Publication 515
Cat. No. 15019L

Withholding of Tax on Nonresident Aliens and Foreign Entities

For use in 2010

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What's New

U.S. real property interest. Generally, the treatment of a regulated investment company (RIC) as a qualified investment entity (QIE) changes in 2010. The special rules that apply to distributions from a QIE attributable to gain from the sale or exchange of a U.S. real property interest will continue to apply to any distribution from an RIC. See Qualified investment entities under U.S. Real Property Interest.

Interest-related dividends and short-term capital gain dividends received from mutual funds. Beginning January 1, 2010, the exception from withholding on certain interest-related dividends and short-term capital gain dividends paid by a mutual fund or other regulated investment company expires.

New tax treaty and protocol. The United States has exchanged instruments of ratification for a new income tax treaty with Italy and a new protocol amending the income tax treaty with France. The effective dates are as follows.

Italy. The provisions for withholding tax at source are effective for amounts paid or credited on or after February 1, 2010. For other taxes, the treaty is generally effective for tax periods beginning on or after January 1, 2010. A person entitled to benefits under the former treaty can elect to have that treaty apply in its entirety for a twelve-month period following the date the new treaty would otherwise apply.

France. The provisions for withholding tax at source generally are effective for amounts paid or credited on or after January 1, 2009. For other taxes, the protocol is generally effective for tax periods beginning on or after January 1, 2010.

Reminders

Note. This publication serves as the Small Entity Compliance Guide required by section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, P.L. 104-121.

Electronic deposit rules. You must use the Electronic Federal Tax Payment System (EFTPS) to make electronic deposits of all depository tax liabilities you incur after 2009 if you meet either of the following conditions.

• You had to make electronic deposits in 2009.
• You deposited more than $200,000 in federal depository taxes in 2008.

If you do not meet these conditions, electronic deposits are voluntary.

For more information about depositing electronically, see Publication 966, The Secure Way to Pay Your Federal Taxes.

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

For files submitted on the FIRE system, it is the responsibility of the filer to verify the results of the transmission within 5 business days. The IRS will not mail error reports for files that are bad.

IRS taxpayer identification numbers for aliens. The IRS will issue an individual tax payer identification number (ITIN) to an alien who does not have and is not eligible to get a social security number (SSN).

An ITIN is for tax use only. It does not entitle an alien to social security benefits or change his or her employment or immigration status under U.S. law.

For more information on ITINs, see U.S. Taxpayer Identification Numbers, later.

Real estate mortgage investment conduit excess inclusion income. Excess inclusion income is treated as income for purposes of the income tax. The tax on the excess inclusion is not eligible for any reduction in withholding tax (by treaty or otherwise). See REMIC excess inclusions.

Partnership withholding on effectively connected income. A partnership must withhold tax on ECI allocated to a foreign partner. However, a publicly traded partnership (PTP) cannot elect to withhold tax based on ECI allocable to its foreign partners. The PTP must withhold on the distribution of that income to its foreign partners.

For more information, see Publicly Traded Partnerships under Partnership Withholding on Effectively Connected Income.

Qualified intermediaries. A branch of a financial institution may not act as a qualified intermediary in a country that does not have approved know-your-customer rules. See Qualified Intermediary under Foreign Intermediaries beginning on page 5.

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

Introduction

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

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions. You can write to us at the following address:

Internal Revenue Service
Individual Forms and Publications Branch
SE.W-CAR.MP-T:I
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at TaxForms@irs.gov. (The asterisk must be included in the address.) Please put "Publications Comment" on the subject line. Although we cannot respond individually to each email, we do appreciate your feedback and will consider your comments as we revise our tax products.

Ordering forms and publications. Visit www.irs.gov/formspubs to download forms and publications, call 1-800-829-3676, or write to the address below and receive a response within 10 days after your request is received.

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

Tax questions. If you have a tax question, check the information available on IRS.gov or call 1-800-829-1040. We cannot answer tax questions sent to either of the above addresses.

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
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, corporation, partnership, trust, association, nominee (under section 1446 of the Code), or any other entity, including any foreign intermediary, foreign partnership, or U.S. branch of certain foreign banks and insurance companies. You may be a withholding agent even if there is no requirement to withhold from a payment or even if another person has withheld the required amount from the payment.

Additional persons may be withholding agents for a single payment, the full tax is to be withheld only once. Generally, the U.S. person determines the amount of NRA withholding that is the personal responsibility 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 withholding since it also falls within the definition of a withholding agent. In addition, withholding must be done by any qualified intermediary, withholding foreign partnership, or withholding foreign trust in accordance with the terms of its withholding agreement, discussed later.

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

Withholding and Reporting Obligations

You are required to report payments subject to NRA withholding on Form 1042-T. You must file Form 1042-T if you paid a tax return on Form 1042. (See Returns Required, later.) An exception from reporting may apply to individuals who are not required to withhold from a payment and who do not make the payment in the course of their trade or business.

Withholding and Reporting Obligations

You are required to report payments subject to NRA withholding on Form 1042-T. You must file Form 1042-T if you paid a tax return on Form 1042. (See Returns Required, later.) An exception from reporting may apply to individuals who are not required to withhold from a payment and who do not make the payment in the course of their trade or business.

Form 1099 reporting and backup withholding.

You also may be responsible as a payer for reporting on Form 1099 payments subject to backup withholding. For example, a payment made to a creditor of a person subject to Form 1099 reporting if (1) the U.S. person has not provided its taxpayer identification number (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 underpayment, or (4) there has been a payee certification failure. Generally, a TIN must be provided by a U.S. non-exempt recipient of a foreign person's income. A payer files a tax return on Form 945 for backup withholding.

You may be required to file Form 1099, and, if appropriate, backup withholding, even if you do not make the payments directly to that U.S. person. For example, you are required to report income paid to a foreign intermediary or flow-through entity that collects for a U.S. person subject to Form 1099 reporting. See Identifying the Payee, later, for more information. Also see Section S. Special Rules for Reporting Payments Made Through Foreign Intermediaries and Flow-Through Entities on Form 1099 in the General Instructions for Certain Information Returns (Form 1098, 1099, 3921, 3922, 5498, and W-2G).
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 documentation 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.

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

If the payment is not subject to NRA withholding (for example, gross proceeds from the sale of a security), you must treat the payment as made to a U.S. person and not as a payment to a foreign person. You may be required to report the payment on Form 1099 and, if applicable, backup withholding.

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

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

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

Flow-Through Entities

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

All of the following are flow-through entities:

- A foreign partnership (other than a withholding foreign partnership).
- A foreign simple or foreign grantor trust (other than a withholding foreign trust).
- A fiscally transparent entity receiving income for which treaty benefits are claimed. See Fiscally transparent entity, 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 also may be required to treat the entity as a flow-through entity under the presumption 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 relates to each owner or beneficiary, and, if the owner or beneficiary is foreign, whether a reduced rate of NRA withholding applies. You make these determinations based on the documentation and other information (contained in a withholding statement that is associated with the flow-through entity’s Form W-8IMY). If you do not have all of the information that is required to reliably associate a payment with a specific payee, you must apply the presumption rules. See Documentation and Presumption Rules, later.

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

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

Example 1. A nonwithholding foreign partnership has two partners: a nonresident alien individual; a foreign corporation; and a U.S. citizen. You make a payment of U.S. source interest to the partnership. It gives you a Form W-8BEN with which it associates Forms W-8BEN from the nonresident alien and the foreign corporation and a Form W-9 from the U.S. citizen. The partnership also gives you a complete withholding statement that enables you to associate a portion of the interest payment to each partner.

You must treat all three partners 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 payment to the U.S. citizen on Form 1099-INT.

Example 2. A nonwithholding foreign partnership has two partners: a foreign corporation, and a nonwithholding foreign partnership. The second partnership has two partners, both nonresident alien individuals. You make a payment of U.S. source interest to the first partnership. It gives you a valid Form W-8IMY with which it associates a Form W-8BEN from the foreign corporation and a Form W-8IMY from the second partnership. In addition, Forms W-8BEN from the partners are associated with the Form W-8IMY from the second partnership. The Forms W-8IMY from the partnerships have complete withholding statements associated with them. Because you can reliably associate a portion of the interest payment with the Forms W-8IMY 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 partnership. The partnership has two partners, both foreign corporations. You can reliably associate the payment with a valid Form W-8IMY from the partnership on which it represents that it is a withholding foreign partnership. You must treat the partnership as the payee of the dividends.

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 exercise primary supervision over the administration of the trust.
- One or more U.S. persons have the authority to control all substantial decisions of the trust.

Generally, a foreign simple trust is a foreign trust that is required to distribute all of its income annually. A foreign grantor trust is a foreign trust that is treated as a grantor trust under sections 671 through 679 of the Code.
The payees of a payment made to a foreign simple trust are the beneficiaries of the trust. The payees of a payment made to a foreign grantor trust are the owners of the trust. However, the payee is the foreign simple or grantor trust itself if the trust is claiming treaty benefits on the basis that it is not fiscally transparent and that it meets all the other requirements for claiming treaty benefits. If the beneficiaries or owners are themselves flow-through entities or foreign intermediaries, you apply the payee determination rules to that beneficiary or owner to determine the payees.

Example. A foreign simple trust has three beneficiaries: 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-2IMY with which it associates Forms W-2BEN 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 payment with the forms provided by each beneficiary. 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 payment 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 entity in which the interest holder must treat the entity as fiscally transparent. The determination of whether an entity is fiscally transparent is made on an item of income basis; that is, the determination is made separately for interest, dividends, royalties, etc. 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 purposes of withholding for the income to the extent of the laws of that jurisdiction require the interest holder to separately take into account on a current basis the interest holder's share of the income, whether or not distributed to the interest holder, and the character and source of the income to the interest holder are determined as if the income was realized directly from the source that paid it to the entity. Subject to the standards of knowledge rules discussed later, you generally make the determination that an entity is fiscally transparent based on a Form W-8IMY provided by the entity.

Example. Entity A is a business organization 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 country Y. C is a corporation organized under the laws of country Z. Both countries Y and Z have a corporation organized under the laws of the jurisdiction where the entity is considered a resident. An entity is considered to be fiscally transparent in its jurisdiction, country X.

QI withholding agreement. A qualified intermediary (QI) is any foreign intermediary (or foreign branch of a U.S. intermediary) that has entered into a qualified intermediary withholding agreement with the IRS. A QI has an income tax treaty in effect with the United States. A QI is required to reliably associate a payment with a QI, through whom the foreign intermediary collects the payment, on a current basis B's share of the income paid to C is determined as if the income was realized directly from the source that paid it to C. Accordingly, C is fiscally transparent in its jurisdiction, country Z. Country Y, on the other hand, treats A as a corporation and does not require C to take into account its share of A's income on a current basis whether or not distributed. Therefore, A is not treated as fiscally transparent under the laws of country Z. Accordingly, C is not treated as deriving its share of the U.S. source royalty income for purposes of the U.S.-Z income tax treaty.

Foreign intermediaries. Generally, if you make payments to a foreign intermediary, the payees are the persons for whom the foreign intermediary collects the payments, 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, however, treat a qualified intermediary that has assumed primary withholding responsibility for a payment as the payee, and you are not required to have the payees of a payment made to a fiscally transparent entity be fiscally transparent for the income to the extent of the laws of that jurisdiction that require the interest holder to separately take into account on a current basis the interest holder's share of the income, whether or not distributed to the interest holder, and the character and source of the income to the interest holder are determined as if the income was realized directly from the source that paid it to the entity. Subject to the standards of knowledge rules discussed later, you generally make the determination that an entity is fiscally transparent based on a Form W-8IMY provided by the entity.

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A QI is required to provide the U.S. withholding agent with information regarding payments made to a nonresident alien. The withholding agent may use this information to determine whether payments made to the nonresident alien are subject to withholding. The withholding agent may also use this information to determine whether the nonresident alien is subject to backup withholding.

A QI is not required to report payments made to its direct foreign account holders on a pooled basis rather than reporting payments to each direct account holder specifically. Pooled basis reporting is not available for payments to certain account holders, such as a nonqualified intermediary or a flow-through entity (discussed earlier).

Collective refund procedures allow a QI to seek a refund on behalf of its direct account holders. The direct account holders, therefore, are not required to file returns with the IRS to obtain refunds, but rather may obtain them from the QI.

U.S. branches of foreign banks and foreign insurance companies. Special rules apply to a U.S. branch of a foreign bank subject to Federal Reserve Board supervision or a foreign insurance company subject to state regulatory supervision. If your employee is late in notifying the IRS of the QI agreement, the QI agreement becomes effective 31 days after the QI agreement is filed with the IRS. The QI must file the Form W-8BEN or W-8IMY within 30 days after the date on which it files the QI agreement.

U.S. residents. The QI agreement is not required to file returns with the IRS to obtain refunds, but rather may obtain them from the QI.

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Employer identification number (EIN). A listed comp. dom. must be submitted with the application for being a WP or WT. The WP or WT will be assigned an EIN if a WP or WT is acting in that capacity and a written statement identifying the amounts for which it is acting. The statement is not required to contain information relating to the identity of a direct partner or beneficial owner. The Form W-8IMY must contain the WP or WT-EIN.

