

# Step 1 (cont'd)

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

### Step 1: Determine if the individual is a qualified individual.

A qualifying individual is one who has a tax home in foreign country and who is:

- A U.S. citizen who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year,
- A U.S. resident alien who is a citizen or national of a country with which the United States has an income tax treaty in effect and who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year, or
- A U.S. citizen or resident alien who is physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months.

The individual must also make a valid election in order to exclude his foreign earned income under IRC 911.

Considerations	Resources	6103 Protected Resources
 <b>CAUTION:</b> An individual who has elected to exclude his foreign earned income, may not take deductions, exclusions, or credits with respect to the excluded amounts.	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.911-6</li> </ul>	

# Step 2

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

### Step 2: Determine the amount of foreign earned income.

Foreign earned income for purposes of IRC 911 includes wages, salaries, professional fees and other compensation (including noncash income and allowances or reimbursements) received for personal services performed in a foreign country while having a tax home in a foreign country and meeting either the bona fide residence test or the physical presence test.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ The source and character of income is determined at the partnership level.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Rul. 67-158</li> </ul>	
<ul style="list-style-type: none"> <li>▪ All fees for professional services are earned income.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.911-3(b)(3)</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Once the amount of the partnership's foreign earned income has been determined, it is allocated among the partners based on the partnership agreement. This allocation must have substantial economic effect.</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRC 704(a) and (b)</li> <li>▪ Treas. Reg. 1.704-1</li> </ul>	
<ul style="list-style-type: none"> <li>▪ If the partnership agreement does not specify, or if the allocation does not have substantial economic effect, foreign earned income is allocated among the partners based on their interests in the partnership.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.704-1(b)(3)(ii)</li> <li>▪ <i>Foster v. U.S.</i>, 329 F.2d 717 (1964)</li> <li>▪ <i>Miller v. Commissioner</i>, 52 T.C. 752 (1969)</li> </ul>	

## Step 2 (cont'd)

### Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

#### Step 2: Determine the amount of foreign earned income.

Foreign earned income for purposes of IRC 911 includes wages, salaries, professional fees and other compensation (including noncash income and allowances or reimbursements) received for personal services performed in a foreign country while having a tax home in a foreign country and meeting either the bona fide residence test or the physical presence test.

Considerations	Resources	6103 Protected Resources
 <p><b>CAUTION:</b> If both capital investment and personal services are an important part of producing income, income must be allocated between personal services and investment income. The amount of personal services income must be reasonable and cannot be more than 30% of the individual's share of net profits. If there are no net profits, the 30% limitation does not apply.</p>		
<ul style="list-style-type: none"> <li>If any of the partners is eligible to exclude income under IRC 911, the earned income of the partnership for all partners must be separately stated. (This is per Treas. Reg. 1.701-2(a)(8)(ii), which applies to taxable years beginning on or after July 23, 2002.)</li> </ul>	<ul style="list-style-type: none"> <li>Treas. Reg. 1.702-1(a)(8)(ii)</li> </ul>	

## Step 2 (cont'd)

### Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

#### Step 2: Determine the amount of foreign earned income.

Foreign earned income for purposes of IRC 911 includes wages, salaries, professional fees and other compensation (including noncash income and allowances or reimbursements) received for personal services performed in a foreign country while having a tax home in a foreign country and meeting either the bona fide residence test or the physical presence test.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ A guaranteed payment received by a partner is considered foreign earned income if it is:               <ul style="list-style-type: none"> <li>– fixed in amount,</li> <li>– paid for services performed by the partner in a foreign country, and</li> <li>– payable regardless of whether the partnership has any profits.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ IRC 707(c)</li> <li>▪ Rev. Rul. 81-300</li> <li>▪ Rev. Rul. 81-301</li> <li>▪ <i>Miller v. Commissioner</i>, 52 T.C. 752 (1969)</li> </ul>	
<ul style="list-style-type: none"> <li>▪ If the amount received does not qualify as a guaranteed payment and the partnership agreement does not specify otherwise, it is “foreign earned income” only to the extent of the partner’s distributive share of the total earned income of the partnership which is derived from foreign sources, regardless of where he or she works.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Rul. 67-158</li> <li>▪ Reg. § 1.861-8(a)(2)</li> <li>▪ <i>Foster v. U.S.</i>, 329 F.2d 717 (1964)</li> <li>▪ <i>Miller v. Commissioner</i>, 52 T.C. 752 (1969)</li> </ul>	

