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

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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.

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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; the Pub. 501 page is at IRS.gov/Pub501; the Form W-4 page is at IRS.gov/W4; and the Schedule A (Form 1040/SR) page is at 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. 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.

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Department of the Treasury

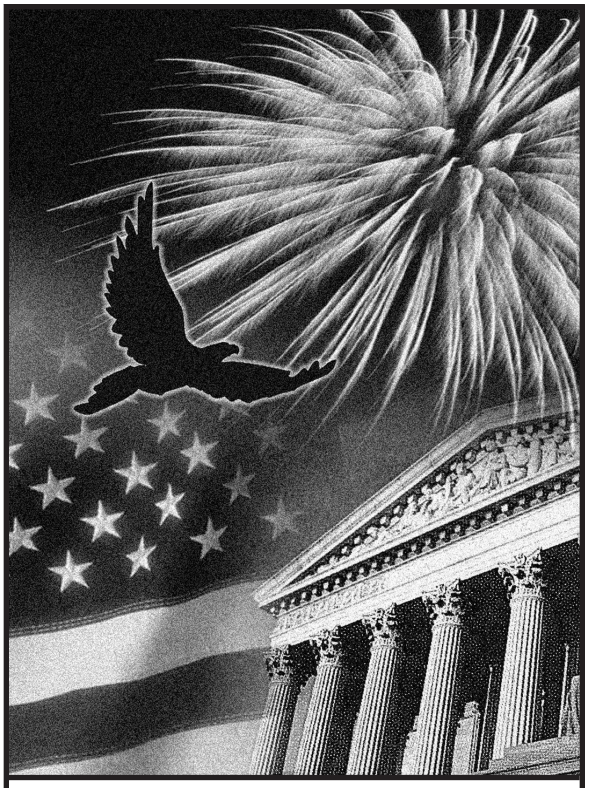
Internal Revenue Service

Publication 515
Cat. No. 15019L

Withholding of Tax on Nonresident Aliens and Foreign Entities

DRAFT AS OF February 14, 2020

For use in **2020**



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Future Developments

For the latest information about developments related to Pub. 515, such as legislation enacted after it was published, go to *IRS.gov/Pub515*.

What's New

Final Chapter 3 and Chapter 4 regulations. On January 2, 2020, final regulations under Chapters 3 and 4 were issued (85 FR 192). The final regulations adopt in final form regulations proposed on January 6, 2017 (82 FR 1645, as corrected in 82 FR 43314 and 82 FR 49549). The final regulations narrow the scope of withholding agent's obligations to collect foreign taxpayer identification numbers (foreign TINs) and dates of birth, as provided in Notice 2017-46, 2017-41 I.R.B. 275, available at *IRS.gov/irb/2017-41_IRB#NOT-2017-46*, and Notice 2018-20, 2018-12 I.R.B. 444, available at *IRS.gov/irb/2018-12_IRB#NOT-2018-20* and adopt the provisions of regulations proposed on December 18, 2018 (83 FR 64757) relating to accounts with hold mail instructions and to treaty statements provided with documentary

evidence. The final regulations also permit withholding agents to collect a foreign TIN on a written statement if certain conditions are met, and permit a nonqualified intermediary to provide a withholding statement that does not include a Chapter 4 recipient code for one or more payees if certain conditions are met.

Section 871(m) transition. On December 16, 2019, Notice 2020-2, 2020-3 I.R.B. 327, available at *IRS.gov/irb/2020-03_IRB#NOT-2020-2* was issued announcing the intention of the Department of the Treasury and the IRS to amend the section 871(m) regulations to further delay the effective/applicability date of certain rules in those final regulations. In addition, Notice 2020-2 extends for 2 years the phase-in period provided in Notice 2018-72, 2018-40 I.R.B. 522, available at *IRS.gov/irb/2018-40_IRB#NOT-2018-72* for certain provisions of the section 871(m) regulations, including certain requirements of a qualified derivatives dealer (QDD).

Reliance on proposed regulations reducing burden under FATCA and Chapter 3. On December 18, 2018, the Department of Treasury and the IRS issued proposed regulations (83 FR 64757) to reduce taxpayer burden with respect to certain requirements under Chapters 3 and 4 of the Code. A withholding agent may rely on applicable provisions of these proposed regulations in connection with completing Form 1042-S. See the Instructions for Forms 1042 and 1042-S for 2020.

Central Withholding Agreement (CWA) simplified application process. The IRS has developed a simplified application process for nonresident alien athletes and entertainers who earn less than $10,000 to apply for a CWA. Form 13930-A, Application for Central Withholding Agreement (Less than $10,000), must be submitted at *Pay.gov* at least 45 days before the first event to be covered by the CWA.

For more information on the CWA program, see *Artists and Athletes (Income Codes 42 and 43)* under *Withholding on Specific Income*, later. Also, go to *IRS.gov/Individuals/International-Taxpayers/Central-Withholding-Agreements*.

Reminders

Deposit interest paid to certain nonresident alien individuals. Deposit interest of $10 or more paid to certain nonresident alien individuals must be reported on Form 1042-S. See *Deposit interest paid to certain nonresident alien individuals*, later.

Electronic deposits. You must make all deposits of taxes paid with respect to Form 1042-S (including taxes withheld under either Chapter 3 or Chapter 4) electronically.

Substitute forms. The official Form 1042-S is the standard for substitute forms. All substitute forms must comply with the rules set out in Pub. 1179. A substitute of Form 1042-S, Copy A, must be an exact copy of the official form. If it is not, the IRS may reject the form as incorrect and may impose penalties. The IRS provides several means, including electronic, of obtaining the most frequently used tax forms. For details on the requirements of substitute forms, see Pub. 1179.

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

If you submit files on the FIRE system, it is your responsibility to verify the results of the transmission within 5 business days. The IRS will not mail error reports for files that are bad. See Pub. 1187 for information on the requirements for filing Form 1042-S electronically.

Requests for extensions on Form 8809. Requests on Form 8809 for an extension of time to file Form 1042-S should be made electronically. See *Extension to file Form 1042-S with the IRS*, later.

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

Introduction

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

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

You can send us comments through *FormComments*. Or, you can write to: Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax forms, instructions, and publications. We can't answer tax questions sent to the above address.

Tax questions. If you have a tax question not answered by this publication or the *How To Get Tax Help* section at the end of this publication, go to the IRS Interactive Tax Assistant page at *IRS.gov/Help/ITA* where you can find topics using the search feature or by viewing the categories listed.

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Useful Items

You may want to see:

Publication

- ❑ **15** (Circular E), Employer's Tax Guide
- ❑ **15-A** Employer's Supplemental Tax Guide
- ❑ **15-B** Employer's Tax Guide to Fringe Benefits
- ❑ **15-T** Federal Income Tax Withholding Methods
- ❑ **51** (Circular A), Agricultural Employer's Tax Guide
- ❑ **505** Tax Withholding and Estimated Tax
- ❑ **519** U.S. Tax Guide for Aliens
- ❑ **901** U.S. Tax Treaties
- ❑ **1179** General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns
- ❑ **1187** Specifications for Electronic Filing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding
- ❑ **5124** FATCA XML User Guide

Form (and Instructions)

- ❑ **SS-4** Application for Employer Identification Number
- ❑ **W-2** Wage and Tax Statement
- ❑ **W-4** Employee's Withholding Allowance Certificate
- ❑ **W-4P** Withholding Certificate for Pension or Annuity Payments
- ❑ **W-7** Application for IRS Individual Taxpayer Identification Number
- ❑ **W-8BEN** Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)
- ❑ **W-8BEN-E** Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)
- ❑ **W-8ECI** Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States
- ❑ **W-8EXP** Certificate of Foreign Government or Other Foreign

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Organization for United States Tax Withholding and Reporting

- ❑ **W-8IMY** Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting
- ❑ **W-8 Inst.** Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY
- ❑ **W-9** Request for Taxpayer Identification Number and Certification
- ❑ **W-9 Inst.** Instructions for the Requester of Form W-9
- ❑ **941** Employer's QUARTERLY Federal Tax Return
- ❑ **945** Annual Return of Withheld Federal Income Tax
- ❑ **1042** Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
- ❑ **1042-S** Foreign Person's U.S. Source Income Subject to Withholding
- ❑ **1042-T** Annual Summary and Transmittal of Forms 1042-S
- ❑ **8233** Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual
- ❑ **8288** U.S. Withholding Tax Return for Disposition by Foreign Persons of U.S. Real Property Interests
- ❑ **8288-A** Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests
- ❑ **8966** FATCA Report

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

Withholding of Tax

In most cases, a foreign person is subject to U.S. tax on its U.S. source income. Most types of U.S. source income received by a foreign person are subject to U.S. tax of 30%. A reduced rate, including exemption, may apply if there is a tax treaty between the foreign person's country of residence and the United States. The tax is generally withheld (Chapter 3 withholding) from the payment made to the foreign person.

The term "Chapter 3 withholding" is used in this publication descriptively to refer to withholding required under sections 1441, 1442, and 1443 of the Internal Revenue Code. In most cases, Chapter 3 withholding describes the withholding regime that requires withholding on a payment of U.S. source income. Payments to foreign persons, including nonresident alien individuals, foreign entities, and governments, may be subject to Chapter 3 withholding.

Withholding also may be required on a payment to the extent required under Chapter 4. "Chapter 4" refers to Chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code. See *Chapter 4 Withholding Requirements*, later.

CAUTION *Chapter 3 withholding does not include withholding under section 1445 of the Code (see U.S. Real Property Interest, later) or under section 1446 of the Code (see Partnership Withholding on Effectively Connected Income, later).*

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

If an amount subject to Chapter 3 withholding also is a *withholdable payment* and Chapter 4 withholding is applied to the payment, no withholding is required under Chapter 3. See *Chapter 4 Withholding Requirements*, later.

Withholding Agent

Chapter 3 Withholding Requirements

You are a withholding agent if you are a U.S. or foreign person, in whatever capacity acting, that has control, receipt, custody, disposal, or payment of an amount subject to Chapter 3 withholding. A withholding agent may be an individual, corporation, partnership, trust, association, nominee (under section 1446 of the Code), or any other entity, including any foreign intermediary, foreign partnership, or U.S. branch of certain foreign banks and insurance companies. You may be a withholding agent even if there is no requirement to withhold from a payment or even if another person has withheld the required amount from the payment.

Although several persons may be withholding agents for a single payment, the full tax is required to be withheld only once. In most cases, the U.S. person who pays an amount subject to Chapter 3 withholding is the person responsible for withholding. However, other persons may be required to withhold. For example, a payment made by a flow-through entity or nonqualified intermediary (NQI) that knows, or has reason to know, that the full amount of Chapter 3 withholding was not done by the person from which it receives a payment is required to do the appropriate withholding since it also falls within the definition of a withholding agent. In addition, withholding must be done by any QI, withholding foreign partnership, or withholding foreign trust in accordance with the terms of its withholding agreement, discussed later.

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

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

Determination of amount to withhold. You must withhold on the gross amount subject to Chapter 3 withholding. You cannot reduce the gross amount by any deductions.

If the determination of the source of the income or the amount subject to tax depends on facts that are not known at the time of payment, you must withhold an amount sufficient to ensure that at least 30% of the amount subsequently determined to be subject to withholding is withheld. In no case, however, should you withhold more than 30% of the total amount paid. You may elect to hold 30% of the payment in escrow until the earlier of the date that the amount of income from U.S. sources or the taxable amount can be determined or 1 year from the date the amount is placed in escrow, at which time the withholding becomes due, or, to the extent that withholding is not required, the escrowed amount must be paid to the payee.

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

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

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

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Chapter 4 Withholding Requirements

You are a withholding agent for purposes of Chapter 4 if you are a U.S. or foreign person, in whatever capacity acting, that has control, receipt, custody, disposal, or payment of a withholdable payment. Similar rules for determining who is a withholding agent as those described in *Chapter 3 Withholding Requirements*, earlier, also apply for Chapter 4. For purposes of Chapter 4, a withholding agent includes a participating foreign financial institution (FFI) (including a reporting Model 2 FFI) or registered deemed-compliant FFI to the extent such FFI makes a withholdable payment.

Under Chapter 4 of the Code, a withholding agent that makes a withholdable payment to a payee that is an FFI must withhold 30% on the payment unless the withholding agent is able to treat the FFI as a *participating FFI*, *deemed-compliant FFI*, or *exempt beneficial owner*. A withholding agent also must withhold 30% on a withholdable payment made to a payee that is a foreign entity other than an FFI (that is, a nonfinancial foreign entity, or NFFE) that fails to identify its substantial U.S. owners (or certify that it does not have any substantial U.S. owners) unless the payment is excepted from withholding under the regulations to section 1472. A participating FFI is a withholding agent under Chapter 4 and is required to withhold on a withholdable payment to the extent required under the FFI agreement, including on a payment made to an account holder that the FFI is required to treat as a recalcitrant account holder. A reporting Model 1 FFI is required to withhold under Chapter 4 to the extent required in the applicable Intergovernmental Agreement (IGA). A registered deemed-compliant FFI (other than a reporting Model 1 FFI) is required to withhold under Chapter 4 to the extent required under the conditions applicable to its registered deemed-compliant FFI status. See Regulations section 1.1471-5(f)(1) for a description of the types of registered deemed-compliant FFIs that may have withholding requirements.

Generally, a withholdable payment is a payment of U.S. source fixed or determinable annual or periodical (FDAP) income. Specific exceptions to withholdable payments apply instead of the exemptions from withholding or taxation provided under Chapter 3. See *Income Subject to Withholding*, later, for more information on payments of U.S. source FDAP income that are excepted from the definition of withholdable payment.

If a withholding agent makes a payment subject to both Chapter 4 withholding and Chapter 3 withholding, the withholding agent must apply the withholding provisions of Chapter 4, and need not withhold on the payment under Chapter 3 to the extent that it has withheld under Chapter 4.

Similar rules for withholding agent liability for tax, determination of amount to withhold, and when to withhold as those described in *Chapter 3 Withholding Requirements*, earlier, also apply for Chapter 4.

Forms 1042 and 1042-S Reporting Obligations

You are required to report payments subject to Chapter 3 withholding on Form 1042-S and to file a tax return on Form 1042. (See *Returns Required*, later.) You also are required to report withholdable payments to which Chapter 4 withholding was (or should have been) applied on Form 1042-S and to file a tax return on Form 1042 to report the payments. An exception from reporting may apply for Chapter 3 purposes to individuals who are not required to withhold from a payment and who do not make the payment in the course of their trade or business. A similar exception from reporting for Chapter 4 purposes may apply to an individual making a withholdable payment outside the course of the individual's trade or business (including as an agent with respect to making or receiving such payment).

Withholding and Reporting Obligations (Other Than Forms 1042 and 1042-S Reporting)

Form 1099 reporting and backup withholding. You also may be responsible as a payer for reporting payments to a U.S. person, generally on Form 1099. You must withhold 24% (backup withholding rate) from certain reportable payments made to a U.S. person that is subject to Form 1099 reporting if any of the following apply.

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

In most cases, a TIN must be provided by a U.S. nonexempt recipient (a U.S. person subject to Form 1099 reporting) on Form W-9.

A payer files a tax return on Form 945 to report backup withholding.

You may be required to file Form 1099 and, if appropriate, backup withhold, even if you do not make the payments directly to that U.S. person. For example, you are required to report income paid to a foreign intermediary or flow-through entity that collects for a U.S. person subject to Form 1099 reporting. However, you may not be required to report on Form 1099 if you make a payment to a participating FFI or registered deemed-compliant FFI that provides a withholding statement allocating the payment to a Chapter 4 withholding rate pool of U.S. payees. See *Identifying the Payee*, later, for more information. Also see *Section S. Special Rules for Reporting Payments Made Through Foreign Intermediaries and Foreign Flow-Through Entities on Form 1099* in the General Instructions for Certain Information Returns.

TIP *Foreign persons who provide a Form W-8 (or applicable documentary evidence when permitted in lieu of a Form W-8) are exempt from backup withholding and Form 1099 reporting.*

Form 8966 reporting. For Chapter 4 purposes, you may be required to report on Form 8966, FATCA Report, if you make a withholdable payment to an entity you agree to treat as an owner-documented FFI or to a passive NFFE. See *Returns Required*, later.

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

Effectively connected income by partnerships. A withholding agent that is a partnership (whether U.S. or foreign) also is responsible for withholding on its income effectively connected with a U.S. trade or business that is allocable to foreign partners. See *Partnership Withholding on Effectively Connected Income*, later, for more information.

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

Persons Subject to Chapter 3 or Chapter 4 Withholding

Chapter 3 withholding applies only to payments made to a payee that is a foreign person. It does not apply to payments made to U.S. persons.

Usually, you determine the payee's status as a U.S. or foreign person or, if you are making a withholdable payment to an entity (or are an FFI making a payment to an account holder), the payee's Chapter 4 status, based on the documentation that person provides. See *Documentation*, later. However, if you have received no documentation or you cannot reliably associate all or a part of a payment with documentation upon which you can rely, then you must apply certain *presumption rules*, discussed later.

Chapter 4 withholding applies to withholdable payments made to an entity payee that is an FFI unless the withholding agent is able to treat the FFI as a participating FFI, deemed-compliant FFI, or exempt beneficial owner. Chapter 4 withholding also applies to withholdable payments made to a passive NFFE that fails to identify its substantial U.S. owners (or certify that it does not have any substantial U.S. owners). You must establish the payee's Chapter 4 status to determine if withholding applies by applying the documentation requirements of Chapter 4, generally by obtaining a Form W-8 (or, under an applicable IGA, a similar agreed form) associated with the payment, or other

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documentation for payments made outside of the United States on offshore obligations. See Regulations section 1.1471-3(d) for details on these documentation requirements. Withholding under Chapter 4 also applies to account holders of a participating FFI or registered deemed-compliant FFI that the FFI is required to treat as recalcitrant account holders.

This section titled *Persons Subject to Chapter 3 or Chapter 4 Withholding* applies to both Chapters 3 and 4 except where otherwise indicated and except where the text clearly applies to one or the other (for example, reduced rates and exemptions under income tax treaties).

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Identifying the Payee

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

U.S. agent of foreign person. For purposes of Chapter 3, if you make a payment to a U.S. person and you have actual knowledge that the U.S. person is receiving the payment as an agent of a foreign person, you must treat the payment as made to the foreign person. However, if the U.S. person is a financial institution, you may treat the institution as the payee provided you have no reason to believe that the institution will not comply with its own obligation to withhold under Chapter 3.

For Chapter 4 purposes, if you make a withholdable payment to a U.S. person and you have actual knowledge that the U.S. person is receiving the payment as an intermediary or agent of a foreign person, you must treat the foreign person as the payee. However, if you make a withholdable payment to a U.S. financial institution or a U.S. insurance broker (to the extent the withholdable payment is a payment of an insurance premium) that is receiving the payment as an intermediary or agent, you may treat the financial institution or insurance broker as the payee if you do not have reason to know that the financial institution or insurance broker will not comply with its obligations to withhold under Chapter 4. See *Definitions*, later, for the definition of financial institution.

If the payment is not subject to Chapter 3 withholding and is not a withholdable payment, you must treat the payment as made to a U.S. person and not as a payment to a foreign person. You may be required to report the payment on Form 1099 and, if applicable, backup withhold.

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

If the owner of the entity is a foreign person, you must apply Chapter 3 withholding unless you can treat the foreign owner as a beneficial owner entitled to a reduced rate of withholding.

If the owner is a U.S. person, you do not apply Chapter 3 withholding. However, you may be required to report the payment on Form 1099 and, if applicable, backup withhold. You may assume that a foreign entity is not a disregarded entity unless you can reliably associate the payment with documentation provided by the owner or you have actual knowledge or reason to know that the foreign entity is a disregarded entity.

Special Chapter 4 rules. If you make a withholdable payment to a disregarded entity owned by an FFI, for Chapter 4 purposes you must determine whether you must treat the payment as made to a payee that is a nonparticipating FFI (to which Chapter 4 withholding applies) or a payee that is an FFI with another Chapter 4 status (such as a participating FFI). If you make a withholdable payment to a disregarded entity that is treated as a disregarded entity that is a branch of an FFI that cannot comply with the requirements of an applicable IGA or the regulations under Chapter 4, you must treat the payment as made to a nonparticipating FFI and withhold 30% of the payment. See the Instructions for Form W-8BEN-E for more information on payments to disregarded entities.

Flow-Through Entities

Chapter 3 payees. The payees of payments (other than income effectively connected with a U.S. trade or business) made to a foreign flow-through entity are the owners or beneficiaries of the flow-through entity. This rule applies for purposes of Chapter 3 withholding and for Form 1099 reporting and backup withholding. Income that is, or is deemed to be, effectively connected with the conduct of a U.S. trade or business of a flow-through entity is treated as paid to the entity.

The following are flow-through entities.

- A foreign partnership (other than a withholding foreign partnership).
- A foreign simple or foreign grantor trust (other than a withholding foreign trust).

If the Chapter 3 payee is a disregarded entity or flow-through entity for U.S. tax purposes, but the payee is claiming treaty benefits, see *Fiscally transparent entities claiming treaty benefits*, later.

Chapter 4 payees. For purposes of Chapter 4, however, a foreign entity that is a flow-through entity is a payee with respect to a payment (other than income effectively connected with the conduct of a U.S. trade or business) if the flow-through entity is:

- An FFI that is not a participating FFI or deemed-compliant FFI, or restricted distributor (an entity that operates as a distributor that holds debt or equity interests in a restricted fund as a nominee and meets the requirements described in Regulations section 1.1471-5(f)(4)) receiving the payment on behalf of its owners (in such a case, the entity is a nonparticipating FFI subject to withholding under Chapter 4); or
- An excepted NFFE that is not acting as an agent or intermediary with respect to the payment.

If you make a withholdable payment to a flow-through entity that is not one of the types described above, you must treat the partner, beneficiary, or owner (as applicable) of the flow-through entity as the payee for Chapter 4 purposes (similar to the determination of the payee for Chapter 3 purposes) (looking through partners, beneficiaries, and owners that are themselves flow-through entities that are not one of the types described above).

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

For purposes of Chapter 3, you must determine whether the owners or beneficiaries of a flow-through entity are U.S. or foreign persons, how much of the payment relates to each owner or beneficiary, and, if the owner or beneficiary is foreign, whether a reduced rate of Chapter 3 withholding applies. For purposes of Chapter 4, you must determine the Chapter 4 status of the owners or beneficiaries of a flow-through entity (subject to the exceptions described above), how much of the payment relates to each owner or beneficiary, and whether withholding under Chapter 4 applies. You make these determinations based on the documentation and other information (contained in a withholding statement) that is associated with the flow-through entity's Form W-8IMY. If you do not have all of the information that is required to reliably associate a payment with a specific payee, you must apply the presumption rules. See *Documentation* and *Presumption Rules*, later.

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

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

For purposes of Chapter 4, a foreign partnership is a payee of a withholdable payment if the partnership is a withholding foreign partnership that is not acting as an agent or intermediary with respect to the payment. If the partnership is not a withholding foreign partnership, the payees are the partners (looking through any partners that are flow-through entities that are not treated as payees under the Chapter 4 regulations).

Example 1. A nonwithholding foreign partnership has three partners: a nonresident alien

individual, a foreign corporation, and a U.S. citizen. You make a payment of U.S. source interest to the partnership. Assume that the payment is subject to Chapter 3 withholding but is not a withholdable payment. The partnership gives you a Form W-8IMY with which it associates Form W-8BEN from the nonresident alien, Form W-8BEN-E from the foreign corporation, and Form W-9 from the U.S. citizen. The partnership also gives you a complete withholding statement that enables you to associate a part of the interest payment to each partner.

You must treat all three partners as the payees of their part of the interest payment as if the payment were made directly to them. Report the payments to the nonresident alien and the foreign corporation on Forms 1042-S. Report the payment to the U.S. citizen on Form 1099-INT. You do not need to determine the Chapter 4 status of the partnership because the payment is not a withholdable payment.

Example 2. A nonwithholding foreign partnership has two partners: a foreign corporation and a nonwithholding foreign partnership. The second partnership has two partners, both nonresident alien individuals. You make a payment of U.S. source interest to the first partnership. Assume that the payment is subject to Chapter 3 withholding but is not a withholdable payment. The partnership gives you a valid Form W-8IMY with which it associates a Form W-8BEN-E from the foreign corporation and a Form W-8IMY from the second partnership. In addition, Forms W-8BEN from the partners are associated with the Form W-8IMY from the second partnership. The Forms W-8IMY from the partnerships have complete withholding statements associated with them. Because you can reliably associate a part of the interest payment with the Form W-8BEN-E provided by the foreign corporation and the Forms W-8BEN provided by the nonresident alien individual partners as a result of the withholding statements, you must treat them as the payees of the interest. You do not need to determine the Chapter 4 status of the partnership because the payment is not a withholdable payment.

Example 3. You make a payment of U.S. source dividends to a withholding foreign partnership. Assume that the payment is subject to Chapter 3 withholding and is not a withholdable payment. The partnership has two partners, both foreign corporations. You can reliably associate the payment with a valid Form W-8IMY from the partnership on which it represents that it is a withholding foreign partnership. You must treat the partnership as the payee of the dividends for purposes of both Chapter 3 and Chapter 4, and you must determine the Chapter 4 status of the partnership.

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

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

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

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

Example. A foreign simple trust has three beneficiaries: two nonresident alien individuals and a U.S. citizen. You make a payment of U.S. source interest to the foreign trust. Assume that the payment is subject to Chapter 3 withholding but is not a withholdable payment. The foreign trust gives you a Form W-8IMY with which it associates Forms W-8BEN from the nonresident aliens and a Form W-9 from the U.S. citizen. The trust also gives you a complete withholding statement that enables you to associate the interest payment with the forms provided by each beneficiary. You must treat all three beneficiaries as the payees of their part of the interest payment as if the payment were made directly to them. Report the payment to the nonresident aliens on Forms 1042-S. Report the payment to the U.S. citizen on Form 1099-INT. You do not need to establish the Chapter 4 status of the trust because the payment is not a withholdable payment.

Fiscally transparent entities claiming treaty benefits. For purposes of claiming treaty benefits, if an entity is fiscally transparent for U.S. tax purposes (for example, a disregarded entity or flow-through entity for U.S. tax purposes) and the entity is or is treated as a resident of a treaty country, it will derive the item of income and may be eligible for treaty benefits. In such case, the entity is the payee for Chapter 3 purposes. It does not need to be taxed on such item, but the item must be accounted for as the entity's income, not the interest holders' income, under the law of the treaty country whose treaty it is invoking. It also must meet any other requirements for claiming benefits, including a limitation on benefits article, if any, in the treaty. The entity should provide a Form W-8BEN-E in such circumstances. If, for Chapter 3 purposes, the payee is a foreign corporation or other non-flow-through entity for U.S. tax purposes, it is nonetheless not entitled to claim treaty benefits if the entity is fiscally transparent in its country of residence (that is, foreign reverse hybrid). Instead, any interest holder resident in that country will derive its allocable share of the items of income paid to the foreign reverse hybrid and may be eligible for benefits. If an interest holder is a resident of a third country, the interest holder may claim treaty benefits under its treaty with the United States, if any, only if the foreign reverse hybrid is fiscally transparent under the laws of the third country. If an interest holder is entitled to treaty benefits under its country of residence, the payee may provide a Form W-8IMY and attach Form W-8BEN or W-8BEN-E from any interest holder that claims treaty benefits on such income.

The determination of whether an entity is fiscally transparent is made on an item of income basis (that is, the determination is made separately for interest, dividends, royalties, etc.). An interest holder in an entity makes the determination by applying the laws of the jurisdiction where the interest holder is organized, incorporated, or otherwise considered a resident. An entity is considered to be fiscally transparent with respect to the income to the extent the laws of that jurisdiction require the interest holder to separately take into account on a current basis the interest holder's share of the income, whether or not distributed to the interest holder, and the character and source of the income to the interest holder are determined as if the income was realized directly from the source that paid it to the entity. Subject to the *Standards of Knowledge for Purposes of Chapter 3* and *Standards of Knowledge for Purposes of Chapter 4* discussed later, you generally make the determination that an entity is fiscally transparent based on a Form W-8IMY provided by the entity.

For Chapter 3 purposes, the payees of a payment made to a fiscally transparent entity are the interest holders of the entity if the interest holders are claiming treaty benefits with respect to the payment.

For Chapter 4 purposes, if you are making a withholdable payment to a fiscally transparent entity, you must apply the rules of Chapter 4 to determine the payee (applying the rules described earlier) and whether Chapter 4 withholding applies to the payment based on the payee's Chapter 4 status. Thus, Chapter 4 withholding may apply to a withholdable payment made to a fiscally transparent entity based on the Chapter 4 status of the entity even when the interest holders in the entity would be eligible for reduced withholding under an income tax treaty with respect to the payment. Treaty benefits may be granted to the interest holder when the payment made is not subject to Chapter 4 withholding based on the Chapter 4 status of both the entity and the interest holder.

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

A receives royalty income from U.S. sources that is not effectively connected with the conduct of a trade or business in the United States and that is not a withholdable payment. The Chapter 4 status of A does not need to be determined because the payment is not a withholdable payment.

For U.S. income tax purposes, A is treated as a partnership. Country X treats A as a partnership and requires the interest holders in A to separately take into account on a current basis their respective shares of the income paid to A even if the income is not distributed. The laws of country X provide that the character and source of the income to A's interest holders are determined as if the income were realized

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directly from the source that paid it to A. Accordingly, A is fiscally transparent in its jurisdiction, country X.

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

Foreign Intermediaries

In most cases, if you make payments to a foreign intermediary, the payees are the persons for whom the foreign intermediary collects the payment, such as account holders or customers, not the intermediary itself. This rule applies for purposes of Chapter 3 withholding and for Form 1099 reporting and backup withholding and Chapter 4 withholding, provided the intermediary is not a nonparticipating FFI to which you make a withholdable payment to which Chapter 4 withholding applies. You may, however, treat a QI that has assumed primary withholding responsibility for a payment as the payee, and you are not required to withhold.

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

For purposes of Chapter 3, you must determine whether the customers or account holders of a foreign intermediary are U.S. or foreign persons and, if the account holder or customer is foreign, whether a reduced rate of, or exemption from, Chapter 3 withholding applies. For purposes of Chapter 4, you must generally determine the Chapter 4 status of the account holders of a foreign intermediary if the payment is a withholdable payment. The determination for Chapter 3 purposes is not required when withholding applies under Chapter 4 (that is, when the Chapter 4 status of the foreign intermediary is a nonparticipating FFI or an entity or branch treated as a nonparticipating FFI under an applicable IGA). You make these determinations based on the foreign intermediary's Form W-8IMY and associated information and documentation. If you do not have all of the information or documentation that is required to reliably associate a payment with a payee, you must apply the presumption rules of Chapter 3, and must apply the presumption rules of Chapter 4 to the foreign intermediary if the Chapter 4 status of the entity (when required) cannot be determined. See *Documentation* and *Presumption Rules*, later.

