

Instructions for Form W-8EXP



Department of the Treasury
Internal Revenue Service

(October 1998)

Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding

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

General Instructions

Purpose of form. Foreign persons are subject to U.S. tax at a 30% rate on income they receive from U.S. sources that consists of interest (including certain original issue discount (OID)), dividends, rents, premiums, annuities, compensation for, or in expectation of, services performed, or other fixed or determinable annual or periodical gains, profits, or income. This tax is imposed on the gross amount paid and is generally collected by withholding on that amount. A payment is considered to have been made whether it is made directly to the beneficial owner or to another person for the benefit of the beneficial owner.

If you receive certain types of income, you must provide Form W-8EXP to:

- Establish that you are a foreign person;
- Claim that you are the beneficial owner of the income for which Form W-8EXP is given; and
- Claim a reduced rate of, or exemption from, withholding as a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, or foreign private foundation.

In general, payments to a foreign government (including a foreign central bank of issue wholly-owned by a foreign sovereign) from investments in the United States in stocks, bonds, other domestic securities, financial instruments held in the execution of governmental financial or monetary policy, and interest on deposits in banks in the United States are exempt from tax under section 892 and exempt from withholding under sections 1441 and 1442. Payments other than those described above, including income derived in the U.S. from the conduct of a commercial activity, income received from a controlled commercial entity (including gain from the disposition of any interest in a controlled commercial entity), and income received by a controlled commercial entity, do not qualify for exemption from tax under section 892 or exemption from withholding under sections 1441 and 1442. See Temporary Regulations section 1.892-3T. In addition, certain distributions to a foreign government from a real estate investment trust (REIT) may not be eligible for relief from withholding and may be subject to withholding at 35% of the gain realized. For the definition of "commercial activities," see Temporary Regulations section 1.892-4T.

In general, payments to an international organization from investment in the United States in stocks, bonds and other domestic securities, interest on deposits in banks in the United States, and payments from any other source within the United States are exempt from tax under section 892 and exempt from withholding under sections 1441 and 1442. See Temporary Regulations section 1.892-6T. Payments to a foreign central bank of issue (whether or not wholly owned by a foreign sovereign) or to the Bank for International Settlements from obligations of the United States or of any agency or instrumentality thereof, or from interest on deposits with persons carrying on the banking business, are also generally exempt from tax under section 895 and exempt from withholding under sections 1441 and 1442. In addition, payments to a foreign central bank of issue from bankers' acceptances are exempt

from tax under section 871(i)(2)(C) and exempt from withholding under sections 1441 and 1442.

Payments to a foreign tax-exempt organization from certain types of U.S. source income are also generally exempt from tax and exempt from withholding. Gross investment income of a foreign private foundation, however, is subject to withholding under section 1443(b) at a rate of 4%.

To establish eligibility for exemption from 30% tax and withholding, a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, or foreign private foundation must provide a Form W-8EXP to a withholding agent or payer with all necessary documentation. The withholding agent or payer of the income may rely on a properly completed Form W-8EXP to treat the payment associated with the Form W-8EXP as a payment to a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, or foreign private foundation exempt from withholding at source (or, where appropriate, subject to withholding at a 4% rate).

Provide Form W-8EXP to the withholding agent or payer before income is paid or credited to you. Failure by a beneficial owner to provide a Form W-8EXP when requested may lead to withholding of a 30% or 31% (as backup withholding) amount from the payment.

Who must file. You must give Form W-8EXP to the withholding agent or payer if you are a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, or foreign private foundation. Submit Form W-8EXP whether or not you are claiming a reduced rate of, or exemption from, U.S. tax withholding.