Foreign Persons. A QI is required to report payments made to a foreign partnership (WP) or foreign trust (WT) subject to NRA withholding as made to a foreign partner or beneficiary. A foreign partnership (WP) or foreign trust (WT) is subject to NRA withholding if it is a foreign partnership that has entered into a WP or WT withholding agreement with the IRS and is acting in that capacity. A withholding foreign trust (WT) is a foreign simple or grantor trust that has entered into a WP withholding agreement with the IRS and is acting in that capacity.

WP or WT withholding agreements. The WP and WT withholding agreements and the application procedures for the agreements are in Rev. Proc. 2004-21. Generally, the days the alien is in the United States for purposes of state or local income tax does not count for purposes of Form W-8BEN or W-8IMY.

Employer identification number (EIN). A completed Form SS-4 must be submitted with the application for being a WP or WT. The WP or WT will be assigned a WP-EIN or WT-EIN if a WP or WT is acting in that capacity and a written statement identifying the amounts for which it is acting. The statement is not required to contain information relating to the identity of a direct partner or beneficial owner.

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U.S. branches of foreign banks and foreign insurance companies. Special rules apply to a U.S. branch of a foreign bank subject to Federal Reserve Board supervision or a foreign insurance company subject to state regulatory supervision. If your employee is late in notifying the IRS of the QI agreement, the QI agreement becomes effective 31 days after the QI agreement is filed with the IRS. The QI must file the Form W-8BEN or W-8IMY within 30 days after the date on which it files the QI agreement.

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Collective refund procedures allow a QI to seek a refund on behalf of its direct account holders. The direct account holders, therefore, are not required to file returns with the IRS to obtain refunds, but rather may obtain them from the QI.

U.S. branches of foreign banks and foreign insurance companies. Special rules apply to a U.S. branch of a foreign bank subject to Federal Reserve Board supervision or a foreign insurance company subject to state regulatory supervision. If your employee is late in notifying the IRS of the QI agreement, the QI agreement becomes effective 31 days after the QI agreement is filed with the IRS. The QI must file the Form W-8BEN or W-8IMY within 30 days after the date on which it files the QI agreement.

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U.S. branches of foreign banks and foreign insurance companies. Special rules apply to a U.S. branch of a foreign bank subject to Federal Reserve Board supervision or a foreign insurance company subject to state regulatory supervision. If your employee is late in notifying the IRS of the QI agreement, the QI agreement becomes effective 31 days after the QI agreement is filed with the IRS. The QI must file the Form W-8BEN or W-8IMY within 30 days after the date on which it files the QI agreement.
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 in any of its states, or the District of Columbia.

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

• At all times during the tax year less than 25% in value of the corporation’s stock is owned, directly or indirectly, by foreign persons, and

• At least 20% of the corporation’s gross income is derived from sources within Guam, the CNMI, or the United States 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,

• 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 (unless exempted by a treaty) rather than the ordinary statutory 30% rate.

Other foreign organizations, associations, and charitable institutions. An organization may be exempt from income tax under section 501(a) of the Internal Revenue Code 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-Exempt Organizations—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 is a payment made to the foreign person. Generally, you may treat payments to U.S. branches of foreign banks and foreign insurance companies (discussed earlier) that are subject to U.S. regulatory supervision, as payments made to a U.S. person, if you and the U.S. branch have agreed to do so, and if their agreement is evidenced by a withholding certificate, Form W-8IMY. For this purpose, a 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 discussed later. For example, if you do not have documentation or you cannot determine the portion of a payment that is allocable to the partner or a foreign person, you must use the presumption rules.

The specific types of documentation are discussed in this section. However, you should also see the discussion, Withholding on Specific Income, as well as the instructions to the particular forms. As the withholding agent, you also may want to see the Instructions for the Requester of Forms W-8BEN, W-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 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 be used only 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 residence address provided 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 8330, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual. These forms are discussed in Pay for Personal Services Performed Under Withholding on Specific Income.

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

Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding. 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 or a partner in a partnership subject to section 1446 withholding, and

• If applicable, claim a reduced rate of, or exemption from, withholding under an income tax treaty.

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

Claiming treaty benefits. You may apply a reduced rate of withholding under a foreign person that provides a Form W-8BEN claiming a re- duced rate of withholding under an income tax treaty only if the person provides a U.S. TIN and certifies that:

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

If the foreign beneficial owner claiming a treaty benefit is related to you, the foreign bene- ficial owner also must certify on Form W-8BEN that it will file Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b), if the amount subject to NRA withhold- ing received during a calendar year exceeds, in the aggregate, $500,000.

An entity derives income for which it is claim- ing 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 corpora- tion 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.

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 state- ments accompanying documentary evidence for which you did not have actual knowledge, or reason to know that the statements were incor- rect.

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

- Income from marketable securities (dis- cussed next).
- Unexpected payments to an individual (discussed under U.S. Taxpayer Identifica- tion 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 claim- ing the benefits on income from marketable se- curities. 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 regis- tered 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) pub- licly offered and are registered with the SEC under the Securities Act of 1933.
- Income related to loans of any of the above securities.

If a payment is made outside the United States to an offshore ac- count, a payee may give you documentary evi- dence, rather than Form W-8BEN.

Generally, a payment is made outside the United States if you complete the acts neces- sary to effect the payment outside the United States. However, an amount paid by a bank or other financial institution on a deposit or account usually will be treated as paid at the branch or office where the amount is credited. An offshore account is an account maintained at an office or branch of a U.S. or foreign bank or other finan- cial institution at any location outside the United States.

If you may rely on documentary evidence given you by a nonqualified intermediary or a flow-through entity with its Form W-BIMY. This rule applies even though you make the payment to a nonqualified intermediary or flow-through entity in the United States. Generally, the non- qualified intermediary or flow-through entity that gives you documentary evidence also will have to give you a withholding statement, discussed later.

Documentary evidence. You may apply a reduced rate of withholding to income from mar- ketable securities (discussed earlier) paid outside the United States to an offshore account if the beneficial owner gives you documentary evidence in place of a Form W-8BEN. 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, and
   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 au- thorized 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 of- fice in the treaty country, and
   c. Is an official document issued by an au- thorized governmental body.

In addition to the documentary evidence, a for- eign 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 Per- son’s Claim That Income is Effectively Con- nected 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 con- nected with the conduct of a trade or busi- ness 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 partner- ship, the income claimed to be effectively con- nected 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 part- ner must submit Form W-8ECI, and attach a copy of the election, or a statement of intent to elect, to the form.

If the partner’s only effectively con- nected income is the income allocated to the partner is not making the election under section 871(d) or 882(d), the partner should provide Form W-8BEN to the partnership.

Form W-8EXP, Certificate of Foreign Govern- ment or Other Foreign Organization for United States Tax Withholding. This form is used by a foreign government, international or- ganization, foreign central bank of issue, foreign tax-exempt organization, foreign private founda- tion, or government of a U.S. possession 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 a payee. The additional information required depends on the type of intermediary or flow-through entity and the extent of the withholding responsibilities it assumes.

Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Foreign-Branches for United States Tax Does Not Assume NRA Withholding Responsibility and/or Primary Form 1099 Reporting and Backup 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 assuming 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-ship, or a nonwithholding foreign trust and that the income is not effectively con-nected 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 grantor trust and that the form is being used to transmit the required doc-umentation. 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 sign-

Responsibilities. Payments made to a QI that does not assume NRA withholding responsibility are treated as paid to its account holders, customers, and foreign payees. 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 pay-ment of a single type of income, determined in accordance with the categories of income re-port on Form 1042-S that is subject to a single withholding rate. A qualified intermediary that requires you to provide it 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 Form 1099 reporting and backup withholding responsibility. For the alter-native procedure for providing rate pool informa-tion 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 as- sumes primary NRA withholding responsi-bility and/or primary Form 1099 and backup withholding responsibility, and
3. Provide sufficient information for you to al-locate the payment to a withholding rate pool.

The extent to which you must have withhold-ing rate pool information depends on the with-holding 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 pay-ment 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 and/or 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 associate the payment with withholding rate pools.

Example. You make a payment of divi-dends 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 allo-cates 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 re-port 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 part-nership 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 passthrough 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. Also see Revenue Procedure 2004-21.

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 or grantor trust.
2. It is either:
   a. A direct account holder of the QI, or
   b. An indirect account holder of the QI that is a direct partner, beneficiary, or owner of a partnership or trust to which the QI has applied this rule.

For information on these rules, see section 4A.02 of the QI agreement. This is found in Appendix 3 of Revenue Procedure 2003-64. Also see Revenue Procedure 2005-77.

Nonqualified Intermediaries

If you are making a payment to an NQI, foreign flow-through entity, or U.S. branch that is using Form W-8IMY to transmit information about the branch’s account holders or customers, you can treat the payment (or a 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. A WP can allocate the payment to a valid withholding rate pool, the payment relates to valid documentation, and the payment on a 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:

(a) inform you, on its withholding statement, that it is using the alternative procedure; and
(b) obtain your consent. You must receive the withholding statement with all the required information (other than item 5) prior to making the payment.

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. If an NQI uses the alternative procedure, it must provide you with withholding rate pool information, as opposed to individual allocation information. A withholding rate pool is a payment of a single type of income (as determined by the income categories on Form 1042-S) that is subject to a single rate of withholding. For example, an NQI that has foreign account holders receiving royalties and dividends, both subject to the 15% rate, will provide you with information for two withholding rate pools (one for royalties and one for dividends). The NQI must provide you with the payee specific allocation information (information allocating each payment to each payee) by January 31 following the calendar year of payment.

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

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

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

Withholding Foreign Partnerships

If you are making payments to a WP, you do not have to withhold if the WP is acting in that capacity. The WP must assume NRA withholding responsibility for amounts (subject to NRA withholding) that are distributed to, or included in the distributive share of, any direct partner. The WP must withhold the amount required to be withheld. A WP must provide you with a Form W-8IMY that certifies that the WP is acting in that capacity and a written statement identifying the amounts for which it is so acting. The Form W-8IMY must contain the WP’s TIN.

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 must withhold on the partner’s distributive share on the earlier of the date that the partnership must mail or otherwise provide to the partner a Schedule K-1 (Form 1065) or the due date for furnishing the statement (whether or not the WP is required to furnish the statement).

The WP may determine the amount of withholding based on a reasonable estimate of the partner’s distributive share of income subject to withholding for the year. The WP must correct the estimated withholding to reflect the actual distributive share on the earlier of the dates mentioned in the preceding paragraph. If the due date is after the due date (including extensions) for filing the WP’s Forms 1042 and 1042-S for the calendar year in which the distribution was made, the WP 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 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 Provisions) 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 or grantor trust.
Responsibilities of WT. The WT must withhold 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 distributed, the WT must withhold on the beneficiary’s or owner’s distributive share on the earlier of the date that the trust must mail or otherwise provide to the beneficiary or owner 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 withholding based on a reasonable estimate of the beneficiary’s or owner’s distributive share of income subject to withholding for the year. The WT must correct the estimated withholding to reflect the actual distributive share on the earlier of the dates mentioned in the preceding paragraph. If that date is after the due date (including extensions) for filing the WT’s Forms 1042 and 1042-S for the calendar year, the WT may withhold and report any adjustments in the following calendar year.

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

Form 1042-S reporting. A WT can elect to report payments made to its direct beneficiaries or owners on a pooled basis rather than reporting payments to each direct beneficiary or owner. This election must be made when the withholding 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 reporting election can treat partners of certain smaller partnerships and beneficiaries or owners of certain smaller trusts (Joint Account Provision) 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 Appendix 2 of Revenue Procedure 2003-64. Also see Revenue Procedure 2004-21.

Related partnerships and trusts. Under a special rule, a WT that has made a pooled reporting election can treat 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, 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 Appendix 2 of Revenue Procedure 2003-64. Also see Revenue Procedure 2005-77.

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, pass-through partners or indirect partners.

You must treat payments made to a nonwithholding foreign partnership as made to the partnership. The partnership must provide you with a Form W-8IMY (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 capacity. 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-8IMY 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-8IMY must contain the WT-EIN.

Reasons 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 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 nonwithholding foreign trust as made to the beneficiaries of a simple trust or the owners of a grantor trust. The trust must provide you with a Form W-8IMY (with Part VI completed), a withholding statement identifying the amounts, the withholding certificates or documentary evidence of the beneficiaries or owners, and the information shown earlier under Withholding statement under Nonqualified Intermediaries.

Standards of Knowledge

You must withhold in accordance with the presumption rules (discussed later) if you know or have reason to know that a Form W-8 or documentary evidence provided by a payee is unreliable 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.