Special rule for Chapter 4. For purposes of Chapter 4, a foreign person acting as an intermediary is generally not the payee if the foreign person is:

- An NFFE, unless the NFFE is a QI that has assumed primary Chapters 3 and 4 withholding responsibility; or
- A participating FFI, deemed-compliant FFI, or restricted distributor, unless such entity is a QI that has assumed primary Chapters 3 and 4 withholding responsibility.

If you make a withholdable payment to one of the types of entities described above, the payee is the person for whom the agent or intermediary collects the payment.

Nonqualified intermediary (NQI). An NQI is any intermediary that is a foreign person and that is not a QI. The payees of a payment made to an NQI for both Chapter 3 and Chapter 4 purposes are the customers or account holders on whose behalf the NQI is acting.

Example. You make a payment of interest to a foreign bank that is an NQI. Assume the payment is subject to Chapter 3 withholding but is not a withholdable payment. The bank gives you a Form W-8IMY, the Forms W-8BEN of two foreign persons, and a Form W-9 from a U.S. person for whom the bank is collecting the payments. The bank also associates with its Form W-8IMY a withholding statement on which it allocates the interest payment and provides all other information required to be on the withholding statement. The account holders are the payees of the interest payment. You should report the part of the interest paid to the two foreign persons on Forms 1042-S and the part paid to the U.S. person on Form 1099-INT. You do not need to establish the Chapter 4 status of the NQI because the payment is not a withholdable payment.

Qualified intermediary (QI). A QI generally is a foreign intermediary (or foreign branch of a U.S. intermediary) that has entered into a *QI agreement* (discussed later) with the IRS. Certain entities also may act as QIs even when they are not intermediaries. You may treat a QI as a payee to the extent it assumes primary Chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility for a payment. In this situation, the QI is required to withhold the tax. You can determine whether a QI has assumed responsibility from the Form W-8IMY provided by the QI.

A payment to a QI to the extent it does not assume primary Chapters 3 and 4 withholding responsibility is considered made to the person on whose behalf the QI acts. If a QI does not assume Form 1099 reporting and backup withholding responsibility, you must report on Form 1099 and, if applicable, backup withhold as if you were making the payment directly to the U.S. person. See *Qualified Intermediary (QI)*, later, for a discussion of withholding rate pools and when a QI may include a U.S. nonexempt recipient in a U.S. payee pool.

Qualified derivatives dealers (QDDs). For the definition of QDD, see *Qualified derivatives dealer (QDD)*, later. For QDD liability, see *Amounts paid to QDDs*, later.

Branches of financial institutions. Branches of financial institutions are not permitted to operate as QIs if they are located outside of countries having approved "know-your-customer" (KYC) rules. The countries with approved KYC rules are listed at *IRS.gov/Businesses/International-Businesses/List-of-Approved-KYC-Rules*.

QI agreement. FFIs, foreign clearing organizations, and foreign branches of U.S. financial institutions or clearing organizations can enter into an agreement with the IRS to become a QI. An eligible entity (as defined in Regulations section 1.1441-1(e)(6)(ii)) also may enter into a QI agreement for purposes of becoming a QDD. To enter into a QI agreement, an FFI must have a Chapter 4 status as:

- A participating FFI (including a reporting Model 2 FFI);
- A registered deemed-compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed-compliant); or
- An FFI treated as a deemed-compliant FFI under an applicable Model 1 IGA that is subject to similar due diligence and reporting requirements with respect to U.S. accounts as those applicable to a registered deemed-compliant FFI (a "registered deemed-compliant Model 1 IGA FFI").

Certain foreign corporations that are NFFEs acting on behalf of persons other than shareholders or foreign central banks of issue also may apply to the IRS to become QIs.

See Revenue Procedure 2017-15, available at *IRS.gov/irb/2017-03_IRB#RP-2017-15*, for more information on becoming a QI.

An entity may apply for QI status at *IRS.gov/Businesses/Corporations/Qualified-Intermediary-System*.

Note. A QI (other than an NFFE acting on behalf of persons other than shareholders and certain central banks) also must register at *IRS.gov/FATCA* to obtain its applicable Chapter 4 status and global intermediary identification number (GIIN).

Documentation requirements. For documentation requirements applicable to payments made to QIs, see *Responsibilities and Documentation*, discussed later under *Qualified Intermediary (QI)*.

Reporting requirements. For the reporting requirements of QIs, see *Form 1042-S reporting* and *Collective refund procedures*, discussed later under *Qualified Intermediary (QI)*.

U.S. branches of foreign banks and foreign insurance companies. Special rules apply to a U.S. branch of a foreign bank subject to Federal Reserve Board supervision or a foreign insurance company subject to state regulatory supervision. If you make a payment of an amount subject to Chapter 3 withholding or a withholdable payment to a U.S. branch of a foreign bank or insurance company that agrees to be treated as a U.S. person, you may treat the

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U.S. branch as a payee that is a U.S. person, provided you receive a Form W-8IMY from the U.S. branch that you can reliably associate with the payment. If you treat the branch as a U.S. person, you are not required to withhold on an amount subject to Chapter 3 withholding or a withholdable payment. Even though you agree to treat the branch as a U.S. person, you must report the payments made to the branch on Form 1042-S.

A territory financial institution is a financial institution as defined for Chapter 4 purposes (except when it is an investment entity that is not also a depository institution, custodial institution, or specified insurance company) incorporated or organized under the laws of a possession of the United States. A territory financial institution that is an intermediary or flow-through entity is treated as a U.S. branch that agrees to be treated as a U.S. person. The special rules described in this section apply to a territory financial institution.

If you are paying a U.S. branch an amount that is not subject to Chapter 3 withholding and is not a withholdable payment, treat the payment as made to a foreign person, irrespective of any agreement to treat the branch as a U.S. person for such amounts. Consequently, amounts not subject to Chapter 3 withholding and that are not withholdable payments that are paid to a U.S. branch are not subject to Form 1099 reporting or backup withholding.

Alternatively, a U.S. branch may provide you with a Form W-8IMY with which it associates the documentation of the persons on whose behalf it acts. In this situation, the U.S. branch is not treated as a U.S. person, and the payees are the persons on whose behalf the branch acts provided you can reliably associate the payment with valid documentation from those persons. See *Nonqualified Intermediary (NQI)* under *Documentation*, later.

If you cannot reliably associate the payment with a Form W-8IMY from the U.S. branch but you have obtained an employer identification number (EIN) for the branch, you should treat the payment as a payment to a foreign person of income that is effectively connected with the conduct of a trade or business in the United States. If you cannot reliably associate the payment with a Form W-8IMY from the U.S. branch and you have not obtained an EIN for the branch, you should treat the payment as a payment to a foreign person of income that is not effectively connected with the conduct of a trade or business in the United States.

Withholding foreign partnership and withholding foreign trust. A withholding foreign partnership (WP) is any foreign partnership that has entered into a WP agreement with the IRS and is acting in that capacity with respect to its partners. A withholding foreign trust (WT) is a foreign simple or grantor trust that has entered into a WT agreement with the IRS and is acting in that capacity with respect to its owners and beneficiaries. In order to enter into a WP or WT agreement with the IRS, a WP or WT that is an FFI must have Chapter 4 status as a:

- Participating FFI (including a reporting Model 2 FFI),
- Registered-deemed compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed compliant),
- Registered deemed-compliant Model 1 IGA FFI, or
- Retirement fund.

A WP or WT that is an NFFE also may enter into a WP or WT agreement with the IRS. An FFI that is a foreign reverse hybrid entity may apply to enter into a WP agreement, provided that the FFI is a participating FFI, a registered deemed-compliant FFI, or a registered deemed-compliant Model 1 IGA FFI.

A WP or WT must act in that capacity for reportable amounts that are distributed to, or included in the distributive share of, its direct partners, beneficiaries, or owners. A WP or WT may act in that capacity for reportable amounts that are distributed to, or included in the distributive share of, its indirect partners, beneficiaries, or owners that are not U.S. nonexempt recipients (except for a U.S. nonexempt recipient that is included in a Chapter 4 withholding rate pool of U.S. payees). A WP or WT acting in that capacity must assume primary Chapters 3 and 4 withholding responsibility for payments subject to withholding and must assume certain reporting requirements with respect to its U.S. partners, beneficiaries, and owners. You may treat a WP or WT as a payee if it has provided you with *documentation* (discussed later) that represents that it is acting as a WP or WT for such amounts.

See Revenue Procedure 2017-21, available at *IRS.gov/irb/2017-06_IRB#RP-2017-21*, for more information on becoming a WP or WT.

WP agreement and WT agreement. The WP agreement and WT agreement and the application procedures for the agreements are in Revenue Procedure 2017-21. An entity applies for WP or WT status at *IRS.gov/Businesses/Corporations/Qualified-Intermediary-System*. The WP or WT will be assigned a WP-EIN or WT-EIN to be used only when acting in that capacity.

A WP or WT that is an FFI (other than a retirement fund) also must register with the IRS at *IRS.gov/Businesses/Corporations/FATCA-Foreign-Financial-Institution-Registration-System* to obtain its applicable Chapter 4 status and GIIN.

Documentation. A WP or WT must provide you with a Form W-8IMY that certifies that the WP or WT is acting in that capacity and provides all other information and certifications required by the form, including its WP-EIN or WT-EIN. When you make a withholdable payment to a WP or WT, the WP or WT generally also may provide a certificate of a Chapter 4 status permitted of a WP or WT (and GIIN, if applicable). The WP or WT, when acting in such capacity, is not required to provide a withholding statement and is not required to disclose any information regarding its direct partners, beneficiaries, or owners or any indirect partner, beneficiary, or owner for which it acts as a WP or WT that is not a U.S. nonexempt recipient (except for a U.S. nonexempt recipient included in a Chapter 4 withholding rate pool of U.S. payees). A Chapter 4 withholding rate pool also means a payment of a single type of income that is allocated to U.S. payees when the WP provides the certification required on Form W-8IMY for allocating payments to this pool. When a WP or WT is not acting as a WP or WT with respect to an amount distributed to, or included in the distributive share of, an indirect partner, beneficiary, or owner, it must provide you with a nonwithholding foreign partnership or nonwithholding foreign trust withholding certificate on a Form W-8IMY and documentation for its indirect partners, beneficiaries, and owners that are not included in a Chapter 4 withholding rate pool.

Foreign Persons

Rules relevant to Chapters 3 and 4. A payee is subject to withholding only if it is a foreign person. A foreign person includes a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, foreign estate, and any other person that is not a U.S. person. It also includes a foreign branch of a U.S. financial institution if the foreign branch is a QI. In most cases, the U.S. branch of a foreign corporation or partnership is treated as a foreign person. The determination of whether a foreign person is treated as an entity or as a foreign corporation, foreign partnership, or foreign trust is made under U.S. tax rules.

If an amount is both a withholdable payment and an amount subject to Chapter 3 withholding and the withholding agent withholds under Chapter 4, it may credit this amount against any tax due under Chapter 3.

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

Married to U.S. citizen or resident alien. Nonresident alien individuals married to U.S. citizens or resident aliens may choose to be treated as resident aliens for certain income tax purposes. However, these individuals are still subject to the Chapter 3 withholding rules that apply to nonresident aliens for all income except wages. Wages paid to these individuals are subject to graduated withholding. See *Wages Paid to Employees—Graduated Withholding*, later.

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

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

1. 31 days during the current calendar year; and

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

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

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

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

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

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

For more information, see Pub. 570.

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

Guam or Northern Mariana Islands corporations. A corporation created or organized in, or under the laws of, Guam or the CNMI is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

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

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

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

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

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

Other foreign organizations, associations, and charitable institutions. An organization may be exempt from income tax under section 501(a) of the Internal Revenue Code and Chapter 4 withholding tax even if it was formed under foreign law. In most cases, you do not have to withhold tax on payments of income to these foreign tax-exempt organizations unless the IRS has determined that they are foreign private foundations.

Payments to these organizations, however, must be reported on Form 1042-S if the payment is subject to Chapter 3 withholding, even though no tax is withheld.

You must withhold tax on the unrelated business income (as described in Pub. 598) of foreign tax-exempt organizations in the same way that you would withhold tax on similar income of nonexempt organizations when the organization does not provide you a Form W-8ECI to certify that the income is effectively connected with a U.S. trade or business of the organization.

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

Additional Rules Specific to Chapter 4

A payee may be subject to Chapter 4 withholding only if it is a foreign entity. A foreign entity for Chapter 4 purposes means any entity that is not a U.S. person and includes a territory entity as defined in Regulations section 1.1471-1(b)(129).

A foreign entity is subject to Chapter 4 withholding if it is a nonparticipating FFI or a passive NFFE that does not provide the appropriate certification regarding its substantial U.S. owners. A nonparticipating FFI is an FFI other than a *participating FFI*, *deemed-compliant FFI*, or *exempt beneficial owner*. See *Definitions*, later, for the definitions of these terms. A passive NFFE is an NFFE other than a publicly traded corporation, certain affiliated entities related to a publicly traded corporation, certain territory entities, active NFFEs, and excluded FFIs.

For Chapter 4 purposes, a U.S. person does not include a foreign insurance company that has made an election under section 953(d) if it is a specified insurance company and is not licensed to do business in any state. Notwithstanding the foregoing, a withholding agent should treat such entity as a U.S. person for purposes of documenting the entity's status for purposes of Chapters 3 and 4.

Documentation

Documentation for Chapter 3

For purposes of Chapter 3, in most cases, you must withhold 30% from the gross amount paid to a foreign payee unless you can reliably associate the payment with valid documentation that establishes either of the following.

- The payee is a U.S. person.
- The payee is a foreign person that is the beneficial owner of the income and is entitled to a reduced rate of withholding under the Code or an applicable income tax treaty.

For rules related to when a withholding agent may rely on an otherwise valid withholding certificate received electronically from a third-party repository, see Regulations section 1.1441-1(e)(4)(iv)(E).

If withholding is applied under Chapter 4 on a payment, no withholding will be required on such payment under Chapter 3.

Documentation for Chapter 4

If you make a withholdable payment, you must determine the Chapter 4 status of payees, beneficial owners, and intermediaries and flow-through entities receiving the payment to the extent required for Chapter 4 purposes. You also must determine the Chapter 4 status of persons that own an interest in an entity receiving a withholdable payment that you treat as an owner-documented FFI, provided you are either a U.S. financial institution, participating FFI, or

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reporting Model 1 FFI. To establish a Chapter 4 status, you generally must obtain a valid withholding certificate or documentary evidence that you can reliably associate with the payment. If you make a payment to a passive NFFE, you must obtain either a certification that the NFFE does not have any substantial U.S. owners, or the name, address, and TIN of each substantial U.S. owner of the NFFE (or, under an applicable IGA, each controlling person that is a specified U.S. person).

You can reliably associate a payment with a Form W-8 for purposes of establishing a payee's Chapter 4 status in most cases if, prior to the payment, you obtain a valid form that contains the information required for Chapter 4 purposes, you can reliably determine how much of the payment relates to the form, and you have no actual knowledge or reason to know that any of the information, certifications, or statements in, or associated with, the form is unreliable or incorrect for Chapter 4 purposes. See *Standards of Knowledge for Purposes of Chapter 4*, later, for the reason to know standards that apply for Chapter 4 purposes.

For the requirements for documenting specific Chapter 4 statuses of persons receiving withholdable payments, see Regulations section 1.1471-3(d). For rules related to when a withholding agent may rely on an otherwise valid withholding certificate received electronically from a third-party repository, see Regulations section 1.1441-1(e)(4)(iv)(E). Also see Regulations section 1.1471-3(d) for the extent to which a withholding agent may rely on documentary evidence (other than a Form W-8) to establish the Chapter 4 status of an entity payee, including the forms of documentary evidence permitted for each specific Chapter 4 status. For the requirements for documentary evidence, see Regulations section 1.1471-3(c)(5). If you make a withholdable payment to an entity payee and cannot reliably associate the payment with a valid withholding certificate or valid documentary evidence, you must apply the Chapter 4 presumption rules described in *Presumption Rules for Chapter 4*, later.

You may rely on the same documentation for purposes of both Chapters 3 and 4 provided the documentation is sufficient to meet the requirements of each chapter. For example, you may use a W-8BEN-E to obtain both the Chapter 3 and Chapter 4 statuses of an entity providing the form.

Additional Documentation Rules Applicable to Chapters 3 and 4

In most cases, you must reliably associate the payment with valid documentation to apply reduced withholding and must get the documentation before you make the payment. The documentation is not valid if you know, or have reason to know, that it is unreliable or incorrect. See *Standards of Knowledge for Purposes of Chapter 3* and *Standards of Knowledge for Purposes of Chapter 4*, later.

If you cannot reliably associate a payment with valid documentation, you must use the *presumption rules* discussed later to determine the rate of withholding. For example, if you do not have documentation or you cannot determine the part of a payment that is allocable to specific documentation, you must use the presumption rules of section 1441.

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

Section 1446 withholding. Under section 1446 of the Code, a partnership must withhold tax on its effectively connected income allocable to a foreign partner. In most cases, a partnership determines if a partner is a foreign partner and the partner's tax classification based on the withholding certificate provided by the partner. This is the same documentation that is filed for Chapter 3 withholding, but may require additional information as discussed under each of the forms in this section.

Documentation rule for joint payees. If you make a payment to joint payees (such as holders of a joint account), you need to get documentation from each payee. If you make a payment to joint payees and cannot reliably associate the payment with documentation from all of the payees, you generally must presume the payment is made to an unidentified U.S. person. If the payment is a withholdable payment and any of the payees do not appear, by name or other information in the account file, to be an individual, you must treat the entire amount as a payment made to an undocumented foreign person. However, if one of the joint payees has provided you with a Form W-9, you must treat the payment as made to that payee.

Form W-9. In most cases, you can treat the payee as a U.S. person if the payee gives you a Form W-9. The Form W-9 can be used only by a U.S. person and must contain the payee's TIN. U.S. persons are not subject to Chapter 3 withholding, but may be subject to:

- Form 1099 reporting and backup withholding under section 3406,
- Reporting as a U.S. account holder of a participating FFI or registered deemed-compliant FFI, and
- Classification as a recalcitrant account holder of a participating FFI or registered deemed-compliant FFI for Chapter 4 purposes (including Chapter 4 withholding) when the FFI is unable to report the information required with respect to the account holder.

Forms W-8. In most cases, a foreign payee of the income should give you a form in the Form W-8 series.

If certain requirements are met, the foreign person can give you documentary evidence, rather than a Form W-8. You can rely on documentary evidence in lieu of a Form W-8 for an amount paid outside the United States with respect to an offshore obligation. Refer to *Offshore obligations*, later, to determine whether a payment qualifies as such a payment.

Other documentation. Other documentation may be required to claim an exemption from, or a reduced rate of, Chapter 3 withholding on pay for personal services. The nonresident alien individual may have to give you a Form W-4 or a Form 8233. These forms are discussed in *Pay for Personal Services Performed* under *Withholding on Specific Income*, later.

Beneficial Owners

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

Claiming treaty benefits for purposes of Chapter 3. You may apply a reduced rate of Chapter 3 withholding to a foreign person that provides a Form W-8 claiming a reduced rate of withholding under an income tax treaty only if the person provides a U.S. or foreign TIN and certifies that:

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

If the payment you make is a withholdable payment to an entity, a requirement to withhold under Chapter 4 may apply based on the Chapter 4 status of the payee regardless of whether a claim of treaty benefits may apply to such payee or other person receiving the income.

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

Limitations on benefits provisions in income tax treaties generally prevent third country residents (unless the treaty contains a derivative benefits rule) and others that do not have a substantial nexus to the treaty country from obtaining treaty benefits. For example, a foreign corporation may not be entitled to a reduced rate of withholding unless a minimum percentage of its owners are citizens or residents of the United States or the treaty country. Foreign entities that are residents of a country whose income tax treaty with the United States contains a limitation on benefits article are eligible for treaty benefits only if they satisfy one of the objective tests under the limitation on benefits article or obtain a favorable discretionary determination from the U.S. competent authority.

The exemptions from, or reduced rates of, U.S. tax vary under each treaty. You must check the provisions of the tax treaty that apply. See *Tax Treaties*, later, for information on how to access tax treaties.

If you know, or have reason to know, that an owner of income is not eligible for treaty benefits claimed or if the United States does not have an income tax treaty in force with that country, you may not reduce the rate of

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withholding. You are not, however, responsible for misstatements on a Form W-8, documentary evidence, or statements accompanying documentary evidence for which you did not have actual knowledge, or reason to know, that the statements were incorrect. Certain withholding agents, such as financial institutions, have limited reason to know requirements for this purpose. See Regulations section 1.1441-7(b) for these requirements.

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

- Income from marketable securities (discussed next).
- Unexpected payments to an individual (discussed under *U.S. or Foreign TINs*, later).

The allowance to provide a foreign TIN (rather than a U.S. TIN) does not apply to a payment to compensate an individual for personal services.

See *U.S. or Foreign TINs*, later, for when a foreign person is required to provide a foreign TIN for purposes other than making a treaty claim.

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

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

Offshore obligations. If a payment is made outside the United States with respect to an offshore obligation, a payee may give you documentary evidence, rather than a Form W-8, to establish that the payee is a foreign person. See Regulations section 1.6049-5(c)(1) for the requirements for documentary evidence for offshore obligations. For accounts opened on or after July 1, 2014, through December 31, 2014, you may use the rules regarding the use of documentary evidence under Regulations sections 1.6049-5(c)(1) and (c)(4) as in effect prior to the issuance of the temporary regulations.

A payment is made outside the United States if you complete the acts necessary to effect the payment outside the United States. However, an amount paid by a bank or other financial institution on a deposit or account usually will be treated as paid at the branch or office where the amount is credited unless the other requirements of Regulations section 1.6049-5(e)(2) are met with respect to the branch or office, unless the amount is collected by the financial institution as an agent of the payee. An offshore obligation is an account maintained at an office or branch of a bank or other financial institution located outside the United States or an obligation, contract, or other instrument with respect to which the payer of the payment is either engaged in business as a broker or dealer in securities or a financial institution that engages in significant activities at an office or branch located outside the United States.

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

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

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

In addition to the documentary evidence, a foreign beneficial owner that is an entity must provide a statement that it derives the income for which it claims treaty benefits and that it meets one or more of the conditions set forth in a limitation on benefits article, if any (or similar provision), contained in the applicable treaty and must identify the specific limitation on benefits provision. In the case of a withholdable payment made to an entity, you also must obtain the applicable documentation to establish that withholding does not apply under Chapter 4.

Form W-8BEN. This form is used by a foreign individual to:

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

Note. Form W-8BEN is now used exclusively by individuals. Entities documenting their status as a foreign person and beneficial owner for Chapter 3 purposes, their Chapter 4 status as a payee for Chapter 4 purposes, or eligibility for making a claim of treaty benefits (if applicable) should use Form W-8BEN-E.

A withholding agent in some cases may substitute its own form for a Form W-8BEN for individuals. Solely for purposes of Chapter 3, a Form W-8BEN with a revision date of February 2006 provided to you by an entity before January 1, 2015, will remain valid until the form's validity expires under the applicable Chapter 3 regulations. For purposes of Chapter 4, a Form W-8BEN with a revision date of February 2006 provided to you by an entity before such date is and will remain valid to the extent permitted under Chapter 4.

Form W-8BEN also may be used to claim that the foreign individual is exempt from Form 1099 reporting and backup withholding for income that is not subject to Chapter 3 withholding and is not a withholdable payment. For example, a foreign person may provide a Form W-8BEN to a broker to establish that the gross proceeds from the sale of securities are not subject to Form 1099 reporting or backup withholding.

Date of birth requirement for certain account holders. If you are a U.S. office or branch of a depository institution, custodial institution, investment entity, or specified insurance company (each as defined in Regulations section 1.1471-5(e)) documenting an individual account holder (as defined in Regulations section 1.1471-5(a)(3)) of an account that is a financial account (as defined in Regulations section 1.1471-5(b)), you must obtain the individual account holder's date of birth on the Form W-8BEN in order for the form to not be invalid for a payment of U.S. source income reportable on Form 1042-S. If the individual's date of birth is not provided on the Form W-8BEN, the form is not invalid if you otherwise have the date of birth in your account files for the account holder or you obtain the date of birth on a written statement (including a written statement transmitted by email) from the account holder and associate the written statement with the Form W-8BEN. See the related Foreign TIN requirement discussed under *Foreign TIN requirement for account holders*, later, which also generally applies with respect to accounts described in this paragraph.

Form W-8BEN-E. This form is used by a foreign entity to:

- Establish foreign status;
- Establish an entity's Chapter 4 status to the extent required for Chapter 4 purposes;
- Claim that such entity is the beneficial owner of the income for which the form is

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being furnished or a partner in a partnership subject to section 1446 withholding; and
- If applicable, claim a reduced rate of, or exemption from, Chapter 3 withholding under an income tax treaty.

Form W-8BEN-E also may be used to claim that the foreign entity is exempt from Form 1099 reporting and backup withholding for income that is not subject to Chapter 3 withholding and is not a withholdable payment. For example, a foreign entity may provide a Form W-8BEN-E to a broker to establish that the gross proceeds from the sale of securities are not subject to Form 1099 reporting or backup withholding.

An entity payee also may provide a Form W-8BEN-E to establish that certain income from notional principal contracts is not effectively connected with the conduct of a U.S. trade or business. In addition, a foreign hybrid entity claiming treaty benefits on its own behalf should provide you with a Form W-8BEN-E with respect to the income for which treaty benefits are being claimed. In certain cases, a similar agreed form may be associated with the payment instead of a Form W-8BEN-E.

Form W-8ECI. This form is used by a foreign person to:
- Establish foreign status,
- Claim that such person is the beneficial owner of the income for which the form is being furnished, and
- Claim that the income is effectively connected with the conduct of a trade or business in the United States. (See *Effectively Connected Income*, later.)

Effectively connected income for which a valid Form W-8ECI has been provided is generally not subject to Chapter 3 withholding or withholding under Chapter 4.

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

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

Form W-8EXP. This form is used by a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession to:
- Establish foreign status,
- Establish the entity's Chapter 4 status to the extent required for Chapter 4 purposes,
- Claim that such person is the beneficial owner of the income for which the form is being furnished, and
- Claim an exemption from withholding under both Chapter 3 and Chapter 4 for such entity or that the entity is a foreign private foundation subject to the 4% tax. See section 1443 for the withholding required for a payment made to such an entity.

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

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

Foreign Intermediaries and Foreign Flow-Through Entities

Payments made to a foreign intermediary or foreign flow-through entity that is not a QI that assumes primary Chapters 3 and 4 withholding responsibility, a WP, a WT, or a branch treated as a U.S. person (see *U.S. branches of foreign banks and foreign insurance companies*, earlier) are treated as made to the payees on whose behalf the intermediary or entity acts except when the intermediary or flow-through entity is subject to Chapter 4 withholding. See *Flow-Through Entities* and *Foreign intermediaries*, earlier. The Form W-8IMY provided by a foreign intermediary or flow-through entity must be accompanied by additional information for you to be able to reliably associate the payment with a payee. The additional information required depends on the type of intermediary or flow-through entity and the extent of the withholding responsibilities it assumes.

Form W-8IMY. This form is used by foreign intermediaries and foreign flow-through entities, as well as certain U.S. branches, to:
- Represent that a foreign person is a QI or NQI;
- Establish the entity's Chapter 4 status when required for Chapter 4 purposes;
- When applicable, certify that the entity is a participating FFI, a registered deemed-compliant FFI, or a QI that may provide a withholding statement allocating a payment to a Chapter 4 withholding rate pool of U.S. payees;
- Represent, if applicable, that the QI is assuming primary Chapters 3 and 4 withholding responsibility and/or primary Form 1099 reporting and backup withholding responsibility;
- Represent that a foreign partnership or a foreign simple or grantor trust is a withholding foreign partnership or a withholding foreign trust;
- Represent that a foreign flow-through entity is a nonwithholding foreign partnership, or a nonwithholding foreign trust;
- Represent that the provider is a U.S. branch of a foreign bank or insurance company and either is agreeing to be treated as a U.S. person or is transmitting documentation of the persons on whose behalf it is acting for the payments;
- Represent its status as a qualified securities lender with respect to payments of U.S. source substitute dividends;
- Represent its status as a QI acting as a QDD for certain payments; and
- Represent that, for purposes of section 1446, it is an upper-tier foreign partnership or a foreign grantor trust and that the form is being used to transmit the required documentation. For information on qualifying as an upper-tier foreign partnership, see Regulations section 1.1446-5.

For purposes of Chapter 4, an intermediary or flow-through entity that is a participating FFI or registered deemed-compliant FFI receiving a withholdable payment may, instead of providing documentation for each payee, provide pooled allocation information as described under *FFI withholding statement*, later.

FFI withholding statement. An FFI withholding statement must be provided by a participating FFI or registered deemed-compliant FFI (including a U.S. branch of a participating FFI that is not treated as a U.S. person) that is an NQI, nonwithholding foreign partnership, nonwithholding foreign trust, or a QI that makes an election to be withheld on for Chapter 4 purposes (that is, a QI that does not assume Chapter 3 or 4 withholding responsibility), as described next under *Qualified Intermediary (QI)*.

An FFI withholding statement may include either payee-specific information or pooled information. If the withholding statement includes pooled information, the withholding statement must indicate the portion of the payment allocable to:
- A Chapter 4 withholding rate pool of U.S. payees,
- Each class of recalcitrant account holders under Regulations section 1.1471-4(d)(6) or a single pool for a QI, or
- A class of nonparticipating FFIs.

If the withholding statement includes payee-specific information, it must indicate both the portion of the payment allocated to each payee and each payee's Chapter 4 status.

Any withholding statement provided by an FFI other than an FFI acting as a WP, WT, or QI with respect to the account also must identify each intermediary or flow-through entity that receives the payment and such entity's Chapter 4 status and GIIN, when applicable.

For additional information on the requirements for FFI withholding statements, see Regulations section 1.1471-3(c)(3)(iii)(B)(2).

Chapter 4 withholding statement. A Chapter 4 withholding statement must be provided by the following.
- A territory financial institution that does not agree to be treated as a U.S. person.
- A U.S. branch that is not a U.S. branch of a participating FFI.
- An NFFE or certified deemed-compliant FFI that is an NQI, nonwithholding foreign partnership, or nonwithholding foreign trust and is not the payee.