DO NOT use Form W-8EXP if:

- You are not a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, or foreign private foundation claiming the applicability of section 501(c), 892, 895, or 1443(b). Instead, provide **Form W-8BEN**, Certificate of Beneficial Status of Beneficial Owner for United States Tax Withholding, or **Form W-8ECI**, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States. For example, if you are a foreign tax-exempt organization claiming a benefit under an income tax treaty, provide Form W-8BEN.
- You are receiving income that is effectively connected with the conduct of a trade or business in the United States. Instead, provide Form W-8ECI.
- You are a tax-exempt organization receiving unrelated business taxable income subject to withholding under section 1443(a). Instead, provide Form W-8BEN or Form W-8ECI for this portion of your income.
- You are a foreign partnership. Instead, provide Form W-8ECI or **Form W-8IMY**, Certificate of Foreign Intermediary, Foreign Partnership, or Certain U.S. Branches for United States Tax Withholding. But if you are a partner in a partnership and you are not yourself a partnership, you may be required to furnish a Form W-8BEN or W-8EXP to the partnership.
- You are acting as an intermediary (i.e., acting not for your own account, but for the account of others as an agent, nominee, or custodian). Instead, provide Form W-8IMY.

Giving Form W-8EXP to the withholding agent. Give Form W-8EXP to the person who is requesting it from you. Generally, this person will be the one from whom you receive the payment or who credits your account. Generally, a separate Form W-8EXP must be given to each withholding agent.

Give Form W-8EXP to the person requesting it before the payment is made to you or credited to your account. If you do not provide this form, the withholding agent may have to withhold tax at a 30% or 31% rate. If you receive more than one type of income from a single withholding agent, the withholding agent may require you to submit a Form W-8EXP for each different type of income.

DO NOT send Form W-8EXP to the IRS.

Change in status. If a change in circumstances makes any information on the Form W-8EXP you have submitted incorrect, you must notify the withholding agent within 30 days of the change in circumstances and you **must** file a new Form W-8EXP or other appropriate form.

Expiration of Form W-8EXP. Generally, a Form W-8EXP filed without a taxpayer identification number (TIN) will remain in effect for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year. However, in the case of an integral part of a foreign government (within the meaning of Temporary Regulations section 1.892-2T(a)(2)) or a foreign central bank of issue, a Form W-8EXP filed without a TIN will remain in effect until a change in circumstances makes any of the information on the form incorrect. See Regulations section 1.1441-1(e)(4)(ii)(B)(7). A Form W-8EXP furnished with a TIN will remain in effect until a change in circumstances makes any information on the form incorrect.

Definitions

Beneficial owner. The beneficial owner is the person who is the owner of the income for tax purposes and who beneficially owns the income. Thus, a person receiving income as a nominee, custodian, or agent for another person is not the beneficial owner of the income. Generally, a person is treated as the owner of the income to the extent it is required under U.S. tax principles to include the amount paid in gross income on a tax return. A person who is the owner of income is considered the beneficial owner of that income unless that person is a conduit entity whose participation in a transaction can be disregarded. Generally, the principles of section 7701(l) and Regulations section 1.881-3 apply to determine if a person is a conduit entity.

A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, or foreign private foundation that is the owner of the income for tax purposes is generally considered the beneficial owner of that income.

Foreign person. A "foreign person" includes a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, foreign estate, foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, or foreign private foundation, and any other person that is not a U.S. person. It also includes a foreign branch or office of a U.S. financial institution or U.S. clearing organization if the foreign branch is a qualified intermediary. Generally, a payment to a U.S. branch of a foreign person is a payment to a foreign person.

Foreign government. A "foreign government" includes only the integral parts or controlled entities of a foreign sovereign as defined in Temporary Regulations section 1.892-2T.

An **integral part** of a foreign sovereign, in general, is any person, body of persons, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a foreign country. The net earnings of the governing authority must be credited to its own account or to other accounts of the foreign sovereign, with no portion benefiting any private person.

