

# Publication 519

## U.S. Tax Guide for Aliens

For use in preparing  
**2023** Returns

Volume 5 of 7



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## **Independent Contractors**

If there is no employee-employer relationship between you and the person for whom you perform services, your compensation is subject to the 30% (or lower treaty) rate of withholding. However, if you are engaged in a trade or business in the United States during the tax year, your compensation for personal services as an independent contractor (independent personal services) may be entirely or partly exempt from withholding if you reach an agreement with the IRS on the amount of withholding required. An agreement that you reach with the IRS regarding withholding from your compensation for independent personal services is effective for payments covered by the agreement after it is agreed to by all parties. You must agree to timely file an income tax return for the current tax year.

## **Central withholding agreements (CWA).**

If you are a nonresident alien entertainer or athlete performing or participating in athletic events in the United States, you may be able to enter into a CWA with the IRS for reduced withholding, provided certain requirements are met. Under no circumstances will such a withholding agreement reduce taxes withheld to less than the anticipated amount of income tax liability.

Use Form 13930 to apply for a CWA, for a nonresident alien entertainer or athlete that has calendar year-to-date U.S. gross income of at least \$10,000. Form 13930 must be mailed to the address listed below.

Central Withholding Agreement Program

Internal Revenue Service  
24000 Avila Road, MS 6040  
Laguna Niguel, CA 92677



*We have temporarily waived the income requirement for which form to use when applying for a CWA. Form 13930-A is currently unavailable. While the waiver is in effect, individuals with income below \$10,000 can apply for a CWA using Form 13930, Instructions on how to apply for a Central Withholding Agreement. For more information on how to apply for a CWA, see Form 13930. For more information, go to [IRS.gov/ Individuals/International-Taxpayers/Central-WithholdingAgreements](https://www.irs.gov/Individuals/International-Taxpayers/Central-WithholdingAgreements).*

A request for a CWA must be received by the IRS at least 45 days before the agreement is to take effect to ensure it is in place before the tour begins or the first event occurs, and it must contain all supporting documentation specified in the instructions, or no consideration will be given to entering into a CWA. Exceptions will be considered on a case-by-case basis.

**Final payment exemption.** Your final payment of compensation during the tax year for independent personal services may be entirely or partly exempt from withholding. This exemption (does not apply to wages) is available only once during your tax year and applies to a maximum of \$5,000 of compensation. To obtain this exemption, you or your agent must give the following statements and information to the Commissioner or Commissioner's delegate.

- A statement by each withholding agent from whom you have received gross income effectively connected with a trade or business in the United States during the tax year, showing the amount of income paid and the tax withheld. Each statement must be signed by the withholding agent and verified by a declaration that it is made under penalties of perjury.

- A statement by the withholding agent from whom you expect to receive the final payment of compensation, showing the amount of the payment and the amount of tax that would be withheld if a final payment exemption were not granted. This statement must also be signed by the withholding agent and verified by a declaration that it is made under penalties of perjury.
- A statement by you that you do not intend to receive any other income effectively connected with a trade or business in the United States during the current tax year.
- The amount of tax that has been withheld or paid under any other provision of the Internal Revenue Code or regulations for any income effectively connected with your trade or business in the United States during the current tax year.
- The amount of your outstanding tax liabilities, if any, including interest and

penalties, from the current tax year or prior tax periods.

- Any provision of an income tax treaty under which a partial or complete exemption from withholding may be claimed, the country of your residence, and a statement of sufficient facts to justify an exemption under the treaty.
- A statement signed by you, and verified by a declaration that it is made under penalties of perjury, that all the information given is true and that to your knowledge no relevant information has been omitted.

If satisfied with the information, the IRS will determine the amount of your tentative income tax for the tax year on gross income effectively connected with your trade or business in the United States. Ordinary and necessary business expenses can be taken into account if proven to the satisfaction of



the Commissioner or Commissioner's delegate.

The Commissioner or Commissioner's delegate will send you a letter, directed to the withholding agent, showing the amount of the final payment of compensation that is exempt from withholding and the amount that can be paid to you because of the exemption. You must give two copies of the letter to the withholding agent and must also attach a copy of the letter to your income tax return for the tax year for which the exemption is effective. For more information, see [Pub. 515](#).

## **Refund of Taxes Withheld in Error**

**Multilevel marketing.** If you are a distributor for a multilevel marketing company who had taxes withheld in error, file a U.S. income tax return (Form 1040-NR or Form 1120-F) or, if a tax return has already been filed, a claim for refund (Form 1040-X or amended Form 1120-F) to recover the amount withheld in error. You must also

attach to the U.S. income tax return or claim for refund supporting information that includes, but is not limited to, the following items.

- A copy of your Form W-2, Form 1042-S, or Form 1099 to prove the amount of taxes withheld.
- A statement explaining why income reported on your Form W-2, Form 1042-S, or Form 1099 is not subject to U.S. taxation.
- A statement listing all the dates you entered and left the United States during the tax year. If the compensation is multiyear compensation, the statement must list all the dates you entered and left the United States during each of the tax years to which the compensation is attributable.
- A copy of any documents or records that show the number of days you actually

were present in the United States during the years listed.

- A statement providing (a) the number of days (or unit of time less than a day, if appropriate) that personal services were performed in the United States in connection with recruiting, training, and supporting your lower-tier distributors; and (b) the total number of days (or unit of time less than a day, if appropriate) that personal services were performed globally in connection with recruiting, training, and supporting your lower-tier distributors.
- Any further relevant document or record supporting your claim that the taxes were withheld in error.

**Refund of taxes withheld in error on social security benefits paid to resident aliens.** Social security benefits paid to a lawful permanent resident (green card holder) are not subject to 30% withholding. For U.S.

income tax purposes, green card holders continue to be resident aliens until their lawful permanent resident status under immigration laws is either taken away or is administratively or judicially determined to have been abandoned. See *Green Card Test* in chapter 1. If you are a green card holder and tax was withheld in error on your social security benefits because you have a foreign address, the withholding tax is refundable by the IRS. To obtain a refund, you must file a Form 1040 or 1040-SR. To determine if you are entitled to a refund, send your return to:

Department of the Treasury  
Internal Revenue Service Center  
Austin, TX 73301

You must also attach the following to your Form 1040 or 1040-SR.

- A copy of Form SSA-1042S, Social Security Benefit Statement.
- A copy of the green card.

- A signed declaration that includes the following statements: “The SSA should not have withheld income tax from my social security benefits because I am a U.S. lawful permanent resident and my green card has been neither revoked nor administratively or judicially determined to have been abandoned. I am filing a U.S. income tax return for the tax year as a resident alien reporting all of my worldwide income. I have not claimed benefits for the tax year under an income tax treaty as the resident of a country other than the United States.”

## **Withholding From Other Income**

Other income subject to 30% withholding generally includes fixed or determinable income such as interest (other than portfolio interest), dividends, pensions and annuities, and gains from certain sales and exchanges, discussed in chapter 4. It also includes 85%

of social security benefits paid to nonresident aliens.

**Other income not subject to withholding of 30% (or lower treaty) rate.** The following income is not subject to withholding at the 30% (or lower treaty) rate if you file Form W-8ECI with the payer of the income.

- Income (other than compensation) that is effectively connected with your U.S. trade or business.
- Income from real property that you choose to treat as effectively connected with a U.S. trade or business. See *Income From Real Property* in chapter 4 for details about this choice.

