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.
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
Resources

• https://www.irs.gov/Individuals/International-Taxpayers
Questions