

# Instructions for Form W-8ECI

(October 1998)

## 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

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



Department of the Treasury  
Internal Revenue Service

### General Instructions

**Purpose of form.** Foreign persons are generally subject to U.S. tax at a 30% rate on income they receive from U.S. sources. However, no withholding is required on income (other than personal services income and income subject to withholding under section 1445 (dispositions of U.S. real property interests) or section 1446 (foreign partner's share of effectively connected income)) that is, or is deemed to be, effectively connected with the conduct of a trade or business within the United States and is includable in the beneficial owner's gross income for the tax year.

If you receive effectively connected income from sources within the United States, you must provide Form W-8ECI to:

- Establish that you are a foreign person;
- Claim that you are the beneficial owner of the income for which Form W-8ECI is being provided; and
- Claim that the income is effectively connected with the conduct of a trade or business within the United States.

If you expect to receive both income that is effectively connected and income that is not effectively connected from a withholding agent, you must provide Form W-8ECI for the effectively connected income and Form W-8BEN (or Form W-8EXP or Form W-8IMY) for income that is not effectively connected.

If you are a foreign partnership with effectively connected income, you may submit Form W-8ECI without attaching Forms W-8BEN or other documentation for your foreign partners.

A withholding agent or payer of the income may rely on a properly completed Form W-8ECI to treat the payment associated with the Form W-8ECI as a payment to a foreign person who beneficially owns the amounts paid and is entitled to an exemption from withholding because the income is effectively connected with the conduct of a trade or business within the United States.

Provide Form W-8ECI to the withholding agent or payer before income is paid or credited to you. Failure by a beneficial owner to provide a Form W-8ECI 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-8ECI to the withholding agent or payer if you are a foreign person and you are the beneficial owner of U.S. source income that is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States.

**DO NOT** use Form W-8ECI if:

- You are a nonresident alien individual who claims exemption from withholding on compensation for independent or certain dependent personal services performed in the United States. Instead, provide **Form 8233**, Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien, or **Form W-4**, Employee's Withholding Allowance Certificate.
- You are claiming an exemption from withholding for a reason other than a claim that the income is effectively connected with

the conduct of a trade or business within the United States. For example, if you are a foreign person and the beneficial owner of U.S. source income that is not effectively connected with a U.S. trade or business and are claiming a reduced rate of withholding as a resident of a foreign country with which the United States has an income tax treaty in effect, do not use this form. Instead, provide Form **W-8BEN**, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding.

- You are a foreign person receiving proceeds from the disposition of a U.S. real property interest. Instead, see **Form 8288-B**, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.
- You are acting as an intermediary (i.e., acting not for your own account or for that of your partners, but for the account of others as an agent, nominee, or custodian). Instead, provide **Form W-8IMY**, Certificate of Foreign Intermediary, Foreign Partnership, or Certain U.S. Branches for United States Tax Withholding.
- You are a withholding foreign partnership. A foreign withholding partnership is, generally, a foreign partnership that has entered into a withholding agreement with the IRS under which it agrees to assume primary withholding responsibility for each partner's distributive share of income subject to withholding that is paid to the partnership. Instead provide Form W-8IMY.
- You are a foreign corporation that is a personal holding company receiving compensation described in section 543(a)(7). Such compensation is not exempt from withholding as effectively connected income, but may be exempt from withholding on another basis.
- You are a foreign partner in a domestic partnership and the income you receive from the partnership is effectively connected with the conduct of a trade or business within the United States. See section 1446. A Form W-8BEN, Form W-8IMY, or **Form W-8EXP**, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding, is required, however, for income that is not effectively connected. See Rev. Proc. 89-31, 1989-1 C.B. 895.

**Giving Form W-8ECI to the withholding agent.** Give Form W-8ECI to the person who is requesting it from you. Generally, this will be the person from whom you receive the payment or who credits your account. Give Form W-8ECI 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 at a 30% or 31% rate. A separate Form W-8ECI must be given to each withholding agent.

**DO NOT** send Form W-8ECI to the IRS.

**Change in status.** If a change in circumstances makes any information on the Form W-8ECI you have submitted incorrect, you must notify the withholding agent or payer within 30 days of the change in circumstances and you **must** file a new Form W-8ECI. For example, if during the taxable year any part or all of the income is no longer effectively connected with the conduct of a trade or business within the United States, your Form W-8ECI is no longer valid. You must notify the withholding agent and provide Form W-8BEN, W-8EXP, or Form W-8IMY.

If you become a citizen or a resident of the United States after you submit Form W-8ECI, you are no longer subject to the 30% foreign-person withholding rules. You must notify the withholding agent or payer within 30 days of becoming a U.S. citizen or resident. For more information, see the **Instructions for the Requestor of Form W-9**.

**Expiration of Form W-8ECI.** Generally, a Form W-8ECI 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, unless a change in circumstances makes any information on the form incorrect. For example, a Form W-8ECI signed on September 30, 1999, remains valid through December 31, 2002. Upon the expiration of the 3-year period, you must provide a new Form W-8ECI.

## 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.

The beneficial owners of income paid to a partnership are those persons who, under U.S. tax principles, are the owners of the income for tax purposes in their separate or individual capacities and who beneficially own the income. However, it is not necessary for a foreign partner in a foreign partnership that is engaged in a trade or business within the United States to give a Form W-8ECI to a withholding agent if the foreign partnership has provided a Form W-8ECI.

**Effectively connected income.** Generally, when a foreign person engages in a trade or business within the United States, all income from sources within the United States other than fixed or determinable annual or periodic (FDAP) income (e.g., interest, dividends, rents, and certain similar amounts) is considered income effectively connected with a U.S. trade or business. FDAP income may or may not be effectively connected with a U.S. business. Factors to be considered to determine whether FDAP income and similar amounts from U.S. sources 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
- The activities of that trade or business were a material factor in the realization of the income.

