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to the extent of the limitation for that year. Except as otherwise provided, §§1.911–1 through 1.911–7 apply to taxable years beginning after December 31, 1981. These sections do not apply to any item of income, expense, deduction, or credit arising before January 1, 1982, even if such item is attributable to services performed after December 31, 1981.

(b) *Scope.* Section 1.911–2 provides rules for determining whether an individual qualifies to make an election under section 911. Section 1.911–3 provides rules for determining the amount of foreign earned income that is excludable under section 911(a)(1). Section 1.911–4 provides rules for determining the housing cost amount and the portions excludable under section 911(a)(2) or deductible under section 911(c)(3). Section 1.911–5 provides special rules applicable to married couples. Section 1.911–6 provides for the disallowance of deductions, exclusions, and credits attributable to amounts excluded under section 911. Section 1.911–7 provides procedural rules for making or revoking an election under section 911. Section 1.911–8 provides a reference to rules applicable to taxable years beginning before January 1, 1982.

(Sec. 911 (95 Stat. 194; 26 U.S.C. 911) and sec. 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 8006, 50 FR 2964, Jan. 23, 1985]

§ 1.911–2 Qualified individuals.

(a) *In general.* An individual is a qualified individual if:

(1) The individual's tax home is in a foreign country or countries throughout—

(i) The period of bona fide residence described in paragraph (a)(2)(i) of this section, or

(ii) The 330 full days of presence described in paragraph (a)(2)(ii) of this section, and

(2) The individual is either—

(i) A citizen of the United States who establishes to the satisfaction of the Commissioner or his delegate that the individual has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(ii) A citizen or resident of the United States who has been physically present in a foreign country or countries for at least 330 full days during any period of twelve consecutive months.

(b) *Tax home.* For purposes of paragraph (a)(i) of this section, the term ''tax home'' has the same meaning which it has for purposes of section 162(a)(2) (relating to travel expenses away from home). Thus, under section 911, an individual's tax home is considered to be located at his regular or principal (if more than one regular) place of business or, if the individual has no regular or principal place of business because of the nature of the business, then at his regular place of abode in a real and substantial sense. An individual shall not, however, be considered to have a tax home in a foreign country for any period for which the individual's abode is in the United States. Temporary presence of the individual in the United States does not necessarily mean that the individual's abode is in the United States during that time. Maintenance of a dwelling in the United States by an individual, whether or not that dwelling is used by the individual's spouse and dependents, does not necessarily mean that the individual's abode is in the United States.

(c) *Determination of bona fide residence.* For purposes of paragraph (a)(2)(i) of this section, whether an individual is a bona fide resident of a foreign country shall be determined by applying, to the extent practical, the principles of section 871 and the regulations thereunder, relating to the determination of the residence of aliens. Bona fide residence in a foreign country or countries for an uninterrupted period may be established, even if temporary visits are made during the period to the United States or elsewhere on vacation or business. An individual with earned income from sources within a foreign country is not a bona fide resident of that country if:

(1) The individual claims to be a nonresident of that foreign country in a statement submitted to the authorities of that country, and

(2) The earned income of the individual is not subject, by reason of nonresidency in the foreign country, to the income tax of that country.

If an individual has submitted a statement of nonresidence to the authorities of a foreign country the accuracy of which has not been resolved as of any date when a determination of the individual's bona fide residence is being made, then the individual will not be considered a bona fide resident of the foreign country as of that date.

(d) *Determination of physical presence.* For purposes of paragraph (a)(2)(ii) of this section, the following rules apply.

(1) *Twelve-month test.* A period of twelve consecutive months may begin with any day but must end on the day before the corresponding day in the twelfth succeeding month. The twelve-month period may begin before or after arrival in a foreign country and may end before or after departure.

(2) *330-day test.* The 330 full days need not be consecutive but may be interrupted by periods during which the individual is not present in a foreign country. In computing the minimum 330 full days of presence in a foreign country or countries, all separate periods of such presence during the period of twelve consecutive months are aggregated. A full day is a continuous period of twenty-four hours beginning with midnight and ending with the following midnight. An individual who has been present in a foreign country and then travels over areas not within any foreign country for less than twenty-four hours shall not be deemed outside a foreign country during the period of travel. If an individual who is in transit between two points outside the United States is physically present in the United States for less than twenty-four hours, such individual shall not be treated as present in the United States during such transit but shall be treated as travelling over areas not within any foreign country. For purposes of this paragraph (d)(2), the term ''transit between two points outside the United States'' has the same meaning that it has when used in section 7701(b)(6)(C).

