

## **Reg. Section 1.911-2(d)**

### Qualified Individuals

(a) In general. An individual is a qualified individual if:

- (1) The individual's tax home is in a foreign country or countries throughout-
  - (i) The period of bona fide residence described in paragraph (a)(2)(i) of this section, or
  - (ii) The 330 full days of presence described in paragraph (a)(2)(ii) of this section, and
- (2) The individual is either-
  - (i) A citizen of the United States who establishes to the satisfaction of the Commissioner or his delegate that the individual has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or
  - (ii) A citizen or resident of the United States who has been physically present in a foreign country or countries for at least 330 full days during any period of twelve consecutive months.

(b) Tax home. For purposes of paragraph (a)(i) of this section, the term "tax home" has the same meaning which it has for purposes of section 162(a)(2) (relating to travel expenses away from home). Thus, under section 911, an individual's tax home is considered to be located at his regular or principal (if more than one regular) place of business or, if the individual has no regular or principal place of business because of the nature of the business, then at his regular place of abode in a real and substantial sense. An individual shall not, however, be considered to have a tax home in a foreign country for any period for which the individual's abode is in the United States. Temporary presence of the individual in the United States does not necessarily mean that the individual's abode is in the United States during that time. Maintenance of a dwelling in the United States by an individual, whether or not that dwelling is used by the individual's spouse and dependents, does not necessarily mean that the individual's abode is in the United States.

(c) Determination of bona fide residence. For purposes of paragraph (a)(2)(i) of this section, whether an individual is a bona fide resident of a foreign country shall be determined by applying, to the extent practical, the principles of section 871 and the regulations thereunder, relating to the determination of the residence of aliens. Bona fide residence in a foreign country or countries for an uninterrupted period may be established, even if temporary visits are made during the period to the United States or elsewhere on vacation or business. An individual with

earned income from sources within a foreign country is not a bona fide resident of that country if:

- (1) The individual claims to be a nonresident of that foreign country in a statement submitted to the authorities of that country, and
- (2) The earned income of the individual is not subject, by reason of nonresidency in the foreign country, to the income tax of that country.

If an individual has submitted a statement of nonresidence to the authorities of a foreign country the accuracy of which has not been resolved as of any date when a determination of the individual's bona fide residence is being made, then the individual will not be considered a bona fide resident of the foreign country as of that date.



(d) Determination of physical presence. For purposes of paragraph (a)(2)(ii) of this section, the following rules apply.

(1) Twelve-month test. A period of twelve consecutive months may begin with any day but must end on the day before the corresponding day in the twelfth succeeding month. The twelve-month period may begin before or after arrival in a foreign country and may end before or after departure.

(2) 330-day test. The 330 full days need not be consecutive but may be interrupted by periods during which the individual is not present in a foreign country. In computing the minimum 330 full days of presence in a foreign country or countries, all separate periods of such presence during the period of twelve consecutive months are aggregated. A full day is a continuous period of twenty-four hours beginning with midnight and ending with the following midnight. An individual who has been present in a foreign country and then travels over areas not within any foreign country for less than twenty-four hours shall not be deemed outside a foreign country during the period of travel. If an individual who is in transit between two points outside the United States is physically present in the United States for less than twenty-four hours, such individual shall not be treated as present in the United States during such transit but shall be treated as travelling over areas not within any foreign country. For purposes of this paragraph (d)(2), the term "transit between two points outside the United States" has the same meaning that it has when used in section 7701(b)(6)(C).

(3) Illustrations of the physical presence requirement. The physical presence requirement of paragraph (a)(2)(ii) of this section is illustrated by the following examples:

Example (1). B, a U.S. citizen, arrives in Venezuela from New York at 12 noon on April 24, 1982. B remains in Venezuela until 2 p.m. on March 21, 1983, at which time B departs for the United States. Among other possible twelve month periods, B is present in a foreign country an aggregate of 330 full days during each of the following twelve month periods: March 21, 1982 through March 20, 1983; and April 25, 1982 through April 24, 1983.

Example (2). C, a U.S. citizen, travels extensively from the time C leaves the United States on March 5, 1982, until the time C departs the United Kingdom on January 1,

1984, to return to the United States permanently. The schedule of C's travel and the number of full days at each location are listed below:

<b>Country</b>	<b>Time and date of arrival</b>	<b>Time and date of departure</b>	<b>Full days in foreign country</b>
United States		10 p.m. (by air) Mar. 5, 1982	
United Kingdom	9 a.m. Mar. 6, 1982	10 p.m. (by ship) June 25, 1982	110
United States	11 a.m. June 30, 1982	1 p.m. (by ship) July 19, 1982	0
France	3 p.m. July 24, 1982	11 a.m. (by air) Aug. 22, 1983	393
United States	4 p.m. Aug. 22, 1983	9 a.m. (by air) Sept. 4, 1983	0
United Kingdom	9 a.m. Sept. 5, 1983	9 a.m. (by air) Jan. 1, 1984	117
United States	1 p.m. Jan. 1, 1984		

Among other possible twelve month periods, C is present in a foreign country or countries an aggregate of 330 full days during the following twelve month periods: March 2, 1982 through March 1, 1983; and January 21, 1983 through January 20, 1984. The computation of days with respect to each twelve month period may be illustrated as follows:

First twelve month period (March 2, 1982 through March 1, 1983):

	<b>Full days in foreign country</b>
Mar. 2, 1982 through Mar. 6, 1982	0
Mar. 7, 1982 through June 24, 1982	110
June 25, 1982 through July 24, 1982	0

July 25, 1982 through Mar. 1, 1983	220
Total full days	330

Second twelve month period (January 21, 1983 through January 20, 1984):

	<b>Full days in foreign country</b>
Jan. 21, 1983 through Aug. 21, 1983	213
Aug. 22, 1983 through Sept. 5, 1983	0
Sept. 6, 1983 through Dec. 31, 1983	117
Jan. 1, 1984 through Jan. 20, 1984	0
Total full days	330

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