A Chapter 4 withholding statement must contain the following.
- The name, address, TIN (if any), entity type, and Chapter 4 status of each payee.
- The amount allocated to each payee.
- A valid withholding certificate or other appropriate documentation sufficient to establish the Chapter 4 status of each payee,

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and each intermediary or flow-through entity that receives the payment on behalf of the payee.

- Any other information the withholding agent reasonably requests in order to fulfill its obligations under Chapter 4.

A Chapter 4 withholding statement is permitted to provide pooled allocation information with respect to payees that are treated as nonparticipating FFIs.

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Qualified Intermediary (QI)

In most cases, a QI is any foreign intermediary that has entered into a *QI agreement* (discussed earlier) with the IRS. A foreign entity that is a QI acting as a QDD or that is acting with respect to payments of substitute interest (as permitted by the QI agreement) can act as a QI even though it is not receiving payments as an intermediary. A foreign entity that has received a QI employer identification number (QI-EIN) may represent on Form W-8IMY that it is a QI. The QI can claim that it is a QI until the IRS revokes its QI-EIN.

A QI can be either an *FFI* or an *NFFE*. An FFI that is a QI must be a *participating FFI* (including a *reporting Model 2 FFI*), a *registered deemed-compliant FFI* (including a *reporting Model 1 FFI* and a nonreporting Model 2 FFI treated as a *registered deemed-compliant FFI*), or an FFI treated as a *deemed-compliant FFI* under an applicable Model 1 IGA that is subject to similar due diligence and reporting requirements with respect to its U.S. accounts as those applicable to a registered deemed-compliant FFI (including the requirement to register with the IRS) (defined in the QI agreement as a "registered deemed-compliant Model 1 IGA FFI"). Thus, you must identify the Chapter 4 status of an FFI, certifying its status as a QI as one of the Chapter 4 statuses referenced in the preceding sentence on a Form W-8IMY when a Chapter 4 status is required for Chapter 4 purposes.

Responsibilities and documentation. Payments made to a QI that does not assume primary Chapters 3 and 4 withholding responsibilities are treated as paid to its account holders. However, a QI is not required to provide you with documentation it obtains from its foreign account holders or from U.S. exempt recipients (U.S. persons exempt from Form 1099 reporting). Instead, it provides you with a withholding statement that contains either Chapter 3 or Chapter 4 withholding rate pool information. A Chapter 4 withholding rate pool is a payment of a single type of income that is a withholdable payment that is allocated to payees that are nonparticipating FFIs or recalcitrant account holders (in a single pool). A Chapter 4 withholding rate pool also means a payment of a single type of income that is allocated to U.S. payees when the QI provides the certification required on Form W-8IMY for allocating payments to this pool and a withholding statement. A QI may include in its Chapter 4 withholding rate pools its direct account holders as well as account holders of another QI or a participating FFI or registered deemed-compliant FFI. With respect to a payment to a foreign person for which no Chapter 4 withholding is required, a Chapter 3 withholding rate pool is a payment of a single type of income that is subject to a single rate of withholding and that is reported on Form 1042-S under a single Chapter 4 exemption code. Payments made to U.S. exempt recipients also may be included in a Chapter 3 withholding rate pool to which withholding does not apply.

A QI is required to provide you with information regarding U.S. nonexempt recipients (U.S. persons subject to Form 1099 information reporting) and to provide you withholding rate pool information separately for each such U.S. person unless it has assumed primary Form 1099 reporting and backup withholding responsibility and meets the requirements to include these recipients in a U.S. payee pool. For the alternative procedure for providing withholding rate pool information for U.S. nonexempt persons not included in a Chapter 4 withholding rate pool of U.S. payees, see the Form W-8IMY instructions.

The withholding statement must:

1. Designate those accounts for which it acts as a QI;
2. Designate those accounts for which it assumes primary Chapters 3 and 4 withholding responsibility and/or primary Form 1099 reporting and backup withholding responsibility;
3. If applicable, designate the accounts for which it acts as a qualified securities lender with respect to any U.S. source substitute dividend payments;
4. If applicable, designate those accounts for which it acts as a QDD;
5. Provide sufficient information for you to allocate the payment, as applicable, to Chapter 3 withholding rate pools and, for payments that are withholdable payments, Chapter 4 withholding rate pools of nonparticipating FFIs and recalcitrant account holders when the QI has not assumed primary Chapter 3 or 4 withholding responsibility; and
6. Provide sufficient information for you to allocate payments to each U.S. nonexempt recipient or to a pool of U.S. payees to the extent described earlier under this heading.

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

If a QI that is permitted to do so by the QI agreement obtains documentary evidence under the "know-your-customer" rules that apply to the QI under local law, and the documentary evidence is of a type specified in an attachment to the QI agreement, the documentary evidence remains valid until there is a change in circumstances or the QI knows the information is incorrect. A QI may rely on a Form W-8 until its validity expires under Regulations section 1.1441-1(e)(4)(ii) and may rely on documentary evidence not obtained pursuant to "know-your-customer" rules until its validity expires under Regulations section 1.6049-5(c).

Primary Chapters 3 and 4 withholding responsibilities not assumed. If a QI does not assume primary Chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility for the payment, you can reliably associate the payment with valid documentation only to the extent you can reliably determine the part of the payment that relates to each withholding rate pool for foreign and U.S. payees. Unless the alternative procedure applies and the QI is permitted to include U.S. nonexempt recipients in a Chapter 4 withholding rate pool of U.S. payees, the QI must provide you with a separate withholding rate pool for each U.S. nonexempt recipient that must be reported on Form 1099. If you and the QI agree, the QI may apply the alternative procedures for U.S. nonexempt recipients by establishing a single withholding rate pool (not subject to backup withholding) for all U.S. nonexempt recipient account holders for whom the QI is required to report on Form 1099 and has provided you with Forms W-9 prior to you making the reportable payment, or, if applicable, designated broker proceeds to which backup withholding does not apply. The QI must provide a Form W-9 or, in the absence of the form, the name, address, and TIN, if available, for each U.S. nonexempt recipient.

Primary Chapters 3 and 4 withholding responsibilities assumed. If you make a payment to a QI that assumes primary Chapters 3 and 4 withholding responsibilities (but not primary Form 1099 reporting and backup withholding responsibility), you can reliably associate the payment with valid documentation only to the extent you can reliably determine the part of the payment that relates to the Chapter 4 withholding rate pools and Chapter 3 withholding rate pools, as applicable, and the part of the payment attributable to withholding rate pools for each U.S. nonexempt recipient, unless the alternative procedure applies for Form 1099 reporting and/or backup withholding purposes. The QI must provide a Form W-9 or, in the absence of the form, the name, address, and TIN, if available, for such person.

Primary Chapters 3 and 4 withholding responsibilities and Form 1099 reporting and backup withholding responsibilities assumed. If you make a payment to a QI that assumes primary Chapters 3 and 4 withholding responsibilities and primary Form 1099 reporting and backup withholding responsibility, you can reliably associate the payment with valid documentation provided that you receive a valid Form W-8IMY. It is not necessary to associate the payment with any Chapter 3 or Chapter 4 withholding rate pools.

If you make a payment to a QI that also is a QDD, the QI must provide a withholding statement designating the accounts for which it acts as a QDD even if it assumes primary withholding responsibility for all payments, unless it is acting as a QDD for all payments it receives.

Example. You make a payment of U.S. source dividends to a QI. It has five customers: two are foreign persons who have provided documentation entitling them to a 15% rate of withholding on dividends; two are foreign persons subject to a 30% rate of withholding on dividends; and one is a U.S. individual who provides it with a Form W-9. Each customer is entitled to 20% of the dividend payment. The QI

does not assume any primary withholding responsibility. The QI gives you a Form W-8IMY with which it associates the Form W-9 and a withholding statement that allocates 40% of the dividend to a 15% withholding rate pool, 40% to a 30% withholding rate pool, and 20% to the U.S. individual. You should report on Forms 1042-S 40% of the payment as made to a 15% rate dividend pool and 40% of the payment as made to a 30% rate dividend pool. The part of the payment allocable to the U.S. individual (20%) is reportable on Form 1099-DIV.

Joint account treatment. A QI may apply joint account treatment to a partnership or trust if the partnership or trust meets the following conditions.

- It is a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust.
- It is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to the QI, an exempt beneficial owner, an NFFE, or is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under Regulations section 1.1471-5(a) and has provided the QI with a certification that it has maintained such Chapter 4 status during each certification period.
- It is a direct account holder of the QI.
- None of its partners, beneficiaries, or owners is a flow-through entity or is acting as an intermediary for a payment made by the QI to the partnership or trust, and none of its partners, beneficiaries, or owners is a U.S. person.
- None of its foreign partners, beneficiaries, or owners is subject to withholding or reporting under Chapter 4.
- It agrees to make available upon request to the QI (or QI's reviewer) records that establish it has provided the QI with documentation for purposes of Chapters 3 and 4 for all of its partners, beneficiaries, or owners.

For information on these rules, see section 4.05 of the QI agreement in Revenue Procedure 2017-15, available at *IRS.gov/irb/2017-03_IRB#RP-2017-15*.

Agency option. A QI may apply the agency option to a partnership or trust under which the partnership or trust agrees to act as an agent of the QI and to apply the provisions of the QI agreement to its partners, beneficiaries, or owners. A QI and a partnership or trust may only apply the agency option if the partnership or trust meets the following conditions.

- It is a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust.
- It is either a direct account holder of the QI or an indirect account holder of the QI that is a direct partner, beneficiary, or owner of a partnership or trust to which the QI also applies the agency option.
- It is an FFI that is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI), an owner-documented FFI with respect to the QI, an NFFE, an exempt beneficial owner, or is covered as an account that is excluded from the definition of financial account under Annex II of an applicable IGA or under Regulations section 1.1471-5(a) and has provided QI with a certification that it has maintained such Chapter 4 status during each certification period.
- None of its partners, beneficiaries, or owners is a withholding foreign trust, withholding foreign partnership, participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or another QI acting as an intermediary for a payment made by the QI to the partnership or trust.
- It agrees to permit the QI to treat its direct and indirect partners, beneficiaries, or owners as direct and indirect account holders, respectively, of the QI under the QI agreement.
- It agrees to comply with the compliance procedures of the QI agreement.

For information on these rules, see section 4.06 of the QI agreement in Revenue Procedure 2017-15, available at *IRS.gov/irb/2017-03_IRB#RP-2017-15*.

Form 1042-S reporting. A QI is generally permitted to report payments made to its foreign account holders on a pooled basis rather than reporting payments to each account holder specifically. Pooled basis reporting is not available for payments to certain account holders, such as nonqualified intermediaries, *flow-through entities* (discussed earlier) and certain of their account holders and owners, private arrangement intermediaries, and, in certain circumstances, qualified intermediaries, withholding foreign partnerships, and withholding foreign trusts. Notwithstanding these requirements, separate Forms 1042-S are not issued to account holders that the QI is permitted to include in a Chapter 4 withholding rate pool.

Collective refund procedures. A QI may seek a refund of tax withheld under Chapters 3 and 4 on behalf of its account holders when the QI has not issued a Form 1042-S to the account holders that received the payment that was subject to overwithholding. The account holders, therefore, are not required to file claims for refund with the IRS to obtain refunds, but rather may obtain them from the QI. A QI may obtain a refund of tax withheld under Chapter 4, however, to the extent permitted under the QI agreement.

Nonqualified Intermediary (NQI)

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

- You can allocate the payment to a valid Form W-8IMY;
- You can reliably determine how much of the payment relates to valid documentation provided by a payee (a person that is not itself a foreign intermediary, flow-through entity, or U.S. branch with a Chapter 4 withholding rate pool) (see *Pooled withholding information*, later); and
- You have sufficient information to report the payment on Form 1042-S or Form 1099, if reporting is required.

Withholding statement. The NQI or U.S. branch must give you certain information on a withholding statement that is associated with the Form W-8IMY. A withholding statement must be updated to keep the information accurate prior to each payment. See, however, Regulations section 1.1441-3(e)(4)(iv)(C) for when a withholding agent may instead accept an alternative withholding statement.

For Chapter 4 purposes. An NQI receiving a withholdable payment must provide a withholding statement which satisfies the requirements of an FFI withholding statement or, if the NQI is not a participating FFI or registered deemed-compliant FFI, a Chapter 4 withholding statement.

An FFI withholding statement may allocate the payment to Chapter 4 reporting rate pools (as appropriate), including a Chapter 4 withholding rate pool for nonparticipating FFIs, recalcitrant account holders (in each class of account holders as described in the Chapter 4 regulations), and, for an NQI that is a participating FFI (including a reporting Model 2 FFI) or a registered deemed-compliant FFI (including a reporting Model 1 FFI), U.S. payees. However, an NQI may allocate a payment of a reportable amount (regardless of whether the payment is a withholdable payment) to a Chapter 4 withholding rate pool of U.S. payees when the NQI satisfies the requirements for providing such a pool, including the requirement to certify to its status as a participating FFI, including a reporting Model 2 FFI, or registered deemed-compliant FFI, including a reporting Model 1 FFI.

If the FFI withholding statement instead includes payee-specific information for purposes of Chapter 4, it must indicate both the portion of the payment allocated to each payee and each payee's Chapter 4 status. The withholding statement also must identify each intermediary or flow-through entity that is receiving a payment (excluding any intermediary or flow-through entity that is an account holder or interest holder in another QI, WP, or WT), each such entity's Chapter 4 status and GIIN (if applicable) when required for Chapter 4 purposes, and the Chapter 4 withholding rate pools associated with each such entity.

A Chapter 4 withholding statement must contain the name, address, TIN (if any), entity type, Chapter 4 status of each payee, the amount allocated to each payee, and a valid withholding certificate or other documentation sufficient to establish each payee's Chapter 4 status for payees that are not included in a Chapter 4 withholding rate pool of nonparticipating FFIs. The withholding statement also must identify each intermediary or flow-through entity that is receiving a payment (excluding any intermediary or flow-through entity that is an account holder or interest holder in another QI, WP, or WT), each such entity's Chapter 4 status and GIIN (if applicable), and the Chapter 4 withholding rate pools associated with each such entity. An allocation of a payment to an NQI, nonwithholding foreign partnership, or

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nonwithholding foreign trust of an amount subject to Chapter 3 withholding to a Chapter 4 withholding rate pool of U.S. payees must identify the payees consistent with the description in Regulations section 1.1471-3(c)(3)(iii)(B)(2)(iii).

For Chapter 3 purposes. The withholding statement should allocate for Chapter 3 purposes only the portion of the payment that was not allocated to a Chapter 4 withholding rate pool or to a payee identified on a withholding statement to whom withholding was applied under Chapter 4. For Chapter 3 purposes, a withholding statement must include the information described below for a reportable amount.

1. The name, address, and TIN (if any, or if required) of each person for whom documentation is provided.
2. The type of documentation (documentary evidence, Form W-8, or Form W-9) for every person for whom documentation has been provided, and, for a withholdable payment, that the documentation establishes the payee's Chapter 4 status to the extent required for Chapter 4 purposes.
3. The status of the person for whom the documentation has been provided, such as whether the person is a U.S. exempt recipient, U.S. nonexempt recipient, or a foreign person. For a foreign person, the statement must indicate whether the person is the beneficial owner or a foreign intermediary, flow-through entity, or a U.S. branch that is not included in a Chapter 4 withholding rate pool or in a pool of payees under the alternative procedures (see *Alternative procedure*, later).
4. The type of recipient the person is, based on the recipient codes used on Form 1042-S.
5. Information allocating each payment, by income type, to each payee (including U.S. exempt and nonexempt recipients) for whom documentation has been provided that is not included in a Chapter 4 withholding rate pool or in a pool of payees under the alternative procedures (see *Alternative procedure*, later).
6. The rate of withholding that applies to each foreign person to whom a payment is allocated.
7. A foreign payee's country of residence.
8. If a reduced rate of withholding is claimed under Chapter 3, the basis for a reduced rate of withholding (for example, portfolio interest, treaty benefit, etc.).
9. In the case of treaty benefits claimed by entities, whether the applicable limitation on benefits statement and the statement that the foreign person derives the income for which treaty benefits are claimed, have been made.
10. The name, address, and TIN (if any) and, for a withholdable payment, the Chapter 4 status (if required) and GIIN (if applicable) of any other NQI, flow-through entity, or U.S. branch from which the payee will directly receive a payment.
11. Any other information a withholding agent requests to fulfill its reporting and withholding obligations.

Alternative procedure. Under this alternative procedure, the NQI can give you the information that allocates each payment to each foreign and U.S. exempt recipient or Chapter 4 withholding rate pool by January 31 following the calendar year of payment, rather than before the payment is made as otherwise required. To take advantage of this procedure, the NQI must (a) inform you, on its withholding statement, that it is using the alternative procedure; and (b) obtain your consent. You must receive the withholding statement with all the required information (other than item 5) before the NQI makes the payment.

CAUTION *The alternative procedure cannot, however, be used for payments to U.S. nonexempt recipients other than those recipients included in a Chapter 4 withholding rate pool of U.S. payees. See Chapter 4, later. Therefore, an NQI must provide you with allocation information for any U.S. nonexempt recipients not included in a Chapter 4 withholding rate pool of U.S. payees before the NQI makes a payment.*

Pooled withholding information. If an NQI uses the alternative procedure, it must provide you with withholding rate pool information, as opposed to individual allocation information, before the payment of a reportable amount. The NQI must provide you with the payee specific allocation information (information allocating each payment to each payee) by January 31 following the calendar year of payment except as otherwise permitted for Chapter 4 purposes when using this procedure.

Chapter 4. In the case of a reportable amount that also is a withholdable payment, an NQI may include amounts allocable to a Chapter 4 withholding rate pool (other than a Chapter 4 withholding rate pool of U.S. payees) and payees subject to Chapter 4 withholding for whom the NQI will provide payee-specific information in a 30% rate pool together with payees subject to Chapter 3 withholding at the 30% rate. For the amount of the payment allocable to a Chapter 4 withholding rate pool of U.S. payees, an NQI may include amounts allocable to the pool with other amounts exempt from withholding (and an NQI may allocate payments to this pool regardless of whether the payment is a withholdable payment) and may not otherwise apply these provisions for payments made to U.S. nonexempt recipients. The NQI must identify prior to the payment each Chapter 4 withholding rate pool to be allocated a portion of the payment, in addition to each payee to be allocated the payments that is not included in such a pool. The NQI must then also allocate, by January 31 following the calendar year of the payment, the portion of the payment to each such pool in addition to allocating the payment to each payee that is not included in the pool.

Failure to provide allocation information. If an NQI fails to provide you with the payee specific allocation information for a withholding rate pool or Chapter 4 withholding rate pool by January 31, you must not apply the alternative procedure to any of the NQI's withholding rate pools from that date forward. You must treat the payees as undocumented and apply the presumption rules, discussed later in *Presumption Rules*. An NQI is deemed to have failed to provide specific allocation information if it does not give you such information for more than 10% of any one withholding rate pool.

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

If the NQI fails to allocate more than 10% of the payment to a withholding rate pool by February 14 following the calendar year of payment, you must file a Form 1042-S for each account holder in the pool on a pro-rata basis (treating a Chapter 4 withholding rate pool as an account holder for this purpose and excluding U.S. exempt recipients). For example, if there are four account holders in a withholding rate pool that receives a $100 payment and the NQI fails to allocate more than $10 of the payment, you must file four Forms 1042-S, one for each account holder in the pool, showing $25 of income to each. You also must check the "Pro-rata Basis Reporting" box at the top of each form. If, however, the NQI provides allocation information for 90% or more of the payment to a withholding rate pool, the pro-rata reporting method is not required. Instead, you must file a Form 1042-S for each account holder for whom you have allocation information and report the unallocated part of the payment on a Form 1042-S issued to "unknown recipient."

Withholding Foreign Partnerships (WPs)

If you are making payments to a WP, you do not have to withhold if the WP is acting in that capacity. The WP must assume primary Chapters 3 and 4 withholding responsibility for amounts that are distributed to, or included in the distributive share of, any direct partner and may assume Chapters 3 and 4 withholding responsibilities for certain of its indirect partners. The WP must withhold the amount required to be withheld. A WP must provide you with a Form W-8IMY that certifies that the WP is acting in that capacity and provides all other information and certifications required by the form. The Form W-8IMY must contain the WP-EIN and GIIN (if applicable).

A WP can be either an FFI or an NFFE. An FFI (other than a retirement fund) that is a WP must be a *participating FFI*, a *registered deemed-compliant FFI*, or an FFI treated as a *deemed-compliant FFI* under an applicable Model 1 IGA that is subject to similar due diligence and reporting requirements with respect to its U.S. accounts as those applicable to a registered deemed-compliant FFI under Regulations section 1.1471-5(f)(1) (including the requirement to register with the IRS) (defined in the WP agreement as a "registered deemed-compliant Model 1 IGA FFI"). Thus, an FFI certifying its status as a WP must provide you a Form W-8IMY that certifies to one of the

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Chapter 4 statuses referenced in the preceding sentence when a Chapter 4 status is required.

Responsibilities of the WP. The WP must withhold under Chapter 3 or 4 on the date it makes a distribution of a withholdable payment or an amount subject to Chapter 3 withholding to a direct foreign partner based on the Forms W-8 or W-9 it receives from its partners. If the partner's distributive share has not been distributed, the WP must withhold on the partner's distributive share on the earlier of the date that the partnership must mail or otherwise provide to the partner a Schedule K-1 (Form 1065) or the due date for furnishing the statement (whether or not the WP is required to furnish the statement).

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

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

Form 1042-S reporting. The WP can elect to report payments made to its foreign direct partners on a pooled basis for Chapter 3 purposes rather than reporting payments to each direct partner in addition to reporting payments in a Chapter 4 withholding rate pool to the extent the WP is permitted to do so based on its Chapter 4 status. A WP can treat as its direct partners those indirect partners of the WP for which it applies joint account treatment or the agency option (described later). A WP must otherwise issue a Form 1042-S to each partner to the extent it is required to do so under the WP agreement. You may issue a single Form 1042-S for all payments you make to a WP other than payments for which the entity does not act as a WP. You may, however, have Form 1099 requirements for certain indirect partners of a WP that are U.S. nonexempt recipients.

Collective refund procedures. A WP may seek a refund of tax withheld under Chapters 3 and 4 on behalf of its partners when the WP has not issued a Form 1042-S to the partners that received the payment that was subject to over-withholding. The partners, therefore, are not required to file claims for refund with the IRS to obtain refunds, but rather may obtain them from the WP. A WP may obtain a refund of tax withheld under Chapter 4 to the extent permitted under the WP agreement.

Reporting of U.S. partners. A WP must report its U.S. partners on Schedule K-1 to the extent required under the WP agreement. If the WP is an FFI, it also is required to report each of its U.S. accounts (or U.S. reportable accounts if a reporting Model 1 FFI) on Form 8966 consistent with its Chapter 4 requirements or the requirements of an IGA. If the WP is an NFFE, the WP must file Form 8966 to report any partner that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or, under an applicable IGA, controlling persons that are specified U.S. persons) if the NFFE is the beneficial owner of a withholdable payment received by the WP. The WP also must file a Form 8966 to report withholdable payments made to a pass-through partner for which the WP acts under the WP agreement that provides information on an account holder (or interest holder) that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or, under an applicable IGA, controlling persons that are specified U.S. persons) and that is the beneficial owner of the withholdable payment received by the WP, unless the pass-through partner certifies to the WP that it is reporting on the account holder (or interest holder) pursuant to its U.S. account reporting requirements. The preceding sentence applies with respect to a pass-through partner to which WP applies the agency option or which has partners, beneficiaries, or owners that are indirect partners of the WP.

Joint account treatment. Under special procedures provided in the WP agreement, a WP may apply joint account treatment to a partnership or trust that is a direct partner of the WP. A WP that applies the joint account option must elect to perform pool reporting for amounts subject to Chapter 3 withholding that either are not withholdable payments or are withholdable payments for which no Chapter 4 withholding is required and that the WP distributes to, or includes in the distributive share of, a foreign direct partner. These rules only apply to a partnership or trust that meets the following conditions.

- It is a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust.
- It is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI as defined in the WP agreement), an owner-documented FFI, an exempt beneficial owner, or an NFFE (other than a WP or WT).
- It is a direct partner of the WP.
- None of its partners, beneficiaries, or owners is a flow-through entity or intermediary.
- None of the partnership's or trust's partners, beneficiaries, or owners is a U.S. person or is subject to withholding or reporting under Chapter 4.
- It agrees to make available upon request to the WP (or the WP's auditor) records that establish it has provided the WP with documentation for purposes of Chapters 3 and 4 for all of its partners, beneficiaries, or owners.

For more information on applying these rules, see section 9.01 of the WP agreement in section 6 of Revenue Procedure 2017-21, available at *IRS.gov/irb/2017-06_IRB#RP-2017-21*.

Agency option. A WP may apply the agency option to a partnership or trust under which the partnership or trust agrees to act as an agent of the WP and to apply the provisions of the WP agreement to its partners, beneficiaries, or owners. A WP that applies the agency option must elect to perform pool reporting for amounts subject to Chapter 3 withholding that either are not withholdable payments or are withholdable payments for which no Chapter 4 withholding is required and that the WP distributes to, or includes in the distributive share of, a foreign direct partner. A WP and a partnership or trust may only apply the agency option if the partnership or trust meets the following conditions.

- It is a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust.
- It is either a direct partner of the WP or an indirect partner of the WP that is a direct partner, beneficiary, or owner of a partnership or trust to which the WP also applies the agency option.
- It is an FFI that is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI, as defined in the WP agreement), an owner-documented FFI, an NFFE, or an exempt beneficial owner.
- None of its partners, beneficiaries, or owners is a WT, WP, participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI (as defined in the WP agreement), or QI acting as an intermediary for a payment made by the WP to the partnership or trust.
- The WP may not act as a withholding foreign partnership with respect to any direct or indirect partner of the partnership or trust that is a U.S. nonexempt recipient, unless the U.S. nonexempt recipient is a partner of an owner-documented FFI or passive NFFE to which the WP applies the agency option and is included in the WP's U.S. payee pool.
- It agrees to comply with the compliance procedures described in section 8.05 of the WP agreement by providing the WP with the certification described in section 8.03 of the WP agreement and providing the WP with documentation or other information for review.
- It agrees to comply with the documentation requirements of a WP in the WP agreement.

For more information on applying these rules, see section 9.02 of the WP agreement in section 6 of Revenue Procedure 2017-21, available at *IRS.gov/irb/2017-06_IRB#RP-2017-21*.

WP acting for indirect partners. A WP may act as a WP with respect to an indirect partner of the WP that is not a U.S. nonexempt recipient. However, a WP may act as a WP for an indirect partner that is a U.S. nonexempt recipient if the indirect partner is included in a pass-through partner's Chapter 4 withholding rate pool of recalcitrant account holders or U.S. payees. A WP acting as a WP for an indirect partner is not required to forward to its withholding agent the documentation and the withholding statement of the pass-through partner and indirect partner that the WP would have otherwise been required to provide under the requirements of a nonwithholding foreign partnership. See *Not acting as a WP*, later. However, a WP must provide the withholding agent with

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documentation and any other information from any pass-through partner whose direct or indirect partner, beneficiary, or owner is a U.S. nonexempt recipient unless the recipient is included in the pass-through partner's Chapter 4 withholding rate pool of recalcitrant account holders or U.S. payees.

If a WP is making a payment that is a withholdable payment, the pass-through partner's withholding statement must meet the requirements of Regulations section 1.1471-3(c)(3)(iii)(B). The pass-through partner's withholding statement must include the account holders or interest holders of the pass-through partner in Chapter 4 withholding rate pools (to the extent permitted), and, for an amount subject to Chapter 3 withholding that is not a withholdable payment or is a withholdable payment for which Chapter 4 withholding is not required, valid documentation provided by the account holders or interest holders of the pass-through partner that are not themselves QIs or flow-through entities.

For more information on applying these rules, see section 9.03 of the WP agreement in section 6 of Revenue Procedure 2017-21, available at *IRS.gov/irb/2017-06_IRB#RP-2017-21*.

Not acting as a WP. A foreign partnership that is not acting as a WP is a nonwithholding foreign partnership. This occurs if a WP is not acting in that capacity for some or all of the amounts it receives from you.

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

Withholding Foreign Trusts (WTs)

If you are making payments to a WT, you do not have to withhold if the WT is acting in that capacity. The WT must assume primary Chapters 3 and 4 withholding responsibility for amounts that are distributed to, or included in the distributive share of, any direct beneficiary or owner and may assume primary Chapters 3 and 4 withholding responsibility for certain of its indirect beneficiaries or owners. The WT must withhold the amount required to be withheld. A WT must provide you with a Form W-8IMY that certifies that the WT is acting in that capacity and provides all other information and certifications required by the form. The Form W-8IMY must contain the WT-EIN and GIIN (if applicable).

A WT can be either an FFI or an NFFE. An FFI (other than a retirement fund) that is a WT must be a participating FFI, a registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable Model 1 IGA that is subject to similar due diligence and reporting requirements with respect to its U.S. accounts as those applicable to a registered deemed-compliant FFI under Regulations section 1.1471-5(f)(1) (including the requirement to register with the IRS) (defined in the WT agreement as a "registered deemed-compliant Model 1 IGA FFI"). Thus, you must identify the Chapter 4 status of an FFI certifying its status as a WT as one of the Chapter 4 statuses referenced in the preceding sentence on a Form W-8IMY when a Chapter 4 status is required for Chapter 4 purposes.

Responsibilities of a WT. The WT must withhold on the date it makes a distribution of a withholdable payment or an amount subject to Chapter 3 withholding to a direct foreign beneficiary or owner. If the beneficiary's or owner's distributive share has not been distributed, the WT must withhold on the beneficiary's or owner's distributive share on the earlier of the date that the trust must mail or otherwise provide to the beneficiary or owner the statement required under section 6048(b) or the due date for furnishing the statement (whether or not the WT is required to furnish the statement).

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

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

Form 1042-S reporting. The WT can elect to report payments made to its foreign direct beneficiaries or owners on a pooled basis for Chapter 3 purposes rather than reporting payments made to each foreign direct beneficiary or owner in addition to reporting payments in a Chapter 4 withholding rate pool to the extent the WT is permitted to do so based on its Chapter 4 status. A WT can treat as its direct beneficiaries or owners those indirect beneficiaries or owners of the WT for which it applies joint account treatment or the agency option (described later). A WT must otherwise issue a Form 1042-S to each beneficiary or owner to the extent it is required to do so under the WT agreement. You may issue a single Form 1042-S for all payments you make to a WT other than payments for which the entity does not act as a WT. You may, however, have Form 1099 requirements for certain indirect beneficiaries or owners of a WT that are U.S. nonexempt recipients.