(3) *Illustrations of the physical presence requirement.* The physical presence requirement of paragraph (a)(2)(ii) of this section is illustrated by the following examples:

Example 1. B, a U.S. citizen, arrives in Venezuela from New York at 12 noon on April 24, 1982. B remains in Venezuela until 2 p.m. on March 21, 1983, at which time B departs for the United States. Among other possible twelve month periods, B is present in a foreign country an aggregate of 330 full days during each of the following twelve month periods: March 21, 1982 through March 20, 1983; and April 25, 1982 through April 24, 1983.

Example 2. C, a U.S. citizen, travels extensively from the time C leaves the United States on March 5, 1982, until the time C departs the United Kingdom on January 1, 1984, to return to the United States permanently. The schedule of C's travel and the number of full days at each location are listed below:

Country	Time and date of arrival	Time and date of departure	Full days in foreign country
United States		10 p.m. (by air) Mar. 5, 1982.	
United Kingdom	9 a.m. Mar. 6, 1982	10 p.m. (by ship) June 25, 1982	110
United States	11 a.m. June 30, 1982	1 p.m. (by ship) July 19, 1982	0
France	3 p.m. July 24, 1982	11 a.m. (by air) Aug. 22, 1983	393
United States	4 p.m. Aug. 22, 1983	9 a.m. (by air) Sept. 4, 1983	0
United Kingdom	9 a.m. Sept. 5, 1983	9 a.m. (by air) Jan. 1, 1984	117
United States	1 p.m. Jan. 1, 1984		

Among other possible twelve-month periods, C is present in a foreign country or countries an aggregate of 330 full days during the following twelve-month periods: March 2, 1982 through March 1, 1983; and January 21, 1983 through January 20, 1984. The computation of days with respect to each twelve month period may be illustrated as follows:

First twelve-month period (March 2, 1982 through March 1, 1983):

	Full days in foreign country
Mar. 2, 1982 through Mar. 6, 1982	0
Mar. 7, 1982 through June 24, 1982	110
June 25, 1982 through July 24, 1982	0
July 25, 1982 through Mar. 1, 1983	220
Total full days	330

Second twelve-month period (January 21, 1983 through January 20, 1984):

	Full days in foreign country
Jan. 21, 1983 through Aug. 21, 1983	213
Aug. 22, 1983 through Sept. 5, 1983	0
Sept. 6, 1983 through Dec. 31, 1983	117
Jan. 1, 1984 through Jan. 20, 1984	0
Total full days	330

(e) *Special rules.* For purposes only of establishing that an individual is a qualified individual under paragraph (a) of this section, residence or presence in a foreign country while there employed by the U.S. government or any agency or instrumentality of the U.S. government counts towards satisfaction of the requirements of §1.911–2(a). (But see section 911(b)(1)(B)(ii) and §1.911–3(c)(3) for the rule excluding amounts paid by the U.S. government to an employee from the definition of foreign earned income.) Time spent in a foreign country prior to January 1, 1982, counts toward satisfaction of the bona fide residence and physical presence requirements, even though no exclusion or deduction may be allowed under section 911 for income attributable to services performed during that time. For purposes or paragraph (a)(2)(ii) of this section, the term ''resident of the United States'' includes an individual for whom a valid election is in effect under section 6013 (g) or (h) for the taxable year or years during which the physical presence requirement is satisfied.

(f) *Waiver of period of stay in foreign country due to war or civil unrest.* Notwithstanding the requirements of paragraph (a) of this section, an individual whose tax home is in, a foreign country, and who is a bona fide resident of, or present in a foreign country for any period, who leaves the foreign country after August 31, 1978, before meeting the requirements of paragraph (a) of this section, may as provided in this paragraph, qualify to make an election under section 911(a) and §1.911–7(a). If the Secretary determines, after consultation with the Secretary of State or his delegate, that war, civil unrest, or similar adverse conditions existed in a foreign country, then the Secretary shall publish the name of the foreign country and the dates between which such conditions were deemed to exist. In order to qualify to make an election under this paragraph, the individual must establish to the satisfaction of the Secretary that the individual left a foreign country, the name of which has been published by the Secretary, during the period when adverse conditions existed and that the individual could reasonably have expected to meet the requirements of paragraph (a) of this section but for the adverse conditions. The individual shall attach to his return for the taxable year a statement that the individual expected to meet the requirements of paragraph (a) of this section but for the conditions in the foreign country which precluded the normal conduct of business by the individual. Such individual shall be treated as a qualified individual, but only for the actual period of residence or presence. Thus, in determining the number of the individual's qualifying days, only days within the period of actual residence or presence shall be counted.

