



Department
of the
Treasury

Internal
Revenue
Service

Publication 515
(Rev. February 2001)
Cat. No. 15019L

Withholding of Tax on Nonresident Aliens and Foreign Corporations

For Withholding in 2001



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Important Changes

New regulations. The Internal Revenue Service issued new regulations relating to the withholding of tax on, and reporting of, certain U.S. source income paid to foreign persons. The new regulations are generally effective for payments made on or after January 1,

2001. These regulations contain significant changes to the rules governing payments of U.S. source income, particularly with respect to payments made to foreign intermediaries, foreign partnerships, and foreign trusts. You should carefully evaluate the effect of the new regulations.

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.

New documentation requirements. New forms replace the following forms and statement.

- Form W-8, *Certificate of Foreign Status*.
- Form 1001, *Ownership, Exemption, or Reduced Rate Certificate*.
- Form 1078, *Certificate of Alien Claiming Residence in the United States*.
- Form 4224, *Exemption From Withholding of Tax on Income Effectively Connected With the Conduct of a Trade or Business in the United States*.
- Form 8709, *Exemption From Withholding on Investment Income of Foreign Governments and International Organizations*.
- Statement under former regulation section 1.1441-5, relating to an individual's claim to be a U.S. citizen or resident, or a partnership's or corporation's claim that it is a domestic entity.

In addition, the **address rule** for dividends does not apply for any payments of dividends made after December 31, 2000. A reduced rate of withholding applies to dividends only if the withholding agent has received valid documentation.

The following are the new forms. For more information, see *Documentation*, later.

- **Form W-8BEN**, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*.
- **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*.
- **Form W-8EXP**, *Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding*.
- **Form W-8IMY**, *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding*.

Generally, Form W-8BEN replaces Forms W-8 and 1001, Form W-8ECI replaces Form 4224, and Form W-8EXP replaces Form 8709. Form W-8IMY is a new form that had no counterpart under prior law. Form W-9, *Request for Taxpayer Identification Number and Certification*, replaces Form 1078.

New reporting requirements. The new regulations make significant changes to the method for reporting payments to foreign persons, particularly with respect to payments made to foreign intermediaries, partnerships, and trusts. In addition, Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, has been significantly revised to reflect changes in the new regulations. Withholding agents that rely on automated sys-

tems to report income paid to foreign persons should ensure that they have made the necessary changes to their systems to comply with these new reporting requirements.

Income tax treaties. A new income tax treaty with Denmark went into effect for taxes withheld at source for amounts paid or credited on or after May 1, 2000, and for other taxes, for tax years beginning on or after January 1, 2001.

A new income tax treaty with Ukraine went into effect for taxes withheld on interest, dividends, and royalties paid or credited on or after August 1, 2000, and for other taxes, for tax periods beginning on or after January 1, 2001.

A new income tax treaty with Luxembourg went into effect on January 1, 2001.

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. The new treaties are shown in these tables.

Generally, a person entitled to benefits under the previous treaty with that country (for Ukraine, the treaty with the former Soviet Union) can elect to have that treaty apply in its entirety for one year following the date the new treaty would otherwise apply.

Notice 2001-4. The IRS issued Notice 2001-4 to provide guidance regarding certain transitional and other issues for qualified intermediaries and U.S. withholding agents. Some of the provisions of that notice are discussed next. For more details and other provisions, see Notice 2001-4 in *Internal Revenue Bulletin* 2001-2.

Documentation. During calendar year 2001, you (a U.S. withholding agent) may rely on forms received under the regulations in effect prior to January 1, 2001 (old forms), if you can show that you have made a good faith effort to get the appropriate new form. This applies even if the validity period of those old forms has expired.

You cannot use the address rule for dividends paid after December 31, 2000. You must have documentation to treat a payee as a foreign person or apply a reduced rate of withholding. During calendar year 2001, you meet this requirement if you have an old Form W-8 or a Form 1001 for the same payee.

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 or 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. You can rely on documentary evidence in lieu of a Form W-8 for a payment made in a U.S. possession.

See *New documentation requirements*, earlier.

You may not rely on an old Form W-8 to treat a foreign financial institution as the beneficial owner of income if you know, or have reason to know, that the institution is acting as an intermediary.

Qualified intermediaries. Generally, a qualified intermediary (QI) is any foreign intermediary that has entered into a QI withholding agreement with the IRS. (See the discussions under *Persons Subject to NRA Withholding* and *Documentation*, later.) An

applicant for a QI agreement may represent on Form W-8IMY that it is a QI for a limited period after it submits a complete application and before it receives a fully executed agreement. If the application was submitted before January 1, 2001, this period ends on June 30, 2001. If the application was submitted after December 31, 2000, this period continues until the end of the sixth full month after the month in which the application was submitted.

If the application was submitted before July 1, 2001, an applicant may apply all of the provisions of the QI agreement beginning January 1, 2001. If the application was submitted after June 30, 2001, all the following apply.

- 1) The applicant may represent to a withholding agent that it is a QI effective on the date it submits a complete application.
- 2) The QI cannot apply the following provisions of the QI agreement (see *Revenue Procedure 2000-12*) to any payments received before the effective date:
 - a) Reporting provisions (section 8), and
 - b) Collective credit or refund provisions (section 9.04).
- 3) The QI must report all payments it makes before the effective date as a nonqualified intermediary.

A withholding agent is not required to determine when a QI applied for an agreement or if it has received a fully executed agreement.

QI-EIN. When the IRS receives an application for a QI agreement it will issue the applicant a QI employer identification number (QI-EIN). The QI should include its QI-EIN on any Form W-8IMY it gives to a withholding agent. If Form W-8IMY is provided before the number is received, the QI should write "awaiting QI-EIN" on line 6 of Part I of the form. If the QI-EIN was not on the Form W-8IMY given to a withholding agent, the QI must give the number to the withholding agent as soon as practicable after it is received. A new Form W-8IMY is not required if all of the information on the original form remains valid. A withholding agent is not required to verify the QI-EIN.

Primary Form 1099 responsibility assumed. QIs that are not U.S. payors are no longer required to obtain IRS approval before assuming primary Form 1099 reporting and backup withholding responsibility.

Foreign partnerships. For calendar year 2001, a foreign partnership can give you a Form W-8IMY with a withholding statement that gives you information regarding withholding rate pools. The foreign partnership must associate the documentation from each of its partners with the Form W-8IMY. If a partner is a foreign person or a U.S. exempt recipient, documentation may be provided to you at any time during calendar year 2001. However, a Form W-9 must be provided for any U.S. non-exempt recipient before a payment is made to a partnership.

Services performed outside the United States. You are not required to report, under section 6041 of the Internal Revenue Code, income paid for services, even if you do not have a Form W-8 from the payee, if:

- 1) The payee is an individual,

- 2) You do not know that the payee is a U.S. citizen or resident,
- 3) You do not know, and have no reason to know, that the income is (or may be) effectively connected with the conduct of a U.S. trade or business, and
- 4) The payee performed all of the services for which payment is made outside the United States.

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.

Important Reminders

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 2000, if you meet either of the following conditions.

- You had to make electronic deposits in 2000.
- You deposited more than \$200,000 in federal depository taxes in 1999.

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

For more information about depositing electronically, see Publication 966, *EFTPS: The Easiest Way to Pay Your Federal Taxes*.

IRS taxpayer identification numbers for aliens. The IRS will issue an individual taxpayer 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.

Hong Kong. Hong Kong and China continue to be treated as two separate countries for purposes of certain bilateral agreements, the Internal Revenue Code, and the Income Tax Regulations.

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 filing 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.

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You can write to us at the following address:

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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.

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
- 941** Employer's Quarterly Federal Tax Return
- 1042** Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
- 1042-S** Foreign Person's U.S. Source Income Subject to Withholding

See *How To Get Tax Help*, near the end of this publication for information about getting publications and forms.

Withholding of Tax

Generally, a foreign person is subject to U.S. tax on its U.S. source income. Most types of U.S. source income received by a foreign person are subject to U.S. tax of 30%. A reduced rate, including exemption, may apply if there is a tax treaty between the foreign person's country of residence and the United States. The tax is generally withheld (NRA withholding) from the payment made to the foreign person.

The term "**NRA withholding**" is used in this publication descriptively to refer to with-

holding required under sections 1441, 1442, and 1443 of the Internal Revenue Code. Generally, NRA withholding describes the withholding regime that requires 30% withholding on a payment of U.S. source income. Payments to all foreign persons, including nonresident alien individuals, foreign entities and governments, may be subject to NRA withholding. The term does not include withholding done under section 1445 of the Code (see *U.S. Real Property Interest*, later) or under section 1446 of the Code (see *Partnership Withholding on Effectively Connected Income*, later).

A withholding agent must withhold 30% of any payment subject to NRA withholding, made to a payee that is a foreign person. However, a withholding agent that can reliably associate the payment with documentation (discussed later) from a U.S. person is not required to withhold. In addition, a withholding agent may apply a reduced rate of withholding (including an exemption from withholding) if it can reliably associate the payment with documentation from a beneficial owner that is a foreign person entitled to a reduced rate of 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, 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.

Although several persons may be withholding agents for a single payment, the full tax is required to be withheld only once. Generally, the U.S. person who pays an amount subject to NRA withholding to a foreign person is the person responsible 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 in accordance with the terms of its qualified intermediary withholding agreement.

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. The applicable tax will be collected only once. If the foreign person satisfies its U.S. tax liability, you may still be held liable for interest and penalties for your failure to withhold.

Determination of amount to withhold. You must withhold on the gross amount subject to NRA withholding. You cannot reduce the

gross amount by any deductions. However, see *Scholarships and Fellowship Grants*, and *Pay for Personal Services Performed*, later, for when a deduction for a personal exemption may be allowed.

If the determination of the source of the income or the amount subject to tax depends on facts that are not known at the time of payment, you must withhold an amount sufficient to ensure that at least 30% of the amount subsequently determined to be subject to withholding is withheld. In no case, however, should you withhold more than 30% of the total amount paid.

When to withhold. Withholding is required at the time you make a payment of an amount subject to withholding. A payment is made to a person if that person realizes income whether or not there is an actual transfer of cash or other property. A payment is considered made to a person if it is paid for that person's benefit. For example, a payment made to a creditor of a person in satisfaction of that person's debt to the creditor is considered made to the person. A payment is also considered made to a person if it is made to that person's agent.

A U.S. partnership should withhold when any distributions that include amounts subject to withholding are made. However, if a foreign partner's distributive share of income subject to withholding is not actually distributed, the U.S. partnership must withhold on the foreign partner's distributive share of the income on the earlier of the date that a Schedule K-1 (Form 1065) is provided or mailed to the partner or the due date for furnishing that schedule.