Financial institutions (including a regulated investment company) are treated as having reason to know documentation is unreliable or incorrect for payments on marketable securities.
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:

1. 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.
2. The Form W-8 contains any information that is inconsistent with the account holder’s claim.
3. The Form W-8 lacks information necessary to establish entitlement to a reduced rate of withholding, if a reduced rate is claimed, or
   a. 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. You receive the Form W-8 from an individual 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.
2. 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.
3. 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
   a. You obtain a written statement from the beneficial owner that reasonably establishes its entitlement to treaty benefits.
4. 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:

1. The documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence, or
2. The documentary evidence contains information that is inconsistent with the account holder’s claim of a reduced rate of withholding, or
3. You have account information that is inconsistent with the account holder’s claim of a reduced rate of withholding, or
4. The documentary evidence lacks information necessary to establish a reduced rate of withholding.
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 a U.S. address or account maintained in the United States.
6. The only mailing or residence address on the form that is inconsistent with the claims made by the account holder, or
   a. You possess or obtain documentary evidence provided after December 31, 2001.
   b. You possess or obtain documentary evidence that substantiates that the foreign person is unreliable or incorrect if:
   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.
7. 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.

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:

1. The permanent residence address on the Form W-8BEN is not in the treaty country or the beneficial owner notifies you of a new permanent residence address that is not in the treaty country,
2. 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
3. The account holder has standing instructions for you to pay amounts from its account to an address or an account not in the treaty country.

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:

1. The only mailing or residence address on documentary evidence provided after December 31, 2000, is an address at a financial institution (unless the financial institution is the beneficial owner), an in-care-of address, or a P.O. box, or
2. You have a mailing or residence address for the account holder in the United States or if the account holder notifies you of a new address in the United States, or
3. The account holder has standing instructions directing you to pay amounts from the account to an address or account maintained in the United States.

You may, however, rely on 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. 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. You have reason to know that a Form W-8BEN or Form W-8EXP is unreliable or incorrect to establish a reduced rate of withholding, if a reduced rate is claimed, or
   a. You possess or obtain documentary evidence that substantiates that the foreign person is unreliable or incorrect if:
   b. 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
   c. You obtain a written statement from the beneficial owner that reasonably establishes its entitlement to treaty benefits.
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a. You possess or obtain additional documentary evidence (that does not contain a U.S. address) supporting the claim of foreign status and a reasonable explanation in writing supporting the account holder’s foreign status.

b. You 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

c. 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 filled 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:

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

b. You obtain a valid Form W-8-B 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

c. 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.

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 for you to pay amounts from its account to an address or account not in the treaty country.

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

1. The mailing or residence address is outside the treaty country and:

a. You possess or obtain additional documentary evidence supporting the account holder’s claim of residence in the treaty country (and the documentary evidence does not contain an address outside the treaty country, a P.O. box, an in-care-of address, or the address of a financial institution),

b. You possess or obtain documentary evidence that establishes that the account holder is an entity organized in a treaty country, or

c. You obtain a valid Form W-8B that contains a permanent residence address and a mailing address in the applicable treaty country.

2. You have instructions to pay amounts outside the treaty country and the account holder gives you a reasonable explanation, in writing, establishing residence in the applicable treaty country.

Indirect Account Holders

A financial institution that receives documentation from a payee through an NQI, a flow-through entity, or a U.S. branch of a foreign bank or insurance company subject to U.S. 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 to the extent the information does not support the claims made for a payee. You may not treat a payee as a foreign person if a U.S. address is provided for the payee. You may not treat a person as a resident of a country with which the United States has an income tax treaty if the address for the person is outside the treaty country.

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

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

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

Presumption Rules

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

The presumption rules apply to determine the status of the person you pay as a U.S. or foreign person and other relevant characteristics such as whether the payee is a beneficial owner or intermediary, and whether the payee is an individual, corporation, partnership, or trust.

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.
Income Subject to NRA Withholding

This section explains how to determine if a pay- ment is subject to NRA withholding.

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

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

In addition, a payment is subject to NRA with- holding if withholding is specifically required, even though it may not constitute U.S. source income or FDAP income. For example, corporate distributions may be subject to NRA with- holding 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 require- ments. See Interest, later.
- Bank deposit interest that is not effectively connected with the conduct of a U.S. trade or business. See Interest, later.
- Original issue discount on certain short-term obligations. See Original issue discount, later.
- Nonbusiness gambling income of a non- resident alien playing blackjack, baccarat, craps, roulette, or big-6 wheel in the United States. See Gambling winnings, later.

- Amounts paid as part of the purchase price of an obligation sold between inter- est 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 is- sued 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 residents, 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 per- formed 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 for- eign corporation or foreign partnership is for- eign-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 effect- ively connected with the conduct of a U.S. trade or business. This applies to a foreign partner- ship 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, pay- ment for personal services performed in the United States is not considered income from sources within the United States. For informa- tion on this exception, see Pay for Personal Services Performed, later.

If the income is for personal services per- formed partly in the United States and partly outside the United States, you must make an accurate allocation of income for services per- formed in the United States based on the facts and circumstances. In most cases, you can 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 follow- ing fraction:

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

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>
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<td>Payee’s status</td>
<td>1.1441-1(b)(3); 1.6049-5(d)</td>
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<td>Foreign tax-exempt organizations (including private foundations)</td>
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Chart B. Summary of Source Rules for FDAP Income

<table>
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<th>IF you have:</th>
<th>THEN the source of that income is determined by:</th>
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<td>Pay for personal services</td>
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<td>Dividends</td>
<td>The type of corporation (U.S. or foreign)</td>
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<td>Interest</td>
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<td>Rents</td>
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<td>Royalties — Patents, copyrights, etc.</td>
<td>Where the property is used</td>
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<td>Royalties — Natural resources</td>
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<tr>
<td>Pensions: Investments attributable to contributions</td>
<td>Where the services were performed while a nonresident alien</td>
</tr>
<tr>
<td>Pensions: Investment earnings on contributions</td>
<td>The location of pension trust</td>
</tr>
<tr>
<td>Scholarships and fellowship grants</td>
<td>Generally, the residence of payer</td>
</tr>
</tbody>
</table>
earned on a voyage along the coast of the United States are regarded as from sources in the United States. Wages or salaries for personal services performed in a mine or on an oil or gas well located or being developed on the continental shelf of the United States are treated as from sources in the United States.

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

Crew members. Income from the performance of services by a nonresident alien in connection with the individual’s temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a U.S. possession is income from U.S. sources.

Scholarships, fellowships, and grants. Scholarships, fellowships, and grants are sourced according to the residence of the payer. Those made by entities created or domiciled in the United States are generally treated as income from sources within the United States. However, see Activities outside the United States, next. Those made by entities created or domiciled in a foreign country are treated as income from foreign sources.

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

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

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

Employer contributions to a defined benefit plan covering more than one individual are not made for the benefit of a specific participant, but are made based on the total liabilities to all participants. All funds held under the plan are available to provide benefits to any participant. If the payment is from such a plan, you can use the method in Rev. Proc. 2004-37 to allocate the payment to sources in and out of the United States. Rev. Proc. 2004-37, 2004-26 I.R.B.1099, is available at www.irs.gov/info/2004-26_.IRB/ar08.html

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

Fixed and Determinable Annual or Periodical Income (FDAP)

FDAP 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 FDAP 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 during the tax year.
- A commission paid for a single transaction.
- The distributable net income of an estate or trust that is FDAP income and must be distributed currently, or has been paid or credited during the tax year.
- FDAP income distributed by a partnership that, or such an amount that, although not actually distributed, is includible in the gross income of a foreign partner.
- Taxes, mortgage interest, or insurance premiums paid to or for the account of, a nonresident alien landlord by a tenant under the terms of a lease.
- Publication rights.
- Prizes awarded to nonresident alien artists for pictures exhibited in the United States.
- Purses paid to nonresident alien boxers for prize fights in the United States.
- Prizes awarded to nonresident alien professional golfers in golfing tournaments in the United States.

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

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

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

Racing purses. Racing purses are FDAP income and racetrack operators must withhold 30% on any purse paid to a nonresident alien racehorse owner in the absence of definite information contained in a statement filed together with a Form W-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 of tax at 30% on the purses if the owner gives you Form W-8ECI, which provides that the income is effectively connected with the conduct of a U.S. trade or business and that the income is includible in the owner’s gross income.

Covenant not to compete. Payment received for a promise not to compete is FDAP income. Its source is the place where the promisor forfeited his or her right to act. Amounts paid to a nonresident alien for his or her promise not to compete in the United States are subject to 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 establishing whether FDAP income and similar amounts are effectively connected with a U.S. trade or business include:

- Whether the income is from assets used in, or held for use in, the conduct of that trade or business, or...
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• 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 under a contract or agreement 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 income or gain economically equivalent to such amounts, is attributable to the U.S. office and is 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:

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

This withholding exemption applies to income 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), or
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 or agreement to render 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 some time during the tax year is owned, directly or indirectly, by or for an individual who has performed, is to perform, or is promised to perform, the services called for under the contract.

Notional principal contract income. Payment of an amount 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 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 income if 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 subject to NRA withholding. When to withhold, excise tax on principal contract income, 1042-S if it is effectively connected with the conduct of a trade or business in the United States. The original issue discount subject to NRA withholding 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, or other obligations of U.S. corporations, partnerships, 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 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 payment 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 is not subject to NRA withholding even, 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 was not included in the obligation price at the time 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.
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 NFA withholding. To qualify as portfolio interest, the interest must be otherwise subject to withholding. A portfolio interest 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 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-8EXP from an entity that completes the Form W-8EXP in an entity that completes the Form W-8EXP for other purposes is also acceptable) or, if allowable, valid documentary evidence. See Documentation, earlier.

A registered obligation is 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-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.

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>Taxable part of U.S. scholarship or fellowship grant paid to holder of “F” or “M” visa (see Scholarship and Fellowship Grants, later)</th>
<th>14%</th>
</tr>
</thead>
<tbody>
<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>
<tr>
<td>Distributions of effectively connected income to foreign partners by publicly traded partnerships (see Publicly Traded Partnerships, later)</td>
<td>35%</td>
</tr>
<tr>
<td>Dispositions of U.S. real property interests (see U.S. Real Property Interest, later)</td>
<td>10% *</td>
</tr>
<tr>
<td>Dividends paid to Puerto Rico corporation</td>
<td>10%</td>
</tr>
<tr>
<td>All other income subject to withholding</td>
<td>30%</td>
</tr>
</tbody>
</table>

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

**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 NFA withholding. To qualify as portfolio interest, the interest must be otherwise subject to withholding. A portfolio interest 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 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-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.

A registered obligation is 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-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.

*35% in the case of certain distributions by corporations, partnerships, trusts, or estates.
loss and the excess inclusion amount on Sched-
ule 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 re-
cieved 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 in-
terest.
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 follow-
ing foreign persons must be included in that person’s income at the same time as other in-
come from the entity 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 or-
ganization.

The entity must withhold on the excess inclu-
sion.


Interest paid to controlling foreign corpora-
tions (Income Code 3). A treaty may permit a reduced rate or exemption for interest paid by a domestic corporation to a controlling foreign corpor-
ation. The interest may be on any type of debt including open or unsecured accounts pay-
able, notes, certificates, bonds, or other ev-
idence of indebtedness.

Interest paid by foreign corporations (In-
come 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 do-
mestic corporation (without considering the “payer having income from abroad” exclusion). As a result, the interest paid to foreign payees is generally subject to NRA withholding. In addi-
tion, if “allocable interest” exceeds the branch

Interest from foreign business arrange-
ments. In general, interest received from a resident alien individual or a domestic corpora-
tion 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 3 tax years of the payer before 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 consid-
ered to be a related person (see section 861(c) of the Internal Revenue Code). A foreign benefi-
ciary 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 withhold-
ing. This does not apply if the sale or exchange is paid as a plan provided for the 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.

Interest on deposits (Income Code 29). For-
eign 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 super-
vised 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 re-
quire 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.
Commonwealth of Puerto Rico is 10%, rather than 30% if:
• At all times during the tax year less than 25% in value of the Puerto 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 to not withhold on the part of the distribution that:
1. Represents a nontaxable distribution payable in stock or stock rights,
2. Represents a distribution in part or full payment in exchange for stock,
3. Is not paid out of current or accumulated earnings and profits, based on a reasonable estimate of the anticipated amount of earnings and profits for the tax year of the distribution made at a time reasonably close to the date of the distribution,
4. Represents a capital gain dividend (use Income Code 36) or an exempt interest dividend by a regulated investment company, or
5. Is subject to withholding under section 1445 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:
1. Any real estate investment trust (REIT), or
2. Any regulated investment company (RIC) that is a U.S. real property holding corporation if the distribution by the RIC is attributable to a distribution received by the RIC from a REIT.

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 not 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.

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 3 tax years before the year in which the dividends are declared, or shorter period if the corporation was not in existence for 3 years. The percentage is found by dividing the corporation’s foreign gross income for the testing period by the corpora-tion’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 other foreign shareholder who agrees to treat the amount as a taxable dividend, you must pay and report on Form 1042 and Form 1042-S any withholding tax you would have withheld if the dividend had been actually paid.