## Step 2 (cont'd)

### Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

#### Step 2: Determine the amount of foreign earned income.

Foreign earned income for purposes of IRC 911 includes wages, salaries, professional fees and other compensation (including noncash income and allowances or reimbursements) received for personal services performed in a foreign country while having a tax home in a foreign country and meeting either the bona fide residence test or the physical presence test.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ Assuming the partner qualifies for the foreign earned income exclusion, the excludable amount is limited if the partnership also has U.S. source earned income even if all of the partner's services were rendered in a foreign country unless:               <ul style="list-style-type: none"> <li>– the partnership agreement specifies that the partner's distributive share is based on the partnership's foreign income (which, if earned, will give rise to foreign earned income), or</li> <li>– if the partner receives guaranteed payments (which, to the degree received for services rendered in a foreign country, will constitute foreign earned income).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ IRC 707(c)</li> </ul>	

## Step 2 (cont'd)

### Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

#### Step 2: Determine the amount of foreign earned income.

Foreign earned income for purposes of IRC 911 includes wages, salaries, professional fees and other compensation (including noncash income and allowances or reimbursements) received for personal services performed in a foreign country while having a tax home in a foreign country and meeting either the bona fide residence test or the physical presence test.

Considerations	Resources	6103 Protected Resources
<p>AUDIT TIPS:</p> <ul style="list-style-type: none"><li>▪ Review the partnership agreement.</li><li>▪ Interview the partner.</li><li>▪ Ask the partner to obtain information and/or a letter from the partnership that provides the separately stated amounts if those were not provided on the Schedule K-1 and/or if not all partnership earned income was foreign source.</li></ul>		

# Step 3

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

**Step 3: Calculate the maximum amount of foreign earned income eligible for exclusion.**

The FEIE limitation is \$99,200 for tax year 2014 and that amount is adjusted annually for inflation.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ The maximum amount of foreign earned income an individual may exclude for any tax year is the lesser of:               <ol style="list-style-type: none"> <li>1. The Foreign Earned Income for the Tax Year minus the Foreign Housing Exclusion</li> <li style="text-align: center;">or</li> <li>2. <math display="block">\frac{\text{Number of Qualifying Days in the Tax Year}}{365} \times \text{Annual Limit for the Tax Year} [\\$99,200 \text{ in } 2014]</math></li> </ol> </li> </ul> <p>NOTE: A “qualifying day” is a day that falls within a period during which the individual has a tax home in a foreign country and is either a bona fide resident of a foreign country or meets the physical presence test.</p>	<ul style="list-style-type: none"> <li>▪ IRC 911(b)(2)</li> <li>▪ Treas. Reg. 1.911-3(d)(2)</li> <li>▪ Rev. Proc. 2013-35</li> <li>▪ Rev. Proc. 2014-61</li> </ul>	

# Step 3 (cont'd)

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

**Step 3: Calculate the maximum amount of foreign earned income eligible for exclusion.**

The FEIE limitation is \$99,200 for tax year 2014 and that amount is adjusted annually for inflation.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"><li>▪ If both spouses work abroad and each meet all of the requirements of IRC 911, they may be able to exclude as much as \$198,400 (<math>\\$99,200 \times 2</math>) for tax year 2014.</li></ul>		

# Step 4

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

### Step 4: Determine the amount of disallowed expenses and/or deductions related to the excluded amount.

Determine the amount of expenses and/or deductions allocable to the excluded amount, as these must be disallowed.