There are special rules for determining whether income from securities is effectively connected with the active conduct of a U.S. banking, financing, or similar business. See section 864(c)(4)(B)(ii) and Regulations section 1.864-4(c)(5)(ii) for more information.

Effectively connected income, after allowable deductions, is taxed at graduated rates applicable to U.S. citizens and residents, rather than at the 30% foreign-person withholding rate. You must report this income on an annual tax return as follows:

- **Individuals**—Use **Form 1040NR**, U.S. Nonresident Alien Income Tax Return.
- **Corporations**—Use **Form 1120-F**, U.S. Income Tax Return of a Foreign Corporation.
- **Partnerships**—Use **Form 8804**, Annual Return for Partnership Withholding Tax (Section 1446).
- **Trusts or estates**—Use **Form 1041**, U.S. Income Tax Return for Estates and Trusts.

**Foreign person.** A foreign person includes a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, 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.

**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 individual. Additionally, an alien individual who is a resident of a foreign country under the residence article of an income tax treaty, or an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa is a nonresident alien individual.

**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 certain purposes (e.g., filing a joint income tax return), such individual is still treated as a nonresident alien for withholding tax purposes on all income except wages.*

See **Pub. 519**, U.S. Tax Guide for Aliens, for more information on resident and nonresident alien status.

**Disregarded entity.** A business entity that has a single owner and is not a corporation under Regulations section 301.7701-2(b) is disregarded as an entity separate from its owner.

**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 including (but not limited to) any foreign intermediary, foreign partnership, and U.S. branches of certain foreign banks and insurance companies. Generally, the person who pays (or causes to be paid) an amount subject to withholding to the foreign person (or to its agent) must withhold.

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## Specific Instructions

### Part I

**Line 1.** Enter your name. If you are a disregarded entity with a single owner who is a foreign person, enter the name of your foreign single owner.

**Note:** *If you own the income or account jointly with one or more other persons, the income or account will be treated by the withholding agent as owned by a foreign person only if Forms W-8ECI are provided by all of the owners. If a withholding agent or payer does not receive a Form W-8ECI from all of the joint owners or if a **Form W-9**, Request for Taxpayer Identification Number and Certification, is received from any one of the joint owners, the payment must be treated as made to U.S. persons.*

**Line 2.** Enter the country of incorporation if you are a corporation. If you are another type of entity, enter the country under whose laws you are created, organized, or governed. If you are an individual, write "N/A" (for "not applicable").

**Line 3.** Check the box that applies. By checking a box, you are representing that you qualify for this classification. You must check the **one** box that represents your classification (e.g., corporation, partnership, trust or estate, etc.) under U.S. tax principles. If you are a disregarded entity, you must check the disregarded entity box. Do not check the box that describes the status of your single owner.

**Line 4.** Your permanent residence address is the address in the country where you claim to be a resident for that country's income tax. **Do not** show the address of a financial institution, a post office box, or an address used solely for mailing purposes. If you are an individual who does not have a tax residence in any country, your permanent residence is where you normally reside. If you are not an individual and you do not have a tax residence in any country, the permanent residence address is where you maintain your principal office.

**Line 5.** Enter your business address in the United States. Do not show a post office box.

**Line 6.** You must provide a U.S. taxpayer identification number (TIN) for this form to be valid. A TIN is a social security number (SSN), employer identification number (EIN), or IRS individual taxpayer identification number (ITIN). Check the appropriate box for the type of TIN you are providing.

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 eligible to get one, apply on **Form SS-5**, Application for a Social Security Card. If you do not have, **and are not eligible to obtain**, an SSN, you may apply for an ITIN using **Form W-7**, Application for IRS Individual Taxpayer Identification Number.

If you are other than an individual (including a foreign estate or trust), or you are an individual who is an employer or who is engaged in a U.S. trade or business as a sole proprietor, use **Form SS-4**, Application for Employer Identification Number, to obtain an EIN. If you are a foreign wholly-owned entity, enter the TIN of your foreign single owner.

**Line 7.** If your country of residence for tax purposes has issued you a tax identifying number, enter it here. For example, if you are a resident of Canada, enter your Social Insurance Number.

**Line 8.** List all account numbers with the same withholding agent or payer unless the withholding agent or payer requires you to submit a separate Form W-8ECI for each account.

**Line 9.** You must specify the items of income that are effectively connected with the conduct of a trade or business within the United States. You will generally have to provide Form W-8BEN, Form W-8EXP or Form W-8IMY for those items from sources within the United States that are not effectively connected with the conduct of a trade or business within the United States. See Form W-8BEN, W-8EXP, W-8IMY, and their instructions for more details.

## Part II

**Signature.** Form W-8ECI must be signed and dated by the beneficial owner of the income, or, if the beneficial owner is not an individual, by an authorized representative or officer of the

beneficial owner. If Form W-8ECI is completed by an agent acting under a duly authorized power of attorney, the form must be accompanied by the power of attorney in proper form or a copy thereof specifically authorizing the agent to represent the principal in making, executing, and presenting the form. **Form 2848**, Power of Attorney and Declaration of Representative, may be used for this purpose. The agent, as well as the beneficial owner, may incur liability for the penalties provided for an erroneous, false, or fraudulent form.

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**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 income effectively connected with the conduct of a trade or business in 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**, 3 hr., 35 min.; **Learning about the law or the form**, 2 hr., 5 min.; **Preparing and sending the form to IRS**, 2 hr., 14 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-8ECI to this office. Instead, give it to your withholding agent.