

2019

Instructions for Form 1042-S

Foreign Person's U.S. Source Income Subject to Withholding

Volume 1 of 3



Department of the Treasury
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Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 1042-S and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form1042S](https://www.irs.gov/Form1042S).

General Instructions

What's New

Checkbox 7c. A new box was added for partnerships to indicate if withholding with respect to a partnership interest occurred in the subsequent year. See the instructions for *Box 7c*, later.

New income code. A new income code, income code 55, was added for taxable death benefits paid on a life insurance contract. See the instructions for *Box 1, Income Code*, later.

Reminders

Withholding rates. The rate of withholding under section 1446 by a publicly traded partnership on a distribution of income effectively connected to a U.S. trade or business is 21% for corporate partners and 37% for all other partners.

The rate of withholding by a Qualified Investment Entity on a distribution to a nonresident alien or foreign corporation that is treated as gain from the sale or exchange of a U.S. real property interest by the shareholder is 21%.

Qualified derivatives dealers (QDDs).

These instructions provide guidance on how to report payments on Form 1042-S that are made to and by QDDs. See *Payments by U.S. Withholding Agents* and *Amounts Paid by Qualified Intermediaries*, later. For more information on the withholding and reporting requirements associated with payments made to and by QDDs, see Rev. Proc. 2017-15.

Foreign Account Tax Compliance Act (FATCA). Form 1042-S reports payments and

amounts withheld under the provisions commonly known as FATCA or Chapter 4 of the Internal Revenue Code (chapter 4) in addition to those amounts required to be reported under Chapter 3 of the Internal Revenue Code (chapter 3). Form 1042-S requires the reporting of an applicable exemption to the extent withholding under chapter 4 did not apply to a payment of U.S. source fixed or determinable annual or periodical (FDAP) income (including deposit interest) that is reportable on Form 1042-S. For payments to intermediaries,

flow-through entities, and recipients, Form 1042-S requires that the chapter 3 status (or classification) and, when the payment reported is a withholdable payment, the chapter 4 status, be reported on the form according to the codes provided in these instructions.

For the requirement of a withholding agent to file a Form 1042-S for chapter 4 purposes, see Regulations section 1.1474-1(d).

Interest on deposits. Deposit interest described in section 871(i)(2)(A) aggregating

\$10 or more paid to certain nonresident alien individuals with respect to a deposit maintained at an office within the United States and held by a resident of certain countries must be reported on Form 1042-S. For more information, see *Interest on deposits paid to certain nonresident aliens* in the bullet list under *Amounts Subject to Reporting on Form 1042-S*, later.

Substitute forms. A substitute form furnished to a recipient must conform in format and size to the official IRS form and contain the exact same information as the copy filed with the IRS. However, the size of the form may be adjusted if the substitute form is presented on a landscape-oriented page instead of portrait. Only one Form 1042-S may be submitted per page, regardless of orientation. Withholding agents that furnish a substitute Form 1042-S (Copy B, C, or D) to the recipient must furnish a separate substitute Form 1042-S for each type of payment of income (as determined by the income code in Box 1). Withholding agents are no longer permitted to combine all payments of income on a single substitute

Form 1042-S. For more information, see Substitute Forms, later.

Account-by-account reporting by U.S. financial institutions. A U.S. financial institution or a U.S. branch of a foreign financial institution maintaining an account within the United States is required to report payments of the same type of income (as determined by the income code in Box 1) made to multiple financial accounts held by the same beneficial owner on separate Forms 1042-S for each account. See Account-by-Account Reporting by Certain Financial Institutions, later.

Withholding agent's status codes.

Withholding agents must enter both a chapter 3 and a chapter 4 status code regardless of the type of payment being made. Also, status codes under chapter 3 (code 34) and chapter 4 (code 50) apply to a withholding agent that is a foreign branch of a U.S. financial institution. See Boxes 12b and 12c, Withholding Agent's Chapter 3 and Chapter 4 Status Code, later.

Recipient country code. If the recipient is unknown, leave Box 13b, Recipient's country code, blank and enter "Unknown Recipient" in Box 13a, Recipient's name.

Treaty claims and limitation on benefits articles. Withholding agents that are withholding at a reduced rate based on a treaty claim by an entity must include a limitation on benefits code (LOB code) in Box 13j for the recipient when they receive documentation establishing the applicable limitation on benefits provision of the treaty under which the entity qualifies. Withholding agents are not, however, required to obtain new documentation unless they are otherwise required to renew such documentation. See *Box 13j, LOB Code*, later.

Chapter indicator. Withholding agents must enter either "3" or "4" in Box 3 to indicate the chapter with respect to which a Form 1042-S is being filed. See *Chapter indicator* under *Box 3*, later, for more information.

Filing Information Returns Electronically (FIRE) System. For files submitted on the FIRE System, it is the responsibility of the

filer to check the status within 5 business days to verify the results of the transmission. The IRS will not mail error reports for files that are bad. See Pub. 1187, Specifications for Electronic Filing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.

Unique form identifier. Withholding agents must assign a unique identifying number to each Form 1042-S they file. This identifying number is used, for example, to identify which information return is being corrected or amended when multiple information returns are filed by a withholding agent with respect to the same recipient. The unique identifying number cannot be the recipient's U.S. or foreign TIN. The unique identifying number must be numeric. The length of a given identifying number must be exactly 10 digits. The identifying number must be unique to each original Form 1042-S filed for the current year. The identifying number can be used on a new original form in a subsequent year.

Amended forms. Withholding agents filing an amended form must indicate the amendment number (see top of form below title, to the right of the “Amended” checkbox). The amendment number must be numeric and the length must be exactly **one** digit. Any amended form must have the same unique form identifier as the original form that is being amended. Each time that you amend the same form (as determined by the unique form identifier), you must provide the amendment number in the box provided on the form (using “1” for the first amendment and increasing sequentially for each subsequent amendment). See *Amended Forms*, later, for more information.

List of foreign country codes. Form 1042-S filers must use the same list of country codes used on other IRS forms (for example, Forms 926, 1118, 3520, and 8805). This list of foreign country codes may be found at *IRS.gov/CountryCodes*.

Note. Although the list of country codes is maintained by Modernized e-File, Form 1042-S filers who file electronically will continue to

use the FIRE System. See the instructions for Electronic Reporting, later. Also, if applicable, the option to file Form 1042-S by paper is still available.