Collective refund procedures. A WT may seek a refund of tax withheld under Chapters 3 and 4 on behalf of its beneficiaries or owners when the WT has not issued a Form 1042-S to the beneficiaries or owners that received the payment that was subject to overwithholding. The beneficiaries or owners, therefore, are not required to file claims for refund with the IRS to obtain refunds, but rather may obtain them from the WT. A WT may obtain a refund of tax withheld under Chapter 4 to the extent permitted under the WT agreement.

Reporting of U.S. beneficiaries or owners. If the WT is a grantor trust with U.S. owners, the WT is required to file Form 3520-A, and to provide statements to a U.S. owner, as well as each U.S. beneficiary who is not an owner and receives a distribution. If the WT is an FFI, it is required to report each of its U.S. accounts (or U.S. reportable accounts if a reporting Model 1 FFI) on Form 8966 consistent with its FATCA requirements or the requirements of an IGA. If the WT is an NFFE, the WT must file Form 8966 to report any beneficiary or owner that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or, under an applicable IGA, controlling persons that are specified U.S. persons) if the NFFE is the beneficial owner of a withholdable payment received by the WT.

The WT also must file a Form 8966 to report withholdable payments made to a pass-through beneficiary or owner for which the WT acts under the WT agreement that provides information on an account holder (or interest holder) that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or, under an applicable IGA, controlling persons that are specified U.S. persons) and that is the beneficial owner of the withholdable payment received by the WT, unless the pass-through beneficiary or owner certifies to the WT that it is reporting on the account holder (or interest holder) pursuant to its U.S. account reporting requirements. The preceding sentence applies with respect to a pass-through beneficiary or owner to which the WT applies the agency option or which has partners, beneficiaries, or owners that are indirect beneficiaries or owners of the WT. In addition, if the WT is not a participating FFI, a registered deemed-compliant FFI, or a registered deemed-compliant Model 1 IGA FFI and is not required to report with respect to a U.S. beneficiary of the WT on Form 3520-A, then the WT must report with respect to such beneficiary on Form 8966 as required in the WT agreement. A beneficiary for this purpose means a beneficiary that receives a distribution from the WT during the year or that is required to include an amount in gross income under sections 652(a) or 662(a) with respect to the WT.

Joint account treatment. Under special procedures provided in the WT agreement, a WT may apply joint account treatment to a partnership or trust that is a direct beneficiary or owner of the WT. A WT that applies the joint account option must elect to perform pool reporting for amounts subject to Chapter 3 withholding that either are not withholdable payments or are withholdable payments for which no Chapter 4 withholding is required and that the WT distributes to, or includes in the distributive share of, a foreign direct beneficiary or owner. These rules only apply to a partnership or trust that meets the following conditions.

- It is a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust.
- It is a certified deemed-compliant FFI (other than a registered deemed-compliant

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Model 1 IGA FFI, as defined in the WT agreement), an owner-documented FFI, an exempt beneficial owner, or an NFFE (other than a WP or WT).
- It is a direct beneficiary or owner of the WT.
- None of its partners, beneficiaries, or owners is a flow-through entity or intermediary.
- None of the partnership's or trust's partners, beneficiaries, or owners is a U.S. person or is subject to withholding or reporting under Chapter 4.
- It agrees to make available upon request to the WT (or the WT's auditor) records that establish it has provided the WT with documentation for purposes of Chapters 3 and 4 for all of its partners, beneficiaries, or owners.

For more information on applying these rules, see section 9.01 of the WT agreement found in section 7 of Revenue Procedure 2017-21, available at *IRS.gov/irb/2017-06_IRB#RP-2017-21*.

Agency option. A WT may apply the agency option to a partnership or trust under which the partnership or trust agrees to act as an agent of the WT and to apply the provisions of the WT agreement to its partners, beneficiaries, or owners. A WT that applies the agency option must elect to perform pool reporting for amounts subject to Chapter 3 withholding that either are not withholdable payments or are withholdable payments for which no Chapter 4 withholding is required and that the WT distributes to, or includes in the distributive share of, a foreign direct beneficiary or owner. A WT and a partnership or trust may only apply the agency option if the partnership or trust meets the following conditions.
- It is a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust.
- It is either a direct beneficiary or owner of the WT or an indirect beneficiary or owner of the WT that is a direct partner, beneficiary, or owner of a partnership or trust to which the WT also applies the agency option.
- It is an FFI that is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI, as defined in the WT agreement), an owner-documented FFI, an NFFE, or an exempt beneficial owner.
- None of its partners, beneficiaries, or owners is a WT, WP, participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI (as defined in the WT agreement), or a QI acting as an intermediary for a payment made by the WT to the partnership or trust.
- The WT may not act as a withholding foreign trust with respect to any direct or indirect beneficiary or owner of the partnership or trust that is a U.S. nonexempt recipient, unless the U.S. nonexempt recipient is a beneficiary or owner of an owner-documented FFI or passive NFFE to which the WT applies the agency option and is included in the WT's U.S. payee pool.
- It agrees to comply with the compliance procedures described in section 8.05 of the WT agreement by providing the WT with the certification described in section 8.03 of the WT agreement and providing the WT with documentation or other information for review.
- It agrees to comply with the documentation requirements of a WT in the WT agreement.

For more information on applying these rules, see section 9.02 of the WT agreement in section 7 of Revenue Procedure 2017-21, available at *IRS.gov/irb/2017-06_IRB#RP-2017-21*.

WT acting for indirect beneficiaries or owners. A WT may act as a WT with respect to an indirect beneficiary or owner of the WT that is not a U.S. nonexempt recipient. However, a WT may act as a WT for an indirect beneficiary or owner that is a U.S. nonexempt recipient if the indirect beneficiary or owner is included in a pass-through beneficiary's or owner's Chapter 4 withholding rate pool of recalcitrant account holders or U.S. payees. A WT acting as a WT for an indirect beneficiary or owner is not required to forward to its withholding agent the documentation and the withholding statement of the pass-through beneficiary or owner and indirect beneficiary or owner that the WT would have otherwise been required to provide under the requirements of a nonwithholding foreign trust. See *Not acting as a WT*, later. However, a WT must provide the withholding agent with documentation and any other information from any pass-through beneficiary or owner whose direct or indirect partner, beneficiary, or owner is a U.S. nonexempt recipient unless the recipient is included in the pass-through beneficiary's or owner's Chapter 4 withholding rate pool of recalcitrant account holders or U.S. payees. If a WT is making a payment that is a withholdable payment, the pass-through beneficiary's or owner's withholding statement must meet the requirements of Regulations section 1.1471-3(c)(3)(iii)(B). The pass-through beneficiary's or owner's withholding statement must include the account holders or interest holders of the pass-through beneficiary or owner in Chapter 4 withholding rate pools (to the extent permitted), and, for an amount subject to Chapter 3 withholding that is not a withholdable payment or is a withholdable payment for which Chapter 4 withholding is not required, valid documentation provided by the account holders or interest holders of the pass-through beneficiary or owner that are not themselves QIs or flow-through entities.

For more information on applying these rules, see section 9.03 of the WT agreement in section 7 of Revenue Procedure 2017-21, available at *IRS.gov/irb/2017-06_IRB#RP-2017-21*.

Not acting as a WT. A foreign trust that is not acting as a WT is a nonwithholding foreign trust. This occurs if a WT is not acting in that capacity for some or all of the amounts it receives from you.

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

Standards of Knowledge for Purposes of Chapter 3

You must withhold in accordance with the presumption rules (discussed later) if you know or have reason to know that a withholding certificate or documentary evidence provided by a payee is unreliable or incorrect to establish the payee's status for Chapter 3 purposes. If you rely on an agent to obtain documentation, you are considered to know, or have reason to know, the facts that are within the knowledge of your agent for this purpose.

Reason To Know

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

For an obligation that is not a preexisting obligation (that is, an obligation, including an account, held by an individual that is outstanding on June 30, 2014, or an obligation, including an account, held by an entity that is opened, executed, or issued before January 1, 2015), you have reason to know that an account holder's Chapter 3 claim is unreliable or incorrect if any information contained in your account opening files or other account information conflicts with the account holder's claim. For an obligation other than a preexisting obligation, you will not be considered to have reason to know that a person's Chapter 3 claim is unreliable or incorrect based on documentation collected for anti-money laundering (AML) purposes until 30 days after the obligation is executed, or 30 days after the account is opened for such person, whichever is applicable.

Financial institutions, insurance companies, or brokers or dealers in securities have reason to know that documentation provided by a direct account holder is unreliable or incorrect only in the circumstances discussed next. If the documentation is considered unreliable or incorrect, you must get new documentation to support the payee's claimed status or may rely on the original documentation if you receive the additional statements and/or documentation discussed later and are a withholding agent described above with respect to a direct account holder (defined in Regulations section 1.1441-7(b)(3)(i)). Such documentation is described in Regulations section 1.1471-3(c)(5)(i).

The circumstances, discussed next, also apply to other withholding agents. However, these withholding agents are not limited to these circumstances in determining if they have reason to know that documentation is unreliable or incorrect. These withholding agents cannot

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base their determination on the receipt of additional statements or documents. They need to get new documentation.

Withholding Certificates

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

- The Form W-8 is incomplete with respect to any item on the form that is relevant to the claims made by the account holder;
- The Form W-8 contains any information that is inconsistent with the account holder's claim;
- The Form W-8 lacks information necessary to establish entitlement to a reduced rate of withholding, if a reduced rate is claimed; or
- You have information not contained on the form that is inconsistent with the claims made on the form.

The rules below apply to withholding agents that are financial institutions, insurance companies, or brokers or dealers in securities.

Limits on reason to know for preexisting obligations. With respect to a preexisting obligation (that is, an obligation, including an account, held by an individual that is outstanding on June 30, 2014, or an obligation, including an account, held by an entity that is opened, executed, or issued before January 1, 2015), if you have documented the foreign status of an account holder for purposes of Chapter 3 or 61 prior to July 1, 2014, you may continue to rely on that documentation. In addition, if you make a payment to a new entity account holder that you treat as a preexisting entity account under Notice 2014-33, you may apply the standards of knowledge in Regulations sections 1.1441-7(b)(5) and (b)(8), that were applicable prior to the issuance of the temporary regulations. See Notice 2014-59, available at *IRS.gov/irb/2014-44_IRB#NOT-2014-59*.

However, if you review documentation for an individual account holder claiming foreign status that contains a U.S. place of birth or if you are notified of a change in circumstances, the obligation will be treated as having a change in circumstances as of the date you review the documentation or receive the notification, and you will then have reason to know that the documentation is unreliable or incorrect. However, if you are reviewing documentation provided by an entity before January 1, 2015, you will not be required to treat the additional U.S. indicia added to Regulations section 1.1441-7(b) by the temporary regulations as a change in circumstances. See Notice 2014-59, available at *IRS.gov/irb/2014-44_IRB#NOT-2014-59*.

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

1. The Form W-8 has a current permanent residence address in the United States,
2. The Form W-8 has a current mailing address in the United States,
3. You have a current residence or current mailing address as part of your account information that is an address in the United States,
4. The account holder notifies you of a new residence or mailing address in the United States,
5. You have classified the account holder as a U.S. person in your account information, or
6. You have a current telephone number for the account holder in the United States and no telephone number for the account holder outside the United States (only to the extent described in Regulations section 1.1441-7(b)(5)).

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

1. You receive the Form W-8BEN from an individual and:
   a. You possess or obtain documentary evidence (that does not contain a U.S. address) that supports the claim of foreign status, and the individual provides you with a reasonable explanation in writing supporting the claim of foreign status;
   b. If you make a payment outside the United States with respect to an offshore obligation and you possess or obtain documentary evidence establishing foreign status that does not contain a U.S. address;
   c. With respect to an offshore obligation, if you classify the individual as a resident of the country where the obligation is maintained and you are required to report payments to the individual annually to the tax authority of the country where the obligation is maintained and that country has a tax treaty or information exchange agreement in effect with the United States; or
   d. You have classified the account holder as a U.S person in your account information and you possess or obtain documentary evidence evidencing citizenship in a country other than the United States.
2. You receive the Form W-8BEN-E from an entity that is not a flow-through entity and:
   a. You have in your possession or obtain documentation establishing foreign status that substantiates that the entity is organized or created under foreign law; or
   b. With respect to an offshore obligation, if you classify the entity as a resident of the country where the obligation is maintained and you are required to report payments to the entity annually to the tax authority of the country where the obligation is maintained and that country has a tax treaty or information exchange agreement in effect with the United States.
3. The account holder (whether an individual or an entity) has provided standing instructions to make payments with respect to an offshore obligation to an address in, or an account maintained in, the United States, unless the account holder provides a reasonable explanation in writing that supports its foreign status or provides documentary evidence supporting its foreign status.
4. If an individual account holder provides a Form W-8BEN to establish the individual's foreign status, and you have, either on accompanying documentation or as part of your account information, an unambiguous indication of a place of birth for the individual in the United States, you may not rely on the Form W-8BEN unless you possess or obtain documentary evidence evidencing citizenship in a country other than the United States and either (i) a copy of the individual's Certificate of Loss of Nationality of the United States or (ii) a reasonable written explanation for the individual's renunciation of U.S. citizenship (or, under an applicable IGA, the reason the individual does not have a Certificate of Loss of Nationality of the United States despite relinquishing its U.S. citizenship), or the reason the individual did not obtain U.S. citizenship at birth.

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

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

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

1. The permanent residence address is not in the treaty country and:
   a. The account holder provides a reasonable explanation for the permanent residence address outside the treaty country, or
   b. You possess or obtain documentary evidence described in Regulations section 1.1471-3(c)(5)(i) that establishes residency in a treaty country.

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2. The mailing address is not in the treaty country and:
   a. You possess or obtain documentary evidence described in Regulations section 1.1471-3(c)(5)(i) (that does not contain an address outside the treaty country) supporting the beneficial owner's claim of residence in the treaty country,
   b. You possess or obtain documentation that establishes that the beneficial owner is an entity organized in a treaty country,
   c. You know that the address outside the treaty country is a branch of the account holder that is a resident of the treaty country, or
   d. You obtain a written statement from the beneficial owner that reasonably establishes its entitlement to treaty benefits.
3. You have instructions to pay amounts outside the treaty country and the account holder gives you a reasonable explanation, in writing, establishing residence in the applicable treaty country or you possess or obtain documentary evidence described in Regulations section 1.1471-3(c)(5)(i) establishing the account holder's residence in the treaty country.

Hold mail instruction. An address that is provided subject to an instruction to hold all mail to that address is not a permanent residence address such that you may not rely upon the Form W-8. However, the address can be used as a permanent residence address if the person has provided you with documentary evidence that is permitted under Regulations section 1.1441-1(c)(38)(ii). If, after a Form W-8 is provided, a person's permanent residence address is subsequently subject to a hold mail instruction, this is a change in circumstances requiring the person to provide the documentary evidence described in the preceding sentence in order to use the address as a permanent residence address.

Documentary Evidence

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

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

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

- For documentary evidence received prior to January 1, 2001, if you have actual knowledge that the account holder is a U.S. person or if you have a mailing or residence address for the account holder in the United States.
- For documentary evidence received after December 31, 2000, if you do not have a permanent residence address for the account holder, if you have classified the account holder as a U.S. person in your account information, if you have a current mailing or current permanent residence address (whether or not on the documentation) for the account holder in the United States, if the account holder notifies you of a new residence or mailing address in the United States, or if you have a current telephone number for the account holder in the United States and no telephone number for the account holder outside the United States.
- If the account holder is an individual and you have, either on the documentary evidence or as part of your account information, an unambiguous place of birth for the individual in the United States.
- With respect to an offshore obligation, the account holder has standing instructions directing you to pay amounts from the account to an address or account maintained in the United States.

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

1. The mailing or residence address or sole telephone number is in the United States, you receive the documentary evidence from an individual, and:
   a. You possess or obtain additional documentary evidence (that does not contain a U.S. address) supporting the claim of foreign status and a reasonable explanation in writing supporting the account holder's foreign status;
   b. You obtain a Form W-8 that contains a permanent residence address and mailing address outside the United States (or, if a mailing address is inside the United States, the account holder provides a reasonable explanation in writing supporting the account holder's foreign status); or
   c. For a payment made with respect to an offshore obligation, if you classify the individual as a resident of the country where the obligation is maintained, you are required to report a payment made to the individual annually on a tax information statement filed with that country's tax authority as part of the resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.
2. The mailing or residence address or sole telephone number is in the United States, you receive the documentary evidence from an entity (other than a flow-through entity), and:
   a. You possess or obtain documentation to substantiate that the entity is actually organized or created under the laws of a foreign country;
   b. You obtain a valid Form W-8 that contains a permanent residence address and mailing address outside the United States (or, if a mailing address is inside the United States, the account holder provides a reasonable explanation in writing supporting the account holder's foreign status); or
   c. For a payment made with respect to an offshore obligation, if you classify the entity as a resident of the country where the obligation is maintained and you are required to report a payment made to the entity annually on a tax information statement filed with that country's tax authority as part of the resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.
3. You have instructions to pay amounts to an address or an account in the United States and the account holder provides you with a reasonable explanation, in writing, that supports the account holder's foreign status or a valid beneficial owner withholding certificate claiming foreign status.
4. You have an unambiguous place of birth in the United States for an individual account holder and you possess or obtain documentary evidence demonstrating the individual's citizenship in a country other than the United States and a copy of the individual's Certificate of Loss of Nationality of the United States. Alternatively, you may treat such an individual as a foreign person if you obtain a valid beneficial owner withholding certificate that establishes the individual's foreign status, documentary evidence evidencing citizenship in a country other than the United States, and a reasonable explanation in writing of the individual's renunciation of U.S. citizenship (or, under an applicable IGA, the reason the individual does not have a Certificate of Loss of Nationality of the United States despite relinquishing U.S. citizenship) or the reason the individual did not obtain U.S. citizenship at birth.

Claim of reduced rate of withholding under treaty. You have reason to know that documentary evidence provided by a direct account holder to claim a reduced rate of withholding

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under a treaty is unreliable or incorrect for purposes of establishing the account holder's residency in a treaty country if:

- You have a mailing or residence address for the account holder that is outside the applicable treaty country,
- You have no permanent residence for the account holder, or
- The account holder has standing instructions for you to pay amounts from its account to an address or account not in the treaty country.

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

1. The mailing or residence address is outside the treaty country and:
   a. You possess or obtain additional documentary evidence supporting the account holder's claim of residence in the treaty country (and the documentary evidence does not contain an address outside the treaty country, a P.O. box, an in-care-of address, or the address of a financial institution),
   b. You possess or obtain documentary evidence that establishes that the account holder is an entity organized in a treaty country, or
   c. You obtain a valid Form W-8 that contains a permanent residence address and a mailing address in the applicable treaty country.
2. You have instructions to pay amounts outside the treaty country and the account holder gives you a reasonable explanation, in writing, establishing residence in the applicable treaty country or a valid beneficial owner withholding certificate that contains a permanent residence address and a mailing address in the applicable treaty country.

Indirect Account Holders' Chapter 3 Status

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

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

You may, however, treat a payee as a foreign person and may treat a foreign person as a resident of a treaty country if the withholding statement is accompanied by a valid withholding certificate and documentary evidence or a reasonable explanation is provided, by the NQI, flow-through entity, or U.S. branch supporting the payee's foreign status or residency in a treaty country.

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

If you choose to rely on the withholding certificate, you must, in addition to instructing the NQI, flow-through entity, or U.S. branch to correct the withholding statement, instruct the NQI, flow-through entity, or U.S. branch to confirm that it does not know or have reason to know that the withholding certificate is unreliable or inaccurate.

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

Standards of Knowledge for Purposes of Chapter 4

If you make a withholdable payment, you must withhold in accordance with the *presumption rules* (discussed later) if you know or have reason to know that a withholding certificate or documentary evidence provided by the payee is unreliable or incorrect to establish a payee's Chapter 4 status. If you rely on an agent to obtain documentation, you are considered to know, or have reason to know, the facts that are within the knowledge of your agent for this purpose.

Notification by the IRS

If you receive notification from the IRS that a claim of status as a U.S. person, a participating FFI, a deemed-compliant FFI, or other entity entitled to a reduced rate of withholding under Chapter 4 is incorrect, you are considered to have knowledge that such a claim is incorrect beginning 30 days after you receive the notice.

GIIN Verification

If you have received a Form W-8BEN-E or Form W-8IMY from an entity payee that is claiming certain Chapter 4 statuses, you must obtain and verify the entity's GIIN against the published IRS FFI list. The IRS FFI list can be found at *IRS.gov/Businesses/Corporations/FFI-List-Resources-Page*. You must obtain and verify against the published IRS FFI list a GIIN for the following Chapter 4 statuses.

- Participating FFIs (including reporting Model 2 FFIs).
- Registered deemed-compliant FFIs (including reporting Model 1 FFIs).
- Sponsored FFIs.
- Direct reporting NFFEs.
- Sponsored direct reporting NFFEs.
- Certain nonreporting IGA FFIs (as described below).

If you receive a Form W-8BEN-E or Form W-8IMY from a nonreporting IGA FFI that is a trustee-documented trust with a foreign trustee, you must obtain the GIIN of a foreign trustee, but you are not required to verify the GIIN. The GIIN that the trustee must provide is the GIIN that it received when it registered as a participating FFI or reporting Model 1 FFI, not the GIIN that it received when it registered as a trustee of a trustee-documented trust.

If you receive a Form W-8BEN-E or Form W-8IMY from a nonreporting IGA FFI that checks Model 2 IGA in Part XII of Form W-8BEN-E or Part XIX of Form W-8IMY (as applicable) and identifies a category of entity that is a registered deemed-compliant FFI under Annex II of an applicable Model 2 IGA, you must obtain and verify the GIIN of the nonreporting IGA FFI. Additionally, if you receive a Form W-8BEN-E or Form W-8IMY from a nonreporting IGA FFI that provides a citation to a section of the regulations for its registered deemed-compliant status in Part XII of Form W-8BEN-E or Part XIX of Form W-8IMY (as applicable), you must obtain and verify the GIIN of the nonreporting IGA FFI. You will have reason to know that such payee is not such a financial institution if the payee's name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made.

If you receive a Form W-8BEN-E or Form W-8IMY from an entity payee and the form contains "Applied for" in the box for the GIIN, the payee must provide you its GIIN within 90 days of providing the form. A Form W-8BEN-E or Form W-8IMY from such payee that does not include a GIIN, or includes a GIIN that does not appear on the published IRS FFI list, will be invalid for Chapter 4 purposes 90 days after the date the form is provided.

The GIIN that you must confirm is the GIIN assigned to the FFI identifying its country of residence for tax purposes (or place of organization if the FFI has no country of residence), except as otherwise provided.

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Branches and disregarded entities. If you make a withholdable payment to a branch of, or an entity that is disregarded as an entity separate from, a participating FFI or registered deemed-compliant FFI located outside of the FFI's country of residence or organization, the GIIN you must verify is the GIIN of the branch or disregarded entity receiving the payment. You must identify a GIIN associated with a disregarded entity to the extent provided in the instructions to Form W-8BEN-E or the Instructions for Form W-8IMY.

You will have reason to know that a withholdable payment is made to a branch (including a disregarded entity) of a participating FFI or registered deemed-compliant FFI that is not itself a participating FFI or registered deemed-compliant FFI when you are directed to make the payment to an address in a jurisdiction other than that of the participating FFI or registered deemed-compliant FFI (or branch of, or disregarded entity wholly owned by, such FFI) that is identified as the FFI (or branch of, or disregarded entity wholly owned by, such FFI) that is supposed to receive the payment and for which the FFI's GIIN is not confirmed as described in the preceding paragraphs.

The preceding sentence does not apply to an FFI that is an investment entity. If an FFI (other than an investment entity) directs you to make the payment to an account held by the FFI and maintained by another financial institution, the FFI must provide to you a statement in writing that the FFI is not directing the payment to any branch of such FFI that is not a participating FFI or a registered deemed-compliant FFI.

Sponsored, closely held investment vehicles. If you make a withholdable payment to a certified deemed-compliant FFI that is a sponsored, closely held investment vehicle, you must obtain a GIIN for the sponsoring entity and verify it against the published IRS FFI list.

Reason To Know

In general, you have reason to know that a claim of Chapter 4 status is unreliable or incorrect if your knowledge of relevant facts or statements contained in the withholding certificate or other documentation is such that a reasonably prudent person would question the claim being made. For an obligation other than a preexisting obligation (that is, an obligation other than an obligation, including an account, held by an individual that is outstanding on June 30, 2014, or an obligation, including an account, held by an entity that is opened, executed, or issued before January 1, 2015), you have reason to know that a claim of Chapter 4 status is unreliable or incorrect if any information contained in the account opening files or other customer account files, including documentation collected for AML due diligence purposes, conflicts with the Chapter 4 status being claimed. You will not have reason to know that a claim of Chapter 4 status is unreliable or incorrect based on documentation collected for AML due diligence purposes until the date that is 30 days after the obligation is created.

If you have classified an entity as engaged in a particular type of business based on your records, such as through the use of a standardized industry coding system, you have reason to know that the Chapter 4 status claimed by the entity is unreliable or incorrect only if the entity's claim conflicts with the withholding agent's classification of the entity's business type.

Withholding Certificates

In general, you have reason to know that a withholding certificate from a person is unreliable or incorrect with respect to claim of Chapter 4 status if:

- The withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claim made by the person;
- The withholding certificate contains any information that is inconsistent with the person's claim;
- You have other account information that is inconsistent with the person's claim;
- The withholding certificate lacks information necessary to establish entitlement to an exemption from withholding for Chapter 4 purposes; or
- With respect to an alternative certification under an applicable IGA included with a withholding certificate, if you know or have reason to know the certification is incorrect.

If you obtain a withholding certificate associated with a withholdable payment to a participating FFI, a registered deemed-compliant FFI, a sponsoring entity, or a sponsored FFI, you do not need to apply the standards of knowledge described earlier with respect to an account holder's claim of foreign status if you have confirmed the FFI's GIIN on the current published IRS FFI list within 90 days of receipt of the withholding certificate.

CAUTION *A withholding certificate used for Chapter 4 purposes also must include the information required for Chapter 3 purposes (that is, the entity's tax classification) with regard to a payment that is a reportable amount under Regulations section 1.1441-1(e)(3)(vi).*

Documentary Evidence

You have reason to know that documentary evidence provided by a person is unreliable or incorrect with respect to a claim of Chapter 4 status if:

- The documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence,
- The documentary evidence contains information that is inconsistent with the person's claim as to its Chapter 4 status,
- You have other account information that is inconsistent with the person's Chapter 4 status, or
- The documentary evidence lacks information necessary to establish the person's Chapter 4 status.

For standards of knowledge applicable to specific types of documentary evidence, see Regulations section 1.1471-3.

Payee Documentation From Intermediaries or Flow-Through Entities

In general. If you receive documentation for a payee of a withholdable payment through one or more intermediaries or flow-through entities, you must, in addition to determining each such entity's Chapter 4 status when required for Chapter 4 purposes, review all documentation obtained with respect to the payee. Under certain circumstances, you may rely on a withholding certificate with an electronic signature provided by an account holder that is an NQI, when you are permitted to do so under Regulations section 1.1441-1(e)(4)(i)(B). When withholding under Chapter 4 is not applied based on the Chapter 4 status of an intermediary or flow-through entity, you are not required to obtain documentation for a payee through an intermediary or flow-through entity that is a QI, WP, or WT or a payee that is included in a Chapter 4 withholding rate pool of U.S. payees.

Withholding statement. You must review the withholding statement provided and may not rely on information in the statement to the extent the information does not support the claims made regarding the Chapter 4 status of the payee. You may not treat a person as a foreign person if a U.S. address is provided, unless the withholding statement is accompanied by a valid withholding certificate and documentary evidence establishing foreign status.

Withholding certificate. You must review each withholding certificate, written statement (as permitted for Chapter 4 purposes with respect to certain payments to entities), or documentary evidence, and must verify that the information is consistent with the information on the withholding statement. If there is a discrepancy, you may rely on the documentation provided such documentation is valid and the intermediary or flow-through entity does not indicate that the documentation is unreliable or incorrect, or, alternatively, you may apply the presumption rules. If you choose to rely on the documentation, you must instruct the intermediary or flow-through entity to correct the withholding statement and confirm that the intermediary or flow-through entity does not know or have reason to know that the documentation is unreliable or incorrect. See Regulations section 1.1471-3(d) for when a written statement is permitted for Chapter 4 purposes.

Documentation from participating FFIs and registered deemed-compliant FFIs. If you receive documentation for a payee of a withholdable payment through a participating FFI or registered deemed-compliant FFI that is an intermediary or flow-through entity receiving the payment, you may rely on the Chapter 4 status provided in the withholding statement, including a Chapter 4 status determined under the requirements of (and documentation or information that is publicly available that determines the Chapter 4 status of the payee permitted under) an applicable IGA, provided that you have the information necessary to report on Form 1042-S, unless you have information that conflicts with the Chapter 4 status provided. If underlying documentation is provided for the payee and information in the documentation or

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in your records conflicts with the Chapter 4 status claimed, you have reason to know that the Chapter 4 status claimed is unreliable or incorrect. However, you are not required to verify the information contained in the documentation that is not facially incorrect, and you are generally not required to obtain supporting documentation for the payee. You may determine the recipient code of a payee for Chapter 4 purposes (for filing Form 1042-S) that is not identified on a withholding statement when you are able to do so based on other information included on or with the withholding statement or in your records with respect to the payee.

Preexisting obligation of entities. If you make a withholdable payment with respect to a preexisting obligation to an entity, the scope of review is limited with respect to the time in which you must determine the entity's Chapter 4 status. For more information, see Regulations section 1.1471-3(e)(4)(vii) or, if you are a reporting Model 1 FFI or a reporting Model 2 FFI, the requirements of the applicable IGA.

Presumption Rules

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

The presumption rules apply to determine the status of the person you pay as a U.S. or foreign person and other relevant characteristics, such as whether the payee is a beneficial owner or intermediary, and whether the payee is an individual, corporation, partnership, or trust. In the case of a withholdable payment you make to an entity, you must apply the presumption rules for Chapter 4 purposes to treat the entity as a nonparticipating FFI when you cannot reliably associate the payment with documentation permitted for Chapter 4 purposes. You are not permitted to apply a reduced rate of Chapter 3 withholding based on a payee's presumed status if documentation is required to establish a reduced rate of withholding. For example, if the payee of interest is presumed to be a foreign person, you may not apply the portfolio interest exception or a reduced rate of withholding under a tax treaty since both exceptions require documentation.

