

# 2019

## Instructions for Form 1042-S

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

Volume 2 of 3



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## Requirement To Withhold

**Chapter 3 withholding.** For purposes of sections 1441 and 1442, a withholding agent must withhold 30% of any payment of an amount subject to withholding under chapter 3 (defined above) made to a payee that is a foreign person (or is presumed to be a foreign person) unless it can associate the payment with documentation to treat the payment as made to a foreign person entitled to a reduced rate of or exemption from withholding. For more information, see *Chapter 3 Responsibilities* under *Responsibilities of a Withholding Agent To Obtain Form W-8* in the Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY. Also see Pub. 515.

**Chapter 4 withholding.** For purposes of chapter 4, a withholding agent must withhold 30% of a withholdable payment (defined earlier) made to an FFI that is or is presumed to be a nonparticipating FFI (defined earlier). It also applies to withholdable payments made to certain NFFEs that fail to identify

their substantial U.S. owners (or to certify that they have none) under Regulations section 1.1472-1(b). For more information, see *Chapter 4 Responsibilities* under *Responsibilities of a Withholding Agent To Obtain Form W-8* in the Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY. Also see Pub. 515.

A payment will be subject to withholding under either chapter 3 or chapter 4 but not both. If the payment is of an amount subject to both chapter 3 and chapter 4 withholding, chapter 4 withholding takes precedence.

## **Before Completing Form 1042-S**

You must complete the following steps before completing Form 1042-S.

**Step 1.** Determine if you have a Form 1042-S filing obligation. If you make a payment described under *Amounts Subject to Reporting on Form 1042-S*, earlier, you are required to file Form 1042-S for that payment. Note that you may have a Form

1042-S reporting obligation even if withholding is not required.

**Step 2.** Determine whether the payment is:

- A “withholdable payment” under chapter 4,
- An “amount subject to withholding under chapter 3,”
- Both a withholdable payment and an amount subject to withholding under chapter 3, or
- Neither a withholdable payment nor an amount subject to withholding under chapter 3.

Be sure to carefully read through the exceptions to “withholdable payment” and the exemptions from withholding or taxation provided under chapter 3 that are included in Pub. 515. Note that reporting and withholding are done either under chapter 3 or chapter 4, not both. However, even if reporting is done under chapter 3, you may be required to provide certain chapter 4 information.

**Step 3.** Determine the chapter indicator to be entered in Box 3. The chapter indicator is generally based on whether amounts were withheld (or paid by the withholding agent) under chapter 3 or chapter 4. For example, if the payment is a withholdable payment and it is subject to chapter 4 withholding (see *Requirement To Withhold*, earlier), enter “4” in Box 3. If no withholding was required on the payment, enter “3” in Box 3. For additional information, see the instructions for *Box 3*, later.

**Note.** You must always complete Boxes 4a (chapter 4 exemption code) and 4b (chapter 4 withholding rate) regardless of the chapter indicator entered in Box 3.

**Note.** If a payment is a withholdable payment under chapter 4, you must complete Boxes 4a (chapter 4 exemption code), 4b (chapter 4 withholding rate), and 13g (recipient chapter 4 status code), even if the payment is properly classified with a chapter 3 indicator in Box 3.

**Note.** If a payment is properly classified with a chapter 3 indicator in Box 3, the withholding

agent is not required to complete Boxes 12e, 13h, 15e, and 16c, all of which request a GIIN.

Be sure to complete a separate Form 1042-S for:

- Each recipient of income,
- Each income type paid to the same recipient, and
- Each amount to which a separate tax rate was applied (if you withheld at more than one tax rate for a specific type of income that you paid to the same recipient).

## **Payments by U.S. Withholding Agents**

**In general.** U.S. withholding agents making payments described under *Amounts Subject to Reporting on Form 1042-S*, earlier, must file a separate Form 1042-S for each recipient who receives the income. Furthermore, withholding agents are not permitted to report multiple types of income on a single Form 1042-S (or substitute Form 1042-S) furnished to a recipient or on Copy A filed

with the IRS. These filers must use a separate Form 1042-S (or substitute form) for information reportable on a single type of income.

See *Payments Made to Persons Who Are Not Recipients*, later, if the payment is made to a foreign person that is not a recipient.

## **Payments to Recipients**

**Payments directly to beneficial owners.** A U.S. withholding agent making a payment directly to a beneficial owner must complete Form 1042-S and treat the beneficial owner as the recipient.

Boxes 15a through 15i should be left blank. The Form 1042-S must also include the appropriate chapter 3 and chapter 4 exemption codes, if applicable, in boxes 3a and 4a, as well as the appropriate recipient codes for the chapter 3 and chapter 4 status codes for a payment that is a withholdable payment and an amount subject to chapter 3 withholding. A U.S. withholding agent should complete Boxes 16a through 16e only if it is completing Form 1042-S as a paying agent

acting pursuant to an agreement to act as an authorized agent for filing and reporting Form 1042 and 1042-S.

In the case of foreign joint owners, you may provide a single Form 1042-S made out to the owner whose status you relied upon to determine the applicable rate of withholding (the owner subject to the highest rate of withholding). If, however, any one of the owners requests its own Form 1042-S, you must furnish a Form 1042-S to the person who requests it. If the request is made after a Form 1042-S was filed reporting the payment and tax withheld to only one of the joint owners, you should amend the originally filed Form 1042-S to allocate the payment and tax withheld among the joint owners accordingly and provide copies of the amended forms to each recipient. If more than one Form 1042-S is issued for a single payment, the aggregate amount paid and tax withheld that is reported on all Forms 1042-S cannot exceed the total amounts paid to joint owners and the tax withheld on those payments. In any event, each Form 1042-S can only include the recipient information (Boxes 13a through 13d)

for one of the beneficial owners. Form 1042-S must not be completed with more than one of the joint owners as the recipient.



*In the case of joint owners, Form 1042-S can only list one of the owners as the recipient in Box 13a. Form 1042-S must not be completed with more than one of the joint owners as the recipient.*

**Example 1.** WA, a U.S. withholding agent, makes a withholdable payment of U.S. source dividends to A, a foreign individual from whom it has received a Form W-8BEN and who is not eligible for a reduced rate of chapter 3 withholding under a treaty. WA must file a Form 1042-S for A, enter "3" in Box 3, "06" in Box 1 (income code), "00" in Box 3a (chapter 3 exemption code), "30.00" in Box 3b (chapter 3 tax rate), "15" in Box 4a (payee not subject to chapter 4 withholding), "00.00" in Box 4b (chapter 4 tax rate), "16" in Box 13f (individual), and "23" in Box 13g (individual).



*See Appendix C for a comprehensive analysis of this Example 1 fact pattern, including a step-by-step guide on how to complete Form 1042-S in its entirety.*

**Payments to a qualified intermediary (including a qualified derivatives dealer), withholding foreign partnership, or withholding foreign trust.** A U.S.

withholding agent that makes payments to a QI (whether or not the QI assumes primary withholding responsibility), a QI acting as a QDD with respect to a payment, a withholding foreign partnership (WP), or a withholding foreign trust (WT) should complete Form 1042-S in most cases, treating the QI, QDD, WP, or WT as the recipient.

If a payment is being made to a QI that is acting as a QDD with respect to the payment, a U.S. withholding agent should report the QDD as the recipient showing the QDD as the recipient in Box 13a (including any branch identifier included on the withholding certificate provided by the QDD) and using

recipient code 35 (qualified derivatives dealer) as the chapter 3 status code.

See *Payments allocated, or presumed made, to U.S. nonexempt recipients*, later, for exceptions.

A QI that does not assume primary withholding responsibility is required to provide information regarding the allocations of income subject to a particular withholding rate to the withholding agent on the withholding statement associated with its Form W-8IMY. In such a case, the U.S. withholding agent must complete a separate Form 1042-S for each withholding rate pool associated with the QI. For purposes of chapter 4, a QI may provide a single pool of recalcitrant account holders (rather than separate pools for each class). In such a case, the withholding agent may use chapter 4 pooled reporting code 49 (QI-Recalcitrant Pool-General). A QI that assumes primary withholding responsibility, a WP, or a WT is not required to provide withholding rate pool information to a withholding agent but will report such information directly to the IRS.

