Withholding of Tax on Nonresident Aliens and Foreign Entities

For use in 2009

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Partnership withholding on effectively connected income (ECI). New rules apply to the process used by a partnership to reduce or eliminate the partnership’s obligation to pay withholding tax under section 1446 on ECI of a foreign partner. Any certificate (including any updated certificates and status reports) submitted, or required to be submitted, after July 28, 2008, must comply with the new rules. See Amount of Withholding Tax under Partnership Withholding on Effectively Connected Income.

U.S. real property interest. For dispositions of U.S. real property interests after July 30, 2008, transfersor can give a nonforeign certification to a qualified substitute. See Exceptions under U.S. Real Property Interest.

Generally, the treatment of a regulated investment company (RIC) as a qualified investment entity (QIE) was scheduled to expire at the end of 2007. These provisions have been extended through 2009.

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CAUTION

Useful Items
You may want to see:

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

Form (and Instructions)
- SS-4 Application for Employer Identification Number
- W-2 Wage and Tax Statement
- W-4 Employee’s Withholding Allowance Certificate
- W-4P Withholding Certificate for Pension or Annuity Payments
- W-7 Application for IRS Individual Taxpayer Identification Number
- W-8BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding
- W-8ECI Certificate of Foreign Person’s Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States
- W-8EXP Certificate of Foreign Government or Other Foreign Organization for United States Withholding
- W-8IMY Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding
- 941 Employer’s Quarterly Federal Tax Return
- 1042 Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
- 1042-S Foreign Person’s U.S. Source Income Subject to Withholding
- 1042-T Annual Summary and Transmittal of Forms 1042-S

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

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

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

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

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

Withholding Agent
You are a withholding agent if you are a U.S. or foreign person that has control, receipt, custody, disposal, or payment of any item of income of a foreign person that is subject to withholding. A withholding agent may be an individual, corpora-
tion, partnership, trust, association, nominee (under section 1446 of the Code), or any other entity, including any foreign intermediary, for-
eign partnership, or U.S. branch of certain for-
eign 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. Generally, the U.S. person who pays an amount subject to NRA withholding is the person responsible for withholding. However, other persons may be required to withhold. For example, a payment made by a flow-through entity or nonqualified intermediary that knows, or has reason to know, that the full amount of NRA withholding was not done by the person from which it receives a payment is required to do the appropriate with-
holding, even if it also falls within the definition of a withholding agent. In addition, withholding must be done by any qualified intermediary, withhold-
ing 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 pay-
ment is made. If you fail to withhold and the foreign payee fails to satisfy its U.S. tax liability, then both you and the foreign person are liable for tax, as well as interest and any applicable penalties.

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

Determination of amount to withhold. You must withhold on the gross amount subject to NRA withholding. You cannot reduce the gross amount by any deductions. However, see Schol-
arships and Fellowship Grants, and Pay for Per-
sonal Services Performed, later, for when a deduction for a personal exemption may be al-
lowed.

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 en-
sure that at least 30% of the amount subsequently determined to be subject to withholding is withheld. In no case, however, should you withhold more than 30% of the total amount paid. Or, you may make a reasonable estimate of the amount from U.S. sources and put a corresponding portion of the amount due in es-

crow until the amount from U.S. sources can be determined, at which time withholding becomes due.

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

A U.S. partnership should withhold when any distribution of income subject to withholding is made. However, if a foreign partner’s distributable share of income subject to withholding is not actually distributed, the U.S. partnership must withhold on the foreign partner’s distributable 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 dis-

distributable amount consists of effectively con-

nected income, see Partnership Withholding on Effectively Connected Income, later.

A U.S. trust is required to withhold on the amount includable in the gross income of a for-
eign beneficiary to the extent the trust’s distribut-
able 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 alloc-
able share at the time the income is required to be reported on Form 1042-S.

Withholding and Reporting Obligations

You are required to report payments subject to NRA withholding on Form 1042-S and to file a tax return on Form 1042. (See Returns Re-

quired, later.) An exception from reporting may...
apply to individuals who are not required to with- hold from a payment and who do not make the payment in the course of their trade or business.

Form 1099 reporting and backup withhold- ing. You may also be responsible as a payer for reporting on Form 1099 payments made to a U.S. person. You must withhold 28% (backup withholding rate) from reportable payment made to a U.S. person that is subject to Form 1099 reporting if (1) the U.S. person has not provided a TIN in the manner required, (2) the IRS notifies you that the TIN furnished by the payee is incorrect, (3) there has been a notified payee underreport- ing, or (4) there has been a payee certification failure. Generally, a TIN must be provided by a U.S. non-exempt recipient on Form W-9. A payer files a tax return on Form 945 for backup withholding.

You may be required to file Form 1099, and, if appropriate, backup withhold, even if you do not make the payments directly to that U.S. person. For example, you are required to report income received from a foreign entity by a U.S. payee that collects for a foreign person. You may be required to file Form 1099-Misc for backup withholding. However, you may be required to report foreign payments made to U.S. persons. gives you a valid Form W-8IMY with which to rely, you apply the payee determination rules to that partner to determine the payee's status. You may also be required to treat the foreign entity as if it is a foreign person. See were made directly to them. Report the payment witholding and for Form 1099 reporting and backup withholding.

Persons Subject to NRA Withholding

NRA withholding applies only to payments made to a payee that is a foreign person. It does not apply to payments made to U.S. persons. Usually, you determine the payee's status as a U.S. or foreign person based on the documen- ration that person provides. See Documentation, later. However, if you have received no documentation or you cannot reliably associate all or a portion of a payment with documentation, then you must apply certain presumption rules, discussed later.

Identifying the Payee

Generally, 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.

Example 1. A nonwithholding foreign partnership has three partners: a U.S. person and two foreign persons. The partnership is claiming treaty benefits on the basis that it is a fiscally transparent entity. A foreign intermediary, you apply the presumption rules to determine the payee.

Example 2. A nonwithholding foreign partner- ship has three partners: a non-U.S. resident alien individual; a foreign corporation; and a U.S. citi- zen. You make a payment of U.S. source inter- est to the partnership. It gives you a Form W-8IMY with which to claim treaty benefits on the basis that it is a fiscally transparent entity. A foreign intermediary, you apply the payee deter- mination rules to determine the payee.

Foreign partnerships. A foreign partnership is any partnership that is not organized under the laws of any state of the United States or the District of Columbia or any partnership that is treated as foreign under the income tax regula- tions. If a foreign partnership is not a withholding foreign partnership, the payees of income are the partners of the partnership, provided the partners are not themselves a flow-through entity or a foreign intermediary. However, the payee is W-8BEN, W-8EXP (or applicable documentary evidence) are exempt from backup withholding and Form 1099 reporting.

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

Effectively connected income by partner- ships. A withholding agent that is a partner- ship (whether U.S. or foreign) is also responsible for withholding on its income effec- tively connected with a U.S. trade or business that is allocable to foreign partners. See Partner- ship Withholding on Effectively Connected In- come, later, for more information.

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

Generally, 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 may also be required to treat the entity as a flow-through entity under the pre- sumption rules, discussed later.

You must determine whether the owners or beneficiaries of a flow-through entity are U.S. or foreign persons, how much of the payment re- lies to each owner or beneficiary, and, if the owner or beneficiary is foreign, whether a re- duced rate of NRA withholding applies. You make these determinations based on the documen- tion 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 the information required to reliably associate a payment with a specific payee, you may apply the presumption rules. See Documentation and Presumption Rules, later.

Withholding foreign partnerships and with- holding foreign trusts are not flow-through en- tities.

Presumption Rules. A withholding entity that has effectively connected income is treated as a withholding foreign entity unless the payer has reason to believe that the payee is a flow-through entity or that the income is effectively connected with the conduct of a U.S. trade or business of a flow-through entity, as treated to paid as to the entity.

All of the following are flow-through entities.

- A foreign partnership (other than a with- holding foreign partnership).
- A foreign simple or foreign grantor trust (other than a withholding foreign trust).
- A fiscally transparent entity receiving in- come for which treaty benefits are claimed. See Fiscally transparent entity, later.
Forms W-8IMY from the partnerships have com-
plete withholding statements associated with them. Because you can reliably associate a por-
tion of the interest payment with the Forms W-8BEN provided by the foreign corporation and
the nonresident alien individual partners as a result of the withholding statements, you must treat
them as the payees of the interest.

Example 3. You make a payment of U.S.
source dividends to a withholding foreign part-
nership. The partnership has two partners, both foreign. You are an entity that is required to
shelter the payment with a valid Form W-8IMY from the partnership on which it represents that it is a
withholding foreign partnership. You must treat
the partnership as the payee of the dividends.

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

• A court within the United States is able to
erect primary supervision over the ad-
ministration of the trust.

• One or more U.S. persons have the au-
thority to control all substantial decisions of the trust.

Generally, a foreign simple trust is a foreign
tax 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
gantor trust are the owners of the trust. How-
ever, the payee is the foreign simple or grantor
tax itself if the trust is claiming treaty benefits
on the basis that it is not fisically transparent and
that it meets all the other requirements for claim-
ing treaty benefits. If the beneficiaries or owners
are themselves flow-through entities or foreign
intermediaries, you apply the payee determina-
tion rules to that beneficiary or owner to deter-
mine the payees.

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

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

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

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

A receives royalty income from U.S. sources
that is not effectively connected with the con-
duct of a trade or business in the United States. For
U.S. income tax purposes, A is treated as a part-
nership. Country X treaty A as a partnership and
requires the interest holders in A to sepa-
rately 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 coun-
try Y provide that the character and source of
the income to A is interest holders are determined as
if the income was realized directly from the
source that paid it to A. Accordingly, A is fiscally
transparent in its jurisdiction, country X.

B and C are not fiscally transparent under the
tax laws of their respective countries of inhab-
itation. Country Y requires B to separately take into
account on a current basis B’s share of the
income to B is determined as if the income
was realized directly from the source that paid it to A. Accordingly, A is fiscally transparent for
that income under the laws of country Y, and B is
treated as deriving its share of the U.S. source
royalty income for purposes of the U.S.-Y in-
come 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. Therefore, A is not treated as fiscally transparent under the laws of country Z. Accord-
ingly, 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

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

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

You must determine whether the customers or
account holders of a foreign intermediary are
U.S. persons to whom primary withholding respon-
sibility is required. The payees of a payment to
an intermediary are the interest holders of the
intermediary.

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

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

Qualified intermediary. A qualified inter-
mediary (QI) is any foreign intermediary (or foreign
branch of a U.S. intermediary) that has entered into
a qualified intermediary withholding agree-
ment (discussed later) with the IRS. You may
place a QI as a payee to the extent the QI as-
sumes primary withholding responsibility or pri-
mary backup withholding responsibility for a pay-
ment. In this situation, the QI is required to with-
hold the tax. You may not determine, however, if
the QI is acting as a payee for purposes of the Form
W-8IMY provided by the QI.

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

Branches of financial institutions. Branches
of financial institutions are not permit-
ted to operate as QIs if they are located outside
countries having approved (Kyc) rules. The coun-
tries with approved KYC rules are listed on the

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QI withholding agreement. Foreign financial institutions and foreign branches of U.S. financial institutions can enter into an agreement with the IRS to be a qualified intermediary. A QI is entitled to certain simplified withholding and reporting rules. In general, there are three major areas whereby intermediaries with QI status are afforded such simplified treatment.

The QI withholding agreement and procedures necessary to complete an application are set forth in Revenue Procedure 2000-12 found on page 387 of Internal Revenue Bulletin (I.R.B.) 2000-4 at www.irs.gov/pub/irs-irb/ irb2000-4.pdf. Also see the following items.


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

A QI is required to provide the U.S. withholding agent with information regarding U.S. persons subject to Form 1099 information reporting unless the QI assumes the primary obligation to do Form 1099 reporting and backup withholding. If a QI obtains documentary evidence under the "know your customer" rules that apply to the QI under local law, and the documentary evidence is of a type specified under an agreement to treat the branch as a U.S. branch, the QI is required to provide the QI agreement, the documentary evidence remains valid until there is a change in circumstances.

A withholding foreign trust (WT) is a foreign simple or grantor trust that is considered a U.S. person for amounts subject to NRA withholding.

Some exceptions to them, see Publication 519. A statement identifying the amounts for which it is paid by the payee for a payment subject to NRA withholding. Consequently, amounts not subject to NRA withholding that are paid to a U.S. branch are not subject to Form 1099 reporting or backup withholding.

