



Instructions for Form 8233

(Rev. October 1996)

Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual

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

Paperwork Reduction Act Notice.—We ask for the information on this form to carry out the Internal Revenue laws of the United States. If you want to receive exemption from withholding on compensation for independent (and certain dependent) personal services, you are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 26 min.; **Learning about the law or the form**, 19 min.; **Preparing and sending the form to IRS**, 42 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the tax form to this office. Instead, give it to your withholding agent.

Avoid Common Errors

To ensure that your Form 8233 is promptly accepted, be sure that you:

- Enter your complete name, address, and taxpayer identification number (TIN) in Part I.
- Answer all applicable questions completely.
- Are not trying to claim treaty benefits for a country with which the United States does not have a ratified tax treaty.
- Are not trying to claim a treaty exemption that does not exist in your treaty.
- Answer all parts of questions 4 and 5 in sufficient detail to allow the IRS to determine which tax treaty benefit you are claiming.
- Have claimed the proper number of personal exemptions in question 7.
- Have attached the required statement if you are a foreign student, professor/teacher, or researcher.
- Have fully completed the required certification in Part II if you are the withholding agent.

General Instructions

Purpose of Form.—In general, section 1441 requires 30% Federal income tax withholding on payments to nonresident aliens for independent personal services (self-employment). Sections 1441, 3401, and 3402 require withholding, sometimes at 30% and sometimes at graduated rates, on compensation for dependent personal services paid to nonresident alien students, professors/teachers, and researchers. However, some payments may be exempt from withholding because of a tax treaty or the personal exemption amount. Complete and give Form 8233 to your withholding agent if some or all of your compensation is exempt from withholding.

Who Should Use Form 8233.—A nonresident alien individual should use this form to claim exemption from withholding on some or all compensation paid for (1) independent personal services (self-employment) or (2) dependent personal services provided by a student, professor/teacher, researcher, or business/vocational trainee. For services in (1) above, use Form 8233 to claim a tax treaty exemption and/or the personal exemption amount. For services in (2) above, use Form 8233 only to claim a **tax treaty exemption** for any part of your compensation that is exempt from withholding; use **Form W-4**, Employee's Withholding Allowance Certificate, to claim the personal exemption amount.

Voluntary Use of Form 8233.—Certain resident aliens are eligible to exempt from Federal income tax their dependent personal service income under a tax treaty article covering students, professors/teachers, or researchers. These persons may (but are not required to) certify a claim for exemption from withholding by submitting a completed Form 8233 to their withholding agent. In such cases, the withholding agent **should not** submit Form 8233 to the IRS for approval.

Canadian students.—Canadian students performing dependent personal services who reasonably expect to earn \$10,000 or less in a tax year may also use this form as described above to certify their exemption from withholding under Article XV of the U.S./Canada tax treaty. These students should check "Foreign student" on line 3 and write "Canadian" above the checkbox.

Giving Form 8233 to the Withholding Agent.—Complete a separate Form 8233 for each type of income and give it to each withholding agent for review. You must complete a Form 8233 for each tax year.

Example. A nonresident alien is primarily present in the United States as a professor, but also is occasionally invited to lecture at another educational institution. These lectures are not

connected with his teaching obligations but are in the nature of self-employment. The professor must complete two Forms 8233 and give one to each withholding agent to claim tax treaty benefits on the separate items of income.

If the withholding agent accepts your Form 8233, the withholding agent will sign it in Part II and will forward it to the IRS Office of the Assistant Commissioner (International). An accepted Form 8233 is effective only for the tax year shown on the form.

Do not use Form 8233 if you have an office in the United States regularly available to you for performing personal services. If you have an office in the United States regularly available to you, contact the IRS Office of the Assistant Commissioner (International). You may call 202-874-1460 or write to the address shown under Part II on page 2 for more information.

Definitions

Nonresident Alien Individual.—Any individual who is not a citizen or resident of the United States is a nonresident alien individual. An alien individual meeting either the "green card test" or the "substantial presence test" for the calendar year is a resident alien. Any person not meeting either test is a nonresident alien. The term "individual" also includes a nonresident alien fiduciary.

For more information on resident and nonresident alien status, the tests for residence, and common exceptions to them, see **Pub. 519**, U.S. Tax Guide for Aliens. You can get Pub. 519 by calling 1-800-TAX-FORM (1-800-829-3676).

Note: Even though a nonresident alien individual married to a U.S. citizen or resident alien may choose to be treated as a resident alien for income tax purposes (e.g., for purposes of filing a joint income tax return), such individual is still treated as a nonresident alien for withholding tax purposes on all income except wages.