A U.S. withholding agent making a withholdable payment to an FFI that is a QI (that assumes primary withholding responsibility), a WP, or a WT must use recipient code 12 (qualified intermediary), 09 (withholding foreign partnership), or 11 (withholding foreign trust) as the chapter 3 status code and must use recipient code 05 (participating FFI other), 06 (participating FFI reporting Model 2 FFI), 07 (registered deemed-compliant FFI reporting Model 1 FFI), 09 (registered deemed-compliant FFI other) for an FFI treated as deemed-compliant under an IGA, 31 (nonreporting IGA FFI) or, for a payment to a QI, 27 (exempt beneficial owner) as the chapter 4 status code. A U.S. withholding agent must use chapter 4 recipient code 48 (U.S. Payees Pool) when reporting a reportable amount allocated to a chapter 4 withholding rate pool of U.S. payees of a QI and report the chapter 3 recipient code 12 (qualified intermediary). A U.S. withholding agent must not use any chapter 3 pooled reporting code (codes 27 through 32) as such codes are only to be used by a withholding agent that is a QI, QSL, WP, or

WT. See Amounts Paid by Qualified Intermediaries, later, and the instructions for Boxes 13f and 13g, later. Use of an inappropriate recipient code may cause a notice to be generated.



*A QI is required to act in such capacity only for designated accounts. Therefore, such an entity also may provide a Form W-8IMY in which it certifies that it is acting as an NQI for other accounts and, if it is an FFI that is receiving a withholdable payment, that it is a participating FFI, registered deemed-compliant FFI, or FFI treated as deemed-compliant under an IGA. A U.S. withholding agent that receives a Form W-8IMY on which the foreign person providing the form indicates that it is not acting as a QI may not treat the foreign person as a recipient except as otherwise provided in these instructions. A withholding agent must not use the EIN that a QI provides in its capacity as such to report payments that are treated as made to an entity in its capacity as an NQI. In that case, use the GIIN, if any, and EIN that is provided by the entity on its Form W-8IMY in which it*

*claims that it is acting as an NQI or flow-through entity.*

**Note.** A withholding agent is required to use chapter 4 reporting pool codes as the chapter 4 status code in the case of withholdable payments made to:

- A QI that does not assume primary withholding responsibility;
- A participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT; or
- An NQI, NWP, or NWT (other than a nonparticipating FFI) that provides a pool of nonparticipating FFIs, if the QI, NQI, NWP, or NWT provides chapter 4 withholding rate pool information in the withholding statement associated with its Form W-8IMY. See *Amounts paid to a nonqualified intermediary or flow-through entity*, later, and the presumption rules under Regulations section 1.1471-3(f) when such information is not provided for a withholdable payment made to an entity.

**Example 2.** WA, a U.S. withholding agent, makes a withholdable payment of U.S. source dividends to QI, a qualified intermediary that does not assume primary chapters 3 and 4 withholding responsibility and that is a participating FFI. QI provides WA with a valid Form W-8IMY with which it associates a withholding statement that allocates 95% of the payment to a chapter 3, 15% withholding rate pool with a single chapter 4 exemption code, and 5% of the payment to a chapter 4, 30% withholding rate pool of recalcitrant account holders. WA must complete a Form 1042-S for the dividends allocated to the chapter 3, 15% withholding rate pool, showing "3" in Box 3, "00" in Box 3a (chapter 3 exemption code), "15.00" in Box 3b (chapter 3 tax rate), chapter 4 exemption code 15 (payee not subject to chapter 4 withholding) in Box 4a, "00.00" in Box 4b (chapter 4 tax rate) and QI as the recipient in Box 13a along with recipient code 12 (qualified intermediary) as the chapter 3 status code, and recipient code 05 (participating FFI-other) as the chapter 4 status code. WA must also complete a Form

1042-S for the dividends allocated to the chapter 4, 30% withholding rate pool, showing "4" in Box 3, chapter 3 exemption code 12 (payee subjected to chapter 4 withholding) in Box 3a, "00.00" in Box 3b (chapter 3 tax rate), "00" in Box 4a (chapter 4 exemption code), and "30.00" in Box 4b with QI as the recipient in Box 13a, and recipient code 12 (qualified intermediary) as the chapter 3 status code, and recipient code 49 (QI-Recalcitrant Pool-General) as the chapter 4 status code.

***Payments allocated, or presumed made, to U.S. nonexempt recipients.*** A QI may provide Forms W-9 or other information regarding U.S. nonexempt recipients that the QI (or other entity maintaining the account) is required to report under chapter 61 and for which the QI does not assume primary Form 1099 reporting responsibility. A QI may also provide information regarding U.S. nonexempt recipients on whom the QI elects to backup withhold under section 3406 instead of withholding under chapter 4 on payments made to an account holder. If Forms W-9 or other information is provided

together with information allocating all or a part of the payment to U.S. nonexempt recipients, you must report income allocable to the U.S. nonexempt recipients on the appropriate Form 1099 and not on Form 1042-S even though you are paying that income to a QI. The QI may also provide information regarding U.S. nonexempt recipients in a chapter 4 withholding rate pool that the withholding agent must report on Form 1042-S.

You also may be required under the presumption rules to treat a payment made to a QI as made to a payee that is a U.S. nonexempt recipient from which you must withhold on the payment under the backup withholding provisions of the Code. In this case, you must report the payment on the appropriate Form 1099. See the General Instructions for Certain Information Returns, available on IRS.gov.

***Example 3.*** WA, a U.S. withholding agent, makes a withholdable payment of U.S. source dividends to QI, a qualified intermediary and registered deemed-compliant FFI that is a

local FFI described in Regulations section 1.1471-5(f)(1)(i)(A). QI provides WA with a valid Form W-8IMY certifying that it is transmitting Forms W-9 for U.S. nonexempt recipients and with which it associates a withholding statement that allocates 95% of the payment to a chapter 3, 15% withholding rate pool with a single chapter 4 exemption code, and 5% of the payment to C, a U.S. individual. QI also provides WA with C's Form W-9. C is a direct account holder of QI and a U.S. citizen that is a resident of QI's local jurisdiction that QI is not required to report under chapter 4 (see Regulations section 1.1471-5(f)(1)(i)(A)) and thus cannot be included in a chapter 4 withholding rate pool of U.S. payees. See Regulations section 1.6049-4(c)(4). WA must complete a Form 1042-S, showing QI as the recipient in Box 13a, and WA should use recipient code 12 (qualified intermediary) as the chapter 3 status code and recipient code 09 (registered deemed-compliant FFI – other) as the chapter 4 status code for the dividends allocated to the 15% withholding rate pool. WA also must complete a Form 1099-DIV issued to C

reporting the part of the dividend allocated to C.

**Example 4.** WA, a withholding agent, makes a withholdable payment of U.S. source dividends to QI, a qualified intermediary that is a reporting Model 1 FFI. QI provides WA with a valid Form W-8IMY with which it associates a withholding statement that allocates 40% of the payment to a chapter 3, 15% withholding rate pool and 40% to a chapter 3, 30% withholding rate pool. QI does not provide any withholding rate pool information regarding the remaining 20% of the payment. WA must apply the presumption rule to the part of the payment (20%) that has not been allocated. Under the presumption rules of Regulations section 1.1471-3(f) for a withholdable payment made to an entity, 20% of the payment is treated as paid to a nonparticipating FFI. WA must complete three Forms 1042-S. First, a Form 1042-S for dividends subject to 15% withholding, showing "3" in Box 3, "00" in Box 3a (chapter 3 exemption code), "15.00" in Box 3b (chapter 3 tax rate), chapter 4 exemption code 15 (payee not subject to

chapter 4 withholding) in Box 4a, "00.00" in Box 4b (chapter 4 tax rate), QI as the recipient in Box 13a, recipient code 12 (qualified intermediary) as the chapter 3 status code, and recipient code 07 (registered deemed-compliant FFI-reporting Model 1 FFI) as the chapter 4 status code (because the payment is a withholdable payment). Second, a Form 1042-S for dividends subject to 30% withholding, showing "3" in Box 3, "00" in Box 3a (chapter 3 exemption code), "30.00" in Box 3b (chapter 3 tax rate), chapter 4 exemption code 15 (payee not subject to chapter 4 withholding) in Box 4a, "00.00" in Box 4b (chapter 4 tax rate), QI as the recipient in Box 13a, recipient code 12 (qualified intermediary) as the chapter 3 status code, and recipient code 07 (registered deemed-compliant FFI – reporting Model 1 FFI) as the chapter 4 status code. Third, a Form 1042-S for dividends subject to 30% withholding, showing "4" in Box 3, chapter 3 exemption code 12 (payee subjected to chapter 4 withholding) in Box 3a, "00.00" in Box 3b (chapter 3 tax rate), "00" in Box 4a (chapter 4 exemption code), "30.00" in Box

4b (chapter 4 tax rate), "Unknown Recipient" as the recipient name in Box 13a, recipient code 21 (unknown recipient) as the chapter 3 status code, and recipient code 29 (unknown recipient) as the chapter 4 status code. Also, QI's name, status codes, country code, address, GIIN, and QI-EIN must be entered in Boxes 15a through 15i.