Alternatively, a U.S. branch may provide you with a Form W-8IMY with which it associates the documentation of the persons on whose behalf it acts. In this situation, the payees are the persons on whose behalf the branch acts, and you can rely specifically to the agreement. A QI is permitted to report payments made to its direct foreign branch on which the agreement is evidenced. If you treat the branch as a U.S. payee, you are not required to withhold. Even though you agree to treat the branch as a U.S. person, you must report the payment on Form 1042-S.

A financial institution organized in a U.S. state, and any other person that is not a U.S. person. It also includes a foreign branch of a U.S. financial institution if the foreign branch is a qualified intermediary. Generally, the U.S. branch of a foreign corporation or partnership is treated as a foreign person.

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

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

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

Green card test. An alien is a U.S. resident if the individual is a lawful permanent resident of the United States at any time during the calendar year. This is known as the green card test because these aliens hold immigrant visas (also known as green cards).

Substantial presence test. An alien is considered a U.S. resident if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the United States on at least:

1. 31 days during the current calendar year, and
2. 183 days during the current year and the 2 preceding years, counting all the days with physical presence in the current year, but only ⅓ the number of days of presence in the first preceding year, and only ⅓ the number of days in the second preceding year.

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

For more information on resident and nonresident status, the tests for residence, and the exceptions to them, see Publication 519.
Resident of a U.S. possession. A bona fide resident of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), or American Samoa who is not a U.S. citizen or a U.S. national is treated as a nonresident alien for the withholding rules explained here. A bona fide resident of a possession is someone who:

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

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

Foreign corporations. A foreign corporation is one that does not fit the definition of a domestic corporation. A domestic corporation is one that was created or organized in the United States or under the laws of the United States, or 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% of the corporation's stock is owned, directly or indirectly, by U.S. 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 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, and
- At least 65% of the corporation's gross income is effectively connected with the conduct of a trade or business in the U.S. Virgin Islands, American Samoa, Guam, the CNMI, or the United States for the 3-year period ending with the close of the tax year of the corporation (or the period the corporation or any predecessor has been in existence, if less), and
- No substantial part of the income of the corporation is used, directly or indirectly, to satisfy obligations to a person who is not a bona fide resident of the U.S. Virgin Islands, American Samoa, Guam, the CNMI, or the United States.

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

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

Payments to these organizations, however, must be reported on Form 1042-S, even though no tax is withheld. You must withhold tax on the unrelated business income (as described in Publication 598, Tax on Unrelated Business Income of Exempt Organizations) of foreign tax-exempt organizations in the same way that you would withhold tax on similar income of nonexempt organizations.

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

Documentation

Generally, 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.

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

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

The specific types of documentation are discussed in this section. You should, however, also see the discussion, Withholding on Specific Income, as well as the instructions to the particular forms. As the withholding agent, you may also want to see section 1446 of the Code for the procedures for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY.

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

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

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

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

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

Other documentation. Other documentation may be required to claim an exemption from, or a reduced rate of, withholding on pay for personal services. The nonresident alien individual may have to give you a Form W-4 or a Form 8333, Exemption From Withholding on Compensation for Independent Personal Services Performed by a Nonresident Alien Individual. These forms are discussed in Pay for Personal Services Performed Under Withholding on Specific Income.

Beneficial Owners

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

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

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

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

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

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

Generally, 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 being furnished, and

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

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

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

To claim treaty benefits, the documentary evidence must be one of the following:

1. **A certificate of residence that:**
   - a. Is issued by a tax official of the treaty country of which the foreign beneficial owner claims to be a resident,
   - b. States that the person has filed its most recent income tax return as a resident of that country, and
   - c. Is issued within 3 years prior to being presented to you.

2. **Documentation for an individual that:**
   - a. Includes the individual’s name, address, and photograph,
   - b. Is an official document issued by an authorized governmental body, and
   - c. Is issued no more than 3 years prior to being presented to you.

3. **Documentation for an entity that:**
   - a. Includes the name of the entity,
   - b. Includes the address of its principal office in the treaty country, and
   - c. Is an official document issued by an authorized governmental body.

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

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

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

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

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

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

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

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

See Foreign Governments and Certain Other Foreign Organizations, later.

Foreign Intermediaries and Foreign Flow-Through Entities

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

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

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

Qualified Intermediaries

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

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

The withholding statement must:

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

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

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

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

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

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

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

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

For information on these rules, see section 4A.01 of the QI agreement. This is found in Appendix 3 of Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2004-21 (I.R.B. 2004-14).

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

1. It is a foreign partnership or foreign simple holding rate pool that is using Form W-8IMY to transmit information about the branch’s account holders or customers, you can treat the payment (or a portion of the payment) as reliably associated with valid documentation from a specific payee only if, prior to making the payment:
   • You can allocate the payment to a valid Form W-8IMY.
   • You can reliably determine how much of the payment relates to valid documentation provided by a payee (a person that is not itself a foreign intermediary, flow-through entity, or a U.S. branch), and
   • You have sufficient information to report the payment on Form 1042-S or Form 1099, if reporting is required.

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

Withholding statement. Generally, a withholding statement must contain the following information:

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

Alternative procedure. Under this alternative procedure the NQI can give you the information that allocates each payment to each foreign and U.S. exempt recipient by January 31 following the calendar year of payment, rather than prior to the payment being made as otherwise required. To take advantage of this procedure, the NQI must:

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

Pooled withholding information. An NQI may certify that the WP is acting in that capacity. The WP must assume NRA withholding responsibility for amounts (subject to NRA withholding) that are distributed, or included in the distribution statement, that the WP武警 withhold and the WP武警 must withhold the amount required to be withheld. A WP must provide you with a Form W-8IMY that certifies that the WP is acting in that capacity and a written statement identifying the amounts for which it is so acting. The Form W-8IMY must contain the WP-EIN.

Responsibilities of WP. The WP must withhold on the date it makes a distribution of an amount subject to NRA withholding to a direct foreign partner based on the Forms W-8 or W-9 it receives from its partners. If the partner’s distributive share has not been distributed, the WP武警 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武警 must provide the estimated withholding to reflect the actual distributive share on the earlier of the dates mentioned in the preceding paragraph. If that date is after the due date for filing the WP’s Forms 1042 and 1042-S (including extensions for the calendar year), the WP武警 may withhold and
report any adjustments in the following calendar year.

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

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

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

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

For more information on applying these rules, see section 10.01 of the WP agreement found in Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2004-21 (I.R.B. 2004-14).

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

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

For more information on applying these rules see section 10.02 of the WP agreement found in Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2005-77 (I.R.B. 2005-51).

**Not acting as WP.** A foreign partnership that is not acting as a WP is a nonwithholding foreign partnership. This occurs if a WP is not acting in that capacity for some or all of the amounts it receives from you. Also, a WP generally is a nonwithholding foreign partnership for amounts distributed to, or included in the distributive share of, passthrough partners or indirect partners. You must treat payments made to a nonwithholding foreign partnership as made to the partners of the partnership. The partnership must provide you with a Form W-BIMY (with Part VI completed), a withholding statement identifying the amounts, the withholding certificates or documentary evidence of the partners, and the information shown earlier under Withholding statement under Nonqualified Intermediaries.

**Withholding Foreign Trusts**

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

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

The WT may determine the amount of with- holding 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 para- graph. If that date is after the due date for filing the WT’s Forms 1042 and 1042-S (including extensions) for the calendar year, the WT may withhold and report any adjustments in the fol- lowering 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 WT must attach a statement showing the amounts of any over- or under-withholding adjustments and an explanation of those adjustments.

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

**Smaller partnerships and trusts.** Under a special rule, a WT that has made a pooled re- porting election can treat partners of certain smaller partnerships and beneficiaries or own- ers of certain smaller trusts (Joint Account Provi- sion) as direct beneficiaries or owners. These rules only apply to a partnership or trust that meets the following conditions:

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

For more information on applying these rules, see section 10.01 of the WT agreement found in Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2004-21 (I.R.B. 2004-14).

**Related partnerships and trusts.** Under a special rule, a WT that has made a pooled re- porting election can treat direct partners of cer- tain related partnerships and direct beneficiaries or owners of certain related trusts as direct ben- eficiaries or owners. These rules only apply to a partnership or trust that meets the following con- ditions:

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

For more information on applying these rules, see section 10.02 of the WP agreement found in Revenue Procedure 2003-64 (I.R.B. 2003-32). Also see Revenue Procedure 2005-77 (I.R.B. 2005-51).

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

Generally, 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-BIMY (with Part VI completed), a withholding statement identifying the amounts, the withholding certificates or documentary evi- dence of the beneficiaries or owners, and the information shown earlier under Withholding statement under Nonqualified Intermediaries.

**Standards of Knowledge**

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

Reason To Know

Generally, you are considered to have reason to know that a claim of U.S. status or of a reduced rate of withholding is incorrect if statements contained in the withholding certificate or other documentation, or other relevant facts of which you have knowledge, would cause a reasonably prudent person in your position to question the claims made. Financial institutions (including a regulated investment company) are treated as having reason to know documentation is unreliable or incorrect for payments on marketable securities only in the circumstances discussed next. If the documentation is considered unreliable or incorrect, you must get new documentation. However, you may rely on the original documentation if you receive the additional statements and/or documentation discussed.

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

Withholding Certificates

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

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

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

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

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

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

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

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

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

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

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

Documentary Evidence

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

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

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

• The only mailing or residence address on documentary evidence provided after December 31, 2000, is a mailing or a P.O. box, an in-care-of address, or a P.O. box, and mailing address outside the United States (or if a mailing address is inside the United States, the account holder provides additional documentary evidence to establish the account holder’s foreign status, or the Form W-8 was received before December 31, 2001), or

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

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

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

• You have a mailing or residence address for the account holder that is outside the applicable treaty country,

• The only address that you have (whether in or outside the treaty country) is a P.O. box, an in-care-of address, or the address of a financial institution (that is not the beneficial owner of the income), or

• The account holder has standing instructions directing you to pay amounts from an account to an address or account maintained in the United States.

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

1. The mailing or residence address is in the United States, you receive the documentary evidence from an individual, and

• 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,

• You possess or obtain a Form W-8 that contains a permanent residence address and mailing address outside the United States (or if a mailing address is inside the United States the account holder provides a reasonable explanation, in writing, supporting the account holder’s foreign status, or the Form W-8 was received before December 31, 2001), or

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

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

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

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

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

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

Indirect Account Holders

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

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

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

Withholding certificate. If you receive a Form W-8BEN, 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 nonqualified intermediary, flow-through entity, or U.S. branch to correct the withholding statement, or, alternatively, you may apply the presumption rules, discussed later, to the payee.

Documentary evidence. If you receive documentary evidence for a payee in association with a Form W-8BEN, you must review the documentary evidence provided by the nonqualified intermediary, flow-through entity, or U.S. branch to determine that the payee is a U.S. person subject to Form 1099 reporting or that the documentary evidence does not establish the identity of the person who provided the documentation (for example, the documentary evidence does not appear to be an identification document).

Presumption Rules

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

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

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

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

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

<table>
<thead>
<tr>
<th>For the presumption rules related to:</th>
<th>See regulation section:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payee’s status</td>
<td>1.1441-1(b)(3); 1.6049-5(d)</td>
</tr>
<tr>
<td>Effectively connected income</td>
<td>1.1441-4(a)(2)</td>
</tr>
<tr>
<td>Partnership and its partners</td>
<td>1.1441-5(d); 1.1446-1(c)(3)</td>
</tr>
<tr>
<td>Estate or trust and its beneficiaries or owner</td>
<td>1.1441-5(e)(6)</td>
</tr>
<tr>
<td>Foreign tax-exempt organizations (including private foundations)</td>
<td>1.1441-9(b)(3)</td>
</tr>
</tbody>
</table>

**Income Subject to NRA Withholding**

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

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

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

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

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

- Portfolio interest on bearer obligations or foreign-targeted registered obligations if those obligations meet certain requirements. See Interest, later.
- Bank deposit interest that is not effectively connected with the conduct of a U.S. trade or business. See Interest, later.
- Original issue discount on obligations payable 183 days or less from the date of original issue. See Original issue discount, later.
- Nonbusiness gambling income of a non-resident alien playing blackjack, baccarat, crap, roulette, or big-6 wheel in the United States. See Gambling winnings, later.
- Amounts paid as part of the purchase price of an obligation sold between interest payment dates. See Interest, later.
- Original issue discount paid on the sale of an obligation other than a redemption. See Original issue discount, later.
- Insurance premiums paid on a contract issued by a foreign insurer.