Special rules for withholding on partnership income, scholarships, and fellowships are explained next.

## **Tax Withheld on Partnership Income**

If you are a foreign partner in a U.S. or foreign partnership, the partnership will withhold tax on your share of ECTI from the partnership. Your partnership may be able to reduce withholding on your share of ECTI by considering certain partner-level deductions. Generally, you must submit Form 8804-C for this purpose. For more information, see the Instructions for Form 8804-C.

The withholding rate on your share of effectively connected income is generally the highest rate of tax specified under section 1 (37%). However, the partnership may withhold at the highest rate that applies to a particular type of income allocable to you if you gave the partnership the appropriate documentation. Long-term capital gain is an example of a particular type of income to which the highest tax rate applies. Claim the tax withheld as a credit on your 2023 Form 1040-NR.

The partnership will give you a statement on Form 8805 showing the tax withheld. A partnership that is publicly traded will withhold tax on your actual distributions of effectively connected income. In this case, the partnership will give you a statement on Form 1042-S.

**Tax withheld on gain from the sale or exchange of certain partnership**

**interests.** If you are a direct or indirect foreign partner in a U.S. or foreign partnership that is engaged (or is treated as engaged) in a trade or business within the United States and you directly or indirectly dispose of that interest for a gain, then for transfers occurring after 2017 the transferee will generally withhold and pay to the IRS on your behalf a tax equal to 10% of the amount realized on the sale. The rules for withholding and paying over this amount are similar to the rules for sales of U.S. real property interests. You will receive a Form 8288-A



reflecting the amount withheld that you may then claim on line 25f of your Form 1040-NR as a credit against the tax you owe on the gain. You may be able to provide certain information to the transferee to reduce or eliminate withholding. For example, if a nonrecognition provision of the Internal Revenue Code applies to all of the gain realized on a transfer, the transferee does not need to withhold if you provide a notice describing the application of a nonrecognition provision. If you are a transferee that failed to withhold, under section 1446(f)(4) the partnership is required to withhold on distributions to you an amount equal to the tax you failed to withhold (plus interest, if applicable).

On November 30, 2020, the Department of the Treasury and the IRS issued final regulations under section 1446(f) in [T.D. 9926](#) (85 FR 76910) for transfers of both non-PTP and PTP interests. The final regulations

require any transferee to withhold a tax equal to 10% of the amount realized on any transfer of a partnership interest (other than certain PTP interests) under section 1446(f)(1), unless an exception to withholding applies. These regulations generally apply to transfers that occur on or after January 29, 2021. However, in accordance with Notice 2021-51, 2021-36 I.R.B. 361, the rules related to withholding under section 1446(f)(4) and to transfers of PTP interests apply to transfers occurring on or after January 1, 2023. Additionally, the final regulations revised certain provisions in Regulations section 1.1446-4 for withholding under section 1446(a) on PTP distributions. Also in accordance with Notice 2021-51, these revisions apply to PTP distributions made on or after January 1, 2023. Notices 2018-8 and 2018-29 apply to transfers that occur before the effective date of the final regulations or, as previously described, taxpayers may apply

the proposed regulations to transfers of non-PTP interests during this time.

For additional guidance on certain issues related to the 1446(f) regulations, see [Notice 2023-8](#).

## **Withholding on Scholarships and Fellowship Grants**

There is no withholding on a qualified scholarship received by a candidate for a degree. See chapter 3.

If you are a nonresident alien student or grantee with an “F,” “J,” “M,” or “Q” visa and you receive a U.S. source grant or scholarship that is not fully exempt, the withholding agent (usually the payer of the scholarship) withholds tax at 14% (or lower treaty rate) of the taxable part of the grant or scholarship that is not a payment for services. However, if you are not a candidate for a degree and the grant does not meet certain

requirements, tax will be withheld at the 30% (or lower treaty) rate.

Any part of a scholarship or fellowship grant that is a payment for services is subject to graduated withholding, as discussed earlier under Withholding on Wages.

### **Alternate Withholding Procedure**

Your withholding agent may choose to use an alternate procedure by asking you to fill out Form W-4. See below for items that may reduce your withholding.

**Expenses.** Include expenses that will be deductible on your return. These include the IRA deduction discussed under Deductions in chapter 5.

**Nontaxable grant or scholarship.** You can exclude the part of your grant or scholarship that is not taxable under U.S. law or under a tax treaty.

**Standard deduction.** If you are a student who qualifies under Article 21(2) of the United States-India Income Tax Treaty, you can take the standard deduction. The standard deduction amount for 2023 is \$13,850.

**Form W-4.** Complete the appropriate lines of Form W-4. Sign and date the form and give it to your withholding agent.

If you file a Form W-4 to reduce or eliminate the withholding on your scholarship or grant, you must file an annual U.S. income tax return to be allowed any deductions you claimed on that form. If you are in the United States during more than 1 tax year, you must attach a statement to your yearly Form W-4 indicating that you have filed a U.S. income tax return for the previous year. If you have not been in the United States long enough to be required to file a return, you must attach a statement to your Form W-4 saying you will file a U.S. income tax return when required.

After the withholding agent has accepted your Form W-4, tax will be withheld on your scholarship or grant at the graduated rates that apply to wages. The gross amount of the income is reduced by the applicable amount(s) on Form W-4, and the withholding tax is figured on the remainder.

You will receive a Form 1042-S from the withholding agent (usually the payer of your grant) showing the gross amount of your taxable scholarship or fellowship grant less any withholding allowance amount, the tax rate, and the amount of tax withheld. Use this form to prepare your annual U.S. income tax return.

For more information, go to [IRS.gov/FormW4](https://www.irs.gov/FormW4).

## **Income Entitled to Tax Treaty Benefits**

If a tax treaty between the United States and your country of residence provides an exemption from, or a reduced rate of, tax for

certain items of income, you should notify the payer of the income (the withholding agent) of your foreign status to claim a tax treaty withholding exemption. Generally, you do this by filing either Form W-8BEN or Form 8233 with the withholding agent.

File Form W-8BEN for income that is not personal services income. File Form 8233 for personal services income, as discussed next.



*If you qualify for an exemption under a tax treaty but did not submit a Form 8233 to your withholding agent to claim an exemption from withholding, you can still get the benefit of the exemption by filing a Form 1040-NR. Follow the instructions for line 1a of the Form 1040-NR.*

### **Employees and independent contractors.**

If you perform personal services as an employee or as an independent contractor and you can claim an exemption from withholding on that personal service income because of a tax treaty, give Form 8233 to

each withholding agent from whom amounts will be received.

Even if you submit Form 8233, the withholding agent may have to withhold tax from your income. This is because the factors on which the treaty exemption is based may not be determinable until after the close of the tax year. In this case, you must file Form 1040-NR to recover any overwithheld tax and to provide the IRS with proof that you are entitled to the treaty exemption.

***Students, teachers, and researchers.***

Students, teachers, and researchers must attach the appropriate statement shown in Appendix A (for students) or Appendix B (for teachers and researchers) at the end of this publication to the Form 8233 and give it to the withholding agent. For treaties not listed in the appendices, attach a statement in a format similar to those for other treaties.



If you received a scholarship or fellowship grant, as well as personal services income, from the same withholding agent, use Form 8233 to claim an exemption from withholding based on a tax treaty for both types of income.

**Note.** Form 8233 can be used when you are claiming an exemption for scholarship or fellowship income (that is not compensation) only if you are also claiming a treaty withholding exemption for personal services income. Otherwise, you must use Form W-8BEN.