**Substitute dividends paid to qualified securities lenders (QSLs).** A withholding agent that makes payments of substitute dividends to a QSL should complete Form 1042-S treating the QSL as the recipient. Use income code 34. Use recipient code 13 or 14 (qualified securities lender – qualified intermediary or qualified securities lender – other) as the chapter 3 status code and include the applicable chapter 4 status code of the QSL.

The withholding agent is not required to withhold on a substitute dividend payment if it receives, at least annually, a certificate from the QSL that includes a statement with the following information.

- The recipient of the substitute dividend is a QSL.
- With respect to the substitute dividend it receives from the withholding agent, the QSL states that it will withhold and remit or pay the proper amount of U.S. gross-basis tax.

If the withholding agent receives a certificate from the QSL that includes a statement that contains the above information, use chapter 3 exemption code 11.

If the QSL is also a QI with primary withholding responsibility, use chapter 3 exemption code 11 and not exemption code 06 for chapter 3 purposes.

**Amounts paid to certain U.S. branches.** A U.S. withholding agent making a payment to a U.S. branch of an FFI or NFFE completes Form 1042-S as follows.

- If a withholding agent makes a payment to a U.S. branch that has provided the withholding agent with a Form W-8IMY stating that it has agreed to be treated as a U.S. person, the U.S. withholding agent

treats the U.S. branch as the recipient using chapter 3 recipient code 05 (U.S. branch treated as a U.S. person) and chapter 4 recipient code 17 (U.S. branch treated as a U.S. person).

- If a withholding agent makes a payment to a U.S. branch that has provided a Form W-8IMY to transmit information regarding its chapter 4 reporting pools when the payment is a withholdable payment or the branch provides a chapter 4 withholding rate pool of U.S. payees and, to the extent applicable, recipient specific information for chapter 3 purposes, the U.S. withholding agent must complete a separate Form 1042-S for each chapter 4 reporting pool treating the U.S. branch as the recipient or, for chapter 3 purposes, for each recipient that is a foreign person whose documentation is associated with the U.S. branch's Form W-8IMY. If a payment cannot be reliably associated with recipient documentation, the U.S. withholding agent must complete Form 1042-S in accordance with the presumption rules. If a U.S. branch not

treated as a U.S. person fails to certify that it will meet the requirements under Regulations section 1.1471-4(d)(2)(iii) (C), a withholding agent must report the branch as an NPFFI.

- If a withholding agent cannot reliably associate a payment with a Form W-8IMY from a U.S. branch, and if a withholding agent has an EIN for the branch, then the payment may be reported on a single Form 1042-S treating the U.S. branch as the recipient and reporting the income as effectively connected income.

**Amounts paid to a foreign estate.** If a U.S. withholding agent makes a payment to a foreign estate, a Form 1042-S must be completed showing the estate as the recipient. Use recipient code 17 (estate) as the chapter 3 status code and the applicable recipient code for the chapter 4 status code.

**Dual claims.** A U.S. withholding agent may make a payment to a foreign entity (for example, a hybrid entity) that is simultaneously claiming an exemption from chapter 4 withholding and a reduced rate of

tax under chapter 3 on its own behalf for a part of the payment and an exemption from chapter 4 withholding and a reduced rate of tax under chapter 3 on behalf of persons in their capacity as interest holders in that entity on the remaining part. If the claims are consistent and the withholding agent has accepted the multiple claims, a separate Form 1042-S must be filed for the entity for those payments for which the entity is treated as claiming a reduced rate of withholding, and separate Forms 1042-S must be filed for each of the interest holders for those payments for which the interest holders are claiming a reduced rate of withholding. The Forms 1042-S must include the chapter 4 status of the payee (including the applicable chapter 4 exemption). If the claims are consistent but the withholding agent has not chosen to accept the multiple claims, or if the claims are inconsistent, a separate Form 1042-S must be filed for the person(s) being treated as the recipient(s).

**Special instructions for U.S. trusts and estates.** Report the entire amount of income

subject to reporting, regardless of estimates of distributable net income.

## **Payments Made to Persons Who Are Not Recipients**

Disregarded entities and hybrid entities. If a U.S. withholding agent makes a payment to a disregarded entity that is not a hybrid entity making a treaty claim, and receives a valid Form W-8BEN-E or W-8ECI from a foreign person that is the single owner of the disregarded entity, the withholding agent must file a Form 1042-S in the name of the foreign single owner. The taxpayer identification number (TIN) on the Form 1042-S, if required, must be the foreign single owner's TIN. However, in Box 13h include the GIIN of the disregarded entity provided in Part II of Form W-8BEN-E if the owner is an FFI.

**Example 5.** WA, a withholding agent, makes a withholdable payment of interest to LLC, a foreign limited liability company that is not an FFI. LLC is wholly owned by FC, a foreign corporation that is an excepted nonfinancial

foreign entity. LLC is treated as a disregarded entity. WA has a Form W-8BEN-E from FC on which it states that it is the beneficial owner of the income paid to LLC. WA reports the interest payment on Form 1042-S showing FC as the recipient. The result would be the same if LLC was a domestic entity.

A disregarded entity can, however, claim to be the beneficial owner of a payment if it is a hybrid entity claiming treaty benefits. See Form W-8BEN-E and its instructions for more information. If a disregarded entity claims on a valid Form W-8BEN-E to be the beneficial owner, the U.S. withholding agent must complete a Form 1042-S treating the disregarded entity as a recipient and using recipient code 26 (hybrid entity making treaty claim) as the chapter 3 status code and the applicable recipient code for the chapter 4 status code of the single owner when the payment is a withholdable payment and chapter 4 withholding does not apply.

A hybrid entity with multiple owners may also claim treaty benefits. See Form W-8BEN-E and its instructions for more information on

documentation requirements that apply in such cases. If a hybrid entity treated as a resident of a treaty country claims treaty benefits on a valid Form W-8BEN-E associated with a withholdable payment (and chapter 4 withholding does not apply with respect to any of its owners to such payment or portion of such payment), the U.S. withholding agent should complete a Form 1042-S treating the hybrid entity as a recipient, use code 26 (hybrid entity making treaty claim) as the chapter 3 recipient status code, and leave blank the chapter 4 recipient status code. To the extent, however, that a portion of a withholdable payment is allocated to an owner of the hybrid entity for which chapter 4 withholding must be applied, the U.S. withholding agent must issue a separate Form 1042-S to such owner using the applicable recipient codes for the owner's chapters 3 and 4 status codes and report the hybrid entity as the intermediary. The withholding agent must do so for each such owner for which chapter 4 withholding applies and must exclude amounts allocable to such owners from the Form 1042-S issued to the hybrid entity.

