Foreign Earned Income: Form 2555 Exclusion Reporting and Other Tax Issues for Expat Workers
Navigating Tax Treaties, Social Security Totalization Agreements, and Other Complexities

THURSDAY, MAY 8, 2014, 1:00-2:50 pm Eastern

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Foreign Earned Income: Form 2555 Exclusion Reporting and Other Tax Issues for Expat Workers

May 8, 2014

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Today’s Program

Foreign Earned Income Exclusion
[Robert J. Misey Jr.]

Housing Cost Exclusions
[Paul W. Jones]

Foreign Tax Credit And The FEIE
[Mark A. Chaves]

Social Security And Totalization Agreements
[Paul W. Jones]
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Foreign-Earned Income Exclusion Under Code Section 911

by Robert Misey
Reinhart Boerner Van Deuren s.c.
312-207-5456 or 414-298-8135
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May 8, 2014
Hypothetical

Oscar is a former U.S. collegiate basketball player who, after failing to make an NBA team plays in Europe. Oscar saw on the internet that U.S. persons do not have to pay U.S. tax on foreign-earned income.
Exclusion For Foreign-Earned Income

1. U.S. taxation of worldwide Income

2. Foreign-earned income exclusion of $97,600 for 2013 and $99,200 for 2014
Exclusion vs Credit

1. Relative Tax Rates
2. The Exclusion
3. The Foreign Tax Credit
Exclusion vs Credit Hypothetical

Oscar

US

$120,000 income
$40,000 foreign taxes

Europe
Exclusion vs Credit Options

1. Pay U.S. tax on $120,000 and take a foreign tax credit of $40,000
2. Take a deduction for $40,000
3. Take an exclusion for $99,200 and a foreign tax credit of $6,933 \( \left( \dfrac{20,800}{120,000} \times 40,000 \right) \)
Foreign-Earned Income Exclusion

1. Tax Home In Foreign Country, and
2. Either
   – Physical Presence in Foreign Country for 330 days
     OR
   – Bona Fide Resident of Foreign Country for Entire Taxable Year
Tax Home

Principal Place of Business
330 Days of Physical Presence

1. Objective Test
2. Combine Foreign Stays
3. Combine Foreign Countries
330-Day Test

Oscar

US

1/1/14 → 12/31/14
$90,000

Europe
Combine Foreign Stays

Oscar

US

US

F

Jan. 1 → June 30
July 20 → Dec. 31

Europe
Combine Foreign Countries

Oscar
US

US
F

Jan. 1 → June 30 France
July 20 → Dec. 31 Italy

Europe
Bona Fide Residence Test

1. Subjective Test
2. Facts and Circumstances
Bona Fide Residence Test

Oscar
US

April 1 → Sept. 30

US

F

Jan. 1 → March 31
Oct. 1 → Dec. 31

Europe
Bona Fide Residence Test
Computing the Exclusion

1. $97,600 for 2013
2. $99,200 for 2014
3. Prorate the number of qualifying days
Prorate the Number of Days

Oscar

US

292 days

Europe
Bifurcate the Years

Oscar
US

US
F

7/1/13 - 6/30/14

Europe

Reinhart Boerner Van Deuren s.c.
Electing the Exclusion

1. Form 2555
2. Timing
Hot Issues

1. Employee/Independent Contractors of the U.S. Government

2. Petroleum Industry Workers
Robert Misey

Robert Misey is Chair of the International Department for Reinhart Boerner Van Deuren s.c. When previously with the IRS Chief Counsel (International) in Washington, he served on the industry program for athletes and entertainers. He has also authored *A Practical Guide to U.S. Taxation of International Transactions*. Robert can be reached via phone at either 312-207-5456 or 414-298-8135 or via e-mail at rmisey@reinhartlaw.com
Housing Cost Exclusions

By Paul W. Jones, JD, CPA
Overview of Foreign Housing Costs

• A "qualified individual" is entitled to make a separate election to exclude or deduct statutorily identified housing cost amounts from gross income. IRC §911(a)(2), (c); Reg. §1.911-4.

