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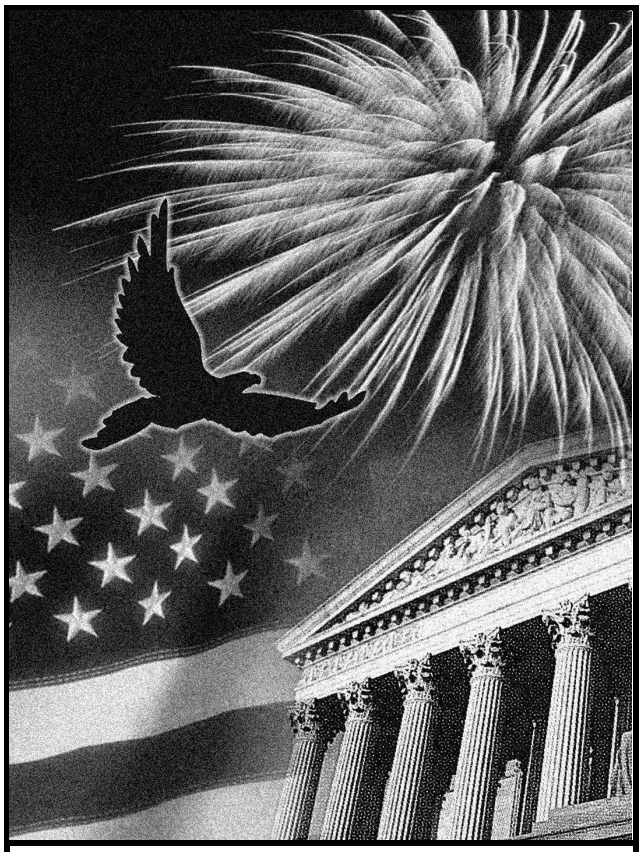
Withholding of Tax on Nonresident Aliens and Foreign Entities

For use in **2012**



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What's New

Changes to withholding rate table. Table 1, Withholding Tax Rates on Income Other Than Personal Services Income, is revised. Columns have been deleted or renamed and footnotes have been added, deleted, or revised for clarity.

U.S. real property interest. In most cases, the treatment of a regulated investment company (RIC) as a qualified investment entity (QIE) changes in 2012. The special rules that apply to distributions from a QIE attributable to the gain from the sale or exchange of a U.S. real property interest will continue to apply to certain distributions from a RIC that are directly or indirectly attributable to distributions received by the RIC from a real estate investment trust. See *Qualified investment entities* under *U.S. Real Property Interest.*

Interest-related dividends and short-term capital gain dividends received from mutual funds. Beginning January 1, 2012, the exemption from withholding on certain interest-related dividends and short-term capital gain dividends paid by a mutual fund or other regulated investment company expires.

Portfolio interest. The rules determining whether interest is considered portfolio interest change for obligations issued after March 18, 2012. Generally, interest paid on nonregistered (bearer) bonds will not be treated as portfolio interest. See *Portfolio interest.*

New codes for payments to artists or athletes. Use Income Code 42 for payments to an artist or athlete who has not signed a central withholding agreement. Use Income Code 43 for payments to an artist or athlete who has signed a central withholding agreement.

More requests for extensions must be filed electronically. Requests on Form 8809 for an extension of time to file Form 1042-S must be made electronically if the request is for more than one payer. See *Extension to file Form 1042-S with the IRS.*

Future developments. The IRS has created a page on IRS.gov for information about Publication 515 at *www.irs.gov/pub515*. Information about any future developments affecting Publication 515 (such as legislation enacted after we release it) will be posted on that page.

Reminders

Exemption from requirement to withhold for certain payments to qualified securities lenders. If you made U.S.-source substitute dividend payments to qualified securities lenders, and these payments are part of a chain of substitute dividend payments, you may be exempt from withholding tax on the payments. See *Amounts paid to qualified securities lenders*.

Electronic deposits. You must make all deposits of taxes electronically.

Substitute forms. Any substitute forms you use must comply with the requirements in Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns. If they do not, the forms may be rejected as incorrect and the IRS may impose penalties. See *Penalties*.

Filing electronically. If you file Form 1042-S electronically, you will use the Filing Information Returns Electronically (FIRE) system. You get to the system through the Internet at *fire.irs.gov*.

For files submitted on the FIRE system, it is the responsibility of the filer to verify the results of the transmission within 5 business days. The IRS will not mail error reports for files that are bad.

Qualified intermediaries. A branch of a financial institution may not act as a qualified intermediary in a country that does not have approved know-your-customer rules. See *Qualified intermediary* under *Foreign Intermediaries*.

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

This publication is for withholding agents who pay income to foreign persons, including nonresident aliens, foreign corporations, foreign partnerships, foreign trusts, foreign estates, foreign governments, and international organizations. Specifically, it describes the persons responsible for withholding (withholding agents), the types of income subject to withholding, and the information return and tax return filing obligations of withholding agents. In addition to discussing the rules that apply generally to payments of U.S. source income to foreign persons, it also contains sections on the withholding that applies to the disposition of U.S. real property interests and the withholding by partnerships on income effectively connected with the active conduct of a U.S. trade or business.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can write to us at the following address:

Internal Revenue Service
Individual Forms and Publications Branch
SE:W:CAR:MP:T:I
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at *taxforms@irs.gov*. Please put "Publications Comment" on the subject line. You can also send us comments from *www.irs.gov/formspubs/*. Select "Comment on Tax Forms and Publications" under "Information About."

Although we cannot respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax products.

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Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

Tax questions. If you have a tax question, check the information available on IRS.gov or call 1-800-829-1040. We cannot answer tax questions sent to either of the above addresses.

Useful Items

You may want to see:

Publication

- ❑ **15** (Circular E), Employer's Tax Guide
- ❑ **15-A** Employer's Supplemental Tax Guide
- ❑ **15-B** Employer's Tax Guide to Fringe Benefits
- ❑ **51** (Circular A), Agricultural Employer's Tax Guide
- ❑ **519** U.S. Tax Guide for Aliens
- ❑ **901** U.S. Tax Treaties

Form (and Instructions)

- ❑ **SS-4** Application for Employer Identification Number
- ❑ **W-2** Wage and Tax Statement
- ❑ **W-4** Employee's Withholding Allowance Certificate
- ❑ **W-4P** Withholding Certificate for Pension or Annuity Payments
- ❑ **W-7** Application for IRS Individual Taxpayer Identification Number
- ❑ **W-8BEN** Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding
- ❑ **W-8ECI** Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States
- ❑ **W-8EXP** Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding
- ❑ **W-8IMY** Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding
- ❑ **941** Employer's QUARTERLY Federal Tax Return
- ❑ **1042** Annual Withholding Tax Return for U.S. Source Income of Foreign Persons

❑ **1042-S** Foreign Person's U.S. Source Income Subject to Withholding

❑ **1042-T** Annual Summary and Transmittal of Forms 1042-S

See *How To Get Tax Help* at the end of this publication, for information about getting publications and forms.

Withholding of Tax

In most cases, a foreign person is subject to U.S. tax on its U.S. source income. Most types of U.S. source income received by a foreign person are subject to U.S. tax of 30%. A reduced rate, including exemption, may apply if there is a tax treaty between the foreign person's country of residence and the United States. The tax is generally withheld (NRA withholding) from the payment made to the foreign person.

The term "NRA withholding" is used in this publication descriptively to refer to withholding required under sections 1441, 1442, and 1443 of the Internal Revenue Code. In most cases, NRA withholding describes the withholding regime that requires withholding on a payment of U.S. source income. Payments to foreign persons, including nonresident alien individuals, foreign entities, and governments, may be subject to NRA withholding.

CAUTION *NRA withholding does not include withholding under section 1445 of the Code (see* U.S. Real Property Interest*, later) or under section 1446 of the Code (see* Partnership Withholding on Effectively Connected Income*, later).*

A withholding agent (defined next) is the person responsible for withholding on payments made to a foreign person. However, a withholding agent that can reliably associate the payment with documentation (discussed later) from a U.S. person is not required to withhold. In addition, a withholding agent may apply a reduced rate of withholding (including an exemption from withholding) if it can reliably associate the payment with documentation from a beneficial owner that is a foreign person entitled to a reduced rate of withholding.

Withholding Agent

You are a withholding agent if you are a U.S. or foreign person that has control, receipt, custody, disposal, or payment of any item of income of a foreign person that is subject to withholding. A withholding agent may be an individual, corporation, partnership, trust, association, nominee (under section 1446 of the Code), or any other entity, including any foreign intermediary, foreign partnership, or U.S. branch of certain foreign banks and insurance companies. You may be a withholding agent even if there is no requirement to withhold from a payment or even if another person has withheld the required amount from the payment.

Although several persons may be withholding agents for a single payment, the full tax is required to be withheld only once. In most cases, the U.S. person who pays an amount subject to NRA withholding is the person responsible for withholding. However, other persons may be required to withhold. For example, a payment made by a flow-through entity or nonqualified intermediary that knows, or has reason to know, that the full amount of NRA withholding was not done by the person from which it receives a payment is required to do the appropriate withholding since it also falls within the definition of a withholding agent. In addition, withholding must be done by any qualified intermediary, withholding foreign partnership, or withholding foreign trust in accordance with the terms of its withholding agreement, discussed later.

Liability for tax. As a withholding agent, you are personally liable for any tax required to be withheld. This liability is independent of the tax liability of the foreign person to whom the payment is made. If you fail to withhold and the foreign payee fails to satisfy its U.S. tax liability, then both you and the foreign person are liable for tax, as well as interest and any applicable penalties.

The applicable tax will be collected only once. If the foreign person satisfies its U.S. tax liability, you are not liable for the tax but remain liable for any interest and penalties for failure to withhold.

Determination of amount to withhold. You must withhold on the gross amount subject to NRA withholding. You cannot reduce the gross amount by any deductions. However, see *Scholarships and Fellowship Grants* and *Pay for Personal Services Performed*, later, for when a deduction for a personal exemption may be allowed.

If the determination of the source of the income or the amount subject to tax depends on facts that are not known at the time of payment, you must withhold an amount sufficient to ensure that at least 30% of the amount subsequently determined to be subject to withholding is withheld. In no case, however, should you withhold more than 30% of the total amount paid. Or, you may make a reasonable estimate of the amount from U.S. sources and put a corresponding part of the amount due in escrow until the amount from U.S. sources can be determined, at which time withholding becomes due.

When to withhold. Withholding is required at the time you make a payment of an amount subject to withholding. A payment is made to a person if that person realizes income, whether or not there is an actual transfer of cash or other property. A payment is considered made to a person if it is paid for that person's benefit. For example, a payment made to a creditor of a person in satisfaction of that person's debt to the creditor is considered made to the person. A payment also is considered made to a person if it is made to that person's agent.

A U.S. partnership should withhold when any distributions that include amounts subject to withholding are made. However, if a foreign partner's distributive share of income subject to withholding is not actually distributed, the U.S. partnership must withhold on the foreign partner's distributive share of the income on the earlier of the date that a Schedule K-1 (Form 1065) is provided or mailed to the partner or the due date for furnishing that schedule. If the distributable amount consists of effectively connected income, see *Partnership Withholding on Effectively Connected Income*, later.

A U.S. trust is required to withhold on the amount includible in the gross income of a foreign beneficiary to the extent the trust's distributable net income consists of an amount subject to withholding. To the extent a U.S. trust is required to distribute an amount subject to withholding but does not actually distribute the amount, it must withhold on the foreign beneficiary's allocable share at the time the income is required to be reported on Form 1042-S.

Withholding and Reporting Obligations

You are required to report payments subject to NRA withholding on Form 1042-S and to file a tax return on Form 1042. (See *Returns Required*, later.) An exception from reporting may apply to individuals who are not required to withhold from a payment and who do not make the payment in the course of their trade or business.

Form 1099 reporting and backup withholding. You also may be responsible as a payer for reporting on Form 1099 payments made to a U.S. person. You must withhold 28% (backup withholding rate) from a reportable payment made to a U.S. person that is subject to Form 1099 reporting if any of the following apply.

- The U.S. person has not provided its taxpayer identification number (TIN) in the manner required.
- The IRS notifies you that the TIN furnished by the payee is incorrect.
- There has been a notified payee underreporting.
- There has been a payee certification failure.

In most cases, a TIN must be provided by a U.S. non-exempt recipient on Form W-9, Request for Taxpayer Identification Number and Certification. A payer files a tax return on Form 945, Annual Return of Withheld Federal Income Tax, for backup withholding.

You may be required to file Form 1099 and, if appropriate, backup withhold, even if you do not make the payments directly to that U.S. person. For example, you are required to report income paid to a foreign intermediary or flow-through entity that collects for a U.S. person subject to Form 1099 reporting. See *Identifying the Payee*, later, for more information. Also see *Section S. Special Rules for Reporting Payments Made Through Foreign Intermediaries and Foreign Flow-Through Entities on Form 1099* in the General Instructions for Certain Information Returns.

TIP *Foreign persons who provide Form W-8BEN, Form W-8ECI, or Form W-8EXP (or applicable documentary evidence) are exempt from backup withholding and Form 1099 reporting.*

Wages paid to employees. If you are the employer of a nonresident alien, you generally must withhold taxes at graduated rates. See *Pay for Personal Services Performed*, later.

Effectively connected income by partnerships. A withholding agent that is a partnership (whether U.S. or foreign) is also responsible for withholding on its income effectively connected with a U.S. trade or business

that is allocable to foreign partners. See *Partnership Withholding on Effectively Connected Income*, later, for more information.

U.S. real property interest. A withholding agent also may be responsible for withholding if a foreign person transfers a U.S. real property interest to the agent, or if it is a corporation, partnership, trust, or estate that distributes a U.S. real property interest to a shareholder, partner, or beneficiary that is a foreign person. See *U.S. Real Property Interest*, later.

Persons Subject to NRA Withholding

NRA withholding applies only to payments made to a payee that is a foreign person. It does not apply to payments made to U.S. persons.

Usually, you determine the payee's status as a U.S. or foreign person based on the documentation that person provides. See *Documentation*, later. However, if you have received no documentation or you cannot reliably associate all or a part of a payment with documentation, then you must apply certain presumption rules, discussed later.

Identifying the Payee

In most cases, the payee is the person to whom you make the payment, regardless of whether that person is the beneficial owner of the income. However, there are situations in which the payee is a person other than the one to whom you actually make a payment.

U.S. agent of foreign person. If you make a payment to a U.S. person and you have actual knowledge that the U.S. person is receiving the payment as an agent of a foreign person, you must treat the payment as made to the foreign person. However, if the U.S. person is a financial institution, you may treat the institution as the payee provided you have no reason to believe that the institution will not comply with its own obligation to withhold.

If the payment is not subject to NRA withholding (for example, gross proceeds from the sales of securities), you must treat the payment as made to a U.S. person and not as a payment to a foreign person. You may be required to report the payment on Form 1099 and, if applicable, backup withhold.

Disregarded entities. A business entity that is not a corporation and that has a single owner may be disregarded as an entity separate from its owner (a disregarded entity) for federal tax purposes. The payee of a payment made to a disregarded entity is the owner of the entity.

If the owner of the entity is a foreign person, you must apply NRA withholding unless you can treat the foreign owner as a beneficial owner entitled to a reduced rate of withholding.

If the owner is a U.S. person, you do not apply NRA withholding. However, you may be required to report the payment on Form 1099 and, if applicable, backup withhold. You may assume that a foreign entity is not a disregarded entity unless you can reliably associate the payment with documentation provided by the owner or you have actual knowledge or reason to know that the foreign entity is a disregarded entity.

Flow-Through Entities

The payees of payments (other than income effectively connected with a U.S. trade or business) made to a foreign flow-through entity are the owners or beneficiaries of the flow-through entity. This rule applies for purposes of NRA withholding and for Form 1099 reporting and backup withholding. Income that is, or is deemed to be, effectively connected with the conduct of a U.S. trade or business of a flow-through entity is treated as paid to the entity.

All of the following are flow-through entities.

- A foreign partnership (other than a withholding foreign partnership).
- A foreign simple or foreign grantor trust (other than a withholding foreign trust).
- A fiscally transparent entity receiving income for which treaty benefits are claimed. See *Fiscally transparent entity*, later.

In most cases, you treat a payee as a flow-through entity if it provides you with a Form W-8IMY (see *Documentation*, later) on which it claims such status. You also may be required to treat the entity as a flow-through entity under the presumption rules, discussed later.

You must determine whether the owners or beneficiaries of a flow-through entity are U.S. or foreign persons, how much of the payment relates to each owner or beneficiary, and, if the owner or beneficiary is foreign, whether a reduced rate of NRA withholding applies. You make these determinations based on the documentation and other information (contained in a withholding statement) that is associated with the flow-through entity's Form W-8IMY. If you do not have all of the information that is required to reliably associate a payment with a specific payee, you must apply the presumption rules. See *Documentation* and *Presumption Rules*, later.

Withholding foreign partnerships and withholding foreign trusts are not flow-through entities.

Foreign partnerships. A foreign partnership is any partnership that is not organized under the laws of any state of the United States or the District of Columbia or any partnership that is treated as foreign under the income tax regulations. If a foreign partnership is not a withholding foreign partnership, the payees of income are the partners of the partnership, provided the partners are not themselves a flow-through entity or a foreign intermediary. However, the payee is the partnership itself if the partnership is claiming treaty benefits on the basis that it is not fiscally transparent and that it meets all the other requirements for claiming treaty benefits. If a partner is a foreign flow-through entity or a foreign intermediary, you apply the payee determination rules to that partner to determine the payees.

Example 1. A nonwithholding foreign partnership has three partners: a nonresident alien individual; a foreign corporation; and a U.S. citizen. You make a payment of U.S. source interest to the partnership. It gives you a Form W-8IMY with which it associates Forms W-8BEN from the nonresident alien and the foreign corporation and a Form W-9 from the U.S. citizen. The partnership also gives you a complete withholding statement that enables you to associate a part of the interest payment to each partner.

You must treat all three partners as the payees of the interest payment as if the payment were made directly to them. Report the payment to the nonresident alien and the foreign corporation on Forms 1042-S. Report the payment to the U.S. citizen on Form 1099-INT.

Example 2. A nonwithholding foreign partnership has two partners: a foreign corporation and a nonwithholding foreign partnership. The second partnership has two partners, both nonresident alien individuals. You make a payment of U.S. source interest to the first partnership. It gives you a valid Form W-8IMY with which it associates a Form W-8BEN from the foreign corporation and a Form W-8IMY from the second partnership. In addition, Forms W-8BEN from the partners are associated with the Form W-8IMY from the second partnership. The Forms W-8IMY from the partnerships have complete withholding statements associated with them. Because you can reliably associate a part of the interest payment with the Forms W-8BEN provided by the foreign corporation and the nonresident alien individual partners as a result of the withholding statements, you must treat them as the payees of the interest.

Example 3. You make a payment of U.S. source dividends to a withholding foreign partnership. The partnership has two partners, both foreign corporations. You can reliably associate the payment with a valid Form W-8IMY from the partnership on which it represents that it is a withholding foreign partnership. You must treat the partnership as the payee of the dividends.

Foreign simple and grantor trust. A trust is foreign unless it meets both of the following tests.

- A court within the United States is able to exercise primary supervision over the administration of the trust.
- One or more U.S. persons have the authority to control all substantial decisions of the trust.

In most cases, a foreign simple trust is a foreign trust that is required to distribute all of its income annually. A foreign grantor trust is a foreign trust that is treated as a grantor trust under sections 671 through 679 of the Code.

The payees of a payment made to a foreign simple trust are the beneficiaries of the trust. The payees of a payment made to a foreign grantor trust are the owners of the trust. However, the payee is the foreign simple or grantor trust itself if the trust is claiming treaty benefits on the basis that it is not fiscally transparent and that it meets all the other requirements for claiming treaty benefits. If the beneficiaries or owners are themselves flow-through entities or foreign

intermediaries, you apply the payee determination rules to that beneficiary or owner to determine the payees.

Example. A foreign simple trust has three beneficiaries: a nonresident alien individual, a foreign corporation, and a U.S. citizen. You make a payment of interest to the foreign trust. It gives you a Form W-8IMY with which it associates Forms W-8BEN from the nonresident alien and the foreign corporation and a Form W-9 from the U.S. citizen. The trust also gives you a complete withholding statement that enables you to associate a part of the interest payment with the forms provided by each beneficiary. You must treat all three beneficiaries as the payees of the interest payment as if the payment were made directly to them. Report the payment to the nonresident alien and the foreign corporation on Forms 1042-S. Report the payment to the U.S. citizen on Form 1099-INT.

Fiscally transparent entity. If a reduced rate of withholding under an income tax treaty is claimed, a flow-through entity includes any entity in which the interest holder must treat the entity as fiscally transparent. The determination of whether an entity is fiscally transparent is made on an item of income basis (that is, the determination is made separately for interest, dividends, royalties, etc.). The interest holder in an entity makes the determination by applying the laws of the jurisdiction where the interest holder is organized, incorporated, or otherwise considered a resident. An entity is considered to be fiscally transparent for the income to the extent the laws of that jurisdiction require the interest holder to separately take into account on a current basis the interest holder's share of the income, whether or not distributed to the interest holder, and the character and source of the income to the interest holder are determined as if the income was realized directly from the source that paid it to the entity. Subject to the standards of knowledge rules discussed later, you generally make the determination that an entity is fiscally transparent based on a Form W-8IMY provided by the entity.

The payees of a payment made to a fiscally transparent entity are the interest holders of the entity.

Example. Entity A is a business organization organized under the laws of country X that has an income tax treaty in force with the United States. A has two interest holders, B and C. B is a corporation organized under the laws of country Y. C is a corporation organized under the laws of country Z. Both countries Y and Z have an income tax treaty in force with the United States.

A receives royalty income from U.S. sources that is not effectively connected with the conduct of a trade or business in the United States. For U.S. income tax purposes, A is treated as a partnership. Country X treats A as a partnership and requires the interest holders in A to separately take into account on a current basis their respective shares of the income paid to A even if the income is not distributed. The laws of country X provide that the character and source of the income to A's interest holders are determined as if the income was realized directly from the source that paid it to A. Accordingly, A is fiscally transparent in its jurisdiction, country X.

B and C are not fiscally transparent under the laws of their respective countries of incorporation. Country Y requires B to separately take into account on a current basis B's share of the income paid to A, and the character and source of the income to B is determined as if the income was realized directly from the source that paid it to A. Accordingly, A is fiscally transparent for that income under the laws of country Y, and B is treated as deriving its share of the U.S. source royalty income for purposes of the U.S.-Y income tax treaty. Country Z, on the other hand, treats A as a corporation and does not require C to take into account its share of A's income on a current basis whether or not distributed. Therefore, A is not treated as fiscally transparent under the laws of country Z. Accordingly, C is not treated as deriving its share of the U.S. source royalty income for purposes of the U.S.-Z income tax treaty.

Foreign Intermediaries

In most cases, if you make payments to a foreign intermediary, the payees are the persons for whom the foreign intermediary collects the payment, such as account holders or customers, not the intermediary itself. This rule applies for purposes of NRA withholding and for Form 1099 reporting and backup withholding. You may, however, treat a qualified intermediary that has assumed primary withholding responsibility for a payment as the payee, and you are not required to withhold.

An intermediary is a custodian, broker, nominee, or any other person that acts as an agent for another person. A foreign intermediary is either a qualified intermediary or a nonqualified intermediary. In most cases, you determine whether an entity is a qualified intermediary or a nonqualified intermediary based on the representations the intermediary makes on Form W-8IMY.

You must determine whether the customers or account holders of a foreign intermediary are U.S. or foreign persons and, if the account holder or customer is foreign, whether a reduced rate of NRA withholding applies. You make these determinations based on the foreign intermediary's Form W-8IMY and associated information and documentation. If you do not have all of the information or documentation that is required to reliably associate a payment with a payee, you must apply the presumption rules. See *Documentation* and *Presumption Rules*, later.

Nonqualified intermediary. A nonqualified intermediary (NQI) is any intermediary that is a foreign person and that is not a qualified intermediary. The payees of a payment made to an NQI are the customers or account holders on whose behalf the NQI is acting.

Example. You make a payment of interest to a foreign bank that is a nonqualified intermediary. The bank gives you a Form W-8IMY and the Forms W-8BEN of two foreign persons, and a Form W-9 from a U.S. person for whom the bank is collecting the payments. The bank also associates with its Form W-8IMY a withholding statement on which it allocates the interest payment to each account holder and provides all other information required to be on the withholding statement. The account holders are the payees of the interest payment. You should report the part of the interest paid to the two foreign persons on Forms 1042-S and the part paid to the U.S. person on Form 1099-INT.

Qualified intermediary. A qualified intermediary (QI) is any foreign intermediary (or foreign branch of a U.S. intermediary) that has entered into a qualified intermediary withholding agreement (discussed later) with the IRS. You may treat a QI as a payee to the extent the QI assumes primary withholding responsibility or primary Form 1099 reporting and backup withholding responsibility for a payment. In this situation, the QI is required to withhold the tax. You can determine whether a QI has assumed responsibility from the Form W-8IMY provided by the QI.

A payment to a QI to the extent it does not assume primary NRA withholding responsibility is considered made to the person on whose behalf the QI acts. If a QI does not assume Form 1099 reporting and backup withholding responsibility, you must report on Form 1099 and, if applicable, backup withhold as if you were making the payment directly to the U.S. person.

Branches of financial institutions. Branches of financial institutions are not permitted to operate as QIs if they are located outside of countries having approved "know-your-customer" (KYC) rules. The countries with approved KYC rules are listed on IRS.gov.

QI withholding agreement. Foreign financial institutions and foreign branches of U.S. financial institutions can enter into an agreement with the IRS to be a qualified intermediary.

A QI is entitled to certain simplified withholding and reporting rules. In general, there are three major areas whereby intermediaries with QI status are afforded such simplified treatment.

The QI withholding agreement and procedures necessary to complete the QI application are set forth in Revenue Procedure 2000-12, which is on page 387 of Internal Revenue Bulletin 2000-4 at *www.irs.gov/pub/irs-irbs/irb00-04.pdf*. Also see the following items.

- Notice 2001-4, which is on page 267 of Internal Revenue Bulletin 2001-2 at *www.irs.gov/pub/irs-irbs/irb01-02.pdf*.
- Revenue Procedure 2003-64, Appendix 3, which is on page 306 of Internal Revenue Bulletin 2003-32 at *www.irs.gov/pub/irs-irbs/irb03-32.pdf*.
- Revenue Procedure 2004-21, 2004-14 I.R.B. 702, available at *www.irs.gov/irb/2004-14_IRB/ar10.html*.
- Revenue Procedure 2005-77, 2005-51 I.R.B.1176, available at *www.irs.gov/irb/2005-51_IRB/ar13.html*.

Documentation. A QI is not required to forward documentation obtained from foreign account holders to the U.S. withholding agent from whom the QI receives a payment of U.S. source income. The QI maintains such documentation at its location and provides the U.S. withholding agent with withholding rate pools. A withholding rate pool is a payment of a single type of income that is subject to a single rate of withholding.

A QI is required to provide the U.S. withholding agent with information regarding U.S. persons subject to Form 1099 information reporting unless the QI assumes the primary obligation to do Form 1099 reporting and backup withholding.

If a QI obtains documentary evidence under the "know-your-customer" rules that apply to the QI under local law, and the documentary evidence is of a type specified in an attachment to the QI agreement, the documentary evidence remains valid until there is a change in circumstances or the QI knows the information is incorrect. This indefinite validity period rule does not apply to Forms W-8 or to documentary evidence that is not of the type specified in the attachment to the agreement.

Form 1042-S reporting. A QI is permitted to report payments made to its direct foreign account holders on a pooled basis rather than reporting payments to each direct account holder specifically. Pooled basis reporting is not available for payments to certain account holders, such as a nonqualified intermediary or a flow-through entity (discussed earlier).

Collective refund procedures. A QI may seek a refund on behalf of its direct account holders. The direct account holders, therefore, are not required to file returns with the IRS to obtain refunds, but rather may obtain them from the QI.

U.S. branches of foreign banks and foreign insurance companies. Special rules apply to a U.S. branch of a foreign bank subject to Federal Reserve Board supervision or a foreign insurance company subject to state regulatory supervision. If you agree to treat the branch as a U.S. person, you may treat the branch as a U.S. payee for a payment subject to NRA withholding provided you receive a Form W-8IMY from the U.S. branch on which the agreement is evidenced. If you treat the branch as a U.S. payee, you are not required to withhold. Even though you agree to treat the branch as a U.S. person, you must report the payment on Form 1042-S.

A financial institution organized in a U.S. possession is treated as a U.S. branch. The special rules discussed in this section apply to a possessions financial institution.

If you are paying a U.S. branch an amount that is not subject to NRA withholding, treat the payment as made to a foreign person, irrespective of any agreement to treat the branch as a U.S. person for amounts subject to NRA withholding. Consequently, amounts not subject to NRA withholding that are paid to a U.S. branch are not subject to Form 1099 reporting or backup withholding.

Alternatively, a U.S. branch may provide you with a Form W-8IMY with which it associates the documentation of the persons on whose behalf it acts. In this situation, the payees are the persons on whose behalf the branch acts provided you can reliably associate the payment with valid documentation from those persons. See *Nonqualified Intermediaries* under *Documentation,* later.

If the U.S. branch does not provide you with a Form W-8IMY, then you should treat a payment subject to NRA withholding as made to the foreign person of which the branch is a part and the income as effectively connected with the conduct of a trade or business in the United States.

Withholding foreign partnership and foreign trust. A withholding foreign partnership (WP) is any foreign partnership that has entered into a WP withholding agreement with the IRS and is acting in that capacity. A withholding foreign trust (WT) is a foreign simple or grantor trust that has entered into a WT withholding agreement with the IRS and is acting in that capacity.

A WP or WT may act in that capacity only for payments of amounts subject to NRA withholding that are distributed to, or included in the distributive share of, its direct partners, beneficiaries, or owners. A WP or WT acting in that capacity must assume NRA withholding responsibility for these amounts. You may treat a WP or WT as a payee if it has provided you with documentation (discussed later) that represents that it is acting as a WP or WT for such amounts.

WP and WT withholding agreements. The WP and WT withholding agreements and the application procedures for the agreements are in Revenue Procedure 2003-64. Also see the following items.

- Revenue Procedure 2004-21.
- Revenue Procedure 2005-77.

Employer identification number (EIN). A completed Form SS-4 must be submitted with the application for being a WP or WT. The WP or WT will be assigned a WP-EIN or WT-EIN to be used only when acting in that capacity.

Documentation. A WP or WT must provide you with a Form W-8IMY that certifies that the WP or WT is acting in that capacity and a written statement identifying the amounts for which it is so acting. The statement is not required to contain withholding rate pool information or any information relating to the identity of a direct partner, beneficiary, or owner. The Form W-8IMY must contain the WP-EIN or WT-EIN.

Foreign Persons

A payee is subject to NRA withholding only if it is a foreign person. A foreign person includes a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, foreign estate, and any other person that is not a U.S. person. It also includes a foreign branch of a U.S. financial institution if the foreign branch is a qualified intermediary. In most cases, the U.S. branch of a foreign corporation or partnership is treated as a foreign person.

Nonresident alien. A nonresident alien is an individual who is not a U.S. citizen or a resident alien. A resident of a foreign country under the residence article of an income tax treaty is a nonresident alien individual for purposes of withholding.

Married to U.S. citizen or resident alien. Nonresident alien individuals married to U.S. citizens or resident aliens may choose to be treated as resident aliens for certain income tax purposes. However, these individuals are still subject to the NRA withholding rules that apply to nonresident aliens for all income except wages. Wages paid to these individuals are subject to graduated withholding. See *Wages Paid to Employees—Graduated Withholding*.

Resident alien. A resident alien is an individual who is not a citizen or national of the United States and who meets either the green card test or the substantial presence test for the calendar year.

- ***Green card test.*** An alien is a U.S. resident if the individual was a lawful permanent resident of the United States at any time during the calendar year. This is known as the green card test because these aliens hold immigrant visas (also known as green cards).
- ***Substantial presence test.*** An alien is considered a U.S. resident if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the United States on at least:

1. 31 days during the current calendar year, and
2. 183 days during the current year and the 2 preceding years, counting all the days of physical presence in the current year, but only 1/3 the number of days of presence in the first preceding year, and only 1/6 the number of days in the second preceding year.

In most cases, the days the alien is in the United States as a teacher, student, or trainee on an "F," "J," "M," or "Q" visa are not counted. This exception is for a limited period of time.

For more information on resident and nonresident status, the tests for residence, and the exceptions to them, see Publication 519.

Note. If your employee is late in notifying you that his or her status changed from nonresident alien to resident alien, you may have to make an adjustment to Form 941 if that employee was exempt from withholding of social security and Medicare taxes as a nonresident alien. For more information on making adjustments, see chapter 13 of Publication 15 (Circular E).

Resident of a U.S. possession. A bona fide resident of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), or American Samoa who is not a U.S. citizen or a U.S. national is treated as a nonresident alien for the withholding rules explained here. A bona fide resident of a possession is someone who:

- Meets the presence test,
- Does not have a tax home outside the possession, and
- Does not have a closer connection to the United States or to a foreign country than to the possession.

For more information, see Publication 570, Tax Guide for Individuals With Income From U.S. Possessions.

Foreign corporations. A foreign corporation is one that does not fit the definition of a domestic corporation. A domestic corporation is one that was created or organized in the United States or under the laws of the United States, any of its states, or the District of Columbia.

Guam or Northern Mariana Islands corporations. A corporation created or organized in,

or under the laws of, Guam or the CNMI is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

- At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons; and
- At least 20% of the corporation's gross income is derived from sources within Guam or the CNMI for the 3-year period ending with the close of the preceding tax year of the corporation (or the period the corporation has been in existence, if less).

Note. The provisions discussed below under *U.S. Virgin Islands and American Samoa corporations* will apply to Guam or CNMI corporations when an implementing agreement is in effect between the United States and that possession.

U.S. Virgin Islands and American Samoa corporations. A corporation created or organized in, or under the laws of, the U.S. Virgin Islands or American Samoa is not considered a foreign corporation for the purposes of withholding tax for the tax year if:

- At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons,
- At least 65% of the corporation's gross income is effectively connected with the conduct of a trade or business in the U.S. Virgin Islands, American Samoa, Guam, the CNMI, or the United States for the 3-year period ending with the close of the tax year of the corporation (or the period the corporation or any predecessor has been in existence, if less), and
- No substantial part of the income of the corporation is used, directly or indirectly, to satisfy obligations to a person who is not a bona fide resident of the U.S. Virgin Islands, American Samoa, Guam, the CNMI, or the United States.

Foreign private foundations. A private foundation that was created or organized under the laws of a foreign country is a foreign private foundation. Gross investment income from sources within the United States paid to a qualified foreign private foundation is subject to NRA withholding at a 4% rate (unless exempted by a treaty) rather than the ordinary statutory 30% rate.

Other foreign organizations, associations, and charitable institutions. An organization may be exempt from income tax under section 501(a) of the Internal Revenue Code even if it was formed under foreign law. In most cases, you do not have to withhold tax on payments of income to these foreign tax-exempt organizations unless the IRS has determined that they are foreign private foundations.

Payments to these organizations, however, must be reported on Form 1042-S, even though no tax is withheld.

