



税务快讯

美国联邦税局发布受新冠疫情影响纳税人指引



概览

2020 年 4 月 21 日，美国联邦税局发布了第 2020-20 和第 2020-27 号文件（Revenue Procedures），为因新型冠状病毒疫情而导致的跨境旅行中断可能对个人税务居民身份状态的影响提供了相关的指引。相关指引涉及以下两类受影响个人：

- 入境美国的外国商务人士 - 受疫情影响致旅行中断或因居家令而被迫滞留美国的情形；
- 境外履职的美国公民和居民 - 受疫情影响被迫离开派驻国而暂时返回美国的情形

入境美国的外国商务人士

由于新冠病毒疫情造成旅行中断，目前滞留在美国的外国商务人士可能会因为“实质居住测试”¹规则下在美停留天数的规定而成为美国税务居民，或由于他们在美国的停留时间延长，导致其可能会失去相关税收协定的免税待遇。

2020-20 号税收文件规定，个人因新冠病毒疫情流行而在美国滞留的一部分天数，可以适用“医疗条件豁免”规则，在根据“实质居住测试”规则计算美国停留天数时被排除在外。原本有意离开美国，但在 **2020 年 2 月 1 日至 2020 年 4 月 1 日期间**，受疫情影响而未能离开美国的个人，可以最多将 60 天不计入“实质居住测试”规则下的在美停留天数（简称“60 天豁免”）。该规定适用于任何一位原本计划在该期间离开美国的

个人，除非该个人已申请或采取其他措施成为美国合法永久居民（即获得绿卡）。文件中所规定的旅行中断，包括以下任一情况而导致的旅行中断，而无论该个人是否实际感染了新冠病毒：

- 政府颁布的行动限制令；
- 航班取消和其他交通方式受限；
- 就地避难令，隔离要求和边境关闭；
- 因政府建议实施社交隔离而感到出行安全无法得以保障。

个人适用“60天豁免”需同时满足以下条件：

1. 在 2019 年末不是美国税务居民；
2. 在 2020 年的任何时点都不是美国的合法永久居民；
3. 在适用“60天豁免”的涉及期间内，每天都实际停留在美国；
4. 个人在 2020 年内的美国停留天数（不包括上述 60 天期间内的在美停留天数）不会使其构成美国税务居民。

除适用于根据“实质居住测试”判定美国税务居民身份之外，上述“60天豁免”也适用于在美国工作或提供其他非独立个人劳务的个人，以判断其能否享受税收协定待遇从而使相关所得免于缴纳美国联邦所得税。

境外履职的美国公民和居民

同样基于新冠病毒疫情在全球蔓延而导致的不同影响，2020-27 号文件放宽了在美国境外生活及工作的美国公民或居民在 2019 年和 2020 年某些特定时期可以享受境外积极所得豁免和境外住房费用豁免的条件。

在现行的美国个人联邦所得税法下，对满足一定条件的美国公民或居民，如果该纳税人在当年有境外积极劳动所取得的所得，这部分所得可以享受一定额度的税收豁免。为享受豁免，纳税人在享受豁免的纳税年度必须同时满足以下两个条件：第一，纳税人的优先征税地（Tax home）位于美国境外的国家或地区。优先征税地一般指纳税人经常性的或最主要的从事商业经营或工作履职的地点。第二，纳税人必须满足“真实居所”（Bona Fide Residence）或“实际居留”（Physical Presence）测试。“真实居所”测试要求美国公民或居民（如税收协定待遇适用）不间断地在美国境外的国家或地区居住一个纳税年度（从 1 月 1 日至 12 月 31 日）或以上，而“实际居留”测试则要求美国公民或永久居民在任何连续的 12 个月内在美国境外的国家或地区居留 330 天或以上，也就是说在 12 个月内在美国的停留时间不超过 35 天。除非发生战争、内乱或类似的不利条件而导致纳税人不得不离开该境外国家或地区，纳税人必须满足上述两项测试之一，才能享受境外积极所得和境外住房费用的税收豁免。

根据 2020-27 号税收文件，美国联邦税局已将新冠病毒疫情在以下国家或地区确认为妨碍正常经济运行的不利条件：

- (1) 中国内地（2019 年 12 月 1 日至 2020 年 7 月 15 日期间）
- (2) 其他国家或地区（2020 年 2 月 1 日至 2020 年 7 月 15 日期间）

因此，有资格享受境外积极所得豁免和境外住房费用豁免的个人，若在上述期间离开相应的国家和地区，不会失去继续享受该豁免的资格，只要该个人在上述期间或之前已经在相应国家或地区建立了“真实居所”或开始了“实际居留”并且合理预期仍符合能够享受豁免的有关条件。

常设机构

除了上述指引之外，美国联邦税局还发布了两则常见问题解答，以解决因受紧急旅行中断影响而滞留在美国的个人进行商务活动所带来的相关问题。

在判断非居民或外国公司是否在美国构成常设机构时，上述问答明确，如果相关个人的服务或其他活动原本不会在美国发生，而只是由于紧急情况下的旅行中断而致个人在美国滞留引起，那么这部分服务或活动将不被纳入考虑。

