



Note: *The draft you are looking for begins on the next page.*

Caution: DRAFT—NOT FOR FILING

This is an early release draft of an IRS tax form, instructions, or publication, which the IRS is providing for your information. **Do not file draft forms** and do **not** rely on draft forms, instructions, and publications for filing. We do **not** release draft forms until we believe we have incorporated all changes (except when explicitly stated on this coversheet). However, unexpected issues occasionally arise, or legislation is passed—in this case, we will post a new draft of the form to alert users that changes were made to the previously posted draft. Thus, there are never any changes to the last posted draft of a form and the final revision of the form. Forms and instructions generally are subject to OMB approval before they can be officially released, so we post only drafts of them until they are approved. Drafts of instructions and publications usually have some changes before their final release.

Early release drafts are at [IRS.gov/DraftForms](https://www.irs.gov/DraftForms) and remain there after the final release is posted at [IRS.gov/LatestForms](https://www.irs.gov/LatestForms). All information about all forms, instructions, and pubs is at [IRS.gov/Forms](https://www.irs.gov/Forms).

Almost every form and publication has a page on IRS.gov with a friendly shortcut. For example, the Form 1040 page is at [IRS.gov/Form1040](https://www.irs.gov/Form1040); the Pub. 501 page is at [IRS.gov/Pub501](https://www.irs.gov/Pub501); the Form W-4 page is at [IRS.gov/W4](https://www.irs.gov/W4); and the Schedule A (Form 1040/SR) page is at [IRS.gov/ScheduleA](https://www.irs.gov/ScheduleA). If typing in a link above instead of clicking on it, be sure to type the link into the address bar of your browser, not a Search box.

If you wish, you can submit comments to the IRS about draft or final forms, instructions, or publications at [IRS.gov/FormsComments](https://www.irs.gov/FormsComments). We cannot respond to all comments due to the high volume we receive and may not be able to consider many suggestions until the subsequent revision of the product.

If you have comments on reducing paperwork and respondent (filer) burden, with respect to draft or final forms, please respond to the relevant information collection through the Federal Register process; for more info, click [here](#).

**DRAFT AS OF
November 3, 2022
DO NOT FILE**

[This page left blank intentionally]

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

Future Developments

For the latest information about developments related to Form 8833 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form8833](https://www.irs.gov/Form8833).

General Instructions

Purpose of Form

Form 8833 must be used by taxpayers to make the treaty-based return position disclosure required by section 6114 and the regulations thereunder (Regulations section 301.6114-1). The form must also be used by dual-resident taxpayers (defined later) to make the treaty-based return position disclosure required by Regulations section 301.7701(b)-7. A separate form is required annually for each treaty-based return position taken by the taxpayer, although a taxpayer may treat payments or income items of the same type received from the same payor as a single item for reporting purposes.

Who Must File

Generally, a taxpayer who takes a treaty-based return position must disclose that position, unless reporting is specifically waived. See *Exceptions from reporting* below.

A taxpayer takes a treaty-based return position by maintaining that a treaty of the United States overrules or modifies a provision of the Internal Revenue Code and thereby causes (or potentially causes) a reduction of tax on the taxpayer's tax return. For these purposes, a treaty includes, but is not limited to, an income tax treaty; estate and gift tax treaty; or friendship, commerce, and navigation treaty.

Reporting specifically required. Regulations section 301.6114-1(b) specifically requires reporting on a Form 8833 for the following treaty-based return positions. Note that this is not an exhaustive list of all positions that are reportable on a Form 8833 and that some specifically reportable positions are waived in certain circumstances under Regulations section 301.6114-1(c).

- That a nondiscrimination provision of the treaty prevents the application of an otherwise applicable Code provision, other than with respect to making an election under section 897(i);
- That a treaty reduces or modifies the taxation of gain or loss from the disposition of a U.S. real property interest;

- That a treaty reduces or modifies the branch profits tax (section 884(a)) or the tax on excess interest (section 884(f)(1)(B));
- That a treaty exempts from tax or reduces the rate of tax on dividends or interest paid by a foreign corporation that are U.S.-sourced under section 861(a)(2)(B) or section 884(f)(1)(A);
- That a treaty exempts from tax or reduces the rate of tax on fixed or determinable annual or periodical (FDAP) income that a foreign person receives from a U.S. person, but only if:

(1) The amount is not properly reported on Form 1042-S and the foreign person is: (a) a controlled foreign corporation (as defined in section 957) in which the U.S. person is a U.S. shareholder (as defined in section 951(b)); (b) a foreign corporation that is controlled by a U.S. person within the meaning of section 6038; (c) a foreign corporation that is a 25-percent shareholder of the U.S. person under section 6038A; or (d) a foreign related party, as defined under section 6038A(c)(2)(B);