### **Special events and promotions.**

Withholding at the full 30% rate is required for payments made to a nonresident alien or foreign corporation for gate receipts (or television or other receipts) from music festivals, boxing promotions, and other entertainment or sporting events, unless the withholding agent has been specifically advised otherwise by letter from the IRS.

Depending on the calendar year in which the U.S. gross income is earned, Form 13930 can be used to request a reduction in withholding. Withholding may be required even if the income may be exempt from taxation by provisions of a tax treaty. One reason for this is that the partial or complete exemption is usually based on factors that cannot be determined until after the close of the tax year.



*We have temporarily waived the income requirement for which form to use when applying for a CWA. Form 13930-A is currently unavailable. While the waiver is in effect, individuals with income below \$10,000 can apply for a CWA using Form 13930, Instructions on how to apply for a Central Withholding Agreement. For more information on how to apply for a CWA, see Form 13930. For more information, go to [IRS.gov/ Individuals/International-Taxpayers/Central-WithholdingAgreements](https://www.irs.gov/Individuals/International-Taxpayers/Central-WithholdingAgreements).*



*You will be required to pay U.S. tax at the time of your departure from the United States on any income for which you incorrectly claimed a treaty exemption. For more details on treaty provisions that apply to compensation, see [Pub. 901](#).*

**Tax withheld on real property sales.** If you are a nonresident alien and you disposed of a U.S. real property interest, the transferee (buyer) of the property must generally withhold a tax equal to 15% of the amount realized on the disposition.

However, if the property is acquired by the buyer for use as a residence and the amount realized does not exceed \$1 million, the rate of withholding is 10%.

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.

A distribution by a QIE to a nonresident alien shareholder that is treated as gain from the sale or exchange of a U.S. real property interest by the shareholder is subject to withholding at 21%. Withholding is also required on certain distributions and other transactions by domestic or foreign corporations, partnerships, trusts, and estates. These rules are covered in [Pub. 515](#) and in the Instructions for Form 8288.

For information on the tax treatment of dispositions of U.S. real property interests, see *Real Property Gain or Loss* in chapter 4.

If you are a partner in a domestic partnership, and the partnership disposes of a U.S. real property interest at a gain, the partnership will withhold tax on the amount of gain allocable to its foreign partners. Your share of the income and tax withheld will be reported to you on Form 8805 or Form 1042-S (in the case of a PTP).

Withholding is not required in the following situations.

1. The property is acquired by the buyer for use as a residence and the amount realized is not more than \$300,000.
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 nonpublicly traded interests in publicly traded corporations.

3. The property disposed of is an interest in a U.S. corporation that is not regularly traded on an established market and you (the seller) give the buyer a copy of a statement issued by the corporation certifying that the interest is not a U.S. real property interest.
4. You (the seller) give the buyer a certification stating, under penalties of perjury, that you are not a foreign person, and containing your name, U.S. TIN, and home address. You can give the certification to a qualified substitute. The qualified substitute gives the buyer 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 your agent; or
  - b. The buyer's agent.
- 5. The buyer receives a withholding certificate from the IRS.
- 6. You give the buyer written notice that you are not required to recognize any gain or loss on the transfer because of a nonrecognition provision in the Internal Revenue Code or a provision in a U.S. tax treaty. The buyer must file a copy of the notice with the Ogden Service Center, P.O. Box 409101, Ogden, UT 84409. You must verify the notice as true and sign it under penalties of perjury.

See Regulations section 1.1445-2(d)(2) for more information on the transferor's notice of nonrecognition.

You may not give the buyer a written notice for any of the following transfers.

- a. The sale of your main home on which you exclude gain.
- b. A like-kind exchange that does not qualify for nonrecognition treatment in its entirety.
- c. A deferred like-kind exchange that has not been completed at the time the buyer must file Form 8288.

Instead, you must get a withholding certificate (described next).

- 7. The amount you realize 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 territory, a political subdivision, or the District of Columbia.
9. The distribution is from a domestically controlled QIE and is treated as a distribution of a U.S. real property interest only because an interest in the entity was disposed of in an applicable wash sale transaction. For the definition of a QIE, see Qualified investment entities under *Real Property Gain or Loss*, earlier. See Wash sale under *Real Property Gain or Loss* in chapter 4.

The certifications in (3) and (4) must be disregarded by the buyer if the buyer or qualified substitute has actual knowledge, or receives notice from a seller's or buyer's agent (or substitute), that they are false. This also applies to the qualified substitute's statement under (4).

**Withholding certificates.** The tax required to be withheld on a disposition can be reduced or eliminated under a withholding certificate issued by the IRS. In most cases, either you or the buyer can request a withholding certificate.

A withholding certificate can be issued due to any of the following.

1. The IRS determines that reduced withholding is appropriate because either:
  - a. The amount required to be withheld would exceed your maximum tax liability, or
  - b. Withholding of the reduced amount would not jeopardize collection of the tax.
2. All of your realized gain is exempt from U.S. tax and you have no unsatisfied withholding liability.

3. You or the buyer enters into an agreement with the IRS for the payment of tax and provides security for the tax liability.

See [Pub. 515](#) and [IRS.gov/Individuals/InternationalTaxpayers/Withholding-Certificates](#) for information on procedures to request a withholding certificate.

**Credit for tax withheld.** The buyer must report and pay over the withheld tax within 20 days after the transfer using Form 8288. This form is filed with the IRS with copies A and B of Form 8288-A. Copy B of this statement will be stamped received by the IRS and returned to you (the seller) if the statement is complete and includes your TIN. You must file Copy B with your tax return to take credit for the tax withheld.

A stamped copy of Form 8288-A will not be provided to you if your TIN is not included on that form. The IRS will send you a letter

requesting the TIN and provide instructions for how to get a TIN. When you provide the IRS with a TIN, the IRS will provide you with a stamped Copy B of Form 8288-A.

**Refunds of certain withholding tax delayed.** Refund requests for tax withheld and reported on Form 1042-S, Form 8288-A, or Form 8805 may require additional time for processing. Allow up to 6 months for these refunds to be issued.

## **Social Security and Medicare Taxes**

If you work as an employee in the United States, you must pay social security and Medicare taxes in most cases. Your payments of these taxes contribute to your coverage under the U.S. social security system. Social security coverage provides retirement benefits, survivors and disability benefits, and medical insurance (Medicare) benefits to individuals who meet certain eligibility requirements.

In most cases, the first \$160,200 of taxable wages received in 2023 for services performed in the United States is subject to social security tax. All taxable wages are subject to Medicare tax. Your employer deducts these taxes from each wage payment. Your employer must deduct these taxes even if you do not expect to qualify for social security or Medicare benefits. You can claim a credit for excess social security tax on your income tax return if you have more than one employer and the amount deducted from your combined wages for 2023 is more than \$9,932.40.

If any one employer deducted more than \$9,932.40, you cannot claim a credit for that amount. Ask your employer to refund the excess. If your employer does not refund the excess, you can file a claim for refund using Form 843.

In general, U.S. social security and Medicare taxes apply to payments of wages for services performed as an employee in the United States, regardless of the citizenship or residence of either the employee or the employer. In limited situations, these taxes apply to wages for services performed outside the United States. Your employer should be able to tell you if social security and Medicare taxes apply to your wages. You cannot make voluntary payments if no taxes are due.

