

The Foreign Earned Income Exclusion (FEIE), Housing Exclusion (HE) and Housing Deduction (HD)
And TIPRA (Tax Increase Prevention and Reconciliation Act of 2005
Changes effective January 1, 2006 to the FEIE, and HE/ HD

January 9, 2024

by: Marc J. Strohl, CPA
Protax Consulting Services Inc.
www.protaxconsulting.com/

The goal of this article is to provide a comprehensive checklist of information for the United States (U.S.) person to consider prior to accepting an assignment outside the U.S. This article is not designed to teach you the required technical competence to perform self compliance; however, it will certainly arm you with the technical knowledge to determine if your U.S. Certified Public Accountant (CPA) tax preparer knows all that they should know to provide you with technically competent professional services

TIPRA Changes:

The Foreign Earned Income Exclusion (FEIE) and Form 2555:

Effective January 1, 2006 as amended by IRC Sec. 515 of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA)- until December 31, 2005 the first \$126,500 for 2024 (\$120,000 for 2023, \$112,000 for 2022, \$108,700 for 2021, \$107,600 for 2020, \$105,900 for 2019, \$103,900 for 2018, \$102,100 for 2017, \$101,300 for 2016, \$100,800 for 2015, \$99,200 for 2014, \$97,600 for 2013, and \$95,100 for 2012) of income earned overseas was excluded from U.S. taxation, with the next dollar earned overseas treated as though it were the first dollar of income and taxed at the very lowest tax bracket. This new law provides for “stacking”.

“Stacking” results in the next dollar of income taxed at a much higher marginal rate of tax, as though it was the \$120,501st dollar of income earned. Therefore this “stacking” feature assumes that the excluded foreign earned income is actually present for tax calculation purposes, effectively using the tax bracket in which it would have been taxed had the excluded foreign earned income actually been present for tax calculation purposes. This results in the taxpayer being pushed into an initially higher starting tax bracket at higher tax rates on that first dollar of unexcluded income.

The implementation of the “stacking” mechanism results in three obvious factors, in addition to an additional tax grab: 1) The usefulness or effectiveness of the FTC and 2) the potential for Foreign Tax (FT) carryover are both diminished, in addition 3) in the case of high tax foreign countries, it may be preferable to use the FTC alone. Protax continually optimizes and tests for these factors. Keeping in mind the deemed revocation implications, weighing the alternatives both quantitatively and qualitatively.

The Foreign Housing Exclusion (HE) or Deduction (HD):

Effective January 1, 2006, as amended by IRC Sec. 515 of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), this new law provides for two changes regarding the HE and HD:

- 1) the base housing amount (otherwise known as ‘Housing Norm’, which acts like a deductible) representing the amount that needs to be exceeded before any qualified housing costs are excluded or deducted, effective January 1, 2024, has risen from \$52.60 per day or \$19,200 for a full 365 days for 2023 to \$55.30 per day or \$20,240 for a full 366 days for 2024, representing 16% of the amount of the FEIE or \$126,500 for 2024 (\$120,000 for 2023).
- 2) further TIPRA has placed an overall effective cap on the total Qualified Housing Expenses eligible for consideration for either the HE or HD, at 30% of the FEIE of \$126,500 for 2024 (\$120,000 for 2023) or for 2024 \$103.60 per day or \$37,950 for a full 366 days (30% * \$126,500). For 2023- \$98.63 per day or \$36,000 for a full 365 days (30% * \$120,000). This cap had not existed prior to January 1, 2006.

Therefore, the maximum excludable or deductible Qualified Housing Expenses is the difference between the cap of \$37,950 less the deductible base housing amount of \$20,240 which equals \$17,710 or \$48.39 per day for a full 366 days.

Further to the ratification of TIPRA, the IRS continues to issue IRS Notice(s) for 2023 Notice 2023-26 (issued March 14, 2023) (2022 Notice 2022-10 (issued March 7, 2022)) which allows for certain cities (of 52 countries worldwide) with very high housing costs a higher overall exclusion cap, effectively overriding the 2024 30% limitation on the FEIE or \$37,950 cap. Until the 2024 IRS Notice is issued assumingly in March or April of 2024 for the 2024 tax year, we will continue to apply the 2023 Notice to 2023 tax year. When the 2024 Notice is issued, we may elect to apply the 2024 Notice adjustments to the 2023 tax year in lieu of the adjusted 2023 Notice adjustments (Notice 2023-26) if the 2024 Notice limitations are higher. Please consult us on a list of these cities and amounts separately.

Marc J. Strohl, CPA is a Principal at Protax Consulting Services Inc.
Seven Penn Plaza, Suite 816, New York, New York 10001
He may be reached at: Tel: (212) 714-1805, Fax: (212) 714-6654
Email: mstrohl@protaxconsulting.com
Web site: www.protaxconsulting.com