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Information for Return Preparers with International Clients





Objectives

- Decide whether an individual must make a shared responsibility payment under the Affordable Care Act
- List the requirements for claiming IRC § 911 benefits
- Decide if an individual has a U.S. “abode” as it relates to IRC § 911





Affordable Care Act (ACA)

- Requires individuals to:
 - Have qualifying health care coverage (also called minimum essential coverage or MEC), or
 - Qualify for an exemption from coverage, or
 - Make an individual shared responsibility payment (SRP) when filing their federal income tax return





Deemed Minimum Essential Coverage

- Either a U.S. citizen, or a resident alien who is a citizen of a country with which the U.S. has an income tax treaty with a nondiscrimination clause, and a bona fide resident of a foreign country for an uninterrupted period that includes an entire tax year
- U.S. citizen or resident alien physically present in a foreign country for at least 330 days in 12-month period
- Bona fide resident of a U.S. territory



Short Coverage Gap Exemption

- A gap in coverage of less than 3 months may qualify for the short coverage gap exemption.
 - If more than one short coverage gap during year, the exemption only applies to the first
 - If coverage gap is 3 months or more, none of those months qualify for the short coverage gap exemption





Individual Shared Responsibility Payment IRC § 5000A(c)(1)

- For each year, the SRP is the lesser of the:
 - sum of the monthly penalty amounts or
 - sum of the monthly national average bronze plan premium (published beginning of year in Rev. Proc.) for coverage appropriate for nonexempt family members without MEC.





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Individual Shared Responsibility Payment

IRC §§ 5000A(c)(2) and (3)

- For each month, the monthly penalty amount is 1/12 of the greater of the:
 - sum of the applicable dollar amount (\$325 for 2015) for every individual without MEC or exemption (not to exceed 300% of the applicable dollar amount), or
 - income percentage (2% for 2015) times excess of household income over return filing threshold





Foreign Earned Income Exclusion Requirements

- Foreign earned income
- Tax home in a foreign country
- Meet either bona fide residence or physical presence test
- Make a valid election





Foreign Earned Income Exclusion Effect on Credits or Deductions

- Not eligible for earned income credit
- Cannot take foreign tax credit or deduction for taxes on the excluded income
- Must add back excluded amount when computing AGI for purposes of child tax credit and/or additional child tax credit





Foreign Earned Income Exclusion Tax Home Requirement

- Located at individual's regular or principal place of business (or, if none, then his/her place of abode)
 - Only one tax home
 - Cannot have a tax home in a foreign country for any period during which his/her abode is in U.S.





Foreign Earned Income Exclusion Tax Home Requirement – “Abode”

- Legal standard for establishing an exclusion is higher than that for deductions.
- Tax Court cases have looked to an individual’s economic, familial and personal ties to determine “abode” as it relates to tax home.





Foreign Earned Income Exclusion Tax Home Requirement – “Abode”

- Economic factors, such as:
 - Location of bank accounts
 - Location of real and personal property owned
 - In some cases, whether “excess housing costs” were incurred





Foreign Earned Income Exclusion Tax Home Requirement – “Abode”

- Familial relationships, such as:
 - Location of immediate family (spouse, children, parents)
 - Cultural background





Foreign Earned Income Exclusion Tax Home Requirement – “Abode”

- Personal ties, such as:
 - Jurisdiction in which the individual voted / held driver’s license
 - Location of place of worship / social activities
 - Familiarity with language / extent of integration into the foreign culture





Tax Home / “Abode” Example

Evans v. CIR, T.C. Memo 2015-12

- Ties to the U.S.:
 - Home, vehicles, bank account and credit cards
 - Driver’s license, registered to vote
- Ties to Russia:
 - Russian visa / employer-provided housing
 - Interacted with locals / knew basic Russian phrases





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Resources

- <https://www.irs.gov/Individuals/International-Taxpayers>
- <https://www.irs.gov/Individuals/International-Taxpayers/Affordable-Care-Act-and-the-International-Taxpayer>
- <https://www.irs.gov/Individuals/International-Taxpayers/Foreign-Earned-Income-Exclusion>





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Questions