德勤观察

美国联邦税局的相关文件积极响应了经济合作与发展组织于 2020 年 4 月初发布的针对新冠病毒流行疫情引起的税务居民问题的指导意见，为受疫情影响而被迫滞留在美国的国际商务人士和国际派遣员工提供了更清晰的补充指引。

对于因受疫情影响而被迫滞留在美国的非美商务人士，需密切关注其在美国的实际停留天数。若相关个人拟适用 60 天豁免期，则应知悉该项规则的适用需满足一定的申报程序要求。例如，申请“实质居住测试”的天数豁免和税收协定的天数豁免，需要分别填报 8843 表格（个人豁免及医疗条件豁免的声明）和 8233 表格（非居民个人独立和非独立个人劳动报酬所得的预扣预缴豁免）。另外，若根据“实质居住测试”可能被视为美国税务居民的个人，除适用新冠病毒疫情有关的天数豁免之外，在符合条件的情况下亦可考虑适用通常的“医疗条件豁免”，“海外国家紧密关系豁免”（closer connection exception）或“税收协定归属认定规则豁免”（treaty tiebreaker exception），以申请美国税务非居民身份。

对于在境外履职的美国公民和居民而言，为了满足境外积极所得和境外住房费用的税收豁免的要求，应保存相关的海外任职合同（需注明计划的任职期限和任职地点）和实时更新准确的旅行日志。个人应证明其主要工作和纳税地点仍保留在美国境外的国家或地区，而在美国停留时间延长仅是由于新冠病毒疫情的影响。

若有员工因受新冠病毒疫情的影响而暂时滞留美国，在此建议雇主及时了解相关员工的差旅情况，以便评估其潜在的美国税务影响和应履行的税务合规义务。对于参与公司税收平衡计划员工，如果员工在疫情和旅行限制解除后选择继续留在美国，则建议雇主与员工充分沟通相应的税务影响和纳税义务。

¹ 根据现行的美国税法，如果非美籍个人满足在美国停留的“实质居住测试”，则被视为美国税务居民。“实质居住测试”指满足以下条件：

(1) 当年在美国境内累计停留至少 31 天；并且

(2) 按以下公式计算的最近连续三年美国境内天数累计为 183 天或以上：

当年美国境内天数 × 1 + 去年美国境内天数 × 1/3 + 前年美国境内天数 × 1/6

该规则有项例外情况——如果个人有意离开美国，但在美国期间由于健康问题而无法离开，则相关天数可免于计入（即“医疗条件豁免”）

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Tax Newsflash

U.S. tax guidance for individuals facing COVID-19 disruptions



Overview

On 21 April 2020, the Internal Revenue Service (IRS) released two Revenue Procedures 2020-20 (Rev. Proc. 2020-20) and 2020-27 (Rev. Proc. 2020-27) which provide guidance and relief measures to support individuals whose tax residency might be affected by cross-border travel disruptions arising from the COVID-19 emergency. The affected individuals may include:

- Business travellers visiting the U.S. may have been forced to remain in the U.S. due to travel disruptions or stay-at-home orders (Business Travellers)
- U.S. citizens and residents on foreign assignment may have been required to depart the foreign country and temporarily return to the United States (U.S. Citizens and Residents)

Business Travellers

International travellers currently are forced to stay in the U.S. as a result of COVID-19-related travel disruptions may find themselves facing the challenges of potentially becoming U.S. residents in 2020 for U.S. federal income tax purposes under the day-counting rules of the "substantial presence test¹". Others may find themselves lose out on a tax treaty benefit with respect to income from dependent personal services performed in the U.S. because of their extended stay in the U.S.

The Rev. Proc. 2020-20 provides that certain days of presence in the United States due to the COVID-19 pandemic could be excluded for purposes of the substantial presence test under the medical condition exception. An individual who intended to leave the U.S. but was unable to do so during any period **on or after 1 February 2020 and on or before 1 April 2020**, due to a "COVID-19 travel disruption", may exclude up to 60 calendar days of presence in the U.S. (the individual's COVID-19 Emergency Period) for the purposes of applying the substantial presence test. The individual is presumed to have intended to leave the U.S. on any day during the period unless that individual has applied for, or otherwise taken steps to become, a lawful permanent resident (i.e. to obtain a U.S. greencard) of the United States. The Rev. Proc. 2020-20 defines a COVID-19 travel disruption to include any of the following

broad travel disruptions experienced by an individual, regardless of whether such individual was infected with the COVID-19 virus:

- Severe restrictions in movement, including by order of government authorities;
- Cancelled flights and disruptions in other forms of transportation;
- Shelter-in-place orders, quarantines and border closures; and
- Feeling unsafe travelling due to recommendations to implement social distancing.

The relief granted under the Rev. Proc. 2020-20 is limited to individuals who (i) was not a U.S. resident at the close of the 2019 tax year, (ii) is not a lawful permanent resident at any point in 2020, (iii) is physically present in the United States on each day during the individual's COVID-19 Emergency Period 60-day period, and (iv) does not become a U.S. resident in 2020 due to days present in the United States outside of the individual's COVID-19 Emergency Period.