• A "qualified individual" can exclude housing cost amounts only if his housing expenses are provided by his employer. If the employer does not provide a housing allowance, or if the taxpayer is self employed, he can deduct his housing cost amounts. IRC §911(c)(4)(A).

• If he uses the deduction, the annual exclusion limitation is not directly reduced, rather another limitation may apply to restrict the deduction.
Excludable Housing Expenses

Housing expenses are the reasonable expenses paid or incurred during the taxable year for housing in a foreign country. The expenses are those paid by or on behalf of the taxpayer, and his spouse and dependents if they live with him. They include, variously, expenses attributable to housing such as utilities (other than telephone) and insurance, rent or the fair rental value of employer-provided housing, repairs, nondeductible occupancy taxes, furniture rental, and residential parking.

Housing expenses do not include expenses that are lavish, extravagant or outrageous (taking account of the taxpayer's circumstances), deductible interest or taxes, the cost of buying property (including mortgage payments), domestic help, capital improvements to the residential premises, or purchased furniture. IRC §911(c)(3)(A); Reg. §1.911-4(b)(1) & (2).
Excludable Housing Expenses Cont.

As a general rule, a taxpayer can exclude the housing cost amounts of only one foreign residence. Normally, that is the one which is his tax home. If the taxpayer maintains a second foreign household where his spouse or dependents reside but he does not reside there, he generally cannot exclude the costs of the second home. However, housing cost amounts in relation to the second residence can be excluded from gross income if he maintains the second residence because living conditions where he resides are dangerous, unhealthful, or otherwise adverse. Those adverse circumstances include a state of warfare or civil insurrection, or may occur if the taxpayer is required to reside at the premises of his employer at a place or in a manner which is not conducive for his dependents or spouse to live with him, e.g., on a drilling rig or at a remote construction site. In no event, however, can the cost of more than two households be taken into account for purposes of the exclusion. IRC §911(c)(3)(B); Reg. §1.911-4(b)(5).
Housing Cost Amount Exclusion

• Foreign housing expenses provided by the taxpayer's employer, either through payments made directly to the taxpayer or by payments made on his behalf, are included in the employee's gross income under the regular rules of the Code.

• Of this amount, the taxpayer can elect to exclude his housing cost amount from gross income.

• Treasury regulations require that all qualified housing cost amounts be excluded once an election for them is made. A partial exclusion is not permitted.
Housing Cost Amount Exclusion Cont.

• The excludable housing cost amount is measured by the excess of housing costs over a base amount. The base amount is 16% of the foreign earned income exclusion amount, computed on a daily basis, multiplied by the number of days in the taxable year that the taxpayer is a qualified individual. IRC §911(c)(1).

• For example, for 2014, the inflation-adjusted exclusion amount is $99,200. IRC §911(b)(2)(D); Rev. Proc. 2013-35, 2013-47 I.R.B. 537.

• The annual base amount under this formula is $29,760 ($99,200 x 30%). On a daily basis, the base amount is $81.53 ($29,760/365).

• Daily housing costs are excludable only to the extent that they exceed that amount.
Housing Cost Amount Exclusion Cont.

• However, that exclusion is subject to an upper limitation. In general, housing costs are not excludable to the extent that they exceed 30% of the foreign earned income exclusion amount, computed on a daily basis, multiplied by the number of days in the taxable year that the taxpayer is a qualified individual.

• For example, for 2014, the inflation-adjusted exclusion amount is $99,200. The upper limitation on the housing costs considered for the exclusion is $29,760 ($99,200 x 30%). On a daily basis, the base amount is $81.53 ($29,760/365). Using the 2014 numbers, therefore, the housing costs, computed on a daily basis, are excludable to the extent they exceed $43.48 per day but not to the extent that they exceed $81.53 per day. The maximum exclusion is $13,888 ($29,760 - $15,872). Computed on a daily basis, this is $38.05 ($81.53 - $43.48).

• Pursuant to statutory authority (IRC §911(c)(2)(B)), the IRS has significantly adjusted the upper limit on the housing cost amount for many countries with high housing costs relative to the housing costs in the United States.
Housing Cost Amount Deduction

A qualified individual can deduct housing cost amounts, as have already discussed, if his employer does not provide them, which implies that they are not included in his earned gross income, or if he is self-employed.

