

COVID-19 relief available to some nonresident aliens and foreign corporations

On its website, the IRS recently announced tax relief for nonresident aliens and foreign corporations that don't have a U.S. trade or business (USTB) because of travel disruptions related to the COVID-19 pandemic. This includes partnerships in which nonresident aliens and foreign corporations are partners. Read on for further details.

Background

Nonresident alien individuals who perform services or other activities in the United States, and foreign corporations that employ individuals or engage individuals as agents to perform services or other activities in the United States, may be considered engaged in a USTB. Generally, a nonresident alien or foreign corporation engaged in a USTB is taxed on its business income connected to that USTB.

If a U.S. income tax treaty applies, however, the nonresident alien individual or foreign corporation generally won't be liable for tax on the income of its USTB (that is, business profits) unless the business is conducted through a permanent establishment (PE) in the United States.

Two FAQs

In April, the IRS issued two FAQs regarding USTBs and PEs. The first FAQ says that an "Affected Person" — that is, a nonresident alien, foreign corporation or partnership in which either is a partner — may choose an uninterrupted period of up to 60 calendar days during which services or other activities conducted in the United States won't be taken into account in determining whether the nonresident alien or foreign corporation is engaged in a USTB.

The uninterrupted period must begin on or after February 1, 2020, and on or before April 1, 2020 (referred to as "the COVID-19 Emergency Period"). The activities in question must have been performed by one or more individuals temporarily present in the United States and wouldn't have been performed there but for COVID-19 travel disruptions.

The second FAQ says that, during an Affected Person's COVID-19 Emergency Period, services or other activities performed by one or more individuals temporarily present in the United States won't be considered in determining whether the nonresident or foreign corporation has a PE. This is provided that the services or other activities of these individuals wouldn't have occurred in the United States but for COVID-19 travel disruptions.

Generally, a 30% tax is imposed on U.S.-source income that 1) isn't effectively connected with the conduct of a USTB, and 2) is received by a nonresident alien or foreign corporation. However, an Affected Person's income earned during the COVID-19 Emergency Period won't be subject to the 30% tax solely because the Affected Person isn't treated as having a USTB or PE under the FAQs.

Notable relief

If you're a nonresident alien or involved in a foreign corporation, this tax relief is notable. Ask your CPA whether and how it applies to your situation. •