You must withhold tax on the unrelated business income (as described in Publication 598, Tax on Unrelated Business Income of Exempt Organizations) of foreign tax-exempt organizations in the same way that you would withhold tax on similar income of nonexempt organizations.

U.S. branches of foreign persons. In most cases, a payment to a U.S. branch of a foreign person is a payment made to the foreign person. However, you may treat payments to U.S. branches of foreign banks and foreign insurance companies (discussed earlier) that are subject to U.S. regulatory supervision as payments made to a U.S. person, if you and the U.S. branch have agreed to do so, and if their agreement is evidenced by a withholding certificate, Form W-8IMY. For this purpose, a financial institution organized under the laws of a U.S. possession is treated as a U.S. branch.

Documentation

In most cases, you must withhold 30% from the gross amount paid to a foreign payee unless you can reliably associate the payment with valid documentation that establishes either of the following.

- The payee is a U.S. person.
- The payee is a foreign person that is the beneficial owner of the income and is entitled to a reduced rate of withholding.

In most cases, you must get the documentation before you make the payment. The documentation is not valid if you know, or have reason to know, that it is unreliable or incorrect. See *Standards of Knowledge*, later.

If you cannot reliably associate a payment with valid documentation, you must use the presumption rules discussed later. For example, if you do not have documentation or you cannot determine the part of a payment that is allocable to specific documentation, you must use the presumption rules.

The specific types of documentation are discussed in this section. However, see *Withholding on Specific Income*, later, as well as the instructions to the particular forms. As the withholding agent, you also may want to see the Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY.

Section 1446 withholding. Under section 1446 of the Code, a partnership must withhold tax on its effectively connected income allocable to a foreign partner. In most cases, a partnership determines if a partner is a foreign partner and the partner's tax classification based on the withholding certificate provided by the partner. This is the same documentation that is filed for NRA withholding, but may require additional information as discussed under each of the forms in this section.

Joint owners. If you make a payment to joint owners, you need to get documentation from each owner.

Form W-9. In most cases, you can treat the payee as a U.S. person if the payee gives you a Form W-9. The Form W-9 can be used only by a U.S. person and must contain the payee's taxpayer identification number (TIN). If there is more than one owner, you may treat the total amount as paid to a U.S. person if any one of the owners gives you a Form W-9. See *U.S. Taxpayer Identification Numbers*, later. U.S. persons are not subject to NRA withholding, but may be subject to Form 1099 reporting and backup withholding.

Form W-8. In most cases, a foreign person that is a beneficial owner of the income should give you a Form W-8. Until further notice, you can rely upon Forms W-8 that contain a P.O. box as a permanent residence address provided you do not know, or have reason to know, that the person providing the form is a U.S. person and that a street address is available. You may rely on Forms W-8 for which there is a U.S. mailing address provided you received the form prior to December 31, 2001.

If certain requirements are met, the foreign person can give you documentary evidence, rather than a Form W-8. You can rely on documentary evidence in lieu of a Form W-8 for a payment made in a U.S. possession.

Other documentation. Other documentation may be required to claim an exemption from, or a reduced rate of, withholding on pay for personal services. The nonresident alien individual may have to give you a Form W-4 or a Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual. These forms are discussed in *Pay for Personal Services Performed* under *Withholding on Specific Income.*

Beneficial Owners

If all the appropriate requirements have been established on a Form W-8BEN, W-8ECI, W-8EXP or, if applicable, on documentary evidence, you may treat the payee as a foreign beneficial owner.

Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding. This form is used by a foreign person to:

- Establish foreign status;
- Claim that such person is the beneficial owner of the income for which the form is being furnished or a partner in a partnership subject to section 1446 withholding; and
- If applicable, claim a reduced rate of, or exemption from, withholding under an income tax treaty.

Form W-8BEN also may be used to claim that the foreign person is exempt from Form 1099 reporting and backup withholding for income that is not subject to NRA withholding. For example, a foreign person may provide a Form W-8BEN to a broker to establish that the gross proceeds from the sale of securities are not subject to Form 1099 reporting or backup withholding.

Claiming treaty benefits. You may apply a reduced rate of withholding to a foreign person that provides a Form W-8BEN claiming a reduced rate of withholding under an income tax treaty only if the person provides a U.S. TIN and certifies that:

- It is a resident of a treaty country;

- It is the beneficial owner of the income;
- If it is an entity, it derives the income within the meaning of section 894 of the Internal Revenue Code (it is not fiscally transparent); and
- It meets any limitation on benefits provision contained in the treaty, if applicable.

If the foreign beneficial owner claiming a treaty benefit is related to you, the foreign beneficial owner also must certify on Form W-8BEN that it will file Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b), if the amount subject to NRA withholding received during a calendar year exceeds, in the aggregate, $500,000.

An entity derives income for which it is claiming treaty benefits only if the entity is not treated as fiscally transparent for that income. See *Fiscally transparent entity* discussed earlier under *Flow-Through Entities.*

Limitations on benefits provisions generally prohibit third country residents from obtaining treaty benefits. For example, a foreign corporation may not be entitled to a reduced rate of withholding unless a minimum percentage of its owners are citizens or residents of the United States or the treaty country.

The exemptions from, or reduced rates of, U.S. tax vary under each treaty. You must check the provisions of the tax treaty that apply. Tables at the end of this publication show the countries with which the United States has income tax treaties and the rates of withholding that apply in cases where all conditions of the particular treaty articles are satisfied.

If you know, or have reason to know, that an owner of income is not eligible for treaty benefits claimed, you must not apply the treaty rate. You are not, however, responsible for misstatements on a Form W-8, documentary evidence, or statements accompanying documentary evidence for which you did not have actual knowledge, or reason to know, that the statements were incorrect.

Exceptions to TIN requirement. A foreign person does not have to provide a TIN to claim a reduced rate of withholding under a treaty if the requirements for the following exceptions are met.

- Income from marketable securities (discussed next).
- Unexpected payments to an individual (discussed under *U.S. Taxpayer Identification Numbers*).

Marketable securities. A Form W-8BEN provided to claim treaty benefits does not need a U.S. TIN if the foreign beneficial owner is claiming the benefits on income from marketable securities. For this purpose, income from a marketable security consists of the following items.

- Dividends and interest from stocks and debt obligations that are actively traded.
- Dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (mutual fund).
- Dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon issuance) publicly offered and are registered with the SEC under the Securities Act of 1933.
- Income related to loans of any of the above securities.

Offshore accounts. If a payment is made outside the United States to an offshore account, a payee may give you documentary evidence, rather than Form W-8BEN.

In most cases, a payment is made outside the United States if you complete the acts necessary to effect the payment outside the United States. However, an amount paid by a bank or other financial institution on a deposit or account usually will be treated as paid at the branch or office where the amount is credited. An offshore account is an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States.

You may rely on documentary evidence given to you by a nonqualified intermediary or a flow-through entity with its Form W-8IMY. This rule applies even though you make the payment to a nonqualified intermediary or flow-through entity in the United States. In most cases, the nonqualified intermediary or flow-through entity that gives you documentary evidence also will have to give you a withholding statement, discussed later.

Documentary evidence. You may apply a reduced rate of withholding to income from marketable securities (discussed earlier) paid outside the United States to an offshore account if the beneficial owner gives you documentary evidence in place of a Form W-8BEN. To claim treaty benefits, the documentary evidence must be one of the following:

1. A certificate of residence that:
   a. Is issued by a tax official of the treaty country of which the foreign beneficial owner claims to be a resident,
   b. States that the person has filed its most recent income tax return as a resident of that country, and
   c. Is issued within 3 years prior to being presented to you.
2. Documentation for an individual that:
   a. Includes the individual's name, address, and photograph,
   b. Is an official document issued by an authorized governmental body, and
   c. Is issued no more than 3 years prior to being presented to you.
3. Documentation for an entity that:
   a. Includes the name of the entity,
   b. Includes the address of its principal office in the treaty country, and
   c. Is an official document issued by an authorized governmental body.

In addition to the documentary evidence, a foreign beneficial owner that is an entity must provide a statement that it derives the income for which it claims treaty benefits and that it meets one or more of the conditions set forth in a limitation on benefits article, if any, (or similar provision) contained in the applicable treaty.

Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States. This form is used by a foreign person to:

- Establish foreign status,
- Claim that such person is the beneficial owner of the income for which the form is being furnished, and
- Claim that the income is effectively connected with the conduct of a trade or business in the United States. (See *Effectively Connected Income*, later.)

Effectively connected income for which a valid Form W-8ECI has been provided is generally not subject to NRA withholding.

If a partner submits this form to a partnership, the income claimed to be effectively connected with the conduct of a U.S. trade or business is subject to withholding under section 1446. If the partner has made, or will make, an election under section 871(d) or 882(d), the partner must submit Form W-8ECI, and attach a copy of the election, or a statement of intent to elect, to the form.

CAUTION *If the partner's only effectively connected income is the income allocated from the partnership and the partner is not making the election under section 871(d) or 882(d), the partner should provide Form W-8BEN to the partnership.*

Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding. This form is used by a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession to:

- Establish foreign status,
- Claim that such person is the beneficial owner of the income for which the form is being furnished, and
- Claim a reduced rate of, or an exemption from, withholding as such an entity.

If the government or organization is a partner in a partnership carrying on a trade or business in the United States, the effectively connected income allocable to the partner is subject to withholding under section 1446.

See *Foreign Governments and Certain Other Foreign Organizations*, later.

Foreign Intermediaries and Foreign Flow-Through Entities

Payments made to a foreign intermediary or foreign flow-through entity are treated as made to the payees on whose behalf the intermediary or entity acts. The Form W-8IMY provided by a foreign intermediary or flow-through entity must be accompanied by additional information for you to be able to reliably associate the payment with a payee. The additional information required depends on the type of intermediary or

flow-through entity and the extent of the withholding responsibilities it assumes.

Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding. This form is used by foreign intermediaries and foreign flow-through entities, as well as certain U.S. branches, to:

- Represent that a foreign person is a qualified intermediary or nonqualified intermediary,
- Represent, if applicable, that the qualified intermediary is assuming primary NRA withholding responsibility and/or primary Form 1099 reporting and backup withholding responsibility,
- Represent that a foreign partnership or a foreign simple or grantor trust is a withholding foreign partnership or a withholding foreign trust,
- Represent that a foreign flow-through entity is a nonwithholding foreign partnership, or a nonwithholding foreign trust and that the income is not effectively connected with the conduct of a trade or business in the United States,
- Represent that the provider is a U.S. branch of a foreign bank or insurance company and either is agreeing to be treated as a U.S. person or is transmitting documentation of the persons on whose behalf it is acting, or
- Represent that, for purposes of section 1446, it is an upper-tier foreign partnership or a foreign grantor trust and that the form is being used to transmit the required documentation. For information on qualifying as an upper-tier foreign partnership, see Regulations section 1.1446-5.

Qualified Intermediaries

In most cases, a QI is any foreign intermediary that has entered into a QI withholding agreement (discussed earlier) with the IRS. A foreign intermediary that has received a QI employer identification number (QI-EIN) may represent on Form W-8IMY that it is a QI before it receives a fully executed agreement. The intermediary can claim that it is a QI until the IRS revokes its QI-EIN. The IRS will revoke a QI-EIN if the QI agreement is not executed and returned to the IRS within a reasonable period of time after the agreement was sent to the intermediary for signature.

Responsibilities. Payments made to a QI that does not assume NRA withholding responsibility are treated as paid to its account holders and customers. However, a QI is not required to provide you with documentation it obtains from its foreign account holders and customers. Instead, it provides you with a withholding statement that contains withholding rate pool information. A withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042-S that is subject to a single rate of withholding. A qualified intermediary is required to provide you with information regarding U.S. persons subject to Form 1099 reporting and to provide you withholding rate pool information separately for each such U.S. person unless it has assumed Form 1099 reporting and backup withholding responsibility. For the alternative procedure for providing rate pool information for U.S. non-exempt persons, see the Form W-8IMY instructions.

The withholding statement must:

1. Designate those accounts for which it acts as a qualified intermediary,
2. Designate those accounts for which it assumes primary NRA withholding responsibility and/or primary Form 1099 and backup withholding responsibility, and
3. Provide sufficient information for you to allocate the payment to a withholding rate pool.

The extent to which you must have withholding rate pool information depends on the withholding and reporting obligations assumed by the QI.

Primary responsibility not assumed. If a QI does not assume primary NRA withholding responsibility or primary Form 1099 reporting and backup withholding responsibility for the payment, you can reliably associate the payment with valid documentation only to the extent you can reliably determine the part of the payment that relates to each withholding rate pool for foreign payees. Unless the alternative procedure applies, the qualified intermediary must provide you with a separate withholding rate pool for each U.S. person subject to Form 1099 reporting and/or backup withholding. The QI must provide a Form W-9 or, in the absence of the form, the name, address, and TIN, if available, for such person.

Primary NRA withholding responsibility assumed. If you make a payment to a QI that assumes primary NRA withholding responsibility (but not primary Form 1099 reporting and backup withholding responsibility), you can reliably associate the payment with valid documentation only to the extent you can reliably determine the part of the payment that relates to the withholding rate pool for which the QI assumes primary NRA withholding responsibility and the part of the payment attributable to withholding rate pools for each U.S. person, unless the alternative procedure applies, subject to Form 1099 reporting and/or backup withholding. The QI must provide a Form W-9 or, in the absence of the form, the name, address, and TIN, if available, for such person.

Primary NRA and Form 1099 responsibility assumed. If you make a payment to a QI that assumes both primary NRA withholding responsibility and primary Form 1099 reporting and backup withholding responsibility, you can reliably associate a payment with valid documentation provided that you receive a valid Form W-8IMY. It is not necessary to associate the payment with withholding rate pools.

Example. You make a payment of dividends to a QI. It has five customers: two are foreign persons who have provided documentation entitling them to a 15% rate of withholding on dividends; two are foreign persons subject to a 30% rate of withholding on dividends; and one is a U.S. individual who provides it with a Form W-9. Each customer is entitled to 20% of the dividend payment. The QI does not assume any primary withholding responsibility. The QI gives you a Form W-8IMY with which it associates the Form W-9 and a withholding statement that allocates 40% of the dividend to a 15% withholding rate pool, 40% to a 30% withholding rate pool, and 20% to the U.S. individual. You should report on Forms 1042-S 40% of the payment as made to a 15% rate dividend pool and 40% of the payment as made to a 30% rate dividend pool. The part of the payment allocable to the U.S. individual (20%) is reportable on Form 1099-DIV.

Smaller partnerships and trusts. A QI may apply special rules to a smaller partnership or trust (Joint Account Provision) only if the partnership or trust meets the following conditions.

- It is a foreign partnership or foreign simple or grantor trust.
- It is a direct account holder of the QI.
- It does not have any partner, beneficiary, or owner that is a U.S. person or a passthrough partner, beneficiary, or owner.

For information on these rules, see section 4A.01 of the QI agreement. This is found in Appendix 3 of Revenue Procedure 2003-64. Also see Revenue Procedure 2004-21.

Related partnerships and trusts. A QI may apply special rules to a related partnership or trust only if the partnership or trust meets the following conditions.

1. It is a foreign partnership or foreign simple or grantor trust.
2. It is either:
   a. A direct account holder of the QI, or
   b. An indirect account holder of the QI that is a direct partner, beneficiary, or owner of a partnership or trust to which the QI has applied this rule.

For information on these rules, see section 4A.02 of the QI agreement. This is found in Appendix 3 of Revenue Procedure 2003-64. Also see Revenue Procedure 2005-77.

Nonqualified Intermediaries

If you are making a payment to an NQI, foreign flow-through entity, or U.S. branch that is using Form W-8IMY to transmit information about the branch's account holders or customers, you can treat the payment (or a part of the payment) as reliably associated with valid documentation from a specific payee only if, prior to making the payment:

- You can allocate the payment to a valid Form W-8IMY,
- You can reliably determine how much of the payment relates to valid documentation provided by a payee (a person that is not itself a foreign intermediary, flow-through entity, or U.S. branch), and
- You have sufficient information to report the payment on Form 1042-S or Form 1099, if reporting is required.

The NQI, flow-through entity, or U.S. branch must give you certain information on a withholding statement that is associated with the Form W-8IMY. A withholding statement must be updated to keep the information accurate prior to each payment.

Withholding statement. In most cases, a withholding statement must contain the following information.

1. The name, address, and TIN (if any, or if required) of each person for whom documentation is provided.
2. The type of documentation (documentary evidence, Form W-8, or Form W-9) for every person for whom documentation has been provided.
3. The status of the person for whom the documentation has been provided, such as whether the person is a U.S. exempt recipient (U.S. person exempt from Form 1099 reporting), U.S. non-exempt recipient (U.S. person subject to Form 1099 reporting), or a foreign person. For a foreign person, the statement must indicate whether the person is a beneficial owner or a foreign intermediary, flow-through entity, or a U.S. branch.
4. The type of recipient the person is, based on the recipient codes used on Form 1042-S.
5. Information allocating each payment, by income type, to each payee (including U.S. exempt and U.S. non-exempt recipients) for whom documentation has been provided.
6. The rate of withholding that applies to each foreign person to whom a payment is allocated.
7. A foreign payee's country of residence.
8. If a reduced rate of withholding is claimed, the basis for a reduced rate of withholding (for example, portfolio interest, treaty benefit, etc.).
9. In the case of treaty benefits claimed by entities, whether the applicable limitation on benefits statement and the statement that the foreign person derives the income for which treaty benefits are claimed, have been made.
10. The name, address, and TIN (if any) of any other NQI, flow-through entity, or U.S. branch from which the payee will directly receive a payment.
11. Any other information a withholding agent requests to fulfill its reporting and withholding obligations.

Alternative procedure. Under this alternative procedure the NQI can give you the information that allocates each payment to each foreign and U.S. exempt recipient by January 31 following the calendar year of payment, rather than prior to the payment being made as otherwise required. To take advantage of this procedure, the NQI must: (a) inform you, on its withholding statement, that it is using the alternative procedure; and (b) obtain your consent. You must receive the withholding statement with all the required information (other than item 5) prior to making the payment.

CAUTION *This alternative procedure cannot be used for payments to U.S. non-exempt recipients. Therefore, an NQI must always provide you with allocation information for all U.S. non-exempt recipients prior to a payment being made.*

Pooled withholding information. If an NQI uses the alternative procedure, it must provide you with withholding rate pool information, as opposed to individual allocation information, prior to the payment of a reportable amount. A withholding rate pool is a payment of a single type of income (as determined by the income categories on Form 1042-S) that is subject to a single rate of withholding. For example, an NQI that has foreign account holders receiving royalties and dividends, both subject to the 15% rate, will provide you with information for two withholding rate pools (one for royalties and one for dividends). The NQI must provide you with the payee specific allocation information (information allocating each payment to each payee) by January 31 following the calendar year of payment.

Failure to provide allocation information. If an NQI fails to provide you with the payee specific allocation information for a withholding rate pool by January 31, you must not apply the alternative procedure to any of the NQI's withholding rate pools from that date forward. You must treat the payees as undocumented and apply the presumption rules, discussed later in *Presumption Rules*. An NQI is deemed to have failed to provide specific allocation information if it does not give you such information for more than 10% of any one withholding rate pool.

However, if you receive such information by February 14, you may make the appropriate adjustments to repay any excess withholding incurred between February 1 and on or before February 14.

If the NQI fails to allocate more than 10% of the payment to a withholding rate pool by February 14 following the calendar year of payment, you must file a Form 1042-S for each account holder in the pool on a pro-rata basis. 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, you must file four Forms 1042-S, one for each account holder in the pool, showing $25 of income to each. You must also check the "Pro-rata Basis Reporting" box at the top of each form. If, however, the nonqualified intermediary provides allocation information for 90% or more of the payment to a withholding rate pool, the pro-rata reporting method is not required. Instead, you must file a Form 1042-S for each account holder for whom you have allocation information and report the unallocated part of the payment on a Form 1042-S issued to "unknown recipient."

Withholding Foreign Partnerships

If you are making payments to a WP, you do not have to withhold if the WP is acting in that capacity. The WP must assume NRA withholding responsibility for amounts (subject to NRA withholding) that are distributed to, or included in the distributive share of, any direct partner. The WP must withhold the amount required to be withheld. A WP must provide you with a Form W-8IMY that certifies that the WP is acting in that capacity and a written statement identifying the amounts for which it is so acting. The Form W-8IMY must contain the WP-EIN.

Responsibilities of WP. The WP must withhold on the date it makes a distribution of an amount subject to NRA withholding to a direct foreign partner based on the Forms W-8 or W-9 it receives from its partners. If the partner's distributive share has not been distributed, the WP must withhold on the partner's distributive share on the earlier of the date that the partnership must mail or otherwise provide to the partner a Schedule K-1 (Form 1065) or the due date for furnishing the statement (whether or not the WP is required to furnish the statement).

The WP may determine the amount of withholding based on a reasonable estimate of the partner's distributive share of income subject to withholding for the year. The WP must correct the estimated withholding to reflect the actual distributive share on the earlier of the dates mentioned in the preceding paragraph. If that date is after the due date (including extensions) for filing the WP's Forms 1042 and 1042-S for the calendar year, the WP may withhold and report any adjustments in the following calendar year.

Form 1042 filing. The WP must file Form 1042 even if no amount was withheld. In addition to the information that is required for the Form 1042, the WP must attach a statement showing the amounts of any over- or under-withholding adjustments and an explanation of those adjustments.

Form 1042-S reporting. The WP can elect to report payments made to its direct partners on a pooled basis rather than reporting payments to each direct partner. This election must be made when the WP withholding agreement is executed. If the election was not made, the WP must file separate Forms 1042-S for each direct partner whose distributive share included an amount subject to NRA withholding.

Smaller partnerships and trusts. Under a special rule, a WP that has made a pooled reporting election can treat partners of certain smaller partnerships and beneficiaries or owners of certain smaller trusts (Joint Account Provision) as direct partners. These rules only apply to a partnership or trust that meets the following conditions.

- It is a foreign partnership or foreign simple or grantor trust.
- It is a direct partner of the WP.
- It does not have any partner, beneficiary, or owner that is a U.S. person or a pass-through partner, beneficiary, or owner.

For more information on applying these rules, see section 10.01 of the WP agreement found in Appendix 1 of Revenue Procedure 2003-64. Also see Revenue Procedure 2004-21.

Related partnerships and trusts. Under a special rule, a WP that has made a pooled reporting election can treat direct partners of certain related partnerships and direct beneficiaries or owners of certain related trusts as

direct partners. These rules only apply to a partnership or trust that meets the following conditions.

1. It is a foreign partnership or foreign simple or grantor trust.
2. It is either:
   a. A direct partner of the WP, or
   b. An indirect partner of the WP that is a partner, beneficiary, or owner of a partnership or trust to which the WP has applied this rule.

For more information on applying these rules see section 10.02 of the WP agreement found in Appendix 1 of Revenue Procedure 2003-64. Also see Revenue Procedure 2005-77.

Not acting as WP. A foreign partnership that is not acting as a WP is a nonwithholding foreign partnership. This occurs if a WP is not acting in that capacity for some or all of the amounts it receives from you. Also, a WP generally is a nonwithholding foreign partnership for amounts distributed to, or included in the distributive share of, pass-through partners or indirect partners.

You must treat payments made to a nonwithholding foreign partnership as made to the partners of the partnership. The partnership must provide you with a Form W-8IMY (with Part VI completed), a withholding statement identifying the amounts, the withholding certificates or documentary evidence of the partners, and the information shown earlier under *Withholding statement* under *Nonqualified Intermediaries.*

Withholding Foreign Trusts

If you are making payments to a WT, you do not have to withhold if the WT is acting in that capacity. The WT must assume NRA withholding responsibility for amounts (subject to NRA withholding) that are distributed to, or included in the distributive share of, any direct beneficiary or owner. The WT must withhold the amount required to be withheld. A WT must provide you with a Form W-8IMY that certifies that the WT is acting in that capacity and a written statement identifying the amounts for which it is so acting. The Form W-8IMY must contain the WT-EIN.

Responsibilities of WT. The WT must withhold on the date it makes a distribution of an amount subject to NRA withholding to a direct foreign beneficiary or owner. If the beneficiary's or owner's distributive share has not been distributed, the WT must withhold on the beneficiary's or owner's distributive share on the earlier of the date that the trust must mail or otherwise provide to the beneficiary or owner a Schedule K-1 (Form 1041) or the due date for furnishing the statement (whether or not the WT is required to furnish the statement).

The WT may determine the amount of withholding based on a reasonable estimate of the beneficiary's or owner's distributive share of income subject to withholding for the year. The WT must correct the estimated withholding to reflect the actual distributive share on the earlier of the dates mentioned in the preceding paragraph. If that date is after the due date (including extensions) for filing the WT's Forms 1042 and 1042-S for the calendar year, the WT may withhold and report any adjustments in the following calendar year.

Form 1042 filing. The WT must file Form 1042 even if no amount was withheld. In addition to the information that is required for the Form 1042, the WT must attach a statement showing the amounts of any over- or under-withholding adjustments and an explanation of those adjustments.

Form 1042-S reporting. A WT can elect to report payments made to its direct beneficiaries or owners on a pooled basis rather than reporting payments to each direct beneficiary or owner. This election must be made when the WT withholding agreement is executed. If the election was not made, the WT must file separate Forms 1042-S for each direct beneficiary or owner whose distributive share included an amount subject to NRA withholding.

Smaller partnerships and trusts. Under a special rule, a WT that has made a pooled reporting election can treat partners of certain smaller partnerships and beneficiaries or owners of certain smaller trusts (Joint Account Provision) as direct beneficiaries or owners. These rules only apply to a partnership or trust that meets the following conditions.

- It is a foreign partnership or foreign simple or grantor trust.
- It is a direct partner, beneficiary, or owner of the WT.
- It does not have any partner, beneficiary, or owner that is a U.S. person or a pass-through partner, beneficiary, or owner.

For more information on applying these rules, see section 10.01 of the WT agreement found in Appendix 2 of Revenue Procedure 2003-64. Also see Revenue Procedure 2004-21.

Related partnerships and trusts. Under a special rule, a WT that has made a pooled reporting election can treat direct partners of certain related partnerships and direct beneficiaries or owners of certain related trusts as direct beneficiaries or owners. These rules only apply to a partnership or trust that meets the following conditions.

1. It is a foreign partnership or foreign simple or grantor trust.
2. It is either:
   a. A direct beneficiary or owner of the WT, or
   b. An indirect beneficiary or owner of the WT that is a partner, beneficiary, or owner of a partnership or trust to which the WP has applied this rule.

For more information on applying these rules, see section 10.02 of the WP agreement found in Appendix 2 of Revenue Procedure 2003-64. Also see Revenue Procedure 2005-77.

Not acting as WT. A foreign trust that is not acting as a WT is a nonwithholding foreign trust. This occurs if a WT is not acting in that capacity for some or all of the amounts it receives from you. Also, a WT generally is a nonwithholding foreign trust for amounts distributed to, or included in the distributive share of, pass-through beneficiaries or owners or indirect beneficiaries or owners.

In most cases, you must treat payments made to a nonwithholding foreign trust as made to the beneficiaries of a simple trust or the owners of a grantor trust. The trust must provide you with a Form W-8IMY (with Part VI completed), a withholding statement identifying the amounts, the withholding certificates or documentary evidence of the beneficiaries or owners, and the information shown earlier under *Withholding statement* under *Nonqualified Intermediaries*.

Standards of Knowledge

You must withhold in accordance with the presumption rules (discussed later) if you know or have reason to know that a Form W-8 or documentary evidence provided by a payee is unreliable or incorrect. If you rely on an agent to obtain documentation, you are considered to know, or have reason to know, the facts that are within the knowledge of your agent.

Reason To Know

In most cases, you are considered to have reason to know that a claim of U.S. status or of a reduced rate of withholding is incorrect if statements contained in the withholding certificate or other documentation, or other relevant facts of which you have knowledge, would cause a reasonably prudent person in your position to question the claims made.

Financial institutions (including a regulated investment company) are treated as having reason to know documentation is unreliable or incorrect for payments on marketable securities only in the circumstances discussed next. If the documentation is considered unreliable or incorrect, you must get new documentation. However, you may rely on the original documentation if you receive the additional statements and/or documentation discussed.

The circumstances, discussed next, also apply to a withholding agent that is not a financial institution or making a payment on marketable securities. However, these withholding agents are not limited to these circumstances in determining if they have reason to know that documentation is unreliable or incorrect. These withholding agents cannot base their determination on the receipt of additional statements or documents. They need to get new documentation.

Withholding Certificates

You have reason to know that a Form W-8 provided by a direct account holder that is a foreign person is unreliable or incorrect if:

- The Form W-8 is incomplete with respect to any item on the form that is relevant to the claims made by the account holder;
- The Form W-8 contains any information that is inconsistent with the account holder's claim;
- The Form W-8 lacks information necessary to establish entitlement to a reduced

rate of withholding, if a reduced rate is claimed; or

- You have information not contained on the form that is inconsistent with the claims made on the form.

Establishment of foreign status. You have reason to know that a Form W-8BEN or Form W-8EXP is unreliable or incorrect to establish a direct account holder's status as a foreign person if:

1. The Form W-8 has a permanent residence address in the United States;
2. The Form W-8 has a mailing address in the United States;
3. You have a residence or mailing address as part of your account information that is an address in the United States;
4. The person providing the certificate notifies you of a new residence or mailing address in the United States; or
5. If the Form W-8 is provided with respect to an offshore account, the account holder has standing instructions directing you to pay amounts from its account to an address or account maintained in the United States.

Note. Items (2) and (3) do not apply if the U.S. mailing address is provided on a Form W-8 received before December 31, 2001.

You may, however, rely on a Form W-8 as establishing the account holder's foreign status if any of the following apply:

1. You receive the Form W-8 from an individual and:
   a. You possess or obtain documentary evidence (that does not contain a U.S. address) that was provided within the last three years, was valid when provided, supports the claim of foreign status, and the beneficial owner provides you with a reasonable explanation in writing supporting the account holder's foreign status; or
   b. If the account is maintained at your office outside the United States, you are required to report annually a payment to the account holder on a tax information statement filed with the tax authority of the country in which your office is located and that country has an income tax treaty in effect with the United States.
2. You receive the Form W-8 from an entity that is not a flow-through entity and:
   a. You have in your possession or obtain documentation that substantiates that the entity is organized or created under foreign law, or
   b. If the account is maintained at your office outside the United States, you are required to report annually a payment to the account holder on a tax information statement filed with the tax authority of the country in which your office is located and that country has an income tax treaty in effect with the United States.
3. The account holder has provided standing instructions to make payments with respect to its offshore account to a U.S. account or U.S. address if the account holder provides a reasonable explanation in writing that supports the account holder's foreign status.

Claim of reduced rate of withholding under treaty. You have reason to know that a Form W-8BEN provided by a direct account holder to claim a reduced rate of withholding under a treaty is unreliable or incorrect for purposes of establishing the account holder's residency in a treaty country if:

- The permanent residence address on the Form W-8BEN is not in the treaty country or the beneficial owner notifies you of a new permanent residence address that is not in the treaty country,
- The permanent residence address on the Form W-8BEN is in the treaty country but the withholding certificate (or your account information) contains a mailing address that is not in the treaty country, or
- The account holder has standing instructions for you to pay amounts from its account to an address or an account not in the treaty country.

You may, however, rely on a Form W-8BEN as establishing an account holder's claim of a reduced rate of withholding under a treaty if any of the following apply.

1. The permanent residence address is not in the treaty country and:
   a. The account holder provides a reasonable explanation for the permanent residence address outside the treaty country, or
   b. You possess or obtain documentary evidence that establishes residency in a treaty country.
2. The mailing address is not in the treaty country and:
   a. You possess or obtain additional documentation (that does not contain an address outside the treaty country) supporting the beneficial owner's claim of residence in the treaty country,
   b. You possess or obtain documentation that establishes that the beneficial owner is an entity organized in a treaty country,
   c. You know that the address outside the treaty country is a branch of a bank or insurance company that is a resident of the treaty country, or
   d. You obtain a written statement from the beneficial owner that reasonably establishes its entitlement to treaty benefits.
3. You have instructions to pay amounts outside the treaty country and the account holder gives you a reasonable explanation, in writing, establishing residence in the applicable treaty country.

Documentary Evidence

You have reason to know that documentary evidence provided by a direct account holder that is a foreign person is unreliable or incorrect if:

- The documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence;
- The documentary evidence contains information that is inconsistent with the account holder's claim of a reduced rate of withholding; or
- You have account information that is inconsistent with the account holder's claim of a reduced rate of withholding, or the documentary evidence lacks information necessary to establish a reduced rate of withholding. For example, the documentary evidence does not contain, or is not supplemented by, statements regarding the derivation of the income or compliance with limitations on benefits provisions in the case of an entity claiming treaty benefits.

Establishment of foreign status. You have reason to know that documentary evidence is unreliable or incorrect to establish a direct account holder's status as a foreign person if:

- The only mailing or residence address on documentary evidence provided after December 31, 2000, is an address at a financial institution (unless the financial institution is the beneficial owner), an in-care-of address, or a P.O. box;
- You have a mailing or residence address for the account holder in the United States or if the account holder notifies you of a new address in the United States; or
- The account holder has standing instructions directing you to pay amounts from the account to an address or account maintained in the United States.

You may, however, rely on documentary evidence as establishing an account holder's foreign status if any of the following apply.

1. The mailing or residence address is in the United States, you receive the documentary evidence from an individual, and
   a. You possess or obtain additional documentary evidence (that does not contain a U.S. address) supporting the claim of foreign status and a reasonable explanation in writing supporting the account holder's foreign status,
   b. You possess or obtain a Form W-8 that contains a permanent residence address and mailing address outside the United States (or if a mailing address is inside the United States the account

holder provides a reasonable explanation, in writing, supporting the account holder's foreign status, or the Form W-8 was received before December 31, 2001), or

c. The account is maintained at your office outside the United States and you are required to report annually a payment to the account holder on a tax information statement filed with the tax authority of the country in which your office is located and that country has an income tax treaty in effect with the United States.

2. The mailing or residence address is in the United States, you receive the documentary evidence from an entity (other than a flow-through entity) and:

   a. You possess or obtain documentation to substantiate that the entity is actually organized under the laws of a foreign country,

   b. You obtain a valid Form W-8 that contains a permanent residence address and mailing address outside the United States (or if a mailing address is inside the United States, the account holder provides additional documentary evidence sufficient to establish the account holder's foreign status, or the Form W-8 was received before December 31, 2001), or

   c. The account is maintained at an office outside the United States and you are required to report annually a payment to the account holder on a tax information statement filed with the tax authority of the country in which your office is located and that country has an income tax treaty in effect with the United States.

3. You have instructions to pay amounts to an address or an account in the United States and the account holder provides you with a reasonable explanation, in writing, that supports the account holder's foreign status.

Claim of reduced rate of withholding under treaty. You have reason to know that documentary evidence provided by a direct account holder to claim a reduced rate of withholding under a treaty is unreliable or incorrect for purposes of establishing the account holder's residency in a treaty country if:

- You have a mailing or residence address for the account holder that is outside the applicable treaty country,
- The only address that you have (whether in or outside the treaty country) is a P.O. box, an in-care-of address, or the address of a financial institution (that is not the beneficial owner of the income), or
- The account holder has standing instructions for you to pay amounts from its account to an address or account not in the treaty country.