**Source of Income**

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

Generally, 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.

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

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

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

Number of days of service performed in the United States
Total number of days of service for which compensation is paid

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

<table>
<thead>
<tr>
<th>If you have:</th>
<th>THEN the source of that income is determined by:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pay for personal services</td>
<td>Where the services are performed</td>
</tr>
<tr>
<td>Dividends</td>
<td>The type of corporation (U.S. or foreign)</td>
</tr>
<tr>
<td>Interest</td>
<td>The residence of the payee</td>
</tr>
<tr>
<td>Rents</td>
<td>Where the property is located</td>
</tr>
<tr>
<td>Royalties—Patents, copyrights, etc.</td>
<td>Where the property is located</td>
</tr>
<tr>
<td>Royalties—Natural resources</td>
<td>Where the property is located</td>
</tr>
<tr>
<td>Pensions: Distributions attributable to contributions</td>
<td>Where the services were performed while a nonresident alien owned the property</td>
</tr>
<tr>
<td>Pensions: Investment earnings on contributions</td>
<td>The location of the pension trust</td>
</tr>
<tr>
<td>Scholarships and fellowship grants</td>
<td>Generally, the residence of the payee</td>
</tr>
</tbody>
</table>

**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 section 1.861-4(b)(2)(iii)(D) of the regulations.

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 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 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 FDAP income and is subject to NRA withholding. This includes income derived under a life insurance contract issued by a foreign branch of a U.S. life insurance company.

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

Fixed or Determinable Annual or Periodical Income (FAPD)

FAPD income is all income except:

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

The following items are examples of FAPD income:

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

Installment payments. Income can be FAPD 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 FAPD 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 FAPD income and is subject to NRA withholding. This includes income derived under a life insurance contract issued by a foreign branch of a U.S. life insurance company.

Racing purses. Racing purses are FAPD income and racetrack operators must withhold 30% on any purse paid to a nonresident alien racehorse owner in the absence of definite information contained in a statement filed together with a Form W-8BEN that the owner has not raced, or does not intend to enter, a horse in another race in the United States during the tax year. If available information indicates that the racehorse owner has raced a horse in another race in the United States during the tax year, then the statement and Form W-8BEN filed for that year are ineffective. The owner may be exempt from withholding 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 FAPD income. Its source is the place where the promisor forfeited his or her right to act. Amounts paid to a nonresident alien for his or her promise not to compete in the United States are subject to NRA withholding.

Withholding on Specific Income

Different kinds of income are subject to different withholding requirements.
Effectively Connected Income

Generally, 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 determining 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.
- 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, or notional principal contract income as effectively connected with the conduct of a U.S. trade or business, must be effectively connected income.

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

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

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

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

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

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

Income Not Effectively Connected

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

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

Interest

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

A substitute interest and dividend tax may be imposed on the transfer of a security in a securities lending transaction or a sale-repurchase transaction is treated the same as the interest on the transferred security. Use Income Code 33 to report these substitute payments.

Interest paid by U.S. obligors—general (Income Code 1). With specific exceptions, such as portfolio interest, you must withhold on interest paid or credited on bonds, debentures, notes, open account indebtedness, governmental obligations, certain deferred payment arrangements (as provided in section 483 of the Internal Revenue Code) or other evidences of indebtedness of U.S. obligors. U.S. obligors include the U.S. Government or its agencies or instrumentalities, any U.S. citizen or resident, any U.S. corporation, and any U.S. partnership. If, in a sale of a corporation’s property, payment of the bonds or other obligations of the corporation is assumed by the buyer, that buyer, whether an individual, partnership, or corporation, must deduct and withhold the taxes that would be required to be withheld by the selling corporation as if there had been no sale or transfer. Also, if interest coupons are in default, the tax must be withheld on the gross amount of interest whether or not the payment is a return of capital or the payment of income.

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

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

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

Original issue discount (Income Code 30). Original issue discount paid on the redemption of an obligation is subject to NRA withholding. Original issue discount paid as part of the purchase price of an obligation sold or exchanged, other than in a redemption, is not subject to NRA withholding unless the purchase is part of a plan the principal purpose of which is to avoid tax and the withholding agent has actual knowledge or reason to know of the plan. Withholding is required by a person other than the
issuer of an obligation (or the issuer’s agent) only if the obligation is issued after December 31, 2000.
The original issue discount subject to NRA withholding is the taxable amount of original issue discount. The taxable amount is the original issue discount that accrued while the obligation was held by the foreign beneficial owner up to the time the obligation was sold or exchanged or a payment was made, reduced by any original issue discount that was previously taxed. If a payment was made, the tax due on the original issue discount may not exceed the payment reduced by the tax imposed on the portion of the payment that is qualified stated interest.

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

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

Chart C. Withholding Tax Rates

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

<table>
<thead>
<tr>
<th>Type of Income</th>
<th>Withholding Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable part of U.S. scholarship or fellowship grant paid to holder of “F”, “J”, “M”, or “Q” visa (see Scholarship and Fellowship Grants, later)</td>
<td>14%</td>
</tr>
<tr>
<td>Gross investment income from interest, dividends, rents, and royalties paid to a foreign private foundation</td>
<td>4%</td>
</tr>
<tr>
<td>Pensions—part paid for personal services (see Pensions, Annuities, and Alimony, later)</td>
<td>Graduated rates in Circular A or Circular E</td>
</tr>
<tr>
<td>Wages paid to a nonresident alien employee (see Pay for Personal Services Performed, later)</td>
<td>Graduated rates in Circular A or Circular E</td>
</tr>
<tr>
<td>Each foreign partner’s share of effectively connected income of the partnership (see Partnership Withholding on Effectively Connected Income, later)</td>
<td>35%</td>
</tr>
</tbody>
</table>

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)(iv) of the regulations. However, the procedure that requires the obligation to be offered for sale (or resale) only outside the United States does not apply if the registered obligation is offered for sale through a public auction. Also, the procedure that requires the obligation to be delivered outside the United States does not apply if the obligation is considered registered because it may be transferred only through a book entry system and the obligation is offered for sale through a public auction. The documentation needed depends on whether the interest is paid to a financial institution, a member of a clearing organization, or to some other foreign person.

Dematerialized book-entry systems. Under these systems, bonds are required to be represented only by book entries, and no physical certificates are issued or transferred. The bonds are transferred only by book entries. These bonds are considered to be in registered form if the holder may only obtain a physical certificate in bearer form when the clearing organization that maintains the book-entry system goes out of business without a successor. Generally, these rules apply to bonds issued after December 31, 2000. A bond issued in bearer form before January 1, 2007, may continue to be treated as such until its maturity even if it is held under a book-entry system.

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

Ten-percent owners. Interest paid to a foreign person that owns 10% or more of the total combined voting power of all classes of stock of a corporation, or 10% or more of the capital or profits interest in a partnership, that issued the obligation on which the interest is paid is not portfolio interest. To determine 10% ownership, see Regulations section 1.871-1(i).

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 who is a U.S. person who indirectly owned foreign corpora-

Reduced Rates of Withholding on Interest

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

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

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

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

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

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

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

Distribution of effectively connected income to foreign partners by publicly traded partnerships (see Publicly Traded Partnerships, later) 35%

Dispositions of U.S. real property interests (see U.S. Real Property Interest, later) 10% *

Dividends paid to Puerto Rico corporation 10%

All other income subject to withholding 30%

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

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• Any dividend, partnership distributions, or similar payments made by the debtor or a related person.

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

The contingent interest rule does not apply to any interest paid or accrued on any indebtedness with a fixed term that was issued:
• On or before April 7, 1993, or
• After April 7, 1993, pursuant to a written binding contract in effect on that date and at all times thereafter before that indebtedness was issued.

Interest on real property mortgages (Income Code 2).

Certain treaties (see Table 1) permit a reduced rate or exemption for interest paid or credited on real property mortgages. This is interested paid in 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 portion 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 portion of the REMIC net income or deduction.

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

An excess inclusion allocated to the following foreign persons must be included in that person’s income at the same time as other income from that person is included in income:
• Shareholder of a real estate investment trust.
• Shareholder of a regulated investment trust.
• Participant in a common trust fund.
• Patron of a subchapter T cooperative organization.

The entity must withhold on the excess inclusion.


Interest paid to controlling foreign corporations (Income Code 3).

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

Interest paid by foreign corporations (Income Code 4).

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

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

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

A foreign corporation that pays interest must be a qualified resident (under section 864 of the Internal Revenue Code) of its country of residence for the payer’s treaty to exempt payments from tax by the foreign corporation. However, if the foreign corporation is a resident of a country that has entered into an income tax treaty since 1987 that contains a limitation on benefits article, the foreign corporation need only satisfy the limitation on benefits article in that treaty to qualify for the exemption.

Interest on deposits (Income Code 29).

Foreign persons are not subject to withholding on interest that is not connected with a U.S. trade or business if it is from:
• Deposits with persons carrying on the banking business,
• Deposits or withdrawable accounts with savings institutions chartered and supervised under federal or state law as savings and loan or similar associations, such as credit unions, if the interest is or would be deductible by the institutions, or
• Amounts left with an insurance company under an agreement to pay interest on them.

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

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

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

Interest from foreign business arrangements.

In general, interest received from a resident alien individual or a domestic corporation is not subject to NRA withholding if at least 80% of the payer’s gross income from all sources has been from active foreign business for the 5 tax years preceding the year in which the interest is paid, or for the applicable part of those 3 years. 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 individual or corporation.

However, limits apply if the recipient is considered to be a related person (see section 861(c) of the Code). A foreign beneficial owner does not need to provide a Form W-8 or documentary evidence for this exception. However, documentation may be required for purposes of Form 1099 reporting and backup withholding.

Sales of bonds between interest dates.

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

Short-term obligations.

Interest and original issue discount paid on an obligation that is payable 183 days or less from the date of its original issue (without regard to the period held by the taxpayer) is not subject to NRA withholding. This exemption applies even if you do not have any documentation from the payee. However, documentation may be required for purposes of Form 1099 reporting and backup withholding.
Income from U.S. Savings Bonds of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands. Interest from a Series E, Series EE, Series H, or Series HH U.S. Savings Bond is not subject to NRA withholding if the nonresident alien individual acquired the bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

Dividends

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

- A substitute dividend payment made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction is treated the same as a distribution on the transferred security. Use Income Code 34 to report these substitute payments.

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

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

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

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

1. Represents a nontaxable distribution payable in stock or stock rights,
2. Represents a distribution in part or full payment in exchange for stock,
3. Is not paid out of current or accumulated earnings and profits, based on a reasonable estimate of the anticipated amount of earnings and profits for the tax year of the distribution made at a time reasonably close to the date of the distribution,
4. Represents a capital gain dividend (use Income Code 36) or an exempt interest dividend by a regulated investment company, or
5. Is subject to withholding under section 1444 of the Code (withholding on disposi- tions of U.S. real property interests) and the distributing corporation is a U.S. real property holding corporation or a qualified investment entity.

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

A qualified investment entity (QIE) is any real estate investment trust (REIT) or an exempt investment company (RIC) that is a U.S. real property holding corporation. In determining if the RIC is a U.S. real property holding corporation, the RIC is required to include as U.S. real property interests its holdings of stock in a RIC or REIT that is a U.S. real property holding corporation, even if that stock is regularly traded and the RIC owns less than 5% of the stock.

Dividends paid by a QIE.
A distribution by a QIE to a nonresident alien or a foreign corporation is treated as a dividend and is subject to withholding under section 1445 as a gain from the sale or exchange of a U.S. real property interest:

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

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

The rules treating a RIC as a QIE do not apply after December 31, 2009. However, a RIC will continue to be treated as a QIE, for this purpose and for purposes of section 1445, on any distribution by the RIC to a nonresident alien or a foreign corporation that is attributable to a distribution received by the RIC from a REIT.

Dividends paid by a domestic corporation (an “80/20” company). Generally, a percent-age of any dividend paid by a domestic corporation that received at least 80% of its gross income from the active conduct of a foreign business for a testing period is not subject to NRA withholding. The testing period is the 5 tax years before the year in which the dividends are declared, or shorter period if the corporation was not in existence for 3 years. The percentage is found by dividing the corporation’s foreign gross income for the testing period by the corporation’s total gross income for that period.

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

Dividends paid by a RIC. Subject to certain exceptions, no withholding is required on inter-related dividends and short-term capital gain dividends paid by a RIC. The no withholding rule will not apply to any tax year of the RIC begin- ning after December 31, 2009.