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 prefer-ential rate applies only if the shareholder directly owns the required percentage, although some treaties permit the percentage to be met by direct or indirect ownership. The preferential rate may apply to the payment of a deemed dividend under section 304(a)(1) of the Code. Under some treaties, the preferential rate for dividends qualifying for the direct dividend rate applies only if no more than a certain percentage of the paying corporation’s gross income for a certain period consists of dividends and interest other than dividends and interest from subsidiar-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-8BEN 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-8BEN. However, a withholding account statement 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 prof-its tax for any tax year, withholding is not re-quired 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. How-ever, you may apply a reduced rate of with-holding 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 do-mestic 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, trade-marks, trade brands, franchises, and other like property,
• Gains on certain transfers of all substantial rights to, or an undivided interest in, pat-ents if the transfers were made before Oc-tober 5, 1966, and
• Certain gains from the sale or exchange of original issue discount obligations issued after March 31, 1972. For more on with-holding on original issue discount obliga-tions, see interest, earlier.

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

Unless you have reason to believe other-
amount of gain. The Form W-8 or documentary evidence must show the beneficial owner’s ba-
sis 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 with-
holding.

Royalties
In general, you must withhold tax on the pay-
ment of royalties from sources in the United
States. However, certain types of royalties are
given reduced rates or exemptions under some
tax treaties. Accordingly, these different types of
royalties are treated as separate categories for
withholding purposes.

Industrial royalties (Income Code 10). This
category of income includes royalties for the use
of industrial, scientific, or trade secrets, se-
cret 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 informa-
tion concerning industrial, commercial, and scien-
tific know-how.

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

Other royalties (for example, copyright, re-
cording, 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 copy-
rights.

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 in-
come, 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 roy-
alties from mines, wells, or other natural depos-
tis, as well as ordinary rents for the use of real
property. For withholding that applies to the dis-
position 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 pen-
sions, annuities, and alimony of foreign payees.
Pensions and annuities. Generally, you
must withhold tax on the gross amount of pen-
sions 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 with-
holding 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 to 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
I.R.B. 1099 is available at www.irs.gov/irb/
2004-26, IRRD08.html.

The withholding rules that apply to payments
to foreign persons generally take precedence
over any other withholding rules that would ap-
ply 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 and the payment is:
1. For the nonresident’s personal services
performed outside the United States, or
2. For personal services by a nonresident in-
dividual 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 per-
formed for:
   a. A nonresident alien individual, foreign
   ownership, 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 benefici-
   ary developing country under the Trade Act
   of 1974.

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

Alimony payments. Generally, alimony pay-
ments made by U.S. resident aliens to nonresi-
dent 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 pay-
ments. 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. annuity administrator of a non-
resident 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 re-
search, and which does not constitute compen-
sation for personal services. Whether a fellow-
ship grant from U.S. sources is subject to
NRA withholding depends on the nature of the
payments and whether the recipient is a candi-
date for a degree. See Scholarships, fellow-
ship grants, 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 indi-
vidual 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 fol-
lowing expenses:
   • Tuition and fees required for enrollment
   or attendance at an educational organization,
and
   • Fees, books, supplies, and equipment re-
   quired for courses of instruction at the ed-
   ucational organization.

The payment of a qualified scholarship to a
nonresident alien is not reportable and is not
subject to NRA withholding. However, the por-
tion 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 de-
voted 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 non-
resident aliens temporarily present in the United
States in “F,” “J,” “M,” or “Q” nonimmigrant sta-
tus. Payments made to nonresident alien indi-
viduals in any other immigration status are
subject to 30% withholding.

Nondegree candidate. If the person receiving
the scholarship or fellowship grant is not a can-
date for a degree, and is present in the United
States in “F,” “J,” “M,” or “Q” nonimmigrant sta-
tus, 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,
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c. A federal, state, or local government agency, or
d. An international organization, or a bina-
tional or multinationa1 educational or cultural organization created or contin-
ued by the Mutual Educational and Cul-

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

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

The student or grantee must complete Form W-4 annually following the instructions given here and forward it to you, the payer of the scholarship, or your designated withholding agent. You may rely on the information on Form W-4 unless you know or have reason to know it is incorrect. You must file a Form 1042-S (dis-
cussed 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 to file a return, the individual must attach a statement to the Form W-4 saying that a timely U.S. income tax return will be filed.

A prorated portion of allowable personal ex-
ceptions 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 2010) by the number of days the student or grantee expects to be in the United States during the year. The prorated ex-
ception 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 away-from-home expenses or other itemized deductions (discussed later).

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

• A resident of Canada, Mexico, or South Korea,
• A U.S. national (a citizen of American Sa-
moa, 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 proce-
dure, 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 allow-
ance should be shown on line A of the work-
sheet in addition to the personal exemption amount.

The student or grantee can claim other ex-
ceptions 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 contrib-
utions, casualty losses, and moving expenses. He or she should include these anticipated expenses on lines C and D, as appropriate.

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 treaty.

Lines A through D of the Personal Al-
lowances Worksheet are added and the total should be shown on line H.

The payer of the grant or scholarship must review the Form W-4 to make sure all the neces-
sary 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 statu-
tory 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 deduc-
tion 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 stu-
dent or grantee, enter the taxable part (gross amount less qualified scholarship) of the schol-
arity 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 is also the recipient of a scholarship or fellowship grant usually is subject to graduated withholding ac-
cording to the rules discussed later in Wages Paid to Employees — Graduated Withholding. This includes taxable amounts an individual who is a candidate for a degree receives for teaching, doing research, and carrying out other part-time employment required as a condition for receiv-
ing the scholarship or fellowship grant.

Grants given to students, trainees, or re-
searchers which require the performance of per-
sonal services as a necessary condition for

disbursing the grant do not qualify as scholar-
ship or fellowship grants. Instead, they are com-
monly considered personal services rendered 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 that are really wages. It is the responsibility of the withholding agent to determine whether a grant is "wages" or a "scholarship or fellowship," and to report and withhold on the grant accordingly. An alien stu-
dent, trainee, or researcher who is receiving a grant or scholarship treaty exemption against income which has been reported to him or her on a Form W-2 as wages.

Per diem paid by the U.S. Government. Per diem, a sum of money paid by the U.S. Gover-
ment (directly or by contract) to a nonresident alien engaged in a training program in the United States funded by the U.S. Agency for Interna-
tional Development subject to 14% or 30% withholding. This is true even if the alien is subject to income tax on those amounts.

Tax treaties. Many treaties contain exemp-
tions from U.S. taxation for scholarships and fellowships. Although usually found in the stu-
dent articles of the tax treaties, many of these exemptions also apply to research grants re-
ceived by researchers who are not students. Table 2 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 payer of the grant. However, a scholarship or fellowship recipient who receives both wages and a scholarship or fellowship from the same institution can claim treaty exemptions on both kinds of income on Form 8233.

The scholarship or fellowship recipient who is claiming a treaty exemption must provide you with 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 inid-
ual 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 due to a provision known as a "saving clause." However, an exception to the saving clause may permit an exemption from tax to continue for scholarship or fellowship grant 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 qualifies for the exemption from tax.
- Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under the Internal Revenue Code, a student may become a resident alien for tax purposes if he or her stay in the United States exceeds 5 calendar years. Hence, 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 grantors that reside in the United States are treated as income from sources within the United States. Those made for activities conducted outside the United States by a foreign person or by grantors that reside outside the United States are treated as income from foreign sources. These provisions do not apply to salaries or other pay for services.

**Grant.** The purpose of a grant must be to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee. A grant must also be an amount which the United States, or a state, the District of Columbia, or a political subdivision of a state, or the United States (or one of its instrumentalities or agencies), a state (or a political subdivision of a state), or the District of Columbia for an activity (or past activity in the case of an achievement award) undertaken in the public interest.

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

**Pay for Personal Services Performed**

This section explains the rules for withholding tax from pay for personal services. You generally must withhold tax at the 30% rate on compensation you pay to a nonresident alien individual for labor or personal services performed in the United States, unless that pay is specifically exempted from withholding or subject to a withholding agreement or receives a final payment exemption (discussed later). Under the Internal Revenue Code, a nonresident alien contractor as contrasted with its exceptions. of pay includes payments for professional services, such as fees of an attorney, physician, or accountant made directly to the person performing the services. The income 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% withholding is the income from performing independent personal services received by nonresident aliens for activities conducted outside the United States. The income from performing independent personal services received by an alien is treated as if it were subject to withholding at the 30% rate. Under the Internal Revenue Code, you must withhold tax at the 30% rate on compensation paid for:

- Services performed by a resident alien contractor as contrasted with its exceptions.
- Personal services you pay to a nonresident alien contractor as contrasted with its exceptions.
- Personal services paid to a nonresident alien contractor as contrasted with its exceptions.

**Services Performed**

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

- Wages Paid to Employees—Graduated Withholding, later.
- Pay for personal services (In- come Code 16). Independent personal services (a term commonly used in tax treaties) are personal services performed by an independent nonresident alien contractor as contrasted with those performed by an employee. This category of pay includes payments for professional services, such as fees of an attorney, physician, or accountant made directly to the person performing the services. The income subject to NRA withholding and reporting as follows.

**Example.** Hans Schmidt, who is a resident of South Korea, has a contract to work for a U.S. company in the United States for 100 days during 2010 before returning to his country.

He earned $6,000 for the services performed, and $6,000 for the services performed (not considered wages) in the United States. Hans is married and has three dependent children. 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

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Publication 515 (February 2010)

Employer-employee relationship. 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 provided is true, and that to his or her knowledge no relevant information has been omitted.

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

The Commissioner or his delegate will provide the alien with a letter to you, the withholding agent, stating the amount of the final payment of compensation for personal services that is exempt from withholding and the amount that would be withheld if a final payment exemption is not granted. The amount that would be withheld may be paid to the alien even if the amount of final payment is determined after the close of the tax year. It must be paid to the alien in one payment and not paid in installments. The amount that would be paid to the alien is subject to graduated withholding in the same manner as the rest of his earnings.

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) was paid to a nonresident alien contractor performing personal services of a nonresident alien who is engaged in the United States. Tax must be withheld at 30% on the rest of his earnings, $1,000 ($6,000 – $5,000).

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 paid to a nonresident alien contractor performing personal services of a nonresident alien who is engaged 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 in the United States during the tax year in the conduct of a U.S. trade or business may be wholly or partially exempt from withholding at the statutory rate. This exemption applies to the last payment of compensation, other than wages, for personal services rendered in the United States that the alien expects to receive from any withholding agent during the tax year.

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

- A statement by each withholding agent from whom amounts of gross income effectively connected with the conduct of a U.S. trade or business have been received by the alien during the tax year. It must show the amount of income paid and the amount of tax withheld. The withholding agent must sign the statement and include a declaration that it is made under penalties of perjury.
- A statement by the withholding agent from whom the final payment of compensation for personal services will be received showing the amount of final payment and the amount that would be withheld if a final payment exemption is not granted. The withholding agent must sign the statement and include a declaration that it is made under penalties of perjury.
- A statement by the alien that he or she does not intend to receive any other amounts of gross income effectively connected with the conduct of a U.S. trade or business during the current tax year.
- The amount of tax that has been withheld (or paid) under any other provision of the Code or regulations for any income effectively connected with the conduct of a U.S. trade or business during the current tax year.
- The amount of any outstanding tax liabilities, including any interest and penalties, from the current tax year or prior tax periods.
- The provision of any income tax treaty under which a partial or complete exemption from withholding may be claimed, the country of the alien’s residence, and a statement of sufficient facts to justify an exemption under that treaty.
- The alien must give a statement, signed and verified by a declaration that it is made under the penalties of perjury, that all the information provided is true, and that to his or her knowledge no relevant information has been omitted.

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 are generally not subject to the 30% withholding if the wages are subject to graduated withholding.

Also, the 30% withholding does not apply to pay for personal services performed as an employee by an employer if it is effectively connected with the conduct of a U.S. trade or business and is specifically exempted from the definition of wages. 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 employee-employee relationship exists, it does not matter what the parties call the relationship. It does not matter whether the individual works full-time or part-time.

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

Employee. An employee generally includes any individual who performs services if the relationship between the individual and the person for whom the services are performed is the legal relationship of employer and employee. This includes an individual who receives a supplemental unemployment 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, an institution during any year. Large organizations may wish to prepare their Forms W-2 on computer, using a word processing program that can produce the required form and print it on Form W-2 paper. Large employers may also wish to use a service bureau to complete Form W-2 for them. The service bureau may also make any required corrected Form W-2 if a correction is needed. W-2s are due on January 31 of the year following the calendar year to which they apply. A copy of Form W-2 must be furnished to each employee on or before January 31 of the year following the year to which the wages relate. The employer also must report the wages subject to NRA withholding on Form W-2. For more information, see the instructions for these forms.

Services performed outside the United States. Compensation paid to a nonresident alien (other than a resident of Puerto Rico, the Virgin Islands, or the Northern Mariana Islands) is not considered wages if the pay received is not considered wages (for graduated withholding) includes, but is not limited to, the following items:

- Agricultural labor if the total cash wages paid to an individual worker during the year is less than $150 and the total paid to all workers 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 employee and the actual employer when determining whether the pay received is considered to be wages.