You may, however, rely on documentary evidence as establishing an account holder's claim of a reduced rate of withholding under a treaty if any of the following apply.

1. The mailing or residence address is outside the treaty country and:

   a. You possess or obtain additional documentary evidence supporting the account holder's claim of residence in the treaty country (and the documentary evidence does not contain an address outside the treaty country, a P.O. box, an in-care-of address, or the address of a financial institution),

   b. You possess or obtain documentary evidence that establishes that the account holder is an entity organized in a treaty country, or

   c. You obtain a valid Form W-8BEN that contains a permanent residence address and a mailing address in the applicable treaty country.

2. You have instructions to pay amounts outside the treaty country and the account holder gives you a reasonable explanation, in writing, establishing residence in the applicable treaty country.

Indirect Account Holders

A financial institution that receives documentation from a payee through an NQI, a flow-through entity, or a U.S. branch of a foreign bank or insurance company subject to U.S. or state regulatory supervision has reason to know that the documentary evidence is unreliable or incorrect if a reasonably prudent person in the financial institution's position would question the claims made. This standard requires, but is not limited to, compliance with the following rules.

Withholding statement. You must review the withholding statement provided with Form W-8IMY and may not rely on information in the statement to the extent the information does not support the claims made for a payee. You may not treat a payee as a foreign person if a U.S. address is provided for the payee. You may not treat a person as a resident of a country with which the United States has an income tax treaty if the address for the person is outside the treaty country.

You may, however, treat a payee as a foreign person and may treat a foreign person as a resident of a treaty country if a reasonable explanation is provided, in writing, by the NQI, flow-through entity, or U.S. branch.

Withholding certificate. If you receive a Form W-8 for a payee in association with a Form W-8IMY, you must review each Form W-8 and verify that the information is consistent with the information on the withholding statement. If there is a discrepancy, you may rely on the Form W-8, if valid, and instruct the NQI, flow-through entity, or U.S. branch to correct the withholding statement, or, alternatively, you may apply the presumption rules, discussed later in *Presumption Rules*, to the payee.

Documentary evidence. If you receive documentary evidence for a payee in association with a Form W-8IMY, you must review the documentary evidence provided by the NQI, flow-through entity, or U.S. branch to determine that there is no obvious indication that the payee is a U.S. person subject to Form 1099 reporting or that the documentary evidence does not establish the identity of the person who provided the documentation (for example, the documentary evidence does not appear to be an identification document).

Presumption Rules

If you cannot reliably associate a payment with valid documentation, you must apply certain presumption rules or you may be liable for tax, interest, and penalties. If you comply with the presumption rules, you are not liable for tax, interest, and penalties even if the rate of withholding that should have been applied based on the payee's actual status is different from that presumed.

The presumption rules apply to determine the status of the person you pay as a U.S. or foreign person and other relevant characteristics, such as whether the payee is a beneficial owner or intermediary, and whether the payee is an individual, corporation, partnership, or trust. You are not permitted to apply a reduced rate of NRA withholding based on a payee's presumed status if documentation is required to establish a reduced rate of withholding. For example, if the payee of interest is presumed to be a foreign person, you may not apply the portfolio interest exception or a reduced rate of withholding under a tax treaty since both exceptions require documentation.

If you rely on your actual knowledge about a payee's status and withhold an amount less than that required under the presumption rules or do not report a payment that is subject to reporting under the presumption rules, you may be liable for tax, interest, and penalties. You should, however, rely on your actual knowledge if doing so results in withholding an amount greater than would apply under the presumption rules or in reporting an amount that would not be subject to reporting under the presumption rules.

The presumption rules, in the absence of documentation, for the subject matter are discussed in the regulation section indicated on Chart A.

Chart A. **Presumption Rules in the Absence of Documentation**

For the presumption rules related to:	See regulations section:
Payee's status	1.1441-1(b)(3); 1.6049-5(d)
Effectively connected income	1.1441-4(a)(2)
Partnership and its partners	1.1441-5(d); 1.1446-1(c)(3)
Estate or trust and its beneficiaries or owner	1.1441-5(e)(6)
Foreign tax-exempt organizations (including private foundations)	1.1441-9(b)(3)

Income Subject to NRA Withholding

This section explains how to determine if a payment is subject to NRA withholding.

A payment is subject to NRA withholding if it is from sources within the United States, and it is either:

- Fixed or determinable annual or periodical (FDAP) income, or
- Certain gains from the disposition of timber, coal, and iron ore, or from the sale or exchange of patents, copyrights, and similar intangible property.

In addition, a payment is subject to NRA withholding if withholding is specifically required, even though it may not constitute U.S. source income or FDAP income. For example, corporate distributions may be subject to NRA withholding even though a part of the distribution may be a return of capital or capital gain not otherwise subject to NRA withholding.

Amounts not subject to NRA withholding. The following amounts are not subject to NRA withholding.

- Portfolio interest on bearer obligations or foreign-targeted registered obligations if those obligations meet certain requirements. See *Interest*, later.
- Bank deposit interest that is not effectively connected with the conduct of a U.S. trade or business. See *Interest*, later.
- Original issue discount on certain short-term obligations. See *Original issue discount*, later.
- Nonbusiness gambling income of a nonresident alien playing blackjack, baccarat, craps, roulette, or big-6 wheel in the United States. See *Gambling winnings*, later.
- Amounts paid as part of the purchase price of an obligation sold between interest payment dates. See *Interest*, later.
- Original issue discount paid on the sale of an obligation other than a redemption. See *Original issue discount*, later.
- Insurance premiums paid on a contract issued by a foreign insurer.

Source of Income

In most cases, income is from U.S. sources if it is paid by domestic corporations, U.S. citizens or resident aliens, or entities formed under the laws of the United States or a state. Income is also from U.S. sources if the property that produces the income is located in the United States or the services for which the income is paid were performed in the United States. A payment is treated as being from sources within the United States if the source of the payment cannot be determined at the time of payment, such as fees for personal services paid before the services have been performed. Other source rules are summarized in Chart B and explained in detail in the separate discussions under *Withholding on Specific Income*, later.

In most cases, interest on an obligation of a foreign corporation or foreign partnership is foreign-source income. If the entity is engaged in a trade or business in the United States during its tax year, interest paid by such entity is treated as from U.S. sources only if the interest is paid by a U.S. trade or business conducted by the entity or is allocable to income that is treated as effectively connected with the conduct of a U.S. trade or business. This applies to a foreign partnership only if it is predominantly engaged in the active conduct of a trade or business outside the United States.

Guarantee income. Certain amounts paid, directly or indirectly, for the provision of a guarantee of indebtedness issued after September 27, 2010, are from U.S. sources. The amounts must be paid by one of the following:

1. A noncorporate U.S. resident or a U.S. corporation for the provision of a guarantee of the resident or corporation, or
2. Any foreign person for the provision of a guarantee if the payment is connected with income that is effectively connected, or treated as effectively connected, with the conduct of a U.S. trade or business.

Personal service income. If the income is for personal services performed in the United States, it is from U.S. sources. The place where the services are performed determines the source of the income, regardless of where the contract was made, the place of payment, or the residence of the payer.

However, under certain circumstances, payment for personal services performed in the United States is not considered income from sources within the United States. For information on this exception, see *Pay for Personal Services Performed*, later.

If the income is for personal services performed partly in the United States and partly outside the United States, you must make an accurate allocation of income for services performed in the United States based on the facts and circumstances. In most cases, you make this allocation on a time basis. That is, U.S. source income is the amount that results from multiplying the total amount of pay by the following fraction:

$$\frac{\text{Number of days services are performed in the United States}}{\text{Total number of days of service for which compensation is paid}}$$

Chart B. **Summary of Source Rules for FDAP Income**

IF you have:	THEN the source of that income is determined by:
Pay for personal services	Where the services are performed
Dividends	The type of corporation (U.S. or foreign)
Interest	The residence of the payer
Rents	Where the property is located
Royalties—Patents, copyrights, etc.	Where the property is used
Royalties—Natural resources	Where the property is located
Pensions: Distributions attributable to contributions	Where the services were performed while a nonresident alien
Pensions: Investment earnings on contributions	The location of pension trust
Scholarships and fellowship grants	In most cases, the residence of payer
Guarantee of indebtedness	The residence of the debtor or whether the payment is effectively connected with a U.S. trade or business

Employees. If the services are performed partly in the United States and partly outside the United States by an employee, the allocation of pay, other than certain fringe benefits, is determined on a time basis. The following fringe benefits are sourced on a geographical basis as shown in the following list.

- Housing – employee's main job location.
- Education – employee's main job location.
- Local transportation – employee's main job location.
- Tax reimbursement – jurisdiction imposing tax.
- Hazardous or hardship duty pay – location of pay zone.
- Moving expense reimbursement – employee's new main job location.

For information on what is included in these benefits, see Regulations section 1.861-4(b)(2)(ii)(D).

An employee's main job location (principal place of work) is usually the place where the employee spends most of his or her working time. If there is no one place where most of the work time is spent, the main job location is the place where the work is centered, such as where the employee reports for work or is otherwise required to base his or her work.

An employee can use an alternative basis based on facts and circumstances, rather than the time or geographical basis. The employee, not the employer, must demonstrate that the alternative basis more properly determines the source of the pay or fringe benefits.

Territorial limits. Wages received for services rendered inside the territorial limits of the United States and wages of an alien seaman earned on a voyage along the coast of the United States are regarded as from sources in the United States. Wages or salaries for personal services performed in a mine or on an oil or gas well located or being developed on the continental shelf of the United States are treated as from sources in the United States.

Income from the performance of services directly related to the use of a vessel or aircraft is treated as derived entirely from sources in the United States if the use begins and ends in the United States. This income is subject to NRA withholding if it is not effectively connected with a U.S. trade or business. If the use either begins or ends in the United States, see *Transportation income*, later.

Crew members. Income from the performance of services by a nonresident alien in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a U.S. possession is not income from U.S. sources.

Scholarships, fellowships, and grants. Scholarships, fellowships, and grants are sourced according to the residence of the payer. Those made by entities created or domiciled in the United States are generally treated as income from sources within the United States. However, see *Activities outside the United States*, next. Those made by entities created or domiciled in a foreign country are treated as income from foreign sources.

Activities outside the United States. A scholarship, fellowship, grant, targeted grant, or an achievement award received by a nonresident alien for activities conducted outside the United States is treated as foreign source income.

Pension payments. The source of pension payments is determined by the part of the distribution that constitutes the compensation element (employer contributions) and the part that constitutes the earnings element (the investment income).

The compensation element is sourced the same as compensation from the performance of personal services. The part attributable to services performed in the United States is U.S. source income, and the part attributable to services performed outside the United States is foreign source income.

Employer contributions to a defined benefit plan covering more than one individual are not made for the benefit of a specific participant, but are made based on the total liabilities to all participants. All funds held under the plan are available to provide benefits to any participant. If the payment is from such a plan, you can use the method in Revenue Procedure 2004-37 to allocate the payment to sources in and out of the United States. Revenue Procedure 2004-37, 2004-26 I.R.B.1099, is available at *www.irs.gov/irb/2004-26_IRB/ar08.html*.

The earnings part of a pension payment is U.S. source income if the trust is a U.S. trust.

Fixed or Determinable Annual or Periodical Income (FDAP)

FDAP income is all income except:

- Gains from the sale of property (including market discount and option premiums but not including original issue discount), and
- Items of income excluded from gross income without regard to U.S. or foreign status of the owner of the income, such as tax-exempt municipal bond interest and qualified scholarship income.

The following items are examples of FDAP income.

- Compensation for personal services.
- Dividends, including dividend equivalent payments.
- Interest.
- Original issue discount.
- REMIC excess inclusion income.
- Pensions and annuities.
- Alimony.
- Real property income, such as rents, other than gains from the sale of real property.
- Royalties.
- Taxable scholarships and fellowship grants.
- Other taxable grants, prizes, and awards.
- A sales commission paid or credited monthly.
- A commission paid for a single transaction.
- The distributable net income of an estate or trust that is FDAP income and must be distributed currently, or has been paid or credited during the tax year.
- FDAP income distributed by a partnership that, or such an amount that, although not actually distributed, is includible in the gross income of a foreign partner.
- Taxes, mortgage interest, or insurance premiums paid to or for the account of, a nonresident alien landlord by a tenant under the terms of a lease.
- Publication rights.
- Prizes awarded to nonresident alien artists for pictures exhibited in the United States.
- Purses paid to nonresident alien boxers for prize fights in the United States.
- Prizes awarded to nonresident alien professional golfers in golfing tournaments in the United States.

Installment payments. Income can be FDAP income whether it is paid in a series of repeated payments or in a single lump sum. For example, $5,000 in royalty income would be FDAP income whether paid in 10 payments of $500 each or in one payment of $5,000.

Insurance proceeds. Income derived by an insured nonresident alien from U.S. sources upon the surrender of, or at the maturity of, a life insurance policy, is FDAP income and is subject to NRA withholding. This includes income derived under a life insurance contract issued by a foreign branch of a U.S. life insurance company. The proceeds are income to the extent they exceed the cost of the policy.

However, certain payments received under a life insurance contract on the life of a terminally or chronically ill individual before death (accelerated death benefits) may not be subject to tax. This also applies to certain payments received for the sale or assignment of any part of the death benefit under contract to a viatical settlement provider. See Publication 525, Taxable and Nontaxable Income, for more information.

Racing purses. Racing purses are FDAP income and racetrack operators must withhold 30% on any purse paid to a nonresident alien racehorse owner in the absence of definite information contained in a statement filed together with a Form W-8BEN that the owner has not raced, or does not intend to enter, a horse in another race in the United States during the tax year. If available information indicates that the racehorse owner has raced a horse in another race in the United States during the tax year, then the statement and Form W-8BEN filed for that year are ineffective. The owner may be exempt from withholding of tax at 30% on the purses if the owner gives you Form W-8ECI, which provides that the income is effectively connected with the conduct of a U.S. trade or business and that the income is includible in the owner's gross income.

Covenant not to compete. Payment received for a promise not to compete is generally FDAP income. Its source is the place where the promisor forfeited his or her right to act. Amounts paid to a nonresident alien for his or her promise not to compete in the United States are subject to NRA withholding.

Withholding on Specific Income

Different kinds of income are subject to different withholding requirements.

Effectively Connected Income

In most cases, when a foreign person engages in a trade or business in the United States, all income from sources in the United States connected with the conduct of that trade or business is considered effectively connected with a U.S. business. FDAP income may or may not be effectively connected with a U.S. business. For example, effectively connected income includes rents from real property if the alien chooses to treat that income as effectively connected with a U.S. trade or business.

The factors to be considered in establishing whether FDAP income and similar amounts are effectively connected with a U.S. trade or business include:

- Whether the income is from assets used in, or held for use in, the conduct of that trade or business; or
- Whether the activities of that trade or business were a material factor in the realization of the income.

Income from securities. There is a special rule determining whether income from securities is effectively connected with the active conduct of a U.S. banking, financing, or similar business.

If the foreign person's U.S. office actively and materially participates in soliciting, negotiating, or performing other activities required to arrange the acquisition of securities, the U.S. source interest or dividend income from the securities, gain or loss from their sale or exchange, income or gain economically equivalent to such amounts, or amounts received for providing a guarantee of indebtedness, is attributable to the U.S. office and is effectively connected income.

Withholding exemption. In most cases, you do not need to withhold tax on income if you receive a Form W-8ECI on which a foreign payee represents that:

- The foreign payee is the beneficial owner of the income,
- The income is effectively connected with the conduct of a trade or business in the United States, and
- The income is includible in the payee's gross income.

This withholding exemption applies to income for services performed by a foreign partnership or foreign corporation (unless item (4) below applies to the corporation). The exemption does not apply, however, to:

1. Pay for personal services performed by an individual,
2. Effectively connected taxable income of a partnership that is allocable to its foreign partners (see *Partnership Withholding on Effectively Connected Income*, later),
3. Income from the disposition of a U.S. real property interest (see *U.S. Real Property Interest*, later), or
4. Payments to a foreign corporation for personal services if all of the following apply:
   a. The foreign corporation otherwise qualifies as a personal holding company for income tax purposes,
   b. The foreign corporation receives amounts under a contract for personal services of an individual whom the corporation has no right to designate, and
   c. 25% or more in value of the outstanding stock of the foreign corporation at some time during the tax year is owned, directly or indirectly, by or for an individual who has performed, is to perform, or may be designated as the one to perform, the services called for under the contract.

Notional principal contract income. Certain payments attributable to a notional principal contract are not subject to NRA withholding regardless of whether a Form W-8ECI is provided. However, specified notional principal contract income (described later under *Dividend equivalent payments*) is subject to withholding.

Income from a notional principal contract is subject to reporting on Form 1042-S if it is effectively connected with the conduct of a trade or business in the United States. You must treat the income as effectively connected with a U.S. trade or business if you pay the income to, or to the account of, a qualified business unit (a branch) of a foreign person located in the United States or a qualified business unit located outside the United States and you know, or have reason to know, the income is effectively connected with the conduct of a U.S. trade or business. You do not need to treat notional principal contract income as effectively connected if you receive a Form W-8BEN that represents that the income is not effectively connected with the conduct of a U.S. trade or business or if the payee provides a representation in a master agreement or in the confirmation on the particular notional principal contract transaction that the payee is a U.S. person or a non-U.S. branch of a foreign person.

Income paid to U.S. branch of foreign bank or insurance company. A payment to a U.S. branch of a foreign bank or a foreign insurance company that is subject to U.S. regulation by the Federal Reserve or state insurance authorities is presumed to be effectively connected with the conduct of a trade or business in the United States unless the branch provides a Form W-8BEN or Form W-8IMY for the income. If a U.S. branch of a foreign bank or insurance company receives income that the payer did not withhold upon because of the presumption that the income was effectively connected with the U.S. branch's trade or business, the U.S. branch is required to withhold on the income if it is in fact not effectively connected with the conduct of its trade or business in the United States. Withholding is required whether the payment was collected on behalf of other persons or on behalf of another branch of the same entity.

Income Not Effectively Connected

This section discusses the specific types of income that are subject to NRA withholding. The income codes contained in this section correspond to the income codes used on Form 1042-S (discussed later), and in most cases, on Tables 1 and 2 found at the end of this publication.

You must withhold tax at the statutory rates shown in Chart C unless a reduced rate or exemption under a tax treaty applies. For U.S. source gross income that is not effectively connected with a U.S. trade or business, the rate is usually 30%. In most cases, you must withhold the tax at the time you pay the income to the foreign person. See *When to withhold*, earlier.

Interest

Interest from U.S. sources paid to foreign payees is subject to NRA withholding. When making a payment on an interest bearing obligation, you must withhold on the gross amount of stated interest payable on the interest payment date, even if the payment or a part of the payment may be a return of capital rather than interest.

A substitute interest payment made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction is treated the same as the interest on the transferred security. Use Income Code 33 to report these substitute payments.

Interest paid by U.S. obligors—general (Income Code 1). With specific exceptions, such as portfolio interest, you must withhold on interest paid or credited on bonds, debentures, notes, open account indebtedness, governmental obligations, certain deferred payment arrangements (as provided in section 483 of the Internal Revenue Code) or other evidences of indebtedness of U.S. obligors. U.S. obligors include the U.S. Government or its agencies or instrumentalities, any U.S. citizen or resident, any U.S. corporation, and any U.S. partnership.

If, in a sale of a corporation's property, payment of the bonds or other obligations of the corporation is assumed by the buyer, that buyer, whether an individual, partnership, or corporation, must deduct and withhold the taxes that would be required to be withheld by the selling corporation as if there had been no sale or transfer. Also, if interest coupons are in default, the tax must be withheld on the gross amount of interest whether or not the payment is a return of capital or the payment of income.

A resident alien paying interest on a margin account maintained with a foreign brokerage firm must withhold from the interest whether the interest is paid directly or constructively.

Interest on bonds of a U.S. corporation paid to a foreign corporation not engaged in a trade or business in the United States is subject to NRA withholding even if the interest is guaranteed by a foreign corporation that made payment outside the United States.

Domestic corporations must withhold on interest credited to foreign subsidiaries or foreign parents.

Original issue discount (Income Code 30). Original issue discount paid on the redemption of an obligation is subject to NRA withholding. Original issue discount paid as part of the purchase price of an obligation sold or exchanged, other than in a redemption, is not subject to NRA withholding unless the purchase 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 the plan. Withholding is required by a person other than the issuer of an obligation (or the issuer's agent) for all obligations issued after December 31, 2000.

The original issue discount subject to NRA withholding is the taxable amount of original issue discount. The taxable amount is the original issue discount that accrued while the obligation was held by the foreign beneficial owner up to the time the obligation was sold or exchanged or a payment was made, reduced by any original issue discount that was previously taxed. If a payment was made, the tax due on the original issue discount may not exceed the payment reduced by the tax imposed on the part of the payment that is qualified stated interest.

If you cannot determine the taxable amount, you must withhold on the entire amount of original issue discount accrued from the date of issue until the date of redemption (or sale or exchange, if subject to NRA withholding) determined on the basis of the most recently published Publication 1212, Guide to Original Issue Discount (OID) Instruments.

For more information on original issue discount, see Publication 550, Investment Income and Expenses.

Chart C. **Withholding Tax Rates**

(Note. You must withhold tax at the following rates on payments of income unless a reduced rate or exemption is authorized under a tax treaty. The President may apply higher tax rates on income paid to residents or corporations of foreign countries that impose burdensome or discriminatory taxes on U.S. persons.)

IF you paid the following type of income:	THEN you generally must withhold at the following rate:
Taxable part of U.S. scholarship or fellowship grant paid to holder of "F," "J," "M," or "Q" visa (see *Scholarships and Fellowship Grants*, later)	14%
Gross investment income from interest, dividends, rents, and royalties paid to a foreign private foundation	4%
Pensions—part paid for personal services (see *Pensions, Annuities, and Alimony*, later)	Graduated rates in Circular A or Circular E
Wages paid to a nonresident alien employee (see *Pay for Personal Services Performed*, later)	Graduated rates in Circular A or Circular E
Each foreign partner's share of effectively connected income of the partnership (see *Partnership Withholding on Effectively Connected Income*, later)	35%
Distributions of effectively connected income to foreign partners by publicly traded partnerships (see *Publicly Traded Partnerships*, later)	35%
Dispositions of U.S. real property interests (see *U.S. Real Property Interest*, later)	10%*
Dividends paid to Puerto Rico corporation	10%
All other income subject to withholding	30%

*35% in the case of certain distributions by corporations, partnerships, trusts, or estates.

Reduced Rates of Withholding on Interest

Certain interest is subject to a reduced rate of, or exemption from, withholding.

Portfolio interest. Interest and original issue discount that qualifies as portfolio interest is not subject to NRA withholding. To qualify as portfolio interest, the interest must be paid on obligations issued after July 18, 1984, and otherwise subject to NRA withholding.

Note. The rules for determining whether interest is portfolio interest change for obligations issued after March 18, 2012. Before March 19, 2012, portfolio interest includes interest on certain registered and nonregistered (bearer) bonds if the obligations meet the requirements described below.

For obligations issued after March 18, 2012, portfolio interest does not include interest on nonregistered bonds.

Obligations not in registered form. Interest on an obligation that is not in registered form (bearer obligation) is portfolio interest if the obligation is foreign-targeted. A bearer obligation is foreign-targeted if:

- There are arrangements to ensure that the obligation will be sold, or resold in connection with the original issue, only to a person who is not a United States person,
- Interest on the obligation is payable only outside the United States and its possessions, and
- The face of the obligation contains a statement that any United States person who holds the obligation will be subject to limits under the United States income tax laws.

Documentation is not required for interest on bearer obligations to qualify as portfolio interest. In some cases, however, you may need documentation for purposes of Form 1099 reporting and backup withholding.

Obligations in registered form. Portfolio interest includes interest paid on an obligation that is in registered form, and for which you have received documentation that the beneficial owner of the obligation is not a United States person.

If the registered obligation is not targeted to foreign markets, you must receive documentation on which you may rely to treat the payee as a foreign person that is the beneficial owner of the interest. The documentation required is a valid Form W-8BEN (a valid Form W-8EXP from an entity that completes the Form W-8EXP for other purposes is also acceptable) or, if allowable, valid documentary evidence. See *Documentation*, earlier.

A registered obligation is targeted to foreign markets if it is sold (or resold in connection with its original issuance) only to foreign persons or to foreign branches of U. S. financial institutions in accordance with procedures similar to those provided under section 1.163-5(c)(2)(i) of the regulations. However, the procedure that requires the obligation to be offered for sale (or resale) only outside the United States does not apply if the registered obligation is offered for sale through a public auction. Also, the procedure that requires the obligation to be delivered outside the United States does not apply if the obligation is considered registered because it may be transferred only through a book entry system and the obligation is offered for sale through a public auction. The documentation needed depends on whether the interest is paid to a financial institution, a member of a clearing organization, or to some other foreign person.

Dematerialized book-entry systems. Under these systems, bonds are required to be represented only by book entries, and no physical certificates are issued or transferred. The bonds are transferred only by book entries. These bonds are considered to be in registered form if the holder may only obtain a physical certificate in bearer form when the clearing organization that maintains the book-entry system goes out of business without a successor. In most cases, these rules apply to bonds issued after December 31, 2006. A bond issued in bearer form before January 1, 2007, may continue to be treated as such until its maturity even if it is held under a book-entry system.

Interest that does not qualify as portfolio interest. Payments to certain persons and payments of contingent interest do not qualify as portfolio interest. You must withhold at the statutory rate on such payments unless some other exception, such as a treaty provision, applies.

Contingent interest. Portfolio interest generally does not include contingent interest. Contingent interest is interest that is determined by reference to any of the following.

- Any receipts, sales, or other cash flow of the debtor or related person.
- Income or profits of the debtor or related person.

- Any change in value of any property of the debtor or a related person.
- Any dividend, partnership distributions, or similar payments made by the debtor or a related person.

The term "related person" is defined in section 871(h)(4)(B) of the Internal Revenue Code.

The contingent interest rule does not apply to any interest paid or accrued on any indebtedness with a fixed term that was issued:

- On or before April 7, 1993, or
- After April 7, 1993, pursuant to a written binding contract in effect on that date and at all times thereafter before that indebtedness was issued.

Ten-percent owners. Interest paid to a foreign person that owns 10% or more of the total combined voting power of all classes of stock of a corporation, or 10% or more of the capital or profits interest in a partnership, that issued the obligation on which the interest is paid is not portfolio interest. To determine 10% ownership, see Regulations section 1.871-14(g).

Banks. Except in the case of interest paid on an obligation of the United States, interest paid to a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of the bank's trade or business does not qualify as portfolio interest.

Controlled foreign corporations. Interest paid to a controlled foreign corporation from a person related to the controlled foreign corporation is not portfolio interest.

Interest on real property mortgages (Income Code 2). Certain treaties (see Table 1) permit a reduced rate or exemption for interest paid or credited on real property mortgages. This is interest paid on any type of debt instrument that is secured by a mortgage or deed of trust on real property located in the United States, regardless of whether the mortgagor (or grantor) is a U.S. citizen or a U.S. business entity.

REMIC excess inclusions. 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 earlier of the following dates.

1. The date of distribution by the partnership.
2. The date the foreign partner disposed of its indirect interest in the REMIC residual interest.
3. The last day of the partnership's tax year.

For purposes of item (2), the disposition may occur as a result of:

- A termination of the REMIC,
- A disposition of the partnership's residual interest in the REMIC,
- A disposition of the foreign partner's interest in the partnership, or
- Any other reduction in the foreign partner's allocable share of the partnership's part of the REMIC net income or deduction.

The partnership must withhold tax on the part of the REMIC amount that is an excess inclusion. Excess inclusion income is treated as income from sources in the United States and is not eligible for any reduction in withholding tax (by treaty or otherwise).

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.

The entity must withhold on the excess inclusion.

For information on the taxation and reporting of excess inclusion income by REITs, RICs, and other pass-through entities, see Notice 2006-97, 2006-46 I.R.B. 904, available at *www.irs.gov/irb/2006-46_IRB/ar14.html*.

Interest paid to controlling foreign corporations (Income Code 3). A treaty may permit a reduced rate or exemption for interest paid by a domestic corporation to a controlling foreign corporation. The interest may be on any type of debt, including open or unsecured accounts payable, notes, certificates, bonds, or other evidences of indebtedness.

Interest paid by foreign corporations (Income Code 4). If a foreign corporation is engaged in a U.S. trade or business, any interest paid by the foreign corporation's trade or business in the United States (branch interest) is subject to NRA withholding as if paid by a domestic corporation (without considering the "payer having income from abroad" exception). As a result, the interest paid to foreign payees is generally subject to NRA withholding. In addition, if "allocable interest" exceeds the branch interest paid, the excess interest is also subject to tax and reported on the foreign corporation's income tax return, Form 1120-F. See Instructions for Form 1120-F for more information.

If there is no treaty provision that reduces the rate of withholding on branch interest, you must withhold tax at the statutory rate of 30% on the interest paid by a foreign corporation's U.S. trade or business.

In general, payees of interest from a U.S. trade or business of a foreign corporation are entitled to reduced rates of, or exemption from, tax under a treaty in the same manner and subject to the same conditions as if they had received the interest from a domestic corporation. However, a foreign corporation that receives interest paid by a U.S. trade or business of a foreign corporation also must be a qualified resident of its country of residence to be entitled to benefits under that country's tax treaty. If the payee foreign corporation is a resident of a country that has entered into an income tax treaty since 1987 that contains a limitation on benefits article, the foreign corporation need only satisfy the limitation on benefits article in that treaty to qualify for a reduced rate of tax.

Alternatively, a payee may be entitled to treaty benefits under the payer's treaty if there is a provision in that treaty that applies specifically to interest paid by the payer foreign corporation. This provision may exempt all or a part of this interest. Some treaties provide for an exemption regardless of the payee's residence or citizenship, while others provide for an exemption according to the payee's status as a resident or citizen of the payer's country.

A foreign corporation that pays interest must be a qualified resident (under section 884 of the Internal Revenue Code) of its country of residence for the payer's treaty to exempt payments from tax by the foreign corporation. However, if the foreign corporation is a resident of a country that has entered into an income tax treaty since 1987 that contains a limitation on benefits article, the foreign corporation need only satisfy the limitation on benefits article in that treaty to qualify for the exemption.

Interest on deposits (Income Code 29). Foreign persons are not subject to withholding on interest that is not connected with a U.S. trade or business if it is from:

- Deposits with persons carrying on the banking business,
- Deposits or withdrawable accounts with savings institutions chartered and supervised under federal or state law as savings and loan or similar associations, such as credit unions, if the interest is or would be deductible by the institutions, or
- Amounts left with an insurance company under an agreement to pay interest on them.

Deposits include certificates of deposit, open account time deposits, Eurodollar certificates of deposit, and other deposit arrangements.

The deposit interest exception does not require a Form W-8BEN. However, a Form W-8BEN may be required for purposes of Form 1099 reporting and backup withholding.

You may have to file Form 1042-S to report certain payments of interest on deposits.

Interest from foreign business arrangements. In certain cases, interest received from a domestic payer most of whose gross income is active foreign business income is not subject to NRA withholding.

Active foreign business income is gross income which is:

- Derived from sources outside the United States, and
- Attributable to the active conduct of a trade or business in a foreign country or possession of the United States by the domestic payer.

Obligations issued before August 10, 2010. Interest received from a resident alien individual or a domestic corporation is not subject to NRA withholding if the interest meets all of the following requirements.

- At least 80% of the payer's gross income from all sources has been from active foreign business for the 3 tax years of the

payer before the year in which the interest is paid, or for the applicable part of those 3 years.

- The recipient is not a related person. Use rules similar to those in section 954(d)(3) of the Internal Revenue Code to determine if the recipient is a related person.
- The interest is paid on an obligation issued before August 10, 2010.
- The obligation has not been significantly modified since August 10, 2010.

Corporations existing on January 1, 2011. Certain interest received from a domestic corporation that is an existing 80/20 company is not subject to NRA withholding. An existing 80/20 company must meet all of the following requirements.

- It was in existence on January 1, 2011.
- For the 3 tax years beginning before January 1, 2011 (or for its years of existence if the corporation was in existence for less than 3 tax years), at least 80% of its gross income from all sources was active foreign business income.
- It continues to meet the 80-percent test for every tax year beginning after December 31, 2010.
- It has not added a substantial line of business after August 10, 2010.

Transitional rule for active foreign business income. In most cases, the domestic corporation determines its active foreign business income by combining its income and the income of any subsidiary in which it owns, directly or indirectly, 50% or more of the stock. However, if the testing period includes one or more tax years beginning before January 1, 2011, the corporation can use only its gross income for any tax year beginning before January 1, 2011, and will meet the 80% test if the weighted average percentage of active foreign business income is more than 80%.

A foreign beneficial owner does not need to provide a Form W-8 or documentary evidence for this exception. However, documentation may be required for purposes of Form 1099 reporting and backup withholding.

Sales of bonds between interest dates. Amounts paid as part of the purchase price of an obligation sold or exchanged between interest payment dates is not subject to NRA withholding. This does not apply if the sale or exchange is part of a plan the principal purpose of which is to avoid tax and you have actual knowledge or reason to know of the plan. The exemption from NRA withholding applies even if you do not have any documentation from the payee. However, documentation may be required for purposes of Form 1099 reporting and backup withholding.

Short-term obligations. Interest and original issue discount paid on an obligation that is payable 183 days or less from the date of its original issue (without regard to the period held by the taxpayer) is not subject to NRA withholding. This exemption applies even if you do not have any documentation from the payee. However, documentation may be required for purposes of Form 1099 reporting and backup withholding.

Income from U.S. Savings Bonds of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands. Interest from a Series E, Series EE, Series H, or Series HH U.S. Savings Bond is not subject to NRA withholding if the nonresident alien individual acquired the bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

Dividends

The following types of dividends paid to foreign payees are generally subject to NRA withholding.

Dividends paid by U.S. corporations — general (Income Code 6). This category includes all distributions of domestic corporations (other than dividends qualifying for direct dividend rate — Income Code 7).

A corporation making a distribution with respect to its stock or any intermediary making a payment of such a distribution, is required to withhold on the entire amount of the distribution. However, a distributing corporation or intermediary may elect to not withhold on the part of the distribution that:

1. Represents a nontaxable distribution payable in stock or stock rights,
2. Represents a distribution in part or full payment in exchange for stock,
3. Is not paid out of current or accumulated earnings and profits, based on a reasonable estimate of the anticipated amount of earnings and profits for the tax year of the distribution made at a time reasonably close to the date of the distribution,
4. Represents a capital gain dividend (use Income Code 36) or an exempt interest dividend by a regulated investment company, or
5. Is subject to withholding under section 1445 of the Code (withholding on dispositions of U.S. real property interests) and the distributing corporation is a U.S. real property holding corporation or a qualified investment entity.

The election is made by actually reducing the amount of withholding at the time the distribution is paid.

A qualified investment entity (QIE) is:

1. Any real estate investment trust (REIT), or
2. Any regulated investment company (RIC) that is a U.S. real property holding corporation, but only for distributions by the RIC that are directly or indirectly attributable to distributions the RIC received from a REIT.