A U.S. trust is required to withhold on the amount includible in the gross income of a foreign beneficiary to the extent the trust's distributable net income consists of an amount subject to withholding. To the extent a U.S. trust is required to distribute an amount subject to withholding but does not actually distribute the amount, it must withhold on the foreign beneficiary's allocable share at the time the income is required to be reported on Form 1042-S.

Withholding and Reporting Obligations

You are required to report payments subject to NRA withholding on Form 1042-S and to file a tax return on Form 1042. 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 may also be responsible as a payer for information reporting on Form 1099 for payments made to a U.S. person. In addition, you are required to deduct and withhold 31% from a reportable payment made to a U.S. person that is 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 under-reporting, or (4) there has been a payee certification failure. Generally, a TIN must be provided by a U.S. non-exempt recipient on Form W-9. Foreign persons who provide Form W-8BEN, Form W-8ECI, or Form W-8EXP (or, if applicable, documentary

evidence) are exempt from backup withholding and Form 1099 reporting. A payer files a tax return on Form 945 for backup withholding.

You may be required to report payments on Form 1099, and, if appropriate, backup withhold, if the payee is determined to be a U.S. person subject to Form 1099 reporting even though 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.

Wages paid to employees. If you are the employer of a nonresident alien employee, you may have to withhold taxes at graduated rates. See *Pay for Personal Services Performed*, later.

Effectively connected income by partnerships. A withholding agent that is a partnership (whether U.S. or foreign) is also responsible for withholding on its income effectively connected with a U.S. trade or business that is allocable to foreign partners. See *Partnership Withholding on Effectively Connected Income*, later, for more information.

U.S. real property interest. A withholding agent may also be responsible for withholding if a foreign person transfers a U.S. real property interest to the agent, or if it is a corporation, partnership, trust or estate that distributes a U.S. real property interest to a shareholder, partner, or beneficiary that is a foreign person. See *U.S. Real Property Interest*, later.

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. payees.

Usually, you make the determination of 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 (e.g., gross proceeds from the sales of securities), you must treat the payment as made to a U.S. payee and not as a payment to a foreign person. You may be required to report the payment on Form 1099 and, if applicable, backup withhold.

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 you make a payment to a foreign disregarded entity and 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 withhold. You may assume that a foreign entity is not a disregarded entity unless 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 and partnerships claiming treaty benefits as entities that are not fiscally transparent).
- A foreign simple and foreign grantor trust (other than a withholding foreign trust), and foreign simple and foreign grantor trusts claiming treaty benefits as entities that are not fiscally transparent.
- An entity receiving income for which treaty benefits are claimed by an interest holder in the entity and the entity is considered fiscally transparent.

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 may also 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.

You may treat a withholding foreign partnership and a withholding foreign trust as the payee. They 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 partnership itself if the partnership is claiming treaty benefits on the basis that it is not fiscally transparent under section 894 of the Internal Revenue Code 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 payees.

See *Notice 2001-4* under *Important Changes*, earlier.

Example 1. FP, a nonwithholding foreign partnership organized under the laws of Country X, has three partners: NRAI, a nonresident alien individual; FC, a foreign corporation, and USC, a U.S. citizen. You make a payment of U.S. source interest to FP. FP gives you a Form W-8IMY with which it associates Forms W-8BEN from NRAI and FC and a Form W-9 from USC. FP also gives you a complete withholding statement that enables you to associate a portion of the interest payment to each partner.

You must treat NRAI, FC, and USC as the payees of the interest payment and report the payment to them on Forms 1042-S (for NRAI and FC) and Form 1099 (for USC) as if the payment was made directly to them.

Example 2. FP1 is a nonwithholding foreign partnership organized in Country X. FP1 has two partners: FC, a foreign corporation, and FP2, a nonwithholding foreign partnership. FP2 has two partners: NRAI1 and NRAI2, both nonresident alien individuals. You make a payment of U.S. source interest to FP1. FP1 gives you a valid Form W-8IMY with which it associates a Form W-8BEN from FC and a Form W-8IMY from FP2. In addition, Forms W-8BEN from NRAI1 and NRAI2 are associated with the Form W-8IMY from FP2. The Forms W-8IMY from FP1 and FP2 have complete withholding statements associated with them. Because you can reliably associate a portion of the interest payment with the Forms W-8BEN provided by each of FC, NRAI1, and NRAI2 as a result of the withholding statement, you may treat FC, NRAI1, and NRAI2 as the payees of the interest.

Example 3. You make a payment of U.S. source dividends to WFP, a withholding foreign partnership. WFP has two partners, FC1 and FC2, both foreign corporations. You can reliably associate the payment with a valid Form W-8IMY from WFP on which WFP represents that it is a withholding foreign partnership. You may treat WFP 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 Internal Revenue 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 to determine the payees.

Example. FT, a foreign trust, is a simple trust that has three beneficiaries: NRAI, a nonresident alien individual; FC, a foreign corporation; and USC, a U.S. citizen. You make a payment of interest to FT. FT gives you a Form W-8IMY with which it associates Forms W-8BEN from NRAI and FC and a Form W-9 from USC. FT 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 NRAI, FC, and USC as the payees of the interest payment and report the payment to them on Forms 1042-S (for NRAI and FC) and Form 1099 (for USC) as if the payment was made directly to them.

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 income to the extent 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 standard 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.

The payees of a payment made to a fiscally transparent entity are the owners of 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 an income tax treaty in effect with the United States.

A receives royalty income from U.S. sources that is not effectively connected with the conduct of a trade or business in the United States. For U.S. income tax purposes, A is treated as a partnership. Country X treats A as a partnership and requires the interest holders in A to separately take into account, on a current basis, their respective shares of the income paid to A even if the income is not distributed. The laws of country X provide that the character and source of the income to A's interest holders are determined as if the income was realized directly from the source that paid it to A. Accordingly, A is fiscally transparent in its jurisdiction, country X.

B and C are not fiscally transparent under the laws of their respective countries of incorporation. Country Y requires B to separately take into account on a current basis B's share of the income paid to A, and the character and source of the income to B is determined as if the income was realized directly from the source that paid it to A. Accordingly, A is fiscally transparent for that income under the laws of country Y, and B is treated as deriving its share of the U.S. source royalty income for purposes of the U.S.—Y income tax treaty. Country Z, 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, the payees of payments made to a foreign intermediary are the persons for whom the foreign intermediary collects the payment, 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 withhold.

An intermediary is a custodian, broker, nominee, or any other person that acts as an agent for another person. A foreign intermediary is either a qualified intermediary or a nonqualified intermediary. Generally, you determine whether an entity is a qualified intermediary or a nonqualified intermediary based on the representations the intermediary makes on Form W-8IMY.

You must determine whether the customers or account holders of a foreign intermediary are U.S. or foreign persons, and, if the account holder or customer is foreign, whether a reduced rate of NRA withholding applies. You make these determinations based on the foreign intermediary's Form W-8IMY and associated information and documentation. If you do not have all of the information or documentation that is required to reliably associate a payment with a payee, you must apply the presumption rules. See *Documentation and Presumption Rules*, later.

Nonqualified intermediary. A nonqualified intermediary (NQI) is any intermediary that is a foreign person and that is not a qualified intermediary. The payees of a payment made to an NQI are the customers or account holders on whose behalf the NQI is acting.

Example. You make a payment of interest to NQI, a foreign bank that is a nonqualified intermediary. NQI gives you a Form W-8IMY with which it associates the Forms W-8BEN of NRA1 and NRA2, foreign persons, and a Form W-9 from USP, a U.S. person. NQI also associates with its Form W-8IMY a withholding statement on which it allocates a portion of the interest payment to NRA1, NRA2, and USP and provides all other information required to be on the withholding statement. NRA1, NRA2, and USP are the payees of the interest payment. You should report the portion of the interest paid to NRA1 and NRA2 on Forms 1042-S and the portion paid to USP on Form 1099.

Qualified intermediary. 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 (discussed later) with the IRS. You may treat a QI as a payee to the extent the QI assumes primary withholding responsibility or primary Form 1099 reporting and backup withholding responsibility for a payment. In this situation, the QI is required to withhold the tax. You can determine whether a QI has assumed responsibility from the Form W-8IMY provided by the QI.

A payment to a QI to the extent it does not assume primary NRA withholding responsibility is considered made to the person on whose behalf the QI acts. If a QI does not assume Form 1099 reporting and backup withholding responsibility, you must report on Form 1099 and, if applicable, backup withhold as if you were making the payment directly to the U.S. persons.

QI withholding agreement. Foreign financial institutions and foreign branches of U.S. financial institutions can enter into an agreement with the IRS to be a qualified intermediary. A QI is entitled to certain simplified withholding and reporting rules. In general, there are three major areas whereby intermediaries with QI status are afforded such simplified treatment.



The QI withholding agreement and procedures necessary to complete the QI application are set forth in Revenue Procedure 2000-12 found in Cumulative Bulletin 2000-1. Also see Notice 2001-4 in Internal Revenue Bulletin 2001-4. Additional information can also be found under the *Tax Info for Business* page at our web site www.irs.gov.

Documentation. A QI is not required to forward documentation obtained from foreign account holders to the U.S. withholding agent from whom the QI receives a payment of U.S. source income. The QI maintains such documentation at its location and provides the U.S. withholding agent with withholding rate pools. A withholding rate pool is a payment of a single type of income that is subject to a single rate of withholding.

A QI is required to provide the U.S. withholding agent with information regarding U.S. persons subject to Form 1099 information reporting unless the QI assumes the primary

obligation to do Form 1099 reporting and backup withholding.

An additional documentation benefit for those intermediaries with QI status pertains to the validity period of documentary evidence. Specifically, to the extent a QI obtains documentary evidence under the "know your customer" rules that apply to the QI under local law, and the documentary evidence is of a type specified in an attachment to the qualified intermediary agreement, the documentary evidence remains valid until there is a change in circumstances or the QI knows the information is incorrect. This indefinite validity period rule does not apply to Forms W-8 or to documentary evidence that is not of the type specified in the attachment to the qualified intermediary agreement.

Form 1042-S reporting. A QI is permitted 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, however, if the QI makes a payment to a nonqualified intermediary or a flow-through entity (discussed earlier).

Collective refund procedures. A QI may 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 that is subject to Federal Reserve Board supervision, a foreign insurance company subject to state regulatory supervision, or a financial institution organized in a possession of the United States treated as a U.S. branch. If you agree to treat the branch as a U.S. person, you may treat the branch as a U.S. payee for a payment subject to NRA withholding provided you receive a Form W-8IMY from the U.S. branch on which the agreement is evidenced. If you treat the branch as a U.S. payee, you are not required to withhold. Even though you agree to treat the branch as a U.S. person, however, you must report the payment on Form 1042-S.