Referring- to subsection 7804(b)(3) of the Code. The employer must pay FUTA and file Form 940 for the calendar year in which the trust fund exists, subject to withholding. Copies of this form to the employee. Wages exempt from tax under a tax treaty are reported on Form 1042-S and not in block 1 of Form W-2. Wages exempt from tax under a tax treaty may still be reported in the state and local wages blocks of Form W-2 if such wages are subject to state and local taxation. For more information, see the instructions for these forms.

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

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

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

Wages paid to nonresident alien students, teachers, researchers, trainees, and other nonresident aliens in “F-I,” “J-I,” “M-I,” or “Q” non-immigrant status are not subject to FUTA tax.

Students and business apprentices from India. Students and business apprentices who are eligible for the benefits of Article 21(2) of the United States-India income tax treaty can claim additional withholding allowances on line 5 for their spouses. In addition, they can claim an additional withholding allowance for each dependent who has become a resident alien.

Determining amount to withhold. Employers are required to add an amount to the wages of a nonresident alien employee solely for the purpose of calculating income tax withholding. The specific amounts depend on the payroll period. These amounts can be found in Withholding Adjustment for Nonresident Aliens in chapter 9 of Publication 15 (Circular E). This adjustment does not apply to students and business apprentices from India.

Do not include additional amount on the employer’s Form W-2, Wage and Tax Statement.

Reporting requirements for wages and withheld taxes paid to nonresident aliens. The employer must report the amount of wages and deposits of withheld income and social security and Medicare taxes by filing Form 8141. House- hold employers should see Publication 926, Household Employer’s Tax Guide, for information on reporting and paying employment taxes on wages paid to household employees.

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

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

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

Wages paid to nonresident alien students, teachers, researchers, trainees, and other nonresident aliens in “F-I,” “J-I,” “M-I,” or “Q” non-immigrant status are not subject to FUTA tax.
Pay for dependent personal services (Income Code 17). Dependent personal services are personal services performed in the United States by a nonresident alien individual as an employee rather than as an independent contractor.

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

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

**Exception 1.** Compensation paid for labor or personal services performed in the United States is deemed non-income from sources within the United States and is exempt from U.S. income tax if:

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

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

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

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

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

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

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

- Perform duties in transportation services (such as a railroad, bus, ferry, steamboat, aircraft, or other type) that work in the United States and Canada or Mexico, or
- Perform duties connected with an international project, relating to the construction, maintenance, or operation of a road, viaduct, dam, or bridge crossing by, or crossing, the boundary between the United States and Canada or the boundary between the United States and Mexico.

To qualify for the exemption from withholding during a tax year, a Canadian or Mexican resident must give the employer a statement with name, address, and identification number, and certifying that the resident:

- Is not a U.S. citizen or resident.
- Is a resident of Canada or Mexico, which ever applies, and
- Expects to perform the described duties during the tax year in question.

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

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

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

Compensation paid for either of the following types of services is not subject to withholding if the alien does not expect to be a resident of Puerto Rico during the entire tax year.

- Services performed outside the United States but in Puerto Rico by a nonresident alien who is a resident of Puerto Rico for an employer other than the United States or one of its agencies,
- Services performed outside the United States by a nonresident alien who is a resident of Puerto Rico, as an employee of the United States or any of its agencies.

To qualify for the exemption from withholding for any tax year, the employee must give the employer a statement showing the employee's name and address and certifying that the employee:

- Is not a citizen or resident of the United States, and
- Is a resident of Puerto Rico who does not expect to be a resident for that entire tax year.

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

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

**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 work at the institution.

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

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

**Example.** A nonresident alien is issued a visa to teach for a university. While in the United States, he takes a part-time job working for a chemical company. The wages earned while teaching at the university are exempt from social security and Medicare taxes. The wages earned while working at the university are subject to social security and Medicare taxes. If the 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 asylee immigration status are fully liable for social security and Medicare taxes unless an exemption applies from one of the totalization
agreements in force between the United States and several other nations.

The Social Security Administration publishes the complete texts and ex- planatory pamphlets of the totalization agreements which are available by calling 1-800-772-1213 or by visiting the Social Security Administration web site at www.socialsecurity.gov/international.

Tax treaties. Under most tax treaties, pay for teaching or research is exempt from U.S. income tax and from withholding for a specified period of time when paid to a professor, teacher, or researcher, who was a resident of the treaty country immediately prior to entry into the United States and who is not a citizen of the United States (see Table 2). The U.S. educational insti- tution paying the compensation must report the amount of compensation paid each year which is exempt from tax under a tax treaty on Form 1042-S. The employer should also report the compensation in the state and local wages blocks of Form W-2 if the wages are subject to social security and Medi- care taxes. Claimants must give you either Form W-8BEN or 8233, as applicable, to obtain these treaty benefits.

Pay during studying and training (Income Code 19). This category refers to pay (as contrasted with remittances, allowances, or other forms of scholarships or fellowship grants—see Scholarships and Fellowship Grants, chap. 2) for personal services performed while a nonresident alien is temporarily in the United States as a student, trainee, or appren- tice, or while acquiring technical, professional, or business experience.

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

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

Example. A nonresident alien is admitted to the United States to study surveying. As part of her course, she applies to a surveyor. She state and local taxes, or in the social security and Medicare wages blocks of Form W-2 if the wages are subject to social security and Medi- care taxes. Claimants must give you either Form W-8BEN or 8233, as applicable, to obtain these treaty benefits.

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 em- ployer.

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

Tax treaties. Many tax treaties provide an exemption from U.S. income tax and withholding on compensation paid to nonresident alien students or trainees during training in the United States for a limited period. In addition, some tax treaties provide an exemption from tax and withholding for compensation paid by the U.S. Government or its contractor to a nonresi- dent 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, compensation withheld from pay who is a U.S. resident, a U.S. Government agency, or its contractor must report the amount paid on Form 1042-S.

Claimants must give you either Form W-8BEN 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 cate- gory is assigned these payments for withholding purposes. This category includes payments made for public performances (such as theater, motion picture, radio, or televi- sion artists, or musicians) or artists.

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, ear- lier, for more information. However, in any situa- tion where the nature of the relationship between the payer of the income and the artist is not ascertainable, you should with- hold at a rate of 30%.

Central withholding agreement (CWA). Nonresident alien entertainers and athletes who perform 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 artist or entertainer, a designated withholding agent, and the IRS. Under no cir- cumstances will a CWA reduce taxes withheld to less than the anticipated amount of income tax liability.

Nonresident alien entertainers or athletes re- questing a CWA must submit a written applica- tion 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 keep the IRS informed of any changes in the agreement. The designated withholding agent will be re- quired to file Form 1042 and Form 1042-S for the year in which nonresident aliens are paid to a nonresident alien covered by the CWA. The designated withholding agent will issue Form 1042-S to each nonresident alien artist and entertainer affected by the agreement.

A request for a CWA must be submit- ted 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 M/S 0175 110 City Parkway Las Vegas, NV 89106

Tax treaties. Under many tax treaties, com- pensation paid to public entertainers or athletes (as defined by treaty) of the following foreign countries is not taxable by the United States:

Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Netherlands, Russia, Slovak Repu- blic, Slovenia, South Africa, Spain, Sweden,
Tunisia, Turkey, Ukraine, and the United King-
dom.

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 Identi-
fication Numbers, later, for when you can ac-
cept a Form W-8BEN without a TIN.

Transportation income. U.S. source gross transpor-
tation 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 in-
cludes 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.

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

Eligible deferred compensation items (In-
come Code 36). In general, you must withhold tax at a 30% rate on any direct or indirect distri-
bution from a nongrantor trust. The amount sub-
ject to tax is the amount of the payment that would have been included in the nonresident alien’s U.S. gross income if he had continued to be taxed as a U.S. citizen or resident.

Distributions from a nongrantor trust (In-
come Code 39). In general, you must withhold tax at a 30% rate on any direct or indirect distri-
bution from a nongrantor trust. The amount sub-
ject to tax is the part of the distribution that would have been included in the nonresident alien’s U.S. gross income if he had continued to be taxed as a U.S. citizen or resident. If the nonresi-
dent alien was not a beneficiary of the nongran-
tor trust on the day before he gave up his U.S. citizenship or long-term residence, you do not have to withhold 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 com-
misions, insurance proceeds, patronage distri-
butions, prizes, 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 con-
nected with a U.S. trade or business is subject to

NRA withholding unless the income is specifi-
cally 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 govern-
ment is not included in the gross income of the foreign government and is not subject to U.S. withholding tax. Investment income means in-
come from investments in the United States in stocks, bonds, or other domestic securities, fi-
nancial instruments held in the execution of govern-
mental financial or monetary policy, and interest on money deposited by a foreign gov-
ernment in banks in the United States. A foreign government may provide a Form W-8EXP or, in the case of a payment made outside the United States to an offshore account, documentary evi-
dence to obtain this exemption. Investment in-
come 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 with-
holding.

1. Income (including investment income) re-
ceived from the conduct of a commercial activity or from sources other than those stated above.

2. Income received from a controlled commer-
cial entity (including gain from the disposi-
tion of any interest in a controlled commercial entity) and income received by a controlled commercial entity.

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 ex-
empt from U.S. tax on all U.S. source income. This income is not subject to NRA withholding. These governments should use Form W-8EXP to get this exemption.

International organizations. International or-
ganizations 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 inter-
national organization by executive order.

Foreign tax-exempt organizations. A for-
ign organization that is a tax exempt organiza-
tion 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 foun-
dation, it is subject to a 4% withholding tax on all U.S. source investment income. For a foreign tax-exempt organization to claim an exemption from withholding because of its tax exempt sta-
tus under section 501(c), or to claim withholding at a 4% rate, it must provide you with a Form W-8EXP. However, if a foreign organization is claiming an exemption from withholding under an income tax treaty, or the income is unrelated business taxable income, the organization must provide a Form W-8BEN or W-8ECI. Income paid to foreign tax-exempt organizations is sub-
ject to reporting on Form 1042-S. If the organiza-
tion is a partner in a partnership carrying on a trade or business in the United States, the effec-
tively connected income allocable to the organi-
sation is subject to withholding under section 1446.

U.S. Taxpayer
Identification Numbers

As the withholding agent, you generally must request that the payee provide you with its U.S. taxpayer identification number (TIN). You must include the payee’s TIN on forms, statements, and other tax documents. The payee’s TIN may be any of the following.

• An individual may have a social security number (SSN). If the individual does not have and is eligible for an SSN, he or she must use Form SS-5 to get an SSN. The Social Security Administration will tell the individual if he or she is eligible to get an SSN.

• An individual may have an IRS individual taxpayer identification number (ITIN). If the individual does not have and is not eligible for an SSN, he or she must apply for an ITIN by using Form W-7.

• Any person other than an individual, and any individual who is an employer or who is engaged in a U.S. trade or business as a sole proprietor, must have an employer identification number (EIN). Use Form SS-4 to get an EIN.

A TIN must be on a withholding certificate if the beneficial owner is claiming any of the fol-
lowing.

• Tax treaty benefits (see Exceptions to TIN requirement, later).

• Income is effectively connected with a U.S. trade or business.

• Exemption for certain annuities (see Pen-
sions, Annuities, and Alimony, earlier).

• Exemption based on exempt organization or private foundation status.

In addition, a TIN must be on a withholding certificate from a person claiming to be any of the following.

• Qualified intermediary.

• Withholding foreign partnership.

• Withholding foreign trust.
Exempt organization.
• U.S. branch of a foreign person treated as a U.S. person (see section 1.1441-1(b)(2)(v) of the regulations).
• U.S. person.

Exceptions to TIN requirement. A foreign person does not have to provide a U.S. TIN to claim a reduced rate of withholding under a tax treaty if the requirements for the following exceptions are met.
• Income from marketable securities (discussed earlier under Form W-8BEN).
• Unexpected payment to an individual (discussed next).

Unexpected payment. A Form W-8BEN or Form 8233 provided by a nonresident alien to get treaty benefits does not need a U.S. TIN if you, the withholding agent, meet all the following requirements.
• You are an acceptance agent.
• You can request an ITIN for a payee on an expedited basis.
• You are required to make an unexpected payment to the nonresident alien.
• You cannot get the ITIN because the IRS is not issuing ITINs at the time you make the payment or at any earlier time after you know you have to make the payment.
• You cannot reasonably delay making the unexpected payment.
• You submit a completed Form W-7 for the payee, with a certification that you have reviewed the required documentation and have no actual knowledge or reason to know that the documentation is not complete or accurate, to the IRS during the first business day after you made the payment.

An acceptance agent is a person who, under a written agreement with the IRS, is authorized to assist alien individuals and other foreign persons get ITINs or EINs. For information on the application procedures for becoming an acceptance agent, see Rev. Proc. 2006-10, 2006-2 I.R.B. 293, available at www.irs.gov/irb/2006-02_IRB/ar13.html.

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

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

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

Situation 2. Assume that Mary won the money on Monday. To pay the winnings without withholding U.S. tax, the casino must file Form 15 and ask for an ITIN and get an ITIN for Mary because an expedited ITIN is available from the IRS at the time of the payment.

