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 US person to consider prior to accepting an assignment outside the US. 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 US 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 $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 were the $95,101st dollar of income earned. Therefore this “stacking” feature assumes that the excluded income is actually present for tax calculation purposes, effectively using the tax bracket in which it would have been taxed had it actually been present, pushing the taxpayer into an initially higher starting tax bracket.

The implementation of the ‘stacking” mechanism results in two obvious factors: 1) The usefulness or effectiveness of the foreign tax credit (FTC) and 2) the potential for the FTC carryover are both diminished.

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 new base (or deductible) representing the amount that needs to be exceeded before any qualified housing costs are excluded or deducted, effective January 1, 2012 has risen from $40.72 per day or $14,864 for a full 365 days to $41.69 per day or $15,216 for a full 365 days, representing 16% of the amount of the FEIE or $95,100 for 2012 ($92,900- for 2011 and $91,500- for 2010).
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 $95,100 for 2012 ($92,900- for 2011 and $91,500- for 2010) or for 2012 $28,530 (30% * $95,100) (for 2011- $27,870= $92,900* 30%). This cap had not existed prior to January 1, 2006.

Therefore the maximum excludable or deductible qualified housing expenses is the cap of $28,530 less the deductible of $15,216, which equals $13,314 or $36.48 per day.

Further to the ratification of TIPRA, the IRS issued IRS Notice 2006-87- 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 $28,530 cap. Please consult us on a list of these cities and amounts separately.

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