Compensation for Independent Personal Services (Self-Employment Income).—Independent personal services are services performed in the United States by a nonresident alien individual who is an independent contractor (self-employed) rather than an employee. Such compensation includes payments for contract labor; payments for professional services, such as fees to an attorney, physician, or accountant, if the payments are made directly to the person performing the services; consulting fees; and generally, payments for performances by public entertainers, such as actors, musicians, artists, and athletes.

Compensation for Dependent Personal Services.—Dependent personal services are services performed in the United States by a nonresident alien individual employee. The name by which the compensation for these services is designated is immaterial. Thus, wages, salaries, fees, bonuses, commissions, and similar items paid to an employee are included in this definition.

Any part of a scholarship, fellowship, or grant paid for past, present, or future services to the institution paying the grant or fellowship is compensation for personal services.

Example. G, a foreign graduate student, received a fellowship to a university to conduct advanced research in G's field. As part of this grant, G must teach a seminar 10 hours per week. The part of the grant that is payment for teaching is compensation for personal services.

Withholding Agent.—Any person required to withhold tax on payments made to a nonresident alien individual is a withholding agent. The withholding agent may be an individual, corporation, partnership, trust, association, or

any other entity. Generally, the person who pays or conveys the item of U.S. source income to the nonresident alien individual (or to his or her agent) must withhold. For further information, see **Pub. 515**, Withholding of Tax on Nonresident Aliens and Foreign Corporations.

Specific Instructions

Part I

Taxpayer Identification Number.—You are required to furnish a taxpayer identification number when completing this form. You may use a social security number (SSN) if you have one. If you do not have, and are not eligible to obtain, an SSN, you must apply for an IRS Individual Taxpayer Identification Number (ITIN), using **Form W-7**, Application for IRS Individual Taxpayer Identification Number.

Contact a Social Security Administration (SSA) office to find out if you are eligible to get an SSN. If you do not have an SSN but are required or eligible to get one, apply on **Form SS-5**, Application for a Social Security Card.

Nonresident alien estates or trusts must use their employer identification number or apply for one on **Form SS-4**, Application for Employer Identification Number.

Visa Type and Number.—Enter the visa type that is currently granted to you by the Immigration and Naturalization Service (INS). For example, foreign students are usually granted an “F-1” visa. Foreign professors, teachers, or researchers are usually granted a “J-1” visa. Business/vocational trainees are usually granted an “M-1” visa; however, some persons granted a “J-1” visa may also be considered business/vocational trainees, for example, a person admitted to complete a postgraduate residency in medicine. Also enter the serial number that was assigned to your visa at the time it was granted.

If you do not have, or do not require, a visa, write “None.”

Note: *Spouses and dependents admitted on secondary visas (e.g., F-2, J-2, H-4, O-3) are not usually eligible to claim the same treaty benefits as the primary visa holder.*

Lines 1a, 1b, and 2.—Everyone must complete lines 1a, 1b, and 2, except citizens of Canada or Mexico, who can complete either lines 1a and 1b, or line 2.

Line 3.—Check the box that describes the **primary** reason you are in the United States. For example, if you have an “F-1” visa, the primary reason you are in the United States is as a student.

Caution: *Nonresident alien students, professors/teachers, and researchers using Form 8233 to claim exemption from withholding on compensation for personal services that is exempt from tax under a U.S. tax treaty must attach to Form 8233 the statement required by Revenue Procedure 87-8, 87-9, or 93-22. The format and contents of the required statements are contained in Pub. 519.*

For a newly ratified tax treaty not listed in the above revenue procedures, a nonresident alien student, professor/teacher, or researcher must attach a statement in a format similar to those contained in Pub. 519.

Line 4a.—If you are a nonresident alien individual performing independent personal services (self-employment) in the United States, fully describe the nature of the service, for example, “Consulting contract to design software,” or “Give three lectures at XYZ University.”

If you are a nonresident alien student or researcher who is also performing dependent personal services, fully describe the nature of your employment, for example, “Part-time library assistant,” “Waiting on tables,” or “Teaching one chemistry course per semester to undergraduate students.”

If you are a nonresident alien professor/teacher, write “Teaching.”

If you are a nonresident alien business/vocational trainee, fully describe the nature of your employment, for example, “Neurosurgical residency at ABC Hospital,” or “One-year internship in hydraulic engineering at XYZ Corporation.”

Line 4b.—Enter the total amount of compensation for personal services you will receive from this payer during the tax year. Enter an estimated amount if you do not know the exact amount.

Line 5a.—You must provide full information concerning the specific treaty and article on which you are basing your claim for exemption from withholding, for example, “U.S./Germany tax treaty, Article 20(1).”