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 941 for the deposit rules.)
• Tax withheld on pensions and annuities subject to graduated withholding or the 10% tax on nonperiodic distributions. (See Form 945 for the deposit rules.)
• Tax withheld on a foreign partner’s share of effectively connected income of a partnership. 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 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, 22nd, and last day of the month.) In figuring banking days, exclude any local holidays observed by authorized financial institutions, as well as Saturdays, Sundays, and legal holidays.

You are considered to meet the deposit requirements in (3) if:
• You deposit at least 90% of the actual tax liability for the deposit period, and
• You deposit any underpayment with the first deposit that you must make after the 15th day of the following month, if the quarter-monthly period is in a month other than December. You must deposit any underpayment of $200 or more for a quarter-monthly period that occurs during December by January 31.

Electronic deposit requirement. You must use the Electronic Federal Tax Payment System (EFTPS) to make electronic deposits of all depositee taxes you incur after 2009, if you meet either of the following conditions.
• You had to make electronic deposits in 2009.
• You deposited more than $200,000 in federal depository taxes in 2008.
If you do not meet these conditions, you may choose to make electronic deposits.

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 www.eftps.gov. Get Publication 966, The Secure Way to Pay Your Federal Taxes, for more information.

Qualified business taxpayers that request an EIN will automatically be enrolled in EFTPS. They will receive information on how to activate their account or get federal deposit coupons, discussed next.

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:
Overwithholding discovered by March 15 of following calendar year. If you discover that you overwithheld tax by March 15 of the prior year, you must make the repayment by March 15 of the following year in which the amount was overwithheld. For example, if you overwithheld tax in 2010, you must repay the beneficiary owner by March 15, 2011. 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 calendar year in which the amount was overwithheld. The reduction cannot be more than the amount you actually repaid. 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 calendar year in which the amount was overwithheld. You must state on a timely filed (not including extensions) Form 1042 that you are claiming a credit.

Example. James Smith is a resident of the United Kingdom. In December 2010, domestic corporation M paid a dividend of $100 to James, at which time M withheld $30 and paid the balance $70 to him. In February 2011, James gave M a valid Form W-8BEN. He advises M that under the income tax convention with the United Kingdom, only $15 should have been withheld from the dividend and requests repayment of the $15 overwithheld. Although M Corporation had already deposited the $30, the corporation repaid James $15 before the end of February.

During 2010, M made no other payments from which tax had to be withheld. On its timely filed 2010 Form 1042, M reports $15 as its total tax liability and $30 as its total deposits. M requests that the $15 overpayment be credited to its 2011 Form 1042 rather than refunded. The Form 1042-S that M files for the dividend paid to James in 2010 must show a tax withheld of $30 in boxes 7 and 9 and $15 as an amount repaid in box 10.

In June 2011, M made payments from which it withheld tax of $200. On July 15, 2011, M deposited $185, that is, $200 less the $15 credit claimed on its Form 1042 for 2010. M timely filed its Form 1042 for 2011, showing tax liability of $200, $185 deposited, and $15 credit from 2010.

Set-off procedure. Under the set-off procedure, you repay the beneficial owner or payee the amount overwithheld by reducing the amount you would have been required to withhold on later payments you make to that person. These later payments must be made before the earlier of:

- The date you actually file Form 1042-S for the calendar year in which the amount was overwithheld, or
- March 15 of the year after the calendar year in which the amount was overwithheld.

On Form 1042 and Form 1042-S for the calendar year in which the amount was overwithheld, show the reduced amount as the amount required to be withheld.

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

In this situation, the recipient will have to file 4 U.S. income tax return (Form 1040NR or Form 1040NR-EZ or Form 1120-F) if, or a tax return 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 foreign, 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 Performed),
- 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, later),
- 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 subject to reporting was paid. If March 15 falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.
Form 1042. Every U.S. and foreign withholding agent that is required to file a Form 1042-S 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:

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

Form 1042-S. Every U.S. and foreign withholding agent must file a Form 1042-S for amounts subject to NRA withholding unless an exception applies. The form can be filed electronically or on paper. A separate Form 1042-S is required for each recipient of income to whom you made payments during the preceding calendar year regardless of whether you withheld or were required to withhold tax. You must use a separate Form 1042-S for each type of income that you paid to the same recipient. See Statements to recipients.

You must furnish a Form 1042-S for each recipient even if you did not withhold tax because you repaid the tax withheld to the recipient or because the income payment was exempt from tax under the Internal Revenue Code or under a U.S. income tax treaty. You must get prior annual approval to use a substitute Form 1042-S unless it meets the requirements 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 documentation that permits them to receive the same reduced rate of withholding (for example, under an income tax treaty) you should apply the reduced rate of withholding. You are required, however, to report the payment on one Form 1042-S to the person whose status you rely upon to determine the withholding rate. If, however, any one of the owners requests its own Form 1042-S, you must furnish Form 1042-S to the person who requests it. If more than one Form 1042-S is issued for a single payment, the total amount paid and tax withheld reported on all Forms 1042-S cannot exceed the total amounts paid to joint owners.

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 Return 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 approved by the IRS.

For information 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 electronically, you will use the Filing Information Return 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 generally applies to interest that (a) is on a deposit maintained 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 interest paid on certain bearer certificates of deposit as described in section 16049-b(b) of the regulations, if you pay that interest outside the United States.

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-8BEN. If you have actual knowledge that the payee is a U.S. person, 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 (commercial) statements or notices. These statements must clearly identify the type of income (as described 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 or may not, however, include more than one income line on the copies 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 Automatic Extension of Time To File Certain Business Income Tax Information, and Other Returns. File Form 7004 on or before the due date of Form 1042. Form 7004 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 Information Returns. You should request an extension as soon as you are aware that an extension is necessary, but no later than the due date for filing Form 1042-S. You may request one additional extension of 30 days by submitting a second Form 8809 before the end of the first extension period. Requests for an additional extension are not automatically granted. Approval or denial is based on administrative criteria and guidelines. The IRS will send you a letter of explanation approving or denying your request for an additional extension.

You may request an extension of time to provide the statements to recipients by sending a letter to Enterprise Computing Center—Marlinsburg, 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 statements to recipients, (f) reason for delay, and (g) the signature of the payer or authorized agent.

Your request must be postmarked by the date on which the statements are due to the recipients. If you 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 3% 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),
- $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 the tax and any penalties and interest.

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

U.S. partner. A partner that is a U.S. person should provide Form W-9 to the partnership. A partnership may rely on a partner’s certification of nonforeign status and assume that a partner is not a foreign partner unless the form:

• Does not give the partner’s name, U.S. 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 D) to the partnership.

Partners who have otherwise provided Form W-8 to a partnership for purposes of section 1441 or 1442, as discussed earlier, can use the same form for purposes of section 1446 if they meet the requirements discussed earlier under Documentation. However, a foreign simple trust that has provided documentation for its beneficiaries for purposes of section 1441 must provide a Form W-8 on its own behalf for purposes of section 1446.

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

Chart D. Documentation for Foreign Partners*

<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-6 to ascertain the identity of its partners.
** A domestic grantor trust must provide a statement as shown in section 1.1446-1(h)(2)(ii)(B) and documentation for its grantor.

Amount of Withholding Tax

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

Reduction of withholding

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

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

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

1. State and local income taxes the partnership withheld and pays on behalf of the partner on current year effectively connected taxable income allocated to the partner.
2. The foreign partner’s partner-level deductions and losses that the partner certifies to the partnership as:
   a. Carried forward from a prior year,
   b. Properly allocated to gross effectively connected income of the partner’s trade or business in the United States, and
   c. Reasonably expected to be available and claimed on the partner’s U.S. income tax return.

To certify the deductions and losses, a partner must submit to the partnership Form 8804-C, Certificate of Partner-Level Items to Reduce Section 1446 Withholding.

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

A foreign partner may submit a Form 8804-C to a partnership at any time during the partnership’s year and prior to the partnership’s filing of its Form 8804. An updated certificate is required when the facts or representations made in the original certificate have changed or a status report is required.

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

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

Installment payments. A partnership must make installment payments of withholding tax on its foreign partners’ share of effectively connected taxable income whether or not distributions are made during the partnership’s tax year. The amount of a partnership’s installment payment is the sum of the installment payments for each of its foreign partners. The amount of each installment payment can be figured by using Form 8804-W.

Date payments are due. Payments of withholding tax must be made during the partnership’s tax year in which the effectively connected taxable income is derived. A partnership must pay the IRS a portion of the annual withholding tax for its foreign partners by the 15th day of the 4th, 6th, 9th, and 12th month of its tax year for U.S. income tax purposes. Any additional amounts due are to be paid with Form 8804-C if the foreign 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)(ii) of the regulations.
to the extent of the partner’s share of income for the partnership year.

Notification to partners. Generally, a partner must notify each foreign partner of the tax withheld on its behalf within 10 days of the installment payment date. No particular form is required for this notification. For more information on the substance of the notification and exceptions, see section 1.1446-3(d)(1)(ii) of the regulations.

Real property gains. If a domestic partnership disposes of a U.S. real property interest, the gain is treated as effectively connected income and the partnership or withholding agent must withhold following the rules discussed here. A publicly traded partnership’s (PTP) compliance with these rules satisfies the requirements for withholding on the disposition of U.S. real property interests (discussed later).

If a foreign partnership disposes of a U.S. property interest, while the gain is also treated as effectively connected income, the transferred property is considered, whether or not any withholding tax is paid. It must be delivered to the foreign partner by the due date of the partnership return (including extensions). A copy of Form 8805 for each foreign partner also must be attached to Form 8804 when it is filed.

Also attach the most recent Form 8804-C, discussed earlier, to the Form 8805 filed for the partnership for the 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 this form to Form 8813.

Penalties. A penalty may be imposed for failure to file Form 8804 when due (including extensions). It is the same as the penalty for not filing Form 1042 discussed earlier under Returns Required.

A penalty may be imposed for failure to file Form 8805 when due (including extensions) or for failure to provide complete and correct information. The amount of the penalty depends on whether a correct Form 8805 is filed.

• $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

• $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 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 8805 are due. If you fail 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 the total amount of the items that must be reported, with no maximum penalty.

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

Publicly Traded Partnerships

A publicly traded partnership (PTP) that has effectively connected income, gain, or loss must withhold 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 withholding agent only to the extent of the amount specified in the qualified notice given to the nominee by the PTP. If a nominee is designated as the withholding agent, the obligation to withhold is imposed solely on the nominee. The nominee must report the distributions and withheld amounts on Forms 1042 and 1042-S. For more information, see 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 partnership that receives a partnership distribution from another partnership (a tiered partnership), the distribution also includes the tax withheld from that distribution.

If the distribution is in property other than money, the partnership cannot release the property until it has enough funds to pay over the withholding tax.

A 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 section 1445(e)(1) of the Code on distributions pursuant to an election under section 1.1445-5(c)(3) of the regulations, and

• Amounts not subject to withholding under section 1445 of the Code because the distribution is a partnership or is a foreign corporation that has made an election to be treated as a domestic corporation.

Excluded amounts. Partnership distributions are considered to be paid out of the following types of income in the order listed.

1. Amounts of noneffectively connected income distributed by the partnership and subject to NRA withholding under section 1441 or 1442, as discussed earlier.

2. Amounts of effectively connected income not subject to withholding under section 1446 (for example, amounts exempt by treaty).

3. Amounts subject to withholding under these rules.

4. Amounts not listed in (1) through (3).
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 transferee, you must find out if the transferor is a foreign person. If the transferor is a foreign person and you fail to withhold, you may be held liable for the tax.

Foreign person. A foreign person is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) of the Internal Revenue Code to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. It does not include a resident alien individual.

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, foreign or domestic, that acquires a U.S. real property interest by purchase, exchange, gift, or any other transfer.

U.S. real property interest. A U.S. real property interest is an interest, other than as a creditor, in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the U.S. Virgin Islands, as well as certain personal property that is associated with the use of real property (such as farming machinery). It also means any interest, other than as a creditor, in any domestic corporation unless it is established that the corporation was not at all times a U.S. real property holding corporation during the shorter of the period during which the interest was held, or the 5-year period ending on the date of disposition. 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 recognized, then an interest in the corporation is not a U.S. real property interest.

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

Amount realized is the sum of:

- The cash paid, or to be paid (principal only).
- The fair market value of other property transferred, or to be transferred, and

- The amount of any liability assumed by the transferee or to which the property is subject immediately before and after the transfer.

If the property transferred was owned jointly by U.S. and foreign persons, the amount realized is allocated between the transferees based on the capital contribution of each transferee.

Foreign corporations. A foreign corporation that distributes a U.S. real property interest must withhold a tax equal to 35% of the gain it recognizes on the distribution to its shareholder.

Domestic corporations. A domestic corporation 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 corporation is a U.S. real property interest, and

- The property distributed is either in re-deemption 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 withholding if the distribution is a return of capital or a dividend. If the distribution is not treated as attributable to the foreign beneficiary’s proportionate share of the current balance of the trust’s real property interest account, the trust must withhold under section 1.1445-5(c) of the regulations.

