

IRS provides travel disruption guidance on foreign branch DCL issues; Form 8858 filing

May 12, 2020

In brief

The IRS on May 7 issued Revenue Procedure 2020-30 (Rev. Proc. 2020-30), providing guidance with respect to certain foreign branch issues raised by the COVID-19 pandemic. Rev. Proc. 2020-30 excludes certain 'temporary activities' from (1) resulting in an obligation to file a Form 8858 and (2) giving rise to a foreign branch separate unit for purposes of the Section 1503(d) dual consolidated loss (DCL) rules.

In order to be considered 'temporary activities,' the activities must meet all of the following criteria:

1. The activities are conducted by individual(s) in a foreign country during any single consecutive period of up to 60 calendar days the taxpayer selects;
2. The individual(s) conducting the activity are temporarily present in the foreign country during the selected period; and
3. But for the COVID-19 pandemic travel disruptions impacting the individual(s), the activities would not have been conducted in the foreign country.

Rev. Proc. 2020-30 provides the following example of a 'temporary activity': An individual employed or acting on behalf of a US corporation traveling to a foreign country on March 1, 2020 is not able to leave the foreign country until April 27, 2020 as a result of COVID-19 pandemic travel restrictions imposed by the United States or foreign government. To the extent that the individual would have left the foreign country and not have conducted activities on behalf of the US corporation during this period, such activities are considered 'temporary activities.'

Individuals and domestic corporations relying on Rev. Proc. 2020-30 need to maintain contemporaneous documentation that demonstrates they satisfy its requirements. They must be able to provide this documentation to the IRS upon request.

The IRS notes that Rev. Proc. 2020-30 does not provide any guidance with respect to whether temporary activities outside the 60-day limit give rise to a foreign branch under Treas. Reg. sec. 1.367(a)-6T(g)(1) or a qualified business unit under Treas. Reg. sec. 1.989(a)-1(b)(ii).

The takeaway

With the issuance of Rev. Proc. 2020-30, the IRS continues its trend of releasing guidance (formal and informal) to individuals and companies impacted by travel restrictions due to the COVID-19 pandemic. While this past April's guidance (see [Insight](#)) primarily focused on inbound companies, Rev. Proc. 2020-30 is geared toward relief for outbound companies making foreign branch determinations. However, the guidance is limited to DCLs and Form 8858 filing obligations, and the IRS has only included a 60-day requirement for activities to qualify as 'temporary activities.'

See also:

[IRS issues guidance for individuals and businesses impacted by travel disruptions](#)

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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