The housing cost amount deduction can be claimed only to the extent that foreign earned income is greater than the sum of the earned income exclusion and the housing cost amount exclusion for any taxable year.

To the extent that a deductible housing cost amount cannot be used because of that limitation, the unused amount can be carried forward to the following year, but not beyond that.

IRC §911(c)(4); Reg. §1.911-4(e).
Housing Cost Amount Deduction Cont.

If a taxpayer is both an employee for whom an employer has provided housing cost amounts, and a self-employed person during the same taxable year, he may be able to claim the exclusion and the deduction.

To compute the amounts involved, the taxpayer first determines the exclusion by multiplying his housing cost amount by the portion provided by the employer, then dividing the result by his total foreign earned income.

The remaining balance is deductible.

Reg. §1.911-4(d)(3).
Spouses with Separate Residences

• If a husband and wife are both "qualified individuals," and maintain separate households, each may be able to claim a housing cost exclusion or deduction.
• To do so, each must have a discernible tax home that is not within reasonable commuting distance of that of the other spouse.
• In that case, the housing cost amount exclusion or deduction is computed separately for each spouse.
• If both claim housing cost amounts, then neither can include the costs of a second foreign home.
• However, if one spouse does not claim his housing cost amounts, the other spouse can claim costs of a second foreign home, if the tests for the second home are met.

**Part VI**  Taxpayers Claiming the Housing Exclusion and/or Deduction

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Value 1</th>
<th>Value 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>Qualified housing expenses for the tax year (see instructions)</td>
<td>28</td>
<td>25,000</td>
</tr>
<tr>
<td>29a</td>
<td>Enter location where housing expenses incurred (see instructions)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29b</td>
<td>Enter limit on housing expenses (see instructions)</td>
<td>29b</td>
<td>29,280</td>
</tr>
<tr>
<td>30</td>
<td>Enter the smaller of line 28 or line 29b</td>
<td>30</td>
<td>25,000</td>
</tr>
<tr>
<td>31</td>
<td>Number of days in your qualifying period that fall within your 2013 tax year (see instructions)</td>
<td>31, 365</td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>Multiply $42.76 by the number of days on line 31. If 365 is entered on line 31, enter $15,616.00 here</td>
<td>32</td>
<td>15,616</td>
</tr>
<tr>
<td>33</td>
<td>Subtract line 32 from line 30. If the result is zero or less, do not complete the rest of this part or any of Part IX</td>
<td>33</td>
<td>9,384</td>
</tr>
<tr>
<td>34</td>
<td>Enter employer-provided amounts (see instructions)</td>
<td>34, 250,000</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>Divide line 34 by line 27. Enter the result as a decimal (rounded to at least three places), but do not enter more than <em>1.000</em></td>
<td>35, 1,0000</td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>Housing exclusion. Multiply line 33 by line 35. Enter the result but do not enter more than the amount on line 34. Also, complete Part VIII</td>
<td>36</td>
<td>9,384</td>
</tr>
</tbody>
</table>

**Note:** The housing deduction is figured in Part IX. If you choose to claim the foreign earned income exclusion, complete Parts VII and VIII before Part IX.

**Part VII**  Taxpayers Claiming the Foreign Earned Income Exclusion

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Value 1</th>
<th>Value 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>37</td>
<td>Maximum foreign earned income exclusion</td>
<td>37</td>
<td>$97,600</td>
</tr>
<tr>
<td>38</td>
<td>If you completed Part VI, enter the number from line 31.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>All others, enter the number of days in your qualifying period that fall within your 2013 tax year (see the instructions for line 31)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>If line 38 and the number of days in your 2013 tax year (usually 365) are the same, enter <em>1.000.</em></td>
<td>39, 1,0000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Otherwise, divide line 38 by the number of days in your 2013 tax year and enter the result as a decimal (rounded to at least three places).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>Multiply line 37 by line 39</td>
<td>40</td>
<td>97,600</td>
</tr>
<tr>
<td>41</td>
<td>Subtract line 36 from line 27</td>
<td>41</td>
<td>240,616</td>
</tr>
<tr>
<td>42</td>
<td>Foreign earned income exclusion. Enter the smaller of line 40 or line 41. Also, complete Part VIII</td>
<td>42</td>
<td>97,600</td>
</tr>
</tbody>
</table>