Foreign tax identification number and date of birth. A financial institution that files a Form 1042-S with respect to a payment on an obligation that it maintains at its U.S. office or U.S. branch must report the recipient's foreign tax identification number (FTIN) and date of birth (if the recipient is an individual). See Box 13i, Recipient's Foreign Tax Identification Number and Box 13l, Recipient's Date of Birth, later, for additional information regarding this requirement.

Purpose of Form

Use Form 1042-S to report income described under Amounts Subject to Reporting on Form 1042-S, later, and to report amounts withheld under chapter 3 or chapter 4.

Use Form 1042-S to report specified federal procurement payments paid to foreign persons that are subject to withholding under section 5000C.

Use Form 1042-S to report payments of eligible deferred compensation items or distributions from nongrantor trusts to covered expatriates that are subject to withholding under section 877A. See *Box 1, Income Code*, later.

Use Form 1042-S to report certain distributions that are made by publicly traded trusts and qualified investment entities (as defined under section 897(h) (4)). See *Distributions Attributable to Dispositions of U.S. Real Property Interests by Publicly Traded Trusts and Qualified Investment Entities*, later.

Also use Form 1042-S to report distributions of effectively connected income by a publicly traded partnership or nominee. See *Publicly Traded Partnerships (Section 1446 Withholding Tax)*, later.



Every person required to deduct and withhold any tax under chapter 3 or chapter 4 is liable for such tax.

Do not use Form 1042-S to report an item required to be reported on any of the following forms.

- Form W-2 (wages and other compensation made to employees (other than compensation for dependent personal services for which the beneficial owner is claiming treaty benefits), including wages in the form of group-term life insurance).
- Form 1099.
- Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests, or Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax. Withholding agents otherwise required to report a distribution partly on a Form 8288-A or Form 8805 and partly on a Form 1042-S may instead report the entire amount on Form 8288-A or Form 8805.
- Form 8966, FATCA Report. Foreign financial institutions (FFIs), sponsoring entities of certain FFIs and other foreign

entities, and withholding agents are required to report on Form 8966 certain account holders and payees. An FFI or withholding agent may also be required to file Form 1042-S to report payments of U.S. source FDAP income made to such persons and to report tax deducted and withheld, if any.

Who Must File

Every withholding agent (defined in *Definitions*, later) must file an information return on Form 1042-S to report amounts paid during the preceding calendar year that are described under Amounts Subject to Reporting on Form 1042-S, later.

However, withholding agents who are individuals are not required to report a payment on Form 1042-S if they are not making the payment as part of their trade or business and no withholding is required to be made on the payment.

For example, an individual making a payment of interest that qualifies for the portfolio interest exception from withholding is not

required to report the payment if the portfolio interest is paid on a loan that is not connected to the individual's trade or business. However, an individual who is a withholding agent paying an amount that actually has been subject to withholding is required to report the payment. Also, an individual paying an amount on which withholding is required must report the payment, whether or not the individual actually withholds. See Multiple Withholding Agent Rule, later, for exceptions to reporting when another person has reported the same payment to the recipient.

You must file a Form 1042-S even if you did not withhold tax under chapter 3 because the income was exempt from tax under a U.S. tax treaty or the Code, including the exemption for income that is effectively connected with the conduct of a trade or business in the United States, or you released the tax withheld to the recipient. For exceptions, see Amounts That Are Not Subject to Reporting on Form 1042-S, later.

Amounts paid to an individual that is a bona fide resident of a U.S. possession or territory are not subject to reporting on Form 1042-S if the beneficial owner of the income is a U.S. citizen, national, or resident alien (such amounts may be subject to Form 1099 reporting).



If you file Form 1042-S, you also must file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons. See Form 1042 and its instructions for more information.

Where, When, and How To File

Forms 1042-S, whether filed on paper or electronically, must be filed with the IRS by March 16, 2020. You also must furnish Form 1042-S to the recipient of the income by March 16, 2020.

Copy A is filed with the IRS. Send all paper Forms 1042-S with Form 1042-T, Annual Summary and Transmittal of Forms 1042-S, to the address in the Form 1042-T instructions. You must use Form 1042-T to transmit paper Forms 1042-S. Use a separate

Form 1042-T to transmit each type of Form 1042-S. See *Payments by U.S. Withholding Agents*, later, and the Form 1042-T instructions for more information. If you are a financial institution, you have 250 or more Forms 1042-S to file (irrespective of whether you are a financial institution or not), or you are a partnership that has 100 partners or that is filing at least 150 Forms 1042-S, follow the instructions under *Electronic Reporting*, later.



Attach only Copy A to Form 1042-T. Provide Copies B, C, and D to the recipient of the income. The withholding agent should keep Copy E. All copies must match the copy filed with the IRS. Any differences between the copy of the form issued to recipients and the copy filed with the IRS will lead to delays in processing the recipient's tax return. The IRS may disallow claims for refund or credit for amounts withheld reported on Form 1042-S if the form attached to such claims differs from the copy that was filed with the IRS.

With respect to a withholdable payment, the recipient copy should be provided to the intermediary or flow-through entity named as a recipient with respect to a chapter 4 reporting pool, if applicable.

Extension of time to file. To request an extension of time to file Forms 1042-S, file Form 8809, Application for Extension of Time To File Information Returns. See the Form 8809 instructions for where to file that form. You should request an extension as soon as you are aware that a extension is necessary, but no later than the due date for filing Form 1042-S. By filing Form 8809, you will get an automatic 30-day extension to file Form 1042-S. If you need more time, you may submit a second Form 8809 before the end of the initial extended due date. See Form 8809 for more information.

Recipient copies. You may request an extension of time to provide the statements to recipients by sending a letter to:

Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator

240 Murall Drive Mail Stop 4360
Kearneysville, WV 25430

See Extension to provide statements to recipients in Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.



See Pub. 1187 for more information about filing extension requests electronically instead of on Form 8809.

Electronic Reporting

If you are either a person (including a corporation, partnership, individual, trust, or estate) that is required to file 250 or more Forms 1042-S or a financial institution, whether U.S. or foreign, you must submit Forms 1042-S electronically.

If you are a partnership filing Form(s) 1042-S, you are required to file electronically if you have more than 100 partners or are required to file 150 or more information returns for tax year 2019. For future years, a partnership will be required to file electronically if it has more than 100 partners or if the total of Forms

1042-S it is required to file is at least 100 for 2020, 50 for 2021, and 20 for tax years after 2021.

Electronic submissions are filed using the FIRE System. The FIRE System operates 24 hours a day, 7 days a week, at fire.irs.gov. For more information, see Pub. 1187.