A **controlled entity** of a foreign sovereign is an entity that is separate in form from the foreign sovereign or otherwise constitutes a separate juridical entity only if:

1. It is wholly owned and controlled by the foreign sovereign directly or indirectly through one or more controlled entities;
 2. It is organized under the laws of the foreign sovereign by which it is owned;
 3. Its net earnings are credited to its own account or to other accounts of the foreign sovereign, with no portion of its income benefiting any private person; and
 4. Its assets vest in the foreign sovereign upon dissolution.
- The term "controlled entity" also includes a **pension trust** defined in Temporary Regulations section 1.892-2T(c) and may include a **foreign central bank of issue** to the extent that it is wholly owned by a foreign sovereign.

A foreign government must provide Form W-8EXP to establish eligibility for exemption from withholding for payments exempt from tax under section 892.

International organization. An international organization is any public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288(f)). In general, to qualify as an international organization, the United States must participate in the organization pursuant to a treaty or under the authority of an Act of Congress authorizing such participation. See Regulations section 1.893-1(b)(3).

Amounts exempt from tax under section 892. Only a foreign government or an international organization as defined above qualifies for exemption from taxation under section 892. Section 892 generally excludes from gross income and exempts from U.S. taxation income a foreign government receives from investments in the United States in stocks, bonds, or other domestic securities; financial instruments held in the execution of governmental financial or monetary policy; and interest on deposits in banks in the United States of monies belonging to the foreign government. See Temporary Regulations section 1.892-3T. Income of a foreign government from sources other than those enumerated above or that is: **(a)** derived from the conduct of any commercial activity; **(b)** received directly or indirectly from a controlled commercial entity, or **(c)** derived from the disposition of any interest in a controlled commercial entity is not exempt from U.S. taxation. See section 892(a)(2)(A). For the definition of "commercial activity," see Temporary Regulations section 1.892-4T.

Section 892 also generally excludes from gross income and exempts from U.S. taxation income of an international organization received from investments in the United States in stocks, bonds, or other domestic securities and interest on deposits in banks in the United States of monies belonging to the international organization or from any other source within the United States.

Controlled commercial entity. A "controlled commercial entity" is an entity engaged in commercial activities (whether within or outside the United States) if the foreign government: **(a)** holds any interest in the entity that is 50% or more of the total of all interests in the entity, or **(b)** holds a sufficient interest or any other interest in the entity which provides the foreign government with effective practical control of the entity. See Temporary Regulations section 1.892-5T.

Note: *A foreign central bank of issue will be treated as a controlled commercial entity only if it engages in commercial activities within the United States. See the definition below.*

Foreign central bank of issue. A foreign central bank of issue is a bank that is by law or government sanction the principal authority, other than the government itself, to issue instruments intended to circulate as currency. Such a bank is generally the custodian of the banking reserves of the country under whose law it is organized. For purposes of section 895, the Bank of International Settlements is treated as though it were a foreign central bank of issue. See Regulations section 1.895-1(b).

A foreign central bank of issue must provide Form W-8EXP to establish eligibility for exemption from withholding for payments exempt from tax under either section 892 or section 895.

Amounts exempt from tax under section 895. Section 895 generally excludes from gross income and exempts from U.S. taxation income a foreign central bank of issue receives from obligations of the United States (or of any agency or instrumentality thereof) or from interest on deposits with persons carrying on the banking business unless such obligations or deposits are held for, or used in connection with, the conduct of commercial banking functions or other commercial activities of the foreign central bank of issue.

Amounts subject to withholding. An amount subject to withholding is an amount from sources within the United States that is fixed or determinable annual or periodical (FDAP) income. FDAP income is all income included in gross income, including interest (and original issue discount (OID)), dividends, rents, royalties, and compensation. FDAP income does not include most gains from the sale of property (including market discount and option premiums) and insurance premiums within the meaning of section 4372 paid to a foreign insurer or reinsurer. FDAP also does not include items of U.S. source income that are excluded from gross income without regard to the identity of the holder, such as interest under section 103(a).