**Part VIII**  Taxpayers Claiming the Housing Exclusion, Foreign Earned Income Exclusion, or Both

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Value 1</th>
<th>Value 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>43</td>
<td>Add lines 36 and 42</td>
<td>43</td>
<td>106,984</td>
</tr>
<tr>
<td>44</td>
<td>Deductions allowed in figuring your adjusted gross income (Form 1040, line 37) that are allocable to the excluded income. See instructions and attach computation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Subtract line 44 from line 43. Enter the result here and in parentheses on Form 1040, line 21. Next to the amount enter &quot;Form 2555.&quot; On Form 1040, subtract this amount from your income to arrive at total income on Form 1040, line 22</td>
<td>45</td>
<td>106,984</td>
</tr>
</tbody>
</table>

**Part IX**  Taxpayers Claiming the Housing Deduction—Complete this part only if (a) line 33 is more than line 36 and (b) line 27 is more than line 43.

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Value 1</th>
<th>Value 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>Subtract line 36 from line 33</td>
<td>46</td>
<td>0</td>
</tr>
<tr>
<td>47</td>
<td>Subtract line 43 from line 27</td>
<td>47</td>
<td>0</td>
</tr>
<tr>
<td>48</td>
<td>Enter the smaller of line 46 or line 47</td>
<td>48</td>
<td>0</td>
</tr>
</tbody>
</table>

**Note:** If line 47 is more than line 48 and you could not deduct all of your 2012 housing deduction because of the 2012 limit, use the housing deduction carryover worksheet in the instructions to figure the amount to enter on line 49. Otherwise, go to line 50.

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Value 1</th>
<th>Value 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>49</td>
<td>Housing deduction carryover from 2012 (from housing deduction carryover worksheet in the instructions)</td>
<td>49</td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>Housing deduction. Add lines 48 and 49. Enter the total here and on Form 1040 to the left of line 36. Next to the amount on Form 1040, enter &quot;Form 2555.&quot; Add it to the total adjustments reported on that line</td>
<td>50</td>
<td>0</td>
</tr>
</tbody>
</table>
### Lines 29a and 29b (2555) - Limit on Housing Expenses Worksheet

Note: If the location in which you incurred housing expenses is not listed in the table at the end of the instructions and the number of days in your qualifying period that fall within the 2013 tax year is 365, DO NOT complete this worksheet. Instead, enter $29,280 on line 29b.

| Country in which you incurred housing expenses | China            |
| Street address in which you incurred housing expenses | 12 Qingpu St |
| City in which you incurred housing expenses | Shanghai         |
| Postal code in which you incurred housing expenses | 201700         |

- **Daily Limit:** 156.17
- **Annual Limit:** 57,001.00

1. **Enter the number of days in your qualifying period that fall within the 2013 tax year (see the instructions for line 31):** 365

2. **Did you enter 365 on line 1?**
   - [X] Yes. Locate the amount under the column Limit on Housing Expenses (full year) from the table at the end of the instructions for the location in which you incurred housing expenses. This is your limit on housing expenses. Enter the amount here and on line 29b. STOP and do not complete the rest of this worksheet. 57,001

3. **Enter the amount under the column Limit on Housing Expenses (daily) from the table at the end of the instructions for the location in which you incurred housing expenses.**
   - If the location is not listed in the table, enter $80.21. 80.21

4. **Multiply line 1 by line 3. This is your limit on housing expenses. Enter the result here and on line 29b.** 29,277
Foreign Tax Credit and the FEIE

Presented By:
Mark A. Chaves, CPA
US individuals working abroad are more often than not subject to income tax in the country in which they are working.

US citizens or green card holders are subject to US income tax on their worldwide income, even if earned in a foreign country, subject to the foreign earned income rules covered in this session.

US taxpayers are also eligible to claim a foreign tax credit for income taxes paid on foreign countries for work done overseas.
FOREIGN TAX CREDIT

✧ Taxpayers can choose whether to claim a foreign earned income exclusion in a given year, or whether to claim the full foreign tax credit against their US income tax on non US earnings.