If you are paying a U.S. branch an amount that is not subject to NRA withholding, treat the payment as made to a foreign person, irrespective of any agreement to treat the branch as a U.S. person for amounts subject to NRA withholding. Consequently, amounts not subject to NRA withholding that are paid to a U.S. branch of a foreign bank, insurance company or a possession's financial institution are not subject to Form 1099 reporting or to backup withholding.

Alternatively, a branch of a foreign bank or insurance company, or a possession's financial institution may provide you with a Form W-8IMY with which it associates the documentation of the persons on whose behalf it acts. In this situation, the payees are the persons on whose behalf the branch acts provided you can reliably associate the payment with valid documentation from those persons. See *Nonqualified Intermediaries* under *Documentation*, later.

If the U.S. branch does not provide you with a Form W-8IMY, then you should treat a payment subject to NRA withholding as made to the foreign person of which the branch is a part and the income as effectively connected with the conduct of a trade or business in the United States.

Foreign Persons

A payee is subject to NRA withholding only if it is a foreign person. A foreign person includes a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, a foreign estate, and any other person that is not a U.S. person. It also includes a foreign branch of a U.S. financial institution if the foreign branch is a qualified intermediary. Generally, the U.S. branch of a foreign corporation or partnership is treated as a foreign person.

Nonresident alien. A nonresident alien is an individual who is not a U.S. citizen or a resident alien. An alien individual who is a resident of a foreign country under the residence article of an income tax treaty is a nonresident alien individual.

Married to U.S. citizen or resident alien. Nonresident alien individuals married to U.S. citizens or residents may choose to be treated as resident aliens for certain income tax purposes. However, these individuals are still subject to the NRA withholding rules that apply to nonresident aliens for all income except wages. Wages paid to these individuals are subject to the withholding rules that apply to U.S. citizens and residents and not the NRA withholding rules. See Publication 15 (Circular E).

Resident alien. A resident alien is an individual that is not a citizen or national of the United States and who meets either the green card test or the substantial presence test for the calendar year.

- **Green card test.** An alien is a U.S. resident if the individual was a lawful permanent resident of the United States at any time during the calendar year. This is known as the green card test because these aliens hold immigrant visas (also known as green cards).
- **Substantial presence test.** An alien is also considered a U.S. resident if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the United States on at least:

- 1) 31 days during the current calendar year, and
- 2) 183 days during the current year and the 2 preceding years, counting all the days of physical presence in the current year, but only $\frac{1}{3}$ the number of days of presence in the first preceding year, and only $\frac{1}{6}$ the number of days in the second preceding year.

Generally, the days the alien is in the United States as a teacher, student, or trainee on an "F," "J," "M," or "Q" visa are not counted. This exception is for a limited period of time.

For more information on resident and nonresident status, the tests for residence, and the exceptions to them, see Publication 519.

Note. If your employee is late in notifying you that his or her status changed from nonresident alien to resident alien, you may have to make an adjustment to Form 941 if that employee was exempt from withholding of social security and Medicare taxes as a nonresident alien. For more information on mak-

ing adjustments, see Section 13 of Publication 15 (Circular E).

Resident of Puerto Rico. Even if an alien is a bona fide resident of Puerto Rico for the entire year and must pay taxes generally in the same way as a U.S. citizen, the alien is treated as a nonresident alien for the withholding rules explained here. U.S. citizens that are residents of Puerto Rico are not subject to NRA withholding.

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, 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 Commonwealth of the Northern Mariana Islands (CNMI) is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

- 1) 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
- 2) At least 20% of the corporation's gross income is derived from sources within Guam or the CNMI 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 *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.

Virgin Islands and American Samoa corporations. A corporation created or organized in, or under the laws of, the Virgin Islands or American Samoa is not considered a foreign corporation for the purposes of withholding tax for the tax year if:

- 1) 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,
- 2) At least 65% of the corporation's gross income is effectively connected with the conduct of a trade or business in the 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
- 3) 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 Virgin Islands, American Samoa, Guam, the CNMI, or the United States.

Foreign private foundation. 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 of a 4% excise tax

(unless exempted by a treaty) rather than the ordinary statutory 30% income tax.

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 on 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. You may, however, 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 may be 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.

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 only be used by a U.S. person and must contain the payee's taxpayer identification number (TIN). 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.

Generally, a foreign person that is a beneficial owner of the income should give you a Form W-8. If certain requirements are met, the foreign person can give you documentary evidence, rather than a Form W-8.

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 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien In-*

dividual. These forms are discussed in *Pay for Personal Services Performed under Withholding on Specific Income*.

See *Notice 2001-4* under *Important Changes*, earlier.

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 specific documentation, you must use the presumption rules.

The specific types of documentation are discussed next. You should, however, also see the discussion, *Withholding on Specific Income*, as well as the instructions to the particular forms. As the withholding agent, you may also want to see the *Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY*.

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, is used by a foreign person to:

- 1) Establish foreign status,
- 2) Claim that such person is the beneficial owner of the income for which the form is being furnished, and
- 3) If applicable, claim a reduced rate of, or exemption from, withholding as a resident of a foreign country with which the United States has an income tax treaty.

Form W-8BEN may also 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 withholding.

Claiming treaty benefits. You may apply a reduced rate of withholding to a foreign person that provides a Form W-8BEN claiming a reduced rate of withholding under an income tax treaty only if the person provides a U.S. TIN (unless the exception discussed under *Marketable securities* applies) 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).
- It meets any limitation on benefits provision contained in the treaty, if applicable.

If the foreign beneficial owner claiming a treaty benefit is related to you, the foreign beneficial owner must also 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 withholding received during a calendar year exceeds, in the aggregate, \$500,000.

An entity derives income for which it is claiming treaty benefits only if the entity is not treated as fiscally transparent for that income. See *Fiscally transparent entities* discussed earlier under *Flow-Through Entities*.

Limitations on benefits provisions generally prohibit third country residents from obtaining treaty benefits. For example, a foreign corporation 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 a nonresident alien individual has made an election with his or her U.S. citizen or resident spouse to be treated as a U.S. resident for income tax purposes, the nonresident alien may not claim to be a foreign resident to obtain the benefits of a reduced rate of, or exemption from, U.S. income tax under an income tax treaty.

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 statements accompanying documentary evidence for which you did not have actual knowledge, or reason to know that the statements were incorrect.

Marketable securities. A Form W-8BEN provided to claim treaty benefits does not need a U.S. TIN if the foreign beneficial owner is claiming the benefits on income from marketable securities. 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 registered 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) publicly offered and are registered with the SEC under the Securities Act of 1933.
- Income related to loans of any of the above securities.

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, is used by a foreign person to:

- 1) Establish foreign status,
- 2) Claim that such person is the beneficial owner of the income for which the form is being furnished, and
- 3) Claim that the income is effectively connected with the conduct of a trade or business 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.

Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding, is used by a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession to:

- 1) Establish foreign status,
- 2) Claim that such person is the beneficial owner of the income for which the form is being furnished, and
- 3) Claim a reduced rate of, an exemption from, withholding as such an entity.

See *Foreign Governments and Certain Other Foreign Organizations*, later.

Documentary evidence. Under certain circumstances, a foreign payee may establish that it is the beneficial owner of income and, if applicable, entitled to a reduced rate of withholding based on documentary evidence instead of using an IRS form. Documentary evidence provided for an amount subject to NRA withholding must contain sufficient information for you to complete a Form 1042-S.

A payee may give you documentary evidence, rather than Form W-8BEN, if the payment is made outside the United States to an offshore account. Generally, a payment is made outside the United States if you complete the acts necessary to effect the payment outside the United States. However, an amount paid by a bank or other financial institution on a deposit or account will usually 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 financial institution at any location outside the United States and its possessions.

See *Notice 2001-4* under *Important Changes*, earlier.

You may rely on documentary evidence given you by a nonqualified intermediary or a flow-through entity with its Form W-8IMY. This rule applies even though you make the payment to a nonqualified intermediary or flow-through entity in the United States. Generally, the nonqualified intermediary or flow-through entity that gives you documentary evidence will also have to give you a withholding statement, discussed later.

Documentary evidence—marketable securities. You may apply a reduced rate of withholding to income from marketable 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,
 - 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 authorized 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 office in the treaty country, and
 - c) Is an official document issued by an authorized governmental body.

In addition to the documentary evidence, a foreign 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.

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. Branches for United States Tax Withholding, 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 person is a withholding or nonwithholding foreign partnership, or a withholding or nonwithholding foreign trust, or
- 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.

Qualified Intermediaries

Although payments made to a QI that does not assume NRA withholding responsibility are treated as paid to its account holders and customers, a QI is not required to provide you with documentation it obtains from its foreign account holders and customers. Instead, it provides withholding rate pool information. A withholding rate pool is a payment of a single

type of income, determined in accordance with the categories of income reported on Form 1042-S that is subject to a single rate of withholding. A qualified intermediary is required to provide you 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.

See *Notice 2001-4* under *Important Changes*, earlier.

The withholding statement must:

- 1) Designate those accounts for which it acts as a qualified intermediary,
- 2) Designate those accounts for which it assumes primary NRA withholding responsibility and/or primary Form 1099 and backup withholding responsibility, and
- 3) Provide sufficient information for you to allocate the payment to a withholding rate pool.

The extent to which you must have withholding rate pool information depends on the withholding 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 payment 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. In addition, 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 (but not primary Form 1099 reporting and backup withholding responsibility), you can reliably associate the payment with valid documentation only to the extent you can reliably determine the portion of the payment that relates to the withholding rate pool for which the QI assumes primary NRA withholding responsibility and the portion of the payment attributable to withholding rate pools for each U.S. person subject to Form 1099 reporting and/or backup withholding. The QI must provide a Form W-9 or, in absence of the form, the name, address, and TIN, if available, for such person.

Primary NRA and Form 1099 responsibility assumed. If you make a payment to a QI that assumes both primary NRA withholding responsibility and 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 dividends to QI, a foreign bank. QI has 5 customers: FP1 and FP2 are foreign persons who have

provided documentation entitling them to a 15% rate of withholding on dividends. FP3 and FP4 are foreign persons subject to a 30% rate of withholding on dividends. USI is a U.S. individual who provides QI with a Form W-9. Each customer is entitled to 20% of the dividend payment. QI provides a Form W-8IMY with which it associates the Form W-9 of USI, and a withholding statement that allocates 40% of the dividend to a 15% withholding rate pool, 40% to a 30% withholding rate pool and 20% to USI. You should report on Form 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 USI (20%) is reportable on Form 1099.