To qualify for the RIC must designate any part of a dividend as an inter-related dividend or a short-term capital gain dividend in a written notice mailed to the share-holder not later than 60 days after close of the RIC’s tax year. The amount designated is sub-ject to dollar limitations.

The no withholding rule does not apply to interest-related dividends:

- To the extent the dividend is attributable to interest on debt issued by the person (or a corporation or partnership of which that person is a 10% owner) who receives the dividend,
- Unless documentation is received indicat-ing that the beneficial owner is a foreign person,
- Paid to a person in a foreign country (or addressed to, or for the account of, per-sons in a foreign country) during a period specified for that country by the Commis-sioner.

The no withholding rule does not apply to short-term capital gain dividends paid to a non-resident alien individual present in the United States for 183 days or more during the tax year.

If the requirements discussed earlier under Dividends paid by a QIE are met, the distribution is not treated as a short-term capital gain divi-dend. The distribution is treated as a dividend and may be subject to withholding.

For more information on these dividends, see section 871(k) of the Code and, for amounts paid to a foreign corporation, section 881(e).

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 share-holder owns a certain percentage of the voting stock of the corporation. Generally, this pref-erential 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 if the amount paid is at least 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 subsidi-ar-ies or from the active conduct of a banking, financing, or insurance business. A foreign per-son claiming the direct dividend rate should complete line 10 of Form W-BEN regarding special rates and conditions.

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

Dividends paid by foreign corporations (In-come Code 8).
Dividends paid by a foreign corporation are generally not subject to NRA withholding. This exception does not require a Form W-BEN. However, a Form W-BEN may...
be required for purposes of Form 1099 reporting and backup withholding. The payment to a foreign corporation by a foreign corporation of a deemed dividend under section 304(a)(1) of the Code is subject to NRA withholding except to the extent it can be clearly determined to be from foreign sources.

**Corporation subject to branch profits tax.**

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

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

**Gains**

You generally do not need to withhold on gains 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 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 marks, brand trades, franchises, and other like property.
- Gains on certain transfers of all substantial rights to, or an undivided interest in, patents if the transfers were made before October 5, 1966, and
- Certain gains from the sale or exchange of original issue discount obligations issued after March 31, 1972. For more on withholding on original issue discount obligations, see interest, earlier.

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

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

**Tax treaties.**

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

**Royalties**

In general, you must withhold tax on the payment of royalties from sources in the United States. However, certain types of royalties are treated as separate categories for withholding purposes.

**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 rents for the use or lease of personal property. Under certain tax treaties, different rates may apply to royalties for information concerning industrial, commercial, and scientific know-how.

**Motion picture or television copyright royalties (Income Code 11).**

This category refers to royalties paid for the use of motion picture and television copyrights.

**Other royalties (for example, copyright, recording, publishing) (Income Code 12).**

This category refers to the royalties paid for the use of copyrights on books, periodicals, articles, etc., except motion picture and television copyrights.

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

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

**Pensions, Annuities, and Alimony (Income Code 14)**

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

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

In the absence of a treaty exemption, you must withhold at the statutory rate of 30% on the entire distribution that is from sources within the United States. You may, however, apply withholding at graduated rates to the portion 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. Revenue Procedure 2004-37, 2004-26 (I.R.B. 1099 is available at www.irs.gov/irb/2004-26IRB/0508.html).

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

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

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 does not exceed $3,000, and the personal services are 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 is 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-BEN that contains the Tin of the foreign person.

**Alimony payments.** Generally, alimony payments made by U.S. resident aliens to nonresident aliens are taxable and subject to NRA withholding whether the recipients are residing abroad or are temporarily present in the United States.
Many tax treaties, however, provide for an exemption from withholding for alimony payments. These treaties are shown in Table 1 by a footnote reference under Income Code number 14. Alimony payments made to a nonresident alien by a U.S. ancillary administrator of a nonresident alien estate are from foreign sources and are not subject to withholding.

Scholarships and Fellowship Grants (Income Code 15)

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

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

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

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

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

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

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

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

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

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

A prorated portion of allowable personal exemptions based on the projected number of days he or she will be in this country is allowed. This is figured by multiplying the daily exemption amount ($10.00 for 2009) by the number of days the student or grantee expects to be in the United States during the year. The prorated exemption amount should be shown on line A of the Personal Allowances Worksheet that comes with Form W-4.

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

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

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

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

As lines E, F, and G of the worksheet do not apply to nonresident aliens subject to this procedure, there should be no entries on those lines. The nonresident alien student or grantee may deduct away-from-home expenses (meals, lodging, and transportation) on Form W-4 if he or she expects to be away from his or her tax home for 1 year or less. The amount of the claimed expenses should be the anticipated actual amount, if known.

The actual expenses or the per diem allowance should be shown on line 1 of the worksheet in addition to the personal exemption amount.

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

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

Lines A through D of the Personal Allowances Worksheet are added and the total should be shown on line 1.

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

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

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

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

Grants given to students, trainees, or researchers which require the performance of personal services as a necessary condition for...
disbursing the grant do not qualify as scholar-
ship or fellowship grants. Instead, they are com-
pons. Personal services 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.).

**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 which are really wages. It is the responsibility of the with-
holding agent to determine whether a grant is “wages” or a “scholarship or fellowship,” and to report and withhold on the grant accordingly. All alien students or other researchers may not claim a scholarship or fellowship treaty exemp-
tion against income which has been reported to him on Form W-2 as wages.

**Per diem paid by the U.S. Government.** Per diem for subsistence paid by the U.S. Govern-
ment directly or by contractors to a non-sad-
ient alien engaged in a training program in the United States funded by the U.S. Agency for Interna-
tional Development are not subject to graduated withholding. This is true even if the alien is subject to income tax on those amounts.

**Tax treaties.** Many treaties contain exemp-
tions from U.S. taxation for scholarships and fellowships. Although usually found in the stu-
ent articles of the tax treaties, many of these exemp-
tions also apply to research grants re-
ceived by researchers who are not students. Table 5 of this publication shows a line entry,
entitled “Scholarship or fellowship grant” for those treaties which have such an exemption. The treaty provision usually exempts the entire scholarship or fellowship amount, regardless of whether the grant is a “qualified scholarship” under U.S. law.

An alien student, trainee, or researcher may claim a treaty exemption for a scholarship or fellowship by submitting Form W-8BEN to the pay-
er of the grant. However, a scholarship or fellow-
ship recipient who receives both wages and a scholarship or fellowship from the same ins-
itution can claim treaty exemptions on both kinds of income on Form 8233. The scholarship or fellowship recipient who is claiming a treaty exemption must provide you with his or her TIN on Form W-8BEN or on Form 8233 or you cannot allow the treaty exemption. A copy of a completed Form W-7, showing that a TIN has been applied for, can be given to you with a Form 8233. See Form 8233, later under Pay for Personal Services Performed.

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien indi-
vidual 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 (in-
cluding a trainee or business apprentice) or re-
searcher who has become a resident alien for U.S. tax purposes may not use the terms of a tax treaty to reduce or eliminate income tax on such a tax-free or exempt income. However, an exception to the saving clause may permit an exemption from tax to continue for scholarship or fellowship grant in-
come 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 quali-
fies for the exemption from tax.
- Sufficient facts to justify the exemption from tax under the terms of the treaty arti-
cle.

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

**Other Grants, Prizes, and Awards**

Other grants, prizes, and awards made by grant-
ors which 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 grantees which reside outside the United States are treated as income from foreign sources. These provisions do not apply to sala-
ries 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 grantor must also be an amount which does not qualify as a scholarship or fellowship. The grantor must not intend the amount to be given to the grantee for the purpose of aiding the grantee to perform study, training, or research.

**Prizes and awards.** Prizes and awards are amounts received primarily in recognition of re-
ligious, charitable, scientific, educational, artis-
tic, 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 ac-
tion on his or her part to enter the contest or proceeding.
- The recipient is not required to render sub-
stantial future services as a condition to receive the prize or award, and
- The prize or award is transferred by the pay-
er to a governmental unit or tax-exempt charitable organization as des-
ignated by the recipient.

**Targeted grants and achievement awards.** Targeted grants and achievement awards re-
ceived by nonresident aliens for activities con-
ducted 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 politi-
cal 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 gener-
ally must withhold tax at the 30% rate on com-
ensation you pay to a nonresident alien individ-
al for labor or personal services per-
formed in the United States, unless that pay is spe-
cifically exempted from withholding or sub-
ject to graduated withholding. This rule applies regardless of your place of residence, the place where the contract for service was made, or the place of payment.

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

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

- Independent personal services (self-employment),
- Dependent personal services, or
- Personal services income and noncom-

pensatory scholarship or fellowship in-
come from the same withholding agent.

**Persons providing independent personal services may use Form 8233 to claim the per-
sonal exemption amount.**

**Form W-4, Employee’s Withholding Allow-
ance Certificate.** This form is used by a per-
son providing dependent personal services to claim the personal exemption amount, but not a tax treaty exemption. Nonresident alien individua-
als are subject to special instructions for com-
pleting the Form W-4. See the discussion under
Wages Paid to Employees—Graduated Withholding, later.

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

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

30% rate. You must withhold at the statutory rate of 30% on all payments unless the alien enters into a withholding agreement or receives a final payment exemption (discussed later). The amount of pay subject to 30% withhold-
ing is the amount of pay (including any interest and penalties, determinable until after the close of the tax year. He earned $6,000 for the services performed in the United States. This is because the factors on

Example 1. Hans Schmidt, who is a resident of Country X, worked (not as an employee) for a U.S. company in the United States for 100

days during 2009 before returning to his country. He earned $6,000 for the services performed (not considered wages) in the United States. Hans is married and has three dependent chil-
dren. His wife did not work and had no income subject to U.S. tax. Hans is allowed $1,000 as a deduction against the payments for his personal services performed in the United States (100
days × $10.00). Tax must be withheld at 30% on the rest of his earnings, $5,000 ($6,000 – $1,000).

Example 2. If, in Example 1, Hans were a resident of Mexico, working under contract with a domestic corporation, $5,000 (100 days × $10.00 per day for each of five exemptions) would be allowed against the payments for per-
sonal services performed in the United States. Tax must be withheld at 30% on the rest of his earnings, $1,000 ($6,000 – $5,000).

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 agree-
ment has been reached between the Commis-
sioner 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 pay-
ment 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 ren-
dered 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 ef-
f ectively 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 penal-
ties 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 con-
 nected 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 effec-
tively connected with the conduct of a U.S. trade or business during the current tax year.

- The amount of any outstanding tax liabili-
ties, including any interest and penalties, from the current tax year or prior tax peri-
ods.

- The provision of any income tax treaty under which 30% withholding is eliminated or reduced.

The alien must give a statement, signed and verified by a declaration that it is made under the penalties of perjury, that all the information pro-
vided 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 satis-
faction of the Commissioner or his delegate.

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

Travel expenses. If you pay or reimburse the travel expenses of a nonresident alien, the payments are not reportable to the IRS and are not subject to NRA withholding if the payments are made under an accountable plan as de-
scribed in section 1.62-2(f). This information treat-
ment applies only to that portion of a pay-
ment that represents the payment of travel and lodging expenses and not to that portion that represents compensation for independent per-
sonal 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 per-
forms 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 with-
holding under a tax treaty. For more information, see Form 8233, earlier.

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 overpaid tax by providing the IRS with proof that he or she is entitled to a treaty exemption.

Wages Paid to Employees—Graduated Withholding

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

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 what the parties call the 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. Generally, an officer of a corporation is an employee, but a director acting in this capacity is not. An officer who does not perform any services, or only minor services, and neither receives nor is entitled to receive any pay is not considered an employee.

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

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

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

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

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

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

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

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

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

Withholding exemptions. The amount of wages subject to graduated withholding may be reduced by the personal exemption amount ($3,650 for 2009). The personal exemptions allowed in figuring wages subject to graduated withholding are the same as those discussed earlier under Pay for independent personal services, except that an employee must claim them on Form W-4.

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

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

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

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

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

Please refer to the original source for the most accurate and up-to-date information. The text is a sample representation and may not fully capture the complexity and nuance of the original content.


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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;
- 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 in a foreign country and the employee is a treaty country resident and the nonresident alien employee performs the services while temporarily in the United States.