The electronic filing requirement applies separately to original and amended returns. For a withholding agent other than a financial institution, the filing requirement applies individually to each reporting entity as defined by its separate taxpayer identification number (TIN). For example, if you have 300 original Forms 1042-S, they must be filed electronically. However, if 200 of those forms contained erroneous information, the amended returns may be filed on paper forms because the number of amended Forms 1042-S is less than the 250-or-more filing requirement.



If you file electronically, do not file the same returns on paper. Duplicate filing may cause penalty notices to be generated.

Note. Even though as many as 249 Forms 1042-S may be submitted on paper, the IRS encourages filers to transmit forms electronically.

Hardship waiver. To receive a hardship waiver from filing Forms 1042-S electronically, submit Form 8508, Request for Waiver From Filing Information Returns Electronically.

Waiver requests should be filed at least 45 days before the due date of the returns. See Form 8508 for more information.

Truncation of TIN Rules

Withholding agents may truncate the recipient's TIN (social security number (SSN), individual taxpayer identification number (ITIN), or employer identification number (EIN)) on the recipient's copy of Form 1042-S (that is, Copies B, C, and D), including a substitute form. To truncate the recipient's TIN, only the last four digits of a TIN must be displayed and the remaining digits must be replaced with either asterisks (*) or Xs. For example, an SSN or ITIN must be truncated

on the recipient's copy as XXX-XX-nnnn. An EIN must be truncated as XXXXXnnnn.

Withholding agents may also truncate a recipient's FTIN on the recipient's copy of Form 1042-S (Copies B, C, and D), including a substitute form. The same rules for truncating a recipient's U.S. TIN stated above must be followed if truncating a recipient's FTIN.

Note. The recipient's TIN and FTIN must not be truncated on Copy A filed with the IRS. The withholding agent's EIN cannot be truncated on any copy.

Need assistance? For additional information and instructions on filing Forms 1042-S electronically, extensions of time to file (Form 8809), and hardship waivers (Form 8508), see Pub. 1187.

You also can call the Information Reporting Program at 866-455-7438 (toll free) or 304-263-8700 (not a toll-free number). Do not call the Information Reporting Program for tax law questions. The Information Reporting Program also can be reached by fax at 877-

477-0572 (toll free) and international fax at 304-579-4105 (not a toll-free number).

If you have tax law questions pertaining to Form 1042-S, call 267-941-1000 (not a toll-free number).

Additional Information

For more information on the withholding of tax, see Pub. 515. To order this publication and other publications and forms, call 800-TAX-FORM (800-829-3676). You can download or print some of the forms and publications you may need on [IRS.gov/Forms](https://www.irs.gov/forms).

Otherwise, you can go to [IRS.gov/OrderForms](https://www.irs.gov/OrderForms) to place an order and have forms mailed to you. You should receive your order within 10 business days.

Record Retention

Withholding agents should retain a copy of the information returns filed with the IRS, or have the ability to reconstruct the data, for at least 3 years after the reporting due date.

Substitute Forms

The official Form 1042-S is the standard for substitute forms. All substitute forms must comply with the rules set forth in Pub. 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns. A substitute of Form 1042-S that is furnished to the recipient (Copy B, C, or D) must conform in format and size to the official IRS form and must contain the exact same information as the copy filed with the IRS. However, the size of the form may be adjusted if the substitute form is presented on a landscape-oriented page instead of portrait. Only one Form 1042-S may be submitted per page, regardless of orientation. You may be subject to a penalty for failure to furnish a correct information return. See Penalties, later.

Note. A withholding agent is required to provide a recipient with a separate substitute Form 1042-S for each type of payment of income (as determined by the income code in Box 1).



All of the fields on the substitute form must match the copy filed with the IRS and must comply with IRS standards (see Pub. 1179). Any differences between the substitute form issued to recipients and the copy filed with the IRS will lead to delays in processing the recipient's tax return. The IRS may disallow claims for refund or credit for amounts withheld reported on Form 1042-S if the substitute form attached to such claims differs from the copy that was filed with the IRS.

Penalty for filing incorrect substitute form. Privately printed substitute Forms 1042-S must be exact copies of both the format and content of the official Form 1042-S. If you file a substitute for Form 1042-S, Copy A, with the IRS that is not an exact copy of the official Form 1042-S, Copy A, you may be subject to a penalty for failure to file a correct information return. See *Penalties*, later.

Account-by-Account Reporting by Certain Financial Institutions

A U.S. financial institution or U.S. branch of a foreign financial institution maintaining an account within the United States is required to report payments of the same type of income (as determined by the income code in Box 1) made to multiple financial accounts held by the same recipient on a separate Form 1042-S for each account. For this purpose, a financial account is an account described in Regulations section 1.1471-5(b)(1). See instructions for Box 13k, Recipient's Account Number, later, for information on designating each account with a separate account number.

Combined Reporting Procedures

Rev. Proc. 99-50 provides special procedures for successor entities to use combined information reporting under chapter 3 in certain situations following a merger or acquisition. A withholding agent may also use these procedures for purposes of reporting under chapter 4.

Deposit Requirements

For information and rules concerning federal tax deposits, see *Depositing Withheld Taxes* in Pub. 515 or *Deposit Requirements* in the Instructions for Form 1042.

Definitions

Withholding agent. A withholding agent is any person, U.S. or foreign, that has control, receipt, or custody of an amount subject to withholding under chapter 3, who can disburse or make payments of an amount subject to withholding, or who makes a withholdable payment under chapter 4. The withholding agent may be an individual, corporation, partnership, trust, association, or any other entity.

The term “withholding agent” also includes, but is not limited to, a qualified intermediary (QI), a nonqualified intermediary (NQI), a withholding foreign partnership (WP), a withholding foreign trust (WT), a flow-through entity, a U.S. branch that is treated as a U.S. person under Regulations section 1.1441-1(b)(2)(iv)(A), a territory FI, a nominee

under section 1446, and an authorized agent. A person may be a withholding agent even if there is no requirement to withhold from a payment or if another person has already withheld the required amount from a payment.

In most cases, the U.S. person who pays (or causes to be paid) the item of U.S. source income to a foreign person (or to its agent) must withhold. However, other persons may be required to withhold. For example, if a payment is made by a QI (whether or not it assumes primary withholding responsibility) and the QI knows that withholding was not done by the person from which it received the payment, then that QI is required to do the appropriate withholding. In addition, withholding must be done by any QI that assumes primary withholding responsibility under chapters 3 and 4, a WP, a WT, a U.S. branch that agrees to be treated as a U.S. person under Regulations section 1.1441-1(b)(2)(iv) (A), or an authorized agent. Finally, if a payment is made by an NQI or a flow-through entity that knows, or has reason to know, that withholding was not done, that

NQI or flow-through entity is required to withhold since it also falls within the definition of a withholding agent.