**Additional Medicare Tax.** In addition to the Medicare tax, a 0.9% (0.009) Additional Medicare Tax applies to Medicare wages, RRTA compensation, and self-employment income that are more than:

- \$250,000 if married filing jointly,
- \$125,000 if married filing separately, or
- \$200,000 for any other filing status.

There are no special rules for nonresident aliens for purposes of Additional Medicare Tax. Wages, RRTA compensation, and self-employment income that are subject to Medicare tax will also be subject to Additional Medicare Tax if in excess of the applicable threshold.

Your employer is responsible for withholding the 0.9% (0.009) Additional Medicare Tax on Medicare wages or RRTA compensation it pays to you in excess of \$200,000 in the calendar year. If you intend to file a joint return and you anticipate that you and your spouse's individual wages are not going to be more than \$200,000 but your combined wages and self-employment income are going to be more than \$250,000, you may want to request additional withholding on Form W-4 and/or make estimated tax payments.

If you file Form 1040-NR, you must pay Additional Medicare Tax if the total of your wages and your self-employment income was

more than \$125,000 if married (you checked the Married filing separately box at the top of page 1 of Form 1040-NR), or \$200,000 if single or qualifying surviving spouse (you checked the Single or Qualifying surviving spouse box at the top of page 1 of Form 1040-NR).

See Form 8959 and its instructions to determine whether you are required to pay Additional Medicare Tax. For more information on Additional Medicare Tax, go to [IRS.gov/ADMTfaqs](https://www.irs.gov/ADMTfaqs).

Self-employed individuals may also be required to pay Additional Medicare Tax. See *Self-Employment Tax*, later.

## **Students and Exchange Visitors**

Generally, services performed by you as a nonresident alien temporarily in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a) (15) of the Immigration and



Nationality Act are not covered under the social security program if the services are performed to carry out the purpose for which you were admitted to the United States. This means that there will be no withholding of social security or Medicare taxes from the pay you receive for these services. These types of services are very limited and generally include only on-campus work, practical training, and economic hardship employment.

Social security and Medicare taxes will be withheld from your pay for these services if you are considered a resident alien, as discussed in chapter 1, even though your nonimmigrant classification ("F," "J," "M," or "Q") remains the same.

Services performed by a spouse or minor child of nonimmigrant aliens with the classification of "F-2," "J-2," "M-2," and "Q-3" **are covered** under social security.

## Nonresident Alien Students

If you are a nonresident alien temporarily admitted to the United States as a student, you are generally not permitted to work for a wage or salary or to engage in business while you are in the United States. In some cases, a student admitted to the United States in "F-1," "M-1," or "J-1" status is granted permission to work. Social security and Medicare taxes are not withheld from pay for the work unless the student is considered a resident alien.



*Any student who is enrolled and regularly attending classes at a school may be exempt from social security and Medicare taxes on pay for services performed for that school.*

The USCIS permits on-campus work for students in "F-1" status if it does not displace a U.S. resident. "On-campus work" means work performed on the school's premises. On-campus work includes work performed at an

off-campus location that is educationally affiliated with the school. On-campus work under the terms of a scholarship, fellowship, or assistantship is considered part of the academic program of a student taking a full course of study and is permitted by the USCIS. Social security and Medicare taxes are not withheld from pay for this work unless the student is considered a resident alien.

If services performed by a nonresident alien student are not considered as performed to carry out the purpose for which the student was admitted to the United States, social security and Medicare taxes will be withheld from pay for the services unless the pay is exempt under the Internal Revenue Code.

## **Exchange Visitors**

Exchange visitors are temporarily admitted to the United States under section 101(a)(15)(J) of the Immigration and Nationality Act. Social security and Medicare taxes are not withheld on pay for services of an exchange visitor

who has been given permission to work and who possesses or obtains a letter of authorization from the sponsor unless the exchange visitor is considered a resident alien.

If services performed by an exchange visitor are not considered as performed to carry out the purpose for which the visitor was admitted to the United States, social security and Medicare taxes are withheld from pay for the services unless the pay is exempt under the Internal Revenue Code.

Nonresident aliens temporarily admitted to the United States as participants in international cultural exchange programs under section 101(a)(15)(Q) of the Immigration and Nationality Act may be exempt from social security and Medicare taxes. The employer must be the petitioner through whom the alien obtained the “Q” visa. Social security and Medicare taxes are

not withheld from pay for this work unless the alien is considered a resident alien.

## **Refund of Taxes Withheld in Error**

If social security or Medicare taxes were withheld in error from pay that is not subject to these taxes, contact the employer who withheld the taxes for a refund. If you are unable to get a full refund of the amount from your employer, file a claim for refund with the IRS on Form 843. Attach the following items to Form 843.

- A copy of your Form W-2 to prove the amount of social security and Medicare taxes withheld.
- A copy of your visa.
- Form I-94 (or other documentation showing your dates of arrival or departure).
- If you have a J-1 visa, attach a copy of your Form DS-2019.

- If you have an F-1 or M-1 visa, attach a complete copy of your Form I-20.
- If you are engaged in optional practical training, attach Form I-766.
- If you are engaged in employment due to severe economic necessity, documentation showing permission to work in the United States.
- A statement from your employer indicating the amount of the reimbursement your employer provided and the amount of the credit or refund your employer claimed or you authorized your employer to claim. If you cannot obtain this statement from your employer, you must provide this information on your own statement and explain why you are not attaching a statement from your employer or on Form 8316 claiming your employer will not issue the refund.

- If you were exempt from social security and Medicare tax for only part of the year, pay statements showing the tax paid during the period you were exempt.

Send Form 843 (with attachments) to:

Department of the Treasury  
Internal Revenue Service Center  
Ogden, UT 84201-0038



*Do not use Form 843 to request a refund of Additional Medicare Tax. If Additional Medicare Tax was withheld from your pay in error, you can claim a credit for any withheld Additional Medicare Tax against the total tax liability shown on your tax return by filing Form 8959 with Form 1040, 1040-SR, or 1040-NR. If Additional Medicare Tax was withheld in error in a prior year for which you already filed Form 1040, 1040-SR, or 1040-NR, you must file Form 1040-X for the prior year in which the wages or compensation was originally received to recover the Additional Medicare Tax withheld*

*in error. See the Instructions for Form 1040-X.*

## **Agricultural Workers**

Agricultural workers temporarily admitted into the United States on H-2A visas are exempt from social security and Medicare taxes on compensation paid to them for services performed in connection with the H-2A visa. You can find more information about not having tax withheld at [IRS.gov/ForeignAgriculturalWorkers](https://www.irs.gov/ForeignAgriculturalWorkers).

## **Self-Employment Tax**

Self-employment tax is the social security and Medicare taxes for individuals who are self-employed. Nonresident aliens are not subject to self-employment tax unless an international social security agreement in effect determines that they are covered under the U.S. social security system. Residents of the U.S. Virgin Islands, Puerto Rico, Guam, the CNMI, or American Samoa are considered



U.S. residents for this purpose and are subject to the self-employment tax. You can find more information about international social security agreements, later.

Resident aliens must pay self-employment tax under the same rules that apply to U.S. citizens. However, a resident alien employed by an international organization, a foreign government, or a wholly owned instrumentality of a foreign government is not subject to the self-employment tax on income earned in the United States.

Self-employment income you receive while you are a resident alien is subject to self-employment tax even if it was paid for services you performed as a nonresident alien.