✧ The foreign tax credit limit is computed by the following formula – Foreign source income/Worldwide income * US tax paid. A foreign tax credit cannot exceed the amount of US tax paid on foreign source income.

✧ It is useful for taxpayers to compare taking the foreign earned income exclusion, or taking the full foreign tax credit to determine which approach is more beneficial to them. Consider the following examples.
FOREIGN TAX CREDIT

Mark, a US citizen, works and resides in the Dominican Republic. He earns $105,000 as salary on which he paid foreign tax of $20,000. He also earns interest income of $10,000.

US tax on total income of $115,000 is $22,930, prior to considering the effect of any foreign tax credit.

A foreign tax credit will be allowable to offset US tax earned on Mark’s foreign salary – computed as follows:

Foreign Source income - $105,000/Total Gross income - $115,000
* US Tax paid of $22,930 = $20,936. Mark can take a foreign tax credit for up to $20,936. Since he paid foreign taxes of $20,000, the entire $20,000 can be taken as a foreign tax credit.
FOREIGN TAX CREDIT

Mark will pay additional US tax of $2,930 ($22,930 total US tax, less $20,000 of foreign taxes paid).

Same example, but assume Mark paid $25,000 in foreign taxes, and all else is the same. Mark’s US tax before foreign tax credit is still $22,930. Even though Mark paid $25,000 in foreign taxes, his foreign tax credit limit is still $20,936. Mark will take a foreign tax credit of $20,936, and pay residual US taxes of $1,993. Mark’s additional foreign taxes paid of $4,064 ($25,000 - $20,936) can be carried forward to future years.
FOREIGN EARNED INCOME EXCLUSION

Suppose Mark elects to take the foreign earned income exclusion. Mark’s US tax would be computed as follows:

- Gross income - $115,000
- Exclusion – ($97,600)
- Exemption etc ($9,750)
- Taxable Income $7,650
- Tax before FTC $2,134
- FTC ($908)
- US Tax $1,226
POINTS TO CONSIDER

◆ The foreign tax credit is not eligible to be taken on US source income.

◆ In the examples above, the taxpayer earned US source interest income. The foreign tax credit limitation calculation limits the ability to take a foreign tax credit against the US tax on income that is not foreign source income.

◆ If a taxpayer earns less than the exclusion amount, then there will be no residual taxes to be paid, and any foreign income taxes paid will not be eligible as a credit.
If the foreign tax rate is lower than the US tax rate, then the foreign tax credit may result in a greater amount of residual income tax, since not all of the US income tax will be offset. In that case, taking the exclusion will most likely be beneficial.

Example – Mark earns foreign wages of $105,000. He has no other source of income. Mark pays foreign income taxes of $10,000 on that income. Compare the foreign earned income scenario to the foreign tax credit scenario.
Tax due using the foreign tax credit only will be computed as follows:

Since all income is foreign source income, the foreign taxes paid are fully creditable against the US tax on that income.

- **US tax**: $20,138
- **FTC**: ($10,000)
- **Net US tax**: $10,138
### Points to Consider

- Tax due using the foreign earned income exclusion alone will be computed as follows:
  - **Foreign Source Income**: $105,000
  - **FEIE**: ($97,600)
  - **Taxable income**: $7,400
  - **US tax**: $743
  - **FTC on US tax**: ($704)
  - **Net US tax**: $39
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Social Security and Totalization Agreements

Paul W. Jones, JD, CPA
Overview

The United States has entered into agreements, called Totalization Agreements, with several nations for the purpose of avoiding double taxation of income with respect to social security taxes.

These agreements must be taken into account when determining whether any alien is subject to the U.S. Social Security/Medicare tax, or whether any U.S. citizen or resident alien is subject to the social security taxes of a foreign country.

Totalization agreements also help fill gaps in benefit protection for workers who have divided their careers between the United States and another country.
Countries with Totalization Agreements

- Australia
- Austria
- Belgium
- Canada
- Czech Republic
- Chile
- Denmark
- Finland
- France
- Germany
- Greece
- Ireland
- Italy
- Japan
- Luxembourg
- Netherlands
- Norway
- Poland
- Portugal
- South Korea
- Spain
- Sweden
- Switzerland
- United Kingdom

The U.S. “entered into force” its latest totalization agreement on May 1, 2014 with the Slovak Republic.
How Do Totalization Agreements Work?