Account holder. Generally, the account holder is the person that holds the account. See Regulations section 1.1471-5(a).

Amount subject to withholding. Generally, an amount subject to chapter 3 withholding is an amount from sources within the United States that is fixed or determinable annual or periodical (FDAP) income. FDAP income is all income included in gross income, including interest (as well as OID), dividends, rents, royalties, and compensation. Amounts subject to chapter 3 withholding do not include amounts that are not FDAP, such as most gains from the sale of property (including market discount and option premiums), as well as other specific items of income (such as interest on bank deposits and short-term OID). See Regulations section 1.1441-2.

Authorized agent. An agent is an authorized agent for purposes of filing Form 1042 or making tax deposits and payments on behalf

of its principal (payer) only if all five of the following conditions apply.

1. There is a written agreement between the payer and the person acting as agent.
2. A Form 8655, Reporting Agent Authorization, is filed with the IRS if the agent is filing Form 1042 (in its own name) on behalf of the payer.
3. The books and records and relevant personnel of the agent are available to the payer.
4. The payer remains fully liable for the acts of its agent and does not assert any of the defenses that otherwise may be available.
5. If the agent is filing Form 1042 (in its own name) on behalf of the payer, the agent is reported as the withholding agent in Boxes 12a through 12i and information about the payer is reported in Boxes 16a through 16e of the Form 1042-S.

A sponsoring entity is a reporting agent with respect to withholdable payments and must fulfill the above conditions to be an authorized agent.

For more information on these conditions, see Regulations sections 1.1441-7(c) and 1.1474-1(a)(3)(ii).

Beneficial owner. For payments other than those for which a reduced rate of withholding is claimed under an income tax treaty, the beneficial owner of income in most cases is the person who is required under U.S. tax principles to include the income in gross income on a tax return. A person is not a beneficial owner of income, however, to the extent that person is receiving the income as a nominee, agent, or custodian, or to the extent the person is a conduit whose participation in a transaction is disregarded. In the case of amounts paid that do not constitute income, beneficial ownership is determined as if the payment were income.

Foreign partnerships, foreign simple trusts, and foreign grantor trusts are not the beneficial owners of income paid to the

partnership or trust. The beneficial owners of income paid to a foreign partnership in most cases are the partners in the partnership, provided that the partner is not itself a partnership, foreign simple or grantor trust, nominee, or other agent. The beneficial owner of income paid to a foreign simple trust (a foreign trust that is described in section 651(a)) in most cases is the beneficiary of the trust, if the beneficiary is not a foreign partnership, foreign simple or grantor trust, nominee, or other agent. The beneficial owner of a foreign grantor trust (a foreign trust to the extent that all or a part of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679) is the person treated as the owner of the trust. The beneficial owner of income paid to a foreign complex trust (a foreign trust that is not a foreign simple trust or foreign grantor trust) is the trust itself.

The beneficial owner of income paid to a foreign estate is the estate itself.

A payment to a U.S. partnership, U.S. trust, or U.S. estate is not subject to withholding

under chapter 3 or 4. A U.S. partnership, trust, or estate should provide the withholding agent with a Form W-9, Request for Taxpayer Identification Number and Certification. In most cases, these beneficial owner rules apply for purposes of section 1446; however, there are exceptions.

1. Chapter 3 withholding rate pool. A payment of a single type of income, determined in accordance with the income codes used to file Form 1042-S, that is subject to a single rate of withholding and a single chapter 4 exemption code.
2. Chapter 4 withholding rate pool. A pool of account holders or payees provided on an FFI withholding statement (or a chapter 4 withholding statement) that is described in Regulations section 1.1471-1(b)(20).

Disregarded entity. A business entity that has a single owner and is not a corporation under Regulations section 301.7701-2(b) is disregarded as an entity separate from its owner.

Dividend equivalent. To the extent specified in section 871(m), and the regulations thereunder, a dividend equivalent is a payment (within the meaning of Regulations section 1.871-15(i)) that, directly or indirectly, is contingent on, or determined by reference to, the payment of a dividend from U.S. sources. Dividend equivalent payments include the following payments.

1. A substitute dividend made under a securities lending or sale-repurchase transaction involving a U.S. stock.
2. A payment made under a specified notional principal contract or a specified equity-linked instrument.

Exempt beneficial owner. An exempt beneficial owner means a person that is described in Regulations section 1.1471-6 and includes a foreign government, a political subdivision of a foreign government, a wholly owned instrumentality or agency of a foreign government or governments, an international organization, a wholly owned agency or instrumentality of an international organization, a foreign central bank of issue,

a government of a U.S. possession, certain retirement funds, and certain entities wholly owned by one or more exempt beneficial owners. In addition, an exempt beneficial owner includes any person treated as an exempt beneficial owner under an applicable Model 1 IGA or Model 2 IGA.

Exempt recipient. An exempt recipient is any payee that is exempt from the Form 1099 reporting requirements.

Expatriate. A person is considered an expatriate if he or she relinquishes U.S. citizenship or, in the case of a long-term resident of the United States, ceases to be a lawful permanent resident as defined in section 7701(b)(6).

Fiscally transparent entity. An entity is treated as fiscally transparent with respect to an item of income for which treaty benefits are claimed to the extent that the interest holders in the entity must, on a current basis, take into account separately their shares of an item of income paid to the entity, whether or not distributed, and must determine the character of the items of income as if they

were realized directly from the sources from which realized by the entity. For example, partnerships, common trust funds, and simple trusts or grantor trusts in most cases are considered to be fiscally transparent with respect to items of income received by them.

Flow-through entity. A flow-through entity is a foreign partnership (other than a withholding foreign partnership), a foreign simple or grantor trust (other than a withholding foreign trust), or, for any payments for which a reduced rate of withholding under an income tax treaty is claimed, any entity to the extent the entity is considered to be fiscally transparent under section 894 with respect to the payment by an interest holder's jurisdiction.

Financial institution. A financial institution generally means an entity that is a depository institution, custodial institution, investment entity, or an insurance company (or holding company of an insurance company) that issues cash value insurance or annuity contracts. See Regulations section 1.1471-5(e).

Foreign financial institution (FFI). An FFI is an entity described in Regulations section 1.1471-5(d) or an entity treated as a financial institution under an Intergovernmental Agreement (IGA).