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

In the case of a participating FFI or registered deemed-compliant FFI that cannot report with respect to an individual account holder, the FFI must classify the account holder under the requirements (as applicable) of the FFI agreement, Regulations section 1.1471-5(f), or an applicable IGA. Whether withholding applies to payments made to such account holders classified as recalcitrant account holders (including payments to intermediaries or flow-through entities allocating payments to such account holders on an applicable withholding statement) differs under these requirements.

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

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

For the presumption rules related to:	See Regulations section:
Payee's status	1.1441-1(b)(3); 1.6049-5(d); 1.1471-3(f) (Chapter 4 payees)
Effectively connected income	1.1441-4(a)(2)
Partnership and its partners	1.1441-5(d); 1.1446-1(c)(3)
Estate or trust and its beneficiaries or owner	1.1441-5(e)(6)
Foreign tax-exempt organizations (including private foundations)	1.1441-9(b)(3)

Presumption Rules for Chapter 4

If you determine that you are making a withholdable payment to an entity and cannot reliably associate the payment with a valid Form W-8 or other documentation that you are permitted to rely upon and that is sufficient to determine the Chapter 4 status of the entity, you are required to treat the entity payee as a nonparticipating FFI such that withholding applies. For purposes of determining whether the payment is made to an individual or an entity, or to a U.S. person or a foreign person, if you cannot reliably associate a payment with a valid Form W-8 or other documentation that you are permitted to rely upon and from which you are able to determine the payee's status as an individual or entity, or U.S. or foreign status, you must apply the presumption rules of Regulations section 1.1441-1(b)(3)(ii) to determine the payee's status as an individual or entity and Regulations section 1.1441-1(b)(3)(iii) to determine the payee's U.S. or foreign status.

If you are making a withholdable payment to joint payees and cannot reliably associate the payment with valid documentation from each payee and each of the payees appears to be an individual, the payment is presumed made to an unidentified U.S. person. If any of the joint payees does not appear, by its name or other information in its account file, to be an individual, then the entire payment is treated as made to a nonparticipating FFI. However, if you receive from one of the joint payees a Form W-9, the payment shall be treated as made to that payee.

Income Subject to Withholding

This section explains how to determine if a payment is subject to Chapter 3 withholding or is a withholdable payment.

Amounts Subject to Chapter 3 Withholding

A payment is subject to Chapter 3 withholding if it is from sources within the United States, and it is fixed or determinable annual or periodical (FDAP) income. Generally, excluding gains but including certain gains from the disposal of timber, coal, and iron ore, or from the sale or exchange of patents, copyrights, and similar intangible property.

In addition, a payment is subject to Chapter 3 withholding if withholding is specifically required, even though it may not constitute U.S. source income or FDAP income. For example, corporate distributions may be subject to Chapter 3 withholding even though a part of the distribution may be a return of capital or capital gain that is not FDAP income.

Amounts not subject to Chapter 3 withholding. The following amounts are not subject to Chapter 3 withholding.

- Portfolio interest paid on obligations that meet certain requirements. See *Interest*, later.
- Bank deposit interest that is not effectively connected with the conduct of a U.S. trade or business. See *Interest*, later.
- Original issue discount on certain short-term obligations. See *Original issue discount*, later.
- Nonbusiness gambling income of a nonresident alien playing blackjack, baccarat, craps, roulette, or big-6 wheel in the United States. See *Gambling winnings*, later.
- Amounts paid as part of the purchase price of an obligation sold between interest payment dates. See *Interest*, later.
- Original issue discount paid on the sale of an obligation other than a redemption. See *Original issue discount*, later.
- Insurance premiums paid on a contract issued by a foreign insurer.
- U.S. source transportation income subject to a 4 percent tax on gross income.

Amounts Subject to Chapter 4 Withholding

U.S. source FDAP income for purposes of Chapter 4 is similar to U.S. source FDAP income for purposes of Chapter 3, subject to certain modifications such as the exclusion of

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certain types of non-financial payments and the inclusion (as U.S. source interest) of deposit interest paid by a foreign branch of a U. S. corporation or partnership. Also, see *Fixed or Determinable Annual or Periodical Income (FDAP)*, later.

A withholding agent must withhold on a payment of U.S. source FDAP income that is a withholdable payment to which an exception does not apply under Chapter 4.

Amounts not subject to withholding under Chapter 4. The following amounts are not subject to withholding under Chapter 4.

- Interest or original issue discount from a short-term obligation.
- Payments made under a grandfathered obligation (for example, obligations outstanding on July 1, 2014).

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Source of Income

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

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

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

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

Personal service income (for purposes of Chapter 3 withholding). If the income is for personal services performed in the United States, it is from U.S. sources. The place where the services are performed determines the source of the income, regardless of where the contract was made, the place of payment, or the residence of the payer.

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

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

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

Multiyear compensation. Generally, the source of multiyear compensation is determined on a time basis over the period to which the compensation is attributable. Multiyear compensation is compensation that is included in the taxable income of a recipient in 1 tax year but that is attributable to a period that includes 2 or more tax years. The determination of the period to which the compensation is attributable, for purposes of determining its source, is based on the facts and circumstances of each case. For example, an amount of compensation that specifically relates to a period of time that includes several calendar years is attributable to the entire multiyear period. Where determining the source of multiyear compensation on a time basis is appropriate, the amount of compensation treated as from U.S. sources is figured by multiplying the total multiyear compensation by a fraction. The numerator of the fraction is the number of days (or unit of time less than a day, if appropriate) that labor or personal services were performed in the United States in connection with the project. The denominator of the fraction is the total number of days (or unit of time less than a day, if appropriate) that labor or personal services were performed in connection with the project.

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

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

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

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

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

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

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

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

Multilevel marketing. Certain companies sell products through a multilevel marketing arrangement, such that an upper-tier distributor, who has sponsored a lower-tier distributor, is entitled to a payment from the company based on certain activities of that lower-tier distributor. Generally, depending on the facts, payments from such multilevel marketing companies to independent (nonemployee) distributors (upper-tier distributors) that are based on the sales or purchases of persons whom they have sponsored (lower-tier distributors) constitute income for the performance of personal services in recruiting, training, and supporting the lower-tier distributors. The source of such income is generally based on where the services of the upper-tier distributor are performed, and may, depending on the facts, be considered multiyear compensation, with the source of income determined over the period to which such compensation is attributable.

Scholarships, fellowships, and grants. Scholarships, fellowships, and grants are sourced according to the residence of the payer. Those made by entities created or domiciled in the United States are generally treated as income from sources within the United

States. However, see *Activities outside the United States* next. Those made by entities created or domiciled in a foreign country are treated as income from foreign sources.

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

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

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

Employer contributions to a defined benefit plan covering more than one individual are not made for the benefit of a specific participant, but are made based on the total liabilities to all participants. All funds held under the plan are available to provide benefits to any participant. If the payment is from such a plan, you can use the method in Revenue Procedure 2004-37, available at *IRS.gov/irb/2004-26_IRB#RP-2004-37*, to allocate the payment to sources within and without the United States.

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

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

IF you have...	THEN the source of that income is determined by...
pay for personal services	where the services are performed.
dividends	the type of corporation (U.S. or foreign).
interest	the residence of the payer.
rents	where the property is located.
royalties—patents, copyrights, etc.	where the property is used.
royalties—natural resources	where the property is located.
pensions—distributions attributable to contributions	where the services were performed.
pensions—investment earnings on contributions	the location of pension trust.
scholarships and fellowship grants	in most cases, the residence of the payer.
guarantee of indebtedness	the residence of the debtor or whether the payment is effectively connected with a U.S. trade or business.

Fixed or Determinable Annual or Periodical (FDAP) Income

FDAP income is all income except:

- Gains from the sale of property (not including original issue discount and certain gains that are referred to in *Amounts Subject to Chapter 3 Withholding*, earlier); and
- Items of income excluded from gross income without regard to U.S. or foreign status of the owner of the income, such as tax-exempt municipal bond interest and qualified scholarship income.

The following items are examples of FDAP income.

- Compensation for personal services paid to an individual or a sole proprietorship.
- Dividends and dividend equivalent payments.
- Interest.
- Original issue discount.
- Real estate mortgage investment conduit (REMIC) excess inclusion income.
- Pensions and annuities.
- Alimony (no longer income if the divorce or separation agreement is executed after December 31, 2018, or if executed before January 1, 2019, but modified after December 31, 2018, the modification must state that section 11051 of P.L. 115-97 (TCJA) applies to the modification).
- Real property income, such as rents, other than gains from the sale of real property.
- Royalties.
- Taxable scholarships and fellowship grants.
- Other taxable grants, prizes, and awards.
- A sales commission paid or credited monthly.
- A commission paid for a single transaction.
- The distributable net income of an estate or trust that is FDAP income and must be distributed currently, or has been paid or credited during the tax year.
- FDAP income distributed by a partnership that, or such an amount that, although not actually distributed, is includible in the gross income of a foreign partner.
- Taxes, mortgage interest, or insurance premiums paid to, or for the account of, a nonresident alien landlord by a tenant under the terms of a lease.
- Publication rights.
- Prizes awarded to nonresident alien artists for pictures exhibited in the United States.
- Purses paid to nonresident alien boxers for prize fights in the United States.
- Prizes awarded to nonresident alien professional golfers in golfing tournaments in the United States.

Payments for the following purposes are examples of payments that are not withholdable payments.

- Services (including wages and other forms of employee compensation (such as stock options)).
- The use of property.
- Office and equipment leases.
- Software licenses.
- Transportation.
- Freight.
- Gambling winnings.
- Awards, prizes, and scholarships.
- Interest on outstanding accounts payable arising from the acquisition of goods or services.

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

Insurance proceeds. Income derived by an insured nonresident alien from U.S. sources upon the surrender of, or at the maturity of, a life insurance policy, is FDAP income and is subject to Chapter 3 withholding and is a withholdable payment. This includes income derived under a life insurance contract issued by a foreign branch of a U.S. life insurance company. The proceeds are income to the extent they exceed the cost of the policy.

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

Racing purses (for purposes of Chapter 3 withholding). Racing purses are FDAP income and racetrack operators must withhold 30% on any purse paid to a nonresident alien racehorse owner in the absence of definite information contained in a statement filed together with a Form W-8 that the owner has not raced, or does not intend to enter, a horse in another race in the United States during the tax year. If available information indicates that the racehorse owner has raced a horse in another race in the United States during the tax year, then the statement and Form W-8 filed for that year are ineffective. The owner may be exempt from withholding of tax at 30% on the purses if the owner gives you Form W-8ECI, which provides that the income is effectively connected with the conduct of a U.S. trade or business and that the income is includible in the owner's gross income.

Covenant not to compete. Payment received for a promise not to compete is generally FDAP income. Its source is the place where the promisor forfeited his or her right to act. Amounts paid to a nonresident alien for his or her promise not to compete in the United States are subject to Chapter 3 withholding and are withholdable payments.

Withholding on Specific Income

Different kinds of income are subject to different withholding requirements.

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Effectively Connected Income

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

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

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

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

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

Withholding exemption. In most cases, you do not need to withhold tax on income for purposes of Chapter 3 or 4 if you receive a Form W-8ECI on which a foreign payee represents that:

- The foreign payee is the beneficial owner of the income;
- The income is effectively connected with the conduct of a trade or business in the United States; and
- For purposes of Chapter 3 withholding, the income is includible in the payee's gross income.

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

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

Withholding exemption for purposes of Chapter 4. Income effectively connected with the conduct of a trade or business in the United States is not a withholdable payment under Chapter 4 and thus is not subject to withholding for Chapter 4 purposes. You do not need to withhold tax under Chapter 4 if you receive a Form W-8ECI on which a foreign payee makes the representations described in *Withholding exemptions*, earlier.

Notional principal contract income. Certain payments attributable to a notional principal contract are not subject to withholding regardless of whether a Form W-8ECI is provided. However, payments of dividend equivalents that are not effectively connected with the conduct of a trade or business in the United States, pursuant to a specified notional principal contract (described later under *Dividend equivalent payments*) are subject to withholding.

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

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

Income Not Effectively Connected

This section discusses the specific types of income that are subject to Chapter 3 withholding and where withholding under Chapter 4 is required. The income codes contained in this section correspond to the income codes used on the 2020 Form 1042-S (discussed later).

For purposes of Chapter 3, you must withhold tax at the statutory rates shown in *Chart C* unless a reduced rate or exemption under a tax treaty applies. For U.S. source gross income that is not effectively connected with a U.S. trade or business, the rate is usually 30%. In most cases, you must withhold the tax at the time you pay the income to the foreign person. See *When to withhold*, earlier.

Interest

Interest from U.S. sources paid to foreign payees is subject to Chapter 3 withholding and is a withholdable payment (except when the interest is paid with respect to a grandfathered obligation or another exemption under Chapter 4 applies). When making a payment on an interest-bearing obligation, you must withhold on the gross amount of stated interest payable on the interest payment date, even if the payment or a part of the payment may be a return of capital rather than interest.

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

Interest paid by U.S. obligors—general (Income Code 1). With specific exceptions, such as portfolio interest (for purposes of Chapter 3), you must withhold on interest paid or credited on bonds, debentures, notes, open account indebtedness, governmental obligations, certain deferred payment arrangements (as provided in section 483 of the Internal Revenue Code), or other evidences of indebtedness of U.S. obligors. U.S. obligors include the U.S. Government or its agencies or instrumentalities, any U.S. citizen or resident, any U.S. corporation, and any U.S. partnership.

If, in a sale of a corporation's property, payment of the bonds or other obligations of the corporation is assumed by the buyer, that buyer, whether an individual, partnership, or corporation, must deduct and withhold the taxes that would be required to be withheld by the selling corporation as if there had been no sale or transfer. Also, if interest coupons are in default, the tax must be withheld on the gross

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amount of interest whether or not the payment is a return of capital or the payment of income.

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

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

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

For withholding under Chapter 4 on the interest payments described in this section, see the definition of withholdable payments in Regulations section 1.1473-1(a).

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Original issue discount (Income Code 30). Original issue discount paid on the redemption of an obligation is subject to Chapter 3 withholding and is a withholdable payment (except when paid with respect to a grandfathered obligation). Original issue discount paid as part of the purchase price of an obligation sold or exchanged, other than in a redemption, is not subject to Chapter 3 withholding unless the purchase is part of a plan the principal purpose of which is to avoid tax and the withholding agent has actual knowledge or reason to know of the plan. However, such original issue discount is a withholdable payment (except when paid with respect to a grandfathered obligation). Withholding is required by a person other than the issuer of an obligation (or the issuer's agent).

The original issue discount that is subject to Chapter 3 withholding and is a withholdable payment (except when paid with respect to a grandfathered obligation) is the taxable amount of original issue discount. The taxable amount for both Chapters 3 and 4 withholding purposes is the original issue discount that accrued while the obligation was held by the foreign beneficial owner up to the time the obligation was sold or exchanged or a payment was made, reduced by any original issue discount that was previously taxed. If a payment was made, the tax due on the original issue discount may not exceed the payment reduced by the tax imposed on the part of the payment that is qualified stated interest.

If you cannot determine the taxable amount, you must withhold on the entire amount of original issue discount accrued from the date of issue until the date of redemption (or sale or exchange, if subject to Chapter 3 withholding or a withholdable payment) determined on the basis of the most recently published Pub. 1212.

For more information on original issue discount, see Pub. 550.

Chart C. **Withholding Tax Rates for Purposes of Chapter 3**

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

IF you paid the following type of income...	THEN you generally must withhold at the following rate...
Taxable part of U.S. scholarship or fellowship grant paid to holder of "F," "J," "M," or "Q" visa (see *Scholarships and Fellowship Grants*, later)	14%
Gross investment income from interest, dividends, rents, and royalties paid to a foreign private foundation	4%
Pensions—part paid for personal services (see *Pensions, Annuities, and Alimony*, later)	Graduated rates in Circular A or Circular E
Wages paid to a nonresident alien employee (see *Pay for Personal Services Performed*, later)	Graduated rates in Circular A or Circular E
Each foreign partner's share of effectively connected income of the partnership (see *Partnership Withholding on Effectively Connected Income*, later)	37% for noncorporate partners; 21% for corporate partners
Distributions of effectively connected income to foreign partners by publicly traded partnerships (see *Publicly Traded Partnerships*, later)	37% for noncorporate partners; 21% for corporate partners
Dispositions of U.S. real property interests (see *U.S. Real Property Interest*, later)	15%*
Dispositions of partnership interests under section 1446(f)	10%
Dividends paid to Puerto Rican corporation	10%
All other income subject to withholding	30%

*21% in the case of certain distributions by corporations, partnerships, trusts, or estates.

Reduced Rates of Withholding on Interest

CAUTION *Notwithstanding the exception from withholding under Chapter 3 on interest described under this heading, withholding may still apply under Chapter 4 when the payment is a withholdable payment and an exception from withholding under Chapter 4 does not apply.*

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

Portfolio interest exempt from Chapter 3 withholding. Interest and original issue discount that qualifies as portfolio interest is exempt from Chapter 3 withholding. However, these amounts are not exempt from withholding under Chapter 4 when the interest is a withholdable payment, unless an exception from Chapter 4 withholding applies. To qualify as portfolio interest, the interest must be paid on obligations issued after July 18, 1984, and otherwise subject to Chapter 3 withholding.

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

For obligations issued after March 18, 2012, portfolio interest does not include interest paid on debt that is not in registered form, except for interest paid on foreign-targeted registered obligations issued before January 1, 2016, as described in *Foreign-targeted registered obligations*, later.

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

Generally, an obligation is in registered form if (i) the obligation is registered as to both principal and any stated interest with the issuer (or its agent) and any transfer of the obligation may be effected only by surrender of the old obligation and reissuance to the new holder, (ii) the right to principal and stated interest with respect to the obligation may be transferred only through a book entry system maintained by the issuer or its agent, or (iii) the obligation is registered as to both principal and stated interest with the issuer or its agent and can be transferred both by surrender and reissuance and through a book entry system.

An obligation that would otherwise be considered to be in registered form is not considered to be in registered form as of a particular time if it can be converted at any time in the future into an obligation that is not in registered form, except as otherwise provided in Notice 2012-20, 2012-13 I.R.B 574, available at *IRS.gov/irb/ 2012-13_IRB#NOT-2012-20*, as described in the following section.

Dematerialized book-entry systems and effectively immobilized obligations. An obligation will be considered to be in registered form if it is issued through either a dematerialized book entry system maintained by a clearing organization (or agent thereof) or a clearing system in which the obligation (including a global obligation in bearer form) is effectively immobilized. See *Notice 2012-20*, amplified by Notice 2013-43, 2013-31 I.R.B 113, available at *IRS.gov/irb/2013-31_IRB#NOT-2013-43*.

Under dematerialized book-entry systems, bonds are required to be represented only by book entries, and no physical certificates are issued or transferred. The bonds are transferred only by book entries.

An obligation will be considered to be effectively immobilized if (1) it is represented by one or more global securities in physical form that are issued to and held by a clearing organization (or by a custodian or depository acting as an agent of the clearing organization) for the benefit of purchasers and under arrangements that prohibit transfer except to a successor clearing organization subject to the same terms, and (2) beneficial interest in the underlying

obligation is transferable only through a book-entry system maintained by the clearing organization or its agent.

These bonds are considered to be in registered form if the holder may only obtain a physical certificate in bearer form when (1) the clearing organization that maintains the book-entry system goes out of business without a successor, (2) the issuer defaults, or (3) definitive securities are issued at the issuer's request upon a change in tax law adverse to the issuer. See Notice 2012-20 for more information on registered form requirements.

Foreign-targeted registered obligations. A registered bond issued after March 18, 2012, and before January 1, 2016, also will be considered to be in registered form if it is targeted to foreign markets, and portfolio interest treatment may apply even when you do not receive documentation regarding the beneficial owner of the bond.

If the registered obligation is not targeted to foreign markets, you must receive documentation on which you may rely to treat the payee as a foreign person that is the beneficial owner of the interest. A registered obligation is targeted to foreign markets if it is sold (or resold in connection with its original issuance) only to foreign persons or to foreign branches of U.S. financial institutions in accordance with procedures similar to those provided under section 1.163-5(c)(2)(i) of the regulations. However, the procedure that requires the obligation to be offered for sale (or resale) only outside the United States does not apply if the registered obligation is offered for sale through a public auction. Also, the procedure that requires the obligation to be delivered outside the United States does not apply if the obligation is considered registered because it may be transferred only through a book-entry system and the obligation is offered for sale through a public auction. The documentation needed depends on whether the interest is paid to a financial institution, a member of a clearing organization, or to some other foreign person. See Notice 2012-20 and Regulations section 1.871-14(e) for more information on foreign-targeted registered obligations.

Obligations not in registered form and obligations issued before March 19, 2012. For obligations issued before March 19, 2012, interest on an obligation that is not in registered form (bearer obligation) is portfolio interest if the obligation is foreign targeted. A bearer obligation is foreign targeted if:

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

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

Interest on such obligations is not a withholdable payment under Chapter 4, except when the instrument is materially modified after March 18, 2012.

Interest that does not qualify as portfolio interest. Payments to certain persons and payments of contingent interest do not qualify as portfolio interest. You must withhold at the statutory rate on such payments unless some other exception, such as a treaty provision, applies and withholding under Chapter 4 does not apply.

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

- Any receipts, sales, or other cash flow of the debtor or a related person.
- Income or profits of the debtor or a related person.
- Any change in value of any property of the debtor or a related person.
- Any dividend, partnership distributions, or similar payments made by the debtor or a related person.
- Any amount that is a dividend equivalent.

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

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

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

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

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

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

Reduced rate or exemption from Chapter 3 withholding for interest on real property mortgages (Income Code 2). Certain treaties permit a reduced rate or exemption for interest paid or credited on real property mortgages. This is interest paid on any type of debt instrument that is secured by a mortgage or deed of trust on real property located in the United States, regardless of whether the mortgagor (or grantor) is a U.S. citizen or a U.S. business entity.

REMIC excess inclusions. A domestic partnership must separately state a partner's allocable share of REMIC taxable income or net loss and the excess inclusion amount on Schedule K-1 (Form 1065). If the partnership allocates all or some part of its allocable share of REMIC taxable income to a foreign partner, the partner must include the partner's allocated amount in income as if that amount was received on the earlier of the following dates.

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

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

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

The partnership must withhold tax on the part of the REMIC amount that is an excess inclusion. Excess inclusion income is treated as income from sources in the United States and is not eligible for any reduction in withholding tax (by treaty or otherwise). It also is a withholdable payment for Chapter 4 purposes.

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

- Shareholder of a real estate investment trust (REIT).
- Shareholder of a regulated investment company (RIC).
- Participant in a common trust fund.
- Patron of a subchapter T cooperative organization.

The entity must withhold on the excess inclusion.

For information on the taxation and reporting of excess inclusion income by REITs, RICs, and other pass-through entities, see Notice 2006-97, available at *IRS.gov/irb/2006-46_IRB#NOT-2006-97*.

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

Reduced rate or exemption from Chapter 3 withholding for interest paid by foreign corporations (Income Code 4). If a foreign corporation is engaged in a U.S. trade or business, any interest paid by the foreign corporation's trade or business in the United States (branch interest) is subject to Chapter 3 withholding as if paid by a domestic corporation (without considering the "payer having income from abroad" exception) and is a withholdable payment. As a result, the interest paid to foreign payees is generally subject to Chapter 3 withholding and withholding may apply under Chapter 4 absent

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an applicable withholding exception. In addition, if "allocable interest" exceeds the branch interest paid, the excess interest also is subject to tax and reported on the foreign corporation's income tax return, Form 1120-F. See the Instructions for Form 1120-F for more information.

If there is no treaty provision that reduces the rate of withholding on branch interest, you must withhold tax under Chapter 3 at the statutory rate of 30% on the interest paid by a foreign corporation's U.S. trade or business and you must withhold under Chapter 4 when otherwise applicable and without regard to a treaty provision.

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

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

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

Interest on deposits (Income Code 29). Foreign persons are not subject to Chapter 3 withholding on interest that is not connected with a U.S. trade or business if it is from:

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

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

You may have to file Form 1042-S to report certain payments of interest on deposits. See *Deposit interest paid to certain nonresident alien individuals* under *Returns Required*, later. You also may have to file Form 1042-S when the deposit interest is a withholdable payment to which withholding applies (or was applied) to Chapter 4.

Obligations issued before August 10, 2010. Interest received from a resident alien individual or a domestic corporation is not subject to Chapter 3 withholding and is not a withholdable payment if the interest meets all of the following requirements.

- At least 80% of the payer's gross income from all sources has been from active foreign business for the 3 tax years of the payer before the year in which the interest is paid, or for the applicable part of those 3 years.
- The recipient is not a related person. Use rules similar to those in section 954(d)(3) of the Internal Revenue Code to determine if the recipient is a related person.
- The interest is paid on an obligation issued before August 10, 2010.
- The obligation has not been significantly modified since August 10, 2010.

Interest from foreign business arrangements. In certain cases, interest received from a domestic payer most of whose gross income is active foreign business income is not subject to Chapter 3 withholding and is not a withholdable payment.

Active foreign business income is gross income which is:

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

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

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

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

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

Sales of bonds between interest dates. Amounts paid as part of the purchase price of an obligation sold or exchanged between interest payment dates is not subject to Chapter 3 withholding. In addition, such a payment is not a withholdable payment. This does not apply if the sale or exchange is part of a plan the principal purpose of which is to avoid tax and you have actual knowledge or reason to know of the plan. The exemption from Chapter 3 withholding and from withholdable payments applies even if you do not have any documentation from the payee. However, documentation may be required for purposes of Form 1099 reporting and backup withholding.

Short-term obligations. Interest and original issue discount paid on an obligation that is payable 183 days or less from the date of its original issue (without regard to the period held by the taxpayer) that satisfy other requirements intended to ensure that the debt is not held by a U.S. nonexempt person are not subject to Chapter 3 withholding. In addition, such a payment is not a withholdable payment. These exemptions apply even if you do not have any documentation from the payee. However, documentation may be required for purposes of Form 1099 reporting and backup withholding.

Income from U.S. Savings Bonds of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands. Interest from a Series E, Series EE, Series H, or Series HH U.S. Savings Bond is not subject to Chapter 3 withholding if the nonresident alien individual acquired the bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

Dividends

The following types of dividends paid to foreign payees generally are subject to Chapter 3 withholding and generally are withholdable payments such that withholding Chapter 4 applies absent an exception available under Chapter 4.

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

A corporation making a distribution with respect to its stock, or any intermediary making a payment of such a distribution, is required to withhold on the entire amount of the distribution at the rate applicable under Chapter 3 when withholding under Chapter 4 does not apply.

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However, a distributing corporation or intermediary may elect to not withhold on the part of the distribution that:

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

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

Dividends paid by a QIE (Income Code 24). A QIE is:

1. Any REIT, or
2. Any RIC that is a U.S. real property holding corporation.

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

- The distribution is on stock regularly traded on a securities market in the United States, and
- The individual or corporation did not own more than 10% of such stock in the case of a REIT or 5% of such stock in case of a RIC at any time during the 1-year period ending on the date of distribution.

Certain distributions by a REIT may be treated as a dividend and are not subject to withholding under section 1445 as a gain from the sale or exchange of a U.S. real property interest. See *Qualified investment entities (QIEs)* under *U.S. Real Property Interest*, later.

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

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

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

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

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

Interest-related dividends and short-term capital gain dividends received from mutual funds. Certain interest-related dividends and short-term capital gain dividends paid by a mutual fund or other RIC are exempt from Chapter 3 withholding.

Dividends qualifying for direct dividend rate (Income Code 7). A treaty may reduce the rate of withholding on dividends from that which generally applies under the treaty if the shareholder owns a certain percentage of the voting stock of the corporation when withholding under Chapter 4 does not apply. In most cases, this preferential rate applies only if the shareholder directly owns the required percentage, although some treaties permit the percentage to be met by direct or indirect ownership. The preferential rate may apply to the payment of a deemed dividend under section 304(a)(1) of the Code. Under some treaties, the preferential rate for dividends qualifying for the direct dividend rate applies only if no more than a certain percentage of the paying corporation's gross income for a certain period consists of dividends and interest other than dividends and interest from subsidiaries or from the active conduct of a banking, financing, or insurance business. A foreign person should claim the direct dividend rate by filing the appropriate Form W-8.

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

Dividends paid by foreign corporations (Income Code 8). Dividends paid by a foreign corporation generally are not subject to Chapter 3 withholding and are not withholdable payments. This exception does not require a Form W-8. However, a Form W-8 may be required for purposes of Form 1099 reporting and backup withholding.

The payment to a foreign corporation by a foreign corporation of a deemed dividend under section 304(a)(1) of the Code is subject to Chapter 3 withholding and may be a withholdable payment except to the extent it can be clearly determined to be from foreign sources.

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

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

Dividends paid to Puerto Rican corporation. For Chapter 3 purposes, the tax rate on dividends paid to a corporation created or organized in, or under the law of, the Commonwealth of Puerto Rico is 10%, rather than 30%, if:

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

No special rules apply to Puerto Rican corporations for Chapter 4 purposes, but special withholding rules do apply for withholdable payments made to territory financial institutions and nonfinancial entities. See the Chapter 4

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regulations for information on these special requirements.

Dividend Equivalents

Dividend equivalent payments. Dividend equivalent payments are treated as U.S. source dividends such that withholding under Chapter 3 may apply. Use Income Code 34 or 40 to report dividend equivalent payments. Dividend equivalent payments are withholdable payments except when an exception applies for Chapter 4 purposes.

A dividend equivalent is a payment (as defined in Regulations section 1.871-15(c)) that, directly or indirectly, is contingent on, or determined by reference to, the payment of a dividend from U.S. sources. Dividend equivalent payments include the following payments.

1. A substitute dividend made under a securities lending or sale-repurchase transaction involving a U.S. stock.
2. A payment that references the payment of a dividend from an underlying security made under a specified notional principal contract.
3. A payment that references the payment of a dividend from an underlying security made to a specified equity-linked instrument.
4. Any payment determined by regulations to be substantially similar to a payment in (1) or (2) above.

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

Specified notional principal contracts (SNPCs) and specified equity-linked instruments (SELIs) (Income Code 40).

Transactions entered into on or after January 1, 2017.