In determining if the RIC is a U.S. real property holding corporation, the RIC is required to include as U.S. real property interests its holdings of stock in a RIC or REIT that is a U.S. real property holding company, even if the stock is regularly traded and the RIC owns more than 5% of the stock.

Dividends paid by a QIE. A distribution by a QIE to a nonresident alien or a foreign corporation is treated as a dividend and is not subject to withholding under section 1445 as a gain from the sale or exchange of a U.S. real property interest if:

- The distribution is on stock regularly traded on a securities market in the United States, and
- The individual or corporation did not own more than 5% of that stock at any time during the 1-year period ending on the date of distribution.

If these requirements are not met, item (5) in the previous list applies to the distribution.

Dividends paid by a domestic corporation (an existing "80/20" company). The active foreign business percentage of any dividend paid by a domestic corporation that is an existing 80/20 company is not subject to NRA withholding. A domestic corporation is an existing 80/20 company if it satisfies all of the following.

1. It was in existence on January 1, 2011.
2. For the 3 tax years beginning before January 1, 2011 (or for all years of existence if it was in existence for less than 3 tax years), at least 80% of its gross income from all sources was active foreign business income. Active foreign business income is gross income that is:
   a. Derived from sources outside the United States, and
   b. Attributable to the active conduct of a trade or business in a foreign country or possession of the United States by the corporation.
3. It continues to meet the 80-percent test for every tax year beginning after December 31, 2010.
4. It has not added a substantial line of business after August 10, 2010.

Transitional rule for item (2). In most cases, the domestic corporation determines its active foreign business income by combining its income and the income of any subsidiary in which it owns, directly or indirectly, 50% or more of the stock. However, if the testing period includes one or more tax years beginning before January 1, 2011, the corporation can use only its gross income for any tax year beginning before January 1, 2011, and will meet the 80% test if the weighted average percentage of active foreign business income is more than 80%.

The active foreign business percentage is found by dividing the corporation's active foreign business income for the testing period by the corporation's total gross income for that period. The testing period is the 3 tax years before the year in which the dividends are declared (or shorter period if the corporation was not in existence for 3 years). If the corporation has no gross income for that 3-year period, the testing period is the tax year in which the dividend is paid.

Consent dividends. If you receive a Form 972, Consent of Shareholder To Include Specific Amount in Gross Income, from a nonresident alien individual or other foreign shareholder who agrees to treat the amount as a taxable dividend, you must pay and report on Form 1042 and Form 1042-S any withholding tax you would have withheld if the dividend had been actually paid.

Dividends qualifying for direct dividend rate (Income Code 7). A treaty may reduce the rate of withholding on dividends from that which generally applies under the treaty if the shareholder owns a certain percentage of the voting stock of the corporation. In most cases, this preferential rate applies only if the shareholder directly owns the required percentage, although some treaties permit the percentage to be met by direct or indirect ownership. The preferential rate may apply to the payment of a deemed dividend under section 304(a)(1) of the Code. Under some treaties, the preferential rate for dividends qualifying for the direct dividend rate applies only if no more than a certain percentage of the paying corporation's gross income for a certain period consists of dividends and interest other than dividends and interest from subsidiaries or from the active conduct of a banking, financing, or insurance business. A foreign person claiming the direct dividend rate should complete line 10 of Form W-8BEN regarding special rates and conditions.

Consent dividends. If you receive a Form 972 from a foreign shareholder qualifying for the direct dividend rate, you must pay and report on Form 1042 and Form 1042-S any withholding tax you would have withheld if the dividend had been actually paid.

Dividends paid by foreign corporations (Income Code 8). Dividends paid by a foreign corporation are generally not subject to NRA withholding. This exception does not require a Form W-8BEN. However, a Form W-8BEN may be required for purposes of Form 1099 reporting and backup withholding.

The payment to a foreign corporation by a foreign corporation of a deemed dividend under section 304(a)(1) of the Code is subject to NRA withholding except to the extent it can be clearly determined to be from foreign sources.

Corporation subject to branch profits tax. If a foreign corporation is subject to branch profits tax for any tax year, withholding is not required on any dividends paid by the corporation out of its earnings and profits for that tax year. Dividends may be subject to NRA withholding if they are attributable to any earnings and profits when the branch profits tax is prohibited by a tax treaty.

A foreign person may claim a treaty benefit on dividends paid by a foreign corporation to the extent the dividends are paid out of earnings and profits in a year in which the foreign corporation was not subject to the branch profits tax. However, you may apply a reduced rate of withholding under an income tax treaty only under rules similar to the rules that apply to treaty benefits claimed on branch interest paid by a foreign corporation. You should check the specific treaty provision.

Dividends paid to Puerto Rico corporation. The tax rate on dividends paid to a corporation created or organized in, or under the law of, the Commonwealth of Puerto Rico is 10%, rather than 30%, if:

- At all times during the tax year less than 25% in value of the Puerto Rico corporation's stock is owned, directly or indirectly, by foreign persons,
- At least 65% of the Puerto Rico corporation's gross income is effectively connected with the conduct of a trade or business in Puerto Rico or the United States for the 3-year period ending with the close of the tax year of that corporation (or the period the corporation or any predecessor has been in existence, if less), and
- No substantial part of the income of the Puerto Rico corporation is used, directly or indirectly, to satisfy obligations to a person who is not a bona fide resident of Puerto Rico or the United States.

Dividend equivalent payments. Dividend equivalent payments are treated as U.S. source dividends. Use Income Code 34 or 40 to report dividend equivalent payments.

A dividend equivalent is a payment 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, and
3. Any payment determined by the IRS to be substantially similar to a payment in (1) or (2) above.

Substitute dividend (Income Code 34). A substitute dividend is any payment made in a securities lending or sale-repurchase transaction that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources in the United States.

Specified notional principal contract (SNPC). For payments made before March 19, 2012, a specified notional principal contract 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 tradeable 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.

For payments made after March 18, 2012, an SNPC is any notional principal contract unless the IRS has determined that the contract is a type that does not have the potential for tax avoidance.

Amounts paid to qualified securities lenders. A withholding agent that makes payments of substitute dividends to a qualified securities lender (QSL) should treat the QSL as the recipient. The withholding agent is not required to withhold on a substitute dividend payment that is part of a series of dividend equivalent payments 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, and
- With respect to the substitute dividend it receives from the withholding agent, the QSL states that it will withhold and remit the proper amount of U.S. gross-basis tax.

For more information, see Notice 2010-46, 2010-24 I.R.B. 757, available at *www.irs.gov/irb/2010-24_IRB/ar09.html*.

Gains

You generally do not need to withhold on any gain from the sale of real or personal property because it is not FDAP income. However, see *U.S. Real Property Interest*, later.

Capital gains (Income Code 9). You must withhold at 30%, or if applicable, a reduced treaty rate, on the gross amount of the following items:

- Gains on the disposal of timber, coal, or domestic iron ore with a retained economic interest, unless an election is made to treat those gains as income effectively connected with a U.S. trade or business,
- Gains on contingent payments received from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property,
- Gains on certain transfers of all substantial rights to, or an undivided interest in, patents if the transfers were made before October 5, 1966, and
- Certain gains from the sale or exchange of original issue discount obligations issued after March 31, 1972. For more on withholding on original issue discount obligations, see *Interest*, earlier.

If you do not know the amount of the gain, you must withhold an amount necessary to ensure that the tax withheld will not be less than 30% of the recognized gain. The amount to be withheld, however, must not be more than 30% of the amount payable because of the transaction.

Unless you have reason to believe otherwise, you may rely upon the written statement of the person entitled to the income as to the amount of gain. The Form W-8 or documentary

evidence must show the beneficial owner's basis in the property giving rise to the gain.

Tax treaties. Many tax treaties exempt certain types of gains from U.S. income tax. Be sure to carefully check the provision of the treaty that applies before allowing an exemption from withholding.

Royalties

In general, you must withhold tax on the payment of royalties from sources in the United States. However, certain types of royalties are given reduced rates or exemptions under some tax treaties. Accordingly, these different types of royalties are treated as separate categories for withholding purposes.

CAUTION *Most treaties have more than one withholding rate on royalties, which varies by the classification of the payment in that treaty. Be sure to check your particular treaty for the specific rate that applies to you.*

Industrial royalties (Income Code 10). This category of income includes royalties for the use of, or the right to use, patents, trademarks, secret processes and formulas, goodwill, franchises, "know-how," and similar rights. It may also include payments for the use of, or right to use, industrial, commercial, and scientific equipment, when this is included in the treaty definition of royalties.

Motion picture or television copyright royalties (Income Code 11). This category refers to royalties paid for the use of motion picture and television copyrights.

Other royalties (for example, copyright, recording, publishing) (Income Code 12). This category refers to the royalties paid for the use of copyrights on books, periodicals, articles, etc., except motion picture and television copyrights.

Real Property Income and Natural Resources Royalties (Income Code 13)

You must withhold tax on income (such as rents and royalties) from real property located in the United States and held for the production of income, unless the foreign payee elects to treat this income as effectively connected with a U.S. trade or business. If the foreign payee chooses to treat this income as effectively connected, the payee must give you Form W-8ECI (discussed earlier). This real property income includes royalties from mines, wells, or other natural deposits, as well as ordinary rents for the use of real property. For withholding that applies to the disposition of U.S. real property interests, see *U.S. Real Property Interest*, later.

Pensions, Annuities, and Alimony (Income Code 14)

The following rules apply to withholding on pensions, annuities, and alimony of foreign payees.

Pensions and annuities. In most cases, you must withhold tax on the gross amount of pensions and annuities that you pay that are from sources within the United States. This includes amounts paid under an annuity contract issued by a foreign branch of a U.S. life insurance company. However, most tax treaties provide that private pensions and annuities are exempt from withholding.

In the absence of a treaty exemption, you must withhold at the statutory rate of 30% on the entire distribution that is from sources within the United States. You may, however, apply withholding at graduated rates to the part of a distribution that arises from the performance of services in the United States after December 31, 1986.

Employer contributions to a defined benefit plan covering more than one individual are not made for the benefit of a specific participant, but are made based on the total liabilities to all participants. All funds held under the plan are available to provide benefits to any participant. If the distribution is from such a plan, you can use the method in Revenue Procedure 2004-37 to allocate the distribution to sources in the United States.

The withholding rules that apply to payments to foreign persons generally take precedence over any other withholding rules that would apply to distributions from qualified plans and other qualified retirement arrangements.

No withholding. Do not withhold tax on an annuity payment to a nonresident alien if at the time of the first payment from the plan, 90% or more of the employees eligible for benefits under the plan are citizens or residents of the United States and the payment is:

1. For the nonresident's personal services performed outside the United States; or
2. For personal services by a nonresident individual present in the United States for 90 days or less during each tax year, whose pay for those services did not exceed $3,000, and the personal services were performed for:
   a. A nonresident alien individual, foreign partnership, or foreign corporation not engaged in a trade or business in the United States; or
   b. An office or place of business of a U.S. resident or citizen which was maintained outside the United States.

If the payment otherwise qualifies under these rules, but less than 90% of the employees eligible for benefits are citizens or residents of the United States, you still need not withhold tax on the payment if:

- The recipient is a resident of a country that gives a substantially equal exclusion to U.S. citizens and residents, or
- The recipient is a resident of a beneficiary developing country under the Trade Act of 1974.

The foreign person entitled to the payments must provide you with a Form W-8BEN that contains the TIN of the foreign person.

Alimony payments. In most cases, alimony payments made by U.S. resident aliens to nonresident aliens are taxable and subject to NRA withholding whether the recipients are residing abroad or are temporarily present in the United States.

Many tax treaties, however, provide for an exemption from withholding for alimony payments. These treaties are shown in Table 1 by a footnote reference under Income Code 14.

Alimony payments made to a nonresident alien by a U.S. ancillary administrator of a nonresident alien estate are from foreign sources and are not subject to withholding.

Scholarships and Fellowship Grants (Income Code 15)

A scholarship or fellowship grant is an amount given to an individual for study, training, or research, and which does not constitute compensation for personal services. Whether a fellowship grant from U.S. sources is subject to NRA withholding depends on the nature of the payments and whether the recipient is a candidate for a degree. See *Scholarships, fellowships, and grants* under *Source of Income,* earlier.

Candidate for a degree. Do not withhold on a qualified scholarship from U.S. sources granted and paid to a candidate for a degree. A qualified scholarship means any amount paid to an individual as a scholarship or fellowship grant to the extent that, in accordance with the conditions of the grant, the amount is to be used for the following expenses:

- Tuition and fees required for enrollment or attendance at an educational organization, and
- Fees, books, supplies, and equipment required for courses of instruction at the educational organization.

The payment of a qualified scholarship to a nonresident alien is not reportable and is not subject to NRA withholding. However, the part of a scholarship or fellowship paid to a nonresident alien which does not constitute a qualified scholarship is reportable on Form 1042-S and is subject to NRA withholding. For example, those parts of a scholarship devoted to travel, room, and board are subject to NRA withholding and are reported on Form 1042-S. The withholding rate is 14% on taxable scholarship and fellowship grants paid to nonresident aliens temporarily present in the United States in "F," "J," "M," or "Q" nonimmigrant status. Payments made to nonresident alien individuals in any other immigration status are subject to 30% withholding.

Nondegree candidate. If the person receiving the scholarship or fellowship grant is not a candidate for a degree, and is present in the United States in "F," "J," "M," or "Q" nonimmigrant status, you must withhold tax at 14% on the total amount of the grant that is from U.S. sources if the following requirements are met.

1. The grant must be for study, training, or research in the United States.
2. The grant must be made by:
   a. A tax-exempt organization operated for charitable, religious, educational, etc. purposes,
   b. A foreign government,

c. A federal, state, or local government agency, or

d. An international organization, or a binational or multinational educational or cultural organization created or continued by the Mutual Educational and Cultural Exchange Act of 1961 (known as the Fulbright-Hays Act).

If the grant does not meet both (1) and (2) above, you must withhold at 30% on the amount of the grant that is from U.S. sources.

Alternate withholding procedure. You may choose to treat the taxable part of a U.S. source grant or scholarship as wages. The student or grantee must have been admitted into the United States on an "F," "J," "M," or "Q" visa. The student or grantee will know that you are using this alternate withholding procedure when you ask for a Form W-4.

The student or grantee must complete Form W-4 annually following the instructions given here and forward it to you, the payer of the scholarship, or your designated withholding agent. You may rely on the information on Form W-4 unless you know or have reason to know it is incorrect. You must file a Form 1042-S (discussed later) for each student or grantee who gives you, or your withholding agent, a Form W-4.

Each student or grantee who files a Form W-4 must file an annual U.S. income tax return to be allowed the exemptions and deductions claimed on that form. If the individual is in the United States during more than one tax year, he or she must attach a statement to the annual Form W-4 indicating that the individual has filed a U.S. income tax return for the previous year. If he or she has not been in the United States long enough to have to file a return, the individual must attach a statement to the Form W-4 saying that a timely U.S. income tax return will be filed.

A prorated part of allowable personal exemptions based on the projected number of days he or she will be in this country is allowed. This is figured by multiplying the daily exemption amount ($10.38 for 2012) by the number of days the student or grantee expects to be in the United States during the year. The prorated exemption amount should be shown on line A of the *Personal Allowances Worksheet* that comes with Form W-4.

In most cases, zero (-0-) should be shown on line B of the worksheet. But, a student or grantee who qualifies under Article 21(2) of the United States-India income tax treaty can enter the standard deduction if he or she does not claim away-from-home expenses or other itemized deductions (discussed later).

In most cases, zero (-0-) should be shown on lines C and D of the worksheet. But, an additional daily exemption amount may be allowed for the spouse and each dependent if the student or grantee is:

- A resident of Canada, Mexico, or South Korea;
- A U.S. national (a citizen of American Samoa, or a Northern Mariana Islander who chose to become a U.S. national); or
- Eligible for the benefits of Article 21(2) of the United States-India income tax treaty.

These additional amounts should be entered on lines C and D, as appropriate.

As lines E, F, and G of the worksheet do not apply to nonresident aliens subject to this procedure, there should be no entries on those lines.

The nonresident alien student or grantee may deduct away-from-home expenses (meals, lodging, and transportation) on Form W-4 if he or she expects to be away from his or her tax home for 1 year or less. The amount of the claimed expenses should be the anticipated actual amount, if known.

The actual expenses or the per diem allowance should be shown on line A of the worksheet in addition to the personal exemption amount.

The student or grantee can claim other expenses that will be deductible on Form 1040NR, U.S. Nonresident Alien Income Tax Return. These include student loan interest, certain state and local income taxes, charitable contributions, casualty losses, and moving expenses. He or she should include these anticipated amounts on line A of the worksheet.

The student or grantee can also enter on line A of the worksheet, the part of the grant or scholarship that is tax exempt under the statute or a tax treaty.

Lines A through D of the *Personal Allowances Worksheet* are added and the total should be shown on line H.

The payer of the grant or scholarship must review the Form W-4 to make sure all the necessary and required information is provided. If the withholding agent knows or has reason to know that the amounts shown on the Form W-4 may be false, the withholding agent must reject the Form W-4 and withhold at the appropriate statutory rate (14% or 30%). However, if the only incorrect information is that the student or grantee's stay in the United States has extended beyond 12 months, the withholding agent may withhold under these rules, but without a deduction for away-from-home expenses.

After receipt and acceptance of the Form W-4, the payer must withhold at the graduated rates in Publication 15 (Circular E) as if the grant or scholarship income were wages. The gross amount of the income is reduced by the total amount of exemptions and deductions on the Form W-4 and the withholding tax is figured on the rest.

When completing Form 1042-S for the student or grantee, enter the taxable part (gross amount less qualified scholarship) of the scholarship or fellowship grant in box 2, enter the withholding allowance amount from line H of the *Personal Allowances Worksheet* of Form W-4 in box 3, and show the net of these two amounts in box 4.

Pay for services rendered. Pay for services rendered as an employee by an alien who also is the recipient of a scholarship or fellowship grant usually is subject to graduated withholding according to the rules discussed later in *Wages Paid to Employees—Graduated Withholding*. This includes taxable amounts an individual who is a candidate for a degree receives for teaching, doing research, and carrying out other part-time employment required as a condition for receiving the scholarship or fellowship grant.

Grants given to students, trainees, or researchers which require the performance of personal services as a necessary condition for disbursing the grant do not qualify as scholarship or fellowship grants. Instead, they are compensation for personal services considered to be wages. It does not matter what term is used to describe the grant (for example, stipend, scholarship, fellowship, etc.).

CAUTION *Withholding agents who pay grants that are in fact wages must report such grants on Forms 941 and W-2 and withhold income tax on them at the graduated rates. Withholding agents may not allow tax treaty exemptions that apply to scholarships and fellowships to be applied to grants that are really wages. It is the responsibility of the withholding agent to determine whether a grant is "wages" or a "scholarship or fellowship," and to report and withhold on the grant accordingly. An alien student, trainee, or researcher may not claim a scholarship or fellowship treaty exemption against income that has been reported to him on Form W-2 as wages.*

Per diem paid by the U.S. Government. Per diem for subsistence paid by the U.S. Government (directly or by contract) to a nonresident alien engaged in a training program in the United States funded by the U.S. Agency for International Development are not subject to 14% or 30% withholding. This is true even if the alien is subject to income tax on those amounts.

Tax treaties. Many treaties contain exemptions from U.S. taxation for scholarships and fellowships. Although usually found in the student articles of the tax treaties, many of these exemptions also apply to research grants received by researchers who are not students. Table 2 of this publication shows a line entry entitled "Scholarship or fellowship grant" for those treaties which have such an exemption. The treaty provision usually exempts the entire scholarship or fellowship amount, regardless of whether the grant is a "qualified scholarship" under U.S. law.

An alien student, trainee, or researcher may claim a treaty exemption for a scholarship or fellowship by submitting Form W-8BEN to the payer of the grant. However, a scholarship or fellowship recipient who receives both wages and a scholarship or fellowship from the same institution can claim treaty exemptions on both kinds of income on Form 8233.

The scholarship or fellowship recipient who is claiming a treaty exemption must provide you with his or her TIN on Form W-8BEN or on Form 8233 or you cannot allow the treaty exemption. A copy of a completed Form W-7, showing that a TIN has been applied for, can be given to you with a Form 8233. See *Form 8233*, later, under *Pay for Personal Services Performed.*

Nonresident alien who becomes a resident alien. In most cases, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on income from a scholarship or fellowship grant. A student (including a trainee or business apprentice) or researcher who has become a resident alien for U.S. tax purposes may not use the terms of a tax treaty due to a provision known as a "saving clause." However, an exception to the saving clause may permit an exemption from tax to continue for scholarship or fellowship grant income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

In this situation, the individual must give you a Form W-9 and an attachment that includes all the following information.

- The treaty country.
- The treaty article addressing the income.
- The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
- The type and amount of income that qualifies for the exemption from tax.
- Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under the Internal Revenue Code, a student may become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, the treaty allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States.

Other Grants, Prizes, and Awards

Other grants, prizes, and awards made by grantors that reside in the United States are treated as income from sources within the United States. Those made for activities conducted outside the United States by a foreign person or by grantors that reside outside the United States are treated as income from foreign sources. These provisions do not apply to salaries or other pay for services.

Grant. The purpose of a grant must be to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee. A grant must also be an amount which does not qualify as a scholarship or fellowship. The grantor must not intend the amount to be given to the grantee for the purpose of aiding the grantee to perform study, training, or research.

Prizes and awards. Prizes and awards are amounts received primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, or are received as the result of entering a contest. A prize or award is taxable to the recipient unless all of the following conditions are met:

- The recipient was selected without any action on his or her part to enter the contest or proceeding,
- The recipient is not required to render substantial future services as a condition to receive the prize or award, and
- The prize or award is transferred by the payer to a governmental unit or tax-exempt charitable organization as designated by the recipient.

Targeted grants and achievement awards. Targeted grants and achievement awards received by nonresident aliens for activities conducted outside the United States are treated as income from foreign sources. Targeted grants and achievement awards are issued by exempt organizations or by the United States (or one of its instruments or agencies), a state (or a political subdivision of a state), or the District of Columbia for an activity (or past activity in the case of an achievement award) undertaken in the public interest.

Pay for Personal Services Performed

This section explains the rules for withholding tax from pay for personal services. You generally must withhold tax at the 30% rate on compensation you pay to a nonresident alien individual for labor or personal services performed in the United States, unless that pay is specifically exempted from withholding or subject to graduated withholding. This rule applies regardless of your place of residence, the place where the contract for service was made, or the place of payment.

Illegal aliens. Foreign workers who are illegal aliens are subject to U.S. taxes in spite of their illegal status. U.S. employers or payers who hire illegal aliens may be subject to various fines, penalties, and sanctions imposed by U.S. Immigration and Customs Enforcement. If such employers or payers choose to hire illegal aliens, the payments made to those aliens are subject to the same tax withholding and reporting obligations that apply to other classes of aliens. Illegal aliens who are nonresident aliens and who receive income from performing independent personal services are subject to 30% withholding unless exempt under some provision of law or a tax treaty. Illegal aliens who are resident aliens and who receive income from performing dependent personal services are subject to the same reporting and withholding obligations that apply to U.S. citizens who receive the same kind of income.

Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual. This form is used by a nonresident alien individual to claim a tax treaty exemption from withholding on some or all compensation paid for:

- Independent personal services (self-employment),
- Dependent personal services, or
- Personal services income and noncompensatory scholarship or fellowship income from the same withholding agent.

Persons providing independent personal services can use Form 8233 to claim the personal exemption amount.

Form W-4, Employee's Withholding Allowance Certificate. This form is used by a person providing dependent personal services to claim the personal exemption amount, but not a tax treaty exemption. Nonresident alien individuals are subject to special instructions for completing the Form W-4. See the discussion under *Wages Paid to Employees—Graduated Withholding*, later.

Pay for independent personal services (Income Code 16). Independent personal services (a term commonly used in tax treaties) are personal services performed by an independent nonresident alien contractor as contrasted with those performed by an employee. This category of pay includes payments for professional services, such as fees of an attorney, physician, or accountant made directly to the person performing the services. It also includes honoraria paid by colleges and universities to visiting teachers, lecturers, and researchers.

Pay for independent personal services is subject to NRA withholding and reporting as follows.

30% rate. You must withhold at the statutory rate of 30% on all payments unless the alien enters into a withholding agreement or receives a final payment exemption (discussed later).

The amount of pay subject to 30% withholding may be reduced by the personal exemption amount ($3,800 for 2012) if the alien gives you a properly completed Form 8233. A nonresident alien is allowed only one personal exemption. However, individuals who are residents of Canada, Mexico, or South Korea, or are U.S. nationals generally are entitled to the same exemptions as U.S. citizens.

Students and business apprentices covered by Article 21(2) of the United States-India income tax treaty may claim an additional exemption for their spouse if a joint return is not filed, and if the spouse has no gross income for the year and is not the dependent of another taxpayer. They also may claim additional exemptions for children who reside with them in the United States at any time during the year, but only if the dependents are U.S. citizens or nationals or residents of the United States, Canada, or Mexico. They may not claim exemptions for dependents who are admitted to the United States on "F-2," "J-2," or "M-2" visas unless such dependents have become resident aliens.

Each allowable exemption must be prorated according to the number of days during the tax year during which the alien performs services in the United States. Multiply the number of these days by $10.38 (the daily exemption amount for 2012) to figure the prorated amount. Residents of South Korea must make a further proration of their additional exemptions based on their gross income effectively connected with a U.S. trade or business. The rules for this proration are discussed in detail in Publication 519.

A U.S. national is an individual who owes his sole allegiance to the United States, but who is not a U.S. citizen. Such an individual is usually a citizen of American Samoa or a Northern Mariana Islander who chose to become a U.S. national.

Example 1. Hans Schmidt, who is a resident of Country X, worked (not as an employee) for a U.S. company in the United States for 100 days during 2012 before returning to his country. He earned $6,000 for the services performed (not considered wages) in the United States. Hans is married and has three dependent children. His wife did not work and had no income subject to U.S. tax. Hans is allowed $1,038 as a deduction against the payments for his personal services performed in the United States (100

days × $10.38). Tax must be withheld at 30% on the rest of his earnings, $4,962 ($6,000 – $1,038).

Example 2. If, in *Example 1,* Hans were a resident of Mexico, working under contract with a domestic corporation, $5,190 (100 days × $10.38 per day for each of five exemptions) would be allowed against the payments for personal services performed in the United States. Tax must be withheld at 30% on the rest of his earnings, $810 ($6,000 – $5,190).

Withholding agreements. Pay for personal services of a nonresident alien who is engaged during the tax year in the conduct of a U.S. trade or business may be wholly or partially exempted from withholding at the statutory rate if an agreement has been reached between the Commissioner or his delegate and the alien as to the amount of withholding required. This agreement will be effective for payments covered by the agreement that are made after the agreement is executed by all parties. The alien must agree to timely file an income tax return for the current tax year.

Final payment exemption. The final payment of compensation for independent personal services may be wholly or partially exempt from withholding at the statutory rate. This exemption applies to the last payment of compensation, other than wages, for personal services rendered in the United States that the alien expects to receive from any withholding agent during the tax year.

To obtain the final payment exemption, the alien, or the alien's agent, must file the forms and provide the information required by the Commissioner or his delegate. This information includes, but is not limited to, the following items.

- A statement by each withholding agent from whom amounts of gross income effectively connected with the conduct of a U.S. trade or business have been received by the alien during the tax year. It must show the amount of income paid and the amount of tax withheld. The withholding agent must sign the statement and include a declaration that it is made under penalties of perjury.
- A statement by the withholding agent from whom the final payment of compensation for personal services will be received showing the amount of final payment and the amount that would be withheld if a final payment exemption is not granted. The withholding agent must sign the statement and include a declaration that it is made under penalties of perjury.
- A statement by the alien that he or she does not intend to receive any other amounts of gross income effectively connected with the conduct of a U.S. trade or business during the current tax year.
- The amount of tax that has been withheld (or paid) under any other provision of the Code or regulations for any income effectively connected with the conduct of a U.S. trade or business during the current tax year.
- The amount of any outstanding tax liabilities, including any interest and penalties, from the current tax year or prior tax periods.
- The provision of any income tax treaty under which a partial or complete exemption from withholding may be claimed, the country of the alien's residence, and a statement of sufficient facts to justify an exemption under that treaty.

The alien must give a statement, signed and verified by a declaration that it is made under the penalties of perjury, that all the information provided is true, and that to his or her knowledge no relevant information has been omitted.

If satisfied with the information provided, the Commissioner or his delegate will determine the amount of the alien's tentative income tax for the tax year on gross income effectively connected with the conduct of a U.S. trade or business. Ordinary and necessary business expenses may be taken into account if proved to the satisfaction of the Commissioner or his delegate.

The Commissioner or his delegate will provide the alien with a letter to you, the withholding agent, stating the amount of the final payment of compensation for personal services that is exempt from withholding, and the amount that would otherwise be withheld that may be paid to the alien due to the exemption. The amount of pay exempt from withholding cannot be more than $5,000. The alien must give two copies of the letter to you and must also attach a copy of the letter to his or her income tax return for the tax year for which the exemption is effective.

Travel expenses. If you pay or reimburse the travel expenses of a nonresident alien, the payments are not reportable to the IRS and are not subject to NRA withholding if the payments are made under an accountable plan as described in section 1.62-2 of the regulations. This treatment applies only to that part of a payment that represents the payment of travel and lodging expenses and not to that part that represents compensation for independent personal services.

Tax treaties. Under some tax treaties, pay for independent personal services performed in the United States is treated as business income and taxed according to the treaty provisions for business profits.

Under other tax treaties, pay for independent personal services performed in the United States is exempt from U.S. income tax only if the independent nonresident alien contractor performs the services during a period of temporary presence in the United States (usually not more than 183 days) and is a resident of the treaty country.

Independent nonresident alien contractors use Form 8233 to claim an exemption from withholding under a tax treaty. For more information, see *Form 8233*, earlier.

TIP *Form 8233 should be used to claim a treaty benefit based on a business profits provision or an independent personal services provision.*

Often, you must withhold under the statutory rules on payments made to a treaty country resident contractor for services performed in the United States. This is because the factors on which the treaty exemption is based may not be determinable until after the close of the tax year. The contractor must then file a U.S. income tax return (Form 1040NR) to recover any overwithheld tax by providing the IRS with proof that he or she is entitled to a treaty exemption.

Wages Paid to Employees—Graduated Withholding

Salaries, wages, bonuses, or any other pay for personal services (referred to collectively as wages) paid to nonresident alien employees are subject to graduated withholding in the same way as for U.S. citizens and residents if the wages are effectively connected with the conduct of a U.S. trade or business. Any wages paid to a nonresident alien for personal services performed as an employee for an employer are generally not subject to the 30% withholding if the wages are subject to graduated withholding.

Also, the 30% withholding does not apply to pay for personal services performed as an employee for an employer if it is effectively connected with the conduct of a U.S. trade or business and is specifically exempted from the definition of wages. See *Pay that is not wages*, later.

Special rule for certain agricultural workers. The 30% withholding does not apply to pay for personal services performed by a foreign agricultural worker in the United States on an H-2A visa. However, if the total wages are $600 or more and the worker does not give you a TIN, you may need to backup withhold. You may withhold at graduated rates if the employee asks you to by giving you a completed Form W-4.

Pay for personal services that is not subject to NRA withholding is not subject to reporting on Form 1042-S. If the compensation is more than $600, report it on Form W-2 (if the employee gave you a TIN) or on Form 1099-MISC (if the employee did not give you a TIN).

Employer-employee relationship. For pay for personal services to qualify as wages, there must be an employer-employee relationship.

Under the common law rules, every individual who performs services subject to the will and control of an employer, both as to what shall be done and how it shall be done, is an employee. It does not matter that the employer allows the employee considerable discretion and freedom of action, as long as the employer has the legal right to control both the method and the result of the services.

If an employer-employee relationship exists, it does not matter what the parties call the relationship. It does not matter if the employee is called a partner, coadventurer, agent, or independent contractor. It does not matter how the pay is measured, how the individual is paid, or what the payments are called. Nor does it matter whether the individual works full-time or part-time.

The existence of the employer-employee relationship under the usual common law rules will be determined, in doubtful cases, by an examination of the facts of each case.

Employee. An employee generally includes any individual who performs services if the relationship between the individual and the person for whom the services are performed is the legal relationship of employer and employee. This

includes an individual who receives a supplemental unemployment pay benefit that is treated as wages.

No distinction is made between classes of employees. Superintendents, managers, and other supervisory personnel are employees. In most cases, an officer of a corporation is an employee, but a director acting in this capacity is not. An officer who does not perform any services, or only minor services, and neither receives nor is entitled to receive any pay is not considered an employee.

Employer. An employer is any person or organization for whom an individual performs or has performed any service, of whatever nature, as an employee. The term "employer" includes not only individuals and organizations in a trade or business, but organizations exempt from income tax, such as religious and charitable organizations, educational institutions, clubs, social organizations, and societies. It also includes the governments of the United States, the states, Puerto Rico, and the District of Columbia, as well as their agencies, instrumentalities, and political subdivisions.

Two special definitions of employer that may have considerable application to nonresident aliens are:

- An employer includes any person paying wages for a nonresident alien individual, foreign partnership, or foreign corporation not engaged in trade or business in the United States (including Puerto Rico as if a part of the United States), and
- An employer includes any person who has control of the payment of wages for services that are performed for another person who does not have that control.

For example, if a trust pays wages, such as certain types of pensions, supplemental unemployment pay, or retired pay, and the person for whom the services were performed has no legal control over the payment of the wages, the trust is the employer.

These special definitions have no effect upon the relationship between an alien employee and the actual employer when determining whether the pay received is considered to be wages.

If an employer-employee relationship exists, the employer ordinarily must withhold the income tax from wage payments by using the percentage method or wage bracket tables as shown in Publication 15 (Circular E).

Pay that is not wages. Employment for which the pay is not considered wages (for graduated income tax withholding) includes, but is not limited to, the following items.

- Agricultural labor if the total cash wages paid to an individual worker during the year is less than $150 and the total paid to all workers during the year is less than $2,500. But even if the total amount paid to all workers is $2,500 or more, wages of less than $150 per year paid to a worker are not subject to income tax withholding if certain conditions are met. For these conditions, see Publication 51 (Circular A).
- Services of a household nature performed in or about the private home of an employer, or in or about the clubrooms or house of a local college club, fraternity, or sorority. A local college club, fraternity, or sorority does not include an alumni club or chapter and may not be operated primarily as a business enterprise. Examples of these services include those performed as a cook, janitor, housekeeper, governess, gardener, or houseparent.
- Certain services performed outside the course of the employer's trade or business for which cash payment is less than $50 for the calendar quarter.
- Services performed as an employee of a foreign government, without regard to citizenship, residence, or where services are performed. These include services performed by ambassadors, other diplomatic and consular officers and employees, and nondiplomatic representatives. They do not include services for a U.S. or Puerto Rican corporation owned by a foreign government.
- Services performed within or outside the United States by an employee or officer (regardless of citizenship or residence) of an international organization designated under the International Organizations Immunities Act.
- Services performed by a duly ordained, commissioned, or licensed minister of a church, but only if performed in the exercise of the ministry and not as an employee of the United States, a U.S. possession, or a foreign government, or any of their political subdivisions. These also include services performed by a member of a religious order in carrying out duties required by that order.
- Tips paid to an employee if they are paid in any medium other than cash or, if in cash, they amount to less than $20 in any calendar month in the course of employment.