Pay for teaching (Income Code 18). This category is given a separate income code number because some tax treaties provide at least partial exemption from withholding and from U.S. tax. Pay for teaching means payments to a nonresident alien professor, teacher, or researcher by a U.S. university or other accredited educational institution for teaching or research purposes. This category includes payments for pay to artists and athletes, a separate category is assigned these payments for withholding purposes. Because many tax treaties contain a provision that pay is exempt from withholding if 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 nonimmigrant visas or in refugee, or asylum immigration status are fully liable for social security and Medicare taxes unless an exemption applies from one of the totalization agreements in force between the United States and several other nations.

The Social Security Administration publishes the complete texts and expository pamphlets of the totalization agreements, which are available at 1-800-772-1213 or by visiting the Social Security Administration website at: www.social-security.gov/international.

Tax treaties. Under most tax treaties, pay for teaching or research is exempt from U.S. tax and withholding for compensation paid by or on an “F-1,” “J-1,” “M-1,” or “Q” visa is not subject to withholding if the alien was admitted to the United States for a limited period. In addition, some treaties provide an exemption from tax and withholding for compensation paid by the U.S. Government or its contractor to a nonresident alien student or trainee who is temporarily present in the United States as a participant in a program sponsored by the U.S. Government (see Table 2). However, a withholding agent who is a U.S. resident, a U.S. Government agency, or its contractor must report the amount of pay on Form 1042-S.

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

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

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

Social security and Medicare tax. A nonresident alien temporarily in the United States on an “F-1,” “M-1,” or “Q” 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 nonimmigrant visas or in refugee, or asylum 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.

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Tax treaties. Under most tax treaties, pay for teaching or research is exempt from U.S. tax and withholding for compensation paid by or on an “F-1,” “J-1,” “M-1,” or “Q” visa is not subject to withholding if the alien was admitted to the United States for a limited period. In addition, some treaties provide an exemption from tax and withholding for compensation paid by the U.S. Government or its contractor to a nonresident alien student or trainee who is temporarily present in the United States as a participant in a program sponsored by the U.S. Government (see Table 2). However, a withholding agent who is a U.S. resident, a U.S. Government agency, or its contractor must report the amount of pay on Form 1042-S.

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

Artists and Athletes (Income Code 20)

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

Withholding rate. 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%.

Central withholding agreement (CWA). Nonresident alien entertainers and athletes who...
perform or participate in events in the United States can request a CWA for a lower rate of withholding. A CWA is an agreement entered into by the athlete or entertainer, a designated withholding agent, and the IRS. Under no circumstances will a CWA reduce taxes withheld to less than the anticipated amount of income tax liability. Nonresident alien entertainers or athletes requesting a CWA must submit a written application and appropriate attachments. Use Form 13930, Application for Central Withholding Agreement, and its instructions to apply for a CWA.

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

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

Central Withholding Agreement Program Internal Revenue Service
SE:S:CP:11C:M:S 0175
110 City Parkway
Las Vegas, NV 89106

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

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

Other Income

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

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

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

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

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

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

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

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

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

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

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

Foreign Governments and Certain Other Foreign Organizations

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

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

1. Income (including investment income) received from the U.S. as a result of a foreign activity or from sources other than those stated above.
2. Income received from a controlled commercial entity (including gain from the disposition of an 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 is subject to NRA withholding. If the foreign government is considered derived from a controlled commercial activity and is subject to withholding under section 1446.

3. Gain derived from the disposition of a U.S. real property interest. Withholding on these gains is discussed later under U.S. Real Property Interest.

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

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

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

Foreign tax-exempt organizations 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-BBEN 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
Depositing Withheld Taxes

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

- Taxes on pay subject to graduated withholding as discussed earlier. (See Form 841 for the deposit rules.)
- Tax withheld on pensions and annuities subject to graduated withholding or the 10% tax on nonperiodic distributions. (See Form 841-F for the deposit rules.)
- Tax withheld on a foreign partner’s share of effectively connected income of a partnership. See Partnership Withholding on Effectively Connected Income, later.
- Tax withheld on dispositions of U.S. real property interests by foreign persons. See U.S. Real Property Interest, later.
- Taxes on household employee. See Schedule H (Form 1040), Household Employment Taxes, to report social security and Medicare taxes, and any income tax withheld, on wages paid to a nonresident alien household employee.

When Deposits Are Required

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

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

1. If at the end of a calendar year the total amount of undeposited taxes is less than $200, you may either pay the taxes with your Form 1042 or deposit the entire amount by the due date of your Form 1042.

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 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 the due date.

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 banking days after the end of the quarter-monthly period. (A quarter-monthly period ends on the 7th, 15th,
You are considered to meet the deposit re-
quibements in (3) if:

• You deposit at least 90% of the actual tax
  due within the deposit period.

• You deposit any underpayment with the
  first deposit that you must make after the
  15th day of the following month, if the sub-
  sequent deposits you make before the end
  of the deposit period, and

To participate in EFTPS, you must first enroll.
To receive an enrollment form, call
1-800-316-6541 (individual), 1-800-555-4477
(business), or you can enroll online at
Secure Way to Pay Your Federal Taxes, for more
information.

Qualified business taxpayers that re-
quest an EIN will automatically be en-
rrolled in EFTPS. They will receive
information on how to get their coupons.

Federal tax deposit coupons. If you do not
make electronic deposits, you must deposit the
income tax withheld on fixed or determinable
annual or periodic income using Form 8109.
Federal Tax Deposit Coupon, according to the
instructions provided with the form. If you do not
have your coupons when a deposit is due, call
1-800-829-4933 or contact your local IRS office.
To eliminate any penalty for failure to make
deposits on time, be prepared to show that the
deposit was mailed by the second day before
the due date.

If you prefer, you may mail your coupon and
payment to:

Financial Agent
Federal Tax Deposit Processing
P.O. Box 970030
St. Louis, MO 63197
U.S.A.

Make your check or money order payable to
“Financial Agent.” The Financial Agent cannot
process foreign checks. The “Amount of
Deposit” on the form should be stated in U.S.
dollars and all payments should be made in U.S.
dollars.

Obtaining coupon book. A preinscribed
book of Federal Tax Deposit Coupons (Form
8109) automatically will be sent to you after you
apply for an employer identification number
(EIN). Apply by completing Form SS-4, available
from the IRS. If you have not received the cou-
pon book, call 1-800-829-4933.

If you are a qualified business tax-
payer, you will automatically be en-
rrolled in EFTPS (discussed earlier)
when you apply for your EIN. You will receive
information on how to get your coupons.

Record of deposit. Before making a
deposit, enter the amount of payment on
the coupon and in your records. The
coupon will not be returned to you, but will be
used to credit your tax account as identified by
your employer identification number.

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 de-
posit 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.

Penalty rate. If the deposit is:

1. 5 to 24 days late, the penalty is 1/2% of
   the underpayment,
2. 25 to 44 days late, the penalty is 5% of
   the underpayment,
3. 45 days or more late, the penalty is 10% of
   the underpayment.

However, if the deposit is not made within
20 days after the IRS issues the first notice de-
manding 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 pe-
riod that begins on the date of the notice of
penalty. The notice contains instructions on how to
make this designation.

Adjustment for
Overwithholding

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

Overwithholding discovered by March 15 of
following calendar year. If you discover that
you overwithheld tax by March 15 of the follow-
ing calendar year, you may use the underdep-
ited amount of tax to make any necessary adjust-
ments between you and the recipient of the
income. However, if the underdeposit 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 or the set-off proce-
dure to adjust the overwithholding.

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 re-
imbursment procedure, you repay the benefi-
tial owner.

You use your own funds for this repayment.
You must make the repayment by March 15 of
the year after the calendar year in which the
amount was overwithheld or withheld tax in 2009, you must repay the
beneficial owner before March 15, 2010. 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 repay.
If you will reduce a deposit due in that later
year, you must show the total tax withheld and
the amount actually repaid on a timely filed
(not including extensions) Form 1042-S for the cal-
endar year in which the amount was overwith-
held. You must file the form on a timely filed
(not including extensions) Form 1042 that you
are claiming a credit.

Example. James Smith is a resident of the
United Kingdom. In December 2009, domestic
company M paid a dividend of $100 to James,
at which time M Corporation withheld $30 and
paid the balance of $70 to him. In February 2010, James gave M Corporation a valid Form
W-8BEN. He advises M Corporation that under
his U.K. tax treaty, he qualifies for a dividend.

M Corporation agrees to reimburse James for
the dividend paid to him in 2009. M Corporation
requests that the $30 be withheld only if the
amount is overwithheld or withheld tax in 2009.
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 calen-
dar year in which the amount was overwith-
show the reduced amount as the amount re- quired to be withheld.

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

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

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

- Wages, salaries, or other compensation reported on Form W-2 (see Wages Paid to Employees—Graduated Withholding, earlier under Pay for Personal Services Per- formed),
- Any portion of a U.S. or foreign partner- ship’s (other than a publicly traded part- nership) 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 Prop- erty Interest),
- Pensions, annuities, and certain other de- ferred income reported on Form 1099, and
- Income, social security, and Medicare taxes on wages paid to a household em- ployee reported on Schedule H (Form 1040).

Forms 1042 and 1042-S must be filed by March 15 of the year following the calendar year in which the income sub- ject 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 with- holding agent that is required to file a Form 1042-S must also file an annual return on Form 1042. You must file Form 1042 even if you were not required to withhold any income tax.

You must file Form 1042 with the:

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

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

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

You must get prior annual approval to use a substitute Form 1042-S unless it meets the re- quirements listed in Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, W-2G, and 1042-S. Get Publication 1179 for more information.

Joint owners. If all the owners provide doc- uments that prove to you generally a same rate of withholding for 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, how- ever, any one of the owners requests its own Form 1042-S, you must furnish Form 1042-S to the person who requests it. If more than one Form 1042-S is issued for a single payment, the total amount paid and tax withheld reported on all Forms 1042-S cannot exceed the total amounts paid to joint owners.

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

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

Forms and instructions on filing Forms 1042-S electronically, get Publication 1187, Specifications for Filing Form 1042-S, Foreign Person’s U.S. Source Income Subject to Withholding. Electronically, if you file elec- tronically, you will use the Filing Information Re- turns Electronically (FIRE) system. You get to the system through the Internet at fire.irs.gov.

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

Deposit interest paid to alien individuals who are residents of Canada. If you pay deposit interest of $10 or more to a nonresident alien individual who resides in Canada and is not a U.S. citizen, you may have to report it on Form 1042-S. This reporting requirement applies to interest that (a) is on a deposit main- tained at a bank’s office in the United States, and (b) is not effectively connected with a trade or business within the United States. However, this reporting requirement does not apply to in- terest paid on certain bearer certificates of de- posit as described in section 1.6049-9(b)(3) of the regulations if you pay that interest outside the United States.

How to report. Although you only have to report on Form 1042-S the deposit interest paid to residents of Canada who are not U.S. citi- zens, you can comply by reporting payments to all foreign persons receiving bank deposit inter- est, if that way is easier for you.

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

Statements to recipients. You must furnish a statement to each recipient for whom you are filing a Form 1042-S by the due date for filing Forms 1042 and 1042-S with the IRS. You may use a copy of the official Form 1042-S for this purpose. Or, you may provide recipients with the information together with, or on, other (commer- cial) statements or notices. These statements must clearly identify the type of income (as de- scribed on the official form), the amount of tax withheld, the withholding rate (including 0.00 if exempt), and the country involved. You may include more than one type of income on the copies of the Form 1042-S that you provide to the recipient of the income. You may not, how- ever, include more than one income line on the copy of the form filed with the IRS.

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

The automatic and any approved addi- tional request only extend the due date for filing the returns with the IRS. It does not extend the due date for furnishing statements to recipients.

You can get an automatic 30-day extension of time to file Form 1042-S by filing Form 8809, Application for Extension of Time To File Infor- mation Returns. You should request an exten- sion 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 addi- tional extension of 30 days by submitting a sec- ond Form 8809 before the end of the first extension period. Requests for an additional ex- tension 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.

You may request an extension of time to provide the statements to recipients by sending a letter to Enterprise Computing Center—Mar- linsburg, Information Reporting Program, Attn: Extension of Time Coordinator, 240 Murall Drive, 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 state- ments 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. If you are requesting extensions of time to file for more than 10 withholding agents or payers, you must submit the extension requests electronically. See Publication 1187.

**Penalties.** 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.

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:

- $15 if you file a correct form within 30 days, with a maximum penalty of $75,000 per year ($25,000 for a small business), or
- $30 if you file after 30 days but by August 1, with a maximum penalty of $150,000 ($50,000 for a small business), or
- $50 if you file after August 1 or do not file a correct form, with a maximum penalty of $250,000 per year ($100,000 for a small business).