Considerations	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>No deduction, exclusion, or credit is allowed if it is properly allocable to or chargeable against amounts excluded from gross income under IRC 911(a).</li> </ul>	<ul style="list-style-type: none"> <li>Treas. Reg. 1.911-6(a)</li> </ul>	
<ul style="list-style-type: none"> <li><b>EXAMPLE 1:</b> Ms. X is a U.S. citizen, has a tax home in a foreign country, and meets the bona fide residence test. She has been performing architectural services for clients as a partner in a firm that provides services exclusively in that foreign country. All of the partnership's 2014 income was derived from personal services performed in the foreign country and capital is not a material income producing factor. Under the terms of the partnership agreement, Ms. X is to receive 50% of the net profits. The partnership received gross income of \$248,000 and incurred operating expenses of \$102,250. Ms. X's</li> </ul>		

# Step 4 (cont'd)

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

**Step 4: Determine the amount of disallowed expenses and/or deductions related to the excluded amount.**

Determine the amount of expenses and/or deductions allocable to the excluded amount, as these must be disallowed.

Considerations	Resources	6103 Protected Resources
<p>distributive share of partnership gross earned income is \$124,000. Of the net profits of \$145,750, Ms. X received \$72,875 as her distributive share.</p> <p>Because she chose to exclude \$99,200 of her share of the gross income (which is 80% of \$124,000), she must reduce her foreign earned income exclusion by \$40,900 (80% of \$51,125) of her share of the operating expenses. She must further reduce it by the amount of her deduction for one-half of self-employment taxes paid, as reported on Line 27 of Form 1040.</p>	<ul style="list-style-type: none"> <li>▪ IRC 911(d)(2)</li> <li>▪ Treas. Reg. 1.911-3</li> <li>▪ IRC 911(d)(6)</li> <li>▪ Treas. Reg. 1.911-6(a)</li> <li>▪ IRC 707(c)</li> <li>▪ Rev. Rul. 81-300</li> <li>▪ Rev. Rul. 81-301</li> </ul>	

## Step 4 (cont'd)

### Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

**Step 4: Determine the amount of disallowed expenses and/or deductions related to the excluded amount.**

Determine the amount of expenses and/or deductions allocable to the excluded amount, as these must be disallowed.

Considerations	Resources	6103 Protected Resources
<p>EXAMPLE 2: Mr. Z, a U.S. citizen and bona fide resident of a foreign country, is a limited partner in a partnership that provides IT consulting services. The partnership is a personal services partnership and all of its income consisted of fees for personal services. Mr. Z performs all of his services in the foreign country and received a guaranteed payment of \$160,000 for those services in 2014. Mr. Z elected to exclude \$99,200 of foreign earned income, the maximum allowable for tax year 2014. He deducted \$9,397, one-half of his self-employment taxes, on Line 27 of Form 1040. Of this, 62% (\$99,200/\$160,000) or \$5,826 was allocable to the excluded foreign earned income. Mr. Z deducted no other expenses allocable to the excluded income.</p>		

# Step 5

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

### Step 5: Calculate the foreign earned income exclusion amount.

The foreign earned income exclusion amount is the lesser of the maximum amount of foreign earned income eligible for exclusion or the total of excludible gross receipts less any deductions allocable to the excluded income.

Considerations		Resources	6103 Protected Resources
Amounts USD	Example 1 - Ms. X, architect	<ul style="list-style-type: none"> <li>▪ IRC 911(d)(2)</li> <li>▪ Treas. Reg. 1.911-3</li> <li>▪ IRC 911(d)(6)</li> <li>▪ Treas. Reg. 1.911-6(a)</li> </ul>	
Distributive Share of Partnership Gross Earned Income	\$124,000 (all foreign source)		
Distributive Share of Partnership Operating Expenses	\$ 51,125 (all related to the foreign source income)		
Net SE Earnings	\$ 72,875 → Schedule E		
Excluded	\$99,200 → Form 2555, Ln 42		
- Disallowed Expenses	$\$40,900$ or $\$99,200/\$124,000 \times \$51,125$ $\$4,119$ or $\$99,200/\$124,000 \times \$5,149$ deduction for $\frac{1}{2}$ of SE tax		
= FEIE Amount	\$54,181 → Form 2555, Ln 45		