Nonqualified Intermediaries

If you are making a payment to a nonqualified intermediary, 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.

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.
- 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 (e.g., 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) If a payee receives income from an NQI, flow-through entity, or U.S. branch, other than the NQI, flow-through entity, or U.S. branch to which you make the payment, the name, address, and TIN (if any) of the other NQI, flow-through entity, or U.S. branch from which the payee will directly receive the 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: (1) inform you, on its withholding statement, that it is using the alternative procedure, and (2) obtain your consent. You must receive the withholding statement with all the required information (other than item 5) prior to making the payment.



The 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, prior to the payment of a reportable amount. 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. Unless the NQI provides all the required information, including account holder specific allocation information, prior to any payments being made, you must treat the payees as undocumented and apply 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.

An NQI may cure its failure to provide allocation information by providing the required information to you by February 14 following the calendar year of payment. If you receive such information by that date, you may make the appropriate adjustments to repay any excess withholding incurred between February 1st and on or before February 14th.

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 pro-rata reporting method 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 "unknown recipient."

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.

Reason 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 are treated as having reason to know documentation is unreliable or incorrect for payments on marketable securities only 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 withholding agent that is not a financial institution or making a payment on marketable securities. However, these withholding agents are not limited to these circumstances in determining if they have reason to know that documentation is unreliable or incorrect. These withholding agents cannot base their determination on the receipt of additional statements or documents, they need to get new documentation.

Financial Institutions

A financial institution, which for this purpose includes a regulated investment company, that makes a payment on income from marketable securities, discussed earlier, is treated as having reason to know that the documentation is unreliable or incorrect only in the following circumstances.

Withholding certificates—in general. 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
- 4) You have information not contained on the form that is inconsistent with the claims made on the form.

Withholding certificate—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) The Form W-8 has a permanent residence address in the United States,
- 2) The Form W-8 has a mailing address in the United States,
- 3) You have a residence or mailing address as part of your account information that is an address in the United States,
- 4) The person providing the certificate notifies you of a new residence or mailing address in the United States, or
- 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 an address or account maintained in the United States.

Note. Notice 2001-4 provides that items (2) and (3) do not apply if the U.S. mailing address is provided on a Form W-8 received before December 31, 2001.

You may, however, rely on a Form W-8 as establishing the account holder's foreign status if any of the following apply:

- 1) You receive the Form W-8 from an **individual** and:
 - a) You possess or obtain documentary evidence (that does not contain a U.S. address) that has been presented to you within the last three years and that supports the claim of foreign status, and the beneficial owner provides you with a reasonable explanation in writing supporting the account holder's foreign status, or
 - b) If the account is maintained at an 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) 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 an 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 may treat an account holder that has provided standing instructions to make payments with respect to its offshore account to a U.S. account or U.S. address as a foreign person if the account holder provides a reasonable explanation in writing that supports the account holder's foreign status.

Withholding certificate—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.

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) If 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) If the mailing address is not in the treaty country and:
 - a) You possess or obtain additional documentation (that does not contain an address outside the treaty country) supporting the beneficial

- owner's claim of residence in the treaty country,
 - b) You possess or obtain documentation that establishes that the beneficial owner is an entity organized in a treaty country,
 - 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.
- 3) If 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—in general. 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,
- 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 the documentary evidence lacks information necessary to establish a reduced rate of withholding. For example, the documentary evidence does not contain, or is not supplemented by, statements regarding the derivation of the income or compliance with limitations on benefits provisions in the case of an entity claiming treaty benefits.

Documentary evidence to establish 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 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,
- 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 documentary evidence as establishing an account holder's foreign status if any of the following apply:

- 1) If the mailing or residence address is in the United States, you receive the documentary evidence from an **individual**, and

- 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 provided 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.
- 2) If 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 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 provided 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) If 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.

Documentary evidence—claim of reduced rate of withholding under a 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:

- 1) You have a mailing or residence address for the account holder that is outside the applicable treaty country,

- 2) 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
- 3) 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) If 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-8BEN that contains a permanent residence address and a mailing address in the applicable treaty country.
- 2) If 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 a nonqualified intermediary, a flow-through entity, or a U.S. branch of a foreign bank or insurance company subject to U.S. or 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.

The 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 nonqualified intermediary, flow-through entity, or U.S. branch supporting the payee's foreign status or residence in the treaty country.

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

nonqualified intermediary, 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 nonqualified intermediary, flow-through entity or U.S. branch to determine that 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*.

Chart A. Presumption Rules in the Absence of Documentation

For the presumption rules related to—	See regulation section—
Payee's status—general	1.1441-1(b)(3); 1.6049-5(d)
Effectively connected income	1.1441-4(a)(2)
Partnership and its partners	1.1441-5(d)
Estate or trust and its beneficiaries or owner	1.1441-5(e)(6)
Foreign tax-exempt organizations (including private foundations)	1.1441-9(b)(3)

Income Subject to NRA Withholding

This section explains how to determine if a payment is subject to NRA withholding.

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

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

In addition, a payment is subject to NRA withholding 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 withholding 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.

- 1) Portfolio interest on bearer obligations or foreign-targeted registered obligations if those obligations meet certain requirements. See *Interest*, later.
- 2) Bank deposit interest that is not effectively connected with the conduct of a U.S. trade or business. See *Interest*, later.
- 3) Original issue discount on obligations payable 183 days or less from the date of original issue. See *Original Issue Discount*, later.
- 4) Nonbusiness gambling income of a nonresident alien playing blackjack, baccarat, craps, roulette, or big-6 wheel in the United States. See *Gambling Winnings*, later.
- 5) Amounts paid as part of the purchase price of an obligation sold between interest payment dates. See *Interest*, later.
- 6) Original issue discount paid on the sale of an obligation other than a redemption. See *Original Issue Discount*, later.
- 7) Insurance premiums paid on a contract issued 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 resident aliens, 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 performed 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. In this situation, you are required to withhold the amount necessary to assure that the tax withheld will not be less than 30% of U.S. source income. In the alternative, you may make a reasonable estimate of the amount from U.S. sources and put a corresponding portion of the amount due in escrow until the amount from U.S. sources can be determined, at which time withholding becomes due. Other source rules are summarized in *Chart B* and explained in detail in the separate discussions under *Withholding on Specific Income*, later.

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, payment for personal services performed in the United States is not considered income from sources within the United States. For more information on this exception, see the discussion, *Pay for dependent personal services* under *Pay for Personal Services Performed*, later.

If the income is for personal services performed partly in the United States and partly outside the United States, you must make an accurate allocation of income for services performed in the United States. In most cases, you 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 following fraction:

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

Example. Jean Blanc, a citizen and resident of Canada, is employed as a professional hockey player by a U.S. hockey club. Under Jean's contract, he received \$98,500 for 242 days of play during the year. This includes days spent at pre-season training camp, days during the regular season, and playoff game days. Of the 242 days, 194 days were spent performing services in the United States and 48 days performing services in Canada. The amount of U.S. source income is \$78,963 $((194 \div 242) \times \$98,500)$.

Territorial limits. Wages received for services rendered inside the territorial limits of the United States and wages of an alien seaman 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

Chart B. Summary of Source Rules for FDAP Income

Type of Income:	Source Determined by:
Pay for personal services	Where services are performed
Dividends	Type of corporation (U.S. or foreign)
Interest	Residence of payor
Rents	Where property is located
Royalties—Patents, copyrights, etc.	Where property is used
Royalties—Natural resources	Where property is located
Pensions due to personal services performed	Where services were performed while a nonresident alien
Scholarships and fellowship grants	Generally, residence of payor

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 not 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. To source pension payments accurately, you must determine 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.

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

Fixed or Determinable Annual or Periodical Income

FDAP income is all income except:

- 1) Gains derived from the sale of real or personal property (including market discount and option premiums but not including original issue discount), and
- 2) Items of income excluded from gross income without regard to the 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.
- Pensions and annuities.
- Alimony.
- Real property income, such as rents, other than gains from the sale of real property.
- Royalties.
- Scholarships and fellowship grants.
- Other grants, prizes and awards.
- A sales commission paid or credited monthly.
- A commission paid for a single transaction.
- The distributable net income of an estate or trust that is FDAP income and that must be distributed currently, or has been paid or credited during the tax year, to a nonresident alien beneficiary.
- A distribution from a partnership that is FDAP income, 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.
- 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. 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.

Signing on. A fee paid to a professional athlete, such as a soccer or hockey player for "signing on" with the effect of preventing any other team from negotiating with the player and preventing the player from negotiating with any other team is pay for a covenant not to compete. The source is the place where the right to play is given up. If a league is made up of both foreign and U.S. teams, the fee is from sources partly in and partly outside the United States. The part of the fee that is from U.S. sources is subject to NRA withholding. If there is no reasonable basis for an allocation of the fee, the entire sign-on fee is income from the United States and is 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 within the United States other than fixed or determinable annual or periodical (FDAP) income, discussed earlier, 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:

- 1) Whether the income is from assets used in, or held for use in, the conduct of that trade or business, or
- 2) 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 for determining whether income from securities is effectively connected with the active conduct of a U.S. banking, financing, or similar business.

When the foreign person's U.S. office actively and materially participates in soliciting, negotiating, or performing other activities required to arrange the acquisition of securities, the U.S. source interest or dividend income from the securities (or gain or loss from their sale or exchange) is attributable to the U.S. office.

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 that:

- 1) The foreign payee is the beneficial owner of the income,
- 2) The income is effectively connected with the conduct of a trade or business in the United States, and
- 3) The income is includible in the recipient's gross income.

This withholding exemption applies to income for 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.)

- 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 for 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 may be designated as the one 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 is 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 if you receive a Form W-8BEN that represents that the income is not effectively connected with the conduct of a U.S. trade or business or if the payee provides a representation in a master agreement or in the confirmation on the particular notional principal contract transaction that 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 that is subject to U.S. regulation by the Federal Reserve or state insurance authorities is presumed to be effectively connected with the conduct of a trade or business in the United States unless the branch provides a Form W-8BEN or Form W-8IMY for the income. If a U.S. branch of a foreign bank or insurance company receives income that the payer did not withhold upon because of the presumption that the income was effectively connected with the U.S. branch's trade or business, the U.S. branch is required to withhold on the income if it is in fact not effectively connected with the conduct of its trade or business in the United States. Withholding is required whether the payment was collected on behalf of other persons or on behalf of another branch of the same entity.