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.

If you fail to provide a complete and correct statement to each recipient, a penalty of $50 for each failure may be imposed. The maximum penalty is $100,000 per year. If you intentionally disregard the requirement to report correct information, the penalty for each Form 1042-S (or statement to recipient) is the greater of $100 or 10% of the total amount of the items that must be reported, with no maximum penalty.

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

**Partnership Withholding on Effectively Connected Income**

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

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

**Who Must Withhold**

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

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

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

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

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

The partnership must keep the certification for as long as it may be relevant to the partnership’s liability for section 1446 tax. The partnership may not rely on the certification if it has actual knowledge or has reason to know that any information on the form is incorrect or unreliable.

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

**Foreign Partner**

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

The partner’s tax treaty benefits related to Partnership Withholding on Effectively Connected Income

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

* A partnership may substitute its own form for the official version of Form W-8 to ascertain the identity of its partners.

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

**Reduction of Withholding.** The foreign partner’s share of the partnership’s gross effectively connected income is reduced by:

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

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

1. State and local income taxes the partner 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 after July 28, 2008, a partner must submit to the

**Amount of Withholding Tax**

- The amount of withholding tax 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.

- The partnership is required to report the amount of the withholding tax paid to the IRS. The IRS will then provide the foreign partner with a tax certificate that shows the amount of withholding tax paid.

- The partnership is also required to keep records of all withholding tax paid, including a record of the amount of tax paid, the date the tax was paid, and the payee’s name and address.

- The partnership must file an annual return with the IRS, reporting the amount of withholding tax paid and any other relevant information.

- The partnership is also required to file a Form 1042-S for each recipient of withholding tax.

- The foreign partner can claim a credit for the withholding tax paid by the partnership on its tax return.

- 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.

- 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.
partnership Form 8804-C, Certificate of Part- ner-Level Items to Reduce Section 1446 With- holding.

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

A foreign partner may submit a Form 8804-C to a partnership at any time during the partner- ship’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 re- port is required.

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

Tax rate. The withholding tax rate on a part- ner’s share of effectively connected income is 35%. However, the partnership may withhold at the highest rate applicable to a particular type of income allocated to a noncorporate partner pro- vided the partnership received the appropriate documentation. See section 1.1446-3(a)(2)(i) of the regulations.

Installment payments. A partnership must make installment payments of withholding tax on its foreign partners’ share of effectively con- nected taxable income whether or not distribu- tions are made during the partnership’s tax year.

The amount of a partnership’s installment pay- ment is the sum of the installment payments for each of its foreign partners.

Any additional amounts due are to be paid with Form 8804, the annual partnership withholding tax return, discussed later.

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

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

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

Notification to partners. Generally, a part- nership 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 informa- tion on the substance of the notification and exceptions, see section 1.1446-3(d)(1)(i) of the regulations.

Real property gains. If a domestic partner- ship 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).

Reporting and Paying the Tax

Three forms are required for reporting and pay- ing tax withheld on effectively connected income allocable to foreign partners. This does not apply to publicly traded partnerships, dis- cussed later.

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

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

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

Form 8805, Foreign Partner’s Information Statement of Section 1446 Withholding Tax. Form 8805 is used to show the amount of effec- tively connected taxable income and any with- holding 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 whether or not any withholding tax is paid. It must be delivered to the foreign partner by the due date of the part- nership return (including extensions). A copy of Form 8805 for each foreign partner must also 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 partner- ship’s tax year in which the Form 8804-C was considered.

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

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

Penalties. A penalty may be imposed for fail- ure to file Form 8804 when due (including exten- sions). It is the same as the penalty for not filing Form 1042 discussed earlier under Returns Re- quired.

A penalty may be imposed for failure to file Form 8805 when due (including extensions) or for failure to provide complete and correct infor- mation. The amount of the penalty depends on when you file a correct Form 8805. The penalty for each Form 8805 is:

• $15 if you file a correct form within 30 days,
• with a maximum penalty of $75,000 per year ($250,000 for a small business), or
• $50 if you file after 30 days or do not file a correct form, with a maximum penalty of $250,000 per year ($100,000 for a small business).

A small business is a business that has aver- age 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 8805 are due.

If you file to provide a complete and correct Form 8805 to each partner, a penalty of $50 for each failure may be imposed. The maximum penalty is $100,000 per year.

If you intentionally disregard the requirement to report correct information, the penalty for each Form 8805 is the greater of $100 or 10% of each Form 8805 is the greater of $100 or 10% of the total amount of the items that must be re- ported, with no maximum penalty.

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

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

Publicly Traded Partnerships

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

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

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

Nominee. The withholding agent under this section can be the PTP or a nominee. For this purpose, a nominee is a domestic person that holds an interest in a PTP on behalf of a foreign
person. The nominee is treated as the withhold- 
ing agent only to the extent of the amount speci- fied 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 section 1.1446-4(b) and (d) of 
the regulations.

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 partner- 
ship 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 prop- 
erty until it has enough funds to pay over the 
withholding tax.

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

- Amounts subject to withholding under sec-
  tion 1446(e)(1) of the Code on distribu-
  tions pursuant to an election under section 
  1.1446-5(c)(3) of the regulations, and 
- Amounts not subject to withholding under 
  section 1445 of the Code because the dis-
  tributee is a partnership or is a foreign 
  corporation that has made an election to 
  be treated as a domestic corporation.

Excluded amounts. Partnership distribu-
tions are considered to be paid out of the follow-
ing types of income in the order listed.

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

U.S. Real Property Interest

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

Foreign person. A foreign person is a nonres-
ident alien individual, foreign corporation that 
has not made an election under section 897(i) of 
the Internal Revenue Code to be treated as a 
domestic corporation, foreign partnership, for-

gn, or foreign estate. It does not include a 
resident alien individual.

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

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

Transferee. A transferee is any person, for-

gn, or domestic, that acquires a U.S. real prop-
erty interest by purchase, exchange, gift, or any 
other transfer.

U.S. real property interest. A U.S. real prop-
erty interest is an interest, other than as a credi-
tor, 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 associ-
ated with the use of real property (such as farm-
ing machinery). It also means any interest, other 
than as a creditor, in any domestic corporation 
even if it is established that the corporation was 
at time a U.S. real property holding corpora-
tion during the shorter of the period during which 
the interest was held, or the 5-year period end-
ing on the date of disposition. If on the date of 
disposition, the corporation did not hold any U.S. 
real property interests, and all the interests held 
at any time during the shorter of the applicable 
periods were disposed of in transactions in 
which the full amount of any gain was recog-
nized, then an interest in the corporation is not a 
U.S. real property interest.

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

The amount realized is the sum of:
- The cash paid, or to be paid (principal 
only),
- The fair market value of other property 
thansferred, 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 transferees based on the 
capital contribution of each transferee.

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

Domestic corporations. A domestic corpo-
ration must withhold a tax equal to 10% of the 
fair market value of the property distributed to a 
foreign shareholder if:
- The shareholder's interest in the corpo-
ration is a U.S. real property interest, and
- The property distributed is either in re-
demption of stock or in liquidation of the 
corporation.

U.S. real property holding corporations. A 
distribution from a domestic corporation that is 
a U.S. real property holding corporation (USRPHC) 
is generally subject to NRA withhold-
ing and withholding under the U.S. real property 
interest provisions. This also applies to a corpo-
ation 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 provi-
sions if it withholds under one of the following 
provisions:
- Apply NRA withholding on the full amount 
of the distribution, whether or not any por-
tion of the distribution represents a return 
of basis or capital gain. If a reduced tax 
rate applies under an income tax treaty, 
then the rate of withholding must not be 
less than 10%, unless the treaty specifies 
a lower rate for distributions from a 
USRPHC.
- Apply NRA withholding to the portion of 
the distribution that the USRPHC esti-
mates is a dividend. Then, withhold 35% 
on the remainder of the distribution (or on 
a smaller amount if a withholding certifi-
cate is obtained and the amount of the 
distribution that is a return of capital is 
established).

The same procedure must be used for all distri-
butions made during the year. A different proce-
dure may be used each year.

Partnerships. If a partnership disposes of a 
U.S. real property interest at a gain, the gain is 
treated as effectively connected income and is 
subject to the rules explained earlier under Part-
nership Withholding on Effectively Connected 
Income.

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

A trust with more than 100 beneficiaries may 
elect to withhold from each distribution 35% of 
the amount attributable to the foreign benefi-
ciary’s proportionate share of the current bal-
ance of the trust’s real property interest account.

This election does not apply to publicly traded 
trusts or real estate investment trusts (REITs). 
For more information about this election, see 
section 1.1445-5(c) of the regulations.

Qualified investment entities. Special rules 
apply to qualified investment entities (QIEs). A 
QIE is any real estate investment trust (REIT) 
or any regulated investment company (RIC) that 
is a U.S. real property holding corporation. In 
determining if a REIT is a U.S. real property 
holding corporation, the RIC is required to include 
as U.S. real property interests its holdings of stock
in a RIC or REIT that is a U.S. real property holding corporation, even if that stock is regu-
larly traded and the RIC owns less than 5% of the
stock.
Generally, any distribution by a QIE attribu-
table to gain from the sale or exchange of a U.S.
real property interest is treated as such gain by the nonresident alien or foreign corpora-
tion, or other QIE receiving the distribution. A
distribution by a QIE on stock regularly traded on
an established securities market in the United
States is not treated as gain from the sale or
exchange of a U.S. real property interest if the
nonresident alien or foreign corporation did not
own more than 5% of that stock at any time
during the 1-year period ending on the date of
the distribution. A distribution that is not treated
as gain from the sale or exchange of a U.S. real
property interest is included in the shareholder’s
gross income as a dividend.

After 2009, these rules will apply to a
RIC only if the distribution by the RIC to a
nonresident alien or foreign corpora-
tion is attributable to a distribution received by
the RIC from a REIT.
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 with-
holding at 35%.

Domestically controlled QIE. The sale of an
interest in a domestically controlled QIE is not
the sale of a U.S. real property interest. The
entity is domestically controlled if at all times
during the testing period less than 50% in value
of its stock was held, directly or indirectly, by
foreign persons. The testing period is the shorter
of (a) 5-year period ending on the date of
disposition, or (b) the period during which the
entity was in existence.

If a foreign shareholder in a domestically
controlled QIE disposes of an interest in the QIE
in an applicable wash sale transaction, special
rules apply. In this transaction, the nonresident
alien, foreign corporation, or other QIE:

1. Disposes of an interest in the domestically
controlled QIE during the 30-day period
before the ex-dividend date of a distribu-
tion that would have been treated by the
shareholder as gain from the sale or ex-
change of a U.S. real property interest, and
2. Acquires, or enters into a contract or op-
tion to acquire, a substantially identical in-
terest in that entity during the 61-day period
that began on the first day of the 30-day period.
If this occurs, the shareholder is treated as hav-
ing gain from the sale or exchange of a U.S.
real property interest in an amount equal to the distri-
bution that would have been treated as such
gain. This also applies to any substitute dividend
payment. No withholding is required on these
transactions.
A transaction is not treated as an applicable
wash sale transaction if:

- The shareholder actually receives the dis-
tribution from the domestically controlled
QIE on either the interest disposed of, or
acquired, in the transaction, or
- The shareholder disposes of any class of
stock in a QIE that is regularly traded on
an established securities market in the
United States but only if the shareholder
did not own more than 5% of that stock at
any time during the 1-year period ending
on the date of the distribution.
After 2009, the applicable wash sale transac-
tion rules will apply to a RIC only if the distribu-
tion by the RIC is attributable to a distribution
received by the RIC from a REIT.