If an owner of a reverse hybrid entity claims treaty benefits on a valid Form W-8BEN-E or W-8BEN (and chapter 4 withholding does not apply with respect to the payment to the reverse hybrid entity), the U.S. withholding agent should issue a Form 1042-S for the portion of the payment allocable to each such owner treating the owner as the recipient, using the applicable recipient codes for the chapter 3 and 4 status codes, and report the reverse hybrid entity as the intermediary in Boxes 15a through 15i. In such a case, the U.S. withholding agent must issue a Form 1042-S to the reverse hybrid entity for the remainder of the payment treating such entity as the recipient and using the applicable chapters 3 and 4 status codes. However, if chapter 4 withholding applies with respect to the payment to the reverse hybrid entity, the U.S. withholding agent must instead issue a Form 1042-S to the reverse hybrid entity for the entire payment and withhold accordingly.

**Example 6.** WA, a withholding agent, makes a withholdable payment of interest to FP, a hybrid entity organized in Country X. FP is treated as a partnership under the Code but is

treated as a company resident in Country X for Country X purposes. WA has a Form W-8BEN-E from FP on which it claims treaty benefits. WA also has a Form W-8IMY from FP that includes its chapters 3 and 4 statuses and a W-8BEN-E from each of FP's owners, FC1 and FC2, which certify that FC1 is a PFFI and FC2 is an NPFFI. The attached withholding statement allocates 80% of the payment to FC1 and 20% of the payment to FC2. WA must issue a Form 1042-S for 80% of the payment to FP as the recipient using recipient code 26 (hybrid entity making treaty claim) as the chapter 3 status code and leaving blank the recipient code for the chapter 4 status code. WA must withhold under chapter 4 on the remaining 20% of the payment allocated to FC2 and issue a Form 1042-S to FC2 as the recipient using recipient code 15 (corporation) as the chapter 3 status code and recipient code 15 (nonparticipating FFI) as the chapter 4 status code and must report FP as the intermediary in Boxes 15a through 15i.

**Amounts paid to a nonqualified intermediary or flow-through entity.** If a

U.S. withholding agent makes a payment to an NQI or a flow-through entity (other than a nonparticipating FFI) with respect to a withholdable payment, it must complete a separate Form 1042-S for each recipient on whose behalf the NQI or flow-through entity acts as indicated by its withholding statement and the documentation associated with its Form W-8IMY. If a payment is made through tiers of NQIs or flow-through entities, the withholding agent must nevertheless complete Form 1042-S for the recipients to which the payments are remitted. A withholding agent completing Form 1042-S for a recipient that receives a payment through an NQI or a flow-through entity must include in Boxes 15a through 15i of Form 1042-S the name, country code, address, TIN (if any), GIIN (if any), and status codes of the NQI or flow-through entity from whom the recipient directly receives the payment.

If, however, a U.S. withholding agent makes withholdable payments to an NQI or a flow-through entity that is a participating FFI or registered deemed-compliant FFI that is allocable to a chapter 4 withholding rate pool

as indicated by the FFI's withholding statement, the U.S. withholding agent should complete a separate Form 1042-S for each chapter 4 reporting pool (that is, pool of recalcitrant account holders, pool of nonparticipating FFIs, or pool of payees that are U.S. persons) treating the participating FFI or registered deemed-compliant FFI as the recipient and must include the GIIN and chapter 3 status code of the FFI and the applicable chapter 4 reporting pool code as the chapter 4 status code. If a payment is made through tiers of NQIs or flow-through entities that are participating FFIs or registered deemed-compliant FFIs, the withholding agent must nevertheless complete Form 1042-S for each chapter 4 reporting pool to which the payments are allocated and must report, as the recipient, the FFI from whom the recipients included in the chapter 4 reporting pool directly receive the payment.

**Example 7.** WA, a withholding agent, makes a withholdable payment of interest to FFI 1, a reporting Model 1 FFI. FFI 1 provides WA with a valid Form W-8IMY with which it associates

a withholding statement that allocates 80% of the payment to FFI 2, a participating FFI, and 20% of the payment to a pool of nonparticipating FFIs. FFI 1 also provides WA with FFI 2's Form W-8IMY with which it associates a withholding statement that allocates 100% of the payment to recalcitrant pool-no U.S. indicia. WA must complete a Form 1042-S for the interest allocated to a pool of nonparticipating FFIs with FFI 1 as the recipient and must complete another Form 1042-S for the interest allocated to a pool of recalcitrant account holders-no U.S. indicia with FFI 2 as the recipient.

If a U.S. withholding agent makes a withholdable payment to an NQI or flow-through entity that is a participating FFI or deemed-compliant FFI, and cannot reliably associate the payment, or any part of the payment, with a withholding statement, or to the extent required, a valid withholding certificate (Form W-8 or W-9) or other valid appropriate documentation from a recipient, the withholding agent must follow the appropriate presumption rules for that payment which, if the payment is a

withholdable payment, will generally require the withholding agent to withhold 30% under chapter 4 because such payment is presumed made to a nonparticipating FFI. See Regulations section 1.1471-3(f)(5). For this purpose, if the allocation information provided to the withholding agent indicates an allocation of more than 100% of the payment, then no part of the payment should be considered to be associated with a Form W-8, Form W-9, or other appropriate documentation. The Form 1042-S should be completed by entering "Unknown Recipient" in Box 13a and recipient code 21 (unknown recipient) as the chapter 3 status code and recipient code 29 (unknown recipient) as the chapter 4 status code. Also, the name, country code, address, TIN (if any), GIIN (if any), and status codes of the FFI should be entered in Boxes 15a through 15i.

If a U.S. withholding agent makes a withholdable payment to an NQI or flow-through entity that is a nonparticipating FFI, the withholding agent must treat the payments as made to an unknown recipient regardless of whether it can reliably associate

the payment, or any part of the payment, with a valid withholding certificate (Form W-8 or W-9) or other valid appropriate documentation from a recipient (see Regulations section 1.1471-3(d)(8)).

The withholding agent should complete a Form 1042-S showing "Unknown Recipient" in Box 13a and recipient code 21 (unknown recipient) as the chapter 3 status code and recipient code 29 (unknown recipient) as the chapter 4 status code. Also, the name, country code, address, chapter 4 status code, and TIN (if any), of the nonparticipating FFI should be entered on Form 1042-S in Boxes 15a through 15i.

If, however, an NQI or flow-through entity that is a nonparticipating FFI provides documentation described in Regulations section 1.1471-3(d)(8)(ii) to establish that the withholdable payment or a portion of the payment is beneficially owned by an exempt beneficial owner, then the withholding agent should complete a Form 1042-S for each exempt beneficial owner showing the chapter 4 exemption code 15 (payee not subject to

chapter 4 withholding), the exempt beneficial owner as the recipient in Box 13a, and the name, country code, address, chapter 4 status code, and TIN (if any) of the nonparticipating FFI in Boxes 15a through 15i. For any remaining portion of the payment, the withholding agent should complete a Form 1042-S to an unknown recipient as described directly above.

***Pro-rata reporting.*** If the withholding agent has agreed that an NQI (other than a nonparticipating FFI) may provide information allocating a payment to its account holders under the alternative procedure of Regulations section 1.1441-1(e)(3)(iv)(D) (no later than February 14, 2020) and the NQI fails to allocate more than 10% of the payment in a withholding rate pool to the specific recipients in the pool or an applicable chapter 4 withholding rate pool, the withholding agent must file a Form 1042-S for each recipient in the pool on a pro-rata basis. The withholding agent must check Box 15 (pro-rata basis reporting) on each Form 1042-S. For example, if there are four account holders in a withholding rate pool

that receives a \$100 payment and the NQI fails to allocate more than \$10 of the payment, the withholding agent must file four Forms 1042-S, one for each account holder in the pool, showing \$25 of the income to each and Box 15 checked. If, instead, the NQI fails to timely allocate 10% or less of the payment in a withholding rate pool to the specific recipients in a pool, the withholding agent must file a Form 1042-S for each recipient for which it has allocation information and report the unallocated part of the payment on a Form 1042-S as made to an “unknown recipient.” In this case, the withholding agent does **not** check Box 15 on any of the Forms 1042-S.

