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  

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

TIPRA Changes:  

FEIE:  
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 $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, $95,100 for 2012, $92,900 for 2011 and $91,500 for 2010) 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 $105,901st 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.  

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 the FTC 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 quantitively and qualitatively.  

HE/ 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 (or deductible) representing the amount that needs to be exceeded before any qualified housing costs are excluded or deducted, effective January 1, 2019, has risen from $45.55 per day or $16,624 for a full 365 days for 2018 to $46.42 per day or $16,944 for a full 365 days for 2019, representing 16% of the amount of the FEIE or $105,900 for 2019 ($103,900- for 2018).  

2) further TIPRA has placed an overall effective cap on the total qualified housing costs eligible for consideration for either the HE or HD, at 30% of the FEIE of $105,900 for 2019 ($103,900 for 2018) or for 2019 $87.04 per day or $31,770 for a full 365 days (30% * $105,900). For 2018- $85.40 per day or $31,170 for a full 365 days (30% * $103,900). 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 $31,770 less the deductible base housing amount of $16,944, which equals $14,826 or $40.62 per day for a full 365 days.
Further to the ratification of TIPRA, the IRS continues to issue IRS Notice(s) for 2018 Notice 2018-33 (issued April 23, 2018) replaced by 2018-44 (issued May 2, 2018), (for 2017- IRS Notice 2017-21, *issued March 13, 2017*) - which allows for certain cities (of 52 countries worldwide) with very high housing costs a higher overall exclusion cap, effectively overriding the 30% limitation on the FEIE or $31,770 cap. Until the 2019 IRS Notice is issued assumingly in March or April of 2019 for the 2019 tax year we will continue to apply the 2018 Notice to 2018 tax year. When the 2019 Notice is issued we may elect to apply the 2019 Notice adjustments to the 2018 tax year, in lieu of the adjusted 2018 Notice adjustments (Notice 2018-44), if the 2019 Notice limitations are higher. Please consult us on a list of these cities and amounts separately.

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