For transactions entered into on or after January 1, 2017 (including as a result of a deemed exchange pursuant to section 1001), a SNPC or SELI is a notional principal contract (NPC) or equity linked instrument, respectively, with a delta of 0.8 or greater if it is a simple contract under Regulations section 1.871-15(a)(14)(i), or it meets the substantial equivalence test if it is a complex contract under Regulations section 1.871-15(a)(14)(ii). See Regulations section 1.871-15(g) for the delta test and Regulations section 1.871-15(h) for the substantial equivalence test.

Notwithstanding the preceding paragraph, for transactions entered into prior to January 1, 2023, transition relief provides that, subject to an anti-abuse rule, only delta-one transactions will be treated as SNPCs and SELIs. See *Notice 2020-2*.

NPCs entered into before January 1, 2017.

For transactions entered into before January 1, 2017, a SNPC is any NPC if:

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

For more information regarding dividend equivalents, see Regulations section 1.871-15 and Notice 2020-2.

Amounts paid to qualified securities lenders (QSLs) For 2017, a withholding agent that made payments of substitute dividends to a QSL could treat the QSL as the recipient. Beginning January 1, 2019, QSLs can no longer be treated as the recipient, except that a QSL may be treated as a recipient for substitute dividend payments made before January 1, 2023. See Notice 2020-2.

Amounts paid to QDDs. Only an eligible entity that has entered into a QI agreement can be a QDD. An eligible entity is a home office or branch that is a QI and that is:

1. A dealer in equity derivatives that is subject to regulatory supervision as a dealer by a governmental authority in the jurisdiction in which it was organized or operates;
2. A bank or bank holding company that is subject to regulatory supervision as a bank or bank holding company (as applicable) by a governmental authority in the jurisdiction in which it was organized or operates;
3. An entity that is wholly owned (directly or indirectly) by a bank or bank holding company subject to regulatory supervision as a bank or bank holding company (as applicable) by a governmental authority in the jurisdiction in which the bank or bank holding company (as applicable) was organized or operates and that entity, in its capacity as a dealer in equity derivatives:
   a. Issues potential section 871(m) transactions to customers; and
   b. Receives dividends with respect to stock or dividend equivalent payments pursuant to potential section 871(m) transactions that hedge potential section 871(m) transactions that it issued;
4. A foreign branch of a U.S. financial institution if the foreign branch would be described in (1), (2), or (3) had it been a separate entity; or
5. Any person otherwise acceptable to the IRS.

A QDD is liable for tax under section 881 on its section 871(m) amount for each dividend on each underlying security. The section 871(m) amount is described in Regulations section 1.871-15(q)(3).

For more information on amounts paid to QDDs, see the Chapter 3 regulations issued with the section 871(m) regulations. You can view the regulations at *IRS.gov/irb/2017-09_IRB#TD-9815*.

Gains

You generally do not need to withhold under Chapter 3 or 4 on any gain from the sale of real or personal property because it is not FDAP income. However, see *U.S. Real Property Interest*, later.

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

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

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

Unless you have reason to believe otherwise, you may rely upon the written statement of the person entitled to the income as to the amount of gain. The Form W-8 or documentary evidence must show the beneficial owner's basis in the property giving rise to the gain.

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

Royalties

In general, you must withhold tax under Chapter 3 on the payment of royalties from sources in the United States. However, certain types of royalties are given reduced rates or exemptions under some tax treaties. Accordingly, these different types of royalties are treated as separate categories for withholding purposes. For Chapter 4 purposes, royalties are nonfinancial payments and are therefore excluded as withholdable payments.

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

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

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

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

Real Property Income and Natural Resources Royalties (Income Code 14)

You must withhold tax under Chapter 3 on income (such as rents and royalties) from real property located in the United States and held for the production of income, unless the foreign payee elects to treat this income as effectively connected with a U.S. trade or business. If the foreign payee chooses to treat this income as effectively connected, the payee must give you *Form W-8ECI* (discussed earlier). This real property income includes royalties from mines, wells, or other natural deposits, as well as ordinary rents for the use of real property. For Chapter 4 purposes, income from real property is either a nonfinancial payment (and therefore not a withholdable payment) or is excluded as a withholdable payment because it is effectively connected income. For withholding that applies to the disposition of U.S. real property interests, see *U.S. Real Property Interest*, later.

Pensions, Annuities, and Alimony (Income Code 15)

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

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

Most tax treaties provide an exemption from tax on non-government pensions and annuities. See the specific treaty rules for government pensions. The exemption may not apply to lump-sum payments. See, for example, Article 17(2) of the United States–United Kingdom income tax treaty. In addition, it does not apply to payments treated as deferred compensation, which is often treated as income from employment.

For purposes of Chapter 3 withholding, in the absence of a treaty exemption, you must withhold at the statutory rate of 30% on the entire distribution that is from sources within the United States. You may, however, apply withholding at graduated rates to the part of a distribution that arises from the performance of services in the United States after December 31, 1986.

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

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

Foreign pension plans are exempt from applying withholding under Chapter 4 when they are exempt beneficial owners under Regulations section 1.1471-6(f). A payment from a U.S. pension plan to a foreign individual beneficiary in the plan is not subject to withholding under Chapter 4.

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

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

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

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

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

Alimony payments. In most cases, alimony payments made by U.S. resident aliens to nonresident aliens are taxable and subject to Chapter 3 withholding whether the recipients are residing abroad or are temporarily present in the United States.

Many tax treaties, however, provide for an exemption from withholding for alimony payments. See *Tax Treaties*, later, for information about treaty benefits.

Alimony payments made to a nonresident alien by a U.S. ancillary administrator of a nonresident alien estate are from foreign sources and are not subject to withholding. Alimony payments are not subject to Chapter 4 withholding.

Note. Under section 11051 of P.L. 115-97 (TCJA), alimony is no longer considered income if the divorce or separation agreement is executed after December 31, 2018, or if executed before January 1, 2019, but modified after December 31, 2018, the modification must state that section 11051 of P.L. 115-97 applies to the modification.

Scholarships and Fellowship Grants Subject to Chapter 3 Withholding (Income Code 16)

A scholarship or fellowship grant is an amount given to an individual for study, training, or research, and which does not constitute compensation for personal services. For information about withholding on scholarship and fellowship grants that is treated as compensation for services, see *Pay for services rendered*, later. Whether a fellowship grant from U.S. sources is subject to Chapter 3 withholding depends on the nature of the payments and whether the recipient is a candidate for a degree. These amounts are not subject to Chapter 4 withholding. See *Scholarships, fellowships, and grants* under *Source of Income,* earlier.

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

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

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

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

1. The grant must be for study, training, or research in the United States.
2. The grant must be made by:
   a. A tax-exempt organization operated for charitable, religious, educational, etc. purposes;
   b. A foreign government;
   c. A federal, state, or local government agency; or
   d. An international organization, or a binational or multinational educational or cultural organization created or continued by the Mutual Educational and Cultural Exchange Act of 1961 (known as the Fulbright-Hays Act).

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

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

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

Each student or grantee who files a Form W-4 must file an annual U.S. income tax return to take the deductions claimed on that form. If the individual is in the United States during more than 1 tax year, he or she must attach a statement to the annual Form W-4 indicating that the individual has filed a U.S. income tax return for the previous year. If he or she has not been in the United States long enough to have to file a return, the individual must attach a statement to the Form W-4 saying that a timely U.S. income tax return will be filed.

The payer of the grant or scholarship must review the Form W-4 to make sure all the necessary and required information is provided. If the withholding agent knows or has reason to know that the amounts shown on the Form W-4 may be false, the withholding agent must reject the Form W-4 and withhold at the appropriate statutory rate (14% or 30%).

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

Pay for services rendered. Pay for services rendered as an employee by an alien who also is the recipient of a scholarship or fellowship grant usually is subject to graduated withholding under Chapter 3 according to the rules discussed later in *Wages Paid to Employees—Graduated Withholding*. This includes taxable amounts an individual who is a candidate for a degree receives for teaching, doing research, and carrying out other part-time employment required as a condition for receiving the scholarship or fellowship grant (that is, compensatory scholarship or fellowship income).

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

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

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

Tax treaties. Many treaties contain exemptions from U.S. taxation for scholarships and fellowships. Although usually found in the student articles of the tax treaties, many of these exemptions also apply to research grants received by researchers who are not students. See *Tax Treaties*, later, for information about treaty benefits. The treaty provision usually exempts the entire scholarship or fellowship amount, regardless of whether the grant is a "qualified scholarship" under U.S. law.

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

The scholarship or fellowship recipient who is claiming a treaty exemption must provide you with a foreign TIN on Form W-8BEN or, in the case of a recipient who also received wages from the same institution, a U.S. TIN on Form 8233, or you cannot allow the treaty exemption. A copy of a completed Form W-7, showing that a TIN has been applied for, can be given to you with a Form 8233. See *Form 8233*, later, under *Pay for Personal Services Performed.*

Nonresident alien who becomes a resident alien. In most cases, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on income from a scholarship or fellowship grant. A student (including a trainee or business apprentice) or researcher who has become a resident alien for U.S. tax purposes may not use the terms of a tax treaty due to a provision known as a "saving clause." However, an exception to the saving clause may permit an exemption from tax to continue for scholarship or fellowship grant income even after the recipient has otherwise become a U.S. resident alien for tax purposes. In this situation, the individual must give you a Form W-9 and an attachment that includes all the following information.

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

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

Other Grants, Prizes, and Awards Subject to Chapter 3 Withholding

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

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

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

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

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

Pay for Personal Services Performed

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

Payments for personal services are not withholdable payments under Chapter 4 when they are nonfinancial payments. See Regulations section 1.1473-1(a)(4)(iii) for a description of these payments and their exclusion as withholdable payments.

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

Form 8233. This form is used by a nonresident alien individual to claim a tax treaty exemption from withholding on some or all compensation paid for:

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

A withholding agent that receives Form 8233 from a nonresident alien individual claiming a tax treaty exemption must review the form, sign to indicate its acceptance, and forward the form to the IRS within 5 days of its acceptance.

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

Pay for independent personal services (Income Code 17). Independent personal services (a term commonly used in tax treaties) are personal services performed by an independent nonresident alien contractor as contrasted with those performed by an employee. This category of pay includes payments for professional services, such as fees of an attorney, physician, or accountant made directly to the person performing the services. It also includes honoraria paid by colleges and universities to visiting teachers, lecturers, and researchers.

Pay for independent personal services is subject to Chapter 3 withholding and reporting as follows.

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

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

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

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

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

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

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

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

Travel expenses. If you pay or reimburse the travel expenses of a nonresident alien, the payments are not reportable to the IRS and are not subject to Chapter 3 withholding if the

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payments are made under an accountable plan as described in section 1.62-2 of the regulations. This treatment applies only to that part of a payment that represents the payment of travel and lodging expenses and not to that part that represents compensation for independent personal services.

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

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

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

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

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

Wages Paid to Employees—Graduated Withholding

Salaries, wages, bonuses, or any other pay for personal services (referred to collectively as wages) paid to nonresident alien employees are subject to graduated withholding in the same way as for U.S. citizens and residents if the wages are effectively connected with the conduct of a U.S. trade or business.

Note. Any wages paid to a nonresident alien for personal services performed as an employee for an employer are generally not subject to the 30% withholding if the wages are subject to graduated withholding.

Also, the 30% withholding does not apply to pay for personal services performed as an employee for an employer if it is effectively connected with the conduct of a U.S. trade or business and is specifically exempted from the definition of wages. Chapter 4 withholding does not apply to these payments. See *Pay that is not wages*, later.

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

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

For more information on withholding on foreign agricultural workers, go to IRS.gov and enter "agricultural workers" in the search box.

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

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

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

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

Employee. An employee generally includes any individual who performs services if the relationship between the individual and the person for whom the services are performed is the legal relationship of employer and employee. This includes an individual who receives a supplemental unemployment pay benefit that is treated as wages.

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

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

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

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

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

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

If an employer–employee relationship exists, the employer ordinarily must withhold the income tax from wage payments by using the percentage method or wage bracket tables as shown in Pub. 15-T.

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

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

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exercise of the ministry and not as an employee of the United States, a U.S. possession, or a foreign government, or any of their political subdivisions. These also include services performed by a member of a religious order in carrying out duties required by that order.

- Tips paid to an employee if they are paid in any medium other than cash or, if in cash, they amount to less than $20 in any calendar month in the course of employment.

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

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

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

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

1. Check "Single or Married filing separately" on Step 1(c) (regardless of actual marital status).
2. Write "Nonresident Alien" or "NRA" in the space below Step 4(c).

For more information see Notice 1392.

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

Determining amount to withhold. Employers are required to add an amount to the wages of a nonresident alien employee solely for the purpose of calculating income tax withholding. The specific amounts depend on the payroll period. These amounts can be found in *Withholding Adjustment for Nonresident Alien Employees* in the Introduction of Pub. 15-T. This adjustment does not apply to students and business apprentices from India.

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

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

Form W-2. The employer also must report on Form W-2 the wages subject to Chapter 3 withholding and the withheld taxes. You must give copies of this form to the employee. If the employee submits Form 8233 to claim exemption from withholding under a tax treaty, the wages are reported on Form 1042-S and not in box 1 of Form W-2. Wages exempt under a tax treaty may still be reported in the state and local wages boxes of Form W-2 if such wages are subject to state and local taxation. For more information, see the instructions for these forms.

Trust fund recovery penalty. If you are a person responsible for withholding, accounting for, or depositing or paying employment taxes, and willfully fail to do so, you can be held liable for a penalty equal to the full amount of the unpaid trust fund tax, plus interest. A responsible person for this purpose can be an officer of a corporation, a partner, a sole proprietor, or an employee of any form of business. A trustee or agent with authority over the funds of the business also can be held responsible for the penalty.

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

Social security and Medicare tax. The employer generally also must withhold Federal Insurance Contributions Act (FICA) tax and file Form 941, Employer's QUARTERLY Federal Tax Return. In certain cases, wages paid to students and railroad and agricultural workers are exempt from FICA tax. Wages paid to nonresident alien students, teachers, researchers, trainees, and other nonresident aliens in "F-1," "J-1,"" M-1," or "Q" nonimmigrant status are not subject to FICA. See Pub. 15-T for the rules on withholding.

In addition to withholding Medicare tax at 1.45%, you must withhold a 0.9% Additional Medicare Tax from wages you pay in excess of $200,000 in a calendar year. See Pub.15 for more information.

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

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

Pay for dependent personal services (Income Code 18). Dependent personal services are personal services performed in the United States by a nonresident alien individual as an employee rather than as an independent contractor.

Pay for dependent personal services is subject to Chapter 3 withholding and reporting as follows.

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

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

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

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

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

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

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

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

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

- Perform duties in transportation services (such as a railroad, bus, truck, ferry,

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steamboat, aircraft, or other type) between the United States and Canada or Mexico; or
- Perform duties connected with an international project, relating to the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge crossed by, or crossing, the boundary between the United States and Canada or the boundary between the United States and Mexico.

To qualify for the exemption from withholding during a tax year, a Canadian or Mexican resident must give the employer a statement with the employee's name, address, and identification number, and certifying that the resident:
- Is not a U.S. citizen or resident;
- Is a resident of Canada or Mexico, whichever applies; and
- Expects to perform the described duties during the tax year in question.

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

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

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

Compensation paid for either of the following types of services is not subject to withholding if the alien does not expect to be a resident of Puerto Rico during the entire tax year.
- Services performed outside the United States but not in Puerto Rico by a nonresident alien who is a resident of Puerto Rico for an employer other than the United States or one of its agencies.
- Services performed outside the United States by a nonresident alien who is a resident of Puerto Rico, as an employee of the United States or any of its agencies.

To qualify for the exemption from withholding for any tax year, the employee must give the employer a statement showing the employee's name and address and certifying that the employee:
- Is not a citizen or resident of the United States, and
- Is a resident of Puerto Rico who does not expect to be a resident for that entire tax year.

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

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

Pay for teaching (Income Code 19). This category is given a separate income code number because some tax treaties exempt a teacher from tax for a limited number of years. Pay for teaching means payments to a nonresident alien professor, teacher, or researcher by a U.S. university or other accredited educational institution for teaching or research work at the institution.

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

Social security and Medicare tax. A nonresident alien temporarily in the United States on an "F-1," "J-1," "M-1," or "Q-1" visa is not subject to social security and Medicare taxes on pay for services performed to carry out the purpose for which the alien was admitted to the United States. Social security and Medicare taxes should not be withheld or paid on this amount.

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

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

The Social Security Administration (SSA) publishes the complete texts and explanatory pamphlets of the totalization agreements, which are available by calling 800-772-1213 or by going to *SSA.gov/international/totalization_agreements.html*.

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

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

Pay during studying and training (Income Code 20). This category refers to pay (as contrasted with remittances, allowances, or other forms of scholarships or fellowship grants—see *Scholarships and Fellowship Grants Subject to Chapter 3 Withholding*, earlier) for personal services performed while a nonresident alien is temporarily in the United States as a student, trainee, or apprentice, or while acquiring technical, professional, or business experience.

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

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

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

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

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

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

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

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Artists and Athletes (Income Codes 42 and 43)

Because many tax treaties contain a provision for pay to artists and athletes, a separate category is assigned these payments for Chapter 3 withholding purposes. This category includes payments made for performances by public entertainers (such as theater, motion picture, radio, or television artists, or musicians) or athletes.

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

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

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

Nonresident alien entertainers or athletes requesting a CWA must submit a written application and appropriate attachments. Use Form 13930 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 before the nonresident alien is eligible to apply for a CWA. Nonresident alien entertainers or athletes with gross income of less than $10,000 of calendar year-to-date U.S. gross income may apply for a CWA by submitting the new Form 13930-A, Application for Central Withholding Agreement (Less than $10,000).

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

A request for a CWA must be received by the IRS at least 45 days before the agreement is to take effect, and 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. Form 13930 must be mailed to the address below. Form 13930-A must be submitted electronically through *Pay.gov*.

Central Withholding Agreement Program
Internal Revenue Services
Mail Stop: 1441
2001 Butterfield Rd.
Downer's Grove, IL 60515-1050

For more information on the CWA program, go to *IRS.gov/Individuals/International-Taxpayers/Central-Withholding-Agreements*.

Tax treaties. Under many tax treaties, compensation paid to public entertainers or athletes for services performed in the United States is exempt from U.S. income tax if the artist or athlete derives receipts for the tax year concerned, including expenses reimbursed to him/her or borne on his/her behalf, not in excess of $10,000, or in more recent treaties, $20,000. See *Tax Treaties*, later, for information about treaty benefits.

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

Other Income

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

Gambling winnings (Income Code 28). In general, nonresident aliens are subject to Chapter 3 withholding at 30% on the gross proceeds from gambling won in the United States if that income is not effectively connected with a U.S. trade or business and is not exempted by treaty. The tax withheld and winnings are reportable on Forms 1042 and 1042-S. Chapter 4 withholding does not apply to these proceeds.

No tax is imposed on nonbusiness gambling income a nonresident alien wins playing blackjack, baccarat, craps, roulette, or big-6 wheel in the United States. A Form W-8BEN is not required to obtain the exemption from withholding, but a Form W-8BEN may be required for purposes of Form 1099 reporting and backup withholding. Gambling income that is not subject to Chapter 3 withholding is not subject to reporting on Form 1042-S.

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

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

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

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

Transportation income. U.S. source gross transportation income (USSGTI), as defined in section 887, is not subject to 30% gross withholding tax, and Chapter 4 withholding does not apply to this income. Transportation income is income from the use of a vessel or aircraft, whether owned, hired, or leased, or from the performance of services directly related to the use of a vessel or aircraft. U.S. source gross transportation income includes 50% of all transportation income from transportation that either begins or ends in the United States. USSGTI does not include transportation income of a foreign corporation taxable in a U.S. possession. The recipient of USSGTI must pay tax on it annually at the rate of 4% on Section I of Form 1120-F, unless the income is effectively connected with the conduct of a U.S. trade or business and is reportable on Section II of Form 1120-F. Special rules apply to determine if a foreign corporation's USSGTI is effectively connected with a U.S. trade or business.

Canadian truck and rail income. Under Article VIII (Transportation) of the U.S.–Canada treaty, any U.S. source income derived by a Canadian company engaged in the operation of trucks or a railway as a common carrier or contract carrier, and attributable to the transportation of property between Canada and the United States, is exempt from tax in the United States, provided the company is otherwise eligible for treaty benefits. Payments for the use of trucks (including trailers) or railway rolling stock, or from the use, maintenance, or rental of containers (including trailers and related equipment for the transport of containers) used to transport property between Canada and the United States also are exempt from U.S. tax, provided the company is otherwise eligible for treaty benefits. Canadian companies must file Form 1120-F and Form 8833 to claim an exemption from tax for profits from their operating income.

Canadian corporations are subject to Chapter 3 withholding on rental payments for the use of such equipment in the United States and may claim an exemption on Form W8-BEN-E.

Foreign freight charges or rental of equipment used outside the United States. Payments for transportation of property, whether by ship, air, or truck, solely between points outside the United States or rental of tangible property in connection with transportation solely for use between points outside the United States is not U.S. source income and not subject to Chapter 3 withholding.

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

A covered expatriate should have provided you with Form W-8CE notifying you of their covered expatriate status and the fact that they may be subject to special tax rules with respect to certain items. For more information, see the Instructions for Form W-8CE.

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

Distributions from a nongrantor trust (Income Code 39). In general, you must withhold tax at a 30% rate on any direct or indirect distribution from a nongrantor trust. The amount subject to tax is the part of the distribution that would have been included in the nonresident alien's U.S. gross income if he had continued to be taxed as a U.S. citizen or resident. If the nonresident alien was not a beneficiary of the nongrantor trust on the day before he gave up his U.S. citizenship or long-term residence, you do not have to withhold tax. See section 7 of Notice 2009-85, available at *IRS.gov/irb/2009-45_IRB#NOT-2009-85*.

Guarantee of indebtedness (Income Code 41). An amount paid to a foreign payee for the provision of a guarantee of indebtedness issued after September 27, 2010, may be subject to Chapter 3 withholding. The amounts must be paid by one of the following.

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

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

The amounts described above for a guarantee of indebtedness are withholdable payments, such that Chapter 4 withholding may apply absent an exclusion from withholding under Chapter 4.

Other income (Income Code 23). Use this category to report U.S. source FDAP income that is not reportable under any of the other income categories. Examples of income that may be reportable under this category are commissions, insurance proceeds, patronage distributions, prizes, and racing purses.

As discussed earlier under *Amounts Subject to Chapter 3 Withholding*, every kind of FDAP income from U.S. sources that is not effectively connected with a U.S. trade or business is subject to Chapter 3 withholding unless the income is specifically exempt under the Code or a tax treaty. You generally must withhold at the 30% rate on this income. As a payment of U.S. source FDAP generally is a withholdable payment, you should review Regulations section 1.1473-1(a) (definition of withholdable payment) to determine if the payment is excluded from the definition of a withholdable payment.

Foreign Governments and Certain Other Foreign Organizations

Investment income earned by a foreign government is not included in the gross income of the foreign government and is not subject to Chapter 3 withholding. Investment income means income from investments in the United States in stocks, bonds, or other domestic securities, financial instruments held in the execution of governmental financial or monetary policy, and interest on money deposited by a foreign government in banks in the United States. A foreign government must provide a Form W-8EXP or, in the case of a payment made outside the United States to an offshore account, documentary evidence to obtain this exemption. Investment income paid to a foreign government is subject to reporting on Form 1042-S.

The following types of income received by a foreign government are subject to Chapter 3 withholding.

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

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

For Chapter 4 purposes, payments to a foreign government (other than earnings inuring to the benefit of a private person) are not payments to which Chapter 4 withholding applies unless the payment is made to a controlled entity of the foreign government that is engaged in a commercial financial activity. See Regulations section 1.1471-6(h) for a description of a commercial financial activity. See Regulations section 1.1471-3(d)(9) for the documentation required to establish an entity's Chapter 4 status as a foreign government. Similar rules apply for Chapter 4 purposes to a payment to a foreign central bank of issue.

A government of a U.S. possession is exempt from U.S. tax on all U.S. source income. This income is not subject to Chapter 3 withholding, and Chapter 4 withholding does not apply to income paid to a government of a U.S. possession. See Regulations section 1.1471-3(d)(9) for the documentation required to establish an entity's Chapter 4 status as a government of a U.S. possession. These governments should use Form W-8EXP to claim this exemption for both Chapters 3 and 4 purposes (as required).

International organizations. International organizations are exempt from U.S. tax on all U.S. source income. Income paid to an international organization (within the meaning of section 7701(a)(18) of the Code) is not subject to Chapter 3 withholding. International organizations are not required to provide a Form W-8 or documentary evidence to receive the exemption if the name of the payee is one that is designated as an international organization by executive order.

Payments made to an international organization, as defined for Chapter 4 purposes, are not payments to which Chapter 4 withholding applies. An international organization for purposes of Chapter 4 means any entity described in section 7701(a)(18) of the Code. The term also includes any intergovernmental or supranational organization that is comprised primarily of foreign governments, that is recognized as an intergovernmental or supranational organization under certain foreign laws, or that has in effect a headquarters agreement with a foreign government, and whose income does not inure to the benefit of private persons. See Regulations section 1.1471-3(d)(9) for the documentation required to establish an entity's Chapter 4 status as an international organization.

Foreign tax-exempt organizations. A foreign organization that is a tax-exempt organization under section 501(c) of the Internal Revenue Code is not subject to a withholding tax on amounts that are not income includible under section 512 of the Internal Revenue Code as unrelated business taxable income. In addition, withholdable payments made to a tax-exempt organization under section 501(c) of the Internal Revenue Code are not payments to which Chapter 4 withholding applies.

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However, if a foreign organization is a foreign private foundation, it is subject to a 4% withholding tax on all U.S. source investment income. For a foreign tax-exempt organization to claim an exemption from withholding under Chapter 3 or 4 because of its tax-exempt status under section 501(c), or to claim withholding at a 4% rate, it must provide you with a Form W-8EXP. However, if a foreign organization is claiming an exemption from withholding under an income tax treaty, or the income is unrelated business taxable income, the organization must provide a Form W-8BEN-E or W-8ECI. Income paid to foreign tax-exempt organizations is subject to reporting on Form 1042-S. If the organization is a partner in a partnership carrying on a trade or business in the United States, the effectively connected income allocable to the organization is subject to withholding under section 1446.

Foreign financial institutions. For payments made to a reporting Model 1 FFI or reporting Model 2 FFI, see the applicable IGA for definitions of entities described under this heading. You generally may rely on documentation provided by such an FFI to treat an entity as described under this heading (included under the class of a nonreporting IGA FFI). See the Instructions for Form W-8BEN-E.

U.S. or Foreign TINs

As the withholding agent, in many cases you must request that the payee provide you with its U.S. TIN. You must in such a case include the payee's TIN on forms, statements, and other tax documents. The payee's TIN may be any of the following.

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

CAUTION *Under certain circumstances, a financial institution may be required to get a GIIN for purposes of Chapter 4. See* Global Intermediary Identification Numbers, *later. See the Instructions for Form 8957 for information on whether a GIIN is needed.*

A U.S. or foreign TIN (as applicable) must be on a withholding certificate if the beneficial owner is claiming any of the following.

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

A foreign TIN also may be required for certain account holders (see *Foreign TIN requirement for account holders*, later). In addition, a U.S. TIN must be on a withholding certificate from a person claiming to be any of the following.

- QI.
- Withholding foreign partnership.
- Withholding foreign trust.
- An organization claiming an exemption or reduced rate of withholding based solely on a claim of tax-exempt status under section 501(c) or private foundation status.
- U.S. branch of a foreign person treated as a U.S. person (see Regulations section 1.1441-1(b)(2)(iv)), and a U.S. branch of an FFI acting as an intermediary that is not treated as a U.S person.
- U.S. person.

Exceptions to U.S. TIN requirement. A foreign person does not have to provide a U.S. TIN to claim a reduced rate of withholding under a tax treaty if the requirements for the following exceptions are met. Instead of requesting a U.S. TIN from a foreign payee, you may request a foreign TIN issued by the payee's country of residence except when the payee is a nonresident alien individual claiming an exemption from withholding on Form 8233.

- Income from marketable securities (discussed earlier under *Beneficial Owners*).
- Unexpected payment to an individual in the case of a payment made by a U.S. financial institution to an account maintained at a U.S. office (discussed next).

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

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

An acceptance agent is a person who, under a written agreement with the IRS, is authorized to help alien individuals and other foreign persons get ITINs or EINs. For information on the application procedures for becoming an acceptance agent, go to *IRS.gov/Individuals/New-ITIN-Acceptance-Agent-Program-Changes*.

Note. All acceptance agents will be required to adhere to new quality standards established and monitored by the IRS.

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

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

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

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

Foreign TIN requirement for account holders. If you are a U.S. office or branch of a depository institution, custodial institution, investment entity, or specified insurance company (each as defined in Regulations section 1.1471-5(e)) documenting an account holder (as defined in Regulations section 1.1471-5(a)(3)) of an account that is a financial account (as defined in Regulations section 1.1471-5(b)), you must obtain the account holder's TIN for its jurisdiction of tax residence (foreign TIN) on a Form W-8 that is a beneficial owner withholding certificate in order for the form to not be invalid for a payment of U.S. source income reportable on Form 1042-S, unless:

- The account holder is a resident of a jurisdiction that is not listed in section 3 of Revenue Procedure 2019-23 available at *IRS.gov/irb/2019-38_IRB#REV-PROC-2019-23*, which may be further updated in future published guidance;
- The account holder is a resident in a jurisdiction that has been identified by the IRS on a list of jurisdictions that do not issue foreign TINs. See *IRS.gov/businesses/corporations/list-of-jurisdictions-that-do-not-issue-foreign-tins*;
- The account holder is a government, international organization, foreign central bank of issue, or resident of a U.S. territory; or
- You obtain a reasonable explanation for why the account holder has not been issued a foreign TIN.

A reasonable explanation that an account holder does not have a foreign TIN must address why the account holder was not issued a foreign TIN to the extent provided in the

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instructions for the applicable Form W-8. If an account holder provides an explanation other than the one described in the instructions for the applicable Form W-8, you must determine whether the explanation is reasonable. See Regulations section 1.1441-1(e)(2((ii)(B) for transitional rules for withholding agents to obtain foreign TINs for accounts documented with otherwise valid Forms W-8 that were signed before January 1, 2018.

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Global Intermediary Identification Numbers (GIINs)

If you make a withholdable payment to an entity claiming certain Chapter 4 statuses, you may be required to obtain and verify the entity's GIIN against the published IRS FFI list within 90 days to rely on such a claim. See *GIIN Verification* under *Standards of Knowledge for Purposes of Chapter 4*, earlier, for which Chapter 4 statuses require a GIIN.