Income Other Than Effectively Connected Income

This section discusses the specific types of income that are subject to NRA withholding. The income codes contained in this section correspond to the income codes used on Form 1042-S (discussed later), and in most cases, on *Tables 1 and 2* found at the end of this publication.

You must withhold tax at the statutory rates shown in *Chart C* unless a reduced rate or exemption under a tax treaty applies. For U.S. source gross income that is not effectively connected with a U.S. trade or business, the rate is usually 30%. Generally, you must withhold the tax at the time you pay the income to the foreign person. See *When to Withhold*, earlier.

Interest

Interest from U.S. sources paid to foreign payees is subject to NRA withholding. When making a payment on an interest bearing obligation, you must withhold on the gross amount of stated interest payable on the interest payment date, regardless of whether the payment or a portion of the payment may be a return of capital rather than interest.

A substitute interest payment made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction is treated the same as the interest on the transferred security.

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, open account indebtedness, governmental obligations, certain deferred payment arrangements (as provided in section 483 of the Internal Revenue Code) or other evidences of indebtedness of U.S. obligors. U.S. obligors include the U.S. Government or its agencies or instrumentalities, any U.S. citizen or resident, any U.S. corporation, and any U.S. partnership.

If, in a sale of a corporation's property, payment of the bonds 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 individual paying interest on a margin account maintained with a non-resident 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 not engaged in a trade or business in the United States is subject to NRA withholding even though 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.

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

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.)

Type of Income	Rate
Taxable part of U.S. scholarship or fellowship grant paid to holder of "F," "J," "M," or "Q" visa (see <i>Scholarship and Fellowship Grants</i> , later)	14%
Gross investment income from interest, dividends, rents, and royalties paid to a foreign private foundation	4%
Pensions—part paid for personal services (see <i>Pensions, Annuities, and Alimony</i> , later)	Graduated rates in
Wages paid to a nonresident alien employee (see <i>Pay for Personal Services Performed</i> , later)	Circular A or Circular E
Each foreign partner's share of effectively connected income of the partnership (see <i>Partnership Withholding on Effectively Connected Income</i> , later)	39.6% or 35%
Distributions of effectively connected income to foreign partners by publicly traded partnerships (see <i>Publicly Traded Partnerships</i> , later)	39.6%
Dispositions of U.S. real property interests (see <i>U.S. Real Property Interest</i> , later)	10% (or other amount)
All other income payments subject to withholding	30%

of the purchase price of an obligation sold or exchanged, 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 by a person other than the issuer of an obligation (or the issuer's agent) is not required unless the obligation is issued after December 31, 2000.

The amount of original issue discount subject to NRA withholding is the taxable amount of original issue discount. The taxable amount is the amount of original issue discount that accrued while 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 amount of original issue discount that was previously taxed. If a payment was made, the tax due on the original issue discount may not exceed the amount of 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 the 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, *List of Original Issue Discount Instruments*.

For more information on original issue discount, see Publication 550, *Investment Income and Expenses*.

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 NRA withholding. To qualify as portfolio interest, the interest must be otherwise subject to NRA withholding, 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:

- 1) 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,
- 2) Interest on the obligation is payable only outside the United States and its possessions, and
- 3) 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 in 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-8BEN (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** if it is sold (or resold in connection with its original issuance) only to for-

ign persons or to foreign branches of U. S. financial institutions in accordance with procedures similar to those provided under section 1.163-5(c)(2)(i) of the regulations. However, the procedure that requires the obligation to be offered for sale (or resale) only outside the United States does not apply if the registered obligation is offered for sale through a public auction. Also, the procedure that requires the obligation to be delivered outside the United States does not apply if the obligation is considered registered because it may be transferred only through a book entry system and the obligation is offered for sale through a public auction. The documentation needed depends on whether the interest is paid to a financial institution, a member of a clearing organization, or to some other foreign person.

Interest that does not qualify as portfolio interest. Payments to certain persons and payments of contingent interest do not qualify as portfolio interest. You must withhold at the statutory rate on such payments unless some other exception, such as a treaty provision applies.

Ten-percent owners. Interest paid to a foreign person that owns 10% or more of the total combined voting power of all classes of stock of a corporation, or 10% or more of the capital or profits interest in a partnership, that issued the obligation on which interest is paid is not portfolio interest. Generally, the constructive ownership of stock rules apply in determining if a person is a 10% shareholder of a corporation.

Banks. Except in the case of interest paid on an obligation of the United States, interest paid to a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of the bank's trade or business does not qualify as portfolio interest.

Controlled foreign corporations. Interest paid to a controlled foreign corporation from a person related to the controlled foreign corporation is not portfolio interest.

Contingent interest. Portfolio interest generally does not include contingent interest. Contingent interest is interest that is determined by reference to any of the following.

- Any receipts, sales, or other cash flow of the debtor or related person.
- Income or profits of the debtor or related person.
- Any change in value of any property of the debtor or a related person.
- Any dividend, partnership distributions, or similar payments made by the debtor or a related person.

The term "related person" is defined in section 871(h)(4)(B) of the Internal Revenue Code.

The contingent interest rule does not apply to any interest paid or accrued on any indebtedness with a fixed term that was issued:

- On or before April 7, 1993, or
- After April 7, 1993, pursuant to a written binding contract in effect on that date and at all times thereafter before that indebtedness was issued.

Interest on real property mortgages (Income Code 2). Because a treaty (for example, the U.S.—Egypt treaty) may not permit a reduced rate or exemption for interest paid or credited on real property mortgages, it is

assigned a separate category for withholding purposes. Interest on real property mortgages is interest paid on any type of debt instrument that is secured by a mortgage or deed of trust on real property located in the United States, regardless of whether the mortgagor (or grantor) is a U.S. citizen or a U.S. business entity.

Interest paid to controlling foreign corporations (Income Code 3). Because a treaty (for example, the U.S.—Greece treaty) may not permit a reduced rate or exemption for interest paid by a domestic corporation to a controlling foreign corporation, it is assigned a separate category. The interest may be on any type of debt including open or unsecured accounts payable, notes, certificates, bonds, or other evidences of indebtedness. A controlling foreign corporation is a corporation of the treaty country that controls, directly or indirectly, more than 50% of the entire voting power of the paying corporation.

Interest paid by foreign corporations (Income 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 domestic corporation (without considering the "payer having income from abroad" exception). As a result, the interest paid to foreign payees is generally subject to NRA withholding. In addition, if "allocable interest" exceeds the branch interest paid, the excess interest is also subject to tax and reported on the foreign corporation's income tax return, Form 1120-F. See *Instructions for Form 1120-F* for more information.

If there is no treaty provision that reduces the rate of withholding on branch interest, you must withhold tax at the statutory rate of 30% on the interest paid by a foreign corporation's U.S. trade or business.

In general, payees of interest from a U.S. trade or business of a foreign corporation are entitled to reduced rates of, or exemption from, tax under a treaty in the same manner and subject to the same conditions as if they had received the interest from a domestic corporation. However, a foreign corporation that receives interest paid by a U.S. trade or business of a foreign corporation must also be a qualified resident of its country of residence to be entitled to benefits under that country's tax treaty. If the foreign corporation is a resident of a country that has entered into an income tax treaty since 1987 that contains a limitation on benefits article, the foreign corporation need only satisfy the limitation on benefits article in that treaty to qualify for a reduced rate of tax.

Alternatively, a payee may be entitled to treaty benefits under the payor's treaty if there is a provision in that treaty that applies specifically to interest paid by the payor foreign corporation. This provision may exempt all or a part of this interest. Some treaties provide for an exemption regardless of the payee's residence or citizenship, while others provide for an exemption according to the payee's status as a resident or citizen of the payor's country.

A foreign corporation that pays interest must be a qualified resident (under section 884 of the Internal Revenue Code) of its country of residence for the payor's treaty to exempt payments from tax by the foreign

corporation. However, if the foreign corporation is a resident of a country that has entered into an income tax treaty since 1987 that contains a limitation on benefits article, the foreign corporation need only satisfy the limitation on benefits article in that treaty to qualify for the exemption.

Interest on deposits (Income Code 29). Foreign persons are not subject to withholding on interest that is not connected with a U.S. trade or business if it is from:

- 1) Deposits with persons carrying on the banking business,
- 2) Deposits or withdrawable accounts with savings institutions chartered and supervised 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
- 3) 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 require 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. See *Deposit interest paid to alien individuals who are residents of Canada under Returns Required*, later.

Interest from foreign business arrangements. In general, interest received from a resident alien individual or a domestic corporation 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:

- 1) Derived from sources outside the United States, and
- 2) 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 considered to be a related person (see section 861(c) of the Internal Revenue Code). A foreign beneficial 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 withholding. This does not apply if the sale or exchange is part of a plan the principal 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.

Short-term obligations. Interest and original issue discount paid on an obligation that was issued at a discount and that is payable 183 days or less from the date of its original issue (without regard to the period held by the taxpayer) is not subject to NRA withholding. This exemption 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.

Income from U.S. Savings Bonds of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands. Interest from a Series E, Series EE, Series H, or Series HH U.S. Savings Bond is not subject to NRA withholding if the nonresident alien individual acquired the bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

Dividends

The following types of dividends paid to foreign payees are generally subject to NRA withholding. A substitute dividend payment made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction is treated the same as a distribution on the transferred security.



The address rule for dividends has been eliminated for all payments made after December 31, 2000.

Therefore, you may not apply a reduced rate of withholding on dividends paid after that date to a foreign person unless you have a Form W-8BEN (or you have valid documentary evidence and any additional information required) that entitles a foreign beneficial owner to a reduced rate of withholding. If you do not have Form W-8BEN, documentary evidence or a Form W-9 from a payee, you should apply the applicable presumption rules.

See Notice 2001-4 under Important Changes, earlier.

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 reduce the amount withheld to the extent that the distribution:

- 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 or an exempt interest dividend by a regulated investment company, or
- 5) Is subject to withholding under section 1445 of the Internal Revenue Code (withholding on dispositions of U.S. real

property interests) and the distributing corporation is a U.S. real property holding corporation or a real estate investment trust (REIT).

The election is made by actually reducing the amount of withholding at the time the distribution is paid.

Dividends paid by a domestic corporation (an "80/20" company). Generally, a percentage 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 corporation's total gross income for that period.

Main business in Puerto Rico or the Virgin Islands. Dividends paid by a domestic corporation that generally conducts its main business activities in Puerto Rico or the Virgin Islands and that has chosen the Puerto Rico economic activity credit or the possession tax credit are not subject to NRA withholding.

Jointly-owned stock. If stock is jointly owned, you may treat the total amount of the dividend as paid to a U.S. person if any one of the owners gives you a Form W-9. If all the owners are foreign persons, you should withhold at the highest rate applicable. 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.