***Example.*** Bill Jones is an author. Bill had several books published in a foreign country while Bill was a citizen and resident of that country. During 2023, Bill entered the United States as a resident alien. After becoming a

U.S. resident, Bill continued to receive royalties from Bill's foreign publisher. Bill reports Bill's income and expenses on the cash basis (income is reported on the tax return when received and expenses are deducted when paid). Bill's 2023 self-employment income includes the royalties received after becoming a U.S. resident even though the books were published while still being a nonresident alien. This royalty income is subject to self-employment tax.

**Reporting self-employment tax.** Use Schedule SE (Form 1040) to report and figure your self-employment tax. Then, enter the tax on Schedule 2 (Form 1040), line 4. Attach Schedule SE (Form 1040) to Form 1040, 1040-SR, or 1040-NR.

**Deferral of employment tax deposits and payments.** Section 2302 of the CARES Act permits self-employed individuals to defer payment of a portion of their 2020 self-employment tax until 2021 and 2022. All

amounts were due to be paid by December 31, 2022.

**Note.** This deferral is no longer in effect for tax year 2023.

**Additional Medicare Tax.** Self-employed individuals must pay a 0.9% (0.009) Additional Medicare Tax on self-employment income that exceeds one of the following threshold amounts (based on your filing status).

- Married filing jointly—\$250,000.
- Married filing separately—\$125,000.
- Single, Head of household, or Qualifying surviving spouse—\$200,000.

If you have both wages and self-employment income, the threshold amount for applying the Additional Medicare Tax on the self-employment income is reduced (but not below zero) by the amount of wages subject to Additional Medicare Tax. A self-

employment loss should not be considered for purposes of this tax.

If you file Form 1040-NR, you must pay Additional Medicare Tax if the total of your wages and your self-employment income was more than \$125,000 if married (you checked the Married filing separately box at the top of page 1 of Form 1040-NR), or \$200,000 if single or qualifying surviving spouse (you checked the Single or Qualifying surviving spouse box at the top of page 1 of Form 1040-NR).

See Form 8959 and its separate instructions to determine whether you are required to pay Additional Medicare Tax. For more information on Additional Medicare Tax, go to [IRS.gov/ADMTfaqs](https://www.irs.gov/ADMTfaqs).

**Deduction for employer-equivalent portion of self-employment tax.** If you must pay self-employment tax, you can deduct a portion of the self-employment tax paid in figuring your adjusted gross income.

This deduction is figured on Schedule SE (Form 1040).

**Note.** No portion of the Additional Medicare Tax is deductible for self-employment tax.

**More information.** See [\*Pub. 334\*](#) for more information about self-employment tax.

## **International Social Security Agreements**

The United States has entered into social security agreements, commonly referred to as “Totalization agreements,” with foreign countries to coordinate social security coverage and taxation of workers employed for part or all of their working careers in one of the countries. Under these agreements, dual coverage and dual contributions (taxes) for the same work are eliminated. The agreements generally make sure that social security taxes (including self-employment tax) are paid only to one country.

For a list of current international social security agreements, go to [SSA.gov/international/status.html](https://ssa.gov/international/status.html). As agreements with additional countries enter into force, they will be posted on this website. For more information on international social security agreements, go to [SSA.gov/international/totalization agreements.html](https://ssa.gov/international/totalization_agreements.html).

**Employees.** Generally, under these agreements, you are subject to social security taxes only in the country where you are working. However, if you are temporarily sent to work for the same employer in the United States and your pay would normally be subject to social security taxes in both countries, most agreements provide that you remain covered only by the social security system of the country from which you were sent.

To establish that your pay is subject only to foreign social security taxes and is exempt from U.S. social security taxes (including the

Medicare tax) under an agreement, you or your employer should request a certificate of coverage from the appropriate agency of the foreign country. This will usually be the same agency to which you or your employer pays your foreign social security taxes. The foreign agency will be able to tell you what information is needed for them to issue the certificate. Your employer should keep a copy of the certificate because it may be needed to show why you are exempt from U.S. social security taxes. Only wages paid on or after the effective date of the agreement can be exempt from U.S. social security taxes.

**Note.** Some of the countries with which the United States has agreements will not issue certificates of coverage. In this case, either you or your employer should request a statement that your wages are not covered by the U.S. social security system. For more information and how to apply for a Certificate

of Coverage, go to [SSA.gov/  
international/CoC link.html](https://ssa.gov/international/CoC_link.html).

**Self-employed individuals.** Under most agreements, self-employed individuals are covered by the social security system of the country where they reside. However, under some agreements, you may be exempt from U.S. self-employment tax if you temporarily transfer your business activity to or from the United States.

If you believe that your self-employment income is subject only to U.S. self-employment tax and is exempt from foreign social security taxes, request a Certificate of Coverage from the SSA. See the link in the Note above. This certificate will establish your exemption from foreign social security taxes.

To establish that your self-employment income is subject only to foreign social security taxes and is exempt from U.S. self-employment tax, request a Certificate of



Coverage from the appropriate agency of the foreign country.

**Note.** Some of the countries with which the United States has agreements will not issue certificates of coverage. In this case, you should request a statement that your self-employment income is not covered by the U.S. social security system. For more information and how to apply for a Certificate of Coverage, go to [SSA.gov/international/CoC link.html](https://ssa.gov/international/CoC/link.html).

Attach a photocopy of either statement to Form 1040 or 1040-SR each year you are exempt. Also enter "Exempt, see attached statement" on the line for self-employment tax.



*For questions on the coverage rules of the agreements, call 410-965-7306.*

## **Estimated Tax Form 1040-ES (NR)**

You may have income from which no U.S. income tax is withheld. Or, the amount of tax withheld may be less than the income tax you estimate you will owe at the end of the year. If so, you may have to pay estimated tax.

Generally, you must make estimated tax payments for 2024 if you expect to owe at least \$1,000 in tax and you expect your withholding and certain refundable credits to be less than the smaller of:

1. 90% (0.90) of the tax to be shown on your 2024 income tax return, or
2. 100% (1.00) of the tax shown on your 2023 income tax return (if your 2023 return covered all 12 months of the year).

If your adjusted gross income for 2023 was more than \$150,000 (\$75,000 if your filing status for 2024 is Married filing separately), substitute 110% (1.10) for 100% (1.00) in

(2) above if you are not a farmer or fisherman. Item (2) does not apply if you did not file a 2023 return.

A nonresident alien should use Form 1040-ES (NR) to figure and pay estimated tax. If you pay by check, make it payable to "United States Treasury."

**How to estimate your tax for 2024.** If you filed a 2023 return on Form 1040-NR and expect your income and total deductions for 2024 to be nearly the same, you should use your 2023 return as a guide to complete the Estimated Tax Worksheet in the Form 1040-ES (NR) instructions. If you did not file a return for 2023, or if your income, deductions, or credits will be different for 2024, you must estimate these amounts. Figure your estimated tax liability using the Tax Rate Schedule in the 2024 Form 1040-ES (NR) instructions for your filing status.

**Note.** If you expect to be a resident of Puerto Rico during the entire year, use Form 1040-ES or Formulario 1040-ES (PR).

**When to pay estimated tax.** Make your first estimated tax payment by the due date for filing the previous year's Form 1040-NR. If you have wages subject to the same withholding rules that apply to U.S. citizens, you must file Form 1040-NR and make your first estimated tax payment by April 15, 2024. If you do not have wages subject to withholding, file your income tax return and make your first estimated tax payment by June 17, 2024.