Services performed outside the United States. Compensation paid to a nonresident alien (other than a resident of Puerto Rico, discussed later) for services performed outside the United States is not considered wages and is not subject to withholding.

Withholding exemptions. The amount of wages subject to graduated withholding may be reduced by the personal exemption amount ($3,800 for 2012). The personal exemptions allowed in figuring wages subject to graduated withholding are the same as those discussed earlier under *Pay for independent personal services*, except that an employee must claim them on Form W-4.

Special instructions for Form W-4. A nonresident alien subject to wage withholding must give the employer a completed Form W-4 to enable the employer to figure how much income tax to withhold.

CAUTION *A nonresident alien cannot claim exemption from withholding on Form W-4. Use Form 8233 to claim a tax treaty exemption from withholding. See Form 8233, earlier.*

In completing Form W-4, nonresident aliens should use the following instructions instead of the instructions on Form W-4.

1. Check "Single" on line 3 (regardless of actual marital status).
2. Claim only one withholding allowance on line 5, unless a resident of Canada, Mexico, or South Korea, or a U.S. national.
3. Write "Nonresident Alien" or "NRA" above the dotted line on line 6.

Also see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens.

TIP *Nonresident alien employees are not required to request an additional withholding amount, but they can choose to have an additional amount withheld on line 6.*

Students and business apprentices from India. Students and business apprentices who are eligible for the benefits of Article 21(2) of the United States-India income tax treaty can claim additional withholding allowances on line 5 for their spouses. In addition, they can claim an additional withholding allowance for each dependent who has become a resident alien.

Determining amount to withhold. Employers are required to add an amount to the wages of a nonresident alien employee solely for the purpose of calculating income tax withholding. The specific amounts depend on the payroll period. These amounts can be found in *Withholding Adjustment for Nonresident Aliens* in chapter 9 of Publication 15 (Circular E). This adjustment does not apply to students and business apprentices from India.

CAUTION *Do not include the additional amount on the employee's Form W-2, Wage and Tax Statement.*

Reporting requirements for wages and withheld taxes paid to nonresident aliens. The employer must report the amount of wages and deposits of withheld income and social security and Medicare taxes by filing Form 941. Household employers should see Publication 926, Household Employer's Tax Guide, for information on reporting and paying employment taxes on wages paid to household employees.

Form W-2. The employer also must report on Form W-2 the wages subject to NRA withholding and the withheld taxes. You must give copies of this form to the employee. If the employee submits Form 8233 to claim exemption from withholding under a tax treaty, the wages are reported on Form 1042-S and not in box 1 of Form W-2. Wages exempt under a tax treaty may still be reported in the state and local wages boxes of Form W-2 if such wages are subject to state and local taxation. For more information, see the instructions for these forms.

Trust fund recovery penalty. If you are a person responsible for withholding, accounting for, or depositing or paying employment taxes, and willfully fail to do so, you can be held liable for a penalty equal to the full amount of the

unpaid trust fund tax, plus interest. A responsible person for this purpose can be an officer of a corporation, a partner, a sole proprietor, or an employee of any form of business. A trustee or agent with authority over the funds of the business can also be held responsible for the penalty.

"Willfully" in this case means voluntarily, consciously, and intentionally. You are acting willfully if you pay other expenses of the business instead of the withholding taxes.

Federal unemployment tax (FUTA). The employer must pay FUTA and file Form 940 or 940-EZ, Employer's Annual Federal Unemployment (FUTA) Tax Return. Only the employer pays this tax; it is not deducted from the employee's wages. In certain cases, wages paid to students and railroad and agricultural workers are exempt from FUTA tax. For more information, see the instructions for these forms.

Wages paid to nonresident alien students, teachers, researchers, trainees, and other nonresident aliens in "F-1," "J-1," "M-1," or "Q" nonimmigrant status are not subject to FUTA tax.

Pay for dependent personal services (Income Code 17). Dependent personal services are personal services performed in the United States by a nonresident alien individual as an employee rather than as an independent contractor.

Pay for dependent personal services is subject to NRA withholding and reporting as follows.

Graduated rates. Ordinarily, you must withhold on pay (wages) for dependent personal services using graduated rates. The nonresident alien must complete Form W-4 as discussed earlier under *Special instructions for Form W-4*, and you must report wages and income tax withheld on Form W-2. However, you do not have to withhold if any of the following four exceptions applies.

Exception 1. Compensation paid for labor or personal services performed in the United States is deemed not to be income from sources within the United States and is exempt from U.S. income tax if:

1. The labor or services are performed by a nonresident alien temporarily present in the United States for a period or periods not exceeding a total of 90 days during the tax year;
2. The total pay does not exceed $3,000; and
3. The pay is for labor or services performed as an employee of, or under a contract with:
   a. A nonresident alien individual, foreign partnership, or foreign corporation that is not engaged in a trade or business in the United States, or
   b. A U.S. citizen or resident alien individual, a domestic partnership, or a domestic corporation, if the labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by this individual, partnership, or corporation.

If the total pay is more than $3,000, the entire amount is income from sources in the United States and is subject to U.S. tax.

Also, compensation paid for labor or services performed in the United States by a nonresident alien in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a U.S. possession is not income from sources within the United States.

Exception 2. Compensation paid by a foreign employer to a nonresident alien for the period the alien is temporarily present in the United States on an "F," "J," or "Q" visa is exempt from U.S. income tax. For this purpose, a foreign employer means:

- A nonresident alien individual, foreign partnership, or foreign corporation, or
- An office or place of business maintained in a foreign country or in a U.S. possession by a domestic corporation, a domestic partnership, or an individual U.S. citizen or resident.

You can exempt the payment from withholding if you can reliably associate the payment with a Form W-8BEN containing the taxpayer identification number of the payee.

Exception 3. Compensation paid to certain residents of Canada or Mexico who enter or leave the United States at frequent intervals is not subject to withholding. These aliens must either:

- Perform duties in transportation services (such as a railroad, bus, truck, ferry, steamboat, aircraft, or other type) between the United States and Canada or Mexico; or
- Perform duties connected with an international project, relating to the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge crossed by, or crossing, the boundary between the United States and Canada or the boundary between the United States and Mexico.

To qualify for the exemption from withholding during a tax year, a Canadian or Mexican resident must give the employer a statement with the employee's name, address, and identification number, and certifying that the resident:

- Is not a U.S. citizen or resident;
- Is a resident of Canada or Mexico, whichever applies; and
- Expects to perform the described duties during the tax year in question.

The statement can be in any form, but it must be dated and signed by the employee and must include a written declaration that it is made under penalties of perjury.

Canadian and Mexican residents employed entirely within the United States. Neither the transportation service exception nor the international projects exception applies to the pay of a resident of Canada or Mexico who is employed entirely within the United States and who commutes from a home in Canada or Mexico to work in the United States. If an individual works at a fixed point or points in the United States (such as a factory, store, office, or designated area or areas), the wages for services performed as an employee for an employer are subject to graduated withholding.

Exception 4. Compensation paid for services performed in Puerto Rico by a nonresident alien who is a resident of Puerto Rico for an employer (other than the United States or one of its agencies) is not subject to withholding.

Compensation paid for either of the following types of services is not subject to withholding if the alien does not expect to be a resident of Puerto Rico during the entire tax year.

- Services performed outside the United States but not in Puerto Rico by a nonresident alien who is a resident of Puerto Rico for an employer other than the United States or one of its agencies; or
- Services performed outside the United States by a nonresident alien who is a resident of Puerto Rico, as an employee of the United States or any of its agencies.

To qualify for the exemption from withholding for any tax year, the employee must give the employer a statement showing the employee's name and address and certifying that the employee:

- Is not a citizen or resident of the United States, and
- Is a resident of Puerto Rico who does not expect to be a resident for that entire tax year.

The statement must be signed and dated by the employee and contain a written declaration that it is made under penalties of perjury.

Tax treaties. Pay for dependent personal services under some tax treaties is exempt from U.S. income tax only if both the employer and the employee are treaty country residents and the nonresident alien employee performs the services while temporarily living in the United States (usually for not more than 183 days). Other treaties provide for exemption from U.S. tax on pay for dependent personal services if the employer is any foreign resident and the employee is a treaty country resident and the nonresident alien employee performs the services while temporarily in the United States.

Pay for teaching (Income Code 18). This category is given a separate income code number because some tax treaties provide at least partial exemption from withholding and from U.S. tax. Pay for teaching means payments to a nonresident alien professor, teacher, or researcher by a U.S. university or other accredited educational institution for teaching or research work at the institution.

Graduated rates. Graduated withholding of income tax usually applies to all wages, salaries, and other pay for teaching and research paid by a U.S. educational institution during the period the nonresident alien is teaching or performing research at the institution.

Social security and Medicare tax. A nonresident alien temporarily in the United States on an "F-1," "J-1," "M-1," or "Q-1" visa is not

subject to social security and Medicare taxes on pay for services performed to carry out the purpose for which the alien was admitted to the United States. Social security and Medicare taxes should not be withheld or paid on this amount.

Example. A nonresident alien is issued a visa to teach for a university. While in the United States, he takes a part-time job working for a chemical company. The wages earned while teaching at the university are exempt from social security and Medicare taxes. The wages earned at the chemical company are subject to social security and Medicare taxes.

If an alien is considered a resident alien, as discussed earlier, that pay is subject to social security and Medicare taxes even though the alien is still in one of the nonimmigrant statuses mentioned above. This rule also applies to FUTA (unemployment) taxes paid by the employer. Teachers, researchers, and other employees temporarily present in the United States on other nonimmigrant visas or in refugee or asylee immigration status are fully liable for social security and Medicare taxes unless an exemption applies from one of the totalization agreements in force between the United States and several other nations.

The Social Security Administration publishes the complete texts and explanatory pamphlets of the totalization agreements, which are available by calling 1-800-772-1213 or by visiting the Social Security Administration web site at: www.socialsecurity.gov/international.

Tax treaties. Under most tax treaties, pay for teaching or research is exempt from U.S. income tax and from withholding for a specified period of time when paid to a professor, teacher, or researcher who was a resident of the treaty country immediately prior to entry into the United States and who is not a citizen of the United States (see Table 2). The U.S. educational institution paying the compensation must report the amount of compensation paid each year which is exempt from tax under a tax treaty on Form 1042-S. The employer should also report the compensation in the state and local wages boxes of Form W-2 if the wages are subject to state and local taxes, or in the social security and Medicare wages boxes of Form W-2 if the wages are subject to social security and Medicare taxes.

Claimants must give you either Form W-8BEN or 8233, as applicable, to obtain these treaty benefits.

Pay during studying and training (Income Code 19). This category refers to pay (as contrasted with remittances, allowances, or other forms of scholarships or fellowship grants—see *Scholarships and Fellowship Grants*, earlier) for personal services performed while a nonresident alien is temporarily in the United States as a student, trainee, or apprentice, or while acquiring technical, professional, or business experience.

Graduated rates. Wages, salaries, or other compensation paid to a nonresident alien student, trainee, or apprentice for labor or personal services performed in the United States are subject to graduated withholding.

Social security and Medicare tax. A nonresident alien temporarily in the United States on an "F-1," "J-1," "M-1," or "Q-1" visa is not subject to social security and Medicare taxes on pay for services performed to carry out the purpose for which the alien was admitted to the United States. Social security and Medicare taxes should not be withheld or paid on this amount. This exemption from social security and Medicare taxes also applies to employment performed under Curricular Practical Training and Optional Practical Training, on or off campus, by foreign students in "F-1," "J-1," "M-1," or "Q" status as long as the employment is authorized by the U.S. Citizenship and Immigration Services.

Example. A nonresident alien is admitted to the United States to study surveying. As part of her course, she apprentices to a surveyor. She also works part time at a restaurant to supplement her income. The wages she earns as an apprentice are not subject to social security and Medicare taxes. The wages and tips she earns at the restaurant are subject to social security and Medicare taxes.

If an alien is considered a resident alien, as discussed earlier, that pay is subject to social security and Medicare taxes even though the alien is still in one of the nonimmigrant statuses mentioned above. This rule also applies to FUTA (unemployment) taxes paid by the employer.

Any student who is enrolled and regularly attending classes at a school may be exempt from social security, Medicare, and FUTA taxes on pay for services performed for that school. See Publication 15 (Circular E).

Tax treaties. Many tax treaties provide an exemption from U.S. income tax and from withholding on compensation paid to nonresident alien students or trainees during training in the United States for a limited period. In addition, some treaties provide an exemption from tax and withholding for compensation paid by the U.S. Government or its contractor to a nonresident alien student or trainee who is temporarily present in the United States as a participant in a program sponsored by the U.S. Government (see Table 2). However, a withholding agent who is a U.S. resident, a U.S. Government agency, or its contractor must report the amount of pay on Form 1042-S.

Claimants must give you either Form W-8BEN or 8233, as applicable, to obtain these treaty benefits.

Artists and Athletes (Income Codes 42 and 43)

Because many tax treaties contain a provision for pay to artists and athletes, a separate category is assigned these payments for withholding purposes. This category includes payments made for performances by public entertainers (such as theater, motion picture, radio, or television artists, or musicians) or athletes.

Use Income Code 42 to report payments to artists and athletes who have not signed a central withholding agreement (CWA), discussed later. Use Income Code 43 to report payments to artists and athletes who have signed a CWA.

Income Code 42. You must withhold tax at a 30% rate on payments to artists and athletes for services performed as independent contractors. See *Pay for independent personal services*, earlier, for more information. You must withhold tax at graduated rates on payments to artists and athletes for services performed as employees. See *Pay for dependent personal services*, earlier, for more information. However, in any situation where the nature of the relationship between the payer of the income and the artist or athlete is not ascertainable, you should withhold at a rate of 30%.

Income Code 43. Nonresident alien entertainers and athletes who perform or participate in events in the United States can request a CWA for a lower rate of withholding. A CWA is an agreement entered into by the athlete or entertainer, a designated withholding agent, and the IRS. Under no circumstances will a CWA reduce taxes withheld to less than the anticipated amount of income tax liability.

Nonresident alien entertainers or athletes requesting a CWA must submit a written application and appropriate attachments. Use Form 13930, Application for Central Withholding Agreement, and its instructions to apply for a CWA.

The designated withholding agent must agree to withhold income tax from payments made to the nonresident alien, to pay over the withheld tax to the IRS on the dates and in the amounts specified in the agreement, and to have the IRS apply the payments of withheld tax to the withholding agent's Form 1042 account. The designated withholding agent will be required to file Form 1042 and Form 1042-S for each tax year in which income is paid to a nonresident alien covered by the CWA. The designated withholding agent will issue Form 1042-S to each nonresident alien athlete and entertainer affected by the agreement.

A request for a CWA must be submitted to the following address at least 45 days before the agreement is to take effect. Exceptions will be considered on a case by case basis.

Central Withholding Agreement Program
Internal Revenue Service
3651 S. Interregional Hwy. 35
Stop 4302 AUSC
Austin, TX 78741

TIP *You do not need to complete box 3 or box 5 on Form 1042-S for any artist or athlete who is covered by a CWA.*

Tax treaties. Under many tax treaties, compensation paid to public entertainers or athletes for services performed in the United States is exempt from U.S. income tax only when the alien is present for a limited period of time and the pay is within limits provided in the tax treaty (see Table 2).

Employees and independent contractors may claim an exemption from withholding under a tax treaty by filing Form 8233. Often, however, you will have to withhold at the statutory rates on the total payments to the entertainer or athlete. This is because the exemption may be based upon factors that cannot be determined until after the end of the year.

Other Income

For the discussion of Income Codes 24, 25, and 26, see *U.S. Real Property Interest*, later. For the discussion of Income Code 27, see *Publicly Traded Partnerships*, later.

Gambling winnings (Income Code 28). In general, nonresident aliens are subject to NRA withholding at 30% on the gross proceeds from gambling won in the United States if that income is not effectively connected with a U.S. trade or business and is not exempted by treaty. The tax withheld and winnings are reportable on Forms 1042 and 1042-S.

No tax is imposed on nonbusiness gambling income a nonresident alien wins playing blackjack, baccarat, craps, roulette, or big-6 wheel in the United States. A Form W-8BEN is not required to obtain the exemption from withholding, but a Form W-8BEN may be required for purposes of Form 1099 reporting and backup withholding. Gambling income that is not subject to NRA withholding is not subject to reporting on Form 1042-S.

Nonresident aliens are taxed at graduated rates on net gambling income won in the U.S. that is effectively connected with a U.S. trade or business.

Tax treaties. Gambling income of residents (as defined by treaty) of the following foreign countries is not taxable by the United States: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Tunisia, Turkey, Ukraine, and the United Kingdom.

Gambling income of residents of Malta is taxed at 10%.

Claimants must give you a Form W-8BEN (with a TIN) to claim treaty benefits on gambling income that is not effectively connected with a U.S. trade or business. See *U.S. Taxpayer Identification Numbers*, later, for when you can accept a Form W-8BEN without a TIN.

Transportation income. U.S. source gross transportation income is generally not subject to NRA withholding.

Transportation income is income from the use of a vessel or aircraft, whether owned, hired, or leased, or from the performance of services directly related to the use of a vessel or aircraft. U.S. source gross transportation income includes 50% of all transportation income from transportation that either begins or ends in the United States. For personal service income other than income derived from, or in connection with, a vessel, the use must be between the United States and a U.S. possession.

The recipient of U.S. source gross transportation income must pay tax at the rate of 4% unless the income is effectively connected with the conduct of a U.S. trade or business. If the income is effectively connected with a U.S. trade or business, it is taxed on a net basis at a graduated rate of tax.

Payments to certain expatriates. Certain payments to nonresident aliens who are covered expatriates under section 877A(g)(1) are subject to NRA withholding at 30%. In general, nonresident aliens are covered expatriates if they were U.S. citizens or long-term residents who renounced their citizenship or ceased to be long-term residents for U.S. tax purposes after June 16, 2008, and satisfied other tests for average annual net income tax and net worth. For more information on the definition of covered expatriates, see the Instructions for Form 8854.

Eligible deferred compensation items (Income Code 38). In general, you must withhold tax at a 30% rate on any payment of an eligible deferred compensation item. The amount subject to tax is the amount of the payment that would have been included in the nonresident alien's U.S. gross income if he had continued to be taxed as a U.S. citizen or resident.

Distributions from a nongrantor trust (Income Code 39). In general, you must withhold tax at a 30% rate on any direct or indirect distribution from a nongrantor trust. The amount subject to tax is the part of the distribution that would have been included in the nonresident alien's U.S. gross income if he had continued to be taxed as a U.S. citizen or resident. If the nonresident alien was not a beneficiary of the nongrantor trust on the day before he gave up his U.S. citizenship or long-term residence, you do not have to withhold tax.

Guarantee of indebtedness (Income Code 41). An amount paid to a foreign payee for the provision of a guarantee of indebtedness issued after September 27, 2010, may be subject to NRA withholding. The amounts must be paid by one of the following:

1. A noncorporate U.S. resident,
2. A domestic corporation, or
3. Any foreign person if the amount paid is connected with income that is effectively connected, or treated as effectively connected, with a U.S. trade or business.

An indirect payment includes a payment by a foreign bank to a foreign corporation for the foreign corporation's guarantee of indebtedness owed to the foreign bank by the foreign corporation's domestic subsidiary, where the cost of the guarantee fee is passed on to the domestic subsidiary through additional interest charged on the indebtedness.

Other income (Income Code 50). Use this category to report U.S. source FDAP income that is not reportable under any of the other income categories. Examples of income that may be reportable under this category are commissions, insurance proceeds, patronage distributions, prizes, and racing purses.

As discussed earlier under *Income Subject to NRA Withholding*, every kind of FDAP income from U.S. sources that is not effectively connected with a U.S. trade or business is subject to NRA withholding unless the income is specifically exempt under the Code or a tax treaty. You generally must withhold at the 30% rate on this income.

Foreign Governments and Certain Other Foreign Organizations

Investment income earned by a foreign government is not included in the gross income of the foreign government and is not subject to U.S. withholding tax. Investment income means income from investments in the United States in stocks, bonds, or other domestic securities, financial instruments held in the execution of governmental financial or monetary policy, and interest on money deposited by a foreign government in banks in the United States. A foreign government must provide a Form W-8EXP or, in the case of a payment made outside the United States to an offshore account, documentary evidence to obtain this exemption. Investment income paid to a foreign government is subject to reporting on Form 1042-S.

The following types of income received by a foreign government are subject to NRA withholding.

1. Income (including investment income) received from the conduct of a commercial activity or from sources other than those stated above.
2. Income received from a controlled commercial entity (including gain from the disposition of any interest in a controlled commercial entity) and income received by a controlled commercial entity.

   If the foreign government is a partner in a partnership carrying on a trade or business in the United States, the effectively connected income allocable to the foreign government is considered derived from a controlled commercial activity and is subject to withholding under section 1446.
3. Gain derived from the disposition of a U.S. real property interest. Withholding on these gains is discussed later under *U.S. Real Property Interest*.

A government of a U.S. possession is exempt from U.S. tax on all U.S. source income. This income is not subject to NRA withholding. These governments should use Form W-8EXP to get this exemption.

International organizations. International organizations are exempt from U.S. tax on all U.S. source income. This income is not subject to withholding. International organizations are not required to provide a Form W-8 or documentary evidence to receive the exemption if the name of the payee is one that is designated as an international organization by executive order.

Foreign tax-exempt organizations. A foreign organization that is a tax exempt organization under section 501(c) of the Internal Revenue Code is not subject to a withholding tax on amounts that are not income includible under section 512 of the Internal Revenue Code as unrelated business taxable income. However, if a foreign organization is a foreign private foundation, it is subject to a 4% withholding tax on all U.S. source investment income. For a foreign tax-exempt organization to claim an exemption

from withholding because of its tax exempt status under section 501(c), or to claim withholding at a 4% rate, it must provide you with a Form W-8EXP. However, if a foreign organization is claiming an exemption from withholding under an income tax treaty, or the income is unrelated business taxable income, the organization must provide a Form W-8BEN or W-8ECI. Income paid to foreign tax-exempt organizations is subject to reporting on Form 1042-S. If the organization is a partner in a partnership carrying on a trade or business in the United States, the effectively connected income allocable to the organization is subject to withholding under section 1446.

U.S. Taxpayer Identification Numbers

As the withholding agent, in most cases you must request that the payee provide you with its U.S. taxpayer identification number (TIN). You must include the payee's TIN on forms, statements, and other tax documents. The payee's TIN may be any of the following.

- An individual may have a social security number (SSN). If the individual does not have and is eligible for an SSN, he or she must use Form SS-5, Application for a Social Security Card, to get an SSN. The Social Security Administration will tell the individual if he or she is eligible to get an SSN.
- An individual may have an IRS individual taxpayer identification number (ITIN). If the individual does not have and is not eligible for an SSN, he or she must apply for an ITIN by using Form W-7.
- Any person other than an individual, and any individual who is an employer or who is engaged in a U.S. trade or business as a sole proprietor, must have an employer identification number (EIN). Use Form SS-4 to get an EIN.

A TIN must be on a withholding certificate if the beneficial owner is claiming any of the following.

- Tax treaty benefits (see *Exceptions to TIN requirement*, later).
- Income is effectively connected with a U.S. trade or business.
- Exemption for certain annuities (see *Pensions, Annuities, and Alimony*, earlier).
- Exemption based on exempt organization or private foundation status.

In addition, a TIN must be on a withholding certificate from a person claiming to be any of the following.

- Qualified intermediary.
- Withholding foreign partnership.
- Withholding foreign trust.
- Exempt organization.
- U.S. branch of a foreign person treated as a U.S. person (see section 1.1441-1(b)(2)(iv) of the regulations).
- U.S. person.

Exceptions to TIN requirement. A foreign person does not have to provide a U.S. TIN to claim a reduced rate of withholding under a tax treaty if the requirements for the following exceptions are met.

- Income from marketable securities (discussed earlier under *Form W-8BEN*).
- Unexpected payment to an individual (discussed next).

Unexpected payment. A Form W-8BEN or a Form 8233 provided by a nonresident alien to get treaty benefits does not need a U.S. TIN if you, the withholding agent, meet all the following requirements.

- You are an acceptance agent.
- You can request an ITIN for a payee on an expedited basis.
- You are required to make an unexpected payment to the nonresident alien.
- You cannot get the ITIN because the IRS is not issuing ITINs at the time you make the payment or at any earlier time after you know you have to make the payment.
- You cannot reasonably delay making the unexpected payment.
- You submit a completed Form W-7 for the payee, with a certification that you have reviewed the required documentation and have no actual knowledge or reason to know that the documentation is not complete or accurate, to the IRS during the first business day after you made the payment.

An acceptance agent is a person who, under a written agreement with the IRS, is authorized to assist alien individuals and other foreign persons get ITINs or EINs. For information on the application procedures for becoming an acceptance agent, see Rev. Proc. 2006-10, 2006-2 I.R.B. 293, available at *www.irs.gov/irb/2006-02_IRB/ar13.html*.

A payment is unexpected if you or the beneficial owner could not have reasonably anticipated the payment during a time when an ITIN could be obtained. This could be due to the nature of the payment or the circumstances in which the payment is made. A payment is not considered unexpected solely because the amount of the payment is not fixed.

Example. Mary, a citizen and resident of Ireland, visits the United States and wins $5,000 playing a slot machine in a casino. Under the treaty with Ireland, the winnings are not subject to U.S. tax. Mary claims the treaty benefits by providing a Form W-8BEN to the casino upon winning at the slot machine. However, she does not have an ITIN. The casino is an acceptance agent that can request an ITIN on an expedited basis.

Situation 1. Assume that Mary won the money on Sunday. Since the IRS does not issue ITINs on Sunday, the casino can pay $5,000 to Mary without withholding U.S. tax. The casino must, on the following Monday, fax a completed Form W-7 for Mary, including the required certification, to the IRS for an expedited ITIN.

Situation 2. Assume that Mary won the money on Monday. To pay the winnings without withholding U.S. tax, the casino must apply for and get an ITIN for Mary because an expedited ITIN is available from the IRS at the time of the payment.

Depositing Withheld Taxes

This section discusses the rules for depositing income tax withheld on FDAP income. The deposit rules discussed here do not apply to the following items.

- Taxes on pay subject to graduated withholding as discussed earlier. (See Form 941 for the deposit rules.)
- Tax withheld on pensions and annuities subject to graduated withholding or the 10% tax on nonperiodic distributions. (See Form 945 for the deposit rules.)
- Tax withheld on a foreign partner's share of effectively connected income of a partnership. See *Partnership Withholding on Effectively Connected Income*, later.
- Tax withheld on dispositions of U.S. real property interests by foreign persons. See *U.S. Real Property Interest*, later.
- Taxes on household employees. See Schedule H (Form 1040), Household Employment Taxes, to report social security and Medicare taxes, and any income tax withheld, on wages paid to a nonresident alien household employee.

When Deposits Are Required

A deposit required for any period occurring in one calendar year must be made separately from a deposit for any period occurring in another calendar year. A deposit of this tax must be made separately from a deposit of any other type of tax.

The amount of tax you are required to withhold determines the frequency of your deposits. The following rules show how often deposits must be made.

1. If at the end of a calendar year the total amount of undeposited taxes is less than $200, you may either pay the taxes with your Form 1042 or deposit the entire amount by March 15 of the following calendar year.
2. If at the end of any month the total amount of undeposited taxes is $200 or more but less than $2,000, you must deposit the taxes within 15 days after the end of the month. If the 15th day is a Saturday, Sunday, or legal holiday in the District of Columbia, you must deposit the taxes by the next day that is not a Saturday, Sunday, or legal holiday in the District of Columbia. If

you made a deposit of $2,000 or more during the month (except December) under rule 3 below, carry over any end-of-the-month balance of less than $2,000 to the next month. If you made a deposit of $2,000 or more during December, any end-of-December balance of less than $2,000 should be remitted with your Form 1042 by March 15 of the following year.

3. If at the end of any quarter-monthly period the total amount of undeposited taxes is $2,000 or more, you must deposit the taxes within 3 business days after the end of the quarter-monthly period. (A quarter-monthly period ends on the 7th, 15th, 22nd, and last day of the month.) A business day is any day other than a Saturday, Sunday, or legal holiday in the District of Columbia.

Electronic deposit requirement. You must deposit all withheld taxes by electronic funds transfer. In most cases, electronic funds transfers are made using the Electronic Federal Tax Payment System (EFTPS). If you do not want to use EFTPS, you can arrange for your tax professional, financial institution, or other trusted third party to make deposits on your behalf. Also, you may arrange for your financial institution to initiate a same-day wire payment on your behalf. EFTPS is a free service provided by the Department of Treasury. Services provided by your tax professional, financial institution, or other third party may have a fee. For more information about EFTPS or to enroll in EFTPS, visit www.eftps.gov or call 1-800-555-4477. Additional information about EFTPS is also available in Publication 966, The Secure Way to Pay Your Federal Taxes.

TIP *Qualified business taxpayers that request an EIN will automatically be enrolled in EFTPS. They will receive information on how to activate their account.*

Note. All payments should be stated in U.S. dollars and should be made in U.S. dollars.

Penalty for failure to make deposits on time. If you fail to make a required deposit within the time prescribed, a penalty is imposed on the underpayment (the excess of the required deposit over any actual timely deposit for a period). You can avoid the penalty if you can show that the failure to deposit was for reasonable cause and not because of willful neglect. Also, the IRS may waive the penalty if certain requirements are met.

Depositing on time. For deposits made by EFTPS to be on time, you must initiate the deposit by 8 p.m. Eastern time the day before the date the deposit is due. If you use a third party to make deposits on your behalf, they may have different cutoff times.

Penalty rate. If the deposit is:

- 1 to 5 days late, the penalty is 2% of the underpayment,
- 6 to 15 days late, the penalty is 5%, or
- 16 or more days late, the penalty is 10%.

However, if the deposit is not made within 10 days after the IRS issues the first notice demanding payment, the penalty is 15%.

If you owe a penalty for failing to deposit tax for more than one deposit period, and you make a deposit, your deposit is applied to the most recent period to which the deposit relates unless you designate the deposit period or periods to which your deposit is to be applied. You can make this designation only during a 90 day period that begins on the date of the penalty notice. The notice contains instructions on how to make this designation.

Adjustment for Overwithholding

What to do if you overwithheld tax depends on when you discover the overwithholding.

Overwithholding discovered by March 15 of following calendar year. If you discover that you overwithheld tax by March 15 of the following calendar year, you may use the undeposited amount of tax to make any necessary adjustments between you and the recipient of the income. However, if the undeposited amount is not enough to make any adjustments, or if you discover the overwithholding after the entire amount of tax has been deposited, you can use either the reimbursement procedure or the set-off procedure to adjust the overwithholding.

TIP *If March 15 is a Saturday, Sunday, or legal holiday, the next business day is the final date for these actions.*

Reimbursement procedure. Under the reimbursement procedure, you repay the beneficial owner or payee the amount overwithheld. You use your own funds for this repayment. You must make the repayment by March 15 of the year after the calendar year in which the amount was overwithheld. For example, if you overwithhold tax in 2012, you must repay the beneficial owner by March 15, 2013. You must keep a receipt showing the date and amount of the repayment and provide a copy of the receipt to the beneficial owner.

You may reimburse yourself by reducing any subsequent deposits you make before the end of the year after the calendar year in which the amount was overwithheld. The reduction cannot be more than the amount you actually repaid.

If you will reduce a deposit due in that later year, you must show the total tax withheld and the amount actually repaid on a timely filed (not including extensions) Form 1042-S for the calendar year in which the amount was overwithheld. You must state on a timely filed (not including extensions) Form 1042 that you are claiming a credit.

Example. James Smith is a resident of the United Kingdom. In December 2012, domestic corporation M paid a dividend of $100 to James, at which time M withheld $30 and paid the balance of $70 to him. In February 2013, James gave M a valid Form W-8BEN. He advises M that under the income tax convention with the United Kingdom, only $15 should have been withheld from the dividend and requests repayment of the $15 overwithheld. Although M Corporation had already deposited the $30, the corporation repaid James $15 before the end of February.

During 2012, M made no other payments from which tax had to be withheld. On its timely filed 2012 Form 1042, M reports $15 as its total tax liability and $30 as its total deposits. M requests that the $15 overpayment be credited to its 2013 Form 1042 rather than refunded.

The Form 1042-S that M files for the dividend paid to James in 2012 must show a tax withheld of $30 in boxes 7 and 9 and $15 as an amount repaid in box 10.

In June 2013, M made payments from which it withheld tax of $200. On July 15, 2013, M deposited $185, that is, $200 less the $15 credit claimed on its Form 1042 for 2012. M timely filed its Form 1042 for 2013, showing tax liability of $200, $185 deposited, and $15 credit from 2012.

Set-off procedure. Under the set-off procedure, you repay the beneficial owner or payee the amount overwithheld by reducing the amount you would have been required to withhold on later payments you make to that person. These later payments must be made before the earlier of:

- The date you actually file Form 1042-S for the calendar year in which the amount was overwithheld, or
- March 15 of the year after the calendar year in which the amount was overwithheld.

On Form 1042 and Form 1042-S for the calendar year in which the amount was overwithheld, show the reduced amount as the amount required to be withheld.

Overwithholding discovered at a later date. If you discover after March 15 of the following calendar year that you overwithheld tax for the prior year, do not adjust the amount of tax reported on Forms 1042-S (and Form 1042) or on any deposit or payment for that prior year. Do not repay the beneficial owner or payee the amount overwithheld.

In this situation, the recipient will have to file a U.S. income tax return (Form 1040NR, Form 1040NR-EZ, or Form 1120-F) or, if a tax return has already been filed, a claim for refund (Form 1040X or amended Form 1120-F) to recover the amount overwithheld.

Returns Required

Every withholding agent, whether U.S. or foreign, must file Forms 1042 and 1042-S to report payments of amounts subject to NRA withholding unless an exception applies. Do not use Forms 1042 and 1042-S to report tax withheld on the following:

- Wages, salaries, or other compensation reported on Form W-2 (see *Wages Paid to Employees — Graduated Withholding*, earlier, under *Pay for Personal Services Performed*);
- Any part of a U.S. or foreign partnership's (other than a publicly traded partnership) effectively connected taxable income allocable to a foreign partner (see *Partnership Withholding on Effectively Connected Income*, later);
- Dispositions of U.S. real property interests by foreign persons (see *U.S. Real Property Interest*, later);

- Pensions, annuities, and certain other deferred income reported on Form 1099; and
- Income, social security, and Medicare taxes on wages paid to a household employee reported on Schedule H (Form 1040).

Forms 1042 and 1042-S must be filed by March 15 of the year following the calendar year in which the income subject to reporting was paid. If March 15 falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.

Form 1042. Every U.S. and foreign withholding agent that is required to file a Form 1042-S also must file an annual return on Form 1042. You must file Form 1042 even if you were not required to withhold any income tax.

You must file Form 1042 with the:

Ogden Service Center
P.O. Box 409101
Ogden, UT 84409

Form 1042-S. Every U.S. and foreign withholding agent must file a Form 1042-S for amounts subject to NRA withholding unless an exception applies. The form can be filed electronically or on paper. A separate Form 1042-S is required for each recipient of income to whom you made payments during the preceding calendar year regardless of whether you withheld or were required to withhold tax. You must use a separate Form 1042-S for each type of income that you paid to the same recipient. See *Statements to recipients*, later.

