

CLIENT ALERT

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1

IRS PROVIDES RELIEF FOR NONRESIDENT ALIENS AND FOREIGN BUSINESSES IMPACTED BY COVID-19 TRAVEL DISRUPTIONS

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On April 21, 2020, the IRS issued FAQs providing relief from the U.S. income tax on U.S. trade or business income to certain nonresident aliens and foreign corporations.

BACKGROUND

Nonresident alien individuals who perform services or other activities in the U.S. and foreign corporations who employ individuals or engage individuals as agents to perform services or other activities in the U.S. may be considered engaged in a U.S. trade or business ("USTB"). In general, a nonresident alien or foreign corporation that is engaged in a USTB is taxed on its business income connected to that USTB though an income tax treaty may reduce or eliminate such tax unless the business is conducted through a "permanent establishment" such as an office.

RELIEF UNDER IRS FAQs

In the newly-issued FAQs, the IRS acknowledges that as a result of the COVID-19 pandemic, individuals may be unable or unwilling to travel due to government orders, canceled flights, or a desire to follow social distancing recommendations, among other factors. The IRS acknowledged that these travel disruptions may cause a nonresident alien or foreign corporation to become engaged in a USTB when the nonresident alien or foreign corporation would not be so engaged if these individuals were not present in the U.S.

Under the relief set forth in the FAQs, a nonresident alien, foreign corporation, or a partnership in which either is a partner may choose an uninterrupted period of up to 60 calendar days, beginning on or after February 1, 2020, and on or before April 1, 2020, during which services or other activities conducted in the U.S. will not be taken into account in determining whether the nonresident alien or foreign corporation is engaged in a USTB, provided that such activities were performed by one or more individuals temporarily present in the U.S. and would not have been performed in the U.S. but for COVID-19 travel disruptions. In addition, services or other activities performed by one or more individuals temporarily present in the U.S. will not be taken into account to determine whether the nonresident or foreign corporation has a permanent establishment in the U.S., provided that the services or other activities of these individuals would not have occurred in the U.S. but for COVID-19 travel disruptions.

The FAQs advise that contemporaneous documentation be maintained to establish the 60-day period chosen and that the relevant business activities conducted during that period would not have been undertaken in the U.S. but for the COVID-19 travel disruptions. The FAQs further indicate that the FAQs may be updated as the COVID-19 situation evolves.

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