The following chart (with the exception of Italy) determines the taxpayer’s (U.S. citizen or resident alien) social security tax obligation when working in a foreign totalization country. The agreement with Italy does not contain a “detached-worker rule,” which means that the taxpayer would remain covered under the U.S. program and be exempt from Italian coverage and contributions.

<table>
<thead>
<tr>
<th>If...</th>
<th>Then...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sent abroad by a U.S. employer for less than 5 years</td>
<td>The taxpayer pays U.S. social security tax only.</td>
</tr>
<tr>
<td>Sent abroad by a U.S. employer for more than 5 years</td>
<td>The taxpayer pays foreign social security tax.</td>
</tr>
<tr>
<td>Working for a foreign employer</td>
<td>The taxpayer pays the foreign social security tax only, unless the foreign employer is an affiliate of a U.S. company that has entered into the contract coverage under Title 11 of the Social Security Act with the U.S. Treasury Department.</td>
</tr>
<tr>
<td>Locally hired U.S. or foreign employer</td>
<td>The taxpayer pays foreign social security tax only.</td>
</tr>
<tr>
<td>Working for the U.S. government</td>
<td>Taxpayer pays U.S. social security tax only.</td>
</tr>
<tr>
<td>Self-employed</td>
<td>Taxpayer pays based on residency.</td>
</tr>
</tbody>
</table>
How Do Totalization Agreements Work?

IRC § 3121(l) addresses foreign employers affiliated with U.S. companies, in which case, the employee pays only U.S. social security tax for 5 years.

Use the following chart to determine a taxpayer's (foreign persons, including resident aliens for income tax purposes) social security tax obligation when working in the United States:

<table>
<thead>
<tr>
<th>If...</th>
<th>Then...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sent by a foreign employer for less than 5 years in the United States</td>
<td>Taxpayer pays foreign social security tax only.</td>
</tr>
<tr>
<td>Sent by a foreign employer for more than 5 years in the United States</td>
<td>Taxpayer pays U.S. social security tax only.</td>
</tr>
</tbody>
</table>
Exemption

In order for an individual or the individual's employer to substantiate the individual's exemption from FICA under the terms of a Bilateral Social Security Agreement, the individual or his or her employer must secure an Exemption Statement from either the country in which the individual is employed or the individual's country of residence.

Some of the countries, with which the United States has agreements, will not issue certificates of coverage. In those countries, the employee or the employer can request a statement from the following address:

Social Security Administration
Office of International Programs
P.O. Box 17775
Baltimore, MD 2123-7775
Exemption Cont.

For the employee or the employer to establish that the employee's income is subject only to U.S. social security tax, the U.S. employer can obtain more information or get a determination by:

- Writing to the address in the previous slide
- Calling 1-800-772-1213, 410-965-0144 or 410-965-3549
- Faxing to 410-966-6029, or
- Accessing the SSA Web site at [http://www.ssa.gov/international](http://www.ssa.gov/international)

Correspondence for Exemption Statements must include:

- The employee's name
- The employee's U.S. and foreign social security numbers
- The employee's date and place of birth
- The employee's citizenship
- The employee's place and date of hiring
- The employer's name and address in the United States and in the foreign country
- The beginning date and the expected ending date of the employee's employment in the foreign country

The Exemption Statement must be maintained by the employer because it establishes that the employee's pay is exempt from taxation in the foreign country.
Claiming a Refund

• Claims of erroneously withheld FICA tax must include:
  – Form W-2
  – Social Security Tax Exemption Statement
  – A signed statement from the employee or employer (whichever is applicable)

• The signed statement included in the claim must state which unsuccessful attempts have been made to secure a refund of the erroneously withheld FICA tax from the employer. A Form 8316 may be used for this purpose.

• The claim is only valid when it involves one of the countries with which the U.S. has a Bilateral Social Security (Totalization) Agreement.
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