# Step 5 (cont'd)

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

### Step 5: Calculate the foreign earned income exclusion amount.

The foreign earned income exclusion amount is the lesser of the maximum amount of foreign earned income eligible for exclusion or the total of excludible gross receipts less any deductions allocable to the excluded income.

Considerations		Resources	6103 Protected Resources
Amounts USD	Example 2 - Mr. Z, consultant	<ul style="list-style-type: none"> <li>▪ IRC 911(d)(2)</li> <li>▪ Treas. Reg. 1.911-3</li> <li>▪ IRC 911(d)(6)</li> <li>▪ Treas. Reg. 1.911-6(a)</li> <li>▪ IRC 707(c)</li> <li>▪ Rev. Rul. 81-300</li> <li>▪ Rev. Rul. 81-301</li> </ul>	
Guaranteed Payment	\$160,000 → Schedule E		
Excluded	\$99,200 → Form 2555, Ln 42		
- Disallowed Expenses	\$0 because received a guaranteed payment \$5,826 ( $\$99,200 / \$160,000 \times \$9,397$ deduction for ½ of SE tax)		
= FEIE Amount	\$93,374 → reportable on Line 45 of Form 2555		

# Other Considerations / Impact to Audit

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

Considerations	Resources
<ul style="list-style-type: none"> <li>▪ Income from Both Wages and Self-Employment</li> <li> <b>CAUTION:</b> No deduction, exclusion, or credit is allowed if it is properly allocable to or chargeable against amounts excluded from gross income under IRC 911(a). If an individual has foreign earned income from both wages and self-employment, the amount excluded under IRC 911(a)(1) is deemed to include a pro rata amount of the wage income and self-employment income and a pro rata portion of deductible expenses attributable to the self-employment income must be disallowed.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.911-6(a)</li> </ul>
<ul style="list-style-type: none"> <li>▪ Reduction of Foreign Taxes in Calculating the Foreign Tax Credit</li> <li> <b>CAUTION:</b> Foreign taxes available for the foreign tax credit must be reduced by amounts excluded under IRC 911. The formula is Foreign Taxes Paid x (the Excluded Foreign Earned Income + Foreign Housing Deduction Amount - the disallowed expenses that would otherwise be deductible and are definitely related to and allocable to the excluded amounts) / (the total foreign earned income – the deductible expenses definitely related to the foreign earned income).</li> <li> <b>TREATY IMPLICATION:</b> Contact the Treaties PN if the relevant treaty provides any special sourcing rules.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.911-6(c)</li> <li>▪ Pub. 514, Foreign Tax Credit for Individuals</li> <li>▪ Form 1116, Line 12</li> </ul>

# Other Considerations / Impact to Audit (cont'd)

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

Considerations	Resources
<ul style="list-style-type: none"><li data-bbox="89 446 797 478">▪ Income Earned in Year 1 and Received in Year 2</li></ul> <p data-bbox="89 492 1404 825"> Foreign earned income is generally considered earned in the year in which the services were performed rather than the year in which payment was received. Therefore, income received in Year 2 for services performed in a foreign country in Year 1 can only be offset by any unused foreign earned income exclusion amount for Year 1. For example, if an individual who qualified as a bona fide resident of a foreign country excluded \$95,000 of foreign earned income for 2013 and then received \$5,000 in 2014 for services performed in 2013, only \$2,600 of the \$5,000 is excludible under IRC 911 for tax year 2014, because the maximum FEIE amount for tax year 2013 is \$97,600 less the \$95,000 already excluded for that year.</p>	<ul style="list-style-type: none"><li data-bbox="1425 446 1730 478">▪ IRC 911(b)(2)(B)(iv)</li><li data-bbox="1425 492 1916 524">▪ Treas. Reg. 1.911-3(e)(2) and (4)</li></ul>