***Payments allocated, or presumed made, to U.S. nonexempt recipients.*** You may be given Forms W-9 or other information regarding U.S. nonexempt recipients from an NQI or flow-through entity together with information allocating all or a part of the payment to U.S. nonexempt recipients. You must report income allocable to a U.S. nonexempt recipient on the appropriate Form 1099 and not on Form 1042-S, even though

you are paying that income to an NQI or a flow-through entity. If, however, a participating FFI or registered deemed-compliant FFI provides a withholding statement allocating all or part of the payment to a chapter 4 withholding rate pool of U.S. payees along with the certification provided on Form W-8IMY required for reporting such pool (as described in Regulations section 1.1471-3(c)(3)(iii) (B)), you must report the income allocable to such pool on Form 1042-S.

**Example 8.** FP is a nonwithholding foreign partnership (flow-through entity) that is a certified deemed-compliant FFI. FP receives from WA, a U.S. withholding agent, a withholdable payment of interest described by income code 01 (interest paid by U.S. obligors – general). FP has three partners, A, B, and C, all of whom are individuals. FP provides WA with a Form W-8IMY certifying that it is transmitting Forms W-9 for U.S. nonexempt recipients and Forms W-8BEN from A and B and a Form W-9 from C, a U.S. nonexempt recipient. In addition, FP provides a complete withholding statement in

association with its Form W-8IMY that allocates the interest payments among A, B, and C. WA must file two Forms 1042-S, one each for A and B, treating FP as the intermediary in Boxes 15a through 15i. WA should also file a Form 1099-INT for C.

**Example 9.** The facts are the same as in *Example 8*, except that FP does not provide any documentation from its partners. Because WA cannot reliably associate the withholdable payment of interest with documentation from a payee, it must apply the presumption rules of Regulations section 1.1471-3(f) to treat the interest as paid to a nonparticipating FFI. A Form 1042-S should be completed by entering “4” in Box 3, “Unknown Recipient” in Box 13a, recipient code 21 (unknown recipient) as the chapter 3 status code, and recipient code 29 (unknown recipient) as the chapter 4 status code. Also, the name, country code, address, status codes, and TIN (if any) of FP should be entered in Boxes 15a through 15i.

**Example 10.** The facts are the same as in *Example 9*, except that FP is a participating

FFI and provides WA with a Form W-8IMY certifying that it is reporting its U.S. accounts under chapter 4 and a withholding statement allocating 33% of the payment to a pool of U.S. payees. With respect to the U.S. pool of payees, WA must file a Form 1042-S showing FP as the recipient in Box 13a and include FP's GIIN, recipient code 08 as the chapter 3 status code (partnership other than a withholding foreign partnership), and recipient code 48 (U.S. payees pool) as the chapter 4 status code. WA should enter "3" in Box 3 as the chapter indicator, leave Boxes 3a and 3b blank, and enter exemption code 18 (U.S. payees of a participating FFI or registered deemed-compliant FFI) in Box 4a and "00.00" in Box 4b.

## **Specified Federal Procurement Payments Made to Foreign Persons**

Section 5000C imposes a 2% tax on any foreign person that receives a specified federal procurement payment. A specified federal procurement payment is a payment made to a foreign person pursuant to a contract with the U.S. government for (1) the

provision of goods that are manufactured or produced in a country that does not have an international procurement agreement with the United States, or (2) the provision of services in a country that does not have an international procurement agreement with the United States.

For purposes of section 5000C, a payer of a specified federal procurement payment to a foreign person must complete a Form 1042-S for payments withheld upon in the name of the foreign person. Use income code 44 to report payments subject to withholding under section 5000C. Box 2 should include the amount of the specified federal procurement payments subject to withholding and Box 7 should include the amount of tax withheld under section 5000C.

If you are reporting tax withheld under section 5000C, enter "3" in Box 3 as if the tax were a chapter 3 tax, enter "00" in Box 3a, and report the tax withheld in Box 7. You do not need to complete Box 4a, 4b, or any Box for a chapter 3 or 4 status code. In Boxes 13a through 13d, include the name and the

address of the foreign person withheld upon. If known, include the TIN (if any) in Box 13e.

## **Amounts Paid by Qualified Intermediaries**

**In general.** For purposes of chapter 4, a QI must complete a Form 1042-S for payments withheld under chapter 4 determined in accordance with the income codes used to file Form 1042-S. A QI that is a participating FFI or registered deemed-compliant FFI may use the chapter 4 pooled reporting codes 42 through 48 to allocate payments made to its recalcitrant account holders, payees that are nonparticipating FFIs, and payees that are U.S. persons. A QI should not use chapter 4 reporting pool 49 (QIRecalcitrant Pool-General) to report its accounts but may use it to report accounts maintained by another QI. A QI that is an NFFE or an FFI treated as deemed-compliant under an applicable IGA (as described in Regulations section 1.1441-1(e)(5)(ii)(A)) may use chapter 4 reporting pool code 47 to report payments allocable to a pool of nonparticipating FFIs. A QI may also use the chapter 4 pooled reporting codes to

report payments allocable to account holders, payees, or owners of another participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT, and it must provide its chapter 4 withholding rate pools on its withholding statement. In such case, the QI must include the NQI, NWP, or NWT as the recipient in Box 13a and the applicable recipient code for such entity as the chapter 3 status code. For payments that are exempt from chapter 4 withholding and made by the QI directly to foreign beneficial owners (or that are treated as paid directly to beneficial owners), the QI may report on the basis of chapter 3 reporting pools, in most cases. A QI may not report on the basis of reporting pools in the circumstances described in *Recipient-by-Recipient Reporting*, later. For payments not subject to chapter 4 withholding, a QI may use a single chapter 4 exemption code 15 (payee not subject to chapter 4 withholding) and a single chapter 3 reporting pool code 27 (Withholding rate pool – general) as the chapter 3 status code for all reporting pools, except for amounts paid to foreign tax-exempt recipients for which

chapter 3 reporting pool code 28 should be used. Note, however, that a QI should use recipient code 28 only for pooled account holders that have claimed an exemption based on their tax-exempt status and not some other exemption (tax treaty or other Code section). If a QI uses a chapter 3 pooled reporting code (because chapter 4 withholding does not apply and the QI is not allocating the payment to a U.S. pool of payees), it should leave blank the recipient code for the chapter 4 status code.

**Example 11.** QI, a qualified intermediary and participating FFI, has four direct account holders, A and B, foreign individuals, and X and Y, foreign corporations. The withholdable payments made to these direct account holders are exempt from chapter 4 withholding because of the chapter 4 status of each account holder. A and X are residents of a country with which the United States has an income tax treaty and have provided documentation that establishes that they are entitled to a lower treaty rate of 15% on withholding of dividends from U.S. sources. B and Y are not residents of a treaty country

and are subject to 30% withholding on dividends. QI receives U.S. source dividends on behalf of its four customers. QI must file one Form 1042-S for the 15% withholding rate pool. This Form 1042-S must show income code 06 (dividends paid by U.S. corporations – general) in Box 1, “00” in Box 3a (chapter 3 exemption code), “15.00” in Box 3b (chapter 3 tax rate), chapter 4 exemption code 15 (payee not subject to chapter 4 withholding) in Box 4a, “00.00” in Box 4b (chapter 4 tax rate), “Withholding rate pool” in Box 13a (recipient's name), chapter 3 reporting pool code 27 (withholding rate pool – general) as the chapter 3 status code, and a blank chapter 4 status code. QI also must file one Form 1042-S for the 30% withholding rate pool that contains the same information as the Form 1042-S filed for the 15% withholding rate pool, except that it will show “30.00” in Box 3b (chapter 3 tax rate).