(2) The foreign person is related to the payor under section 267(b) or section 707(b) and receives income exceeding \$500,000, in the aggregate, from the payor and the treaty contains a limitation on benefits article; or

(3) The treaty imposes additional conditions for the entitlement of treaty benefits (for example, the treaty requires the foreign corporation claiming a preferential rate on dividends to meet ownership percentage and ownership period requirements);

- That income effectively connected with a U.S. trade or business of a taxpayer is not attributable to a permanent establishment or a fixed base in the United States;
- That a treaty modifies the amount of business profits of a taxpayer attributable to a permanent establishment or a fixed base in the United States;
- That a treaty alters the source of any item of income or deduction (unless the taxpayer is an individual);
- That a treaty grants a credit for a foreign tax which is not allowed by the Code;
- That the residency of an individual is determined under a treaty and apart from the Code. See *Dual-resident taxpayer* below.

Exceptions from reporting. Regulations section 301.6114-1(c) waives reporting on a Form 8833 for certain treaty-based return positions. In some instances, the waiver narrowly applies to exempt from reporting a treaty position that is

specifically reportable, and thus careful review of the regulations is advised. In addition, some waivers do not apply to positions that are specifically required to be reported under these form instructions. See *Reporting specifically required by Form 8833 instructions*, later.

Positions for which reporting is waived include, but are not limited to, the following. See Regulations section 301.6114-1(c) for other waivers from reporting.

- That a treaty reduces or modifies the taxation of income derived by an individual from dependent personal services, pensions, annuities, social security, and other public pensions, as well as income derived by artists, athletes, students, trainees, or teachers;
- That a Social Security Totalization Agreement or Diplomatic or Consular Agreement reduces or modifies the income of a taxpayer;
- That a treaty exempts a taxpayer from the excise tax imposed by section 4371, but only if certain conditions are met (for example, the taxpayer has entered into an insurance excise tax closing agreement with the IRS);
- That a treaty exempts from tax or reduces the rate of tax on FDAP income, if the beneficial owner is an individual or governmental entity;
- If a partnership, trust, or estate has disclosed a treaty position that the partner or beneficiary would otherwise be required to disclose;
- Unless modified by the instructions below, that a treaty exempts from tax or reduces the rate of tax on FDAP income that is properly reported on Form 1042-S and the amount is received by a:
 - a. Related party (within the meaning of section 6038A(c)(2)) from a reporting corporation within the meaning of section 6038A(a) (a domestic corporation that is 25% foreign owned and required to file Form 5472);
 - b. 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 withholding foreign trust (whether the Form 1042-S reporting is on a specific payee or pooled basis); or
 - c. Taxpayer that is not an individual or a State, if the amounts are not received through an account with an intermediary or with respect to an interest in a partnership or a simple or grantor trust, and if the amounts do not total more than \$500,000 for the tax year.

Reporting specifically required by Form 8833 instructions. The following are amounts for which a treaty-based return disclosure on Form 8833 is specifically required under these instructions.

- Amounts described in paragraph a or c, above, that are received by a corporation that is a resident under the domestic law of both the United States and a foreign treaty jurisdiction (a dual-resident corporation).
- Amounts described in paragraph a or c, above, that are received by a corporation that is a resident of both the jurisdiction whose treaty is invoked and another foreign jurisdiction that has an income tax treaty with that treaty jurisdiction. See Revenue Ruling 2004-76, 2004-31 I.R.B. 111, available at www.irs.gov/pub/irs-irbs/irb04-31.pdf.
- Amounts described in paragraph a or c, above, that are received by a foreign collective investment vehicle that is a contractual arrangement and not a person under foreign law. See Example 7 of Regulations section 1.894-1(d)(5).
- Amounts described in paragraph a or c, above, that are received by a foreign "interest holder" in a "domestic reverse hybrid entity," as those terms are used in Regulations section 1.894-1(d)(2).

Dual-resident taxpayer. An alien individual is a dual-resident taxpayer if that individual is considered to be a resident of both the United States and another country under each country's tax laws. If the income tax treaty between the United States and the other country contains a provision for resolution of conflicting claims of residence by the United States and its treaty partner, and the individual determines that under those provisions he or she is a resident of the foreign country for treaty purposes, the individual may claim treaty benefits as a resident of that foreign country, provided that he or she complies with the instructions below.

