



IRS

IRS

Nationwide

TaxFORUM

# Foreign Information Reporting

Form 1042-S and Foreign Investment in Real Property Tax Act (FIRPTA)





# AGENDA

I - Update on Foreign Investment in U.S.  
Real Property Tax Act (FIRPTA)

II - Notice 2015-10 – Refunds

III - Update on Forms 1042 and 1042-S

IRS  
Nationwide  
**TAX FORUM**





# Conditions for FIRPTA to Apply

- Foreign Corporation or Nonresident Alien makes a
- Disposition of a
- U.S. real property interest (USRPI)



# What Constitutes Disposition?

- Any transfer that would constitute a disposition by the transferor for any purpose of the Code and regulations, such as:
  - Sale or exchange
  - Liquidation and redemptions
  - IRC § 1031 like-kind exchanges
  - Involuntary conversions
  - Gifts





IRS  
Nationwide

TAX  
FORUM

# What is USRPI?

- Any interest (other than solely as a creditor) in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, and
- Any interest (other than solely as a creditor) in any domestic corporation unless that corporation establishes that it was not a U.S. real property holding corporation (USRPHC) during the testing period.





# Tax on Disposition of USRPI

- Treat gain or loss from dispositions of USRPI by certain foreign persons as income effectively connected with a U.S. trade or business (ECI).
- Require buyer/transferee to deduct and withhold a 15% tax on the amount realized on such disposition (or 35% of gain on certain distributions).





IRS

Nationwide

TAXFORUM

# Distributions by Domestic Corporations

- Domestic corporation that is a USRPHC distributes property to a foreign shareholder under IRC §§ 301 or 302 is required to withhold under IRC § 1441/1442 and/or § 1445.





# Distributions by Foreign Corporations

- Foreign corporation distributes a USRPI must withhold 35% of the gain on the distributed property recognized by the corporation.





# Distributions by Partnerships, Trusts and Estates

- Domestic or foreign partnership, trust or estate that distributes a USRPI to a foreign person is not required to withhold under IRC § 1445(e)(4) until implementing regulations are issued.





# Withholding Requirements

- A buyer/transferee must withhold 15% of the amount realized by a seller/transferor that is a foreign person on the disposition of a USRPI.
- The amount withheld must be remitted to the IRS by the 20th day after the date of transfer with the filing of Forms 8288 and 8288-A.





IRS

IRS  
Nationwide

TAX  
FORUM

# Selected Exemptions from Withholding

- Transferor furnishes a non-foreign certificate.
- Domestic corporation furnishes information that its interest is not a USRPI.
- Transferee receives a withholding certificate from the IRS.
- Property that is acquired by transferee as personal residence and the amount realized by the foreign transferor does not exceed \$300,000.
- Transferee acquires stock in a domestic corporation where stocks are regularly traded on an established security market.
- Transferor furnishes a notice that gain is subject to a nonrecognition provision.





# Withholding Certificates

- A withholding certificate issued by the IRS can reduce or eliminate withholding obligation on a disposition of a USRPI.
- Use Form 8288-B or follow the procedures in Rev. Proc. 2000-35.





IRS  
Nationwide

TAX  
FORUM

# Credits and Refunds

- Transferee must complete and file Forms 8288 and 8288-A.
- The IRS will stamp Copy B of each Form 8288-A and will forward the stamped copy to the foreign person. To receive credit for the withheld amount, the transferor generally must attach the stamped Copy B of Form 8288-A to his or her U.S. income tax return.
- Taxpayer identification number (TIN) is mandatory.





# Protecting Americans from Tax Hikes (PATH) Act of 2015

- Increase the rate of withholding from 10% to 15% for dispositions after February 16, 2016.
  - Rate remains at 10% if the amount realized is more than \$300,000 but does not exceed \$1 million and the buyer acquires the property for use as a residence.
- Modify the FIRPTA rules on real estate investment trusts (REITs).





# PATH Act - Changes to FIRPTA REIT Rules

- Made permanent the definition of a qualified investment entity (QIE) to include certain regulated investment companies (RICs)
- Prevent REITs and certain RICs to apply the “cleansing exception”
- Increase the ownership ceiling to 10% for the publicly traded exception for REITs





IRS  
Nationwide

TAX  
FORUM

# PATH Act - Changes to FIRPTA REIT Rules

- Change rules for determining ownership of domestically controlled REITs
- Create a new “qualified shareholder” FIRPTA exemption for REIT
- Exempt qualified foreign pension funds from FIRPTA





IRS  
Nationwide

TAX  
FORUM

# Notice 2007-55

- IRC § 892 does not exempt foreign government shareholders from taxation on distributions of gain from disposition of USRPI by a QIE.
- FIRPTA tax applies to all distributions to the extent attributable to gain from sales or exchanges of USRPI by QIEs (including domestically controlled REITs).