Qualified investment entities. Special rules apply to qualified investment entities (QIEs). A QIE is:

1. Any real estate investment trust (REIT), or
2. Any regulated investment company (RIC) that is a U.S. real property holding corporation if the distribution by the RIC is attributable to a distribution received by the RIC from a REIT.

In determining if a 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.

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

If a foreign shareholder in a domestically controlled QIE disposes of an interest in the QIE in an arm’s length sale transaction, special rules apply. In this transaction, the nonresident alien, foreign corporation, or other QIE repurchasing the interest from the QIE is treated as the RIC and withholding is applicable.

A trust with more than 100 beneficiaries may elect to withhold from each distribution 35% of the real property interest attributable to the foreign beneficiary’s proportionate share of the current balance of the trust’s real property interest account. This election does not apply to publicly traded trusts or real estate investment trusts (REITs).

The type and rule above prints on all papers including departmental reproduction proofs. MUST be removed before printing.
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.

Additional information. For additional infor-

mation on the withholding rules that apply to corpora-
tions, trusts, estates, and qualified in-
vestment entities, see section 1445 of the Inter-
nal Revenue Code and the related regulations. For additional information on the withholding rules that apply to partnerships, see the previ-

ous discussion.

You may also write to the:

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 residence and the amount realized (sales price) is not more than $300,000. You or a member of your family must have definite plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month peri-
ods following the date of transfer. When counting the number of days the property is used, do not count the days the property will be vacant. For this exception, the transferee must be an individual.

2. The property disposed of is an interest in a dom-
  estic corporation if any class of stock of the corporation is regularly traded on an
  established securities market. However, this exception does not apply to certain dispositions of substantial amounts of non-publicly traded interests in publicly traded corporations.

3. The disposition is of an interest in a do-
  mestic corporation and that corporation furnishes you a certification stating, under penalties of perjury, that the interest is not a U.S. real property interest. Generally, the corporation can make this certification only if either of the following is true.

- During the previous 5 years (or, if shorter, the period the interest was held by its present owner), the corpo-
  ration was not a USRPHC.
- As of the date of disposition, the in-
  terest in the corporation is not a U.S. real property interest by reason of section 897(c)(1)(B) of the Code. The certification must be dated not more than 30 days before the date of transfer.

4. The transferor gives you a certification stat-
  ing, under penalties of perjury, that the transferor is not a foreign person and con-
  taining the transferor's name, U.S. taxpayer identification number, and home address (or office address, in the case of an entity).

The transferor can give the certification to a qualified substitute. The qualified substitute gives you a statement, under penalties of per-

jury, that the certification is in possession of the qualified substitute. For this purpose, a quali-

fied substitute is (a) the person (including any attorney or title company) responsible for clos-

ing the transaction, other than the transferor's agent, and (b) the transferee's agent.

5. You receive a withholding certificate from the Internal Revenue Service that excuses withholding. See Withholding Certificates, later.

6. The transferor gives you a 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. tax treaty.

You must file a copy of the notice by the 20th day after the date of transfer with the Ogden Service Center, P.O. Box 409101, Ogden, UT 84409.

7. The amount the transferor realizes on the transfer of a U.S. real property interest is zero.

8. The property is acquired by the United States, a U.S. state or possession, a 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-
  licly traded partnership or trust. However, this exception does not apply to certain dispositions of substantial amounts of non-publicly traded interests in publicly traded partnerships or trusts.

Late filing of certifications or notices. If you become aware that you have failed to timely file certain certifications or notices, you still may be able to 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

The completed certification or notice at-

tended to the explanation must be filed with, or obtained from, an appropriate person the

required certification or notice.

The completed certification or notice at-

tended to the explanation must be filed with, or obtained from, an appropriate person the

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required certification or notice.
Withholding Certificates

The amount that must be withheld from the dis-
position of a U.S. real property interest can be adjusted by a withholding certificate issued by the IRS. The transferee, the transferee’s agent, or the transferor may request a withholding cer-
tificate. The IRS will generally act on these re-
quests within 90 days after receipt of a complete
application including the TINs of all the parties to
the transaction. A transferor that applies for a
withholding certificate must notify the transferee
in writing that the certificate has been applied for
on the day of or the day 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 pro-
   viding security for the tax liability, entered
   into by the transferee or transferor.

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

1. Applications based on a claim that the
   transferor is entitled to nonrecognition
   treatment or is exempt from tax, and
2. Applications based solely on a calculation
   withholding certificate is sought.
3. Applications under special installment sa-
   les, or in a domestic U.S. real property
   interest, property, in associated personal prop-
   erty, or in a domestic U.S. real property
   holding corporation),
4. Contract price,
5. Date of transfer,
6. Location and general description (if an
   interest in real property interests, or in a domestic U.S. real
   property holding corporation),
7. Whether in the 3 preceding tax years:

    i. State which category (4, 5, or 6) de-
       scribes the application,
    ii. State whether the proposed agree-
        ment secures (A) the transferor’s
        maximum tax liability, or (B) the
        amount that would otherwise have
        to be withheld, and
    iii. State whether the proposed agree-
        ment and security instrument con-
        form 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 instruc-
      tions),
   b. State whether that person is the trans-
      feree 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 inter-
est for which the withholding certificate is
sought, state the:

   a. Type of interest (such as interest in real
      property, in associated personal prop-
      erty, or in a domestic U.S. real property
      holding corporation),
   b. Class or type and amount of the interest
      in a U.S. real property holding corpora-
      tion, and
   c. Whether in the 3 preceding tax years:
      (1) U.S. income tax returns were filed
      relating to the U.S. real property inter-
      est, and if so, when and where those
      returns were filed, and if not, why re-
      turns were not filed, and (2) U.S. in-
      come 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 ba-
sis for the issuance of the withholding cer-
tificate. 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 ap-
propriate 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 transferee’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.


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 Rev. Proc. 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 Rev. Proc. 2000-35.

Category (6) applications. These are nonstandard applications and may be of the following types:

- Agreement for payment of tax with nonconforming security. An applicant seeking to enter into an agreement for the payment of tax but wanting to provide a nonconforming type of security must include the following in the application:
  1. The information required for Category (4) applications, discussed earlier,
  2. A description of the nonconforming security proposed by the applicant, 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 U.S. income taxes on certain income received from within the United States.

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

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.
Table 1. Withholding Tax Rates on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties—For Withholding in 2010

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<th>Name</th>
<th>Code</th>
<th>Interest paid by U.S. obligations General</th>
<th>Interest on real property mortgages</th>
<th>Dividends</th>
<th>Paid by U.S. corporations General</th>
<th>Qualifying for direct dividend</th>
<th>Capital Gains</th>
<th>Industrial Royalties</th>
<th>Copyright royalties</th>
<th>Motion Picture and Television</th>
<th>Other</th>
<th>Real Property Income and Natural Resources Royalties</th>
<th>Pensions and Annuities</th>
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</tbody>
</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 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 RBT 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.
The rate is 5% for interest (a) beneficially owned by a bank or other financial institution (including an insurance company) or (b) paid due to a sale on credit of any industrial, commercial, or scientific equipment, or of any merchandise to an enterprise.

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.

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.

Exemption or reduced rate does not apply to an excess inclusion for a residual interest in a real estate mortgage investment conduit (REMIC).

The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or real estate investment trust (REIT). Dividends paid by a real estate investment trust (REIT) are subject to a 30% rate.

Under the treaty the exemption or reduction in rate does not apply if the recipient has a permanent establishment in the United States, and (3) the amount is not a periodic payment, or is a lump-sum payment in lieu of a right to receive an annuity.

The rate is 15% (10% for Bulgaria and 30% for Germany) for 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 15% for interest determined with reference to (a) receipts, sales, income, profits or other cash flow of the debtor or a related person, (b) any change in the value of any property of the debtor or a related person, or (c) any dividend, partnership distribution or similar payment made by the debtor to a related party.

The rate is 4.9% 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 beneficiary owner of the dividends is (a) an individual holding 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.

Interest paid to a financial institution is exempt.

Dividends paid by an 80%-owned corporate subsidiary are exempt if certain conditions are met.

Dividends paid to a trust, company, or other organization operated exclusively to administer or provide pension, retirement, or other employee benefits generally are exempt if certain conditions are met.

Exemption or reduced rate does not apply to amount paid under, or as part of, a conduit arrangement.

Interest is exempt if (a) paid to certain financial institutions, or (b) paid on indebtedness from the sale of credit equipment or merchandise.

Amounts paid to a pension fund that are not derived from the carrying on of a business, directly or indirectly, by the fund are exempt. This includes amounts paid by a REIT only if the conditions in footnote it are met. For Sweden, the pension fund must not sell or make a contract to sell the holding from which the dividend is derived within 2 months of the date the pension fund acquired the holding.

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 holding 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 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 holding not more than a 25% 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, or (d) a Dutch beleggingsinstelling.

Interest paid or accrued on the sale of goods, merchandise, or services between enterprises is exempt. Interest paid or accrued on the sale on credit of industrial, commercial, or scientific equipment is exempt.
### Table 2. Compensation for Personal Services Performed in United States Exempt from Withholding and U.S. Income Tax Under Income Tax Treaties

<table>
<thead>
<tr>
<th>Category of Personal Services</th>
<th>Purpose</th>
<th>Required Employer or Payer</th>
<th>Country</th>
<th>Maximum Presence in U.S.</th>
<th>Maximum Code</th>
<th>Treaty Article Citation</th>
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<tbody>
<tr>
<td>Independent personal services</td>
<td>Any contractor</td>
<td>No limit</td>
<td>Australia</td>
<td>89 days</td>
<td>(2)</td>
<td>2017 21(2)</td>
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<tr>
<td>Dependent personal services</td>
<td>Any foreign resident</td>
<td>No limit</td>
<td>Bangladesh</td>
<td>89 days</td>
<td>(2)</td>
<td>2017 21(2)</td>
</tr>
<tr>
<td>Remittances or allowances</td>
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<td>No limit</td>
<td>Bulgaria</td>
<td>3 years</td>
<td>(6)</td>
<td>2017 21(2)</td>
</tr>
<tr>
<td>Scholarship or fellowship grant</td>
<td>Any contractor</td>
<td>No limit</td>
<td>Canada</td>
<td>89 days</td>
<td>(6)</td>
<td>2017 21(2)</td>
</tr>
<tr>
<td>Public entertainment</td>
<td>Any contractor</td>
<td>No limit</td>
<td>Denmark</td>
<td>89 days</td>
<td>(2)</td>
<td>2017 21(2)</td>
</tr>
<tr>
<td>Teaching and training</td>
<td>Any U.S. or foreign resident</td>
<td>No limit</td>
<td>France</td>
<td>89 days</td>
<td>(6)</td>
<td>2017 21(2)</td>
</tr>
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<td>Remittances or allowances</td>
<td>Any U.S. or foreign resident</td>
<td>No limit</td>
<td>Germany</td>
<td>89 days</td>
<td>(6)</td>
<td>2017 21(2)</td>
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<tr>
<td>Compensation during study or training</td>
<td>Any contractor</td>
<td>No limit</td>
<td>India</td>
<td>89 days</td>
<td>(6)</td>
<td>2017 21(2)</td>
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<tr>
<td>Independent personal services</td>
<td>Any contractor</td>
<td>No limit</td>
<td>Indonesia</td>
<td>89 days</td>
<td>(6)</td>
<td>2017 21(2)</td>
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<td>Dependent personal services</td>
<td>Any foreign resident</td>
<td>No limit</td>
<td>Israel</td>
<td>89 days</td>
<td>(6)</td>
<td>2017 21(2)</td>
</tr>
<tr>
<td>Remittances or allowances</td>
<td>Any U.S. or foreign resident</td>
<td>No limit</td>
<td>Japan</td>
<td>89 days</td>
<td>(6)</td>
<td>2017 21(2)</td>
</tr>
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<td>89 days</td>
<td>(6)</td>
<td>2017 21(2)</td>
</tr>
<tr>
<td>Public entertainment</td>
<td>Any contractor</td>
<td>No limit</td>
<td>Malaysia</td>
<td>89 days</td>
<td>(6)</td>
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<td>No limit</td>
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<td>(6)</td>
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<td>No limit</td>
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<td>2017 21(2)</td>
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<td>(6)</td>
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<td>Any contractor</td>
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<td>89 days</td>
<td>(6)</td>
<td>2017 21(2)</td>
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<td>(6)</td>
<td>2017 21(2)</td>
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<td>(6)</td>
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<tr>
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<td>No limit</td>
<td>Spain</td>
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<td>(6)</td>
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<tr>
<td>Public entertainment</td>
<td>Any contractor</td>
<td>No limit</td>
<td>Sweden</td>
<td>89 days</td>
<td>(6)</td>
<td>2017 21(2)</td>
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<td>2017 21(2)</td>
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<td>89 days</td>
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<td>21(2)</td>
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<td>Any U.S. or foreign resident</td>
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Note: Table 2 (Continued)
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<tr>
<th>Country</th>
<th>Code</th>
<th>Category of Personal Services</th>
<th>Maximum Presence in U.S. (4)</th>
<th>Required Employer or Payer</th>
<th>Maximum Amount of Compensation (5)</th>
<th>Treaty Article Citation (7)</th>
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<td><strong>Egypt</strong></td>
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<td>Any contractor</td>
<td>No limit</td>
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<td>5 years</td>
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<td>Any contractor</td>
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<td>Any foreign resident</td>
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<td>Studying and training</td>
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<td>Other foreign or U.S. resident</td>
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<td>20(1)</td>
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<td>$7,500 p.a.</td>
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Table 2. (Continued)