If your first estimated tax payment is due April 15, 2024, you can pay your estimated tax in full at that time or in four equal installments by the dates shown next.

1st installment . . . . . April 15, 2024

2nd installment . . . . . June 17, 2024

3rd installment . . . . . Sept. 16, 2024

4th installment . . . . . Jan. 15, 2025

If your first payment is not due until June 17, 2024, you can pay your estimated tax in full at that time or pay:

1.  $\frac{1}{2}$  of your estimated tax by June 17, 2024;
2.  $\frac{1}{4}$  of the tax by September 16, 2024; and
3.  $\frac{1}{4}$  by January 15, 2025.



*You do not have to make the payment due January 15, 2025, if you file your 2024 Form 1040-NR by January 31, 2025, and pay the entire balance due with your return.*

***Fiscal year.*** If your return is not on a calendar year basis, your due dates are the 15th day of the 4th, 6th, and

9th months of your fiscal year, and the 1st month of the following fiscal year. If any date falls on a Saturday, Sunday, or legal holiday, use the next day that is not a Saturday, Sunday, or legal holiday.

**Changes in income or deductions.** Even if you are not required to make an estimated tax payment in April or June, your circumstances may change so that you will have to make estimated tax payments later. This can happen if you receive additional income or if any of your deductions are reduced or eliminated. If so, see the Form 1040-ES (NR) instructions and [\*Pub. 505\*](#) for information on figuring your estimated tax.

**Amended estimated tax.** If, after you have made estimated tax payments, you find your estimated tax is substantially increased or decreased because of a change in your income or exemptions, you should adjust your remaining estimated tax payments. To

do this, see the Form 1040-ES (NR) instructions and [\*Pub. 505\*](#).

**Penalty for failure to pay estimated income tax.** You

will be subject to a penalty for underpayment of installments of estimated tax except in certain situations. These situations are explained on Form 2210.

## **9.**

# **Tax Treaty Benefits**

## **Introduction**

A nonresident alien (and certain resident aliens) from a country with which the United States has an income tax treaty may qualify for certain benefits. Most treaties require that the nonresident alien be a resident of the treaty country to qualify in the year the benefit is claimed. However, in the case of certain students, trainees, teachers, or

researchers, some treaties only require the nonresident alien to be a resident of the treaty country immediately prior to coming to the United States.

**Tax treaty tables.** You can access the tax treaty tables by going to [IRS.gov/TreatyTables](https://www.irs.gov/TreatyTables). You can access the texts of recently signed U.S. income tax treaties, protocols, and tax information exchange agreements (TIEAs) and the accompanying Treasury Department tax treaty technical explanations as they become publicly available, as well as the U.S. Model Income Tax Convention, at [Home.Treasury.gov/Policy-Issues/Tax-Policy/InternationalTax](https://home.treasury.gov/policy-issues/tax-policy/international-tax).



*Note that treaty and TIEA documents are posted on this site after signature and before ratification and entry into force.*



The full text of individual tax treaties is also available at

[IRS.gov/Businesses/International-Businesses/UnitedStates-Income-Tax-Treaties-A-to-Z](https://www.irs.gov/Businesses/International-Businesses/UnitedStates-Income-Tax-Treaties-A-to-Z). For more information about tax treaties, go to [IRS.gov/Individuals/InternationalTaxpayers/Tax-Treaties](https://www.irs.gov/Individuals/InternationalTaxpayers/Tax-Treaties).

You can generally arrange to have withholding tax reduced or eliminated on wages and other income that are eligible for tax treaty benefits. See *Income Entitled to Tax Treaty Benefits* in chapter 8.

## **Topics**

This chapter discusses:

- Typical tax treaty benefits,
- How to obtain copies of tax treaties, and •  
How to claim tax treaty benefits on your tax return.

## Useful Items

You may want to see:

### Publication

- ☐ **901** U.S. Tax Treaties

### Form (and Instructions)

- ☐ **1040-NR** U.S. Nonresident Alien Income Tax Return
- ☐ **8833** Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)

See chapter 12 for information about getting these publications and forms.

## Treaty Income

A nonresident alien's treaty income is the gross income on which the tax is limited by a tax treaty. Treaty income includes, for example, dividends from sources in the United States that are subject to tax at a tax treaty rate not to exceed 15%. Nontreaty

income is the gross income of a nonresident alien on which the tax is not limited by an applicable tax treaty.

To determine tax on items of income subject to lower tax treaty rates, figure the tax on each separate item of income at the reduced rate that applies to that item under the treaty.

To determine tax on nontreaty income, figure the tax at either the flat 30% rate or the graduated rate, depending upon whether or not the income is effectively connected with your trade or business in the United States.

Your tax liability is the sum of the tax on treaty income plus the tax on nontreaty income, but it cannot be more than the tax liability figured as if the tax treaty had not come into effect.

***Example.*** Arthur Banks is a nonresident alien who is single and a resident of a foreign country that has a tax treaty with the United

States. Arthur received gross income of \$25,900 during the tax year from sources within the United States, consisting of the following items.

Dividends on which the tax is limited to a 15% rate by the tax treaty .....	<i>\$1,400</i>
Compensation for personal services on which the tax is not limited by the tax treaty	<i>24,500</i>
<b>Total gross income.....</b>	<b><u>\$25,900</u></b>

Arthur was engaged in business in the United States during the tax year. Arthur's dividends are not effectively connected with that business. Arthur has no deductions.

Arthur's tax liability, figured as though the tax treaty had not come into effect, is \$3,140 determined as follows.

Total compensation ..... \$24,500

Less: Deductions ..... 0

**Taxable income ..... \$24,500**

Tax determined by graduated rate  
(Tax Table column for single  
taxpayers) ..... \$2,720

Plus: Tax on gross dividends  
(\$1,400 × (0.30)) ..... 420

**Tax determined as though  
treaty had not come into effect \$3,140**

Arthur's tax liability, figured by taking into account the reduced rate on dividend income as provided by the tax treaty, is \$2,930 determined as follows.

Tax determined by graduated rate  
(same as figured above) \$2,720

Plus: Tax on gross dividends  
(\$1,400 × (0.15)) ..... 210

**Tax on compensation and  
dividends ..... \$2,930**

Arthur's tax liability, therefore, is limited to \$2,930, the tax liability figured using the tax treaty rate on the dividends.

## **Some Typical Tax Treaty Benefits**

The following paragraphs briefly explain the exemptions that are available under tax treaties for personal services income, remittances, scholarships, fellowships, and capital gain income. The conditions for claiming the exemptions vary under each tax treaty. For more information about the conditions under a particular tax treaty, download the complete text of most U.S. tax

treaties at [IRS.gov/ Businesses/International-Businesses/United-StatesIncome-Tax-Treaties-A-to-Z](https://www.irs.gov/Businesses/International-Businesses/United-StatesIncome-Tax-Treaties-A-to-Z). Technical explanations for many of those treaties are also available at that site. Also see [Pub. 901](#).

Tax treaty benefits also cover income such as dividends, interest, rentals, royalties, pensions, and annuities. These types of income may be exempt from U.S. tax or may be subject to a reduced rate of tax. For more information, see [Pub. 901](#) or the applicable tax treaty.