Withholding agent. Any person, U.S. or foreign, that has the control, receipt, custody, disposal, or payment of an item of income of a foreign person subject to withholding 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 an amount subject to withholding to the foreign person (or to its agent) must withhold.

Specific Instructions

Part I

Note: Before completing Part I, complete the **Worksheet for Foreign Governments, International Organizations, and Foreign Central Banks of Issue** on page 4 to determine whether amounts received are or will be exempt from U.S. tax under sections 892 or 895 and exempt from withholding under sections 1441 and 1442. Use the results of this worksheet to check the appropriate box in Part II. **Do not** give the worksheet to the withholding agent. Instead, keep it for your records.

Line 1. Enter the full name of the organization.

Line 2. Enter the country under the laws of which you are created, incorporated, organized, or governed.

Line 3. Check the **one** box that applies. A foreign central bank of issue (wholly owned by a foreign sovereign) should check the foreign government box.

Line 4. The permanent address of a foreign government, international organization, or foreign central bank of issue is where it maintains its principal office. For all other organizations, the permanent address is the address in the country where the organization claims to be a resident for tax purposes. **Do not** show the address of a financial institution, a post office box, or an address used solely for mailing purposes.

Line 5. Enter the mailing address only if it is different from the address shown on line 4.

Line 6. A U.S. taxpayer identification number (TIN) means an Employer Identification Number (EIN). A TIN is generally required if you are claiming an exemption or reduced rate of withholding based solely on your claim of tax-exempt status under section 501(c) or private foundation status. A TIN is required for any foreign trust, whether or not tax treaty relief or another exemption from withholding under section 1441 or 1442 is claimed. Use **Form SS-4**, Application for Employer Identification Number, to obtain an EIN.

Line 7. If the country of residence for tax purposes has issued the organization a tax identifying number, enter it here.

Line 8. List all account numbers with the same payer unless the payer requires a separate Form W-8EXP for each account.

Part II

Line 9. Check the appropriate box. Enter the name of the foreign sovereign's country if you are an integral part of a foreign government or are a controlled entity. A central bank of issue (wholly owned by a foreign sovereign) should check box 9b.

Line 10. Check this box if you are an international organization. By checking this box, you are certifying to all the statements made in line 10.

Line 11. Check this box if you are a foreign central bank of issue not wholly owned by a foreign sovereign. By checking this box, you are certifying to all the statements made in line 11.

Line 12. Check the appropriate box if you are a foreign tax-exempt organization.

Caution: *If you are a foreign tax-exempt organization, you must attach a statement setting forth any income that is includible under section 512 in computing your unrelated business taxable income.*

Box 12a. Check this box if you have been issued a determination letter by the IRS. Enter the date of the IRS determination letter.

Box 12b. Check this box if you do not have an IRS determination letter, but are providing an opinion of U.S. counsel concluding that you are an organization described in section 501(c).

Box 12c. If you are a section 501(c)(3) organization, check this box if you are **not** a private foundation. You must attach to the withholding certificate an affidavit setting forth sufficient facts concerning your operations and support to enable the IRS to determine that you would be likely to qualify as an organization described in section 509(a)(1), (2), (3), or (4).

Box 12d. Check this box if you are a section 501(c)(3) organization and you are a private foundation described in section 509.

Part III

Form W-8EXP must be signed and dated by an authorized official of the foreign government, international organization, central bank of issue, tax-exempt organization, or foreign private foundation, as appropriate.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to provide 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 section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 6 hr., 56 min.; **Learning about the law or the form**, 4 hr., 22 min.; **Preparing and sending the form to IRS**, 4 hr., 41 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 Form W-8EXP to this office. Instead, give it to your withholding agent.

**WORKSHEET FOR FOREIGN GOVERNMENTS, INTERNATIONAL ORGANIZATIONS,
AND FOREIGN CENTRAL BANKS OF ISSUE**

(Do not give to the withholding agent. Keep for your records.)

Complete this worksheet to determine whether amounts received are or will be exempt from United States tax under section 892 or 895 and exempt from withholding under sections 1441 and 1442.