Consent dividends. If you receive a Form 972, *Consent of Shareholder To Include Specific Amount in Gross Income*, from a nonresident 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 shareholder owns a certain percentage of the voting stock of the corporation. Generally, this preferential 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 Internal Revenue 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 subsidiaries or from the active conduct of a banking, financing, or insurance business. A

foreign person claiming the non-portfolio stock treaty 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 parent corporation, which 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 paid by foreign corporations (Income Code 8). Dividends paid by a foreign corporation are generally subject to NRA withholding if 25% or more of its gross income is effectively connected (or treated as effectively connected) with a U.S. trade or business for the 3 tax years (or shorter period) before the year in which the dividends are paid. Taxes should be withheld in the same ratio that the effectively connected gross income bears to the total gross income of the foreign corporation. If less than 25% of the corporation's gross income is effectively connected with a U.S. trade or business, then the dividends are not subject to NRA withholding. The payment to a foreign corporation by a foreign corporation of a deemed dividend under section 304(a)(1) of the Internal Revenue 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 profits tax for any tax year, withholding is not required 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. However, you may apply a reduced rate of withholding 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.

Certain Gains

Except as provided below, you generally do not need to do NRA withholding on gains from the sale of real or personal property because it is not FDAP income. However, you may be required to withhold if you purchase a U.S. real property interest, including stock of a U.S. real property holding company, from a foreign person. See *U.S. Real Property Interest*, later.

Capital gains (Income Code 9). Certain gains are subject to NRA withholding. You must withhold at 30%, or if applicable, a reduced treaty rate, on the gross amount of the following items:

- 1) Gains on disposal of timber, coal, or domestic 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,
- 2) Gains on contingent payments received from the sale or exchange after October 4, 1966, of patents, copyrights, secret

processes and formulas, good will, trade marks, trade brands, franchises, and other like property,

- 3) Gains on certain transfers of all substantial rights to, or an undivided interest in, patents if the transfers were made before October 5, 1966, and
- 4) Certain gains from the sale or exchange of original issue discount obligations issued after March 31, 1972. For more on withholding on original issue discount obligations, see *Interest*, earlier.

If you do not know the amount of the gain, you must withhold an amount necessary to assure 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 otherwise, you may rely upon the written statement of the person entitled to the income as to the amount of gain. The statement, prepared according to regulations, must show the computation of the gain.

Tax treaties. Many tax treaties exempt certain types of gains from U.S. income tax. The conditions for allowing the exemptions vary under each treaty. For example, under some treaties, a nonresident alien individual may not be present in the United States for more than a specified period for the exemption to apply. Be sure to carefully check the provision of the treaty that applies before allowing an exemption from withholding.

Royalties

In general, you must withhold tax on the payment 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, or the right to use, patents, trademarks, secret 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 information concerning industrial, commercial, and scientific know-how.

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

Other royalties (e.g., copyright, recording, 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 copyrights.

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 income, unless the foreign payee elects to treat this income as effectively con-

nected 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 royalties from mines, wells, or other natural deposits, as well as ordinary rents for the use of real property. For withholding that applies to the disposition 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 pensions, annuities, and alimony of foreign payees.

Pensions and annuities. Generally, you must withhold tax on the gross amount of pensions and annuities that you pay that are from sources within the United States. 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 withholding at graduated rates to the portion of a distribution that arises from the performance of services in the United States after December 31, 1986, provided you receive Form W-8ECI and can determine the portion of the distribution that constitutes income effectively connected with the conduct of a trade or business in the United States. The withholding rules that apply to payments to foreign persons generally take precedence over any other withholding rules that would apply 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 individual 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 performed for:
 - a) A nonresident alien individual, foreign partnership, 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:

- 1) The recipient is a resident of a country that gives a substantially equal exclusion to U.S. citizens and residents, or
- 2) The recipient is a resident of a beneficiary 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 payments made by U.S. residents to nonresident 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 payments. 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. ancillary administrator of a nonresident alien estate are from foreign sources and are not subject to withholding.

Scholarships and Fellowship Grants

A scholarship or fellowship grant (**Income Code 15**) is an amount given to an individual to perform study, training, or research, and which does not constitute compensation for personal services. Whether a fellowship grant from U.S. sources is subject to NRA withholding depends on the nature of the payments and whether the recipient is a candidate for a degree.

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 individual 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 following expenses:

- 1) Tuition and fees required for enrollment or attendance at an educational organization, and
- 2) Fees, books, supplies, and equipment required for courses of instruction at the educational organization.

The payment of a qualified scholarship to a nonresident alien is not reportable and is not subject to NRA withholding. However, the portion 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 devoted 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 nonresident aliens temporarily present in the United States in "F," "J," "M," or "Q" nonimmigrant status. Payments made to nonresident alien individuals in any other immigration status are subject to 30% withholding.

Nondegree candidate. If the person receiving the scholarship or fellowship grant is not a candidate for a degree, and is present in the United States in "F," "J," "M," or "Q" nonimmigrant status, 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 at an educational organization in the United States, and

2) The grant must be made by:

- a) A tax-exempt organization operated for charitable, religious, educational, etc. purposes,
- b) A foreign government,
- c) A federal, state, or local government agency, or
- d) An international organization, or a binational or multinational educational or cultural organization created or continued by the Mutual Educational and Cultural Exchange Act of 1961 (known as the Fulbright-Hays Act).

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.

Reduced withholding. Nonresident alien students or grantees who receive U.S. source grants or scholarships may be entitled to reduced withholding on the taxable part of the grant or scholarship under an alternate withholding procedure. The students or grantees must have been admitted into the United States on an "F," "J," "M," or "Q" visa. This alternate withholding procedure is not mandatory, and does not have to be used by you.

Under this alternate withholding procedure, the student or grantee gives you a specially prepared 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 (discussed 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 exemptions 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 (\$7.95 for 2001) by the number of days the student or grantee expects to be in the United States during the year. The prorated exemption amount should be shown on line A of the *Personal Allowances Worksheet* that comes with Form W-4.

On line B, 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). All other nonresident aliens must enter "0."

Generally, zero (-0-) should be shown on lines C and D of the worksheet. But, an ad-

ditional daily exemption amount may be allowed for the spouse and each dependent if the student or grantee is:

- 1) A resident of Canada, Mexico, Japan, or South Korea,
- 2) A U.S. national (a citizen of American Samoa, or a Northern Mariana Islander who chose to become a U.S. national), or
- 3) 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 procedure, 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. If the amount of the expenses is not known at the time the W-4 is filed with you, the current per diem allowance in effect for participants in the Career Education Program under the Federal Travel Regulations may be claimed on Form W-4. The allowable amount is \$18.00 per day.

The actual expenses or the per diem allowance should be shown on line A of the worksheet in addition to the personal exemption amount.

The student or grantee can claim other expenses that will be deductible on Form 1040NR. These include student loan interest, certain state and local income taxes, charitable contributions, casualty losses, and moving expenses. He or she should include these anticipated amounts on line A of the worksheet.

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 tax treaty.

Lines A through D of the *Personal Allowances 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 necessary 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 statutory 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 deduction 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 student or grantee, enter the gross scholarship 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 also is the recipient of a scholarship or fellowship grant usually is subject to graduated withholding according 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 receiving the scholarship or fellowship grant.

Grants given to students, trainees, or researchers which require the performance of personal services as a necessary condition for disbursing the grant do not qualify as scholarship or fellowship grants. Instead, they are compensation for personal services considered 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 which apply to scholarships and fellowships to be applied to grants which 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 student, trainee, or researcher may not claim a scholarship or fellowship treaty exemption against income which has been reported to him on Form W-2 as wages.

Amounts of per diem for subsistence paid by the U.S. Government. Amounts of per diem for subsistence paid by the U.S. Government (directly or by contract) to a nonresident alien engaged in a training program in the United States under the Mutual Security Act of 1954 (grants funded by the U.S. Agency for International Development) are not subject to 14% or 30% withholding. This is true even though the alien may be subject to income tax on those amounts.

Tax treaties. The student articles of many of the income tax treaties contain exemptions from U.S. taxation for scholarships and fellowships. Although usually found in the student articles of the tax treaties, many of these exemptions also apply to research grants received 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, and who wishes to claim treaty exemptions on both kinds of income, may utilize Form 8233 for claiming both treaty exemptions.

For payments made on or after January 1, 2001, the scholarship or fellowship recipi-

ent 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 Form W-7, showing that a TIN has been applied for, can be filed with a Form 8233.

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual 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 (including a trainee or business apprentice) or researcher who has become a resident alien for U.S. tax purposes may be able to claim benefits under a tax treaty that apply to reduce or eliminate U.S. tax on scholarship or fellowship grant income. Most treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for scholarship or fellowship grant income 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.

- 1) The individual's name.
- 2) The individual's U.S. identification number.
- 3) A statement that the individual is a resident alien under:
 - a) The green card test,
 - b) The substantial presence test, or
 - c) The residency article of a tax treaty.
- 4) The tax treaty under which the individual is claiming a benefit.
- 5) The article number of the tax treaty under which the individual is claiming a benefit, and a description of the article.
- 6) A statement that the individual is relying upon an exception to the saving clause of the tax treaty to claim the benefit.

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 his or her stay in the United States exceeds 5 calendar years. However, 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 which reside in the United States are treated as income from sources within the United States. Those made for activities conducted outside the United States or by grantors which 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 does not qualify as a scholarship or fellowship. The grantor must not intend the amount to be given to the

grantee for the purpose of aiding the grantee to perform study, training, or research.

Prizes and awards. Prizes and awards are amounts received primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement, or are received as the result of entering a contest. A prize or award is taxable to the recipient unless all of the following conditions are met:

- 1) The recipient was selected without any action on his or her part to enter the contest or proceeding,
- 2) The recipient is not required to render substantial future services as a condition to receive the prize or award, and
- 3) The prize or award is transferred by the payer to a governmental unit or tax-exempt charitable organization as designated by the recipient.

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 graduated withholding. This rule applies regardless of your place of residence, the place where the contract for service was made, or the place of payment.

Illegal aliens. Foreign agricultural workers or other foreign workers who are illegal aliens are subject to U.S. taxes in spite of their illegal status. U.S. employers or payers who hire illegal aliens may be subject to various fines, penalties, and sanctions imposed by the Immigration and Naturalization Service (INS). If such employers or payers choose to hire illegal aliens, the payments made to those aliens are subject to the same tax withholding and reporting obligations that apply to other classes of aliens. Illegal aliens who are nonresident aliens and who receive income from performing independent personal services are subject to 30% withholding unless exempt under some provision of law or a tax treaty. Illegal aliens who are resident aliens and who receive income from performing dependent personal services are subject to the same reporting and withholding obligations which apply to U.S. citizens who receive the same kind of income.

Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual, is used by a nonresident alien individual 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.

Persons providing independent personal services should use Form 8233 to claim a tax treaty exemption and/or the personal exemption amount. Persons providing dependent personal services should use Form 8233 to claim a tax treaty exemption for any part of their compensation that is exempt from withholding. A student or teacher receiving scholarship income and compensation for personal services from the same withholding agent may use the form to claim treaty benefits on the scholarship income.

Form W-4, Employee's Withholding Allowance Certificate, is used by a person providing dependent personal services to claim the personal exemption amount. Nonresident alien individuals are subject to special instructions for completing the Form W-4. See the discussion under *Wages Paid to Employees—Graduated Withholding,* later.

Pay for independent personal services (Income 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. It also includes honoraria paid by colleges and universities to visiting teachers, lecturers, and researchers.

Pay for independent personal services is 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 may be reduced by the personal exemption amount (\$2,900 for 2001) if the alien gives you a properly completed Form 8233. A nonresident alien is allowed only one personal exemption. However, individuals who are residents of Canada, Mexico, Japan, or South Korea, or are U.S. nationals (defined below) are generally entitled to the same exemptions as U.S. citizens.

Students and business apprentices covered by Article 21(2) of the United States—India Income Tax Treaty may claim an additional exemption for their spouse if a joint return is not filed, and if the spouse has no gross income for the year and is not the dependent of another taxpayer. They may also claim additional exemptions for children who reside with them in the United States at any time during the year, but only if the dependents are U.S. citizens or nationals or residents of the United States, Canada, or Mexico. They may not claim exemptions for dependents who are admitted to the United States on "F-2," "J-2," or "M-2" visas unless such dependents have become resident aliens.

Each allowable exemption must be prorated according to the number of days during the tax year during which the alien performs

services in the United States. Multiply the number of these days by \$7.95 (the daily exemption amount for 2001) to figure the prorated amount. Residents of Japan and South Korea must make a further proration of their additional exemptions based on their gross income effectively connected with a U.S. trade or business. The rules for this proration are discussed in detail in Publication 519.

A **U.S. national** is an individual who owes his sole allegiance to the United States, but who is not a U.S. citizen. Such an individual is usually a citizen of American Samoa, or a Northern Mariana Islander who chose to become a U.S. national.

Example 1. Hans Schmidt, who is a resident of Germany, worked (not as an employee) for a U.S. company in the United States for 100 days during 2001 before returning to his country. He earned \$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 \$795 as a deduction against the payments for his personal services performed in the United States (100 days × \$7.95). Tax must be withheld at 30% on the rest of his earnings, \$5,205 (\$6,000 – \$795). A tax of \$1,561.50 must be withheld from Hans' earnings (30% of \$5,205).

Example 2. If, in *Example 1*, Hans were a resident of Canada or Mexico or a national of the United States, working under contract with a domestic corporation, \$3,975 (100 days × \$7.95 per day for each of five exemptions) would be allowed against the payments for personal services performed in the United States. Tax must be withheld at 30% on \$2,025 (\$6,000 – \$3,975), the rest of his earnings. A tax of \$607.50 must be withheld from Hans' earnings (30% of \$2,025).

Withholding agreements. Pay for personal services of a nonresident alien who is engaged during the tax year in the conduct of a U.S. trade or business may be wholly or partially exempted from withholding at the statutory rate if an agreement has been reached between the Commissioner or his delegate and the alien individual as to the amount of withholding required. This agreement will be effective for payments covered by the agreement that are made after the agreement is executed by all parties. The alien individual must agree to timely file an income tax return for the current tax year.

Final payment exemption. The final payment of compensation for independent personal services may be wholly or partially exempt from withholding at the statutory rate. This exemption does not apply to wages paid to an employee. The nonresident alien must have been engaged during the tax year in the conduct of a U.S. trade or business. This exemption is available only once during an alien individual's tax year. It applies to the last payment of compensation, other than wages, for personal services rendered in the United States that the individual expects to receive from any withholding agent during the tax year.

To obtain the final payment exemption, the nonresident 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.

- 1) 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 individual during the tax year. It must show the amount of income paid and the amount of tax withheld. The withholding agent must sign each statement and include a declaration that it is made under penalties of perjury.

- 2) 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.
- 3) A statement by the individual 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.
- 4) 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.
- 5) The amount of any outstanding tax liabilities, including any interest and penalties, from the current tax year or prior tax periods.
- 6) The provision of any income tax treaty under which a partial or complete exemption from withholding may be claimed, the country of the individual's residence, and a statement of sufficient facts to justify an exemption under that treaty.

The alien individual 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 individual's tentative income tax for the tax year on 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 individual 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 otherwise be withheld that may be paid to the individual due to the exemption. The amount of pay exempt from withholding cannot be more than \$5,000. The alien individual must give two copies of the letter to you and must also attach a copy of the letter to his or her income tax return for the tax year for which the exemption is effective.

Travel expenses. If you pay or reimburse the travel expenses of a nonresident alien, the payments are not reportable to the IRS and are not subject to NRA withholding if the payments are made under an accountable plan as described in section 1.62-2 of the regulations. This treatment applies only to

that portion of a payment that represents the payment of travel and lodging expenses and not to that portion that represents compensation for his independent personal services.

Tax treaties. Under most tax treaties, pay for independent personal services performed in the United States is exempt from U.S. income tax only if the independent nonresident alien contractor performs the services during a period of temporary presence in the United States (usually not more than 183 days) and is a resident of the treaty country. Thus, the pay is not exempt from U.S. tax if the contractor is a U.S. resident.

Independent nonresident alien contractors use Form 8233 to claim an exemption from withholding under a tax treaty. For more information, see Form 8233, earlier.

Often, you must withhold under the statutory rules on payments made to a treaty country resident contractor for services performed in the United States. This is because the factors on which the treaty exemption is based may not be determinable until after the close of the tax year. The treaty country resident contractor must then file a U.S. income tax return (Form 1040NR or Form 1040NR-EZ) to recover any overwithheld tax and to provide the IRS with proof that he or she is entitled to a treaty exemption.

Wages Paid to Employees— Graduated Withholding

Salaries, wages, 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 individual for personal services performed as an **employee for an employer** are generally exempt from the 30% withholding if the wages are subject to graduated withholding.

Also exempt from the 30% withholding is pay for personal services performed as an employee for an employer if it is effectively connected with the conduct of a U.S. trade or business and is specifically excepted from 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 employer-employee relationship exists, it does not matter what the parties call the relationship. It does not matter if the employee is called a partner, coadventurer, agent, or independent contractor. It does not matter how the pay is measured, how the individual is paid, or what the payments are called. Nor does it matter whether the individual works full- 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 pay 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, such as religious and charitable organizations, educational institutions, clubs, social organizations, and societies. It also includes the governments of the United States, the states, Puerto Rico, and the District of Columbia, as well as their agencies, instrumentalities, and political subdivisions.

Two special definitions of employer that may have considerable application to nonresident aliens are:

- 1) An employer includes any person paying wages for a nonresident alien individual, foreign partnership, or foreign corporation not engaged in trade or business in the United States (including Puerto Rico as if a part of the United States), and
- 2) An employer includes any person who has control of the payment of wages for services that are performed for another person who does not have that control.

For example, if a trust pays wages, such as certain types of pensions, supplemental unemployment pay, or retired pay, and the person for whom the services were performed has no legal control over the payment of the wages, the trust is the employer.

These special definitions have no effect upon the relationship between an alien employee and the actual employer when determining whether the pay received is considered to be wages.

If an employer-employee relationship exists, the employer ordinarily must withhold the income tax from wage payments by using the percentage method or wage-bracket tables as shown in Publication 15, (Circular E).

Pay that is not wages. Employment for which the pay is not considered wages (for graduated income tax withholding) includes, but is not limited to, the following items.

- 1) 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 during the year is less than \$2,500. But even if the total amount 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), *Agricultural Employer's Tax Guide*.

- 2) Services of a household nature performed in or about the private home of an employer, or in or about the clubrooms or house of a local college club, fraternity, or sorority. A local college club, fraternity, or sorority does not include an alumni club or chapter and may not be operated primarily as a business enterprise. Examples of these services include those performed as a cook, janitor, housekeeper, governess, gardener, or houseparent.
- 3) Certain services performed **outside** the course of the employer's trade or business for which cash payment is less than \$50 for the calendar quarter.
- 4) Services performed as an employee of a foreign government, without regard to citizenship, residence, or where services are performed. These include services performed by ambassadors, other diplomatic and consular officers and employees, and nondiplomatic representatives. They do not include services for a U.S. or Puerto Rican corporation owned by a foreign government.
- 5) Services performed within or outside the United States by an employee or officer (regardless of citizenship or residence) of an international organization designated under the International Organizations Immunities Act.
- 6) Services performed by a duly ordained, commissioned, or licensed minister of a church, but only if performed in the exercise of the ministry and not as an employee of the United States, a U.S. possession, or a foreign government, or any of their political subdivisions. These also include services performed by a member of a religious order in carrying out duties required by that order.
- 7) Tips paid to an employee if they are paid in any medium other than cash or, if in cash, they amount to less than \$20 in any calendar month in the course of employment.

Services performed outside the United States. Compensation paid to a nonresident alien (other than a resident of Puerto Rico, discussed later) for services performed outside the United States is not considered wages and is not subject to graduated withholding or 30% withholding.

See *Notice 2001-4* under *Important Changes*, earlier.

Withholding exemptions. The amount of wages subject to graduated withholding may be reduced by the personal exemption amount (\$2,900 for 2001). The personal exemptions allowed in figuring wages subject to graduated withholding are the same as those discussed earlier under *Pay for independent personal services*, except that an employee must claim them on Form W-4.

Special instructions for Form W-4. A nonresident alien subject to wage withholding must give the employer a completed Form W-4 to enable the employer to figure how much income tax to withhold. In completing the form, nonresident aliens should use the following instructions instead of the instructions on Form W-4.

- 1) Check only "Single" marital status on line 3 (regardless of actual marital status).

- 2) Claim only one withholding allowance on line 5, unless a resident of Canada, Mexico, Japan, or South Korea, or a U.S. national.
- 3) Request that additional tax of \$7.60 per week be withheld on line 6. If the pay period is two weeks, request that \$15.30 be withheld instead. For other payroll periods, see the amounts in Publication 15 (Circular E).
- 4) Do not claim "Exempt" withholding status on line 7.