## **Personal Services**

Under most income tax treaties, nonresident aliens from treaty countries and dual residents who tie break in favor of the treaty country (see [chapter 1](#)) who are temporarily present in the United States to perform services may be eligible to exempt some or all of their personal services income from U.S. tax if they meet the requirements of the applicable treaty article.

**Income from employment.** Most income tax treaties have an “income from employment” article, sometimes called the dependent personal services article, which allows residents of the treaty country to exempt income earned as employees in the United States from U.S. tax if they satisfy the following.

- They are present in the United States for a period not exceeding 183 days in a 12-month period.
- The income is paid by a foreign employer.
- The income is not borne by a U.S. permanent establishment of the foreign employer.

Some income tax treaties contain different requirements, such as a different period of maximum presence. For more information, see [Pub. 901](#).



**Independent personal services.** Some income tax treaties contain an “independent personal services” article, which allows residents of the treaty country to exempt income earned as an independent contractor or as a self-employed individual from U.S. tax if they are present in the United States for a period not exceeding a certain number of days and if they do not have a fixed base regularly available to them in the United States.

**Note.** Some treaties do not have an independent service article. Under these treaties, income for independent personal services may be covered by the business profits article. Under the business profits article, individuals can generally exempt their business profits from U.S. tax unless they have a permanent establishment in the United States to which the business profits are attributable. For more information, including definitions of the terms “fixed base”

and "permanent establishment," see [Pub. 901.](#)

## **Teachers, Professors, and Researchers**

Under many income tax treaties, nonresident alien teachers or professors who temporarily visit the United States for the primary purpose of teaching at a university or other accredited educational institution are not subject to U.S. income tax on compensation received for teaching for the first 2 or 3 years after their arrival in the United States.

Many treaties also provide an exemption for engaging in research.

Generally, the teacher or professor must be in the United States primarily to teach, lecture, instruct, or engage in research. A substantial part of that person's time must be devoted to those duties. The normal duties of a teacher or professor include not only formal classroom work involving regularly scheduled lectures, demonstrations, or other student-

participation activities, but also the less formal method of presenting ideas in seminars or other informal groups and in joint efforts in the laboratory.

If you entered the United States as a nonresident alien, but are now a resident alien, the treaty exemption may still apply. See Students, Apprentices, Trainees, Teachers, Professors, and Researchers Who Became Resident Aliens, later, under *Resident Aliens*.

## **Employees of Foreign Governments**

All treaties have provisions for the exemption of income earned by certain employees of foreign governments. However, a difference exists among treaties as to who qualifies for this benefit. Under many treaties, aliens who are U.S. residents do not qualify. Under most treaties, aliens who are not nationals or subjects of the foreign country do not qualify. Employees of foreign governments should read the pertinent treaty carefully to

determine whether they qualify for benefits. Chapter 10 of this publication also has information for employees of foreign governments.

## **Students, Apprentices, and Trainees**

Under some income tax treaties, students, apprentices, and trainees are exempt from tax on remittances received from abroad for study and maintenance. Also, under some treaties, scholarship and fellowship grants, and a limited amount of compensation received by students, apprentices, and trainees, may be exempt from tax.

If you entered the United States as a nonresident alien, but are now a resident alien, the treaty exemption may still apply. See *Students, Apprentices, Trainees, Teachers, Professors, and Researchers Who Became Resident Aliens*, later, under *Resident Aliens*.

## **Capital Gains**

Most treaties provide for the exemption of gains from the sale or exchange of personal property. Generally, gains from the sale or exchange of real property located in the United States are taxable.

## **Resident Aliens**

Resident aliens may qualify for tax treaty benefits in the situations discussed below.

### **General Rule for Resident Aliens**

Resident aliens generally do not qualify for tax treaty benefits because most tax treaties contain a "saving clause" that preserves or "saves" the right of the United States to tax its citizens and residents as if the tax treaty had not come into effect. However, many tax treaties have exceptions to the saving clause, which may allow a resident alien to continue to claim treaty benefits.

Some exceptions to the saving clause apply to all resident aliens (for example, under the United States-People's Republic of China treaty); others apply only to resident aliens who are not lawful permanent residents of the United States (green card holders).

In certain cases, you don't need to report the income on your Form 1040 or 1040-SR because the income will be exempt from U.S. tax under a treaty. However, if the income has been reported as taxable income on a Form W-2, Form 1042-S, Form 1099, or other information return, you should report it on the appropriate line of Form 1040 or 1040-SR (for example, line 1a in the case of wages or salaries reported in box 1 of Form W-2).

Enter the amount for which treaty benefits are claimed, in parenthesis, on Schedule 1 (Form 1040), line 8z. Enter "Exempt income," the name of the treaty country, and the treaty article that provides the exemption. Combine the amounts reported on lines 8a

through 8z on Schedule 1 (Form 1040) and enter on line 9. Then, combine the totals from Schedule 1 (Form 1040), lines 1 through 7 and 9 and enter the total on line 10. Then, enter the total from Schedule 1 (Form 1040), line 10, on Form 1040 or 1040-SR, line 8.

For income that is subject to a reduced rate of tax, instead of an exemption, under the treaty, attach a statement to Form 1040 or 1040-SR showing a computation of the tax at the reduced rate, the name of the treaty country, and the treaty article that provides for the reduced tax rate. Enter this tax on Form 1040 or 1040-SR, line 16. Check box 3 and enter "Tax from attached statement."

***Example.*** Jacques Dubois, who is a resident of the United States under Article 4 of the United States-France income tax treaty, receives French social security benefits. Under Article 18(1) of the treaty, French social security benefits are not taxable by the United States. Benefits conferred by Article

18(1) are excepted from the saving clause under Article 29(3) of the treaty. Jacques is not required to report the French social security benefits on Form 1040 or 1040-SR.

### **Special Rule for Canadian and German Social Security Benefits**

Under income tax treaties with Canada and Germany, if a U.S. resident receives social security benefits from Canada or Germany, those benefits are treated for U.S. income tax purposes as if they were received under the social security legislation of the United States. If you receive social security benefits from Canada or Germany, include them on line 1 of your Social Security Benefits Worksheet in the Instructions for Form 1040, for purposes of determining the taxable amount to be reported on Form 1040 or 1040-SR, line 6b. You are not required to file a Form 8833 for those benefits.



## **Students, Apprentices, Trainees, Teachers, Professors, and Researchers Who Became Resident Aliens**

Generally, you must be a nonresident alien student, apprentice, trainee, teacher, professor, or researcher in order to claim a tax treaty exemption for remittances from abroad for study and maintenance in the United States, for scholarship, fellowship, and research grants, and for wages or other personal service compensation. Once you become a resident alien, you can generally no longer claim a tax treaty exemption for this income.

However, if you entered the United States as a nonresident alien, but you are now a resident alien for U.S. tax purposes, the treaty exemption will continue to apply if the tax treaty's saving clause (explained earlier) provides an exception for it and you otherwise meet the requirements for the treaty exemption (including any time limit for

claiming treaty exemptions, explained below). This is true even if you are a nonresident alien electing to file a joint return, as explained in chapter 1.

If you qualify under an exception to the treaty's saving clause, you can avoid income tax withholding by giving the payer a Form W-9 with the statement required by the Form W-9 instructions.

### **Time limit for claiming treaty**

**exemptions.** Many treaties limit the number of years you can claim a treaty exemption. For students, apprentices, and trainees, the limit is usually 4–5 years; for teachers, professors, and researchers, the limit is usually 2–3 years. Once you reach this limit, you can no longer claim the treaty exemption. See the treaty or [\*Pub. 901\*](#) for the time limits that apply.