You must furnish a Form 1042-S for each recipient even if you did not withhold tax because you repaid the tax withheld to the recipient or because the income payment was exempt from tax under the Internal Revenue Code or under a U.S. income tax treaty.

You can use a substitute Form 1042-S if it meets the requirements listed in Publication 1179. Get Publication 1179 for more information.

If you file a substitute for Copy A with the IRS that does not conform to the specifications in Publication 1179, you may be subject to a penalty for failing to file a correct return. See Penalties*, later.*

Joint owners. If all the owners provide documentation that permits them to receive the same reduced rate of withholding (for example, under an income tax treaty), you should apply the reduced rate of withholding. You are required, however, to report the payment on one Form 1042-S to the person whose status you rely upon to determine the withholding rate. If, however, any one of the owners requests its own Form 1042-S, you must furnish Form 1042-S to the person who requests it. If more than one Form 1042-S is issued for a single payment, the total amount paid and tax withheld reported on all Forms 1042-S cannot exceed the total amounts paid to joint owners.

Electronic reporting. Withholding agents or their agents generally must file electronically if they are required to file 250 or more Forms 1042-S with the IRS. You are encouraged to file electronically even if you are not required to.

A completed Form 4419, Application for Filing Information Returns Electronically (FIRE), should be filed at least 30 days before the due date of the return. Returns may not be filed electronically until the application has been approved by the IRS.

For information and instructions on filing Forms 1042-S electronically, get Publication 1187, Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically. If you file electronically, you will use the Filing Information Returns Electronically (FIRE) system. You get to the system through the Internet at *fire.irs.gov*.

Form 1042-T. If Form 1042-S is filed on paper, it must be filed with Form 1042-T. You may need to file more than one Form 1042-T. See the instructions for that form for more information.

Deposit interest paid to alien individuals who are residents of Canada. If you pay deposit interest of $10 or more to a nonresident alien individual who resides in Canada and is not a U.S. citizen, you may have to report it on Form 1042-S. This reporting requirement generally applies to interest that is (a) on a deposit maintained at a bank's office in the United States and (b) not effectively connected with a trade or business within the United States.

Determining residency. You determine whether a payee is a Canadian resident based on the permanent residence address required to be provided on the Form W-8BEN. If you have actual knowledge that the payee is a U.S. person, you must report the payment on Form 1099-INT.

Statements to recipients. You must furnish a statement to each recipient for whom you are filing a Form 1042-S by the due date for filing Forms 1042 and 1042-S with the IRS. You may use a copy of the official Form 1042-S for this purpose. Or, you may provide recipients with the information together with, or on, other (commercial) statements or notices. These statements must clearly identify the type of income (as described on the official form), the amount of tax withheld, the withholding rate (including 00.00 if exempt), and the country involved. You may include more than one type of income on the copies of the Form 1042-S that you provide to the recipient of the income. You may not, however, include more than one income line on the copy of the form filed with the IRS.

Extensions of Time To File

You can request extensions of time to file Forms 1042 and 1042-S with the IRS and additional extensions to furnish Forms 1042-S to recipients.

Extension to file Form 1042. You can get an automatic 6-month extension of time to file Form 1042 by filing Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns. File Form 7004 on or before the due date of Form 1042. Form 7004 does not extend the time for payment of tax.

Form 7004 extends only the due date for filing the returns with the IRS. It does not extend the due date for furnishing statements to recipients.

Extension to file Form 1042-S with the IRS. You can get an automatic 30-day extension of time to file Form 1042-S by filing Form 8809, Application for Extension of Time To File Information Returns. You should request an extension as soon as you are aware that an extension is necessary, but no later than the due date for filing Form 1042-S. You may request one additional extension of 30 days by submitting a second Form 8809 before the end of the first extension period. Requests for an additional extension are not automatically granted. Approval or denial is based on administrative criteria and guidelines. The IRS will send you a letter of explanation approving or denying your request for an additional extension.

If you are requesting extensions of time to file for more than one withholding agent or payer, you must submit the extension request electronically.

Extension to provide statements to recipients. 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. The letter must include (a) your name, (b) your TIN, (c) your address, (d) type of return, (e) a statement that your extension request is for providing statements to recipients, (f) reason for delay, and (g) the signature of the payer or authorized agent. Your request must be postmarked by the date on which the statements are due to the recipients. If your request for an extension is approved, generally you will be granted a maximum of 30 extra days to furnish the recipient statements. See Publication 1187.

If you are requesting extensions of time to file for recipients of more than 10 withholding agents, you must submit the extension requests electronically. See Publication 1187, Part D, section 4, for more information.

Penalties

If you do not file a correct and complete Form 1042 or Form 1042-S with the IRS on time or if you do not provide a correct and complete Form 1042-S to the recipient on time, you may be subject to a penalty.

Failure to file Form 1042. The penalty for not filing Form 1042 when due (including extensions) is usually 5% of the unpaid tax for each month or part of a month the return is late, but not more than 25% of the unpaid tax.

Failure to file correct Form 1042-S. A penalty may be imposed for failure to file Form 1042-S when due (including extensions) or for failure to provide complete and correct information. The amount of the penalty depends on when you file a correct Form 1042-S. The penalty for each Form 1042-S is:

- $30 if you file a correct form within 30 days, with a maximum penalty of

$250,000 per year ($75,000 for a small business);

- $60 if you file after 30 days but by August 1, with a maximum penalty of $500,000 ($200,000 for a small business); or
- $100 if you file after August 1 or do not file a correct form, with a maximum penalty of $1,500,000 per year ($500,000 for a small business).

Small businesses—lower maximum penalties. A small business is a business that has average annual gross receipts of $5 million or less for the most recent 3 tax years (or for the period of its existence, if shorter) ending before the calendar year in which the Forms 1042-S are due.

Exception. No penalty is imposed if the following statements are true.

1. You filed Form 1042-S with the IRS on time, but it was incorrect or incomplete.
2. You filed a correct Form 1042-S by August 1.

If both statements (1) and (2) are true, the penalty for filing incorrect returns (but not for filing late) will not apply to the greater of 10 Forms 1042-S or .5% of the total number of Forms 1042-S and any other information returns you are required to file with the IRS for the calendar year.

Failure to furnish Form 1042-S to recipient. A penalty may be imposed for failure to provide Form 1042-S to the recipient when due (including extensions) or for failing to provide complete and correct information. The amount of the penalty depends on when you provide the correct Form 1042-S. The penalty for each Form 1042-S is:

- $30 if you provide the correct Form 1042-S within 30 days, with a maximum penalty of $250,000 per year ($75,000 for a small business);
- $60 if you provide the correct Form 1042-S after 30 days but by August 1, with a maximum penalty of $500,000 per year ($200,000 for a small business); or
- $100 if you provide the correct Form 1042-S after August 1, with a maximum penalty of $1,500,000 per year ($500,000 for a small business).

Exception. No penalty is imposed if you meet all the following requirements.

1. You provided a Form 1042-S to a recipient on time, but it was incorrect or incomplete.
2. You provide a correct Form 1042-S to the recipient by August 1.

If you satisfy the requirements in (1) and (2) above, the penalty for providing incorrect returns (but not for filing late) will not apply to the greater of 10 Forms 1042-S or .5% of the total number of all types of information returns you had to provide during the calendar year.

Penalty for intentional disregard of requirements to file or provide returns. If you intentionally disregard the requirement to file Form 1042-S when due, to provide Form 1042-S to the recipient when due, or to report correct information, the penalty is the greater of $250 or 10% of the total amount of the items that must be reported, with no maximum penalty.

Failure to file electronically. If you are required to file Form 1042-S electronically but you fail to do so, and you do not have an approved waiver, you may be subject to a penalty of $50 per form unless you show reasonable cause. The penalty applies separately to original and amended returns. The maximum penalty is $100,000.

Partnership Withholding on Effectively Connected Income

Under section 1446, a partnership (foreign or domestic) that has income effectively connected with a U.S. trade or business (or income treated as effectively connected) must pay a withholding tax on the effectively connected taxable income that is allocable to its foreign partners. A publicly traded partnership must withhold tax on actual distributions of effectively connected income. See *Publicly Traded Partnerships*, later.

This withholding tax does not apply to income that is not effectively connected with the partnership's U.S. trade or business. That income is subject to NRA withholding tax, as discussed earlier in this publication.

Who Must Withhold

The partnership, or a withholding agent for the partnership, must pay the withholding tax. A partnership that must pay the withholding tax but fails to do so may be liable for the payment of the tax and any penalties and interest.

The partnership must determine whether a partner is a foreign partner. A foreign partner can be a nonresident alien individual, foreign corporation, foreign partnership, foreign estate or trust, foreign tax-exempt organization, or foreign government.

U.S. partner. A partner that is a U.S. person should provide Form W-9 to the partnership.

A partnership may rely on a partner's certification of nonforeign status and assume that a partner is not a foreign partner unless the form:

- Does not give the partner's name, U.S. taxpayer identification number, and address, or
- Is not signed under penalties of perjury and dated.

The partnership must keep the certification for as long as it may be relevant to the partnership's liability for section 1446 tax.

The partnership may not rely on the certification if it has actual knowledge or has reason to know that any information on the form is incorrect or unreliable.

If a partnership does not receive a Form W-9 (or similar documentation) the partnership must presume that the partner is a foreign person.

Foreign Partner

A partner that is a foreign person should provide the appropriate Form W-8 (as shown in Chart D) to the partnership.

Partners who have otherwise provided Form W-8 to a partnership for purposes of section 1441 or 1442, as discussed earlier, can use the same form for purposes of section 1446 if they meet the requirements discussed earlier under *Documentation*. However, a foreign simple trust that has provided documentation for its beneficiaries for purposes of section 1441 must provide a Form W-8 on its own behalf for purposes of section 1446.

The partnership may not rely on the certification if it has actual knowledge or has reason to know that any information on the form is incorrect or unreliable.

The partnership must keep the certification for as long as it may be relevant to the partnership's liability for section 1446 tax.

Chart D. **Documentation for Foreign Partners***

IF you are a:	THEN provide to the partnership Form:
Nonresident alien	W-8BEN
Foreign corporation	W-8BEN
Foreign partnership	W-8IMY
Foreign government	W-8EXP
Foreign grantor trust**	W-8IMY
Certain foreign trust or foreign estate	W-8BEN
Foreign tax-exempt organization (including a private foundation)	W-8EXP
Nominee	W-8 used by beneficial owner

* A partnership may substitute its own form for the official version of Form W-8 to ascertain the identity of its partners.
**A domestic grantor trust must provide a statement as shown in Regulations section 1.1446-1(c)(2)(ii)(E) and documentation for its grantor.

Amount of Withholding Tax

The amount a partnership must withhold is based on its effectively connected taxable income that is allocable to its foreign partners for the partnership's tax year. However, see *Publicly Traded Partnerships*, later.

Reduction of withholding. The foreign partner's share of the partnership's gross effectively connected income is reduced by:

- The partner's share of partnership deductions connected to that income for the year.
- The partner's tax treaty benefits related to that income (see Chart D for documentation).

The partnership may reduce the foreign partner's share of partnership gross effectively connected income by:

1. State and local income taxes the partnership withholds and pays on behalf of the partner on current year effectively connected taxable income allocated to the partner.
2. The foreign partner's partner-level deductions and losses that the partner certifies to the partnership as:
   a. Carried forward from a prior year,
   b. Properly allocated to gross effectively connected income of the partner's trade or business in the United States, and
   c. Reasonably expected to be available and claimed on the partner's U.S. income tax return.

To certify the deductions and losses, a partner must submit to the partnership Form 8804-C, Certificate of Partner-Level Items to Reduce Section 1446 Withholding.

If the partner's investment in the partnership is the only activity producing effectively connected income and the section 1446 tax is less than $1,000, no withholding is required. The partner must provide Form 8804-C to the partnership to receive the exemption from withholding.

A foreign partner may submit a Form 8804-C to a partnership at any time during the partnership's year and prior to the partnership's filing of its Form 8804. An updated certificate is required when the facts or representations made in the original certificate have changed or a status report is required.

For more information, see the Instructions for Form 8804-C.

Tax rate. The withholding tax rate on a partner's share of effectively connected income is 35%. However, the partnership may withhold at the highest rate applicable to a particular type of income allocated to a noncorporate partner provided the partnership received the appropriate documentation. See Regulations section 1.1446-3(a)(2)(ii).

Installment payments. A partnership must make installment payments of withholding tax on its foreign partners' share of effectively connected taxable income whether or not distributions are made during the partnership's tax year. The amount of a partnership's installment payment is the sum of the installment payments for each of its foreign partners. The amount of each installment payment can be figured by using Form 8804-W.

Date payments are due. Payments of withholding tax must be made during the partnership's tax year in which the effectively connected taxable income is derived. A partnership must pay the IRS a part of the annual withholding tax for its foreign partners by the 15th day of the 4th, 6th, 9th, and 12th months of its tax year for U.S. income tax purposes. Any additional amounts due are to be paid with Form 8804, the annual partnership withholding tax return, discussed later.

A foreign partner's share of withholding tax paid by a partnership is treated as distributed to the partner on the earliest of:

- The day on which the tax was paid by the partnership,
- The last day of the partnership's tax year for which the tax was paid, or
- The last day on which the partner owned an interest in the partnership during that year.

The amount treated as distributed to the partner is generally treated as an advance or draw under Regulations section 1.731-1(a)(1)(ii) to the extent of the partner's share of income for the partnership year.

Notification to partners. In most cases, a partnership must notify each foreign partner of the tax withheld on its behalf within 10 days of the installment payment date. No particular form is required for this notification. For more information on the substance of the notification and exceptions, see Regulations section 1.1446-3(d)(1)(i).

Real property gains. If a domestic partnership disposes of a U.S. real property interest, the gain is treated as effectively connected income and the partnership or withholding agent must withhold following the rules discussed here. A domestic partnership's compliance with these rules satisfies the requirements for withholding on the disposition of U.S. real property interests (discussed later).

If a foreign partnership disposes of a U.S. property interest, the transferee must withhold under section 1445(a), although the gain also is treated as effectively connected income. The foreign partnership may credit the amount withheld under section 1445(a) that is allocable to foreign partners against its section 1446 tax liability.

Reporting and Paying the Tax

Three forms are required for reporting and paying over tax withheld on effectively connected income allocable to foreign partners. This does not apply to publicly traded partnerships, discussed later.

Form 8804, Annual Return for Partnership Withholding Tax (Section 1446). The withholding tax liability of the partnership for its tax year is reported on Form 8804. Form 8804 is also a transmittal form for Forms 8805.

Any additional withholding tax owed for the partnership's tax year is paid (in U.S. currency) with Form 8804. A Form 8805 for each foreign partner must be attached to Form 8804, whether or not any withholding tax was paid.

File Form 8804 by the 15th day of the 4th month after the close of the partnership's tax year. However, a partnership that keeps its books and records outside the United States and Puerto Rico has until the 15th day of the 6th month after the close of the partnership's tax year to file. If you need more time to file Form 8804, you may file Form 7004 to request an automatic 5-month extension of time to file. Form 7004 does not extend the time to pay the tax.

Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax. Form 8805 is used to show the amount of effectively connected taxable income and any withholding tax payments allocable to a foreign partner for the partnership's tax year. At the end of the partnership's tax year, Form 8805 must be sent to each foreign partner on whose behalf section 1446 tax was withheld or whose Form 8804-C the partnership considered, whether or not any withholding tax is paid. It must be delivered to the foreign partner by the due date of the partnership return (including extensions). A copy of Form 8805 for each foreign partner also must be attached to Form 8804 when it is filed. Also attach the most recent Form 8804-C, discussed earlier, to the Form 8805 filed for the partnership's tax year in which the Form 8804-C was considered.

A copy of Form 8805 must be attached to the foreign partner's U.S. income tax return to take a credit on its Form 1040NR or Form 1120-F.

Form 8813, Partnership Withholding Tax Payment Voucher (Section 1446). This form is used to make payments of withheld tax to the United States Treasury. Payments must be made in U.S. currency by the payment dates (see *Date payments are due*, earlier). See the Instructions for Form 8804-C for when you must attach a copy of that form to Form 8813.

Penalties. A penalty may be imposed for failure to file Form 8804 when due (including extensions). It is the same as the penalty for not filing Form 1042, discussed earlier under *Failure to file Form 1042*.

A penalty may be imposed for failure to file Form 8805 when due (including extensions) or for failure to provide complete and correct information. The amount of the penalty depends on when you file a correct Form 8805. The penalty for each Form 8805 is the same as the penalty for not filing Form 1042-S, discussed earlier under *Failure to file correct Form 1042-S*.

If you fail to provide a complete and correct Form 8805 to each partner when due (including extensions), a penalty may be imposed. The amount of the penalty depends on when you provide the correct Form 8805. The penalty for each Form 8805 is the same as the penalty for not providing a correct and complete Form 1042-S on time, discussed earlier under *Failure to furnish Form 1042-S to recipient*.

Exception. No penalty is imposed if you meet certain requirements. The rules are the same as for Form 1042-S. See *Exception* in *Failure to file correct Form 1042-S* and *Exception* in *Failure to furnish Form 1042-S to recipient*.

If you intentionally disregard the requirement to file Form 8805 when due, to provide Form 8805 to the recipient when due, or to report correct information, the penalty for each Form 8805 (or statement to recipient) is the greater of $250 or 10% of the total amount of the items that must be reported, with no maximum penalty.

Identification numbers. A partnership that has not been assigned a U.S. EIN must obtain one. If a number has not been assigned by the due date of the first withholding tax payment, the partnership should enter the date the number was applied for on Form 8813 when making its payment. As soon as the partnership receives

its EIN, it must immediately provide that number to the IRS.

To ensure proper crediting of the withholding tax when reporting to the IRS, the partnership must include each partner's U.S. TIN on Form 8805. If there are partners in the partnership without identification numbers, the partnership should inform them of the need to get a number. See *U.S. Taxpayer Identification Numbers*, earlier.

Publicly Traded Partnerships

A publicly traded partnership (PTP) that has effectively connected income, gain, or loss must pay withholding tax on any distributions of that income made to its foreign partners. A PTP must use Forms 1042 and 1042-S (Income Code 27) to report withholding from distributions. The rate of withholding is 35%.

A PTP is any partnership an interest in which is regularly traded on an established securities market or is readily tradable on a secondary market. These rules do not apply to a PTP treated as a corporation under section 7704 of the Code.

Foreign partner. The partnership determines whether a partner is a foreign partner using the rules discussed earlier under *Foreign Partner*.

Nominee. The withholding agent under this section can be the PTP or a nominee. For this purpose, a nominee is a domestic person that holds an interest in a PTP on behalf of a foreign person. The nominee is treated as the withholding agent only to the extent of the amount specified in the qualified notice given to the nominee by the PTP. If a nominee is designated as the withholding agent, the obligation to withhold is imposed solely on the nominee. The nominee must report the distributions and withheld amounts on Forms 1042 and 1042-S. For more information, see Regulations section 1.1446-4(b) and (d).

Distributions subject to withholding. The partnership or nominee must withhold tax on any actual distributions of money or property to foreign partners. The amount of the distribution includes the amount of any section 1446 tax required to be withheld. In the case of a partnership that receives a partnership distribution from another partnership (a tiered partnership), the distribution also includes the tax withheld from that distribution.

If the distribution is in property other than money, the partnership cannot release the property until it has enough funds to pay over the withholding tax.

A publicly traded partnership that complies with these withholding requirements satisfies the requirements discussed later under *U.S. Real Property Interest*. Distributions subject to withholding include:

- Amounts subject to withholding under section 1445(e)(1) of the Code on distributions pursuant to an election under Regulations section 1.1445-5(c)(3), and
- Amounts not subject to withholding under section 1445 of the Code because the distributee is a partnership or is a foreign corporation that has made an election to be treated as a domestic corporation.

Excluded amounts. Partnership distributions are considered to be paid out of the following types of income in the order listed.

1. Amounts of noneffectively connected income distributed by the partnership and subject to NRA withholding under section 1441 or 1442, as discussed earlier.
2. Amounts of effectively connected income not subject to withholding under section 1446 (for example, amounts exempt by treaty).
3. Amounts subject to withholding under these rules.
4. Amounts not listed in (1) through (3).

U.S. Real Property Interest

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to income tax withholding. If you are the transferee, you must find out if the transferor is a foreign person. If the transferor is a foreign person and you fail to withhold, you may be held liable for the tax.

Foreign person. A foreign person is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) of the Internal Revenue Code to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. It does not include a resident alien individual.

Transferor. A transferor is any foreign person that disposes of a U.S. real property interest by sale, exchange, gift, or any other transfer. A transfer includes distributions to shareholders of a corporation and beneficiaries of a trust or estate.

The owner of a disregarded entity, not the entity, is treated as the transferor of the property.

Transferee. A transferee is any person, foreign or domestic, that acquires a U.S. real property interest by purchase, exchange, gift, or any other transfer.

U.S. real property interest. A U.S. real property interest is an interest, other than as a creditor, in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the U.S. Virgin Islands, as well as certain personal property that is associated with the use of real property (such as farming machinery). It also means any interest, other than as a creditor, in any domestic corporation unless it is established that the corporation was at no time a U.S. real property holding corporation during the shorter of the period during which the interest was held, or the 5-year period ending on the date of disposition. If on the date of disposition, the corporation did not hold any U.S. real property interests, and all the interests held at any time during the shorter of the applicable periods were disposed of in transactions in which the full amount of any gain was recognized, then an interest in the corporation is not a U.S. real property interest.

Amount to withhold. The transferee must deduct and withhold a tax equal to 10% (or other amount) of the total amount realized by the foreign person on the disposition (for example, 10% of the purchase price).

The amount realized is the sum of:

- The cash paid, or to be paid (principal only);
- The fair market value of other property transferred, or to be transferred; and
- The amount of any liability assumed by the transferee or to which the property is subject immediately before and after the transfer.

If the property transferred was owned jointly by U.S. and foreign persons, the amount realized is allocated between the transferors based on the capital contribution of each transferor.

Foreign corporations. A foreign corporation that distributes a U.S. real property interest must withhold a tax equal to 35% of the gain it recognizes on the distribution to its shareholders.

Domestic corporations. A domestic corporation must withhold a tax equal to 10% of the fair market value of the property distributed to a foreign shareholder if:

- The shareholder's interest in the corporation is a U.S. real property interest, and
- The property distributed is either in redemption of stock or in liquidation of the corporation.

U.S. real property holding corporations. A distribution from a domestic corporation that is a U.S. real property holding corporation (USRPHC) is generally subject to NRA withholding and withholding under the U.S. real property interest provisions. This also applies to a corporation that was a USRPHC at any time during the shorter of the period during which the U.S. real property interest was held, or the 5-year period ending on the date of disposition. A USRPHC can satisfy both withholding provisions if it withholds under one of the following procedures.

- Apply NRA withholding on the full amount of the distribution, whether or not any part of the distribution represents a return of basis or capital gain. If a reduced tax rate applies under an income tax treaty, then the rate of withholding must not be less than 10%, unless the treaty specifies a lower rate for distributions from a USRPHC.
- Apply NRA withholding to the part of the distribution that the USRPHC estimates is a dividend. Then, withhold 10% on the remainder of the distribution (or on a smaller amount if a withholding certificate is obtained and the amount of the distribution that is a return of capital is established).

The same procedure must be used for all distributions made during the year. A different procedure may be used each year.

Partnerships. If a partnership disposes of a U.S. real property interest at a gain, the gain is treated as effectively connected income and is

subject to the rules explained earlier under *Partnership Withholding on Effectively Connected Income.*

Trusts and estates. You are a withholding agent if you are a trustee, fiduciary, or executor of a trust or estate having one or more foreign beneficiaries. You must establish a U.S. real property interest account. You enter in the account all gains and losses realized during the tax year of the trust or estate from dispositions of U.S. real property interests. You must withhold 35% on any distribution to a foreign beneficiary that is attributable to the balance in the real property interest account on the day of the distribution. A distribution from a trust or estate to a beneficiary (foreign or domestic) will be treated as attributable first to any balance in the U.S. real property interest account and then to other amounts.

A trust with more than 100 beneficiaries may elect to withhold from each distribution 35% of the amount attributable to the foreign beneficiary's proportionate share of the current balance of the trust's real property interest account. This election does not apply to publicly traded trusts or real estate investment trusts (REITs). For more information about this election, see Regulations section 1.1445-5(c).

Qualified investment entities. Special rules apply to qualified investment entities (QIEs). A QIE is:

1. Any real estate investment trust (REIT), or
2. Any regulated investment company (RIC) that is a U.S. real property holding corporation, but only for distributions by the RIC that are directly or indirectly attributable to distributions the RIC received from a REIT.

In determining if a RIC is a U.S. real property holding corporation, the RIC is required to include as U.S. real property interests its holdings of stock in a RIC or REIT that is a U.S. real property holding corporation, even if that stock is regularly traded and the RIC owns less than 5% of the stock.

In most cases, any distribution from a QIE attributable to gain from the sale or exchange of a U.S. real property interest is treated as such gain by the nonresident alien, foreign corporation, or other QIE receiving the distribution. A distribution by a QIE on 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 nonresident alien or foreign corporation did not own more than 5% of that stock at any time during the 1-year period ending on the date of the distribution. A distribution that is not treated as gain from the sale or exchange of a U.S. real property interest is included in the shareholder's gross income as a dividend.

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 35%.

Domestically controlled QIE. The sale of an interest in a domestically controlled QIE is not the sale of a U.S. real property interest. The entity is domestically controlled if at all times during the testing period less than 50% in value of its stock was held, directly or indirectly, by foreign persons. The testing period is the shorter of (a) the 5-year period ending on the date of disposition, or (b) the period during which the entity was in existence.

If a foreign shareholder in a domestically controlled QIE disposes of an interest in the QIE in an applicable wash sale transaction, special rules apply. In this transaction, the nonresident alien, foreign corporation, or other QIE:

1. Disposes of an interest in the domestically controlled QIE during the 30-day period before the ex-dividend date of a distribution that would have been treated by the shareholder as gain from the sale or exchange of a U.S. real property interest; and
2. Acquires, or enters into a contract or option to acquire, a substantially identical interest in that entity during the 61-day period that began on the first day of the 30-day period.

If this occurs, the shareholder is treated as having gain from the sale or exchange of a U.S. real property interest in an amount equal to the distribution that would have been treated as such gain. This also applies to any substitute dividend payment. No withholding is required on these transactions.

A transaction is not treated as an applicable wash sale transaction if:

- The shareholder actually receives the distribution from the domestically controlled QIE on either the interest disposed of, or acquired, in the transaction, or
- The shareholder disposes of any class of stock in a QIE that is regularly traded on an established securities market in the United States but only if the shareholder did not own more than 5% of that stock at any time during the 1-year period ending on the date of the distribution.

Additional information. For additional information on the withholding rules that apply to corporations, trusts, estates, and qualified investment entities, see section 1445 of the Internal Revenue Code and the related regulations. For additional information on the withholding rules that apply to partnerships, see the previous discussion.

You also may write to the:

Internal Revenue Service
Philadelphia, PA 19255-0725

Exceptions. You do not have to withhold if any of the following apply.

1. You (the transferee) acquire the property for use as a residence and the amount realized (sales price) is not more than $300,000. You or a member of your family must have definite plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. When counting the number of days the property is used, do not count the days the property will be vacant. For this exception, the transferee must be an individual.
2. The property disposed of is an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. However, this exception does not apply to certain dispositions of substantial amounts of non-publicly traded interests in publicly traded corporations.
3. The disposition is of an interest in a domestic corporation and that corporation furnishes you a certification stating, under penalties of perjury, that the interest is not a U.S. real property interest. In most cases, the corporation can make this certification only if either of the following is true.
   - During the previous 5 years (or, if shorter, the period the interest was held by its present owner), the corporation was not a USRPHC.
   - As of the date of disposition, the interest in the corporation is not a U.S. real property interest by reason of section 897(c)(1)(B) of the Code. The certification must be dated not more than 30 days before the date of transfer.
4. The transferor gives you a certification stating, under penalties of perjury, that the transferor is not a foreign person and containing the transferor's name, U.S. taxpayer identification number, and home address (or office address, in the case of an entity).

   The transferor can give the certification to a qualified substitute. The qualified substitute gives you a statement, under penalties of perjury, that the certification is in the possession of the qualified substitute. For this purpose, a qualified substitute is (a) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and (b) the transferee's agent.
5. You receive a withholding certificate from the Internal Revenue Service that excuses withholding. See *Withholding Certificates*, later.
6. The transferor gives you written notice that no recognition of any gain or loss on the transfer is required because of a nonrecognition provision in the Internal Revenue Code or a provision in a U.S. tax treaty. You must file a copy of the notice by the 20th day after the date of transfer with the Ogden Service Center, P.O. Box 409101, Ogden, UT 84409.
7. The amount the transferor realizes on the transfer of a U.S. real property interest is zero.
8. The property is acquired by the United States, a U.S. state or possession, a political subdivision, or the District of Columbia.
9. The grantor realizes an amount on the grant or lapse of an option to acquire a U.S. real property interest. However, you must withhold on the sale, exchange, or exercise of that option.
10. The disposition is of an interest in a publicly traded partnership or trust. However, this exception does not apply to certain dispositions of substantial amounts of

non-publicly traded interests in publicly traded partnerships or trusts.

Late filing of certifications or notices. If you become aware that you have failed to timely file certain certifications or notices, you still may be able to file them.

Complete the required certification or notice and file it with the appropriate person or the IRS. Also include the following.

- A statement at the top of the document(s) that it is "FILED PURSUANT TO REV. PROC. 2008-27".
- An explanation describing why the failure was due to reasonable cause. Within the explanation, provide that you filed with, or obtained from, an appropriate person the required certification or notice.

The completed certification or notice attached to the explanation must be sent to the Ogden Service Center, P.O. Box 409101, Ogden, UT 84409.

Certifications. The certifications in items (3) and (4) are not effective if you (or the qualified substitute) have actual knowledge, or receive a notice from an agent (or substitute), that they are false. This also applies to the qualified substitute's statement under item (4).

If you (or the substitute) are required by regulations to furnish a copy of the certification (or statement) to the IRS and you (or the substitute) fail to do so in the time and manner prescribed, the certification (or statement) is not effective.

Liability of agent or qualified substitute. If you (or the substitute) receive a certification discussed in item (3) or (4) or a statement in item (4), and the agent, or substitute, has actual knowledge that the certification (or statement) is false, or in the case of (3), that the corporation is a foreign corporation, the agent (or substitute) must notify you, or the agent (or substitute) will be held liable for the tax. The agent's (or substitute's) liability is limited to the compensation the agent (or substitute) gets from the transaction.

An agent is any person who represents the transferor or transferee in any negotiation with another person (or another person's agent) relating to the transaction, or in settling the transaction. A person is not treated as an agent if the person only performs one or more of the following acts related to the transaction:

- Receipt and disbursement of any part of the consideration;
- Recording of any document;
- Typing, copying, and other clerical tasks;
- Obtaining title insurance reports and reports concerning the condition of the property; or
- Transmitting documents between the parties.

Reporting and Paying the Tax

Transferees must use Forms 8288 and 8288-A to report and pay over any tax withheld on the acquisition of U.S. real property interests. These forms must also be used by corporations, estates, and QIEs that must withhold tax on distributions and other transactions involving U.S. real property interests. You must include the U.S. TIN of both the transferor and the transferee on the forms.

For partnerships disposing of U.S. real property interests, the manner of reporting and paying over the tax withheld is the same as discussed earlier under *Partnership Withholding on Effectively Connected Income*.

Publicly traded trusts must use Forms 1042 and 1042-S to report and pay over tax withheld on distributions from dispositions of U.S. real property interests.

QIEs must use Forms 1042 and 1042-S for a distribution to a nonresident alien or foreign corporation that is treated as a dividend, as discussed earlier under *Qualified investment entities*.

Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests. The tax withheld on the acquisition of a U.S. real property interest from a foreign person is reported and paid over using Form 8288. Form 8288 also serves as the transmittal form for copies A and B of Form 8288-A.

DUE

In most cases, you must file Form 8288 by the 20th day after the date of the transfer.

If an application for a withholding certificate (discussed later) is submitted to the IRS before or on the date of a transfer and the application is still pending with the IRS on the date of transfer, the correct withholding tax must be withheld, but does not have to be reported and paid over immediately. The amount withheld (or lesser amount as determined by the IRS) must be reported and paid over within 20 days following the day on which a copy of the withholding certificate or notice of denial is mailed by the IRS.

If the principal purpose of applying for a withholding certificate is to delay paying over the withheld tax, the transferee will be subject to interest and penalties. The interest and penalties will be assessed for the period beginning on the 21st day after the date of transfer and ending on the day the payment is made.

Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests. The withholding agent must prepare a Form 8288-A for each person from whom tax has been withheld. Attach copies A and B of Form 8288-A to Form 8288. Keep Copy C for your records.

IRS will stamp Copy B and send it to the person subject to withholding. That person must file a U.S. income tax return and attach the stamped Form 8288-A to receive credit for any tax withheld.

CAUTION

A stamped copy of Form 8288-A will not be provided to the transferor if the transferor's TIN is not included on that form. The IRS will send a letter to the transferor requesting the TIN and providing instructions for how to get a TIN. When the transferor provides the IRS with a TIN, the IRS will provide the transferor with a stamped Copy B of Form 8288-A.

Form 1099-S, Proceeds From Real Estate Transactions. In most cases, the real estate broker or other person responsible for closing the transaction must report the sale of the property to the IRS using Form 1099-S. For more information about Form 1099-S, see the Instructions for Form 1099-S and the General Instructions for Certain Information Returns.

Withholding Certificates

The amount that must be withheld from the disposition of a U.S. real property interest can be adjusted by a withholding certificate issued by the IRS. The transferee, the transferee's agent, or the transferor may request a withholding certificate. The IRS will generally act on these requests within 90 days after receipt of a complete application including the TINs of all the parties to the transaction. A transferor that applies for a withholding certificate must notify the transferee in writing that the certificate has been applied for on the day of or the day prior to the transfer.

A withholding certificate may be issued due to:

1. A determination by the IRS that reduced withholding is appropriate because either:
   a. The amount that must be withheld would be more than the transferor's maximum tax liability, or
   b. Withholding of the reduced amount would not jeopardize collection of the tax;
2. The exemption from U.S. tax of all gain realized by the transferor; or
3. An agreement for the payment of tax providing security for the tax liability, entered into by the transferee or transferor.

Applications for withholding certificates are divided into six basic categories. This categorizing provides for specific information that is needed to process the applications. The six categories are:

1. Applications based on a claim that the transferor is entitled to nonrecognition treatment or is exempt from tax,
2. Applications based solely on a calculation of the transferor's maximum tax liability,
3. Applications under special installment sales rules,
4. Applications based on an agreement for the payment of tax with conforming security,
5. Applications for blanket withholding certificates, and
6. Applications on any other basis.

RECORDS

The applicant must make available to the IRS, within the time prescribed, all information required to verify that representations relied upon in accepting the agreement are accurate, and that the obligations assumed by the applicant will be performed pursuant to the agreement. Failure to provide requested information promptly usually will result in rejection of the application, unless the IRS grants an extension of the target date.