# Notice 2015-10

- Where refund/credit issued for amounts not deposited
  - IRS may not be able to recover/collect amounts especially where TP and WA are outside U.S.
- Announced regulations would provide pro rata allocation of available refunds/credits where WA had only partially deposited taxes due

IRS  
Nationwide

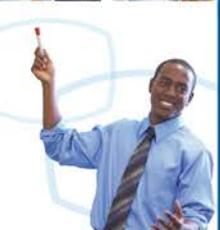
TaxFORUM





# Upcoming Form Changes

- Forms 1120, 1065, 1041 will be updated to accommodate for the new reporting requirement under the Section 6038D regulations.
- Forms will be updated to include question regarding whether taxpayer had a Form 1042/1042-S reporting requirement for the tax year.





# Changes to Forms 1042

- No significant changes
- Withholding agent's Chapters 3 and 4 status code is required in all cases regardless of the types of payments reported on the form.
- Section 2 of the form, Reconciliation of Payments of U.S. Source FDAP income, is no longer optional.





IRS

IRS  
Nationwide

TaxFORUM

# Changes to Form 1042-S

- Unique Identifying Number
- New box to indicate # of Amendments
- New box for LOB code
- New boxes for Payer status code
- Substitute Forms





IRS

IRS  
Nationwide

TaxFORUM

# Common errors when completing Forms 1042/1042-S

## Form 1042

- Reporting amounts withheld and/or deposited with the IRS on Lines 1-60 of Form 1042 instead of reporting the tax liability
- Missing Withholding Agent's Chapter 4 status
- Failure to report net tax liability (Lines 64a-64e)
- Failing to complete Section 2





IRS

# Common errors when completing Forms 1042/1042-S

IRS Nationwide

Tax FORUM

**1042** Annual Withholding Tax Return for U.S. Source Income of Foreign Persons  
OMB No. 1545-0096  
2015

Form Department of the Treasury Internal Revenue Service  
Information about Form 1042 and its separate instructions is at [www.irs.gov/form1042](http://www.irs.gov/form1042).

If this is an amended return, check here

Name of withholding agent  Employer identification number

Ch. 3 Status Code  Ch. 4 Status Code

Number, street, and room or suite no. (If a P.O. box, see instructions)

City or town, state or province, country, and ZIP or foreign postal code

For IRS Use Only

CC	FD
RD	FF
CAF	FP
CR	I
EDC	SIC

If you do not expect to file this return in the future, check here  Enter date final income paid

**Section 1 Record of Federal Tax Liability** (Do not show federal tax deposits here)

Line No.	Period ending	Tax liability for period (Including any taxes assumed on Form(s) 1000)	Line No.	Period ending	Tax liability for period (Including any taxes assumed on Form(s) 1000)	Line No.	Period ending	Tax liability for period (Including any taxes assumed on Form(s) 1000)
1	7		21	7		41	7	
2	15		22	15		42	15	
3	22		23	22		43	22	
4	31		24	31		44	31	
5	Jan. total		25	May total		45	Sept. total	
6	7		26	7		46	7	
7	15		27	15		47	15	
8	22		28	22		48	22	
9	28		29	30		49	31	
10	Feb. total		30	June total		50	Oct. total	
11	7		31	7		51	7	
12	15		32	15		52	15	
13	22		33	22		53	22	
14	31		34	31		54	30	
15	Mar. total		35	July total		55	Nov. total	
16	7		36	7		56	7	
17	15		37	15		57	15	
18	22		38	22		58	22	
19	30		39	31		59	31	
20	Apr. total		40	Aug. total		60	Dec. total	

**64** Total net tax liability

a	Adjustments of underwithheld tax on corporate distributions made during the calendar year	64a
b	Total net tax liability under chapter 3	64b
c	Total net tax liability under chapter 4	64c
d	Excise tax on specified federal procurement payments (Total payments made x 2%)	64d
e	<b>Total net tax liability</b> (Add lines 64 a-d)	64e