In addition to excluding days for purposes of the substantial presence test, these days could also be excluded for purposes of determining whether an individual qualifies under an applicable tax treaty for an exception from U.S. federal income tax for income from employment or other dependent personal services performed in the United States.

U.S. Citizens and Residents

Rev. Proc. 2020-27 relaxes the requirements for a U.S. citizen or resident to be considered a qualified individual under Internal Revenue Code Sec. 911 for certain specified periods during 2019 and 2020.

By way of background, Sec. 911 allows a qualified individual to exclude foreign earned income and housing exclusions from the computation of gross income through meeting either Bona Fide Residence Test or Physical Presence Test. The Bona Fide Residence Test is met by being a U.S. citizen (or a U.S. tax resident where the applicable income tax treaty provision applies) and a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire taxable year. The Physical Presence Test is met by a U.S. citizen or resident who is physically present in a foreign country or countries for at least 330 days during any period of 12 consecutive months.

The Rev. Proc. 2020-27 provides that for 2019 and 2020, the current COVID-19 emergency is an adverse condition that precludes the normal conduct of business in (i) the People's Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau) during the period between 1 December 2019 and 15 July 2020, (ii) all other countries worldwide during the period between 1 February 2020 and 15 July 2020. As a result, a qualified individual meeting the Bona Fide Residence Test or Physical Presence Test who travels outside of his country of residence during the related period will not lose qualified status, provided that the person has established residency, or have been physically present, in the foreign country on or before the applicable related period and establishes a reasonable expectation that he would have been a qualified individual.

The period of extended absence cannot extend beyond 15 July 2020, unless an extension is announced by the Treasury Department and the IRS.

Permanent Establishment

In addition to and consistent with the Revenue Procedures above, the IRS has posted two new FAQs addressing business determinations related to presence or activities conducted by individuals who are temporarily present in the U.S. due to the emergency travel disruptions. The FAQs provide that services or other activities performed by one or more individuals temporarily present in the United States will not be taken into account to determine whether the non-resident or foreign corporation has a permanent establishment, provided that the services or other activities of these individuals would not have occurred in the United States but for COVID-19 Emergency Travel Disruptions.

Observations

In addition to the guidance issued by the OECD in early April 2020 in response to the residency issues arising from the COVID-19 pandemic, the Revenue Procedures and FAQs issued by the IRS provided clear and additional guidance for international employees who are forced to stay in the U.S. due to the lockdown and other COVID-19 disruptions.

For business travelers who are non-U.S. individuals and are unable to leave the U.S. due to the COVID-19 Emergency Travel Disruptions, their days of physical presence in the United States should be closely monitored. If they seek to avail themselves of the 60-day exclusion under the Rev. Proc. 2020-20, they should be aware that there are certain required procedures and filing requirements, e.g., Form 8843 (Statement for Exempt Individuals and Individuals with a Medical Condition) and Form 8233 (Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual) may be required to claim the exceptions to the substantial presence test and the treaty exemptions respectively. Also, an individual who would be treated as a resident of the United States on the basis of the application of the day-count formula under the substantial presence test, notwithstanding the COVID-19 relief, may still qualify as a U.S. tax nonresident under the normal medical condition exception other than COVID-19, the closer connection exception or an applicable treaty tie breaker rule, if applicable.

For U.S. citizens and residents, given individuals would need to meet the eligibility requirements for foreign earned income and foreign housing exclusions, it is important that documentation of the original intended assignment length and location, travel records should be maintained and regularly updated as the situation evolves. The individuals should be able to demonstrate that the principal place of employment (tax home) remains outside the U.S. while the presence and the extended stay in the U.S. merely arose from the COVID-19 emergency.

Taxpayers should reach out to tax advisor with any questions they may have regarding the IRS guidance, filing requirements, the application of the Rev. Proc. to the related exceptions, or more generally, the impact

of COVID-19 related issues on their U.S. income, gift or estate tax-planning strategies.

Employers having employees who are unable to leave the U.S. due to COVID-19 disruptions are recommended to have complete travel records of the affected employees in order to assess the potential U.S. tax implications and the compliance requirements that may need to be fulfilled. Where employees are covered by the tax equalization program, clear communications should be made to address the responsibility of any additional tax obligations where employees choose to continue staying in the U.S. when the COVID-19 emergency and travel restrictions are lifted.

¹ Under current U.S. tax rule, foreigners are classified as U.S. tax residents for federal income tax purposes if they meet the substantial presence test. A non-U.S. person generally meets the substantial presence test in the tested calendar year if (1) the individual is present in the U.S. at least 31 days during the tested calendar year, and (2) the sum of (i) the number of days of U.S. presence in the tested calendar year, (ii) one-third of the number of days of U.S. presence in the preceding calendar year, and (iii) one-sixth of the number of days of U.S. presence in the second preceding calendar year totals 183 days or more. An exception to this rule applies if the individual intended to leave the U.S. but was unable to do so because of a medical condition that arose while the individual was present in the U.S. (medical condition exception).

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