**Example 12.** The facts are the same as in *Example 11*, except that Y is an organization that has tax-exempt status in the United States and in the country in which it is located, and B is a recalcitrant account holder

with U.S. indicia. QI must file three Forms 1042-S. One Form 1042-S (for amounts allocable to A and X) will contain the same information as in *Example 11*. The second Form 1042-S (for amounts allocable to Y) will contain information for the withholding rate pool consisting of the amounts paid to Y. This Form 1042-S will show income code 06 (dividends paid by U.S. corporations – general) in Box 1, exemption code 02 (exempt under IRC (other than portfolio interest)) in Box 3a, “00.00” in Box 3b (chapter 3 tax rate), chapter 4 exemption code 15 (payee not subject to chapter 4 withholding) in Box 4a, “00.00” in Box 4b (chapter 4 tax rate), “Zero rate withholding pool-exempt organizations” or similar designation in Box 13a (recipient's name), chapter 3 code 28 (withholding rate pool – exempt organization) in Box 13f, and a blank chapter 4 status code in Box 13g. The third Form 1042-S will contain information for the recalcitrant pool consisting of amounts paid to B. This Form 1042-S will show income code 06 (dividends paid by U.S. corporations-general) in Box 1, code 12 (payee subjected

to chapter 4 withholding) in Box 3a (chapter 3 exemption code), "00.00" in Box 3b (chapter 3 tax rate), "00" in Box 4a (chapter 4 exemption code), "30.00" in Box 4b (chapter 4 tax rate), "recalcitrant pool – U.S. indicia" or similar designation in Box 13a (recipient's name), chapter 4 recipient code 43 (recalcitrant pool-U.S. indicia) as the chapter 4 status code in Box 13g, and a blank chapter 3 status code in Box 13f.



*Under the terms of its Qualified Intermediary (QI) agreement with the IRS, a QI that is an FFI may be required to report the amounts paid to U.S. nonexempt recipients on Form 1099 or Form 8966 using the name, address, and TIN of the payee to the extent those items of information are known. These amounts must be reported on Form 1042-S if allocated to a chapter 4 withholding rate pool of U.S. payees.*

A QI acting as a QDD must separately report on Forms 1042-S payments that it makes in its QDD capacity. The QI should report the name of the QDD that makes the payment as the withholding agent in Box 12d (following

the naming protocol used for applying to be a QDD) and should use withholding agent code 35 as the chapter 3 status code.



*A QI acting as a QDD with respect to a payment may only use chapter 3 pooled reporting codes 27 and 28.*

## **Amounts Paid to Private Arrangement Intermediaries**

In most cases, a QI must report payments made to each private arrangement intermediary (PAI) (defined under *Definitions*, earlier) as if the PAI's direct account holders were its own. For purposes of chapter 4, a QI that is a participating FFI, registered deemed-compliant FFI, or an FFI treated as deemed-compliant under an applicable IGA (as described in Regulations section 1.1441-1(e)(5)(ii) (A)) may use the chapter 4 reporting pool code 47 to allocate payments made to the PAI's payees that are nonparticipating FFIs, and may treat the PAI as the recipient on Form 1042-S with respect to each such pool. For chapter 3 purposes, if the payment is made directly by the PAI to

the recipient, the QI may report the payment on a pooled basis. A separate Form 1042-S is required for each withholding rate pool of each PAI (unless the QI is acting as a QDD with respect to the payment). However, the QI must include the name and address of the PAI and use reporting pool code 29 or 30 (PAI withholding rate pool – general and PAI-withholding rate pool-exempt organization) as the chapter 3 status code. If the PAI is providing recipient information from an NQI or flow-through entity, the QI may not report the payments on a pooled basis for chapter 3 purposes. Instead, it must follow the same procedures as a U.S. withholding agent making a payment to an NQI or flow-through entity.

**Example 13.** QI, a qualified intermediary, pays U.S. source dividends to direct account holders that are foreign persons and beneficial owners. It also pays a part of the U.S. source dividends to two private arrangement intermediaries, PAI1 and PAI2. The private arrangement intermediaries pay the dividends they receive from QI to foreign persons that are beneficial owners and direct

account holders of PAI1 or PAI2. All payees are exempt from chapter 4 withholding based on their respective chapter 4 statuses and the dividends paid are subject to a 15% rate of withholding. QI must file a Form 1042-S for the dividends paid to its own direct account holders that are beneficial owners. QI also must file two Forms 1042-S, one for the dividends paid to the direct account holders of each of PAI1 and PAI2. Each of the Forms 1042-S that QI files for payments made to PAI1 and PAI2 must contain the name and address of PAI1 or PAI2, recipient code 29 (PAI withholding rate pool – general) as the chapter 3 status code, and a blank chapter 4 status code, and should use chapter 4 exemption code 15 (payee not subject to chapter 4 withholding) in Box 4a.

## **Amounts Paid to Certain Partnerships and Trusts**

A QI that is applying the special pool reporting allowance provided in the QI agreement for certain partnerships or trusts (Agency Option) must file separate Forms 1042-S reflecting reporting pools for each

partnership or trust that has provided reporting pool information in its withholding statement. For purposes of chapter 4, a QI that is an FFI may use the chapter 4 reporting pool code 47 to allocate payments made to the partnership's or trust's payees that are nonparticipating FFIs and should report the partnership or trust as the recipient on Form 1042-S. For chapter 3 purposes, if the payment is made directly by the partnership or trust to the recipient, the QI may use reporting pool code 31 (Agency withholding rate pool general) or 32 (Agency withholding rate pool exempt organization) as the chapter 3 status code (unless the QI is acting as a QDD with respect to the payment). However, to the extent required in the QI agreement, the QI must file separate Forms 1042-S for partners, beneficiaries, or owners of such partnership or trust that are indirect partners, beneficiaries, or owners, and for direct partners, beneficiaries, or owners of such partnership or trust that are intermediaries or flow-through entities.

## **Recipient-by-Recipient Reporting**

If a QI is not permitted to report on the basis of reporting pools, it must follow the same rules that apply to a U.S. withholding agent. For chapter 3 purposes, a QI may not report the following payments on a reporting pool basis, but rather must complete Form 1042-S for each appropriate recipient and must provide the applicable chapter 4 exemption code.

**Payments made to another QI, QDD, QSL, WP, or WT.** The QI must complete a Form 1042-S treating the other QI, QDD (when a QI is acting as a QDD with respect to a payment), QSL, WP, or WT as the recipient.

**Payments made to an NQI (including an NQI that is an account holder of a PAI).** For chapter 3 purposes, the QI must complete a Form 1042-S for each recipient who receives the payment from the NQI. A QI that is completing Form 1042-S for a recipient that receives a payment through an NQI must include in Boxes 15a through 15i the name, country code, address, TIN (if any), GIIN (if any), and status codes of the NQI from whom

the recipient directly receives the payment. In the case of an NQI that is a participating FFI or registered deemed-compliant FFI, the QI must complete a Form 1042-S for the chapter 4 withholding rate pool of the NQI provided in a withholding statement associated with its Form W-8IMY and must report the NQI as the recipient. In such a case, the QI must include the name and address of the NQI as the recipient and use chapter 4 pool reporting codes 42 through 48 as the chapter 4 status code and chapter 3 status code 25 (nonqualified intermediary). If the NQI fails to provide sufficient allocation information with respect to a withholdable payment, the QI must complete a Form 1042-S with the recipient as "Unknown Recipient" using reporting pool code 29 (unknown recipient) and must include the NQI's information in Boxes 15a through 15i.

**Example 14.** QI, a qualified intermediary, has NQI, a nonqualified intermediary that is a participating FFI, as an account holder. NQI has two account holders, A and B, both recalcitrant account holders with U.S. indicia who receive a withholdable payment of U.S.

source dividends from QI. NQI provides QI with a valid Form W-8IMY and a complete withholding statement that allocates the dividends paid to NQI to recalcitrant pool – U.S. indicia for both A and B. QI must complete one Form 1042-S reporting NQI as the recipient and using reporting pool code 43 (recalcitrant pool – U.S. indicia) as the chapter 4 status code.

**Example 15.** QI has NQI, a nonqualified intermediary that is a reporting Model 2 FFI, as an account holder. NQI has two account holders, A and B, who receive a withholdable payment of U.S. source dividends from QI. A is a nonparticipating FFI. NQI treats B as a nonconsenting U.S. account under the applicable IGA and is not required to withhold on payments to B under chapter 4. NQI provides QI with a valid Form W-8IMY and a complete withholding statement that allocates 50% of the dividends paid to A and 50% to B. NQI designates B as an individual exempt from withholding under an IGA but cannot include B in a chapter 4 withholding rate pool of U.S. payees because the payment is subject to chapter 3 withholding and under

the presumption rules of Regulations section 1.1441-1(b)(3) the payment is presumed made to an unknown, undocumented foreign payee. QI must complete two Forms 1042-S. One Form 1042-S must show NQI as the recipient and use reporting pool code 47 (nonparticipating FFI pool). The second Form 1042-S must show the recipient as "Unknown Recipient," NQI's information in Boxes 15a through 15i, chapter 4 exemption code 19 (exempt from withholding under IGA), chapter 4 status code 34 (nonconsenting U.S. account), chapter 3 status code 21 (unknown recipient), and 30% withholding under chapter 3 for the payment allocated to B as a presumed foreign person under chapter 3.