If you are an individual who is a dual-resident taxpayer and you choose to claim treaty benefits as a resident of the foreign country, you are treated as a nonresident alien in figuring your U.S. income tax liability for the part of the tax year you are considered a dual-resident taxpayer. If you are eligible to be treated as a resident of the foreign country pursuant to the applicable income tax treaty and you choose to claim benefits as a resident of such foreign country, you must file Form 1040-NR, U.S. Nonresident Alien Income Tax Return, with Form 8833 attached. A dual-resident taxpayer may also be eligible

for U.S. competent authority assistance. See Rev. Proc. 2015-40, 2015-35 I.R.B. 236, or its successor.

If you choose to be treated as a resident of a foreign country under an income tax treaty, you are still treated as a U.S. resident for purposes other than figuring your U.S. income tax liability (see Regulations section 301.7701(b)-7(a)(3)).

When and Where To File

Attach Form 8833 to your tax return (Form 1040-NR, Form 1120-F, etc.). If you would not otherwise be required to file a tax return, you must file one at the IRS Service Center where you would normally file a return to make the treaty-based return position disclosure under section 6114 (see Regulations section 301.6114-1(a)(1)(ii)) or under Regulations section 301.7701(b)-7.

Specific Instructions

U.S. Taxpayer Identifying Number

The identifying number of an individual is his or her social security number or individual taxpayer identification number. The identifying number of all others is their employer identification number.

For more information about identifying numbers, see the instructions for the tax return with which this form is filed.

Reference ID Number

If the taxpayer is a foreign corporation, enter any reference ID number assigned to the foreign corporation by a U.S. person with respect to which information reporting is required (for example, on Form 5471 or Form 5472).

Address in Country of Residence

Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code. Please **do not** abbreviate the country name.

Termination of U.S. Residency

If you are a dual-resident taxpayer and a long-term resident (LTR) and you are filing this form to be treated as a resident of a foreign country for purposes of claiming benefits under an applicable U.S. income tax treaty, you will be deemed to have terminated your U.S. residency status for federal income tax purposes. Because you are terminating your U.S. residency status, you may be subject to tax under section 877A and you must file Form 8854, Initial and Annual Expatriation Statement. You are an LTR if you were a lawful permanent resident of the United States in at least 8 of the last 15 tax years ending with the

year your status as an LTR ends. For additional information, see the Instructions for Form 8854, Initial and Annual Expatriation Statement, and Pub. 519, U.S. Tax Guide for Aliens.

Line 3

Income that is fixed or determinable annual or periodical includes interest (other than original issue discount), dividends, rents, premiums, annuities, salaries, wages, and other compensation. For more information (including other items of income that are fixed or determinable annual or periodical), nonresident aliens and dual-resident taxpayers filing as nonresident aliens should see section 871(a) and Regulations section 1.871-7(b) and (c). Foreign corporations should see section 881(a) and Regulations section 1.881-2(b) and (c).

Line 4

Name the specific test in the Limitations on Benefits (LOB) article that is met. See Table 4, Limitation on Benefits, at IRS.gov/Individuals/International-Taxpayers/Tax-Treaty-Tables, for a summary of the various tests contained in the LOB article of each treaty. If you have made a request with the U.S. competent authority for a discretionary determination and that request is still pending, you may not claim benefits, unless the treaty or technical explanation specifically provides otherwise.

Line 5

If the taxpayer answers "Yes" to the question on line 5, the taxpayer must enter the subsection of Regulations section 301.6114-1(b) with respect to which the taxpayer is disclosing a treaty-based return position. The taxpayer must also provide the information requested on line 6.

Line 6

All taxpayers taking a treaty-based return position must provide the requested information on line 6, regardless of whether reporting is explicitly required under Regulations section 301.6114-1(b), unless it is waived under Regulations section 301.6114-1(c). If applicable, the taxpayer must explain why it meets the Limitation on Benefits test identified on line 4, the basis for the taxpayer meeting any special requirements for claiming benefits, such as those required to be included on line 15 of Form W-8BEN-E, and the amount (or a reasonable estimate thereof) of the income affected by the treaty claim. See Regulations section 301.6114-1(d)(3) regarding rules for reporting estimates of certain types of income, such as sales or services income.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must

be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual and business taxpayers filing this form is approved under OMB control numbers 1545-0074 and 1545-0123. The estimated burden

for all other taxpayers who file this form is shown below.

Recordkeeping 3 hr., 7 min.

Learning about the law or the form 1 hr., 35 min.

Preparing and sending the form to the IRS 1 hr., 43 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

DRAFT

November 3, 2022

DO NOT FILE