- Foreign governments and foreign central banks of issue, start with question 1.
- International organizations, go directly to question 6.

FOREIGN GOVERNMENT	Yes	No
1a Is the foreign government an integral part of a foreign sovereign (see Definitions)? (If "Yes," go to question 4. If "No," answer question 1b.)		
b Is the foreign government a controlled entity of a foreign sovereign (see Definitions)? (If "Yes," answer question 2a. If "No," go to question 7a.)		
2a Is the controlled entity a foreign central bank of issue (see Definitions)? (If "Yes," answer question 2b. If "No," go to question 3.)		
b Is the foreign central bank of issue engaged in commercial activities within the United States? (If "Yes," go to question 7a. If "No," go to question 4.)		
3 Is the controlled entity engaged in commercial activities anywhere in the world? (If "Yes," income is not exempt from tax under section 892 and may be subject to withholding. DO NOT complete Form W-8EXP for such income. Instead, complete Form W-8BEN or W-8ECI. If "No," answer question 4.)		
4 Does the foreign government or foreign central bank of issue (wholly owned by the foreign sovereign) receive income directly or indirectly from any controlled commercial entities (see Definitions)? (If "Yes," income is not exempt from tax under section 892 and may be subject to withholding. DO NOT complete Form W-8EXP for such income. Instead, complete Form W-8BEN or W-8ECI. If "No," answer question 5.)		
5 Is any of the income received by the foreign government or foreign central bank of issue (wholly owned by the foreign sovereign) from sources other than investments in the United States in stocks, bonds, other domestic securities (as defined in Temporary Regulations section 1.892-3T(a)(3)), financial instruments held in the execution of governmental financial or monetary policy (as defined in Temporary Regulations section 1.892-3T(a)(4) and (a)(5)), or interest on deposits in banks in the United States? (If "Yes," income is not exempt from tax under section 892 and may be subject to withholding. DO NOT complete Form W-8EXP for such income. Instead, complete Form W-8BEN or W-8ECI. If "No," check the appropriate box on line 9 of Form W-8EXP.)		
INTERNATIONAL ORGANIZATION	Yes	No
6 Is the international organization an organization in which the United States participates pursuant to any treaty or under an Act of Congress authorizing such participation and to which the President of the United States has issued an Executive Order entitling the organization to enjoy the privileges, exemptions, and immunities provided under the International Organization Immunities Act (22 U.S.C. 288, 288e, 288f)? (If "Yes," check the box on line 10 of Form W-8EXP. If "No," income may be subject to withholding. DO NOT complete this form for such income. Instead, complete Form W-8BEN or W-8ECI.)		
FOREIGN CENTRAL BANK OF ISSUE	Yes	No
7a Is the entity, whether wholly or partially owned by the foreign sovereign, a foreign central bank of issue? (If "Yes," answer question 7b. If "No," income is not exempt from tax under section 895 and may be subject to withholding. DO NOT complete Form W-8EXP for such income. Instead, complete Form W-8BEN or W-8ECI.)		
b Is the income received by the foreign central bank of issue from sources other than obligations of the United States (or any agency or instrumentality thereof) or from interest on deposits with persons carrying on the banking business? (If "Yes," income is not exempt from tax under section 895 and may be subject to withholding. DO NOT complete Form W-8EXP for such income. Instead, complete Form W-8BEN or W-8ECI. If "No," answer question 7c.)		
c Are the obligations of the United States (or any agency or instrumentality thereof) or bank deposits owned by the foreign central bank of issue held for, or used in connection with, the conduct of commercial banking functions or other commercial activities by the foreign central bank of issue? (If "Yes," income is not exempt from tax under section 895 and may be subject to withholding. DO NOT complete Form W-8EXP for such income. Instead, complete Form W-8BEN or W-8ECI. If "No," check the box on line 11 of Form W-8EXP.)		