Deemed-compliant FFI. Under section 1471(b)(2), certain FFIs are deemed to comply with the regulations under chapter 4 without the need to enter into an FFI agreement with the IRS. However, certain deemed-compliant FFIs are required to register with the IRS and obtain a GIIN. These FFIs are referred to as **registered deemed-compliant FFIs**. See Regulations section 1.1471-5(f)(1). Registered deemed-compliant FFIs also include certain FFIs that satisfy the requirements of an applicable IGA.

Nonparticipating FFI. A nonparticipating FFI is an FFI that is not a participating FFI, deemed-compliant FFI, or exempt beneficial owner.

Participating FFI. A participating FFI is an FFI that has agreed to comply with the terms of an FFI agreement with respect to all branches of the FFI, other than a branch that

is a reporting Model 1 FFI or a U.S. branch. The term “participating FFI” also includes a reporting Model 2 FFI and a QI branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.

Foreign person. A foreign person includes a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, and any other person that is not a U.S. person. The term also includes a foreign branch or office of a U.S. financial institution or U.S. clearing organization if the foreign branch is a QI. A payment to a U.S. branch of a foreign person is treated as a payment to a foreign person for purposes of Form 1042-S.

Global intermediary identification number (GIIN). The GIIN is the identification number that is assigned to a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI), or other entity for chapter 4 reporting purposes.

Intermediary. An intermediary is a person that acts as a custodian, broker, nominee, or

otherwise as an agent for another person, regardless of whether that other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary.

Qualified intermediary (QI). A QI is an intermediary or eligible entity that is a party to a withholding agreement with the IRS. A QI that is a financial institution must have a chapter 4 status described in Regulations section 1.1441-1(e)(5)(ii). An entity must indicate its status as a QI on a Form W-8IMY submitted to a withholding agent. For information on a QI withholding agreement, see Rev. Proc. 2017-15, available at [IRS.gov/irb/2017-03_IRB#RP-2017-15](https://www.irs.gov/irb/2017-03_IRB#RP-2017-15), and [IRS.gov/QualifiedIntermediary](https://www.irs.gov/QualifiedIntermediary).

A branch of a financial institution may not act as a QI in a country that does not have approved know-your-customer (KYC) rules. Countries having approved KYC rules are listed on IRS.gov.

Branches that operate in non-KYC approved jurisdictions as intermediaries are required to act as nonqualified intermediaries. See the

Instructions for Form W-8IMY for more information on the definition of a QI.

Nonqualified intermediary (NQI). An NQI is any intermediary that is not a U.S. person and that is not a QI.

Private arrangement intermediary (PAI).

A QI that is an FFI may enter into a contractual agreement with another intermediary under which the other intermediary generally agrees to perform all of the obligations of the QI with respect to the accounts maintained directly by the other intermediary. See the QI agreement for the requirements of a PAI and a QI's agreement with a PAI.

Nonfinancial foreign entity (NFFE). An NFFE is a foreign entity or an entity incorporated or organized under the laws of any U.S. territory that is not a financial institution.

Excepted NFFE. The term “excepted NFFE” means an NFFE that is described in Regulations section 1.1472-1(c)(1) and generally includes a publicly traded

corporation, certain affiliated entities related to a publicly traded corporation, certain territory entities, active NFFEs, and entities excluded from the definition of FFI (excluded FFIs) described in Regulations section 1.1471-5(e)(5).

Nonexempt recipient. A nonexempt recipient is any person who is not an exempt recipient under chapter 61 of the Code.

Nonresident alien individual. Any individual who is not a citizen or resident of the United States is a nonresident alien individual. An alien individual meeting either the green card test or the substantial presence test for the calendar year is a resident alien. Any person not meeting either test is a nonresident alien individual.

Additionally, an alien individual who is treated as a nonresident alien pursuant to Regulations section 301.7701(b)-(7) for purposes of figuring out the individual's U.S. tax liability, or an alien individual who is a bona fide resident of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or American

Samoa is a nonresident alien individual. An individual will not be treated as a U.S. person for a tax year or any portion of a tax year that the individual is a dual-resident taxpayer who is treated as a nonresident alien for purposes of figuring his or her U.S. tax liability. See Pub. 519, U.S. Tax Guide for Aliens, for more information on resident and nonresident alien status.



Even though a nonresident alien individual married to a U.S. citizen or resident alien may choose to be treated as a resident alien for certain purposes (for example, filing a joint income tax return), such individual is still treated as a nonresident alien for withholding tax purposes.

Payee. Except as otherwise provided, the payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount or treated as the recipient of the payment for purposes of reporting on Form 1042-S. See Regulations section 1.1471-3(a).

Presumption rules. For withholdable payments and for amounts subject to withholding under chapter 3, the presumption rules are those rules that a withholding agent must follow to determine the status of a beneficial owner or payee (for example, as a U.S. person or a foreign person) when it cannot reliably associate a payment with valid documentation. See, for example, Regulations sections 1.1441-1(b)(3), 1.1441-4(a), 1.1441-5(d) and (e), 1.1441-9(b)(3), 1.1446-1(c)(3), and 1.6049-5(d). Also see Pub. 515. For a withholdable payment (defined in Regulations section 1.1473-1(a)), the withholding agent must also follow the presumption rules under Regulations sections 1.1471-3(f) and, for an FFI, 1.1471-4(c)(4)(i) to determine the chapter 4 status of the payee when it cannot reliably associate a payment with valid documentation.

Publicly traded partnership (PTP). A PTP is any partnership in which interests are regularly traded on an established securities market or are readily tradable on a secondary market (regardless of the number of its

partners). However, it does not include a PTP treated as a corporation under section 7704.

Qualified derivatives dealer (QDD). A QDD is a qualified intermediary that is an eligible entity that agrees to meet the requirements of Regulations section 1.1441-1(e)(6)(i) and the QI agreement. An eligible entity is defined in Regulations section 1.1441-1(e)(6)(ii).

To act as a QDD, the home office or branch, as applicable, must qualify and be approved for QDD status and must represent itself as a QDD on its Form W-8IMY and separately identify the home office or branch as a recipient on a withholding statement (if required).

Each home office or branch that obtains QDD status is treated as a separate QDD. See Regulations section 1.1441-1(e)(6) and Rev. Proc. 2017-15 for more information.

Qualified securities lender (QSL). A QSL is a foreign financial institution that satisfies **all** of the following.

- It is a bank, custodian, broker-dealer, or clearing organization that is regulated by

the government in its home jurisdiction and that regularly borrows and lends the securities of U.S. corporations to unrelated customers.