Additional information. For additional infor-
mation on the withholding rules that apply to
corporations, trusts, estates, and qualified in-
vestment entities, see section 1445 of the Inter-
national Income Tax Code and the related regula-
tions. For additional information on the withholding
rules that apply to partnerships, see the previ-
ous discussion.
You may also write to:

Internal Revenue Service
P.O. Box 920
Bensalem, PA 19020

Exceptions. You do not have to withhold if
any of the following apply.
1. You (the transferee) acquire the property
for use as a home 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 fol-
lowing 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
domestically incorporated in a domestic
corporation if any class of stock of the
corporation is regularly traded on an
established securities market. However,
this exception does not apply to certain
distributions of substantial amounts of
non-publicly traded interests in publicly
traded corporations.
3. The disposition is of an interest in a do-
mestically corporation and that corporation
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- The transferor can give the certification to
a qualified substitute. The qualified substi-
tute gives you a statement, under penalties
of perjury, that the certification is in posses-
sion 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
transferor’s agent.
5. You receive a withholding certificate from
the Internal Revenue Service that excuses
withholding. See Withholding Certificates,
below.
6. The transferor gives you written notice that
no recognition of any gain or loss on the
transfer is required because of a nonrec-
ognition provision in the Internal Revenue
Code or a provision in a U.S. law treaty.
You must file a copy of the notice by the
20th day after the date of transfer with the
Ogden Service Center, P.O. Box 409101,
Ogden, UT 84409.
7. The amount the transferor realizes on the
transfer of a U.S. real property interest is
zero.
8. The property is acquired by the United
States in a U.S. state or possession, a politi-
cal 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 pub-
lcly traded partnership or trust. However,
this exception does not apply to certain
distributions 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 apply.
Complete the required certification or notice
and file it with the appropriate person or the IRS.
Also include the following:

1. A statement at the top of the document(s)
that it is “FILED PURSUANT TO REV.
PROC. 2008–27”.
2. 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 at-
tached 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 quali-
fied substitute) have actual knowledge, or re-
ceive 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 regu-
lations 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 an agent (other than a transferee or transferee in any negotiation with another person or another person’s agent) receiving 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 if the amount that must be withheld (or lesser amount as determined by the IRS) is not 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, the principal purpose of applying for a withholding certificate is to delay the tax withheld, 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 the transfer and ending on the day the payment is made.

Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests. The withholding agent must prepare a Form 8288-A for each person to whom such tax has been withheld. Attach copies A and B of Form 8288-A to Form 8288. Keep Copy C for your records. IRS will stamp Copy B and send it to the transferee or transferor.

Paying the Tax

Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests. The tax withheld on the acquisition of a U.S. real property interest from a foreign person is reported and paid over using Form 8288. Form 8288 also serves as the transmittal form for copies A and B of Form 8288-A.

Generally, 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.

Withholding Certificates

The amount that must be withheld from the disposition of a U.S. real property interest is 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 transferee that applies for a withholding certificate must notify the transferee in writing that the certificate has been applied for on the day of or the day prior to the transfer. A withholding certificate may be issued due to:

1. A determination by the IRS that reduced withholding is appropriate because either:
   a. The amount that must be withheld would be more than the transferor’s maximum tax liability, or
   b. Withholding of the reduced amount would not jeopardize collection of the tax,
2. The exemption from U.S. tax of all gain realized by the transferor, or
3. An agreement for the payment of tax providing security for the tax liability entered into by the transferee or transferor.

Applications for withholding certificates are divided into six basic categories. This categorizing provides for specific information that is needed to process the applications. The six categories are:

1. Applications based on a claim that the transferee 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 sale rules,
4. Applications based on an agreement for the payment of tax with conforming security,
5. Applications for blanket withholding certificates, and
6. Applications on any other basis.

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 will usually result in rejection of the application, unless the IRS grants an extension of the target date.

Categories (1), (2), and (3). Use Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests, to apply for a withholding certificate. Follow the instructions for the form.

Categories (4), (5), and (6). Do not use Form 8288-B for applications under categories (4), (5), and (6). For these categories follow the instructions given here and under the specific category.

All applications for withholding certificates must use the following format. The information must be provided in paragraphs labeled to correspond with the numbers and letters set forth below. If the information requested does not apply, place “NA” 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, or a duly authorized agent (with a copy of the power of attorney, such as Form 2848, attached), 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. The person signing the application must verify under penalties of perjury that all representations are true, correct, and complete to that person’s knowledge and belief. If the application is based in whole or in part on information provided by another party to the transaction, that information must be supported by a written verification signed under penalties of perjury by that party and attached to the application.

   Send applications to the:

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

   Category (4) applications. If the application is based on an agreement for the payment of tax, the application must include:
   - Information establishing the transferor’s maximum tax liability, or the amount that otherwise has to be withheld,
   - A signed copy of the agreement proposed by the applicant, and
   - A copy of the security instrument proposed by the applicant.

   Either the transferee or the transferor may enter into an agreement for the payment of tax. The agreement is a contract between the IRS and any other person and consists of two necessary elements. Those elements are:
   - A detailed description of the rights and obligations of each, and
   - A security instrument or other form of security acceptable to the Commissioner or his delegate.

   For more information on the agreement for the payment of tax, including a sample agreement, see section 5 of Revenue Procedure 2000-35. Revenue Procedure 2000-35 is in Cumulative Bulletin 2000-2, or it can be found on page 211 of Internal Revenue Bulletin 2000-35 at www.irs.gov/irb/irb0002-35.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 non-standard applications and may be of the following types:

   Agreement for payment of tax with non-conforming security. An applicant seeking to enter into an agreement for the payment of tax but wanting to provide a nonconforming type of security must include the following in the application:

   1. The information required for Category (4) applications, discussed earlier,
   2. A description of the nonconforming security proposed by the applicant, and
   3. A memorandum of law and facts establishing that the proposed security is valid and enforceable and that it adequately protects the government’s interest.

   Other nonstandard applications. An application for a withholding certificate not previously described must explain in detail the proposed basis for the issuance of the certificate and set forth the reasons justifying the issuance of a certificate on that basis.

   Amendments to Applications

   An applicant for a withholding certificate may amend an otherwise complete application by sending an amending statement to the address shown earlier. There is no particular form required, but the amending statement must provide the following information:

   - The name, address, and TIN of the person providing the amending statement specifying whether that person is the transferee or transferor,
   - The date of the original application for a withholding certificate that is being amended,
   - A brief description of the real property interest for which the original application for a withholding certificate was provided, and
   - The basis for the amendment including any change in the facts supporting the original application for a withholding certificate and any change in the terms of the withholding certificate.

   The statement must be signed and accompanied by a penalties of perjury statement.

   If an amending statement is provided, the time in which the IRS must act upon the application is extended by 30 days. If the amending statement substantially changes the original application, the time for acting upon the application is extended by 60 days. If an amending statement is received after the withholding certificate has been signed, but has not been mailed to the applicant, the IRS will have a 90-day extension of time in which to act.

   Tax Treaty Tables

   The United States has income tax treaties (or conventions) with a number of foreign countries under which residents (sometimes limited to citizens) of those countries are taxed at a reduced rate or are exempt from tax on certain income received from within the United States.

   Income that is exempt under a treaty is not subject to withholding at source under the statutory rules discussed in this publication.

   Three tables follow:

   Table 1 lists the withholding rates on income other than personal service income.
Table 2 lists the different types of personal service income that are entitled to an exemption from, or reduction in, withholding.

Table 3 shows where the full text of each treaty and protocol may be found in the Cumulative Bulletins if it has been published.

These tables are not meant to be a complete guide to all provisions of every income tax treaty. For detailed information, you must consult the provisions of the tax treaty that apply to the country of the nonresident alien to whom you are making payment.

You can obtain the full text of these treaties on the Internet at www.irs.gov. See New treaties and protocol under What's New at the beginning of this publication for the effective dates of the new treaties with Bulgaria and Iceland and the protocol with Canada. Because of the effective date election available under the treaty, two entries are shown for Iceland.
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<th>Interest paid by U.S. obligors</th>
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</table>

I Contains a Business Profits article.
II See Article III of the treaty for treatment of business profits.
III See Article IV of the treaty for treatment of business profits.
Generally, if the property was owned by the Canadian resident on September 26, 1980, not as part of the business property of a permanent establishment or fixed base in the U.S., the taxable gain is limited to the appreciation after 1984. Capital gains on personal property not belonging to a permanent establishment or fixed base of the taxpayer in the U.S. are exempt.

The reduced rate for royalties with respect to tangible personal property is 7%.

Does not apply to annuities. For Denmark, annuities are exempt.

Withholding at a special rate may be required on the U.S. Real Property Interest earlier in this publication.

Tax imposed on 70% of gross royalties for rentals of industrial or scientific equipment.

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or a real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is an individual holding less than a 10% interest (25% in the case of Portugal, Spain, Thailand, and Tunisia) in the REIT.

Royalties not taxed at the 5% or 8% rate are taxed at a 10% rate, unless footnote (g) applies.

The rate is 10% if the interest is paid on a loan granted by a bank or similar financial institution. For Thailand, the 10% rate also applies to interest from an arm's length sale on credit of equipment, merchandise, or services.

This is the rate for royalties for the use of, or the right to use, industrial, commercial, and scientific equipment. The rate for royalties for information concerning industrial, commercial and scientific know-how is subject to the rate in column 12, but use Income Code 10 for reporting purposes.

Exemption does not apply to U.S. Government (federal, state, or local) pensions and annuities; a 30% rate applies to these pensions and annuities. U.S. government pensions paid to an individual who is both a resident and national of Bangladesh, Belgium, Bulgaria, China, Denmark, Estonia, Finland, Germany, Hungary, Iceland (new treaty), India, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Mexico, The Netherlands, Portugal, Russia, Slovenia, South Africa, Spain, Switzerland, Thailand, Turkey, the United Kingdom, or Venezuela are exempt from U.S. tax. U.S. government pensions paid to an individual who is both a resident and citizen of Pakistan, New Zealand, or Sweden are exempt from U.S. tax.

No withholding is required on capital gains other than those listed earlier under Capital Gains, even if the gain is subject to U.S. tax.

Includes alimony.

The exemption or reduction in rate does not apply if the recipient has a permanent establishment in the United States and the property giving rise to the income is effectively connected with this permanent establishment. Under certain treaties, the exemption or reduction in rate also does not apply if the property giving rise to the income is effectively connected with a fixed base in the United States from which the recipient performs independent personal services. Even with the treaty, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a permanent establishment in the United States under IRC section 894(b).

The exemption or reduction in rate does not apply if the recipient is engaged in a trade or business in the United States through a permanent establishment that is in the United States. However, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a permanent establishment in the United States for the purpose of applying the reduced treaty rate to that item of income. IRC section 894(b).

The reduced rate for royalties with respect to tangible personal property is 7%.

Does not apply to annuities. For Denmark, annuities are exempt.

Withholding at a special rate may be required on the disposition of U.S. real property interests. See U.S. Real Property Interest earlier in this publication.

Tax imposed on 70% of gross royalties for rentals of industrial or scientific equipment.

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or a real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is an individual holding less than a 10% interest (25% in the case of Portugal, Spain, Thailand, and Tunisia) in the REIT.

Royalties not taxed at the 5% or 8% rate are taxed at a 10% rate, unless footnote (g) applies.

The exemption does not apply to contingent interest that does not qualify as portfolio interest. Generally, this is interest based on receipts, sales, income, or changes in the value of property.

The rate is 10% if the interest is paid on a loan granted by a bank or similar financial institution. For Thailand, the 10% rate also applies to interest from an arm's length sale on credit of equipment, merchandise, or services.

This is the rate for royalties for the use of, or the right to use, industrial, commercial, and scientific equipment. The rate for royalties for information concerning industrial, commercial and scientific know-how is subject to the rate in column 12, but use Income Code 10 for reporting purposes.
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Under some treaties, the reduced rates of withholding may not apply to a foreign corporation unless a minimum percentage of its owners are citizens or residents of the United States or the treaty country.

The exemption does not apply to cinematographic films, or works on film, tape, or other means of reproduction for use in radio or television broadcasting.

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (a) an individual obtaining not more than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified. Dividends paid to a pension fund from a RIC, or a REIT that meets the above conditions, are exempt. For Sweden, the pension fund must also satisfy the requirements in footnote ss.

The rate is 4.95% if the interest is beneficially owned by a financial institution (including an insurance company).

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (a) an individual obtaining not more than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified.

The rate is 5% for the rental of tangible personal property.

The rate applies to dividends paid by a real estate investment trust (REIT) only if the beneficial owner of the dividends is (a) an individual holding less than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT's stock and the dividend is paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified.

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (a) an individual obtaining not more than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified.

The rate is 5% for interest beneficially owned by an insurance company.

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (a) an individual obtaining not more than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified. Dividends paid to a pension fund from a RIC, or a REIT that meets the above conditions, are exempt. For Sweden, the pension fund must also satisfy the requirements in footnote ss.

The rate is 4.95% if the interest is beneficially owned by a financial institution (including an insurance company).

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (a) an individual obtaining not more than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified.

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (a) an individual obtaining not more than a 10% interest in the REIT, (b) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (c) a person holding not more than a 10% interest in the REIT and the REIT is diversified.

