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IRS Lists Countries for Which Foreign Earned Income Exclusion Requirements Are Waived for 2009

In Rev. Proc 2010-17 [2010-8 IRB 425; www.irs.gov/pub/irs-drop/rp-10-17.pdf], the IRS has announced the list of countries for which the foreign earned income exclusion requirements of IRC §911 are waived for 2009 (with departure dates). The list includes Madagascar (3-18-09) and Guinea (10-1-09).

IRC §911 allows a “qualified individual” to exclude foreign earned income from gross income up to a certain amount (\$91,400 in 2009). An employer need not withhold federal income tax from any wages paid to a qualifying employee if it reasonably believes will be excluded under §911. A qualifying individual is an individual who is a U.S. citizen and a bona fide resident of or present in a foreign country for a specified portion of the taxable year (see *The Payroll Source*®, beginning at p. 14-6 for a detailed discussion).

IRC §911(d)(4) provides an exception to these eligibility requirements if an otherwise qualified individual:

- leaves a listed foreign country because of war, civil unrest, or similar adverse conditions that preclude the normal conduct of business,
- on or after a certain date,
- pursuant to a determination by the Secretary of the Treasury (in consultation with the Secretary of State).

In such a case, the income exclusion will apply even though the individual was not in the foreign country for the statutorily prescribed period, if the individual can show that *but for* the adverse conditions he or she had a reasonable expectation of meeting the requirements of §911.