Categories (1), (2), and (3). Use Form 8288-B, Application for Withholding Certificate

for Dispositions by Foreign Persons of U.S. Real Property Interests, to apply for a withholding certificate. Follow the instructions for the form.

Categories (4), (5), and (6). Do not use Form 8288-B for applications under categories (4), (5), and (6). For these categories follow the instructions given here and under the specific category.

All applications for withholding certificates must use the following format. The information must be provided in paragraphs labeled to correspond with the numbers and letters set forth below. If the information requested does not apply, place "N/A" in the relevant space.

1. Information on the application category:
   a. State which category (4, 5, or 6) describes the application,
   b. If a category (4) application:
      i. State whether the proposed agreement secures (A) the transferor's maximum tax liability or (B) the amount that would otherwise have to be withheld, and
      ii. State whether the proposed agreement and security instrument conform to the standard formats.
2. Information on the transferee or transferor:
   a. State the name, address, and TIN of the person applying for the withholding certificate (if this person does not have a TIN and is eligible for an ITIN, he or she can apply for the ITIN by attaching the application to a completed Form W-7 and forwarding the package to the address given in the Form W-7 instructions);
   b. State whether that person is the transferee or transferor; and
   c. State the name, address, and TIN of all other transferees and transferors of the U.S. real property interest for which the withholding certificate is sought.
3. Information on the U.S. real property interest for which the withholding certificate is sought. State the:
   a. Type of interest (such as interest in real property, in associated personal property, or in a domestic U.S. real property holding corporation);
   b. Contract price;
   c. Date of transfer;
   d. Location and general description (if an interest in real property);
   e. Class or type and amount of the interest in a U.S. real property holding corporation; and
   f. Whether in the 3 preceding tax years: (1) U.S. income tax returns were filed relating to the U.S. real property interest and, if so, when and where those returns were filed and, if not, why returns were not filed and (2) U.S. income taxes were paid relating to the U.S. real property interest and, if so, the amount of tax paid.
4. Provide full information concerning the basis for the issuance of the withholding certificate. Although the information to be included in this section of the application will vary from case to case, the rules shown under the specific category provide general guidelines for the inclusion of appropriate information for that category.

The application must be signed by the individual, a responsible officer in the case of a corporation, a general partner in the case of a partnership, or a trustee, executor, or equivalent fiduciary in the case of a trust or estate, or a duly authorized agent (with a copy of the power of attorney, such as Form 2848, attached). The person signing the application must verify under penalties of perjury that all representations are true, correct, and complete to that person's knowledge and belief. If the application is based in whole or in part on information provided by another party to the transaction, that information must be supported by a written verification signed under penalties of perjury by that party and attached to the application.

Send applications to the:

Ogden Service Center
P.O. Box 409101
Ogden, UT 84409

Category (4) applications. If the application is based on an agreement for the payment of tax, the application must include:

- Information establishing the transferor's maximum tax liability, or the amount that otherwise has to be withheld;
- A signed copy of the agreement proposed by the applicant; and
- A copy of the security instrument proposed by the applicant.

Either the transferee or the transferor may enter into an agreement for the payment of tax. The agreement is a contract between the IRS and any other person and consists of two necessary elements. Those elements are:

- A detailed description of the rights and obligations of each, and
- A security instrument or other form of security acceptable to the Commissioner or his delegate.

For more information on the agreement for the payment of tax, including a sample agreement, see section 5 of Revenue Procedure 2000-35. Revenue Procedure 2000-35 is in Cumulative Bulletin 2000-2, or it can be found on page 211 of Internal Revenue Bulletin 2000-35 at www.irs.gov/pub/irs-irbs/irb00-35.pdf.

There are four major types of security acceptable to the IRS. They are:

- Bond with surety or guarantor,
- Bond with collateral,
- Letter of credit, and
- Guarantee (corporate transferors).

The IRS may, in unusual circumstances and at its discretion, accept any additional form of security that it finds to be adequate.

For more information on acceptable security instruments, including sample forms of these instruments, see section 6 of Revenue Procedure 2000-35.

Category (5) applications. A blanket withholding certificate may be issued if the transferor holding the U.S. real property interests provides an irrevocable letter of credit or a guarantee and enters into a tax payment and security agreement with the IRS. A blanket withholding certificate excuses withholding concerning multiple dispositions of those property interests by the transferor or the transferor's legal representative during a period of no more than 12 months.

For more information, see section 9 of Revenue Procedure 2000-35.

Category (6) applications. These are nonstandard applications and may be of the following types.

Agreement for payment of tax with nonconforming security. An applicant seeking to enter into an agreement for the payment of tax but wanting to provide a nonconforming type of security must include the following in the application:

1. The information required for *Category (4) applications*, discussed earlier,
2. A description of the nonconforming security proposed by the applicant, and
3. A memorandum of law and facts establishing that the proposed security is valid and enforceable and that it adequately protects the government's interest.

Other nonstandard applications. An application for a withholding certificate not previously described must explain in detail the proposed basis for the issuance of the certificate and set forth the reasons justifying the issuance of a certificate on that basis.

Amendments to Applications

An applicant for a withholding certificate may amend an otherwise complete application by sending an amending statement to the address shown earlier. There is no particular form required, but the amending statement must provide the following information:

- The name, address, and TIN of the person providing the amending statement specifying whether that person is the transferee or transferor,
- The date of the original application for a withholding certificate that is being amended,
- A brief description of the real property interest for which the original application for a withholding certificate was provided, and
- The basis for the amendment including any change in the facts supporting the original application for a withholding certificate and any change in the terms of the withholding certificate.

The statement must be signed and accompanied by a penalties of perjury statement.

If an amending statement is provided, the time in which the IRS must act upon the application is extended by 30 days. If the amending statement substantially changes the original application, the time for acting upon the application is extended by 60 days. If an amending statement is received after the withholding certificate has been signed, but before it has been mailed to the applicant, the IRS will have a 90-day extension of time in which to act.

Tax Treaty Tables

The United States has income tax treaties (or conventions) with a number of foreign countries under which residents (sometimes limited to citizens) of those countries are taxed at a reduced rate or are exempt from U.S. income taxes on certain income received from within the United States.

Income that is exempt under a treaty is not subject to withholding at source under the statutory rules discussed in this publication.

Three tables follow:

Table 1 lists the withholding rates on income other than personal service income.

Table 2 lists the different types of personal service income that are entitled to an exemption from, or reduction in, withholding.

Table 3 shows where the full text of each treaty and protocol may be found in the Cumulative Bulletins if it has been published.

CAUTION *These tables are not meant to be a complete guide to all provisions of every income tax treaty. For detailed information, you must consult the provisions of the tax treaty that apply to the country of the nonresident alien to whom you are making payment.*

You can obtain the full text of these treaties at IRS.gov.

Table 1. **Withholding Tax Rates on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties—For Withholding in 2012**

▶Taxpayers must meet the limitation on benefits provisions in the treaty, if any, to qualify for reduced withholding rates.
▶In most cases, the Business Profits article, rather than a reduced withholding tax rate, applies if the income is attributable to a permanent establishment of the taxpayer in the United States.

Income Code Number		1	6	7	14
		Interest	Dividends		
Name	Code	Paid by U.S. Obligors— General	Paid by U.S. Corporations— General[a]	Qualifying for Direct Dividend Rate[a, b]	Pensions and Annuities [d]
Australia	AS	10 g,k,nn	15 mm	5 mm,oo	0
Austria	AU	0 g,jj	15 w	5 w	0
Bangladesh	BG	10 g,bb,jj	15 mm	10 mm	0 f,q
Barbados	BB	5	15 w	5 w	0 f
Belgium	BE	0 g,jj	15 dd,mm	5 dd,mm,oo	0 f
Bulgaria	BU	5 g,jj,nn,ss	10 dd,mm	5 dd,mm	0 f
Canada	CA	0 g,jj	15 mm	5 mm	15
China, People's Rep. of	CH	10	10	10	0 t
Comm. of Independent States*		0 n	30	30	30
Cyprus	CY	10 nn	15	5	0 f
Czech Republic	EZ	0 g	15 w	5 w	0 f
Denmark	DA	0 g,kk	15 dd,mm	5 dd,mm,oo	30 c,t
Egypt	EG	15	15	5	0 f
Estonia	EN	10 g,kk	15 w	5 w	0 f
Finland	FI	0 g,kk	15 dd,mm	5 dd,mm,oo	0 f
France	FR	0 g,k	15 mm	5 mm,oo	30 t
Germany	GM	0 g,jj	15 dd,mm	5 dd,mm,oo	0 f
Greece	GR	0 r	30	30	0
Hungary	HU	0	15	5	0 t
Iceland	IC	0 g,kk	15 dd,mm	5 dd,mm	0
India	IN	15 z	25 w	15 w	0 f
Indonesia	ID	10	15	10	15 q
Ireland	EI	0 g,k	15 mm	5 mm	0 f
Israel	IS	17½ z	25 w	12½ w	0 f
Italy	IT	10 g,h	15 mm	5 mm	0 f
Jamaica	JM	12½	15	10	0 f,p
Japan	JA	10 g,ee,rr,ss	10 dd,ee,mm	5 dd,ee,mm,oo	0
Kazakhstan	KZ	10 g	15 ff	5 ff	0 f
Korea, South	KS	12	15	10	0 f
Latvia	LG	10 g,kk	15 w	5 w	0 f

* Those countries to which the U.S.-U.S.S.R. income tax treaty still applies: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

Table 1.**Withholding Tax Rates on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties—For Withholding in 2012**

▶Taxpayers must meet the limitation on benefits provisions in the treaty, if any, to qualify for reduced withholding rates.
▶In most cases, the Business Profits article, rather than a reduced withholding tax rate, applies if the income is attributable to a permanent establishment of the taxpayer in the United States.

Income Code Number		10			11	12
		Royalties				
Name	Code	Industrial Equipment	Know-How/ Other Industrial Royalties	Patents	Film & TV	Copyrights
Australia	AS	30 u	5	5	5	5
Austria	AU	30 u	0	0	10	0
Bangladesh	BG	30 u	10	10	10	10
Barbados	BB	30 u	5	5	5	5
Belgium	BE	30 u	0	0	0	0
Bulgaria	BU	30 u	5	5	5	5
Canada	CA	30 u	0	0	10	0
China, People's Rep. of	CH	10 v	10	10	10	10
Comm. of Independent States		0	0	0	0	0
Cyprus	CY	30 u	0	0	0	0
Czech Republic	EZ	10	10	10	0	0
Denmark	DA	30 u	0	0	0	0
Egypt	EG	30 u	30 u	15	30 u	15
Estonia	EN	5	10	10	10	10
Finland	FI	30 u	0	0	0	0
France	FR	30 u	0	0	0	0
Germany	GM	30 u	0	0	30	0
Greece	GR	0	0	0	0	0
Hungary	HU	30 u	0	0	0	0
Iceland	IC	30 u	5	0	5	0
India	IN	10	15	15	15	15
Indonesia	ID	10	10	10	10	10
Ireland	EI	30 u	0	0	0	0
Israel	IS	30 u	15 u	15	10	10
Italy	IT	5	8	8	8	0
Jamaica	JM	30 u	10	10	10	10
Japan	JA	30 u	0 ee	0 ee	0 ee	0 ee
Kazakhstan	KZ	10	10	10	10	10
Korea, South	KS	30 u	15	15	10	10
Latvia	LG	5	10	10	10	10

Table 1.**Withholding Tax Rates on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties—For Withholding in 2012**

▶Taxpayers must meet the limitation on benefits provisions in the treaty, if any, to qualify for reduced withholding rates.
▶In most cases, the Business Profits article, rather than a reduced withholding tax rate, applies if the income is attributable to a permanent establishment of the taxpayer in the United States.

Income Code Number		1	6	7	14
		Interest	Dividends		
Name	Code	Paid by U.S. Obligors—General	Paid by U.S. Corporations—General[a]	Qualifying for Direct Dividend Rate[a,b]	Pensions and Annuities
Lithuania	LH	10 g,kk	15 w	5 w	0 f
Luxembourg	LU	0 g,k	15 w	5 w	0
Malta	MT	10 g,jj	15 dd,mm	5 dd,mm	0 f
Mexico	MX	15 g,dd,ee,hh,ss	10 dd,mm	5 dd,mm,oo	0
Morocco	MO	15	15	10	0 f
Netherlands	NL	0 g	15 xx	5 gg,oo,pp	0 f,pp
New Zealand	NZ	10 g,jj,nn	15 mm	5 mm,oo	0
Norway	NO	10 z	15	15	0 f
Pakistan	PK	30	30	15	0 j
Philippines	RP	15	25	20	30 q
Poland	PL	0	15	5	30
Portugal	PO	10 g,k	15 w	5 w	0 f
Romania	RO	10	10	10	0 f
Russia	RS	0 g	10 ff	5 ff	0 t
Slovak Republic	LO	0 g	15 w	5 w	0 f
Slovenia	SI	5 g	15 mm	5 mm	0 f
South Africa	SF	0 g,jj	15 w	5 w	15 l
Spain	SP	10	15 w	10 w	0 f
Sri Lanka	CE	10 g,jj	15 gg	15 gg	0 t
Sweden	SW	0 g	15 dd,mm	5 dd,mm,oo	0
Switzerland	SZ	0 g,jj	15 w	5 w	0
Thailand	TH	15 g,z	15 w	10 w	0 f
Trinidad & Tobago	TD	30	30	30	0 f
Tunisia	TS	15	20 w	14 w	0 f
Turkey	TU	15 g, m,z	20 w	15 w	0
Ukraine	UP	0 g	15 ff	5 ff	0
United Kingdom	UK	0 g,ee,kk	15 ee,mm	5 ee,mm,oo	0 f
Venezuela	VE	10 g,kk,ll	15 mm	5 mm	0 t
Other Countries		30	30	30	30

Table 1. **Withholding Tax Rates on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties—For Withholding in 2012**

▶Taxpayers must meet the limitation on benefits provisions in the treaty, if any, to qualify for reduced withholding rates.
▶In most cases, the Business Profits article, rather than a reduced withholding tax rate, applies if the income is attributable to a permanent establishment of the taxpayer in the United States.

Income Code Number		10			11	12
		Royalties				
Name	Code	Industrial Equipment	Know-how/ Other Industrial Royalties	Patents	Film & TV	Copyrights
Lithuania	LH	5	10	10	10	10
Luxembourg	LU	30 u	0	0	0	0
Malta	MT	30 u	10	10	10	10
Mexico	MX	10	10	10	10	10
Morocco	MO	30 u	10	10	10	10
Netherlands	NL	30 u	0	0	30	0
New Zealand	NZ	30 u	5	5	5	5
Norway	NO	30 u	0	0	30 u	0
Pakistan	PK	30 u	0	0	30 u	0
Philippines	RP	30 u	15	15	15	15
Poland	PL	30 u	10	10	10	10
Portugal	PO	10	10	10	10	10
Romania	RO	30 u	15	15	10	10
Russia	RS	30 u	0	0	0	0
Slovak Republic	LO	10	10	10	0	0
Slovenia	SI	30 u	5	5	5	5
South Africa	SF	30 u	0	0	0	0
Spain	SP	8	10	10	8	5 aa
Sri Lanka	CE	30 u,y	10	10	10	10
Sweden	SW	30 u	0	0	0	0
Switzerland	SZ	30 u	0	0	30	0
Thailand	TH	8	15	15	5	5
Trinidad & Tobago	TD	30 u	15	15	30 u	0 cc
Tunisia	TS	10	15	15	15	15
Turkey	TU	5	10	10	10	10
Ukraine	UP	30 u	10	10	10	10
United Kingdom	UK	30 u	0 ee	0 ee	0 ee	0 ee
Venezuela	VE	5	10	10	10	10
Other Countries		30	30	30	30	30

[a] No U.S. tax is imposed on a percentage of any dividend paid by a U.S. corporation in existence on January 1, 2011, that received at least 80% of its gross income from an active foreign business for the 3-year period before the dividend is declared. (See sections 871(i)(2)(B) and 881(d) of the Internal Revenue Code.)

[b] The reduced rate applies to dividends paid by a subsidiary to a foreign parent corporation that has the required percentage of stock ownership. In some cases, the income of the subsidiary must meet certain requirements (e.g., a certain percentage of its total income must consist of income other than dividends and interest).

[c] In most cases, if the person was receiving pension distributions before March 31, 2000, the distributions continue to be exempt from U.S. tax.

[d] In most cases, this rate applies only to pensions not paid by a government. See specific treaty rules for government pensions.

[e] Interest is exempt if (a) paid to certain financial institutions or (b) paid on indebtedness from the sale on credit of equipment or merchandise.

[f] Includes alimony.

[g] Exemption or reduced rate does not apply to an excess inclusion for a residual interest in a real estate mortgage investment conduit (REMIC).

[h] Interest paid or accrued on the sale of goods, merchandise, or services between enterprises is exempt. Interest paid or accrued on the sale on credit of industrial, commercial, or scientific property is exempt.

[i] The rate is 5% for trademarks and any information for rentals of industrial, commercial, or scientific equipment.

[j] Exemption is not available when paid from a fund under an employees' pension or annuity plan, if contributions to it are deductible under U.S. tax laws in determining taxable income of the employer.

[k] The rate is 15% for interest determined with reference to the profits of the issuer or one of its associated enterprises.

[l] Annuities purchased while the annuitant was not a resident of the United States are not taxable. The reduced rate applies if the distribution is not subject to a penalty for early withdrawal.

[m] Contingent interest that does not qualify as portfolio interest is treated as a dividend and is subject to the rate under column 6 or 7.

[n] The exemption applies only to interest on credits, loans, and other indebtedness connected with the financing of trade between the United States and the C.I.S. member. It does not include interest from the conduct of a general banking business.

[o] The exemption applies only to gains from the sale or other disposition of property acquired by gift or inheritance.

[p] The exemption does not apply if the applicable past employment was performed in the United states while such person was a resident of the United States, or if the annuity was purchased in the United States while such person was a resident of the United States.

[q] Annuities paid in return for other than the recipient's services are exempt. For Bangladesh, exemption does not apply to annuity received for services rendered.

[r] Exemption does not apply to such interest paid by a U.S. corporation to a Greek corporation controlling, directly or indirectly, more than 50 percent of the entire voting power in the paying corporation.

[s] The rate for royalties with respect to tangible personal property is 7%.

[t] Does not apply to annuities. For Denmark, annuities are exempt.

[u] Depending on the facts, the rate may be determined by either the Business Profits article or the Other Income article.

[v] Tax imposed on 70% of gross royalties for rentals of industrial, commercial, or scientific equipment.

[w] The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or a real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is an individual holding less than a 10% interest (25% in the case of Portugal, Spain, Thailand, and Tunisia) in the REIT.

[x] Royalties not taxed at the 5% or 8% rate are taxed at a 10% rate, unless the royalty is attributable to a permanent establishment of the taxpayer in the United States.

[y] The rate is 5% for the rental of tangible personal property.

[z] The rate is 10% if the interest is paid on a loan granted by a bank or similar financial institution. For Norway, the interest described in the preceding sentences is exempt. For Thailand, the 10% rate also applies to interest from an arm's length sale on credit of equipment, merchandise, or services.

[aa] The rate is 8% for copyrights of scientific work.

[bb] The rate is 5% for interest (a) beneficially owned by a bank or other financial institution (including an insurance company) or (b) paid due to a sale on credit of any industrial, commercial, or scientific equipment, or of any merchandise to an enterprise.

[cc] The rate is 15% for copyrights of scientific work.

[dd] Amounts paid to a pension fund that are not derived from the carrying on of a business, directly or indirectly, by the fund are exempt. This includes dividends paid by a REIT only if the conditions in footnote *mm* are met. For Sweden, to be entitled to the exemption, the pension fund must not sell or make a contract to sell the holding from which the dividend is derived within 2 months of the date the pension fund acquired the holding.

[ee] Exemption or reduced rate does not apply to amount paid under, or as part of, a conduit arrangement.

[ff] The rate in column 6 applies to dividends paid by a regulated investment company (RIC). Dividends paid by a real estate investment trust (REIT) are subject to a 30% rate.

[gg] The rate applies to dividends paid by a real estate investment trust (REIT) only if the beneficial owner of the dividends is (a) an individual holding less than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified.

[hh] The rate is 4.9% for interest derived from (1) loans granted by banks and insurance companies and (2) bonds or securities that are regularly and substantially traded on a recognized securities market. The rate is 10% for interest not described in the preceding sentence and paid (i) by banks or (ii) by the buyer of machinery and equipment to the seller due to a sale on credit.

[ii] The exemption does not apply if (1) the recipient was a U.S. resident during the 5-year period before the date of payment, (2) the amount was paid for employment performed in the United States, and (3) the amount is not a periodic payment, or is a lump-sum payment in lieu of a right to receive an annuity.

[jj] The rate is 15% (10% for Bulgaria; 30% for Austria, Germany and Switzerland) for contingent interest that does not qualify as portfolio interest. In most cases, this is interest based on receipts, sales, income, or changes in the value of property.

[kk] The rate is 15% for interest determined with reference to (a) receipts, sales, income, profits or other cash flow of the debtor or a related person, (b) any change in the value of any property of the debtor or a related person, or (c) any dividend, partnership distribution, or similar payment made by the debtor or related person.

[ll] The rate is 4.95% if the interest is beneficially owned by a financial institution (including an insurance company).

[mm] The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (a) an individual (or pension fund, in some cases) holding not more than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified.

[nn] Interest received by a financial institution is exempt. In some cases, the exemption does not apply if the interest is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.

[oo] Dividends received from an 80%-owned corporate subsidiary are exempt if certain conditions are met. For Japan, dividends received from a more than 50% owned corporate subsidiary are exempt if certain conditions are met.

[pp] The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (a) an individual holding not more than a 25% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified, or (d) a Dutch belegginginstelling.

Table 2. Compensation for Personal Services Performed in United States Exempt from U.S. Income Tax Under Income Tax Treaties

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Australia	16	Independent personal services[7]	183 days	Any contractor	No limit	14
	17	Dependent personal services[17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$10,000 p.a. [25]	17
	19	Studying and training:				
		Remittances or allowances[11]	No limit	Any foreign resident	No limit	20
Austria	16	Independent personal services[7]	No limit	Any contractor	No limit	14
	17	Dependent personal services[17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a.[25]	17
	19	Studying and training:				
		Remittances or allowances[11]	3 years[45]	Any foreign resident	No limit	20
Bangladesh	15	Scholarship or fellowship grant[4]	2 years[45]	Any U.S. or foreign resident[5]	No limit	21(2)
	16	Independent personal services[7]	183 days	Any contractor	No limit	15
	17	Dependent personal services[17]	183 days	Any foreign resident	No limit	16
	42	Public entertainment	No limit	Any contractor	$10,000 p.a. [30]	18
	18	Teaching or research[4]	2 years	Any U.S. or foreign resident	No limit	21(1)
	19	Studying and training:[4]				
		Remittances or allowances	2 years[45]	Any foreign resident	No limit	21(2)
		Compensation during study or training	2 years[45]	Any U.S. or foreign resident	$8,000 p.a.	21(2)
Barbados	16	Independent personal services[7, 8]	89 days	Any foreign contractor	No limit	14
			89 days	Any U.S. contractor	$5,000 p.a.	14
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	$5,000 p.a.	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$250 per day or $4,000 p.a.[6, 50]	17
	19	Studying and training:[23]				
		Remittances or allowances[11]	No limit	Any foreign resident	No limit	20
Belgium	16	Independent personal services[53]				7
	17	Dependent personal services[12, 17]	183 days	Any foreign resident	No limit	14
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a.[25]	16
	18	Teaching[4]	2 years	Any U.S. educational or research institution	No limit	19(2)
	19	Studying and training:[11]				
		Remittances or allowances	2 years[45]	Any foreign resident	No limit	19(1)(a)
		Compensation during study or training	2 years[45]	Any U.S. or foreign resident	$9,000 p.a.	19(1)(b)

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Bulgaria	16	Independent personal services[53]				7
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	14
	42	Public entertainment	No limit	Any U.S. or foreign resident	$15,000 p.a.[25]	16
	18	Teaching[4]	2 years	Any U.S. educational or research institution	No limit	19(2)
	19	Studying and training:[11]				
		Remittances or allowances	2 years[45]	Any foreign resident	No limit	19(1)(a)
		Compensation during study or training	2 years[45]	Any U.S. or foreign resident	$9,000 p.a.	19(1)(b)
Canada	16	Independent personal services[53]				VII
	17	Dependent personal services	No limit	Any U.S. or foreign resident	$10,000	XV
			183 days	Any foreign resident[17]	No limit[13]	XV
	42	Public entertainment[54]	No limit	Any U.S. or foreign resident	$15,000 p.a.[25]	XVI
	19	Studying and training:				
		Remittances or allowances[11]	No limit[52]	Any foreign resident	No limit	XX
China, People's Rep. of	15	Scholarship or fellowship grant[15]	No specific limit	Any U.S. or foreign resident[5]	No limit	20(b)
	16	Independent personal services[7]	183 days	Any contractor	No limit	13
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	14
	42	Public entertainment[29]				16
	18	Teaching[4]	3 years	U.S. educational or research institute	No limit	19
	19	Studying and training:				
		Remittances or allowances	No specific limit	Any foreign resident	No limit	20(a)
		Compensation during training or while gaining experience	No specific limit	Any U.S. or foreign resident	$5,000 p.a.	20(c)
Commonwealth of Independent States	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident	Limited[19]	VI(1)
	16	Independent personal services	183 days	Any U.S. or foreign contractor	No limit	VI(2)
	17	Dependent personal services	183 days	Any U.S. or foreign resident	No limit	VI(2)
	18	Teaching[4, 20]	2 years	Any U.S. educational or scientific institution	No limit	VI(1)
	19	Studying and training:				
		Remittances or allowances	5 years	Any U.S. or foreign resident	Limited	VI(1)
		Compensation while gaining experience	1 year	C.I.S. resident	No limit[21]	VI(1)
		Compensation under U.S. Government program	1 year	Any U.S. or foreign resident	No limit	VI(1)

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Cyprus	15	Scholarship or fellowship grant [15]	Generally, 5 years	Any U.S. or foreign resident[5]	No limit	21(1)
	16	Independent personal services[7]	182 days	Any contractor	No limit	17
	17	Dependent personal services[17]	182 days	Any foreign resident	No limit	18
	42	Public entertainment	No limit	Any U.S. or foreign resident	$500 per day or $5,000 p.a.[6]	19(1)
	19	Studying and training:				
		Remittances or allowances	Generally, 5 years	Any foreign resident	No limit	21(1)
		Compensation during training	Generally, 5 years	Any U.S. or foreign resident	$2,000 p.a.	21(1)
		Compensation while gaining experience[2]	1 year	Cyprus resident	$7,500	21(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	21(3)
Czech Republic	15	Scholarship or fellowship grant [4, 15]	5 years	Any U.S. or foreign resident[5]	No limit	21(1)
	16	Independent personal services[7]	183 days	Any contractor	No limit	14
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a.[30]	18
	18	Teaching[4, 35]	2 years	Any U.S. educational or research institution	No limit	21(5)
	19	Studying and training:[4]				
		Remittances and allowances	5 years	Any foreign resident	No limit	21(1)
		Compensation during training	5 years	Any U.S. or foreign resident	$5,000 p.a.	21(1)
		Compensation while gaining experience[2]	12 consec. mos.	Czech resident	$8,000	21(2)
		Compensation under U.S. Government program	1 year	U.S. Government	$10,000	21(3)
Denmark	16	Independent personal services[7]	No limit	Any contractor	No limit	14
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a.[25]	17
	19	Studying and training:[4]				
		Remittances or allowances[11]	3 years[45]	Any foreign resident	No limit	20

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Egypt	15	Scholarship or fellowship grant[15]	Generally, 5 years	Any U.S. or foreign resident[5]	No limit	23(1)
	16	Independent personal services	89 days	Any contractor	No limit	15
	17	Dependent personal services[16, 17]	89 days	Egyptian resident	No limit	16
	42	Public entertainment	No limit	Any U.S. or foreign resident	$400 per day[46]	17
	18	Teaching[4, 13]	2 years	U.S. educational institution	No limit	22
	19	Studying and training:				
		Remittances or allowances	Generally, 5 years	Any foreign resident	No limit	23(1)
		Compensation during training	Generally, 5 years	U.S. or any foreign resident	$3,000 p.a.	23(1)
		Compensation while gaining experience[2]	12 consec. mos.	Egyptian resident	$7,500	23(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	23(3)
Estonia	15	Scholarship or fellowship grants[4]	5 years	Any U.S. or foreign resident[5]	No limit	20(1)
	16	Independent personal services[7]	183 days	Any contractor	No limit	14
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a. [30]	17
	19	Studying and training:[4]				
		Remittances or allowances	5 years	Any foreign resident	No limit	20(1)
		Compensation during training	12 consec. mos.	Estonian resident	$8,000	20(2)
			5 years	Other foreign or U.S. resident	$5,000 p.a.	20(1)
		Compensation while gaining experience[2]	12 consec. mos.	Estonian resident	$8,000	20(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	20(3)
Finland	16	Independent personal services[7]	No limit	Any contractor	No limit	14
	17	Dependent personal services[17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a.[25]	17
	19	Studying and training:				
		Remittances or allowances[11]	No limit	Any foreign resident	No limit	20
France	15	Scholarship or fellowship grant[15]	5 years[43]	Any U.S. or foreign resident[5]	No limit	21(1)
	16	Independent personal services[7]	No limit	Any contractor	No limit	14
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$10,000 p.a. [30]	17
	18	Teaching[4, 44]	2 years[43]	U.S. educational or research institution	No limit	20
	19	Studying and training:[4]				
		Remittances or allowances	5 years[43]	Any foreign resident	No limit	21(1)
		Compensation during study or training	12 consec. mos.	French resident	$8,000	21(2)
			5 years[43]	Other foreign or U.S. resident	$5,000 p.a.	21(1)
		Compensation while gaining experience[2]	12 consec. mos.	French resident	$8,000	21(2)

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Germany	15	Scholarship or fellowship grant	No limit	Any U.S. or foreign resident[5]	No limit	20(3)
	16	Independent personal services[53]				7
	17	Dependent personal services[12,17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a.[30]	17
	18	Teaching[4, 55]	2 years	U.S. educational or research institution	No limit	20(1)
	19	Studying and training:[11]				
		Remittances or allowances	No limit	Any foreign resident	No limit	20(2)
		Compensation during study or training	4 years	Any U.S. or foreign resident	$9,000 p.a.	20(4)
		Compensation while gaining experience[2]	1 year	Any foreign resident	$10,000[28]	20(5)
Greece	16	Independent personal services	183 days	Greek resident contractor	No limit	X
			183 days	Other foreign or U.S. resident contractor	$10,000 p.a.	X
	17	Dependent personal services	183 days	Greek resident	No limit	X
			183 days	Other foreign or U.S resident	$10,000 p.a.	X
	18	Teaching	3 years	U.S. educational institution	No limit	XII
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XIII
Hungary	16	Independent personal services[7]	183 days	Any contractor	No limit	13
	17	Dependent personal services[17]	183 days	Any foreign resident	No limit	14
	18	Teaching[4]	2 years	U.S. educational institution	No limit	17
	19	Studying and training:[23]				
		Remittances or allowances[11]	No limit	Any foreign resident	No limit	18(1)
Iceland	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	19(1)
	16	Independent personal services[53]				7
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	14
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a.[25]	16
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	19(1)
		Compensation during study or training	5 years	Any U.S. or foreign resident	$9,000 p.a.	19(1)
		Compensation while gaining experience	12 consec. mo.	Any U.S. or foreign resident[2]	$9,000	19(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$9,000	19(3)

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
India	16	Independent personal services[7, 8]	89 days	Any contractor	No limit	15
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	16
	42	Public entertainment	No limit	Any U.S. or foreign resident	$1,500 p.a.[26, 50]	18
	18	Teaching[4]	2 years	U.S. educational institution	No limit	22
	19	Studying and training:				
		Remittances or allowances	Reasonable period	Any foreign resident[27]	No limit	21(1)
Indonesia	15	Scholarship and fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	19(1)
	16	Independent personal services[7]	119 days	Any contractor	No limit	15
	17	Dependent personal services[17]	119 days	Any foreign resident	No limit	16
	42	Public entertainment	No limit	Any U.S. or foreign resident	$2,000 p.a.[25, 50]	17
	18	Teaching[4, 44]	2 years	U.S. educational institution	No limit	20
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	19(1)
		Compensation during training	5 years	Any U.S. or foreign resident	$2,000 p.a.	19(1)
		Compensation while gaining experience	12 consec. mo.	Any U.S. or foreign resident	$7,500	19(2)
Ireland	16	Independent personal services[7]	No limit	Any contractor	No limit	14
	17	Dependent personal services[17, 47]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a.[25]	17
	19	Studying and training:				
		Remittances or allowances[11]	1 year[45]	Any foreign resident	No limit	20
Israel	15	Scholarship and fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	24(1)
	16	Independent personal services	182 days	Any contractor	No limit	16
	17	Dependent personal services[16, 17]	182 days	Israeli resident	No limit	17
	42	Public entertainment	No limit	Any U.S. or foreign resident	$400 per day[37]	18
	18	Teaching[4, 39]	2 years	U.S. educational institution	No limit	23
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	24(1)
		Compensation during study or training	5 years	Any U.S. or foreign resident	$3,000 p.a.	24(1)
		Compensation while gaining experience[2]	12 consec. mo.	Israeli resident	$7,500	24(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	24(3)
Italy	16	Independent personal services [7]	No limit	Any contractor	No limit	14(1)
	17	Dependent personal services [8, 17]	183 days	Any foreign resident	No limit	15(2)
	42	Public entertainment	90 days	Any U.S. or foreign resident	$20,000 p.a.[25]	17
	18	Teaching or research [4]	2 years	Any U.S. or foreign resident	No limit	20
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	21

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Jamaica	16	Independent personal services[7]	89 days	Any foreign contractor	No limit	14
			89 days	Any U.S. contractor	$5,000 p.a.	14
	17	Dependent personal services[17]	183 days	Any foreign resident	$5,000 p.a.	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$400 per day or $5,000 p.a.[6]	18
	18	Teaching[4, 44]	2 years	U.S. educational institution	No limit	22
	19	Studying and training:[23]				
		Remittances or allowances[11]	No limit	Any foreign resident	No limit	21(1)
		Compensation during study	12 consec. mo.	Jamaican resident	$7,500 p.a.	21(2)
		Compensation while gaining experience[2]	12 consec. mo.	Jamaican resident	$7,500 p.a.	21(2)
Japan	16	Independent personal services[8, 53]				7
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	14
	42	Public entertainment	No limit	Any U.S. or foreign resident	$10,000 p.a.[25]	16
	18	Teaching or research[4]	2 years	Any U.S. educational institution	No limit	20
	19	Studying and training:				
		Remittances or allowances	1 year[45]	Any foreign resident	No limit	19
Kazakhstan	15	Scholarship or fellowship grant[4, 15, 41]	5 years[31]	Any U.S. or foreign resident[5]	No limit	19
	16	Independent personal services[7]	183 days	Any contractor	No limit	14
	17	Dependent personal services[17, 47]	183 days	Any foreign resident	No limit	15
	19	Studying and training:[4]				
		Remittances or allowances	5 years[31]	Any foreign resident	No limit	19
Korea, South	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	21(1)
	16	Independent personal services[7]	182 days	Any contractor	$3,000 p.a.	18
	17	Dependent personal services[17]	182 days	Korean resident[18]	$3,000 p.a.	19
	18	Teaching[4]	2 years	U.S. educational institution	No limit	20
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	21(1)
		Compensation during training	5 years	Any foreign or U.S. resident	$2,000 p.a.	21(1)
		Compensation while gaining experience[2]	1 year	Korean resident	$5,000	21(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	21(3)