**Payments made to a flow-through entity.**

The QI must complete a Form 1042-S for each recipient who receives the payment from the flow-through entity. A QI that is completing a Form 1042-S for a recipient that receives a payment through a flow-through entity must include in Boxes 15a through 15i the name, country code, address, TIN (if any), GIIN (if any), and status codes of the

flow-through entity from which the recipient directly receives the payment.

For chapter 4 purposes and in the case of a flow-through entity that is a participating FFI or registered deemed-compliant FFI (other than a WP or WT), the QI must complete a Form 1042-S for each chapter 4 withholding rate pool provided in the withholding statement associated with the Form W-8IMY of the flow-through entity. The QI must include the name, address, and GIIN of the flow-through entity as the recipient and the applicable chapter 3 status code for the flow-through entity and use pooled reporting codes 42 through 48 as the chapter 4 status code.

**Example 16.** QI, a qualified intermediary, has FP, a nonwithholding foreign partnership that is a registered deemed-compliant FFI, as an account holder. QI pays interest that is a withholdable payment described by income code 01 (interest paid by U.S. obligors – general) to FP. FP has three partners, A, B, and C, all of whom are exempt from withholding under chapter 4 based on their respective chapter 4 statuses. FP provides QI

with a Form W-8IMY with which it associates the Forms W-8BEN from each of A, B, and C. In addition, FP provides a complete withholding statement in association with its Form W-8IMY that allocates the interest payments among A, B, and C. QI must file three Forms 1042-S, one each for A, B, and C. The Forms 1042-S must show information relating to FP in Boxes 15a through 15i along with the chapter 3 and 4 status codes and chapter 4 exemption code 15 (payee not subject to chapter 4 withholding) for A, B, and C.

## **Amounts Paid by Withholding Foreign Partnerships and Trusts**

**In general.** For chapter 4 purposes, payments that are made by a withholding foreign partnership (WP) or withholding foreign trust (WT) that is a participating FFI or a registered deemed-compliant FFI directly to its partners, owners, or beneficiaries that are recalcitrant account holders, payees that are nonparticipating FFIs, and payees that are U.S. persons may be reported on the basis of chapter 4 reporting pools. A WP or WT may

also use the chapter 4 pooled reporting codes to report payments allocable to account holders, payees, or owners of another participating FFI or registered deemed-compliant FFI that is an NQI, NWP, or NWT and provides its chapter 4 withholding rate pools on its withholding statement when the WP or WT applies section 9.03 of its agreement to such entity. In such case, the WP or WT must include the NQI, NWP, or NWT as the recipient in Box 13a. If a WP or WT has not made a pooled reporting election for chapter 3 purposes, a WP or WT must file a separate Form 1042-S for each direct partner, beneficiary, or owner that is exempt from chapter 4 withholding and to whom the WP or WT distributes, or in whose distributive share is included, an amount subject to withholding under chapter 3, in the same manner as a U.S. withholding agent. However, if the WP or WT has made a pooled reporting election in its WP or WT agreement, the WP or WT may instead report payments to such direct partners, beneficiaries, or owners on the basis of chapter 3 reporting pools and file a separate Form 1042-S for

each reporting pool. For payments not subject to chapter 4 withholding, a WP or WT may use a single chapter 4 exemption code 15 (payee not subject to chapter 4 withholding) and a single chapter 3 reporting pool code 27 (withholding rate pool – general) as the chapter 3 status code for all chapter 3 reporting pools, except for amounts paid to foreign tax-exempt recipients for which a separate recipient code 28 must be used. For this purpose, a foreign tax-exempt recipient includes any organization that is not subject to withholding and is not liable to tax in its country of residence because it is a charitable organization, pension fund, or foreign government. See the WP and WT agreements for when a WP and WT can pool report payments to an indirect partner, a beneficiary, or an owner. See section 9 of the WP or WT agreement.

## **Amounts Paid by Nonqualified Intermediaries and Flow-Through Entities**

An NQI and a flow-through entity are withholding agents and must file Forms 1042-

S for amounts paid to recipients. However, an NQI or flow-through entity is not required to file Form 1042-S if it is not required to file Form 1042-S under the Multiple Withholding Agent Rule, later. An NQI or flow-through entity may report payments made to recipients to the extent it has failed to provide to another withholding agent the appropriate documentation and complete withholding statement for either chapter 3 or 4 purposes. If the NQI or flow-through entity chooses to or must file Form 1042-S, as described above, the NQI or flow-through entity must also file Form 1042 and, if applicable, attach the Form 1042-S it received from the withholding agent to establish any credit for amounts withheld by the withholding agent. See the Instructions for Form 1042.

If another withholding agent has withheld tax on an amount that should have been exempt (for example, where the withholding agent applied the presumption rules because it did not receive proper documentation or other required information from the NQI or flow-through entity), and the payee or beneficial owner will make a claim for refund, the NQI

or flow-through entity must report on Form 1042-S the correct tax rate and the combined amount of U.S. federal tax withheld with respect to all recipients and should enter the applicable chapter 3 and 4 exemption codes.

If another withholding agent underwithholds, regardless of whether it received proper documentation from the NQI or flow-through entity, the NQI or flow-through entity must withhold additional amounts to bring the total withholding to the correct amount.

## **Multiple Withholding Agent Rule**

A withholding agent is not required to file Form 1042-S if a return is filed by another withholding agent reporting the same amount and the withholding agent has withheld correctly.

The multiple withholding agent rule does not relieve withholding agents from Form 1042-S reporting responsibility in the following circumstances.

- Any withholding agent making a payment to a QI, QSL, WP, or WT must report that

payment as made to the QI, QSL, WP, or WT.

- Any withholding agent making a payment to a U.S. branch treated as a U.S. person must report the payment as made to that branch.
- Any withholding agent that withholds an amount from a payment under chapter 3 or 4 must report that amount to the recipient from whom it was withheld.

Furthermore, the multiple withholding agent rule does not relieve the following from Form 1042-S reporting responsibility.

- Any QI, WP, or WT required to report an amount to a chapter 4 withholding rate pool or chapter 3 withholding rate pool.
- An NQI or flow-through entity that knows, or has reason to know, that the correct amount has not been withheld by another withholding agent.

Under the multiple withholding agent rule, a withholding agent reporting amounts withheld by another withholding agent must use Box 8

(Tax withheld by other agents) to report such amounts and must provide the name and EIN of the withholding agent that withheld in Boxes 14a and 14b (Primary Withholding Agent's Name and EIN). See the instructions for Boxes 14a and 14b, later.

**Example 17.** NQI, a foreign bank that is a participating FFI, acts as a nonqualified intermediary for four different foreign persons (A, B, C, and D) who own securities from which they receive interest that is a withholdable payment. The interest is paid by a U.S. withholding agent (WA) as custodian of the securities for NQI. A, B, C, and D each own a 25% interest in the securities. NQI has furnished WA with a Form W-8IMY to which it certifies its status as a participating FFI and has attached Forms W-8BEN from A and B. NQI's Form W-8IMY contains an attachment stating that 25% of the securities are allocable to each of A and B and 50% to a pool of recalcitrant account holders with U.S. indicia. WA pays \$100 of interest during the calendar year. WA treats the \$25 of interest allocable to A and the \$25 of interest allocable to B as portfolio interest and

completes Forms 1042-S for A and for B as the recipients. WA includes information relating to NQI in Boxes 15a through 15i on the Forms 1042-S for A and B. WA subjects the remaining \$50 of interest to 30% withholding under chapter 4 and reports the interest on a Form 1042-S by treating NQI as the recipient in Box 13a and uses chapter 3 status code 25 (nonqualified intermediary), chapter 4 status code 43 (recalcitrant pool – U.S. indicia), “30.00” in Box 4b (chapter 4 tax rate), and \$15 as the amount withheld in Boxes 7 and 10. Under the multiple withholding agent rule, NQI is not required to file a Form 1042-S, but must file a Form 1042-S if, for example, C and D seek to make a claim for refund and NQI has not filed a collective refund claim on behalf of C and D for the tax withheld under chapter 4 on the payment (see Regulations section 1.1471-4(h)).