Line 5b.—If all income received for the services performed to which this Form 8233 applies is exempt, write “All.” If only part is exempt, enter the exact dollar amount that is exempt from withholding.

To avoid underwithholding of income taxes on amounts not exempt from tax, nonresident aliens completing Form W-4 should: (a) not claim exemption from income tax withholding; (b) request withholding as if they are single; (c) generally, claim only one personal exemption; and (d) request an additional income tax withholding amount of \$4.00 per week.

Caution: *Special restrictions on exemption from or reduction of withholding apply to nonresident alien artists, athletes, entertainers, and similar individuals. Generally, such individuals are subject to 30% withholding from gross income paid for personal services performed unless a reduced rate of withholding under a withholding agreement prepared in accordance with Revenue Procedure 89-47, 1989-2 C.B. 598, has been approved by the IRS. For more information, contact the IRS Office of the Assistant Commissioner (International) at 202-874-1460, or write to the address shown under Part II below.*

Line 5c.—Generally, you may claim an exemption from Federal income tax only under a U.S. tax treaty with the country in which you claim permanent (or indefinite) foreign residence. This is the foreign country in which you live most of the time. It is not necessarily the country of your citizenship. For example, you are a citizen of Pakistan but have your home (where you live) in England. You **cannot** claim any exemption provisions under the U.S./Pakistan tax treaty. You can only use the U.S./United Kingdom tax treaty to claim exemption.

Line 6.—Enter any other information you believe may be necessary to clarify or explain your request for exemption from withholding.

Lines 7 and 8. For Independent Personal Services Only.

Line 7.—Generally, 30% must be withheld from your compensation after subtracting the value of one personal exemption. However, if you are a resident of Canada, Mexico, Japan, or the Republic of Korea, a student from India, or a U.S. national, you may be able to claim additional personal exemptions for your spouse and children. See Pub. 519 for more information.

Line 8.—Each allowable personal exemption must be prorated for the number of days during the tax year you will perform the personal

services identified on each Form 8233 in the United States. To figure the daily proration amount for each allowable exemption, divide the personal exemption amount (for example, \$2,550 for tax year 1996) by 365 (366 for a leap year). Then multiply the result by the number of days you will perform these services in the United States. The amount allowed for each personal exemption changes from year to year, and may be obtained from the IRS.

Signature.—The nonresident alien individual or duly authorized representative must sign and date Form 8233.

Part II

Withholding Agent's Responsibilities.—When the nonresident alien individual gives you Form 8233, review it to see if you are satisfied that the exemption from withholding is warranted. If you are satisfied, based on the facts presented, complete and sign the certification in Part II.

You will need four copies of a completed Form 8233. Within 5 days of your acceptance, forward one copy to:

Office of the Assistant Commissioner
(International)
Director, Office of International District
Operations
Attn: CP:IN:D:C:SS
950 L'Enfant Plaza South, S.W.
Washington, DC 20024

Give one copy of the completed Form 8233 to the nonresident alien individual. Also attach a copy of the form to **Form 1042**, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, that you file with the IRS. Keep a copy for your records. Each copy of Form 8233 must include any attachments submitted by the nonresident alien individual.

The exemption from withholding is effective for payments made at least 10 days after you properly mail Form 8233 to the IRS.

You must not accept Form 8233, and you must withhold, if either of the following applies:

- You know or have reason to know that any of the facts or statements on Form 8233 may be false; or
- You know or have reason to know that the eligibility of the nonresident alien individual's compensation for the exemption cannot be readily determined (for example, if you know that the nonresident alien individual has an office in the United States regularly available for performing personal services).

If you accept Form 8233 and later find that either of the situations described above applies, you must promptly notify the IRS at the address above, in writing, and you must begin withholding on any amounts not yet paid. Also, if you are notified by the IRS that the eligibility for the exemption of the nonresident alien individual's compensation is in doubt or that the compensation is not eligible for exemption, you must begin withholding. See Regulations section 1.1441-4(b)(2)(iii) for examples illustrating these rules.

If you submit an incorrect Form 8233, you will be notified by the IRS that the form submitted is not acceptable and that you must begin withholding immediately. An incorrect Form 8233 is (a) any Form 8233 that claims a tax treaty benefit or exemption that does not exist or is obviously false; or (b) any Form 8233 that has not been completed in sufficient detail to allow determination of the correctness of the tax treaty benefit or exemption claimed.

Signature.—You or your duly authorized agent must sign and date Form 8233. See Regulations section 1.1441-7(b) for information about duly authorized agent.

