

General Instructions

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

Paperwork Reduction Act Notice

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

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping 3 hr., 7 min.

Learning about the law or the form 1 hr., 29 min.

Preparing and sending the form to the IRS 1 hr., 37 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the IRS and the Office of Management and Budget at the addresses listed in the instructions of the tax return with which this form is filed.

Purpose of Form

Form 8833 may be used by taxpayers to make the treaty-based return position disclosure required by section 6114. The form may also be used by dual resident taxpayers (defined below) to make the treaty-based return position disclosure required by Regulations section 301.7701(b)-7. A separate form is required for each treaty-based return position taken by the taxpayer.

Who Must File

A taxpayer who takes a treaty-based return position must disclose that position.

A taxpayer takes a **treaty-based return position** by maintaining that a treaty of the United States overrules or modifies a provision of the Internal Revenue Code and thereby causes (or potentially causes) a reduction of tax on the taxpayer's tax return. For these purposes, a treaty includes, but is not limited to, an income tax treaty, estate and gift tax treaty, or friendship, commerce, and navigation treaty. See Regulations sections 301.6114-1(a) and (b) for more details and for examples of treaty-based return positions taken by taxpayers for which they must make disclosure.

Exceptions. See Regulations section 301.6114-1(c) for examples of treaty-based return positions taken by taxpayers for which they are **not** required to make disclosure.

A **dual resident taxpayer** is an individual who is considered to be a resident of both the United States and another country under each country's tax laws. The income tax treaty between the United States and the other country must contain a provision for resolution of conflicting claims of residence.

If you are a dual resident taxpayer and you choose to claim treaty benefits, you are treated as a nonresident alien in figuring your U.S. income tax liability for the part of the tax year you are considered a dual resident taxpayer. If this is the case, attach Form 8833 to **Form 1040NR**, U.S. Nonresident Alien Income Tax Return. Form 1040NR must be timely filed (including extensions). For purposes other than figuring your U.S. income tax liability, you are treated as a U.S. resident (see Regulations section 301.7701(b)-7(a)(3)).

When and Where To File

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

Specific Instructions

Identifying Number

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

Line 3

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