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<th>Maximum Presence in U.S.</th>
<th>Required Employer or Payer</th>
<th>Maximum Amount of Compensation (Compensation while gaining experience)</th>
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Table 2. (Continued)

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<th>Country</th>
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<th>Code</th>
<th>Category of Personal Services</th>
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<th>Required Employer or Payer</th>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: The type and rule above prints on all proofs including departmental reproduction proofs. MUST be removed before printing.
<table>
<thead>
<tr>
<th>Country</th>
<th>Code</th>
<th>Category of Personal Services</th>
<th>Purpose</th>
<th>Maximum Presence in U.S.</th>
<th>Required Employer or Payer</th>
<th>Maximum Amount of Compensation</th>
<th>Treaty Article Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Venezuela</td>
<td>15</td>
<td>Scholarship or fellowship grants</td>
<td>5 years</td>
<td>Any U.S. or foreign resident</td>
<td>No limit</td>
<td>21(1)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>16</td>
<td>Independent personal services</td>
<td>No limit</td>
<td>Any contractor</td>
<td>No limit</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>20</td>
<td>Public entertainment</td>
<td>No limit</td>
<td>Any U.S. or foreign resident</td>
<td>$6,000</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>17</td>
<td>Dependent personal services</td>
<td>183 days</td>
<td>Any contractor</td>
<td>No limit</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>20</td>
<td>Public entertainment</td>
<td>No limit</td>
<td>Any U.S. or foreign contractor</td>
<td>$6,000</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>18</td>
<td>Teaching</td>
<td>2 years</td>
<td>Any U.S. or foreign resident</td>
<td>No limit</td>
<td>21(3)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>19</td>
<td>Studying and training</td>
<td>5 years</td>
<td>Any foreign resident</td>
<td>No limit</td>
<td>21(1)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Remittances or allowances</td>
<td>12 mos</td>
<td>Venezuelan resident</td>
<td>$6,000</td>
<td>21(2)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Compensation during training</td>
<td>5 years</td>
<td>Other foreign or U.S. resident</td>
<td>$5,000 p.a.</td>
<td>21(1)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Compensation while gaining experience</td>
<td>12 mos</td>
<td>Venezuelan resident</td>
<td>$6,000</td>
<td>21(2)</td>
<td></td>
</tr>
</tbody>
</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 entertainer 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 during 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 to grants, allowances, and other similar payments received for studying or doing research.

Exemption does not apply if the individual either (a) 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.

The exemption does not apply if the individual previously claimed the benefit of this Article.

The time limit pertains only to an apprentice or business trainee.

Exemption does not apply if gross receipts exceed this amount.

The 5-year limit pertains only to training or research.

Compensation from employment directly connected with a permanent establishment is exempt if the alien is present in the United States for a period not exceeding 12 consecutive months. Compensation for technical services directly connected with the application of a right or property giving rise to a royalty is exempt if the services are provided as part of a contract granting the use of the right or property.

Exemption does not apply if, during the immediately preceding period, the individual claimed the benefit of Article 21.

Exemption does not apply if, during the immediately preceding period, the individual claimed the benefits of Article 21(5), or (b) during the immediately preceding period, claimed the benefit of Article 21(1), (2), or (3).
Table 3. List of Tax Treaties (Updated through December 31, 2009)

<table>
<thead>
<tr>
<th>Country</th>
<th>Official Text Symbol</th>
<th>General Effective Date</th>
<th>Citation or Treasury Decision (T.D.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>TIAS</td>
<td>Jan. 1, 1999</td>
<td></td>
</tr>
<tr>
<td>Barbados Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 2005</td>
<td></td>
</tr>
<tr>
<td>Belgium Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 2009</td>
<td></td>
</tr>
<tr>
<td>Czech Republic Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 1993</td>
<td></td>
</tr>
<tr>
<td>Denmark Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 2001</td>
<td></td>
</tr>
<tr>
<td>Estonia Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 2000</td>
<td></td>
</tr>
<tr>
<td>Finland Protocol</td>
<td>TIAS 12101</td>
<td>Jan. 1, 1991</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>TIAS</td>
<td>Jan. 1, 1996</td>
<td></td>
</tr>
<tr>
<td>Germany Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 1990</td>
<td></td>
</tr>
<tr>
<td>Iceland Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 2009</td>
<td></td>
</tr>
<tr>
<td>India</td>
<td>TIAS</td>
<td>Jan. 1, 1991</td>
<td></td>
</tr>
<tr>
<td>Indonesia Protocol</td>
<td>TIAS 11593</td>
<td>Jan. 1, 1990</td>
<td></td>
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<tr>
<td>Ireland Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 1998</td>
<td></td>
</tr>
<tr>
<td>Israel Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 1995</td>
<td></td>
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<tr>
<td>Italy</td>
<td>TIAS</td>
<td>Jan. 1, 2010</td>
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</tr>
<tr>
<td>Kazakhstan Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 1996</td>
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<tr>
<td>Latvia</td>
<td>TIAS</td>
<td>Jan. 1, 2000</td>
<td></td>
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<tr>
<td>Lithuania Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 2000</td>
<td></td>
</tr>
<tr>
<td>Luxembourg Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 2001</td>
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<tr>
<td>Mexico</td>
<td>TIAS</td>
<td>Jan. 1, 1994</td>
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<tr>
<td>Netherlands Protocol</td>
<td>TIAS</td>
<td>Jan. 1, 1994</td>
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Table 3. (continued)

<table>
<thead>
<tr>
<th>Country</th>
<th>Official Text Symbol</th>
<th>General Effective Date</th>
<th>Citation</th>
<th>Applicable Treasury Explanations or Treasury Decision (T.D.)</th>
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<tbody>
<tr>
<td>Portugal</td>
<td>TIAS</td>
<td>Jan. 1, 1996</td>
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<tr>
<td>Russia</td>
<td>TIAS</td>
<td>Jan. 1, 1994</td>
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<tr>
<td>Slovak Republic</td>
<td>TIAS</td>
<td>Jan. 1, 1993</td>
<td></td>
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<tr>
<td>Slovenia</td>
<td>TIAS</td>
<td>Jan. 1, 2002</td>
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<tr>
<td>South Africa</td>
<td>TIAS</td>
<td>Jan. 1, 1998</td>
<td></td>
<td></td>
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<tr>
<td>Spain</td>
<td>TIAS</td>
<td>Jan. 1, 1991</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>TIAS</td>
<td>Jan. 1, 2004</td>
<td></td>
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<tr>
<td>Sweden</td>
<td>TIAS</td>
<td>Jan. 1, 1996</td>
<td></td>
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<tr>
<td>Switzerland</td>
<td>TIAS</td>
<td>Jan. 1, 2007</td>
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<tr>
<td>Switzerland</td>
<td>TIAS</td>
<td>Jan. 1, 1998</td>
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<tr>
<td>Thailand</td>
<td>TIAS</td>
<td>Jan. 1, 1998</td>
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<tr>
<td>Trinidad and Tobago</td>
<td>TIAS 7047</td>
<td>Jan. 1, 1970</td>
<td>1971-2 C.B. 479</td>
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<tr>
<td>Tunisia</td>
<td>TIAS</td>
<td>Jan. 1, 1990</td>
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<tr>
<td>Turkey</td>
<td>TIAS</td>
<td>Jan. 1, 1998</td>
<td></td>
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<td>Ukraine</td>
<td>TIAS</td>
<td>Jan. 1, 2001</td>
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<tr>
<td>United Kingdom</td>
<td>TIAS</td>
<td>Jan. 1, 2004</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Venezuela</td>
<td>TIAS</td>
<td>Jan. 1, 2000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. (TAS) — Treaties and Other International Act Series.
2. Information on the treaty can be found in Publication 597, Information on the United States-Canada Income Tax Treaty.
3. The U.S.-U.S.S.R. income tax treaty applies to the countries of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.
• Research your tax questions online.
• Search publications online by topic or keyword.
• Use the online Internal Revenue Code, Regulations, or other official guidance.
• 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-TAX-FORM (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 2009 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). Have your 2009 tax return 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.

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, libraries, grocery stores, copy centers, city and county 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 out 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.

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.
• Tax law frequently asked questions.
• Tax Topics from the IRS telephone response system.
• Internal Revenue Code—Title 26 of the U.S. Code.
• Fill-in, print, and save features for most tax forms.
• Internal Revenue Bulletins.
• 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 2010.

Purchase the DVD from National Technical Information Service (NTIS) at www.irs.gov/contacts for $30 (no handling fee) or call 1-877-233-6767 toll free to buy the DVD for $30 (plus a $6 handling fee).
Tax Publications for Individual Taxpayers

General Guides
1 Your Rights as a Taxpayer
17 Your Federal Income Tax For Individuals
334 Tax Guide for Small Business (For Individuals Who Use Schedule C or C-EZ)
509 Tax Calendars for 2010
910 IRS Guide to Free Tax Services

Specialized Publications
3 Armed Forces’ Tax Guide
54 Tax Guide for U.S. Citizens and Resident Aliens Abroad
225 Farmer’s Tax Guide
463 Travel, Entertainment, Gift, and Car Expenses
501 Exemptions, Standard Deduction, and Filing Information
502 Medical and Dental Expenses (Including the Health Coverage Tax Credit)
503 Child and Dependent Care Expenses
504 Divorced or Separated Individuals
505 Tax Withholding and Estimated Tax
514 Foreign Tax Credit for Individuals
516 U.S. Government Civilian Employees Stationed Abroad
517 Social Security and Other Information for Members of the Clergy and Religious Workers
519 U.S. Tax Guide for Aliens
521 Moving Expenses
523 Selling Your Home
524 Credit for the Elderly or the Disabled
525 Taxable and Nontaxable Income
526 Charitable Contributions
527 Residential Rental Property (Including Rental of Vacation Homes)
529 Miscellaneous Deductions
530 Tax Information for Homeowners
531 Reporting Tip Income

Commonly Used Tax Forms

See How To Get Tax Help for a variety of ways to get forms, including by computer, phone, and mail.

<table>
<thead>
<tr>
<th>Form Number and Title</th>
<th>Form Number and Title</th>
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</thead>
<tbody>
<tr>
<td>1040 U.S. Individual Income Tax Return</td>
<td>2210 Underpayment of Estimated Tax by Individuals, Estates, and Trusts</td>
</tr>
<tr>
<td>1040A Itemized Deductions</td>
<td>2441 Child and Dependent Care Expenses</td>
</tr>
<tr>
<td>1040B Interest and Ordinary Dividends</td>
<td>2848 Power of Attorney and Declaration of Representative</td>
</tr>
<tr>
<td>1040C Profit or Loss From Business</td>
<td>3903 Moving Expenses</td>
</tr>
<tr>
<td>1040EZ Net Profit From Business</td>
<td>4562 Depreciation and Amortization</td>
</tr>
<tr>
<td>1040-D-1 Supplemental Income and Loss</td>
<td>4668 Application for Automatic Extension of Time To File U.S. Individual Income Tax Return</td>
</tr>
<tr>
<td>1040-EZ Earned Income Credit</td>
<td>4962 Investment Interest Expense Deduction</td>
</tr>
<tr>
<td>1040-F Profit or Loss From Farming</td>
<td>5329 Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts</td>
</tr>
<tr>
<td>1040-H Household Employment Taxes</td>
<td>6251 Alternative Minimum Tax—Individuals</td>
</tr>
<tr>
<td>1040-J Income Averaging for Farmers and Fishermen</td>
<td>8283 Noncash Charitable Contributions</td>
</tr>
<tr>
<td>1040-L Standard Deduction for Certain Filers</td>
<td>8562 Passive Activity Loss Limitations</td>
</tr>
<tr>
<td>1040-M Making Work Pay and Government Retiree Credits</td>
<td>8605 Non-deductible IRAs</td>
</tr>
<tr>
<td>1040-R Credit for the Elderly or the Disabled</td>
<td>8812 Additional Child Tax Credit</td>
</tr>
<tr>
<td>1040-SA Self-Employment Tax</td>
<td>8822 Change of Address</td>
</tr>
<tr>
<td>1040-T Income Tax Return for Single and Joint Filers With No Dependents</td>
<td>8829 Expenses for Business Use of Your Home</td>
</tr>
<tr>
<td>1040-ES Estimated Tax for Individuals</td>
<td>8863 Education Credits (American Opportunity, Hope, and Lifetime Learning Credits)</td>
</tr>
<tr>
<td>1040X Amended U.S. Individual Income Tax Return</td>
<td>9465 Installment Agreement Request</td>
</tr>
<tr>
<td>2106 Employee Business Expenses</td>
<td>2106-EZ Unbursed Employee Business Expenses</td>
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