- It is subject to audit by the IRS under section 7602 or by an external auditor if it is a QI.
- It provides to the withholding agent an annual certification of its QSL status.
- It meets the requirements to qualify as a QSL provided in Notice 2010-46 for the transition period and until additional published guidance is issued. See Notice 2010-46 at [IRS.gov/irb/2010-24 IRB/#NOT-2010-46](https://www.irs.gov/irb/2010-24_IRB/#NOT-2010-46).

Note that withholding agents may apply the transition rules described in Notice 2010-46, Part III, for payments made in calendar years 2018 and 2019. See Notice 2018-05 at [IRS.gov/irb/ 2018-06 IRB#NOT-2018-05](https://www.irs.gov/irb/2018-06_IRB#NOT-2018-05).

Recalcitrant account holder. Generally, a recalcitrant account holder is an account holder of a participating or deemed-compliant FFI that failed to provide the documentation

required under chapter 4 to determine the account holder's status or to report the account as a U.S. account. See Regulations section 1.1471-5(g).

Recipient. For chapter 3 purposes, a recipient includes any of the following.

- A beneficial owner of income.
- A QI.
- A WP or WT.
- A U.S. branch that is treated as a U.S. person under Regulations section 1.1441-1(b)(2)(iv)(A).
- A foreign partnership or a foreign trust (other than a WP or WT), but only to the extent the income is effectively connected with its conduct of a trade or business in the United States.
- A payee who is not known to be the beneficial owner, but who is presumed to be a foreign person under the presumption rules.
- A PAI.

- A partner receiving a distribution of effectively connected income from a PTP or nominee.
- A QSL.

For chapter 3 purposes, a recipient does not include any of the following.

- An NQI.
- A nonwithholding foreign partnership, if the income is not effectively connected with its conduct of a trade or business in the United States.
- A disregarded entity, other than a hybrid entity claiming treaty benefits.
- A foreign trust that is described in section 651(a) (a foreign simple trust) if the income is not effectively connected with the conduct of a trade or business in the United States.
- A foreign trust to the extent that all or a part of the trust is treated as owned by the grantor or other person under sections 671 through 679 (a foreign grantor trust).

- A U.S. branch that is not treated as a U.S. person unless the income is, or is treated as, effectively connected with the conduct of a trade or business in the United States.

For chapter 4 purposes, a recipient also includes any of the following.

- A recalcitrant account holder not included in a chapter 4 reporting pool.
- A QI.
- A WP or WT.
- A PAI.
- A participating FFI or deemed-compliant FFI that is an NQI, NWP, or NWT and provides chapter 4 withholding rate pool information to the extent permissible.
- A participating FFI or deemed-compliant FFI that is the beneficial owner, including a nonreporting FFI under a Model 1 or Model 2 IGA.

- A U.S. branch or territory FI treated as a U.S. person under Regulations section 1.1441-1(b)(2)(iv)(A).
- An NFFE that is not a flow-through entity or acting as an intermediary.
- A foreign partnership or a foreign trust (other than a WP or WT), but only to the extent the income is effectively connected with its conduct of a trade or business in the United States.
- A partner or beneficiary of a flow-through entity that is an NFFE (other than a WP or WT).
- A nonparticipating FFI that is a beneficial owner.
- An exempt beneficial owner that is not a flow-through entity or acting as an intermediary.

For chapter 4 purposes, a recipient is generally the same person that is a recipient for chapter 3 purposes.

Specified notional principal contract (SNPC). An SNPC is any notional principal

contract that satisfies **one** or more of the following.

- In connection with entering into the contract, any long party to the contract transfers the underlying security to any short party to the contract.
- In connection with the termination of the contract, any short party to the contract transfers the underlying security to any long party to the contract.
- The underlying security is not readily tradable on an established securities market.
- In connection with entering into the contract, the underlying security is posted as collateral by any short party to the contract with any long party to the contract.
- The IRS identifies the contract as an SNPC.

Specified U.S. person. A specified U.S. person is any U.S. person other than a person identified in Regulations section 1.1473-1(c).

Substantial U.S. owner. A substantial U.S. owner is a specified U.S. person described in Regulations section 1.1473-1(b). For purposes of filing this form, a Reporting Model 2 FFI reporting an account held by a passive NFFE should substitute the term “controlling person that is a specified U.S. person” for “substantial U.S. owner” and refer to the applicable Model 2 IGA for the definition of controlling person. A territory NFFE that is not an excepted NFFE determines its substantial U.S. owners by applying the 10% threshold in Regulations section 1.1473-1(b)(1).

Territory FI. A territory FI is a financial institution that is incorporated or organized under the laws of any U.S. territory and is not an investment entity. See Regulations section 1.1471-5(e)(1)(iii) for the definition of investment entity.

U.S. branch treated as a U.S. person. A U.S. branch may agree to be treated as a U.S. person if it meets the requirements described in the regulations under chapter 3. See Regulations section 1.1441-1(b)(2)(iv)

(A). Additionally, a territory FI may agree to be treated as a U.S. person.

The U.S. branch or territory FI must provide a Form W-8IMY evidencing that it is agreeing to be treated as a U.S. person.



A U.S. branch that is treated as a U.S. person is treated as such solely for purposes of determining whether a payment is subject to withholding. The branch is, for purposes of information reporting, a foreign person, and payments to such a branch must be reported on Form 1042-S.

Withholdable payment. A withholdable payment is generally **any** payment of U.S. source FDAP income, subject to certain exceptions. For exceptions and additional information, see Pub. 515 and Regulations section 1.1473-1(a).

Withholding certificate. The term “withholding certificate” refers to Form W-8 or Form W-9 in most cases.

Note. Throughout these instructions, a reference to or mention of “Form W-8” is a

reference to Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and/or W-8IMY.

Withholding foreign partnership (WP) or withholding foreign trust (WT). A WP or WT is a foreign partnership or trust that has entered into a withholding agreement with the IRS in which it agrees to assume primary withholding responsibility for all payments that are made to it for its partners, beneficiaries, or owners under chapter 3 (except for sections 1445 and 1446) and under chapter 4. For information on these withholding agreements, see Rev. Proc. 2017-21 at [IRS.gov/irb/2017-06_IRB#RP-2017-21](https://www.irs.gov/irb/2017-06_IRB#RP-2017-21) and Regulations section 1.1441-5.

Nonwithholding foreign partnership (NWP) or nonwithholding foreign trust (NWT). An NWP or NWT is any partnership or trust (other than a complex trust) that is not a U.S. person and that is not a WP or WT.