# Training and Additional Resources

## Calculating Foreign Earned Income Exclusion – Partner in a Partnership with Foreign Earned Income

Type of Resource	Description(s) and/or Instructions for Accessing	References
White Papers / Guidance	<ul style="list-style-type: none"> <li>▪ Memorandum issued by Associate Chief Counsel (International)</li> <li>▪ Chief Counsel Advisories</li> <li>▪ Internal Revenue Manual</li> <li>▪ IRS publication available via IRS.gov</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRS AM 2009-003</li> <li>▪ IRS CCA 200202072</li> <li>▪ IRS CCA 200226010</li> <li>▪ IRM 3.38.147.5</li> <li>▪ IRM 21.8.1.2</li> <li>▪ Pub. 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad</li> </ul>
Podcasts / Videos	<ul style="list-style-type: none"> <li>▪ CPE PowerPoint lesson available via Saba Centra</li> </ul>	<ul style="list-style-type: none"> <li>▪ 2011 IIC Session: 911 and FTC</li> </ul>
Databases / Research Tools	<ul style="list-style-type: none"> <li>▪ <i>BNA Tax Management Int'l Portfolio</i> Foreign Income Series: Taxation of U.S. Person's Foreign Income 918-2<sup>nd</sup> Sec. 911</li> </ul>	<ul style="list-style-type: none"> <li>▪ BNA 918-2<sup>nd</sup> – TMFEDPORT No 918 s I</li> </ul>

# Glossary of Terms and Acronyms

Term/Acronym	Definition
AM	Advice Memorandum
CCA	Chief Counsel Advisory
CPE	Continuing Professional Education
DCN	Document Control Number
FEIE	Foreign Earned Income Exclusion
FTC	Foreign Tax Credit
IIC	International Individual Compliance
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
SE	Self-Employment
TAIT	Treaties Assistance and Interpretation Team
UIL	Uniform Issue List
USD	United States Dollars

# Index of Related Issues

Issue	Associated UILs	References
Calculating the FEIE – Employee	<ul style="list-style-type: none"> <li>▪ 9431.06-05</li> </ul>	<ul style="list-style-type: none"> <li>▪ Practice Unit, “Calculating Foreign Earned Income Exclusion – Employee,” JTO/9431.06_12(2015)</li> </ul>
Calculating the FEIE – Self-Employed Individual	<ul style="list-style-type: none"> <li>▪ 9431.06-05</li> </ul>	<ul style="list-style-type: none"> <li>▪ Practice Unit, “Calculating Foreign Earned Income Exclusion – Self-Employed Individual,” JTO/9431.06_13(2015)</li> </ul>
Bona Fide Resident for Purposes of IRC 911	<ul style="list-style-type: none"> <li>▪ 9431.06-05 and 9431.06-06</li> </ul>	<ul style="list-style-type: none"> <li>▪ Practice Unit, “Bona Fide Resident for Purposes of Qualifying for IRC 911 Tax Benefits,” JTO/9431.06_14(2015)</li> </ul>
IRC 911 Election and Revocation	<ul style="list-style-type: none"> <li>▪ 9431.06-05 and 9431.06-06</li> </ul>	<ul style="list-style-type: none"> <li>▪ Practice Unit, “IRC 911 Election and Revocation,” JTO/CU/C_9.6_08(2014)</li> </ul>
Tax Home for Purposes of IRC 911	<ul style="list-style-type: none"> <li>▪ 9431.06-05 and 9431.06-06</li> </ul>	<ul style="list-style-type: none"> <li>▪ Practice Unit, “Tax Home for Purposes of IRC Section 911,” JTO/CU/P_9.6_05(2013)</li> </ul>