Depositing Withheld Taxes

This section discusses the rules for depositing income tax withheld on FDAP income, including tax withheld pursuant to Chapter 4. The deposit rules discussed here do not apply to the following items.

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

When Deposits Are Required

A deposit required for any period occurring in 1 calendar year must be made separately from a deposit for any period occurring in another calendar year. A deposit of this tax must be made separately from a deposit of any other type of tax, but you need not identify whether the deposit is of tax withheld under Chapter 3 or 4.

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

1. If at the end of a calendar year the total amount of undeposited taxes is less than $200, you may either pay the taxes with your Form 1042 or deposit the entire amount by March 15 of the following calendar year.
2. If at the end of any month the total amount of undeposited taxes is $200 or more but less than $2,000, you must deposit the taxes within 15 days after the end of the month. If the 15th day is a Saturday, Sunday, or legal holiday in the District of Columbia, you must deposit the taxes by the next day that is not a Saturday, Sunday, or legal holiday in the District of Columbia. If you made a deposit of $2,000 or more during the month (except December) under rule 3 below, carry over any end-of-the-month balance of less than $2,000 to the next month. If you made a deposit of $2,000 or more during December, any end-of-December balance of less than $2,000 should be remitted with your Form 1042 by March 15 of the following year.
3. If at the end of any quarter-monthly period the total amount of undeposited taxes is $2,000 or more, you must deposit the taxes within 3 business days after the end of the quarter-monthly period. (A quarter-monthly period ends on the 7th, 15th, 22nd, and last day of the month.) A business day is any day other than a Saturday, Sunday, or legal holiday in the District of Columbia.

Escrow in lieu of deposit. Under certain circumstances, a withholding agent may be permitted to set aside a withheld amount in escrow rather than depositing the tax. A participating FFI that withholds tax on a withholdable payment not otherwise subject to Chapter 3 withholding or backup withholding under section 3406 made to a recalcitrant account holder of a dormant account may, in lieu of depositing the tax withheld, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. In such case, the tax withheld becomes due 90 days following the date that the account ceases to be a dormant account if the account holder does not provide the required documentation, or becomes refundable to the account holder if the account holder provides documentation establishing that withholding does not apply.

A withholding agent that withholds tax under Chapter 3 on certain payments that include an undetermined amount of income may retain 30% of the payment to hold in escrow in accordance with Regulations section 1.1441-3(d). Similarly, if a withholding agent is unable to determine whether the payment is a withholdable payment because the source or character of the payment is unknown, the withholding agent may retain 30% of the payment to hold in escrow for Chapter 4 purposes in accordance with Regulations section 1.1471-2(a)(5).

Electronic deposit requirement. You must deposit all withheld taxes under Chapter 3 or 4 by electronic funds transfer. In most cases, electronic funds transfers are made using the Electronic Federal Tax Payment System (EFTPS). If you do not want to use EFTPS, you can arrange for your tax professional, financial institution, or other trusted third party to make deposits on your behalf. Also, you may arrange for your financial institution to initiate a same-day wire payment on your behalf. EFTPS is a free service provided by the Department of Treasury. Services provided by your tax professional, financial institution, or other third party may have a fee. For more information about EFTPS or to enroll in EFTPS, visit *EFTPS.gov* or call 800-555-4477. Additional information about EFTPS also is available in Pub. 966.

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

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

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

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

Penalty rate. If the deposit is:

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

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

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

Adjustment for Overwithholding

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

Overwithholding discovered by March 15 of following calendar year. If you discover that you overwithheld tax under Chapter 3 or 4 by March 15 of the following calendar year, you may use the undeposited amount of tax to make any necessary adjustments between you and the recipient of the income. However, if the undeposited amount is not enough to make any

adjustments, or if you discover the overwithholding after the entire amount of tax has been deposited, you can use either the reimbursement procedure or the set-off procedure to adjust the overwithholding.

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

Reimbursement procedure. Under the reimbursement procedure, you repay the beneficial owner or payee the amount overwithheld. You use your own funds for this repayment. You must make the repayment by the earlier of March 15 of the year after the calendar year in which the amount was overwithheld or the date the Form 1042-S is actually filed with the IRS. For example, if you overwithhold tax in 2019, you must repay the beneficial owner by March 15, 2020. You must keep a receipt showing the date and amount of the repayment and provide a copy of the receipt to the beneficial owner.

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

If you will reduce a deposit due in the following year, you must show the total tax withheld and the amount actually repaid on a timely filed (not including extensions) Form 1042-S for the calendar year in which the amount was overwithheld. You must state on a timely filed (not including extensions) Form 1042 that you are claiming a credit in accordance with Regulations section 1.6414-1.

Example. James Smith is a resident of the United Kingdom. In December 2019, domestic corporation M paid a dividend of $100 to James, at which time M withheld $30 under Chapter 3 and paid the balance of $70 to him. In February 2020, James gave M a valid Form W-8BEN. He advises M that under the income tax convention with the United Kingdom, only $15 should have been withheld from the dividend and requests repayment of the $15 overwithheld. Although M Corporation had already deposited the $30, the corporation repaid James $15 before the end of February.

During 2019, M made no other payments from which tax had to be withheld. On its timely filed 2019 Form 1042, M reports $15 as its total tax liability and $30 as its total deposits. M requests that the $15 overpayment be credited to its 2020 Form 1042 rather than refunded.

The Form 1042-S that M files for the dividend paid to James in 2019 must show a tax withheld of $30 in box 7a, ($15) as an amount repaid in box 9, and a total withholding credit of $15 in box 10. The Form 1042-S must show an exemption code in box 4a for an exemption from Chapter 4 withholding based on the payee's status.

In June 2020, M made payments from which it withheld tax of $200. On July 15, 2020, M deposited $185, that is, $200 less the $15 credit claimed on its Form 1042 for 2019. M timely filed its Form 1042 for 2020, showing tax liability of $200, $185 deposited, and $15 credit from 2019.

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

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

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

CAUTION *For tax year 2020, a withholding agent may rely on proposed regulations (83 FR 64757) which allow adjustments to overwithholding using the reimbursement or set-off procedures until the extended due date for filing Form 1042-S (unless a Form 1042-S has already been filed with the IRS or furnished to the recipient).*

Overwithholding discovered at a later date. If you discover after March 15 of the following calendar year that you overwithheld tax for the prior year, do not adjust the amount of tax reported on Forms 1042-S (and Form 1042) or on any deposit or payment for that prior year. Do not repay the beneficial owner or payee the amount overwithheld unless you are a withholding agent for the payment that is a QI, WP, WT, or participating FFI that is eligible to file a collective refund on behalf of one or more of its account holders, partners, beneficiaries, or owners (as applicable). See the applicable agreement of each such entity for details on the requirements for a collective refund.

In this situation (other than a collective refund filed by the withholding agent), the recipient will have to file a U.S. income tax return (Form 1040NR, Form 1040NR-EZ, or Form 1120-F) to claim a refund or credit or, if a tax return has already been filed, a claim for refund (Form 1040X or amended Form 1120-F) to recover the amount overwithheld. See Regulations section 1.1474-5 for the specific requirements that apply to obtain a credit or refund of tax actually withheld under Chapter 4. As described in Notice 2015-10, available at *IRS.gov/irb/2015-20_IRB#NOT-2015-10*, the IRS intends to issue regulations providing that an otherwise allowable claim for refund or credit made by a claimant that is the beneficial owner of a withheld payment is only available to the extent that the relevant withholding agent deposited the amount withheld. See Notice 2015-10 available at *IRS.gov/irb/2015-20_IRB#NOT-2015-10* for additional information.

Returns Required

Every withholding agent, whether U.S. or foreign, must file Forms 1042 and 1042-S to report amounts subject to Chapter 3 withholding paid to foreign persons (including persons presumed to be foreign), even if no amount is deducted and withheld from the payment under Chapter 3, and payments to which Chapter 4 withholding is applied or which are allocated on an applicable withholding statement provided by a participating FFI or registered deemed-compliant FFI to a Chapter 4 withholding rate pool of U.S. payees (Chapter 4 reportable amounts). Do not use Forms 1042 and 1042-S to report tax withheld on the following.

- Wages, salaries, or other compensation reported on Form W-2 (see *Wages Paid to Employees—Graduated Withholding*, earlier, under *Pay for Personal Services Performed*).
- Any part of a U.S. or foreign partnership's (other than a publicly traded partnership) effectively connected taxable income allocable to a foreign partner (see *Partnership Withholding on Effectively Connected Income*, later).
- Dispositions of U.S. real property interests by foreign persons (see *U.S. Real Property Interest*, later).
- Pensions, annuities, and certain other deferred income reported on Form 1099.
- Income, social security, and Medicare taxes on wages paid to a household employee reported on Schedule H (Form 1040 or 1040-SR).
- Amounts subject to backup withholding under section 3406, including withholdable payments that are reportable payments and that are paid to a recalcitrant account holder of a participating FFI or registered deemed-compliant FFI that has elected on its withholding statement for withholding under section 3406 to apply instead of withholding under Chapter 4.

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

Form 1042. Every U.S. and foreign withholding agent that is required to file a Form 1042-S also must file an annual return on Form 1042. You must file Form 1042 even if you were not required to withhold any income tax under Chapter 3 on the payment, or if the payment is a Chapter 4 reportable amount.

You must file Form 1042 with the:

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

Form 1042-S. Every U.S. and foreign withholding agent must file a Form 1042-S for amounts subject to Chapter 3 withholding and Chapter 4 reportable amounts unless an exception applies. The form can be filed electronically or on paper. A separate Form 1042-S is required for each recipient of income to whom you made payments during the preceding calendar year regardless of whether you withheld or were required to withhold tax. However, if you make a withholdable payment to an NQI or a flow-through entity that is allocable to a Chapter 4 withholding rate pool as indicated on a

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withholding statement upon which you may rely with respect to the payment allocable to such a pool, you should complete a separate Form 1042-S for each Chapter 4 withholding rate pool (that is, pool of recalcitrant account holders, pool of nonparticipating FFIs, pool of payees that are U.S. persons), treating the intermediary or flow-through entity as the recipient (and the applicable pool as the Chapter 4 status of the recipient). You need not issue a Form 1042-S to each recipient included in such pool. You must use a separate Form 1042-S for each type of income that you paid to the same recipient. See *Statements to recipients*, later.

You must furnish a Form 1042-S for each recipient even if you did not withhold tax because you repaid the tax withheld to the recipient or because the income payment was exempt from tax under the Internal Revenue Code or under a U.S. income tax treaty (except for a withholdable payment that is not a Chapter 4 reportable amount).

You can use a substitute Form 1042-S if it meets the requirements listed in Pub. 1179. Paper substitutes that totally conform to the format and size of the official form may be used without prior approval from the IRS. Get Pub. 1179 for more information.

If you are reporting amounts withheld by another withholding agent, Form 1042-S requests the name and EIN of the withholding agent that withheld the tax to the extent required in the Instructions for Form 1042-S.

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

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

Electronic reporting. Generally, withholding agents or their agents that are required to file 250 or more Forms 1042-S for the year 2020, and financial institutions (whether U.S. or foreign) without regard to the 250 threshold, must file Forms 1042-S electronically. You are encouraged to file electronically even if you are not required to. Partnerships see *Electronic reporting by partnerships*, later.

CAUTION *The Taxpayer First Act of 2019, enacted July 1, 2019, authorized the IRS and Treasury to issue regulations that could reduce the 250 return limit to 100 and then to 10, potentially starting as early as with respect to 2020 returns required to be filed in 2021. If those regulations are issued and effective for 2020 tax year returns, we will post an article at IRS.gov/Form1042-S explaining the change. Otherwise, the same limits as applied last year will apply for tax year 2020, as reflected in these instructions.*

Electronic reporting by partnerships. Partnerships with a Form 1042-S filing requirement that are required to file 100 or more Forms 1042-S for the year 2020, must file Forms 1042-S electronically. You are encouraged to file electronically even if you are not required to. Partnerships with 100 or more partners are required to file Forms 1042-S electronically, regardless of the number of Forms 1042-S required to be filed.

CAUTION *The Taxpayer First Act of 2019, enacted July 1, 2019, authorized the IRS and Treasury to issue regulations that could change the Form 1042-S return limit for partnerships, potentially starting as early as with respect to 2020 returns required to be filed in 2021. If those regulations are issued and effective for 2020 tax year returns, we will post an article at IRS.gov/Form1042-S explaining the change.*

A completed Form 4419 should be filed at least 30 days before the due date of the return. Returns may not be filed electronically until the application has been approved by the IRS.

For information and instructions on filing Forms 1042-S electronically, get Pub. 1187. If you file electronically, you will use the Filing Information Returns Electronically (FIRE) system at *FIRE.IRS.gov*.

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

Deposit interest paid to certain nonresident alien individuals. Interest earned by residents of certain foreign countries is subject to information reporting. Deposit interest of $10 or more paid to any nonresident alien individual who is a resident of a foreign country with which the United States has agreed to exchange tax information pursuant to an income tax treaty or other convention or bilateral agreement, must be reported on Form 1042-S.

Revenue Procedure 2019-23, identifies those countries for which reporting of deposit interest is required with respect to a resident of any such country.

Note. You may elect to report interest paid to any nonresident alien.

Statements to recipients. You must furnish a statement to each recipient for whom you are filing a Form 1042-S by the due date for filing Forms 1042 and 1042-S with the IRS. You may use a copy of the official Form 1042-S for this purpose. Any substitute forms must comply with the rules set out in Pub. 1179. You must furnish a separate substitute Form 1042-S for each type of income or payment. The withholding agent must ensure that any substitute Form 1042-S copies B, C, and D, which are provided to the recipient, conforms in format and size to the official Form 1042-S and contains the exact same information as the copy filed with the IRS or submitted electronically. However, the size of a substitute Form 1042-S, copies B, C, and D, may be adjusted if the substitute form is presented on a landscape-oriented page instead of portrait. Only one Form 1042-S may be submitted per page, regardless of orientation.

Form 8966

A withholding agent that makes a withholdable payment to a passive NFFE with one or more substantial U.S. owners (or, in the case of a reporting Model 2 FFI, controlling persons of such an entity) or an owner-documented FFI with a specified U.S. person owning certain equity or debt interests in the FFI must report the payment and each such substantial U.S. owner (or controlling person, as applicable) or specified U.S. person owner of the passive NFFE or owner-documented FFI, respectively, on Form 8966 (in addition to reporting the payment and tax (if any) on Forms 1042 and 1042-S when the payment is an amount subject to Chapter 3 withholding). An exception to the requirement to report on Form 8966 applies when the payment is made to an account reported by an FFI as a U.S. account under the FFI's applicable Chapter 4 requirements or the requirements of an applicable IGA.

Form 8966 must be filed by March 31 of the year following the calendar year in which the payment is made. An automatic 90-day extension of time to file Form 8966 may be requested. To request an automatic 90-day extension of time to file Form 8966, file Form 8809-I. See the Instructions for Form 8809-I for where to file that form. You should request an extension as soon as you are aware that an extension is necessary, but no later than the due date for filing Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension to file Form 8966. To request an additional 90-day extension of time to file Form 8966, file a second Form 8809-I before the end of the initial extended due date.

Electronic filing requirement for Form 8966. An entity that is a financial institution is required to file Form 8966 electronically, irrespective of the number of Forms 8966 filed. All other entities that file 250 or more Forms 8966 for calendar year 2020 are required to file Form 8966 electronically.

CAUTION *The Taxpayer First Act of 2019, enacted July 1, 2019, authorized the IRS and Treasury to issue regulations that could reduce the 250 return limit to 100 and then to 10, potentially starting as early as with respect to 2020 returns required to be filed in 2021. If those regulations are issued and effective for 2020 tax year returns, we will post an article at IRS.gov/Form8966 explaining the change. Otherwise, the same limits as applied last year will apply for tax year 2020, as reflected in these instructions.*

To request a waiver from filing Form 8966 electronically, submit Form 8508-I. Waiver requests should be filed at least 45 days before the due date of the returns. See the instructions for Form 8508-I for where to file and additional

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information. You are encouraged to file electronically even if you are not required to do so. If you are required to file electronically but fail to do so, and you do not have an approved waiver on record, penalties may apply. For the instructions for filing Form 8966 electronically, see Pub. 5124.

Extensions of Time To File

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

Extension to file Form 1042. You can get an automatic 6-month extension of time to file Form 1042 by filing Form 7004. File Form 7004 on or before the due date of Form 1042. Form 7004 does not extend the time for payment of tax.

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

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

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

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

Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator
240 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

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

Penalties

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

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

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

- $50 if you file a correct form within 30 days, with a maximum penalty of $565,000 per year ($197,500 for a small business);
- $110 if you file after 30 days but by August 1, with a maximum penalty of $1,696,000 ($565,000 for a small business); or
- $280 if you file after August 1 or do not file a correct form, with a maximum penalty of $3,392,000 per year ($1,130,500 for a small business).

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

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

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

If both statements (1) and (2) are true, the penalty for filing incorrect returns (but not for filing late) will not apply to the greater of 10 Forms 1042-S or 0.50% of the total number of Forms 1042-S and any other information returns you are required to file with the IRS for the calendar year.

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

- $50 if you provide the correct Form 1042-S within 30 days, with a maximum penalty of $565,000 per year ($197,500 for a small business);
- $110 if you provide the correct Form 1042-S after 30 days but by August 1, with a maximum penalty of $1,696,000 ($565,000 for a small business); or
- $280 if you provide the correct Form 1042-S after August 1, with a maximum penalty of $3,392,000 per year ($1,130,500 for a small business).

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

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

If you satisfy the requirements in (1) and (2) above, the penalty for providing incorrect returns (but not for filing late) will not apply to the greater of 10 Forms 1042-S or 0.50% of the total number of all types of information returns you had to provide during the calendar year.

Penalty for intentional disregard of requirements to file or provide returns. If you intentionally disregard the requirement to file Form 1042-S when due, to provide Form 1042-S to the recipient when due, or to report correct information, the penalty is the greater of $560 or 10% of the total amount of the items that must be reported, with no maximum penalty.

Failure to file electronically. If you are required to file Form 1042-S electronically but you fail to do so, and you do not have an approved waiver, penalties may apply unless you establish reasonable cause for your failure.

Partnership Withholding on Effectively Connected Income

Under section 1446, a partnership (foreign or domestic) that has income effectively connected with a U.S. trade or business (or income treated as effectively connected) must pay a withholding tax on the effectively connected taxable income that is allocable to its foreign partners. A publicly traded partnership must withhold tax on actual distributions of effectively connected income. See *Publicly Traded Partnerships*, later. Chapter 4 withholding does not apply to this income.

This withholding tax does not apply to income that is not effectively connected with the partnership's U.S. trade or business. That income may be subject to Chapter 3 withholding tax, as discussed earlier in this publication.

Who Must Withhold

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

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

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

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

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

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

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

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

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Foreign Partner

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

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

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

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

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

IF you are a...	THEN provide to the partnership Form...
nonresident alien	W-8BEN.
foreign corporation	W-8BEN-E.
foreign partnership	W-8IMY.
foreign government	W-8EXP.
foreign grantor trust**	W-8IMY.
certain foreign trust or foreign estate	W-8BEN.
foreign tax-exempt organization (including a private foundation)	W-8EXP.
nominee	W-8 used by beneficial owner.

* A partnership may substitute its own form for the official version of Form W-8 to ascertain the identity of its partners.

** A domestic grantor trust must provide a statement as shown in Regulations section 1.1446-1(c)(2)(ii)(E), and documentation for its grantor.

Amount of Withholding Tax

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

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

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

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

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

To certify the deductions and losses, a partner must submit to the partnership Form 8804-C.

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

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

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

Tax rate. The withholding tax rate on a partner's share of effectively connected income is 37% for noncorporate partners and 21% for corporate partners. However, the partnership may withhold at the highest rate applicable to a particular type of income allocated to a partner provided the partnership received the appropriate documentation. See Regulations section 1.1446-3(a)(2)(ii).

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

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

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

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

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

Notification to partners. In most cases, a partnership must notify each foreign partner of the tax withheld on its behalf within 10 days of

the installment payment date. No particular form is required for this notification. For more information on the substance of the notification and exceptions, see Regulations section 1.1446-3(d)(1)(i).

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

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

Reporting and Paying the Tax

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

Form 8804. The withholding tax liability of the partnership for its tax year is reported on Form 8804. Form 8804 also is a transmittal form for Forms 8805.

Any additional withholding tax owed for the partnership's tax year is paid (in U.S. currency) with Form 8804.

DUE File Form 8804 by the 15th day of the 3rd month after the close of the partnership's tax year. If you need more time to file Form 8804, file Form 7004 to request an extension of time to file. Form 7004 does not extend the time to pay the tax.

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

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

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

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

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

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

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

If you intentionally disregard the requirement to file Form 8805 when due, to provide Form 8805 to the recipient when due, or to report correct information, the penalty for each Form 8805 (or statement to recipient) is the greater of $550 or 10% of the total amount of the items that must be reported, with no maximum penalty.

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

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

Publicly Traded Partnerships (PTPs)

A PTP that has effectively connected taxable income must pay withholding tax on any distributions of that income made to its foreign partners. A PTP must use Forms 1042 and 1042-S (Income Code 27) to report withholding from distributions. The rate of withholding is 37% for noncorporate partners and 21% for corporate partners.

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

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

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

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

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

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

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

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

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

Depositing taxes a PTP withholds under section 1446. The general rules for making

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payments of taxes withheld under section 1446 do not apply to PTPs. Instead, apply the rules discussed earlier under *Depositing Withheld Taxes*.

Section 1446(f) Withholding

Section 13501 of the TCJA added IRC section 1446(f), which, generally, requires the transferee of a partnership interest to withhold 10% of the amount realized on the disposition of the partnership interest.

Notice 2018-29, available at *IRS.gov/irb/2018-16_IRB#NOT-2018-29*, provides interim guidance regarding withholding of U.S. tax related to transfers of interests in partnerships, other than PTPs, under section 1446(f).

Notice 2018-08, available at *IRS.gov/irb/2018-07_IRB#NOT-2018-08*, temporarily suspends the application of section 1446(f) to the disposition of certain PTP interests until further guidance is issued. On May 7, 2019, the Department of Treasury and the IRS issued proposed regulations under IRC section 1446(f) (84 FR 21198), which include withholding requirements in connection with transfers of PTP interests.

Form 8288 and 8288-A. Currently, to meet the withholding, payment, and reporting requirements under section 1446(f), taxpayers use Forms 8288 and 8288-A. Follow the instructions in section 5 of Notice 2018-29, available at *IRS.gov/irb/2018-16_IRB#NOT-2018-29*.

U.S. Real Property Interest

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to income tax withholding under section 1445. If you are the transferee, you must find out if the transferor is a foreign person. If the transferor is a foreign person and you fail to withhold, you may be held liable for the tax.

Foreign person. A foreign person is a nonresident alien individual, or a foreign corporation that has not made an election under section 897(i) of the Internal Revenue Code to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. It does not include a resident alien individual or, in certain cases, a qualified foreign pension fund. See *Retirement and pension funds*, later.

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

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

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

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

1. Such corporation did not hold any U.S. real property interests on the date of disposition,
2. All the U.S. real property interests held by such corporation at any time during the shorter of the applicable periods were disposed of in transactions in which the full amount of any gain was recognized, and
3. Such corporation and any predecessor of such corporation was not a RIC or a REIT during the shorter of the applicable periods during which the interest was held.

Exception for publicly traded stock. If, at any time during the calendar year, any class of stock of a domestic corporation is regularly traded on an established securities market, an interest in such corporation will not be treated as a U.S. real property interest if the beneficial owner did not own more than 5% of the total fair market value of that class of interests, or 10% of the total fair market value of that class of interests in the case of a REIT at any time during the shorter of the applicable periods. Certain constructive ownership rules apply for purposes of determining whether any person meets the above ownership threshold of any class of stock. See section 897(c)(6)(C) for more information on the constructive ownership rules.

Amount to withhold. The transferee must deduct and withhold a tax on the total amount realized by the foreign person on the disposition. The rate of withholding generally is 15%.

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.

Residences. This rule applies when the property disposed of is acquired by the transferee for use by the transferee as a residence. If the amount realized on such disposition does not exceed $300,000, no withholding is required. Otherwise, the transferee generally must withhold 10% of the amount realized by a foreign person. The rate of withholding is 15% when the amount realized is in excess of $1,000,000.

Foreign corporations. A foreign corporation that distributes a U.S. real property interest must withhold a tax equal to 21% of the gain it recognizes on the distribution to its shareholders.

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

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

The corporation generally must withhold 15% of the amount realized by a foreign person.

U.S. real property holding corporations. A distribution from a domestic corporation that is a U.S. real property holding corporation (USRPHC) generally is subject to Chapter 3 withholding and withholding under the U.S. real property interest provisions. This also applies to a corporation that was a USRPHC at any time during the shorter of the period during which the U.S. real property interest was held, or the 5-year period ending on the date of disposition. A USRPHC can satisfy both withholding provisions if it withholds under one of the following procedures.

- Apply Chapter 3 withholding on the full amount of the distribution, whether or not any part of the distribution represents a return of basis or capital gain. If a reduced tax rate applies under an income tax treaty, see Regulations section 1.1441-3T(c)(4)(i)(A) for the minimum withholding rate that may be applicable.
- Apply Chapter 3 withholding to the part of the distribution that the USRPHC estimates is a dividend. Then, withhold 15% on the remainder of the distribution (or on a smaller amount if a withholding certificate is obtained and the amount of the distribution that is a return of capital is established).

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

Partnerships. If a domestic or foreign partnership with any foreign partners disposes of a U.S. real property interest at a gain, the gain is treated as effectively connected income and generally is subject to the rules explained earlier under *Partnership Withholding on Effectively Connected Income*. A foreign partnership that disposes of a U.S. real property interest may credit the taxes withheld by the transferee against the tax liability determined under the *partnership withholding on effectively connected income* rules.

If a foreign person disposes of an interest in a partnership in which 50% or more of the value of the gross assets consist of U.S. real property interests and 90% or more of the value of the gross assets consist of U.S. real property interests plus any cash or cash equivalents, the

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transferee of the partnership interest must deduct and withhold 15% of the amount realized on the disposition.

Trusts and estates. You are a withholding agent if you are a trustee, fiduciary, or executor of a trust or estate having one or more foreign beneficiaries. You must establish a U.S. real property interest account. You enter in the account all gains and losses realized during the tax year of the trust or estate from dispositions of U.S. real property interests. You must withhold 21% on any distribution to a foreign beneficiary that is attributable to the balance in the real property interest account on the day of the distribution. A distribution from a trust or estate to a beneficiary (foreign or domestic) will be treated as attributable first to any balance in the U.S. real property interest account and then to other amounts.

A trust with more than 100 beneficiaries may elect to withhold from each distribution 21% of the amount attributable to the foreign beneficiary's proportionate share of the current balance of the trust's real property interest account. This election does not apply to publicly traded trusts or REITs. For more information about this election, see Regulations section 1.1445-5(c).

Publicly traded partnership and trust interests. If any class of interest in a partnership or a trust is regularly traded on an established securities market, any interest in such a partnership or trust will be treated as an interest in a publicly traded corporation and will be subject to the rules applicable to those interests.

Qualified investment entities (QIEs). Special rules apply to QIEs. A QIE is:

1. A REIT, or
2. A RIC that is a U.S. real property holding corporation.

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

A distribution by a QIE to a nonresident alien or foreign corporation that is treated as gain from the sale or exchange of a U.S. real property interest by the shareholder is subject to withholding at 21%.

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

Disposition of REIT stock. Disposition of stock in a REIT that is held directly (or indirectly through one or more partnerships) by a qualified shareholder may not be subject to withholding. See section 897(k)(2) for more information.

Domestically controlled QIE. The sale of an interest in a domestically controlled QIE is not the sale of a U.S. real property interest. The entity is domestically controlled if at all times during the testing period less than 50% in value of its stock was held, directly or indirectly, by foreign persons. The testing period is the shorter of (a) the 5-year period ending on the date of disposition, or (b) the period during which the entity was in existence.

For the purpose of determining whether a QIE is domestically controlled, the following rules apply.

1. A person holding less than 5% of any class of stock of a QIE which is regularly traded on an established securities market in the United States at all times during the testing period will be treated as a U.S. person unless the QIE has actual knowledge that such person is not a U.S. person.
2. Any stock in a QIE that is held by another QIE will be treated as held by a foreign person if:
   a. Any class of stock of such other QIE is regularly traded on an established securities market, or
   b. Such other QIE is a RIC that issues certain redeemable securities.

   Notwithstanding the above, the stock of the QIE will be treated as held by a U.S. person if such other QIE is domestically controlled.
3. Stock in a QIE that is held by any other QIE not described above will be treated as held by a U.S. person in proportion to the stock ownership of such other QIE which is (or is treated as) held by a U.S. person.

If a foreign shareholder in a domestically controlled QIE disposes of an interest in the QIE in an applicable wash sale transaction, special rules apply. See section 897.

Retirement and pension funds. A qualified foreign pension fund or any entity wholly owned by such qualified foreign pension fund will not be treated as a foreign person for dispositions of U.S. real property interest or distributions received from a REIT. Qualified foreign pension funds are described in section 897(l)(2).

Additional information. For additional information on the withholding rules that apply to corporations, trusts, estates, and qualified investment entities, see section 1445 of the Internal Revenue Code and the related regulations. For additional information on the withholding rules that apply to partnerships, see the previous discussion.

You also may write to the:

Internal Revenue Service
Philadelphia, PA 19255-0725

Exceptions. You do not have to withhold if any of the following apply.

1. You (the transferee) acquire the property for use as a residence and the amount realized (sales price) is not more than $300,000. You or a member of your family must have definite plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. When counting the number of days the property is used, do not count the days the property will be vacant. For this exception, the transferee must be an individual.
2. The property disposed of is an interest in a domestic corporation and any class of stock of the corporation is regularly traded on an established securities market. However, this exception does not apply to certain dispositions of substantial amounts of non-publicly traded interests in publicly traded corporations.
3. The disposition is of an interest in a domestic corporation and that corporation furnishes you a certification stating, under penalties of perjury, that the interest is not a U.S. real property interest. In most cases, the corporation can make this certification only if either of the following is true.
   - During the previous 5 years (or, if shorter, the period the interest was held by its present owner), the corporation was not a USRPHC.
   - As of the date of disposition, the interest in the corporation is not a U.S. real property interest by reason of section 897(c)(1)(B) of the Code. The certification must be dated not more than 30 days before the date of transfer.
4. The transferor gives you a certification stating, under penalties of perjury, that the transferor is not a foreign person and containing the transferor's name, U.S. TIN, and home address (or office address, in the case of an entity).

