

## The Hidden Jewel

### Form 2555- Foreign Earned Income Exclusion's Other Cousin

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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 designed 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.

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

In addition to the FEIE there is a little known about hidden jewel, the Foreign Housing Exclusion (HE) for employed persons or the Foreign Housing Deduction (HD) for self-employed persons. In addition to the above FEIE of \$91,400 for 2009 (2008- \$87,600), there is an opportunity to augment this basic earned income exclusion by an overseas taxpayer's reasonable qualified foreign housing expenses. Qualified foreign housing expenses are typically much higher than a taxpayer's taxable employer paid housing income/ allowance, or quarters.

The nice feature of the HE or HD is that the list of qualified housing costs is very exhaustive: rent, Fair Market Value (FMV) of employer provided housing, foreign real-estate or occupancy taxes, TV taxes, utilities but not telephone, real or personal property insurance, "key" money or other similar nonrefundable deposits paid to secure a lease, repairs and maintenance, furniture rental, temporary living expenses and residential parking.

However the truly astounding feature about the HE or HD is that **IT DOES NOT MATTER WHO PAYS FOR THESE QUALIFIED HOUSING EXPENSES!!!** Regardless of whether you the employee pay directly for these costs or whether your employer directly pays or reimburses you for these above costs, these costs are still includable as qualified foreign housing costs for determining the HE or HD. However, these costs may also need to be included in your employment income, that is if paid directly or reimbursed by your employer as they are considered taxable compensation.

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, 2009 has risen from \$38.30 per day or \$14,016 for a full 366 days to \$40.07 per day or \$14,624 for a full 365 days, representing 16% of the amount of the FEIE or \$91,400-for 2009 (2008- \$87,600).
- 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 \$91,400- for 2009 (\$87,600 for 2008) or \$27,420 (30% \* \$91,400) (for 2008- \$26,280= \$87,600\* 30%). This cap had not existed prior to January 1, 2006.

Therefore the maximum excludable or deductible qualified housing expenses is the cap of \$27,420 less the deductible of \$14,624, which equals \$12,796, as stated above.

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 \$27,420 cap. Please consult us on a list of these cities and amounts separately.

Other Interesting Form 2555- FEIE, HE and HD, Form 1116- FTC and General Facts:

- The HE and HD are both subject to a base deduction or “Housing Norm” which for 2009 is \$40.07 per day (2008- \$38.30 per day). So if in 2009 you were abroad a full 365 calendar tax year you would first need to deduct \$14,624 prior to any of your Qualified Housing Costs counting towards the HE or HD.

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