Amounts Subject to Reporting on Form 1042-S

Amounts subject to reporting on Form 1042-S are amounts from U.S. sources paid to

foreign persons (including persons presumed to be foreign) or included in a U.S. payee pool that are reportable under chapters 3 and 4, even if no amount is deducted and withheld from the payment because of a treaty or Code exception to taxation or if any amount withheld was repaid to the payee. Amounts subject to reporting are amounts from sources within the United States that constitute (a) fixed or determinable annual or periodical (FDAP) income (including deposit interest); (b) certain gains from the disposal of timber, coal, or domestic iron ore with a retained economic interest; and (c) gains relating to contingent payments received from the sale or exchange of patents, copyrights, and similar intangible property. A payment is also subject to reporting if withholding under chapter 4 is applied (or required to be applied) to the payment.

Amounts subject to reporting on Form 1042-S include, but are not limited to, the following amounts to the extent they are from U.S. sources.

- **Interest on deposits paid to certain nonresident aliens.**

Withholding agents must report certain interest described in section 871(i)(2)(A) aggregating \$10 or more paid with respect to a deposit maintained at an office within the United States if such interest is paid to a nonresident alien individual who is a resident of a country identified in Rev. Proc. 2018-36, available at [IRS.gov/irb/2018-38_IRB#RP-2018-36](https://www.irs.gov/irb/2018-38_IRB#RP-2018-36) (or any superseding Revenue Procedure that is effective as of January 1, 2019). A payer may elect to report interest described above paid to any nonresident alien individual by reporting all such interest.

When completing Form 1042-S, use income code 29 in Box 1 and exemption code 02 in Box 3a for chapter 3 purposes, and the applicable chapter 4 exemption code in Box 4a (see the instructions for [*Boxes 3a and 4a*](#), later).

- **Interest on deposits subject to chapter 4 withholding.** Interest on deposits from U.S. sources are withholdable payments and, therefore,

may be subject to withholding under chapter 4. If payers withhold tax, they must report the interest and tax on Form 1042-S.

- **Corporate distributions.** The entire amount of a corporate distribution (whether actual or deemed) must be reported, regardless of any estimate of the part of the distribution that represents a taxable dividend. Any distribution, however, that is treated as gain from the redemption of stock is not an amount subject to withholding. For information on distributions from the disposition of a U.S. real property interest paid by a publicly traded trust or a qualified investment entity (QIE), see *Distributions Attributable to Dispositions of U.S. Real Property Interests by Publicly Traded Trusts and Qualified Investment Entities*, later.
- **Interest.** Interest subject to reporting includes the part of a notional principal contract payment that is characterized as interest.
- **Rents.**

- **Royalties.**
- **Compensation for independent personal services performed in the United States.**
- **Compensation for dependent personal services performed in the United States (but only if the beneficial owner is claiming treaty benefits).**
- **Annuities.**
- **Pension distributions and other deferred income.**
- **Most gambling winnings.** Proceeds from a wager placed in blackjack, baccarat, craps, roulette, or big-6 wheel are not amounts subject to reporting.
- **Cancellation of indebtedness.** Agents must report income from the cancellation of indebtedness unless the withholding agent is unrelated to the debtor and does not have knowledge of the facts that give rise to the payment.
- **Effectively connected income (ECI).** ECI includes amounts that are (or are

presumed to be) effectively connected with the conduct of a trade or business in the United States even if no withholding certificate is required. Note that bank deposit interest is subject to Form 1042-S reporting if it is ECI or otherwise reportable on Form 1042-S (see Interest on deposits, earlier). ECI of a PTP distributed to a foreign partner must be reported on Form 1042-S.

- **Notional principal contract income.**

Income from notional principal contracts that the payer knows, or must presume, is effectively connected with the conduct of a U.S. trade or business is subject to reporting using income code 32. The amount to be reported is the amount of cash paid on the contract during the calendar year. Any amount of interest determined under the provisions of Regulations section 1.446-3(g)(4) (dealing with interest in the case of a significant nonperiodic payment) is reportable as interest and not as notional principal contract income. See, however,

the separate reporting for U.S.-source dividend equivalent payments.

- **Insurance premiums.** Insurance premiums from U.S. sources (regardless of whether or not the premium payments are subject to the section 4371 excise tax) are withholdable payments under chapter 4. If the payment is actually withheld upon or should have been withheld upon (but the withholding agent failed to withhold), such amount must be reported on Form 1042-S. Insurance premiums from U.S. sources are amounts subject to chapter 3 withholding (excluding amounts subject to the section 4371 excise tax) that must be reported on Form 1042-S.
- **REMIC excess inclusions.** Excess inclusions from REMICs (income code 02) and withheld tax must be reported on Form 1042-S. A domestic partnership must separately state a partner's allocable share of REMIC taxable income or net loss and the excess inclusion amount on Schedule K-1 (Form 1065). If the partnership allocates all or some part of

its allocable share of REMIC taxable income to a foreign partner, the partner must include the partner's allocated amount in income as if that amount was received on the earliest to occur of (1) the date of distribution by the partnership, (2) the date the foreign partner disposes of its indirect interest in the REMIC residual interest, or (3) the last day of the partnership's tax year.

The partnership must withhold tax on the part of the REMIC amount that is an excess inclusion.

An excess inclusion allocated to the following foreign persons must be included in that person's income at the same time as other income from the entity is included in income.

- Shareholder of a real estate investment trust.
- Shareholder of a regulated investment company.
- Participant in a common trust fund.

- Patron of a subchapter T cooperative organization.
- **Students, teachers, and researchers.** Amounts paid to foreign students, trainees, teachers, or researchers as scholarship or fellowship income, and compensation for personal services (whether or not exempt from tax under an income tax treaty), must be reported. However, amounts that are exempt from tax under section 117 are not subject to reporting.
- **Amounts paid to foreign governments, foreign central banks of issue, and international organizations.** These amounts are subject to reporting even if they are exempt from chapter 3 withholding under section 892 or 895.
- **Foreign targeted registered obligations.** Interest paid on registered obligations targeted to foreign markets paid by a U.S. person to a foreign person other than a financial institution or a member of a clearing organization is an amount subject to reporting.