   The transferor can give the certification to a qualified substitute. The qualified substitute gives you a statement, under penalties of perjury, that the certification is in the possession of the qualified substitute. For this purpose, a qualified substitute is (a) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and (b) the transferee's agent.
5. You receive a withholding certificate from the IRS that excuses withholding. See *Withholding Certificates*, later.
6. The transferor gives you written notice that no recognition of any gain or loss on the transfer is required because of a nonrecognition provision in the Internal Revenue Code or a provision in a U.S. tax treaty. You must file a copy of the notice by the 20th day after the date of transfer with the Ogden Service Center, P.O. Box 409101, Ogden, UT 84409.

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7. The amount the transferor realizes on the transfer of a U.S. real property interest is zero.
8. The property is acquired by the United States, a U.S. state or possession, a political subdivision, or the District of Columbia.
9. The grantor realizes an amount on the grant or lapse of an option to acquire a U.S. real property interest. However, you must withhold on the sale, exchange, or exercise of that option.
10. The disposition is of an interest in a publicly traded partnership or trust. However, this exception does not apply to certain dispositions of substantial amounts of non-publicly traded interests in publicly traded partnerships or trusts.

Late filing of certifications or notices. If you become aware that you have failed to timely file certain certifications or notices, you still may be able to file them. See Revenue Procedure 2008-27, available at *IRS.gov/irb/2008-21_IRB#RP-2008-27*.

Complete the required certification or notice and file it with the appropriate person or the IRS. Also include the following.

- A statement at the top of the document(s) that it is "FILED PURSUANT TO Revenue Procedure 2008-27."
- An explanation describing why the failure was due to reasonable cause. Within the explanation, provide that you filed with, or obtained from, an appropriate person the required certification or notice.

The completed certification or notice attached to the explanation must be sent to the Ogden Service Center, P.O. Box 409101, Ogden, UT 84409.

Certifications. The certifications in items (3) and (4) are not effective if you (or the qualified substitute) have actual knowledge, or receive a notice from an agent (or substitute), that they are false. This also applies to the qualified substitute's statement under item (4).

If you (or the substitute) are required by regulations to furnish a copy of the certification (or statement) to the IRS and you (or the substitute) fail to do so in the time and manner prescribed, the certification (or statement) is not effective.

Liability of agent or qualified substitute. If you (or the substitute) receive a certification discussed in item (3) or (4) or a statement in item (4), and the agent, or substitute, has actual knowledge that the certification (or statement) is false, or in the case of (3), that the corporation is a foreign corporation, the agent (or substitute) must notify you, or the agent (or substitute) will be held liable for the tax. The agent's (or substitute's) liability is limited to the compensation the agent (or substitute) gets from the transaction.

An agent is any person who represents the transferor or transferee in any negotiation with another person (or another person's agent) relating to the transaction, or in settling the transaction. A person is not treated as an agent if the person only performs one or more of the following acts related to the transaction.

- Receipt and disbursement of any part of the consideration.
- Recording of any document.
- Typing, copying, and other clerical tasks.
- Obtaining title insurance reports and reports concerning the condition of the property.
- Transmitting documents between the parties.

Reporting and Paying the Tax

Transferees must use Forms 8288 and 8288-A to report and pay over any tax withheld on the acquisition of U.S. real property interests. These forms also must be used by corporations, estates, and QIEs that must withhold tax on distributions and other transactions involving U.S. real property interests. You must include the U.S. TIN of both the transferor and the transferee on the forms.

For partnerships disposing of U.S. real property interests, the manner of reporting and paying over the tax withheld is the same as discussed earlier under *Partnership Withholding on Effectively Connected Income*.

Publicly traded trusts must use Forms 1042 and 1042-S to report and pay over tax withheld on distributions from dispositions of U.S. real property interests.

QIEs must use Forms 1042 and 1042-S for a distribution to a nonresident alien or foreign corporation that is treated as a dividend, as discussed earlier under *Qualified investment entities (QIEs)*.

Form 8288. The tax withheld on the acquisition of a U.S. real property interest from a foreign person is reported and paid over using Form 8288. Form 8288 also serves as the transmittal form for copies A and B of Form 8288-A.

DUE In most cases, you must file Form 8288 by the 20th day after the date of the transfer.

If an application for a *withholding certificate* (discussed later) is submitted to the IRS before or on the date of a transfer and the application is still pending with the IRS on the date of transfer, the correct withholding tax must be withheld, but does not have to be reported and paid over immediately. The amount withheld (or lesser amount as determined by the IRS) must be reported and paid over within 20 days following the day on which a copy of the withholding certificate or notice of denial is mailed by the IRS.

If the principal purpose of applying for a withholding certificate is to delay paying over the withheld tax, the transferee will be subject to interest and penalties. The interest and penalties will be assessed for the period beginning on the 21st day after the date of transfer and ending on the day the payment is made.

Form 8288-A. The withholding agent must prepare a Form 8288-A for each person from whom tax has been withheld. Attach copies A and B of Form 8288-A to Form 8288. Keep copy C for your records.

The IRS will stamp copy B and send it to the person subject to withholding. That person must file a U.S. income tax return and attach the stamped Form 8288-A to receive credit for any tax withheld.

CAUTION *A stamped copy of Form 8288-A will not be provided to the transferor if the transferor's TIN is not included on that form. The IRS will send a letter to the transferor requesting the TIN and providing instructions for how to get a TIN. When the transferor provides the IRS with a TIN, the IRS will provide the transferor with a stamped copy B of Form 8288-A.*

Form 1099-S. In most cases, the real estate broker or other person responsible for closing the transaction must report the sale of the property to the IRS using Form 1099-S. For more information about Form 1099-S, see the Instructions for Form 1099-S and the General Instructions for Certain Information Returns.

Withholding Certificates

The amount that must be withheld from the disposition of a U.S. real property interest can be adjusted by a withholding certificate issued by the IRS. The transferee, the transferee's agent, or the transferor may request a withholding certificate. The IRS will generally act on these requests within 90 days after receipt of a complete application including the TINs of all the parties to the transaction. A transferor that applies for a withholding certificate must notify the transferee in writing that the certificate has been applied for on the day of or the day before the transfer.

A withholding certificate may be issued due to:

1. A determination by the IRS that reduced withholding is appropriate because either:
   a. The amount that must be withheld would be more than the transferor's maximum tax liability, or
   b. Withholding of the reduced amount would not jeopardize collection of the tax;
2. The exemption from U.S. tax of all gain realized by the transferor; or
3. An agreement for the payment of tax providing security for the tax liability, entered into by the transferee or transferor.

Applications for withholding certificates are divided into six basic categories. This categorizing provides for specific information that is needed to process the applications. The six categories are:

1. Applications based on a claim that the transferor is entitled to nonrecognition treatment or is exempt from tax,
2. Applications based solely on a calculation of the transferor's maximum tax liability,
3. Applications under special installment sales rules,
4. Applications based on an agreement for the payment of tax with conforming security,

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5. Applications for blanket withholding certificates, and
6. Applications on any other basis.

The applicant must make available to the IRS, within the time prescribed, all information required to verify that representations relied upon in accepting the agreement are accurate, and that the obligations assumed by the applicant will be performed pursuant to the agreement. Failure to provide requested information promptly usually will result in rejection of the application, unless the IRS grants an extension of the target date.

Categories (1), (2), and (3). Use Form 8288-B to apply for a withholding certificate. Follow the instructions for the form.

Categories (4), (5), and (6). Do not use Form 8288-B for applications under categories (4), (5), and (6). For these categories, follow the instructions given here and under the specific category.

All applications for withholding certificates must use the following format. The information must be provided in paragraphs labeled to correspond with the numbers and letters set forth below. If the information requested does not apply, place "N/A" in the relevant space.

1. Information on the application category:
   a. State which category (4, 5, or 6) describes the application,
   b. If a category (4) application:
      i. State whether the proposed agreement secures (A) the transferor's maximum tax liability, or (B) the amount that would otherwise have to be withheld; and
      ii. State whether the proposed agreement and security instrument conform to the standard formats.
2. Information on the transferee or transferor:
   a. State the name, address, and TIN of the person applying for the withholding certificate (if this person does not have a TIN and is eligible for an ITIN, he or she can apply for the ITIN by attaching the application to a completed Form W-7 and forwarding the package to the address given in the Form W-7 instructions);
   b. State whether that person is the transferee or transferor; and
   c. State the name, address, and TIN of all other transferees and transferors of the U.S. real property interest for which the withholding certificate is sought.
3. Information on the U.S. real property interest for which the withholding certificate is sought. State the:
   a. Type of interest (such as interest in real property, in associated personal property, or in a domestic U.S. real property holding corporation);
   b. Contract price;
   c. Date of transfer;
   d. Location and general description (if an interest in real property);
   e. Class or type and amount of the interest in a U.S. real property holding corporation; and
   f. Whether in the 3 preceding tax years (1) U.S. income tax returns were filed relating to the U.S. real property interest and, if so, when and where those returns were filed and, if not, why returns were not filed, and (2) U.S. income taxes were paid relating to the U.S. real property interest and, if so, the amount of tax paid.
4. Provide full information concerning the basis for the issuance of the withholding certificate. Although the information to be included in this section of the application will vary from case to case, the rules shown under the specific category provide general guidelines for the inclusion of appropriate information for that category.

The application must be signed by the individual, a responsible officer in the case of a corporation, a general partner in the case of a partnership, or a trustee, executor, or equivalent fiduciary in the case of a trust or estate, or a duly authorized agent (with a copy of the power of attorney, such as Form 2848, attached). The person signing the application must verify under penalties of perjury that all representations are true, correct, and complete to that person's knowledge and belief. If the application is based in whole or in part on information provided by another party to the transaction, that information must be supported by a written verification signed under penalties of perjury by that party and attached to the application.

Send applications to the:

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

Category (4) applications. If the application is based on an agreement for the payment of tax, the application must include:

- Information establishing the transferor's maximum tax liability, or the amount that otherwise has to be withheld;
- A signed copy of the agreement proposed by the applicant; and
- A copy of the security instrument proposed by the applicant.

Either the transferee or the transferor may enter into an agreement for the payment of tax. The agreement is a contract between the IRS and any other person and consists of two necessary elements. Those elements are:

- A detailed description of the rights and obligations of each, and
- A security instrument or other form of security acceptable to the Commissioner or his delegate.

For more information on the agreement for the payment of tax, including a sample agreement, see section 5 of Revenue Procedure 2000-35, available at *IRS.gov/pub/irs-irbs/irb00-35.pdf*.

There are four major types of security acceptable to the IRS. They are:

- Bond with surety or guarantor,
- Bond with collateral,
- Letter of credit, and
- Guarantee (corporate transferors).

The IRS may, in unusual circumstances and at its discretion, accept any additional form of security that it finds to be adequate.

For more information on acceptable security instruments, including sample forms of these instruments, see section 6 of Revenue Procedure 2000-35.

Category (5) applications. A blanket withholding certificate may be issued if the transferor holding the U.S. real property interests provides an irrevocable letter of credit or a guarantee and enters into a tax payment and security agreement with the IRS. A blanket withholding certificate excuses withholding concerning multiple dispositions of those property interests by the transferor or the transferor's legal representative during a period of no more than 12 months.

For more information, see section 9 of Revenue Procedure 2000-35.

Category (6) applications. These are nonstandard applications and may be of the following types.

Agreement for payment of tax with nonconforming security. An applicant seeking to enter into an agreement for the payment of tax but wanting to provide a nonconforming type of security must include the following in the application.

1. The information required for *category (4) applications*, discussed earlier.
2. A description of the nonconforming security proposed by the applicant.
3. A memorandum of law and facts establishing that the proposed security is valid and enforceable and that it adequately protects the government's interest.

Other nonstandard applications. An application for a withholding certificate not previously described must explain in detail the proposed basis for the issuance of the certificate and set forth the reasons justifying the issuance of a certificate on that basis.

Amendments to Applications

An applicant for a withholding certificate may amend an otherwise complete application by sending an amending statement to the address shown earlier in *Withholding Certificates*. There is no particular form required, but the amending statement must provide the following information.

- The name, address, and TIN of the person providing the amending statement specifying whether that person is the transferee or transferor.
- The date of the original application for a withholding certificate that is being amended.

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- A brief description of the real property interest for which the original application for a withholding certificate was provided.
- The basis for the amendment including any change in the facts supporting the original application for a withholding certificate and any change in the terms of the withholding certificate.

The statement must be signed and accompanied by a penalties of perjury statement.

If an amending statement is provided, the time in which the IRS must act upon the application is extended by 30 days. If the amending statement substantially changes the original application, the time for acting upon the application is extended by 60 days. If an amending statement is received after the withholding certificate has been signed, but before it has been mailed to the applicant, the IRS will have a 90-day extension of time in which to act.

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Definitions

Chapter 4 withholding rate pool. A "Chapter 4 withholding rate pool" means a pool of payees that are nonparticipating FFIs provided on a Chapter 4 withholding statement (as described in Regulations section 1.1471-3(c)(3)(iii)(B)(3)) to which a withholdable payment is allocated. The term also means a pool of payees provided on an FFI withholding statement (as described in Regulations section 1.1471-3(c)(iii)(B)(2)) to which a withholdable payment is allocated to (a) a pool of payees consisting of each class of recalcitrant account holders described in Regulations section 1.1471-4(d)(6) (or with respect to an FFI that is a QI, a single pool of recalcitrant account holders), including a separate pool of account holders to which the escrow procedures for dormant accounts apply; or (b) a pool of payees that are U.S. persons as described in Regulations section 1.1471-3(c)(3)(iii)(B)(2) (including such a pool allocated to a reportable amount on a withholding statement provided solely for Chapter 3 purposes).

Deemed-compliant FFI. A "deemed-compliant FFI" means an FFI that is treated, pursuant to section 1471(b)(2) and Regulations section 1.1471-5(f), as meeting the requirements of section 1471(b). The term "deemed-compliant FFI" includes a nonreporting IGA FFI (as defined in Regulations section 1.1471-1(b)(83)).

Dividend equivalents. Generally, a "dividend equivalent" is any payment that references the payment of a dividend from an underlying security pursuant to a securities lending or sale-repurchase transaction, SNPC, or specified ELI. This applies without regard to whether there is an actual distribution of cash or property.

Exempt beneficial owner. An "exempt beneficial owner" is any person described in Regulations sections 1.1471-6(b) through (g) and includes any person treated as an exempt beneficial owner under an applicable Model 1 IGA or Model 2 IGA.

Financial institution (FI). A "financial institution" (FI) is any institution that is a depository institution, custodial institution, investment entity, insurance company (or holding company of an insurance company) that issues cash value insurance or annuity contracts, or a holding company or treasury center that is part of an expanded affiliated group of certain FFIs, and includes a financial institution as defined under an applicable Model 1 IGA or Model 2 IGA. See Regulations section 1.1471-5(e)(1).

Foreign financial institution (FFI). Except as otherwise provided for certain foreign branches of a U.S. financial institution or territory financial institutions, a "foreign financial institution" (FFI) means a financial institution that is a foreign entity. The term "FFI" also includes a foreign branch of a U.S. financial institution with a QI agreement in effect.

Model 1 IGA. A "Model 1 IGA" means an agreement between the United States or the Treasury Department and a foreign government or one or more foreign agencies to implement FATCA through reporting by financial institutions to such foreign government or agency thereof, followed by automatic exchange of the reported information with the IRS. For a list of jurisdictions treated as having an IGA in effect, go to *Treasury.gov/Resource-Center/Tax-Policy/Treaties/Pages/FATCA.aspx*.

Model 2 IGA. A "Model 2 IGA" means an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more foreign agencies to implement FATCA through reporting by financial institutions directly to the IRS in accordance with the requirements of the FFI agreement, as modified by an applicable Model 2 IGA, supplemented by the exchange of information between such foreign government or agency thereof and the IRS. For a list of jurisdictions treated as having an IGA in effect, go to *Treasury.gov/Resource-Center/Tax-Policy/Treaties/Pages/FATCA.aspx*.

Non-financial foreign entity (NFFE). A "non-financial foreign entity" (NFFE) is a foreign entity that is not a financial institution. An NFFE includes a territory NFFE, as defined in Regulations section 1.1471-1(b)(132), and a foreign entity treated as an NFFE pursuant to a Model 1 IGA or Model 2 IGA.

Nonparticipating FFI. A "nonparticipating FFI" is an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

Participating FFI. A "participating FFI" is an FFI that has agreed to comply with the requirements of an FFI agreement with respect to all branches of the FFI, other than a branch that is a reporting Model 1 FFI or a U.S. branch. The term "participating FFI" also includes a reporting Model 2 FFI and a QI branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.

Passive NFFE. A "passive NFFE" is an NFFE that is not an excepted NFFE. With respect to a reporting Model 2 FFI filing a Form 8966 to report its accounts and payees, a passive NFFE is an NFFE that is not an active NFFE (as described in the applicable IGA).

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

Recalcitrant account holder. A "recalcitrant account holder" is an account holder (other than an account holder that is an FFI or is presumed to be an FFI) of a participating FFI or registered deemed-compliant FFI that has failed to provide the FFI maintaining its account with the information required under Regulations section 1.1471-5(g).

Registered deemed-compliant FFI. A "registered deemed-compliant FFI" is an FFI described in Regulations section 1.1471-5(f)(1) and includes a reporting Model 1 FFI and a QI branch of a U.S. financial institution that is a reporting Model 1 FFI.

Reporting Model 1 FFI. A "reporting Model 1 FFI" is an FI, including a foreign branch of a U.S. financial institution, treated as a reporting financial institution under a Model 1 IGA.

Reporting Model 2 FFI. A "reporting Model 2 FFI" is an FFI described in a Model 2 IGA that has agreed to comply with the requirements of an FFI agreement with respect to a branch.

Territory financial institution. A "territory financial institution" is a financial institution that is incorporated or organized under the laws of any U.S. territory, excluding a territory entity that is a financial institution only because it is an investment entity as defined in Regulations section 1.1471-5(e)(4).

Withholdable payment. A "withholdable payment" is a payment described in Regulations section 1.1473-1(a). See *Income Subject to Withholding*, earlier, for a discussion of which payments qualify as withholdable payments.

Tax Treaties

The United States has bilateral income tax treaties, also known as "conventions," with a number of foreign countries under which residents (sometimes limited to citizens) of those countries are taxed at a reduced rate or are exempt from U.S. income taxes on certain income received from within the United States.

Income that is exempt under a treaty is not subject to withholding at source under the statutory rules discussed in this publication.

Obtaining treaty information. You can obtain the full text of these treaties, and accompanying technical explanations, at *IRS.gov/Businesses/International-Businesses/United-States-Income-Tax-Treaties-A-to-Z*.

Detailed information about treaty provisions can be found at *IRS.gov/Individuals/International-Taxpayers/Tax-Treaties*.

Tax treaty tables. The tax treaty tables previously contained in this publication have been updated and moved to *IRS.gov/Individuals/International-Taxpayers/Tax-Treaty-Tables*.

How To Get Tax Help

If you have questions about a tax issue, need help preparing your tax return, or want to download free publications, forms, or instructions, go to IRS.gov and find resources that can help you right away.

Preparing and filing your tax return. After receiving your wage and earning statements (Form W-2, W-2G, 1099-R, 1099-MISC) from all employers and interest and dividend statements from banks (Forms 1099), you can find free options to prepare and file your return on IRS.gov or in your local community if you qualify.

The Volunteer Income Tax Assistance (VITA) program offers free tax help to people with low-to-moderate incomes, persons with disabilities, and limited-English-speaking taxpayers who need help preparing their own tax returns. The Tax Counseling for the Elderly (TCE) program offers free tax help for all taxpayers, particularly those who are 60 years of age and older. TCE volunteers specialize in answering questions about pensions and retirement-related issues unique to seniors.

You can go to IRS.gov to see your options for preparing and filing your return, which include the following.

- **Free File.** Go to *IRS.gov/FreeFile* to see if you qualify to use brand-name software to prepare and *e-file* your federal tax return for free.
- **VITA.** Go to *IRS.gov/VITA*, download the free IRS2Go app, or call 800-906-9887 to find the nearest VITA location for free tax return preparation.
- **TCE.** Go to *IRS.gov/TCE*, download the free IRS2Go app, or call 888-227-7669 to find the nearest TCE location for free tax return preparation.

Employers can register to use Business Services Online. The SSA offers online service for fast, free, and secure online W-2 filing options to CPAs, accountants, enrolled agents, and individuals who process Forms W-2, Wage and Tax Statement, and Forms W-2c, Corrected Wage and Tax Statement. Employers can go to *SSA.gov/employer* for more information.

Getting answers to your tax questions. On IRS.gov, get answers to your tax questions anytime, anywhere.

- Go to *IRS.gov/Help* for a variety of tools that will help you get answers to some of the most common tax questions.
- Go to *IRS.gov/ITA* for the Interactive Tax Assistant, a tool that will ask you questions on a number of tax law topics and provide answers. You can print the entire interview and the final response for your records.
- Go to *IRS.gov/Forms* to search for our forms, instructions, and publications. You will find details on 2019 tax changes and hundreds of interactive links to help you find answers to your questions.
- You may also be able to access tax law information in your electronic filing software.

Tax reform. Tax reform legislation affects individuals, businesses, and tax-exempt and government entities. Go to *IRS.gov/TaxReform* for information and updates on how this legislation affects your taxes.

IRS social media. Go to *IRS.gov/SocialMedia* to see the various social media tools the IRS uses to share the latest information on tax changes, scam alerts, initiatives, products, and services. At the IRS, privacy and security are paramount. We use these tools to share public information with you. **Don't** post your social security number or other confidential information on social media sites. Always protect your identity when using any social networking site.

The following IRS YouTube channels provide short, informative videos on various tax-related topics in English, Spanish, and ASL.

- *Youtube.com/irsvideos*.
- *Youtube.com/irsvideosmultilingua*.
- *Youtube.com/irsvideosASL*.

Watching IRS videos. The IRS Video portal (*IRSVideos.gov*) contains video and audio presentations for individuals, small businesses, and tax professionals.

Getting tax information in other languages. For taxpayers whose native language isn't English, we have the following resources available. Taxpayers can find information on IRS.gov in the following languages.

- *Spanish* (*IRS.gov/Spanish*).
- *Chinese* (*IRS.gov/Chinese*).
- *Korean* (*IRS.gov/Korean*).
- *Russian* (*IRS.gov/Russian*).
- *Vietnamese* (*IRS.gov/Vietnamese*).

The IRS Taxpayer Assistance Centers (TACs) provide over-the-phone interpreter service in over 170 languages, and the service is available free to taxpayers.

Getting tax forms and publications. Go to *IRS.gov/Forms* to view, download, or print all of the forms, instructions, and publications you may need. You can also download and view popular tax publications and instructions (including the 1040 and 1040-SR instructions) on mobile devices as an eBook at no charge at *IRS.gov/eBooks*. Or you can go to *IRS.gov/OrderForms* to place an order and have them mailed to you within 10 business days.

Access your online account (individual taxpayers only). Go to *IRS.gov/Account* to securely access information about your federal tax account.

- View the amount you owe, pay online, or set up an online payment agreement.
- Access your tax records online.
- Review the past 24 months of your payment history.
- Go to *IRS.gov/SecureAccess* to review the required identity authentication process.

Using direct deposit. The fastest way to receive a tax refund is to combine direct deposit and IRS *e-file*. Direct deposit securely and electronically transfers your refund directly into your financial account. Eight in 10 taxpayers use direct deposit to receive their refund. The IRS issues more than 90% of refunds in less than 21 days.

Getting a transcript or copy of a return. The quickest way to get a copy of your tax transcript is to go to *IRS.gov/Transcripts*. Click on either "Get Transcript Online" or "Get Transcript by Mail" to order a copy of your transcript. If you prefer, you can order your transcript by calling 800-908-9946.

Using online tools to help prepare your return. Go to *IRS.gov/Tools* for the following.

- The *Earned Income Tax Credit Assistant* (*IRS.gov/EITCAssistant*) determines if you're eligible for the EIC.
- The *Online EIN Application* (*IRS.gov/EIN*) helps you get an employer identification number.
- The *Tax Withholding Estimator* (*IRS.gov/W4app*) makes it easier for everyone to pay the correct amount of tax during the year. The Estimator replaces the Withholding Calculator. The redesigned tool is a convenient, online way to check and tailor your withholding. It's more user-friendly for taxpayers, including retirees and self-employed individuals. The new and improved features include the following.
  - Easy to understand language;
  - The ability to switch between screens, correct previous entries, and skip screens that don't apply;
  - Tips and links to help you determine if you qualify for tax credits and deductions;
  - A progress tracker;
  - A self-employment tax feature; and
  - Automatic calculation of taxable social security benefits.
- The *First Time Homebuyer Credit Account Look-up* (*IRS.gov/HomeBuyer*) tool provides information on your repayments and account balance.
- The *Sales Tax Deduction Calculator* (*IRS.gov/SalesTax*) figures the amount you can claim if you itemize deductions on Schedule A (Form 1040 or 1040-SR), choose not to claim state and local income taxes, and you didn't save your receipts showing the sales tax you paid.

Resolving tax-related identity theft issues.

- The IRS doesn't initiate contact with taxpayers by email or telephone to request personal or financial information. This includes any type of electronic communication, such as text messages and social media channels.
- Go to *IRS.gov/IDProtection* for information.
- If your SSN has been lost or stolen or you suspect you're a victim of tax-related identity theft, visit *IRS.gov/IdentityTheft* to learn what steps you should take.

Checking on the status of your refund.

- Go to *IRS.gov/Refunds*.
- The IRS can't issue refunds before mid-February 2020 for returns that claimed the EIC or the ACTC. This applies to the

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entire refund, not just the portion associated with these credits.
- Download the official IRS2Go app to your mobile device to check your refund status.
- Call the automated refund hotline at 800-829-1954.

Making a tax payment. The IRS uses the latest encryption technology to ensure your electronic payments are safe and secure. You can make electronic payments online, by phone, and from a mobile device using the IRS2Go app. Paying electronically is quick, easy, and faster than mailing in a check or money order. Go to *IRS.gov/Payments* to make a payment using any of the following options.

- *IRS Direct Pay*: Pay your individual tax bill or estimated tax payment directly from your checking or savings account at no cost to you.
- *Debit or Credit Card*: Choose an approved payment processor to pay online, by phone, and by mobile device.
- *Electronic Funds Withdrawal*: Offered only when filing your federal taxes using tax return preparation software or through a tax professional.
- *Electronic Federal Tax Payment System*: Best option for businesses. Enrollment is required.
- *Check or Money Order*: Mail your payment to the address listed on the notice or instructions.
- *Cash*: You may be able to pay your taxes with cash at a participating retail store.
- *Same-Day Wire*: You may be able to do same-day wire from your financial institution. Contact your financial institution for availability, cost, and cut-off times.

What if I can't pay now? Go to *IRS.gov/Payments* for more information about your options.

- Apply for an *online payment agreement* (*IRS.gov/OPA*) to meet your tax obligation in monthly installments if you can't pay your taxes in full today. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.
- Use the *Offer in Compromise Pre-Qualifier* to see if you can settle your tax debt for less than the full amount you owe. For more information on the Offer in Compromise program, go to *IRS.gov/OIC*.

Checking the status of an amended return. Go to *IRS.gov/WMAR* to track the status of Form 1040-X amended returns. Please note that it can take up to 3 weeks from the date you mailed your amended return for it to show up in our system, and processing it can take up to 16 weeks.

Understanding an IRS notice or letter. Go to *IRS.gov/Notices* to find additional information about responding to an IRS notice or letter.

Contacting your local IRS office. Keep in mind, many questions can be answered on IRS.gov without visiting an IRS Taxpayer Assistance Center (TAC). Go to *IRS.gov/LetUsHelp* for the topics people ask about most. If you still need help, IRS TACs provide tax help when a tax issue can't be handled online or by phone. All TACs now provide service by appointment so you'll know in advance that you can get the service you need without long wait times. Before you visit, go to *IRS.gov/TACLocator* to find the nearest TAC, check hours, available services, and appointment options. Or, on the IRS2Go app, under the Stay Connected tab, choose the Contact Us option and click on "Local Offices."

The Taxpayer Advocate Service (TAS) Is Here To Help You

What Is TAS?

TAS is an ***independent*** organization within the IRS that helps taxpayers and protects taxpayer rights. Their job is to ensure that every taxpayer is treated fairly and that you know and understand your rights under the *Taxpayer Bill of Rights*.

How Can You Learn About Your Taxpayer Rights?

The Taxpayer Bill of Rights describes 10 basic rights that all taxpayers have when dealing with the IRS. Go to *TaxpayerAdvocate.IRS.gov* to help you understand *what these rights mean to you* and how they apply. These are ***your*** rights. Know them. Use them.

What Can TAS Do For You?

TAS can help you resolve problems that you can't resolve with the IRS. And their service is free. If you qualify for their assistance, you will be assigned to one advocate who will work with you throughout the process and will do everything possible to resolve your issue. TAS can help you if:

- Your problem is causing financial difficulty for you, your family, or your business;
- You face (or your business is facing) an immediate threat of adverse action; or
- You've tried repeatedly to contact the IRS but no one has responded, or the IRS hasn't responded by the date promised.

How Can You Reach TAS?

TAS has offices *in every state, the District of Columbia, and Puerto Rico*. Your local advocate's number is in your local directory and at *TaxpayerAdvocate.IRS.gov/Contact-Us*. You can also call them at 877-777-4778.

How Else Does TAS Help Taxpayers?

TAS works to resolve large-scale problems that affect many taxpayers. If you know of one of these broad issues, please report it to them at *IRS.gov/SAMS*.

TAS also has a website, *Tax Reform Changes*, which shows you how the new tax law may change your future tax filings and helps you plan for these changes. The information is categorized by tax topic in the order of the IRS Form 1040 or 1040-SR. Go to *TaxChanges.us* for more information.

TAS for Tax Professionals

TAS can provide a variety of information for tax professionals, including tax law updates and guidance, TAS programs, and ways to let TAS know about systemic problems you've seen in your practice.

Low Income Taxpayer Clinics (LITCs)

LITCs are independent from the IRS. LITCs represent individuals whose income is below a certain level and need to resolve tax problems with the IRS, such as audits, appeals, and tax collection disputes. In addition, clinics can provide information about taxpayer rights and responsibilities in different languages for individuals who speak English as a second language. Services are offered for free or a small fee. To find a clinic near you, visit *IRS.gov/LITC* or see IRS Pub. 4134, *Low Income Taxpayer Clinic List*.

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To help us develop a more useful index, please let us know if you have ideas for index entries. See "Comments and Suggestions" in the "Introduction" for the ways you can reach us.

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