(g) *United States.* The term ''United States'' when used in a geographical sense includes any territory under the sovereignty of the United States. It includes the states, the District of Columbia, the possessions and territories of the United States, the territorial waters of the United States, the air space over the United States, and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources.

(h) *Foreign country.* The term ''foreign country'' when used in a geographical sense includes any territory under the sovereignty of a government other than that of the United States. It includes the territorial waters of the foreign country (determined in accordance with the laws of the United States), the air space over the foreign country, and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country and over which the foreign country has exclusive rights, in accordance with international law,

with respect to the exploration and exploitation of natural resources.

(Sec. 911 (95 Stat. 194; 26 U.S.C. 911) and sec. 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 8006, 50 FR 2965, Jan. 23, 1985]

§ 1.911–3 Determination of amount of foreign earned income to be excluded.

(a) *Definition of foreign earned income.* For purposes of section 911 and the regulations thereunder, the term ''foreign earned income'' means earned income (as defined in paragraph (b) of this section) from sources within a foreign country (as defined in §1.911–2(h)) that is earned during a period for which the individual qualifies under §1.911–2(a) to make an election. Earned income is from sources within a foreign country if it is attributable to services performed by an individual in a foreign country or countries. The place of receipt of earned income is immaterial in determining whether earned income is attributable to services performed in a foreign country or countries.

(b) *Definition of earned income*—(1) *In general.* The term ''earned income'' means wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered including the fair market value of all remuneration paid in any medium other than cash. Earned income does not include any portion of an amount paid by a corporation which represents a distribution of earnings and profits rather than a reasonable allowance as compensation for personal services actually rendered to the corporation.

(2) *Earned income from business in which capital is material.* In the case of an individual engaged in a trade or business (other than in corporate form) in which both personal services and capital are material income producing factors, a reasonable allowance as compensation for the personal services actually rendered by the individual shall be considered earned income, but the total amount which shall be treated as the earned income of the individual from such trade or business shall in no case exceed thirty percent of the individual's share of the net profits of such trade or business.

(3) *Professional fees.* Earned income includes all fees received by an individual engaged in a professional occupation (such as doctor or lawyer) in the performance of professional activities. Professional fees constitute earned income even though the individual employs assistants to perform part or all of the services, provided the patients or clients are those of the individual and look to the individual as the person responsible for the services rendered.

(c) *Amounts not included in foreign earned income.* Foreign earned income does not include an amount:

(1) Excluded from gross income under section 119;

(2) Received as a pension or annuity (including social security benefits);

(3) Paid to an employee by an employer which is the U.S. government or any U.S. government agency or instrumentality;

(4) Included in the individual's gross income by reason of section 402(b) (relating to the taxability of a beneficiary of a nonexempt trust) or section 403(c) (relating to the taxability of a beneficiary under a nonqualified annuity or under annuities purchased by exempt organizations);

(5) Included in gross income by reason of §1.911–6(b)(4)(ii); or

(6) Received after the close of the first taxable year following the taxable year in which the services giving rise to the amounts were performed. For treatment of amounts received after December 31, 1962, which are attributable to services performed on or before December 31, 1962, and with respect to which there existed on March 12, 1962, a right (whether forfeitable or nonforfeitable) to receive such amounts, see §1.72–8.

(d) *Determination of the amount of foreign earned income that may be excluded under section 911(a)(1)*—(1) *In general.* Foreign earned income described in this section may be excluded under section 911(a)(1) and this paragraph only to the extent of the limitation specified in paragraph (d)(2) of this section. Income is considered to be earned in the taxable year in which the services giving rise to the income are performed. The determination of the amount of excluded earned income in this manner does not affect the time