**Section 2 Reconciliation of Payments of U.S. Source FDAP Income**

1	Total U.S. source FDAP income required to be withheld upon under chapter 4	1
2	Total U.S. source FDAP income required to be reported under chapter 4 but not required to be withheld upon under chapter 4 because:	
a	Amount of income paid to recipients whose chapter 4 status established no withholding is required	2a
b	Amount of excluded nonfinancial payments	2b
c	Amount of income paid with respect to grandfathered obligations	2c
d	Amount of income effectively connected with the conduct of a trade or business in the U.S.	2d
e	Amount of excluded payments on offshore obligations	2e
f	Amount of excluded payments on collateral	2f
g	Total U.S. source FDAP income required to be reported under chapter 4 but not required to be withheld upon under chapter 4 (Add lines 2a-f)	2g
3	Total U.S. source FDAP income reportable under chapter 4 (Add lines 1 and 2g)	3
4	Total U.S. source FDAP income reported on all Forms 1042-S (from line 62a, (b)(1), and (b)(2))	4
5	Total variance, subtract line 3 from line 4, if amount other than 0 provide explanation on line 6	5
6		





IRS

IRS  
Nationwide

TaxFORUM

# Common errors when completing Forms 1042/1042-S

## Form 1042-S

- Mismatch between copies filed with the IRS and copies provided to recipients
- Missing fields such as
  - Chapter 4 exemption code and tax rate
  - U.S. TIN when required
  - Intermediary's information when required
- Joint payees





IRS

# Common errors when completing Forms 1042/1042-S

IRS

Nationwide

Tax FORUM



Form **1042-S** Foreign Person's U.S. Source Income Subject to Withholding **2015** OMB No. 1545-0096  
 Department of the Treasury Internal Revenue Service  
 Information about Form 1042-S and its separate instructions is at [www.irs.gov/form1042s](http://www.irs.gov/form1042s).  
 AMENDED  PRO-RATA BASIS REPORTING **Copy A** for Internal Revenue Service

<b>1</b> Income code	<b>2</b> Gross income	<b>3</b> Chap. 3: <input type="checkbox"/> Exemption code <b>3a</b> Tax rate <b>3b</b>	<b>4</b> Chap. 4: <input type="checkbox"/> Exemption code <b>4a</b> Tax rate <b>4b</b>	<b>5</b> Withholding allowance	<b>6</b> Net income	<input type="checkbox"/> Check if tax not deposited with IRS pursuant to escrow procedure
<b>8</b> Tax withheld by other agents		<b>9</b> Tax paid by withholding agent		<b>7</b> Federal tax withheld		
<b>10</b> Total withholding credit		<b>11</b> Amount repaid to recipient		<b>14a</b> Primary Withholding Agent's Name (if applicable)		
<b>12a</b> Withholding agent's EIN		<b>12b</b> Ch. 3 status code	<b>12c</b> Ch. 4 status code	<b>14b</b> Primary Withholding Agent's EIN		
<b>12d</b> Withholding agent's name		<b>12e</b> Withholding agent's Global Intermediary Identification Number (GIIN)		<b>15a</b> Intermediary or flow-through entity's EIN, if any	<b>15b</b> Ch. 3 status code	<b>15c</b> Ch. 4 status code
<b>12f</b> Country code		<b>12g</b> Foreign taxpayer identification number, if any		<b>15d</b> Intermediary or flow-through entity's name		
<b>12h</b> Address (number and street)		<b>12i</b> City or town, state or province, country, ZIP or foreign postal code		<b>15e</b> Intermediary or flow-through entity's GIIN		
<b>13a</b> Recipient's U.S. TIN, if any		<b>13b</b> Ch. 3 status code		<b>15f</b> Country code	<b>15g</b> Foreign tax identification number, if any	
<b>13c</b> Ch. 4 status code		<b>13d</b> Recipient's name		<b>15h</b> Address (number and street)		
<b>13e</b> Recipient's country code		<b>13f</b> Address (number and street)		<b>15i</b> City or town, state or province, country, ZIP or foreign postal code		
<b>13g</b> City or town, state or province, country, ZIP or foreign postal code		<b>13h</b> Recipient's GIIN		<b>13i</b> Recipient's foreign tax identification number, if any		
<b>13d</b> Recipient's name		<b>13e</b> Recipient's country code		<b>16</b> Recipient's account number		<b>17</b> Recipient's date of birth
<b>13f</b> Address (number and street)		<b>13g</b> City or town, state or province, country, ZIP or foreign postal code		<b>18</b> Payer's name		<b>19</b> Payer's TIN
<b>13g</b> City or town, state or province, country, ZIP or foreign postal code		<b>13h</b> Recipient's GIIN		<b>20</b> Payer's GIIN		<b>21</b> State income tax withheld
<b>13g</b> City or town, state or province, country, ZIP or foreign postal code		<b>13h</b> Recipient's GIIN		<b>22</b> Payer's state tax no.		<b>23</b> Name of state

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 11386R Form **1042-S** (2015)



IRS

IRS  
Nationwide

TAX  
FORUM

# Points of Contact

Name

Contact Info

Name

Contact Info