- **Original issue discount (OID) from the redemption of an OID obligation.** The amount subject to reporting is the amount of OID actually includible in the gross income of the foreign beneficial owner of the income, if known. Otherwise, the withholding agent should report the entire amount of OID as if the recipient held the instrument from the date of original issuance. See Pub. 1212, Guide to Original Issue Discount (OID) Instruments.
- **Certain distributions attributable to dispositions of U.S. real property interests.** See Distributions Attributable to Dispositions of U.S. Real Property Interests by Publicly Traded Trusts and Qualified Investment Entities, later.
- **Other U.S.-source dividend equivalent payments.** Other U.S.-source dividend equivalent payments are payments other than substitute dividends that qualify as U.S.-source dividends under section 871(m) and the regulations thereunder.

Report these amounts using income code 40 or 53.

- **Guarantee of indebtedness.** This includes amounts paid, directly or indirectly, for the provision of a guarantee of indebtedness issued after September 27, 2010. They must be paid by a noncorporate resident or U.S. corporation or by any foreign person if the amounts are effectively connected with the conduct of a U.S. trade or business. Report these amounts using income code 41.
- **Specified federal procurement payments.** Report specified federal procurement payments subject to withholding under section 5000C.

Amounts That Are Not Subject to Reporting on Form 1042-S

Interest and OID from short-term obligations. Interest and OID from any obligation payable 183 days or less from the date of original issue are generally not required to be reported on Form 1042-S. See, however, the reporting requirements for

deposit interest described in *Interest on deposits paid to certain nonresident aliens* in the bullet list under *Amounts Subject to Reporting on Form 1042-S*, earlier.

Registered obligations targeted to foreign markets. Interest on a registered obligation that is targeted to foreign markets and that qualifies as portfolio interest is not subject to reporting if it is paid to a registered owner that is a financial institution or member of a clearing organization and you have received the required certifications.



Reporting will be required on interest paid on any registered obligation (regardless of whether targeted to foreign markets) if the registered obligation is issued after December 31, 2015.

Bearer obligations targeted to foreign markets. Do not file Form 1042-S to report interest not subject to withholding on bearer obligations if a Form W-8 is not required.



Withholding is required on interest paid on any bearer obligations targeted to foreign markets if the

obligation is issued after March 18, 2012. You must file Form 1042-S to report this interest paid on an obligation issued after that date.

Notional principal contract payments that are not ECI or dividend equivalents.

Do not report on Form 1042-S amounts paid on a notional principal contract, other than a specified notional principal contract (SNPC), if the amounts are not effectively connected with the conduct of a trade or business in the United States. All amounts paid on an SNPC that are treated as dividend equivalent payments should be reported as such on Form 1042-S.

Accrued interest and OID. Interest paid on obligations sold between interest payment dates and the part of the purchase price of an OID obligation that is sold or exchanged in a transaction other than a redemption is not subject to reporting unless the sale or exchange is part of a plan, the principal purpose of which is to avoid tax, and the withholding agent has actual knowledge or reason to know of such plan.

Certain withholdable payments.

Withholdable payments not subject to reporting for chapter 3 purposes (other than bank deposit interest paid to certain nonresident aliens) are not required to be reported if withholding is not applied (or required to be applied) under chapter 4.

Distributions Attributable to Dispositions of U.S. Real Property Interests by Publicly Traded Trusts and Qualified Investment Entities

Publicly traded trusts. In general, when a publicly traded trust makes a distribution to a foreign person attributable to the disposition of a U.S. real property interest, it must withhold tax under section 1445. However, this withholding liability is shifted to the person who pays the distribution to a foreign person (or to the account of the foreign person) if the special notice requirement of Regulations section 1.1445-8(f) and other requirements of Regulations section 1.1445-8(b)(1) are satisfied.

The amount subject to withholding for a distribution by a publicly traded trust is determined under the rules of Regulations section 1.1445-5(c)(3).

Qualified investment entities (QIEs).

Special rules apply to QIEs. A QIE is one of the following.

- A real estate investment trust (REIT).
- A regulated investment company (RIC) that is treated as a U.S. real property holding corporation (after applying certain rules in section 897(h) (4)(A)(ii)).

Look-through rule for QIEs. In most cases, any distribution from a QIE to a nonresident alien, foreign corporation, or other QIE that is attributable to the QIE's gain from the sale or exchange of a U.S. real property interest is treated as gain recognized by the nonresident alien, foreign corporation, or other QIE from the sale or exchange of a U.S. real property interest.

A distribution by a QIE to a nonresident alien or foreign corporation that is treated as gain from the sale or exchange of a U.S. real

property interest by the shareholder is subject to withholding at 21%.

Certain exceptions apply to the lookthrough rule for distributions by QIEs. Any distribution by a QIE with respect to stock regularly traded on an established securities market in the United States is not treated as gain from the sale or exchange of a U.S. real property interest if the shareholder did not own more than 5% of that stock (or 10% of that stock in the case of REITs) at any time during the 1-year period ending on the date of the distribution. A distribution by a REIT generally is not treated as gain from the sale or exchange of a U.S. real property interest if the shareholder is a qualified shareholder (as described in section 897(k)(3)). These distributions may be included in the shareholder's gross income as a dividend (income code 06) from the QIE, not as long-term capital gain.

In addition, a qualified foreign pension fund or an entity all of the interests of which are held by a qualified foreign pension fund generally is not subject to the look-through

rule for distributions by QIEs for purposes of section 897(h).

Use Forms 1042-S and 1042 to report and pay over the withheld amounts. All other withholding required under section 1445 is reported and paid over using Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests, and Form 8288-A.

For more information on reporting income from real property interests, see *U.S. Real Property Interest* in Pub. 515.

Publicly Traded Partnerships (Section 1446 Withholding Tax)

A publicly traded partnership (PTP) (defined under *Definitions*, earlier) that has effectively connected income must pay a withholding tax under section 1446 on distributions of that income made to its foreign partners and file Form 1042-S using income code 27 and chapter 4 exemption code 14. A nominee that receives a distribution of effectively connected income from a PTP is treated as the withholding agent to the extent of the amount

specified in the qualified notice received by the nominee. For this purpose, a nominee is a domestic person that holds an interest in a PTP on behalf of a foreign person. See Regulations section 1.1446-4 and Pub. 515 for details.



If you are a nominee that is the withholding agent under section 1446, enter the PTP's name and other required information in Boxes 15a through 15i on Form 1042-S.

Partnerships (other than PTPs) that have effectively connected gross income allocable to foreign partners must file Form 8804, Annual Return for Partnership Withholding Tax (Section 1446). If these partnerships have effectively connected taxable income allocable to foreign partners, they must also pay a withholding tax under section 1446 and report these amounts on Form 8804 and the partners' allocable shares of these amounts on Form 8805.