The rate is 4.9% for interest derived from (1) loans granted by banks and insurance companies and (2) bonds or securities that are regularly and substantially traded on a recognized securities market. The rate is 10% for interest not described in the preceding sentence and paid (i) by banks or (ii) by the buyer of machinery and equipment to the seller due to a sale on credit.

The exemption does not apply to a sale of a U.S. company's stock representing ownership of 50% or more.

The rate is 5% for interest paid or credited in 2009.

The rate is 5% for interest (a) beneficially owned by a bank or other financial institution, (b) beneficially owned by a bank or other financial institution or (b) paid to a person holding not more than a 10% interest in the REIT and the REIT is diversified, or (d) a Dutch beleggingsinstelling.
<table>
<thead>
<tr>
<th>Code</th>
<th>Country</th>
<th>Category of Personal Services</th>
<th>Presence Required Employer or Payer</th>
<th>Maximum Compensation in U.S.</th>
<th>Treaty Article Citation</th>
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<td>No limit</td>
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<td>XV</td>
<td>Any U.S. or foreign resident</td>
<td>Independent personal services</td>
<td>Any contractor</td>
<td>No limit</td>
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</tr>
<tr>
<td>XV</td>
<td>Any contractor</td>
<td>Dependent personal services</td>
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<tr>
<td>XV</td>
<td>Any foreign resident</td>
<td>Dependent personal services</td>
<td>Any contractor</td>
<td>No limit</td>
<td></td>
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<tr>
<td>XV</td>
<td>Any U.S. or foreign resident</td>
<td>Dependent personal services</td>
<td>Any contractor</td>
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<td></td>
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<td>Any contractor</td>
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<td>Any U.S. or foreign resident</td>
<td>Remittances or allowances</td>
<td>Any contractor</td>
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<tr>
<td>XV</td>
<td>Any contractor</td>
<td>Compensation during study or training</td>
<td>No limit</td>
<td>No limit</td>
<td></td>
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<td>Any foreign resident</td>
<td>Compensation during study or training</td>
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<td>Any U.S. or foreign resident</td>
<td>Compensation during study or training</td>
<td>Any contractor</td>
<td>No limit</td>
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Table 2. Compensation for Personal Services Performed in United States Exempt from Withholding and U.S. Income Tax Under Income Tax Treaties

**Note:** The type and rule above prints on all proofs including departmental reproduction proofs. MUST be removed before printing.
Table 2. (Continued)

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<th>Country</th>
<th>Code1 (2)</th>
<th>Category of Personal Services</th>
<th>Maximum Presence in U.S. (4)</th>
<th>Required Employer or Payer (5)</th>
<th>Maximum Amount of Compensation (6)</th>
<th>Treaty Article Citation (7)</th>
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<td>16</td>
<td>Independent personal services²⁻³</td>
<td>183 days</td>
<td>Any contractor</td>
<td>No limit</td>
<td>13</td>
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<tr>
<td></td>
<td>20</td>
<td>Public entertainment¹⁻²⁻³</td>
<td>No limit</td>
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<td>17</td>
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<td>20(a)</td>
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<td></td>
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<td>Any U.S. or foreign resident</td>
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<td>16</td>
<td>Independent personal services²⁻³</td>
<td>182 days</td>
<td>Any contractor</td>
<td>No limit</td>
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<tr>
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<td>$500 per day or $5,000 p.a.</td>
<td>19(1)</td>
</tr>
<tr>
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<td>Studying and training: Remittances or allowances, Compensation during training, Compensation while gaining experience, Compensation under U.S. Government program</td>
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<td>Any foreign resident</td>
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<td>Czech Republic</td>
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<td>Scholarship or fellowship grant¹⁻²⁻³</td>
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<td>Any U.S. or foreign resident²</td>
<td>No limit</td>
<td>2(1)</td>
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<tr>
<td></td>
<td>16</td>
<td>Independent personal services²⁻³</td>
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<td>Any contractor</td>
<td>No limit</td>
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<td>Public entertainment¹⁻²⁻³</td>
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<td>Any contractor</td>
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<td>Any U.S. or foreign resident</td>
<td>No limit</td>
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<td></td>
<td>20</td>
<td>Public entertainment¹⁻²⁻³</td>
<td>183 days</td>
<td>Any U.S. or foreign resident</td>
<td>$20,000 p.a.</td>
<td>18</td>
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<tr>
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<td>2 years</td>
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<td>No limit</td>
<td>2(1)</td>
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<td>21(1)</td>
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<td>Any contractor</td>
<td>No limit</td>
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<tr>
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<td>20</td>
<td>Public entertainment¹⁻²⁻³</td>
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<td>Venezuelan resident</td>
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<td>21(2)</td>
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</table>
Exemption does not apply if the individual either (a) claimed the benefit of Article 21(5) previously, or (b) during the immediately preceding period, claimed the benefit of Article 21(1), (2), or (3).

Exemption applies only to compensation for personal services performed in connection with, or incidental to, the individual's study, research, or training.

If the compensation exceeds $400 per day, the employer may be taxed on the full amount. If the individual receives a fixed amount for more than one performance, the amount is prorated over the number of days the individual performs the services (including rehearsals).

Exemption does not apply if the immediately preceding period, the individual derived any benefits of Article 22(1).

The combined period of benefits for teaching cannot exceed 5 tax years.

Applies only if grants, allowances, and other similar payments received for studying or doing research.

Exemption does not apply if the individual previously claimed the benefit of this Article, or (b) during the immediately preceding period, claimed the benefit of Article 23. The benefits under Articles 22 and 23 cannot be claimed at the same time.

The combined period of benefits under Articles 20 and 21(1) cannot exceed 5 years.

Does not apply to income for research work primarily for private benefit.
Table 3. List of Tax Treaties (Updated through December 31, 2008)

<table>
<thead>
<tr>
<th>Country</th>
<th>Official Text Symbol</th>
<th>General Effective Date</th>
<th>Citation or Treasury Decision (T.D.)</th>
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<td>Jan. 1, 2005</td>
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<td>Belgium</td>
<td>TIAS</td>
<td>Jan. 1, 2008</td>
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<td>TIAS</td>
<td>Jan. 1, 2009</td>
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<td>Commonwealth of</td>
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<td>TIAS</td>
<td>Jan. 1, 1994</td>
<td>1984-2 C.B. 504</td>
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<td>TIAS 7047</td>
<td>Jan. 1, 1970</td>
<td>1976-2 C.B. 504</td>
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</tbody>
</table>

1 (TIAS) — Treaties and Other International Act Series.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should.

You can contact the TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059 to see if you are eligible for assistance. You can also call or write your local taxpayer advocate, whose phone number and address are listed in your local telephone directory and in Publication 1546, Taxpayer Advocate Service—Your Voice at the IRS. You can file Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), or ask an IRS employee to complete it on your behalf. For more information, go to www.irs.gov/advocate.

If you live outside of the United States, you can call the Taxpayer Advocate at (787) 622-8940 in English or (787) 622-8930 in Spanish. You can contact the Taxpayer Advocate at:

- Internal Revenue Service
  Taxpayer Advocate
  P.O. Box 193479
  San Juan, PR 00919-3479

Low Income Taxpayer Clinics (LITCs). LITCs are independent organizations that provide low income taxpayers with representation in federal tax controversies with the IRS for free or for a nominal charge. The clinics also provide tax education and outreach for taxpayers who speak English as a second language. Publication 4134, Low Income Taxpayer Clinic List, provides information on clinics in your area. It is available at www.irs.gov or your local IRS office.

Free tax services. To find out what services are available, get Publication 910, IRS Guide to Free Tax Services. It contains lists of free tax information sources, including publications, services, and free tax education and assistance programs. It also has an index of over 100 Teletax topics (recorded tax information) you can listen to on your telephone.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.

Free help with your return. Free help in preparing your return is available nationwide from IRS-trained volunteers. The Volunteer Income Tax Assistance (VITA) program is designed to help low-income taxpayers and the Tax Counseling for the Elderly (TCE) program is designed to assist taxpayers age 60 and older with their tax returns. Many VITA sites offer free electronic filing and all volunteers will let you know about credits and deductions you may be entitled to claim. To find the nearest VITA or TCE site, call 1-800-829-1040.

As part of the TCE program, AARP offers the Tax-Aide counseling program. To find the nearest AARP Tax-Aide site, call 1-888-227-7669 or visit AARP’s website at www.aarp.org/individuals.

For more information on these programs, go to www.irs.gov and enter keyword “VITA” in the upper right-hand corner.

Internet. You can access the IRS website at www.irs.gov 24 hours a day, 7 days a week to:
• E-file your return. Find out about commercial tax preparation and e-file services available free to eligible taxpayers.
• Check the status of your 2008 refund. Go to www.irs.gov and click on Where’s My Refund? Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 1040X with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2008 tax return available so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund.
• Download forms, instructions, and publications.
• Order IRS products online.
• Research your tax questions online.
• Search publications online by topic or keyword.
• View Internal Revenue Bulletins (IRBs) published in the last few years.
• Figure your withholding allowances using the withholding calculator online at www.irs.gov/individuals.
• Determine if Form 6251 must be filed by using our Alternative Minimum Tax (AMT) Assistant.
• Sign up to receive local and national tax news by email.
• Get information on starting and operating a small business.
Phone. Many services are available by phone.

- Ordering forms, instructions, and publications. Call 1-800-829-3676 to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 days.
- Asking tax questions. Call the IRS with your tax questions at 1-800-829-1040.
- Solving problems. You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to www.irs.gov/localcontacts or look in the phone book under United States Government, Internal Revenue Service.
- TTY/TDD equipment. If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.
- TeleTax topics. Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.
- Refund information. To check the status of your 2008 refund, call 1-800-829-1954 during business hours or 1-800-829-4477 (automated refund information 24 hours a day, 7 days a week). Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically) before your tax return is available so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund. Refunds are sent out weekly on Fridays. If you check the status of your refund and are not given the date it will be issued, please wait until the next week before checking back.
- Other refund information. To check the status of a prior year refund or amended return refund, call 1-800-829-1954.

If you are outside the United States, taxpayer assistance is available at the following U.S. Embassies or consulates.

Frankfurt, Germany (49) (69) 7535-3834
London, England (44) (20) 7894-0476
Paris, France (33) (1) 4312-2555

Please contact the office for times when assistance will be available. If you cannot get to one of these offices, taxpayer assistance is available at (215) 516-2000 (not a toll free call). If you are in a U.S. territory (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands) and have a tax question, you can call 1-800-829-1040.

Evaluating the quality of our telephone services. To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.

Walk-in. Many products and services are available on a walk-in basis.

- Products. You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices in libraries, grocery stores, copies centers, county and city government offices, credit unions, and office supply stores have a collection of products available to print from a CD or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- Services. You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you are more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread your records and talk with an IRS representative face-to-face. No appointment is necessary—just walk in. If you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. If you have an ongoing, complex tax account problem or a special need, such as a disability, an appointment can be requested. All other issues will be handled without an appointment. To find the number of your local office, go to www.irs.gov/localcontacts or look in the phone book under United States Government, Internal Revenue Service.

If you are outside the United States during the filing period (January to mid-June), you can get the necessary federal tax forms and publications from most U.S. Embassies and consulates.

Also, during filing season, the IRS conducts an overseas taxpayer assistance program. To find out if IRS personnel will be in your area, contact the consular office at the nearest U.S. Embassy.

Mail. You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 days after your request is received.

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

DVD for tax products. You can order Publication 1796, IRS Tax Products DVD, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Toll-free and email technical support.
- Two releases during the year.
  - The first release will ship the beginning of January 2010.
  - The final release will ship the beginning of March 2009.

Purchase the DVD from National Technical Information Service (NTIS) at www.irs.gov/cteorders or call 1-877-233-5767 toll free to buy the DVD for $30 (plus a $6 handling fee).

Small Business Resource Guide 2009. This online guide is a must for every small business owner or any taxpayer about to start a business. This year’s guide includes:

- Helpful information, such as how to prepare a business plan, find financing for your business, and much more.
- The business tax forms, instructions, and publications needed to successfully manage a business.
- Tax law changes for 2009.
- Tax Map: an electronic research tool and finding aid.
- Web links to various government agencies, business associations, and IRS organizations.
- “Rate the Product” survey—your opportunity to suggest changes for future editions.
- A site map of the guide to help you navigate the pages with ease.
- An interactive “Teens in Biz” module that gives practical tips for teens about starting their own business, creating a business plan, and filing taxes.

The information is updated during the year. Visit www.irs.gov and enter keyword “SBRG” in the upper right-hand corner for more information.
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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