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Latvia	15	Scholarship or fellowship grants[4]	5 years	Any U.S. or foreign resident[5]	No limit	20(1)
	16	Independent personal services[7]	183 days	Any contractor	No limit	14
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a. [30]	17
	19	Studying and training:[4]				
		Remittances or allowances	5 years	Any foreign resident	No limit	20(1)
		Compensation during training	12 consec. mos.	Latvian resident	$8,000	20(2)
			5 years	Other foreign or U.S. resident	$5,000 p.a.	20(1)
		Compensation while gaining experience[2]	12 consec. mos.	Lativan resident	$8,000	20(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	20(3)
Lithuania	15	Scholarship or fellowship grants[4]	5 years	Any U.S. or foreign resident[5]	No limit	20(1)
	16	Independent personal services[7]	183 days	Any contractor	No limit	14
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a. [30]	17
	19	Studying and training:[4]				
		Remittances or allowances	5 years	Any foreign resident	No limit	20(1)
		Compensation during training	12 consec. mos.	Lithuanian resident	$8,000	20(2)
			5 years	Other foreign or U.S. resident	$5,000 p.a.	20(1)
		Compensation while gaining experience[2]	12 consec. mos.	Lithuanian resident	$8,000	20(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	20(3)
Luxembourg	16	Independent personal services[7]	No limit	Any contractor	No limit	15
	17	Dependent personal services[12, 17]	183 days	Any foreign resident	No limit	16
	42	Public entertainment	No limit	Any U.S. or foreign resident	$10,000 p.a.[25]	18
	18	Teaching or research[9]	2 years	Any U.S. or foreign resident	No limit	21(2)
	19	Studying and training:				
		Remittances or allowances[11]	2 years[45]	Any U.S. or foreign resident	No limit	21(1)
Malta	16	Independent personal services[53]				7
	17	Dependent personal services[12, 17]	183 days	Any foreign resident	No limit	14
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a.[25]	16
	19	Studying and training:				
		Remittances or allowances	1 year[45]	Any foreign resident	No limit	20(1)
		Compensation during study or training	No limit	Any U.S. or foreign resident	$9,000 p.a.	20(2)
		Compensation while gaining experience	No limit	Any U.S. or foreign resident	$9,000 p.a.	20
Mexico	16	Independent personal services[7]	182 days	Any contractor	No limit	14
	17	Dependent personal services[17, 47]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$3,000 p.a.[30]	18
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	21

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Morocco	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	18
	16	Independent personal services[7]	182 days	Any contractor[13]	$5,000	14
	17	Dependent personal services[17]	182 days	Moroccan resident[13, 18]	No limit	15
	19	Studying and training:[5]				
		Remittances or allowances	5 years	Any foreign resident	No limit	18
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	18
Netherlands	15	Scholarship or fellowship grant[15, 33]	3 years	Any U.S. or foreign resident[5]	No limit	22(2)
	16	Independent personal services[7]	No limit	Any contractor	No limit	15
	17	Dependent personal services[17, 47]	183 days	Any foreign resident	No limit	16
	42	Public entertainment	No limit	Any U.S. or foreign resident	$10,000 p.a.[25]	18
	18	Teaching[4, 34]	2 years	U.S. educational institution	No limit	21(1)
	19	Studying and training:[33]				
		Remittances or allowances	Reasonable period	Any foreign resident	No limit	22(1)
		Compensation while gaining experience	Reasonable period	Any U.S. or foreign resident	$2,000 p.a.	22(1)
		Compensation while recipient of scholarship or fellowship grant	Reasonable period	Any U.S. or foreign resident	$2,000 p.a.[36]	22(2)
New Zealand	16	Independent personal services[53]				7
	17	Dependent personal services[17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$10,000[25]	17
	19	Studying and training:				
		Remittances or allowances[11]	No limit	Any foreign resident	No limit	20
Norway	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	16(1)
	16	Independent personal services[7]	182 days	Any contractor	No limit	13
	42	Public entertainment	90 days	Any contractor	$10,000 p.a.[28]	13
	17	Dependent personal services[17, 56]	182 days	Norwegian resident[18]	No limit	14
	18	Teaching[4]	2 years	U.S. educational institution	No limit	15
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	16(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	16(1)
		Compensation while gaining experience[2]	12 consec. mo.	Norwegian resident	$5,000	16(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	16(3)

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Pakistan	15	Scholarship or fellowship grant[15]	No limit	Pakistani nonprofit organization	No limit	XIII(1)
	16	Independent personal services[16]	183 days	Pakistani resident contractor	No limit	XI
	17	Dependent personal services[16]	183 days	Pakistani resident	No limit	XI
	18	Teaching	2 years	U.S. educational institution	No limit	XII
	19	Studying and training:				
		Remittances or allowances	No limit	Any foreign resident	No limit	XIII(1)
		Compensation during training	No limit	U.S. or any foreign resident	$5,000 p.a.	XIII(1)
		Compensation while gaining experience[2]	1 year	Pakistani resident	$6,000	XIII(2)
		Compensation while under U.S. Government program	No limit	U.S. Government, its contractor, or any foreign resident employer	$10,000	XIII(3)
Philippines	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	22(1)
	16	Independent personal services[7]	89 days	Any foreign contractor	No limit	15
			89 days	Any U.S. resident	$10,000 p.a.	15
	17	Dependent personal services[17]	89 days	Any Philippines resident[18]	No limit	16
	42	Public entertainment	No limit	Any U.S. or foreign resident	$100 per day or $3,000 p.a.[28, 50]	17
	18	Teaching[4, 38]	2 years	U.S. educational institution	No limit	21
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	22(1)
		Compensation during study	5 years	Any U.S. or foreign resident	$3,000 p.a.	22(1)
		Compensation while gaining experience[2]	12 consec. mo.	Philippines resident	$7,500 p.a.	22(2)
		Compensation while under U.S. Government program	1 year	U.S. Government or its contractor	$10,000 p.a.	22(3)
Poland	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	18(1)
	16	Independent personal services	182 days	Any contractor	No limit	15
	17	Dependent personal services[17]	182 days	Any foreign resident	No limit	16
	18	Teaching[4, 41]	2 years	U.S. educational institution	No limit	17
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	18(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	18(1)
		Compensation while gaining experience[2]	1 year	Polish resident	$5,000	18(2)
		Compensation while under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	18(3)
Portugal	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	23(1)
	16	Independent personal services[7]	182 days	Any contractor	No limit	15
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	16
	42	Public entertainment	No limit	Any U.S. or foreign resident	$10,000 p.a.[30]	19
	18	Teaching[4, 42]	2 years	U.S. educational institution	No limit	22
	19	Studying and training:[4]				
		Remittances or allowances	5 years	Any foreign resident	No limit	23(1)
		Compensation during study or training	12 consec. mos.	Portuguese resident	$8,000	23(2)
			5 years	Other foreign or U.S. resident	$5,000 p.a.	23(1)
		Compensation while gaining experience[2]	12 consec. mos.	Portuguese resident	$8,000	23(2)

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Romania	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	20(1)
	16	Independent personal services	182 days	Any contractor	No limit	14
	42	Public entertainment	90 days	Any contractor	$3,000 p.a.[28]	14
	17	Dependent personal services[17]	182 days	Romanian resident[18]	No limit	15
	42	Public entertainment	89 days	Any U.S. or foreign resident	$2,999.99 p.a.[28]	15
	18	Teaching[4]	2 years	U.S. educational institution	No limit	19
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	20(1)
		Compensation during training	5 years	U.S. or any foreign resident	$2,000 p.a.	20(1)
		Compensation while gaining experience[2]	1 year	Romanian resident	$5,000	20(2)
		Compensation while under U.S. Government program	1 year	U.S. Government or its contractor	$10,000	20(3)
Russia	15	Scholarship or fellowship grant[4, 15, 41]	5 years[31]	Any U.S. or foreign resident[5]	No limit	18
	16	Independent personal services[7]	183 days	Any contractor	No limit	13
	17	Dependent personal services[8, 17, 32]	183 days	Any foreign resident	No limit	14
	19	Studying and training:[4]				
		Remittances or allowances	5 years[31]	Any foreign resident	No limit	18
Slovak Republic	15	Scholarship or fellowship grant[4, 15]	5 years	Any U.S. or foreign resident[5]	No limit	21(1)
	16	Independent personal services[7]	183 days	Any contractor	No limit	14
	17	Dependent personal services[12, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a.[30]	18
	18	Teaching[4, 35]	2 years	Any U.S. educational or research institution	No limit	21(5)
	19	Studying and training:[4]				
		Remittances or allowances	5 years	Any foreign resident	No limit	21(1)
		Compensation during training	5 years	Any U.S. or any foreign resident	$5,000 p.a.	21(1)
		Compensation while gaining experience[2]	12 consec. mos.	Slovak resident	$8,000	21(2)
		Compensation while under U.S. Government program	1 year	U.S. Government	$10,000	21(3)
Slovenia	15	Scholarship or fellowship grant[4]	5 years[10]	Any U.S. or foreign resident[5]	No limit	20(1)
	16	Independent personal services[7]	No limit	Any contractor	No limit	14
	17	Dependent personal services[12, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$15,000 p.a.[30]	17
	18	Teaching or research[4]	2 years[40]	Any U.S. or foreign resident	No limit	20(3)
	19	Studying and training:[4]				
		Remittances or allowances	5 years[10]	Any foreign resident	No limit	20(1)
		Compensation during training	12 mos.	Slovenian resident	$8,000	20(2)
			5 years[10]	Other foreign or U.S. resident	$5,000 p.a.	20(1)
		Compensation while gaining experience[2]	12 mos.	Slovenian resident	$8,000	20(2)

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
South Africa	16	Independent personal services[7]	183 days	Any contractor	No limit	14
	17	Dependent personal services[12, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$7,500 p.a.[30]	17
	19	Studying and training:				
		Remittances or allowances[11]	1 year[45]	Any foreign resident	No limit	20
Spain	15	Scholarship or fellowship grant[4, 15]	5 years	Any U.S. or foreign resident[5]	No limit	22(1)
	16	Independent personal services[7]	No limit	Any contractor	No limit	15
	17	Dependent personal services[17]	183 days	Any foreign resident	No limit	16
	42	Public entertainment	No limit	Any U.S. or foreign resident	$10,000 p.a.[30]	19
	19	Studying and training:[4]				
		Remittances or allowances	5 years	Any foreign resident	No limit	22(1)
		Compensation during training	5 years	Any U.S. or foreign resident	$5,000 p.a.	22(1)
		Compensation while gaining experience[2]	12 consec. mo.	Spanish resident	$8,000	22(2)
Sri Lanka	16	Independent personal services[7, 12]	183 days	Any contractor	No limit	15
	17	Dependent personal services[12, 17]	183 days	Any foreign resident	No limit	16
	42	Public entertainment	No limit	Any U.S. or foreign resident	$6,000 p.a.[30]	18
	19	Studying and training:				
		Remittances or allowances[11]	No limit	Any foreign resident	No limit	21(1)
		Compensation while gaining experience[2]	1 year	Sri Lankan resident[19]	$6,000	21(2)
Sweden	16	Independent personal services[7]	No limit	Any contractor	No limit	14
	17	Dependent personal services[12, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$6,000[25]	18
	19	Studying and training:				
		Remittances or allowances [11]	No limit	Any foreign resident	No limit	21
Switzerland	16	Independent personal services[7]	No limit	Any contractor	No limit	14
	17	Dependent personal services[8, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$10,000 p.a.[25]	17
	19	Studying and training:				
		Remittances or allowances [11]	No limit	Any foreign resident	No limit	20

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Thailand	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident[5]	No limit	22(1)
	16	Independent personal services[7]	89 days	Any U.S. resident or permanent establishment	$10,000 p.a.	15
			89 days	Any foreign contractor	No limit[49]	15
	17	Dependent personal services[17, 47]	183 days	Any foreign resident	No limit	16
	42	Public entertainment	No limit	Any U.S. or foreign resident	$100 per day or $3,000 p.a.[48]	19
	18	Teaching or research[4, 38]	2 years	Any U.S. or foreign resident	No limit	23
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	22(1)
		Compensation during training	5 years.	Any U.S. or foreign resident	$3,000 p.a.	22(1)
		Compensation while gaining experience	12 consec. mos.	Thai resident[2]	$7,500 p.a.	22(2)
		Compensation under U.S. Government program	1 year	U.S. Government	$10,000	22(3)
Trinidad and Tobago	15	Scholarship or fellowship grant[15]	5 years	Any U.S. or foreign resident[5]	No limit	19(1)
	16	Independent personal services[14]	183 days	Any foreign resident contractor	No limit	17
			183 days	Any U.S. contractor	$3,000[6]	17
	17	Dependent personal services[14]	183 days	Any foreign resident	No limit	17
			183 days	Any U.S. resident	$3,000[6]	17
	18	Teaching[4]	2 years	U.S. educational institution or U.S. Government	No limit	18
	19	Studying and training:				
		Remittances or allowances	5 years	Any foreign resident	No limit	19(1)
		Compensation during study or research	5 years.	U.S. or any foreign resident	$2,000 p.a.[6]	19(1)
		Compensation during professional training	5 years	U.S. or any foreign resident	$5,000 p.a.[6]	19(1)
		Compensation while gaining experience	1 year	Trinidad–Tobago resident[2]	$5,000[6]	19(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	$10,000[6]	19(3)
Tunisia	15	Scholarship and fellowship grant[11, 15]	5 years	Any U.S. or foreign resident[5]	No limit	20
	16	Independent personal services[7]	183 days	U.S. resident contractor	$7,500 p.a.	14
	17	Dependent personal services[17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$7,500 p.a.[25]	17
	19	Studying and training:[11]				
		Remittances or allowances	5 years	Any foreign resident	No limit	20
		Compensation during training	5 years	Any U.S. or foreign resident	$4,000 p.a.	20
Turkey	16	Independent personal services[7]	183 days	Any contractor	No limit	14
	17	Dependent personal services[12, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$3,000 p.a. [48]	17
	18	Teaching or research	2 years	Any foreign resident	No limit	20(2)
	19	Studying and training:				
		Remittances or allowances[11]	No limit	Any foreign resident	No limit	20(1)

Country (1)	Code[1] (2)	Category of Personal Services: Purpose [22] (3)	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
Ukraine	15	Scholarship or fellowship grant[41]	5 years[31]	Any U.S. or foreign resident[5]	No limit	20
	16	Independent personal services[3, 7]	No limit	Any contractor	No limit	14
	17	Dependent personal services[3, 17]	183 days	Any foreign resident	No limit	15
	19	Studying and training:				
		Remittances or allowances[4]	5 years[31]	Any foreign resident	No limit	20
United Kingdom	16	Independent personal services[53]				7
	17	Dependent personal services[12, 17]	183 days	Any foreign resident	No limit	14
	42	Public entertainment	No limit	Any U.S. or foreign resident	$20,000 p.a.[25]	16
	18	Teaching or research[4]	2 years	Any U.S. educational institution	No limit	20A
	19	Studying and training:				
		Remittances or allowances[11]	1 year[45]	Any foreign resident	No limit	20
Venezuela	15	Scholarship or fellowship grants[4]	5 years[10]	Any U.S. or foreign resident[5]	No limit	21(1)
	16	Independent personal services[7, 12]	No limit	Any contractor	No limit	14
	17	Dependent personal services[12, 17]	183 days	Any foreign resident	No limit	15
	42	Public entertainment	No limit	Any U.S. or foreign resident	$6,000 p.a. [30]	18
	18	Teaching[4]	2 years[40]	Any U.S. or foreign resident	No limit	21(3)
	19	Studying and training:[4]				
		Remittances or allowances	5 years[10]	Any foreign resident	No limit	21(1)
		Compensation during training	12 mos.	Venezuelan resident	$8,000	21(2)
			5 years[10]	Other foreign or U.S. resident	$5,000 p.a.	21(1)
		Compensation while gaining experience	12 mos.	Venezuelan resident[2]	$8,000	21(2)

[1] Refers to income code numbers under which the income is reported on Forms 1042-S. Personal services must be performed by a nonresident alien individual who is a resident of the specified treaty country.

[2] Applies only if training or experience is received from a person other than alien's employer.

[3] The exemption does not apply to income received for performing services in the United States as an entertainer or a sportsman. However, this income is exempt for U.S. income tax if the visit is (a) substantially supported by public funds of Ukraine, its political subdivisions, or local authorities, or (b) made under a specific arrangement agreed to by the governments of the treaty countries.

[4] Does not apply to compensation for research work primarily for private benefit.

[5] Grant must be from a nonprofit organization. In many cases, the exemption also applies to amounts from either the U.S. or foreign government. For Indonesia and the Netherlands, the exemption also applies if the amount is awarded under a technical assistance program entered into by the United States or the foreign government, or its political subdivisions or local authorities.

[6] Reimbursed expenses are not taken into account in figuring any maximum compensation to which the exemption applies. For Japan and Trinidad and Tobago, only reimbursed travel expenses are disregarded in figuring the maximum compensation.

[7] Exemption does not apply to the extent income is attributable to the recipient's fixed U.S. base. For residents of Korea and Norway, the fixed base must be maintained for more than 182 days (for Norway, 30 days in the case of the exploration or exploitation of the seabed and sub-soil and their natural resources); for residents of Morocco, the fixed base must be maintained for more than 89 days.

[8] Does not apply to fees paid to a director of a U.S. corporation.

[9] Does not apply to compensation for research work for other than the U.S. educational institution (or, for Italy, a medical facility that is primarily publicly funded) involved.

[10] Applies to any additional period that a full-time student needs to complete the educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution.

[11] Applies only to full-time student or trainee.

[12] Fees paid to a resident of the treaty country for services performed in the United States as a director of a U.S. corporation are subject to U.S. tax.

[13] Exemption does not apply if, during the immediately preceding period, such individual claimed the benefits of Article 23(1).

[14] Does not apply to compensation paid to public entertainers that is more than $100 a day.

[15] Does not apply to payments from the National Institutes of Health under its Visiting Associate Program and Visiting Scientist Program.

[16] Exemption applies only if the compensation is subject to tax in the country of residence.

[17] The exemption does not apply if the employee's compensation is borne by a permanent establishment (or in some cases a fixed base) that the employer has in the United States.

[18] The exemption also applies if the employer is a permanent establishment in the treaty country but is not a resident of the treaty country.

[19] Applies also to a participant in a program sponsored by the U.S. Government or an international organization.

[20] The exemption is also extended to journalists and correspondents who are temporarily in the U.S. for periods not longer than 2 years and who receive compensation from abroad.

[21] Also exempt are amounts of up to $10,000 received from U.S. sources to provide ordinary living expenses. For students, the amount will be less than $10,000, determined on a case by case basis.

[22] Withholding may be required if the factors on which the treaty exemption is based may not be determinable until after the close of the tax year. Athletes and entertainers may be able to enter into a central withholding agreement with the IRS for reduced withholding provided certain requirements are met.

[23] A student or trainee may choose to be treated as a U.S. resident for tax purposes. If the choice is made, it may not be changed without the consent of the U.S. competent authority.

[24] Does not apply to amounts received in excess of reasonable fees payable to all directors of the company for attending meetings in the United States.

[25] Exemption does not apply if gross receipts (including reimbursements) exceed this amount.

[26] Exemption does not apply if net income exceeds this amount.

[27] Exemption does not apply to payments borne by a permanent establishment in the United States or paid by a U.S. citizen or resident or the federal, state, or local government.

[28] Exemption does not apply if compensation (or gross income for the Phillippines and Romania) exceeds this amount.

[29] The exemption applies only to income from activities performed under special cultural exchange programs agreed to by the U.S. and Chinese governments.

[30] Exemption does not apply if gross receipts (or compensation for Portugal and Venezuela), including reimbursements, exceed this amount. Income is fully exempt if visit to the United States is substantially supported by public funds of the treaty country or its political subdivisions or local authorities.

[31] The 5-year limit pertains only to training or research.

[32] Compensation from employment directly connected with a place of business that is not a permanent establishment is exempt if the alien is present in the United States for a period not exceeding 12 consecutive months. Compensation for technical services directly connected with the application of a right or property giving rise to a royalty is exempt if the services are provided as part of a contract granting the use of the right or property.

[33] Exemption does not apply if, during the immediately preceding period, the individual claimed the benefits of Article 21.

[34] Exemption does not apply if, during the immediately preceding period, the individual claimed the benefits of Article 22.

[35] Exemption does not apply if the individual either (a) claimed the benefit of Article 21(5) during a previous visit, or (b) during the immediately preceding period, claimed the benefit of Article 21(1), (2), or (3).

[36] Exemption applies only to compensation for personal services performed in connection with, or incidental to, the individual's study, research, or training.

[37] If the compensation exceeds $400 per day, the entertainer may be taxed on the full amount. If the individual receives a fixed amount for more than one performance, the amount is prorated over the number of days the individual performs the services (including rehearsals).

[38] Exemption does not apply if, during the immediately preceding period, the individual claimed the benefits of Article 22(1).

[39] Exemption does not apply if, during the immediately preceding period, the individual claimed the benefits of Article 24(1).

[40] The combined benefit for teaching cannot exceed 5 years.

[41] Exemption does not apply if, during the immediately preceding period, the individual claimed the benefits of Article 18(1).

[42] Exemption does not apply if the individual either (a) previously claimed the benefit of this Article, or (b) during the immediately preceding period, claimed the benefit of Article 23. The benefits under Articles 22 and 23 cannot be claimed at the same time.

[43] The combined period of benefits under Articles 20 and 21(1) cannot exceed 5 years.

[44] Exemption does not apply if the individual previously claimed the benefit of this Article.

[45] The time limit pertains only to an apprentice or business trainee.

[46] Exemption does not apply if gross receipts exceed this amount.

[47] Fees paid to a resident of the treaty country for services as a director of a U.S. corporation are subject to U.S. tax, unless the services are performed in the country of residence.

[48] Exemption does not apply if gross receipts exceed this amount. Income is fully exempt if visit to the United States is substantially supported by public funds of the treaty country or its political subdivisions or local authorities.

[49] A $10,000 limit applies if the expense is borne by a permanent establishment or a fixed base in the United States. Exemption does not apply if the recipient maintains a permanent establishment in the U.S. with which the income is effectively connected.

[50] This provision does not apply if these activities are substantially supported by a nonprofit organization or by public funds of the treaty country or its political subdivisions or local authorities. For Indonesia and the Phillipines, the competent authority of the sending state must certify that the visit qualifies.

[51] Exemption does not apply if gross receipts, including reimbursements, exceed this amount during the year. Income is fully exempt if visit is wholly or mainly supported by public funds of one or both of the treaty countries or their political subdivisions or local authorities.

[52] Exemption applies to a business apprentice (trainee) only for a period not exceeding 1 year (2 years for Belgium and Bulgaria) from the date of arrival in the United States.

[53] Treated as business profits under Article 7 (VII) of the treaty.

[54] Employment with a team which participates in a league with regularly scheduled games in both countries is covered under the provisions for dependent personal services.

[55] Exemption does not apply if during the immediately preceding period, the individual claimed the benefit of Article 20(2), (3), or (4).

[56] Labor or personal services performed in connection with the exploration or exploitation of the seabed and sub-soil and their natural resources is fully exempt for a period of 60 days in the tax year.

Table 3. **List of Tax Treaties** (Updated through December 31, 2011)

Country	Official Text Symbol[1]	General Effective Date[4]	Citation	Applicable Treasury Explanations or Treasury Decision (T.D.)
Australia	TIAS 10773	Dec. 1, 1983	1986-2 C.B. 220	1986-2 C.B. 246
Protocol	TIAS	Jan. 1, 2004		
Austria	TIAS	Jan. 1, 1999		
Bangladesh	TIAS	Jan. 1, 2007		
Barbados	TIAS 11090	Jan. 1, 1984	1991-2 C.B. 436	1991-2 C.B. 466
Protocol	TIAS	Jan. 1, 1994		
Protocol	TIAS	Jan. 1, 2005		
Belgium	TIAS	Jan. 1, 2008		
Bulgaria	TIAS	Jan. 1, 2009		
Canada[2]	TIAS 11087	Jan. 1, 1985	1986-2 C.B. 258	1987-2 C.B. 298
Protocol	TIAS	Jan. 1, 1996		
Protocol	TIAS	Dec. 16, 1997		
Protocol	TIAS	Jan. 1, 2009		
China, People's Republic of	TIAS 12065	Jan. 1, 1987	1988-1 C.B. 414	1988-1 C.B. 447
Commonwealth of Independent States[3]	TIAS 8225	Jan. 1, 1976	1976-2 C.B. 463	1976-2 C.B. 475
Cyprus	TIAS 10965	Jan. 1, 1986	1989-2 C.B. 280	1989-2 C.B. 314
Czech Republic	TIAS	Jan. 1, 1993		
Denmark	TIAS	Jan. 1, 2001		
Protocol	TIAS	Jan. 1, 2008		
Egypt	TIAS 10149	Jan. 1, 1982	1982-1 C.B. 219	1982-1 C.B. 243
Estonia	TIAS	Jan. 1, 2000		
Finland	TIAS 12101	Jan. 1, 1991		
Protocol	TIAS	Jan. 1, 2008		
France	TIAS	Jan. 1, 1996		
Protocol	TIAS	Jan. 1, 2007		
Protocol	TIAS	Jan. 1, 2009		
Germany	TIAS	Jan. 1, 1990		
Protocol	TIAS	Jan. 1, 2008		
Greece	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1054	T.D. 6109, 1954-2 C.B. 638
Hungary	TIAS 9560	Jan. 1, 1980	1980-1 C.B. 333	1980-1 C.B. 354
Iceland	TIAS	Jan. 1, 2009		
India	TIAS	Jan. 1, 1991		
Indonesia	TIAS 11593	Jan. 1, 1990		
Ireland	TIAS	Jan. 1, 1998		
Israel	TIAS	Jan. 1, 1995		
Italy	TIAS	Jan. 1, 2010		
Jamaica	TIAS 10207	Jan. 1, 1982	1982-1 C.B. 257	1982-1 C.B. 291
Japan	TIAS	Jan. 1, 2005		
Kazakhstan	TIAS	Jan. 1, 1996		
Korea, Republic of	TIAS 9506	Jan. 1, 1980	1979-2 C.B. 435	1979-2 C.B. 458
Latvia	TIAS	Jan. 1, 2000		
Lithuania	TIAS	Jan. 1, 2000		
Luxembourg	TIAS	Jan. 1, 2001		
Malta	TIAS	Jan. 1, 2011		
Mexico	TIAS	Jan. 1,1994		
Protocol	TIAS	Oct. 26, 1995		
Protocol	TIAS	Jan. 1, 2004		
Morocco	TIAS 10195	Jan. 1, 1981	1982-2 C.B. 405	1982-2 C.B. 427
Netherlands	TIAS	Jan. 1, 1994		
Protocol	TIAS	Jan. 1, 2005		
New Zealand	TIAS 10772	Nov. 2, 1983	1990-2 C.B. 274	1990-2 C.B. 303
Protocol	TIAS	Jan. 1, 2011		
Norway	TIAS 7474	Jan. 1, 1971	1973-1 C.B. 669	1973-1 C.B. 693
Protocol	TIAS 10205	Jan. 1, 1982	1982-2 C.B. 440	1982-2 C.B. 454

Table 3. (continued)

Country	Official Text Symbol[1]	General Effective Date[4]	Citation	Applicable Treasury Explanations or Treasury Decision (T.D.)
Pakistan	TIAS 4232	Jan. 1, 1959	1960-2 C.B. 646	T.D. 6431, 1960-1 C.B. 755
Philippines	TIAS 10417	Jan. 1, 1983	1984-2 C.B. 384	1984-2 C.B. 412
Poland	TIAS 8486	Jan. 1, 1974	1977-1 C.B. 416	1977-1 C.B. 427
Portugal	TIAS	Jan. 1, 1996		
Romania	TIAS 8228	Jan. 1, 1974	1976-2 C.B. 492	1976-2 C.B. 504
Russia	TIAS	Jan. 1, 1994		
Slovak Republic	TIAS	Jan. 1, 1993		
Slovenia	TIAS	Jan. 1, 2002		
South Africa	TIAS	Jan. 1, 1998		
Spain	TIAS	Jan. 1, 1991		
Sri Lanka	TIAS	Jan. 1, 2004		
Sweden	TIAS	Jan. 1, 1996		
Protocol	TIAS	Jan. 1, 2007		
Switzerland	TIAS	Jan. 1, 1998		
Thailand	TIAS	Jan. 1, 1998		
Trinidad and Tobago	TIAS 7047	Jan. 1, 1970	1971-2 C.B. 479	
Tunisia	TIAS	Jan. 1, 1990		
Turkey	TIAS	Jan. 1, 1998		
Ukraine	TIAS	Jan. 1, 2001		
United Kingdom	TIAS	Jan. 1, 2004		
Venezuela	TIAS	Jan. 1, 2000		

[1] (TIAS) — Treaties and Other International Act Series.
[2] Information on the treaty can be found in Publication 597, *Information on the United States-Canada Income Tax Treaty*.
[3] The U.S.-U.S.S.R. income tax treaty applies to the countries of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.
[4] Date listed is the effective date for most income taxes. Check the treaty and/or protocol for other effective dates, including, for example, taxes withheld at source.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Free help with your return. Free help in preparing your return is available nationwide from IRS-certified volunteers. The Volunteer Income Tax Assistance (VITA) program is designed to help low-moderate income taxpayers and the Tax Counseling for the Elderly (TCE) program is designed to assist taxpayers age 60 and older with their tax returns. Most VITA and TCE sites offer free electronic filing and all volunteers will let you know about credits and deductions you may be entitled to claim. To find the nearest VITA or TCE site, visit IRS.gov or call 1-800-906-9887 or 1-800-829-1040.

As part of the TCE program, AARP offers the Tax-Aide counseling program. To find the nearest AARP Tax-Aide site, call 1-888-227-7669 or visit AARP's website at www.aarp.org/money/taxaide.

For more information on these programs, go to IRS.gov and enter keyword "VITA" in the upper right-hand corner.

Internet. You can access the IRS website at IRS.gov 24 hours a day, 7 days a week to:

- Check the status of your 2011 refund. Go to IRS.gov and click on *Where's My Refund*. Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2011 tax return available so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund.
- *E-file* your return. Find out about commercial tax preparation and *e-file* services available free to eligible taxpayers.
- Download forms, including talking tax forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- Use the online Internal Revenue Code, regulations, or other official guidance.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Figure your withholding allowances using the withholding calculator online at www.irs.gov/individuals.
- Determine if Form 6251 must be filed by using our Alternative Minimum Tax (AMT) Assistant available online at www.irs.gov/individuals.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.

Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call 1-800-TAX-FORM (1-800-829-3676) to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 days.
- *Asking tax questions.* Call the IRS with your tax questions at 1-800-829-1040.
- *Solving problems.* You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.
- *TeleTax topics.* Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.
- *Refund information.* You can check the status of your refund on the new IRS phone app. Download the free IRS2Go app by visiting the iTunes app store or the Android Marketplace. IRS2Go is a new way to provide you with information and tools. To check the status of your refund by phone, call 1-800-829-4477 (automated refund information 24 hours a day, 7 days a week). Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2011 tax return available so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund. If you check the status of your refund and are not given the date it will be issued, please wait until the next week before checking back.
- *Other refund information.* To check the status of a prior-year refund or amended return refund, call 1-800-829-1040.

Evaluating the quality of our telephone services. To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.

Walk-in. Many products and services are available on a walk-in basis.

- *Products.* You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have a collection of products available to print from a CD or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- *Services.* You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you are more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary—just walk in. If you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. If you have an ongoing, complex tax account problem or a special need, such as a disability, an appointment can be requested. All other issues will be handled without an appointment. To find the number of your local office, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.

Mail. You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

Taxpayer Advocate Service. The Taxpayer Advocate Service (TAS) is your voice at the IRS. Our job is to ensure that every taxpayer is treated fairly, and that you know and understand your rights. We offer free help to guide you through the often-confusing process of resolving tax problems that you haven't been able to solve on your

own. Remember, the worst thing you can do is nothing at all.

TAS can help if you can't resolve your problem with the IRS and:

- Your problem is causing financial difficulties for you, your family, or your business.
- You face (or your business is facing) an immediate threat of adverse action.
- You have tried repeatedly to contact the IRS but no one has responded, or the IRS has not responded to you by the date promised.

If you qualify for our help, we'll do everything we can to get your problem resolved. You will be assigned to one advocate who will be with you at every turn. We have offices in every state, the District of Columbia, and Puerto Rico. Although TAS is independent within the IRS, our advocates know how to work with the IRS to get your problems resolved. And our services are always free.

As a taxpayer, you have rights that the IRS must abide by in its dealings with you. Our tax toolkit at www.TaxpayerAdvocate.irs.gov can help you understand these rights.

If you think TAS might be able to help you, call your local advocate, whose number is in your phone book and on our website at www.irs.gov/advocate. You can also call our toll-free number at 1-877-777-4778.

TAS also handles large-scale or systemic problems that affect many taxpayers. If you know of one of these broad issues, please report it to us through our Systemic Advocacy Management System at www.irs.gov/advocate.

Low Income Taxpayer Clinics (LITCs). Low Income Taxpayer Clinics (LITCs) are independent from the IRS. Some clinics serve individuals whose income is below a certain level and who need to resolve a tax problem. These clinics provide professional representation before the IRS or in court on audits, appeals, tax collection disputes, and other issues for free or for a small fee. Some clinics can provide information about taxpayer rights and responsibilities in many different languages for individuals who speak English as a second language. For more information and to find a clinic near you, see the LITC page on www.irs.gov/advocate or IRS Publication 4134, *Low Income Taxpayer Clinic List*. This publication is also available by calling 1-800-829-3676 or at your local IRS office.

Free tax services. Publication 910, IRS Guide to Free Tax Services, is your guide to IRS services and resources. Learn about free tax information from the IRS, including publications, services, and education and assistance programs. The publication also has an index of over 100 TeleTax topics (recorded tax information) you can listen to on the telephone. The majority of the information and services listed in this publication are available to you free of charge. If there is a fee associated with a resource or service, it is listed in the publication.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.

DVD for tax products. You can order Publication 1796, IRS Tax Products DVD, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions.
- Tax Topics from the IRS telephone response system.
- Internal Revenue Code—Title 26 of the U.S. Code.
- Links to other Internet based Tax Research Materials.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.
- Two releases during the year.
  - The first release will ship the beginning of January 2012.
  - The final release will ship the beginning of March 2012.

Purchase the DVD from National Technical Information Service (NTIS) at www.irs.gov/cdorders for $30 (no handling fee) or call 1-877-233-6767 toll free to buy the DVD for $30 (plus a $6 handling fee).

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To help us develop a more useful index, please let us know if you have ideas for index entries. See "Comments and Suggestions" in the "Introduction" for the ways you can reach us.

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