**Example 18.** WA, a U.S. withholding agent, makes a \$100 dividend payment that is a withholdable payment to a foreign bank (NQI) that is a participating FFI and acts as a nonqualified intermediary. NQI receives the

payment on behalf of A, documented as a foreign individual exempt from chapter 4 withholding and a resident of a treaty country who is entitled to a 15% rate of withholding under chapter 3, and B, documented as a foreign individual exempt from chapter 4 withholding and a resident of a country that does not have a tax treaty with the United States and who is subject to 30% withholding under chapter 3. NQI provides WA with its Form W-8IMY that certifies its status as a participating FFI to which it associates the Forms W-8BEN from both A and B and a complete withholding statement that allocates 50% of the dividend to A and 50% to B. A's Form W-8BEN claims a 15% treaty rate of withholding. B's Form W-8BEN does not claim a reduced rate of withholding. WA, however, mistakenly withholds only 15%, \$15, from the entire \$100 payment. WA completes a Form 1042-S for each A and B as the recipients, showing on each form \$50 of dividends in Box 2, a withholding rate of "15.00" in Box 3b (chapter 3 tax rate), and \$7.50 as the amount withheld in Boxes 7 and 10. Under the multiple withholding agent rule, NQI is not

required to file a Form 1042-S for A. However, because NQI knows (or should know) that B is subject to a 30% rate of withholding, and assuming it knows that WA only withheld 15%, the multiple withholding agent rule does not apply to the dividend paid to B, and NQI must withhold an additional 15% from the payment to B. NQI then must file a Form 1042-S for B showing \$50 of dividends in Box 2, "00" in Box 3a (chapter 3 exemption code), "30.00" in Box 3b (the correct chapter 3 tax rate), \$7.50 withheld by NQI in Box 7, \$7.50 withheld by WA in Box 8, and \$15 in Box 10 (the combined amount withheld). NQI also must enter chapter 4 exemption code 15 (payee not subject to chapter 4 withholding) in Box 4a and "00.00" in Box 4b (chapter 4 tax rate). See the instructions for Box 3b, later.

## **Penalties**

The following penalties apply to the person required to file Form 1042-S. The penalties apply to both paper filers and electronic filers.

## **Late filing of correct Form 1042-S.**

A penalty may be imposed for failure to file each correct and complete Form 1042-S when due (including extensions), unless you can show that the failure was due to reasonable cause and not willful neglect. The penalty, based on when you file a correct Form 1042-S, is the following.

- \$50 per Form 1042-S if you correctly file within 30 days after the required filing date; the maximum penalty is \$545,500 per year (\$191,000 for a small business). A small business, for this purpose, is defined as having average annual gross receipts of \$5 million or less for the 3 most recent tax years (or for the period of its existence, if shorter) ending before the calendar year in which the Forms 1042-S are due.
- \$100 per Form 1042-S if you correctly file more than 30 days after the due date but by August 1; the maximum penalty is \$1,637,500 per year (\$545,500 for a small business).

- \$270 per Form 1042-S if you file after August 1 or you do not file correct Forms 1042-S; the maximum penalty is \$3,275,500 per year (\$1,091,500 for a small business).

If you intentionally disregard the requirement to report correct information, the penalty per Form 1042-S is increased to the greater of \$540 or 10% of the total amount of items required to be reported, with no maximum penalty.

**Failure to furnish correct Form 1042-S to recipient.** If you fail to provide Forms 1042-S to recipients and cannot show reasonable cause, a penalty of up to \$270 may be imposed for each failure to furnish Form 1042-S to the recipient when due. The penalty also may be imposed for failure to include all required information or for furnishing incorrect information on Form 1042-S. The maximum penalty is \$3,275,500 for all failures to furnish correct recipient statements during a calendar year. If you provide the correct statement on or before August 1, reduced penalties similar to those

for failing to file a correct Form 1042-S with the IRS may be imposed. See *Late filing of correct Form 1042-S*, earlier. If you intentionally disregard the requirement to report correct information, each \$270 penalty is increased to the greater of \$540 or 10% of the total amount of items required to be reported, with no maximum penalty.

**Failure to file electronically.** If you are required to file electronically but fail to do so, and you do not have an approved waiver on record, penalties may apply unless you establish reasonable cause for your failure.

## **Avoid Common Errors**

To ensure that your Forms 1042-S can be correctly processed, be sure that you do the following.

- Carefully read the information provided in Pub. 515 and these instructions.
- Comply with the requirements in Pub. 1187 if you are an electronic filer.
- Complete all required fields. At a minimum, you must provide your unique

form identifier at the top of the form as well as the information requested in Boxes 1, 2, 3, 7a, 12a, 12b, 12c, 12d, 12f (except if the withholding agent is a U.S. person), 12h, 12i, 13a, 13b, 13c, and 13d. Other Boxes must be completed if the nature of the payment requires it.

- If the amount reported in Box 2 is a withholdable payment, you must also enter information in Boxes 4a, 4b, and 13g. If the amount reported in Box 2 is an amount subject to chapter 3 withholding, you must enter information in Boxes 12b, 12c, and 13f.
- If the amount reported in Box 2 is not subject to chapter 4 withholding or is not a withholdable payment, you must enter "00.00" in Box 4b and provide the applicable exemption code in Box 4a.
- If the amount reported in Box 2 is a withholdable payment and an amount subject to chapter 3 withholding and the tax rate in Box 4b is 00.00, you must enter information in Boxes 3a and 3b. If the rate entered in Box 4b is 30.00, you

may enter information in Boxes 3a and 3b.

- If you are a QI, WP, or WT that is pool reporting for its direct account holders only, either a chapter 3 status code (Box 13f) or chapter 4 status code (Box 13g) is required.
- If the recipient in Box 13 or entity in Box 15 is a participating FFI, registered deemed-compliant FFI, sponsored FFI, direct reporting NFFE, or sponsored direct reporting NFFE, you must enter the entity's GIIN or the GIIN of the sponsoring entity in Box 13h or 15e (to the extent that you may rely on a sponsored entity's GIIN under the chapter 4 regulations or an applicable IGA for withholding purposes).
- Use only income, status, and exemption codes specifically listed in these instructions.
- Use only tax rates that are allowed by statute, regulations, or treaty. Do not attempt to "blend" rates. Instead, if

necessary, submit multiple Forms 1042-S to show changes in tax rate. See the *Valid Tax Rate Table*.

All information you enter when reporting the payment must correctly reflect the intent of the statute and regulations. In most cases, you should rely on the withholding documentation you have collected (Form W-8 series, Form 8233, etc.) to complete your Form 1042-S submissions.

Also note the following.

- The gross income you report in Box 2 cannot be zero.
- The income code you report in Box 1 must correctly reflect the type of income you pay to the recipient.
- The withholding agent's name, address, chapter 3 and 4 status codes, EIN, QI-EIN, WP-EIN, WT-EIN, and GIIN (if any) must be reported in Boxes 12a–i.
- The recipient's name, address, U.S. TIN (if any), GIIN (if any), and country code must be reported in Boxes 13a–e and

13h. In most cases, you must report a foreign address. See the instructions for Box 13, later.

- In the case of joint owners, Form 1042-S can only list one of the owners as the recipient in Box 13a. Form 1042-S must not be completed with more than one of the joint owners as the recipient.
- The country code that you report in Boxes 13b and 15f must be present and correctly coded and cannot be "US" (unless the intermediary identified in line 15 is a U.S. branch that is not treated as a U.S. person). Additionally, do not use "OC" or "UC" except as specifically allowed in these instructions.
- For direct account holders, you must report the recipient's account number in Box 13k. You may also be required to report the recipient's foreign TIN, an LOB code (for an entity claiming treaty benefits), and the recipient's date of birth in Boxes 13j and 13l (see the instructions for Box 13j and Box 13l, later).