### **How to report income on your tax return.**

In certain cases, you don't need to report the income on your Form 1040 or 1040-SR

because the income will be exempt from U.S. tax under a treaty. However, if the income has been reported as taxable income on a Form W-2, Form 1042-S, Form 1099, or other information return, you should report it on the appropriate line of Form 1040 or 1040-SR (for example, line 1a, amounts reported in box 1 of Form W-2). Enter the amount for which treaty benefits are claimed, in parentheses, on Schedule 1 (Form 1040), line 8z. Enter "Exempt income," the name of the treaty country, and the treaty article that provides the exemption. Combine the amounts reported on lines 8a through 8z on Schedule 1 (Form 1040) and enter on line 9. Then, combine the totals from Schedule 1 (Form 1040), lines 1 through 7 and 9 and enter the total on line 10. Then, enter the total from Schedule 1 (Form 1040), line 10, on Form 1040 or 1040-SR, line 8.

**Example.** A citizen of the People's Republic of China entered the United States as a nonresident alien student on January 1, 2019. The student remained a nonresident alien through 2023 and was able to exclude scholarship from U.S. tax in those years under Article 20 of the U.S.-People's Republic of China income tax treaty. On January 1, 2024, the student became a resident alien under the substantial presence test because their stay in the United States exceeded 5 years. Even though the student is now a resident alien, the provisions of Article 20 still apply because of the exception to the saving clause in paragraph 2 of the Protocol to the U.S.-People's Republic of China treaty dated April 30, 1984. The student should report their scholarship income shown on their Form 1042-S or Form 1098-T on Schedule 1 (Form 1040), line 8r. Then they should report the amount for which treaty benefits are claimed, in parentheses, on Schedule 1 (Form 1040), line 8z. They should enter "Exempt income,"

the name of the treaty country, and the treaty article that provides the exemption.

## **Reporting Treaty Benefits Claimed**

If you claim treaty benefits that override or modify any provision of the Internal Revenue Code, and by claiming these benefits your tax is, or might be, reduced, you must attach a fully completed Form 8833 to your tax return. See Exceptions below for the situations where you are not required to file Form 8833.

**Form 8833 filing requirement.** You must file a U.S. tax return and Form 8833 if you claim the following treaty benefits.

- You claim a reduction or modification in the taxation of gain or loss from the disposition of a U.S. real property interest based on a treaty.
- You claim a credit for a specific foreign tax for which foreign tax credit would not be allowed by the Internal Revenue Code.

- You receive payments or income items totaling more than \$100,000 and you determine your country of residence under a treaty and not under the rules for residency discussed in chapter 1.

These are the more common situations for which Form 8833 is required. For additional provisions, see the Form 8833 instructions.

**Exceptions.** You do not have to file Form 8833 for any of the following situations.

1. You claim a reduced rate of withholding tax under a treaty on interest, dividends, rent, royalties, or other FDAP income ordinarily subject to the 30% rate.
2. You claim that a treaty reduces or modifies the taxation of income from dependent personal services, pensions, annuities, social security and other public pensions, or income of artists, athletes, students, trainees, or

teachers. This includes taxable scholarship and fellowship grants.

3. You claim a reduction or modification of taxation of income under an International Social Security Agreement or a Diplomatic or Consular Agreement.
4. You are a partner in a partnership or a beneficiary of an estate or trust and the partnership, estate, or trust reports the required information on its return.
5. The payments or items of income that are otherwise required to be disclosed total no more than \$10,000.
6. You are claiming treaty benefits for amounts that are:
  - a. Reported to you on Form 1042-S; and
  - b. Received by you:

- i. As a related party from a reporting corporation within the meaning of section 6038A (relating to information returns on Form 5472 filed by U.S. corporations that are 25% owned by a foreign person), or
- ii. As a beneficial owner that is a direct account holder of a U.S. financial institution or qualified intermediary, or a direct partner, beneficiary, or owner of a withholding foreign partnership or trust, from that U.S. financial institution, qualified intermediary, or withholding foreign partnership or trust.

The exception described in (6) above does not apply to any amounts for which a treaty-based return disclosure is specifically required by the Form 8833 instructions.



**Penalty for failure to provide required information on Form 8833.** If you are required to report the treaty benefits but do not, you may be subject to a penalty of \$1,000 for each failure.

**Additional information.** For additional information, see Regulations section 301.6114-1(c).

## **10.**

# **Employees of Foreign Governments and International Organizations**

## **Introduction**

Employees of foreign governments (including foreign political subdivisions) may be able to exempt their foreign government wages from U.S. income tax if they satisfy the requirements of any one of the following.

1. The applicable article in the multilateral Vienna Convention on Diplomatic Relations, the multilateral Vienna Convention on Consular Relations, or a bilateral consular convention, if one exists, between the United States and the foreign country;
2. The applicable article in a bilateral tax treaty, if one exists, between the United States and the foreign country; or
3. The requirements for obtaining an exemption from U.S. income tax for foreign government wages provided under U.S. tax law.

Employees of international organizations may be able to exempt their wages under a provision, if one exists, in the international agreement creating the international organization, or by satisfying the requirements for obtaining an exemption for such wages under U.S. tax law.

An “international organization” is an organization designated by the President of the United States through Executive Order to qualify for the privileges, exemptions, and immunities provided in the International Organizations Immunities Act.

The exemption discussed in this chapter applies only to pay received for official services performed for a foreign government or international organization. Other U.S. source income received by persons who qualify for this exemption may be fully taxable or given favorable treatment under an applicable tax treaty provision. The proper treatment of this kind of income (interest, dividends, etc.) is discussed earlier in this publication.

## Topics

This chapter discusses:

- Exemptions for employees of Foreign Governments
- Exemptions for employees of International Organizations

## Useful Items

You may want to see:

## Publication

- ☐ **15-A** Employer's Supplemental Tax Guide
- ☐ **901** U.S. Tax Treaties
- ☐ **1779** Independent Contractor or Employee

See chapter 12 for information about getting these publications.

## **Employees of Foreign Governments**

### **Exemption under Vienna Conventions or a bilateral consular convention.**

You should first look at the tax exemption provisions under the Vienna Conventions or a bilateral consular convention, if one exists, to see if your wages qualify for exemption from U.S. income tax under those provisions.

Generally, you are not entitled to the income tax exemption available under either of the Vienna Conventions or a bilateral consular convention if you are a U.S. citizen or resident alien. For further information regarding the Vienna Conventions and bilateral consular conventions, email the Department of State Office of Foreign Missions at [OFMAssistants@state.gov](mailto:OFMAssistants@state.gov).

**Exemption under tax treaty.** If you do not qualify for the tax exemption provided under the Vienna Conventions or a bilateral consular convention but are from a country that has a tax treaty with the United States, you should

look at the tax treaty to see if there is a provision that exempts your wages from U.S. income tax. If you are a U.S. citizen or resident alien working in the United States for a foreign government, your wages are usually not exempt. For more information, see *Wages and Pensions Paid by a Foreign Government* in [Pub. 901](#).

**Exemption under U.S. tax law.** Employees of foreign governments who do not qualify under the tax exemption provisions of either of the Vienna Conventions, a bilateral consular convention, or a tax treaty may be able to exempt their foreign government wages from U.S. income tax if they satisfy the following requirements for obtaining an exemption for such wages under U.S. tax law.