These instructions restrict a nonresident alien's filing status, generally limit the number of allowable exemptions, and require additional tax to be withheld because a nonresident alien cannot claim the standard deduction.

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 the standard deduction and their spouses. In addition, they can claim an additional withholding allowance for each dependent who has become a resident alien. Furthermore, they do not have to request additional withholding on line 6 of Form W-4.

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 941. Household 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 must also 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 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 penalty equal to the full 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 can 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 or 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-1," "J-1," "M-1," or "Q" nonimmigrant 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, the nonresident alien may be exempt from tax or withholding of tax if any of the following four exceptions applies.

Exception 1. Compensation paid for labor or personal services performed in the United States is deemed not to be 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, or
 - 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 possession of the United States by this individual, partnership, or corporation.

If the total pay is more than \$3,000, the entire amount is income from sources in 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. However, this income will be treated as U.S. source income for purposes of the rules relating to pension, profit-sharing, and stock bonus plans, including the minimum participation rules. Amounts includible in the employee's income for the cost of group-term life insurance coverage provided by the employer and amounts received under an employer's acci-

dent and health plan will also be treated as U.S. source income.

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:

- 1) A nonresident alien individual, foreign partnership, or foreign corporation, or
- 2) 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 graduated income tax withholding or 30% withholding. These aliens must either:

- 1) Perform duties in transportation services (such as a railroad, bus, truck, ferry, steamboat, aircraft, or other type) between the United States and Canada or Mexico, or
- 2) Perform duties connected with an international project, relating to the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge crossed 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:

- 1) Is not a U.S. citizen or resident,
- 2) Is a resident of Canada or Mexico, whichever applies, and
- 3) Expects to perform the described duties during the tax year in question.

The statement can be in any form, but it must be dated and signed 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 projects 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 NRA withholding of U.S. federal income tax.

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

- 1) Services performed outside the United States but not 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, or
- 2) 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:

- 1) Is not a citizen or resident of the United States, and
- 2) 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 most 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 pay 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.

A nonresident alien temporarily in the United States as a nonimmigrant 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. However, 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 employer. Alien teachers, researchers, and other alien employees temporarily present in the United

States in "H-1a," "H-1b," "L-1," "O-1," "O-2," "P-1," "P-2," "P-3," "TC," "TN," refugee, or asylum 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 explanatory 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.ssa.gov/international/inter_intro.html.

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 his entry into the United States and who is not a citizen of the United States (see Table 2). The U.S. educational institution 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 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 Medicare 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*, earlier) for personal services performed while a nonresident alien is temporarily in the United States as a student, trainee, or apprentice, or while acquiring technical, professional, or business experience.

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

A nonresident alien temporarily in the United States as a nonimmigrant 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. This exemption from social security and Medicare taxes also applies to employment performed under Curricular Practical Training and Optional Practical Training, on or off campus, by foreign students in "F-1," "J-1," "M-1," or "Q" nonimmigrant status as long as the employment is authorized by the Immigration and Naturalization Service. However, 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 employer.

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

Claimants must give you either Form W-8BEN or 8233, as applicable, to obtain these treaty benefits.

Artists and Athletes

Because many tax treaties contain a provision for pay to artists and athletes, a separate category—*Earnings as an artist or athlete (Income Code 20)*—is assigned these payments for withholding purposes. This category includes payments made for performances by public entertainers (such as theater, motion picture, radio, or television artists, or musicians) or athletes.

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*, earlier, for more information. You must withhold tax at graduated rates on payments to artists and athletes for services performed as employees. See *Pay for dependent personal services*, earlier, for more information. However, in any situation where the nature of the relationship between the payor of the income and the artist or athlete is not ascertainable, you should withhold at a rate of 30%.

Central withholding agreements. Nonresident alien entertainers or athletes performing or participating in athletic events in the United States may be able to enter into a withholding agreement with the IRS for reduced withholding provided certain requirements are met. Under no circumstances will a withholding agreement reduce taxes withheld to less than the alien's anticipated income tax liability.

Nonresident alien entertainers or athletes requesting a central withholding agreement must provide the following information.

- 1) A list of the names and addresses of the nonresident aliens to be covered by the agreement.
- 2) Copies of all contracts that the aliens or their agents and representatives have entered into regarding the time period and performances or events to be covered by the agreement including, but not limited to, contracts with:
 - a) Employers, agents, and promoters,
 - b) Exhibition halls,
 - c) Persons providing lodging, transportation, and advertising, and
 - d) Accompanying personnel, such as band members or trainers.

- 3) An itinerary of dates and locations of all events or performances scheduled during the period to be covered by the agreement.
- 4) A proposed budget containing itemized estimates of all gross income and expenses for the period covered by the agreement, including any documents to support these estimates.
- 5) The name, address, and telephone number of the person the IRS should contact if additional information or documentation is needed.
- 6) The name, address, and employer identification number of the agent or agents who will be the central withholding agents for the aliens and who will enter into a contract with the IRS. A central withholding agent ordinarily receives contract payments, keeps books of account for the aliens covered by the agreement, and pays expenses (including tax liabilities) for the aliens during the period covered by the agreement.

When the IRS approves the estimated budget and the designated central withholding agents, the Associate Chief Counsel (International) will prepare a withholding agreement. The agreement must be signed by each withholding agent, each nonresident alien covered by the agreement, and the Commissioner or his delegate.

Generally, each 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 have the IRS apply the payments of withheld tax to the withholding agent's Form 1042 account. Each withholding agent will have to file Form 1042 and Form 1042-S for each tax year in which income is paid to a nonresident alien covered by the withholding agreement. The IRS will credit the withheld tax payments, posted to the withholding agent's Form 1042 account, in accordance with the Form 1042-S. Each nonresident alien covered by the withholding agreement must agree to file Form 1040NR or, if he or she qualifies, Form 1040NR-EZ.



A request for a central withholding agreement should be sent to the following address at least 90 days before the agreement is to take effect:

Compliance Area Director, Area 15
950 L'Enfant Plaza South, SW
S:C:15
Washington, DC 20024.

Tax treaties. Under many tax treaties, compensation paid to public entertainers or athletes for services performed in the United States is exempt from U.S. income tax only when the services are performed during a limited period of temporary presence in the United States and the pay is within limits provided in the tax treaty that applies (see Table 2).

Independent contractors may claim an exemption from withholding under a tax treaty by filing Form 8233. Employees may claim an exemption from withholding under a tax treaty by filing Form 8233 (if the employee is

a student or teacher) or a Form W-8BEN with their employers.

Often, however, you will have to withhold at the statutory rates on the total payments to the entertainer or athlete. This is because the exemption may be based upon factors that cannot be determined until after the end of the year.

Other Income

For the discussion of Income Codes 24, 25, and 26, see *U.S. Real Property Interest*, later. For the discussion of Income Code 27, see *Publicly Traded Partnerships*, later.

Gambling winnings (Income Code 28).

Use this code to report gambling winnings and any tax withheld on those winnings. In general, nonresident aliens are subject to NRA withholding at 30% on the gross proceeds from gambling won in the United States if that income is not effectively connected with a U.S. trade or business and is not exempted by treaty. The tax withheld and winnings are reportable on Forms 1042 and 1042-S. No tax is imposed on nonbusiness gambling income of a nonresident alien playing blackjack, baccarat, craps, roulette, or big-6 wheel in the United States. A Form W-8BEN is not required to obtain the exemption from withholding, but a Form W-8BEN may be required for purposes of Form 1099 reporting and backup withholding. Gambling income that is not subject to NRA withholding is not subject to reporting on Form 1042-S.

Nonresident aliens are taxed at graduated rates on gambling income won in the U.S. that is effectively connected with a U.S. trade or business.

Tax treaties. Gambling income won in the United States by residents (as defined by treaty) of the following foreign countries is not taxable by the United States: Austria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Russian Federation, Slovak Republic, South Africa, Spain, Sweden, Tunisia, Turkey, Ukraine, and the United Kingdom.

Claimants must give you a Form W-8BEN (with a TIN) to claim treaty benefits on gambling income, from other than blackjack, baccarat, craps, roulette, or big-6 wheel, that is not effectively connected with a U.S. trade or business.

Transportation income. U.S. source gross transportation 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 includes 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. However, the income is not subject to NRA withholding. 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.

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 commissions, insurance proceeds, patronage distributions, 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 connected with a U.S. trade or business is subject to NRA withholding unless the income is specifically 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 government is not included in the gross income of the foreign government and is not subject to U.S. withholding tax. Investment income means income 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 money deposited by a foreign government in banks in the United States. A foreign government must provide a Form W-8EXP or, in the case of a payment made outside the United States to an offshore account, documentary evidence to obtain this exemption. Investment income that is paid to a foreign government is subject to reporting on Form 1042-S.

Income received by a foreign government from the conduct of a commercial activity or from sources other than those stated above, is subject to NRA withholding. In addition, 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 is subject to NRA withholding.

A government of a U.S. possession is exempt 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 are exempt from U.S. tax on all U.S. source income. This income is not subject to NRA 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 international organization by executive order.

A foreign organization that is a tax exempt organization under section 501(c) of the Internal Revenue Code is not subject to a withholding tax on amounts that are not income includable under section 512 of the Internal Revenue Code as unrelated business taxable income. However, if a foreign organization is a foreign private foundation, 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 status 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, it must provide a Form W-8BEN. Income

paid to foreign tax-exempt organizations are subject to reporting on Form 1042-S.

U.S. Taxpayer Identification Numbers

As the withholding agent, you must generally 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 following.

- Tax treaty benefits (other than for income from marketable securities, discussed earlier).
- Exemption for effectively connected income.
- Exemption for certain annuities (see *Pensions, 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.
- Foreign grantor trust with no more than 5 grantors unless the grantor trust is an account holder of a qualified intermediary. See *Notice 2001-4*.
- Exempt organization.
- U.S. branch of a foreign person treated as a U.S. person (see section 1.1441-1(b)(2)(iv) of the regulations).
- U.S. person.

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.

- Tax withheld 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.
- Tax withheld 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 from a deposit 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.

How much 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 deposit the entire amount or remit it with Form 1042 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 paid directly to the IRS along 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:

- 1) You deposit at least 90% of the actual tax liability for the deposit period, and
- 2) 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 depository tax liabilities you incur after 2000, if you meet either of the following conditions.

- You had to make electronic deposits in 2000.
- You deposited more than \$200,000 in federal depository taxes in 1999.

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

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, contact your local IRS office.



Deposits made by foreign corporations. If you use a Form 8109, show the "Amount of Deposit" in U.S. dollars. Send the completed coupon with a bank draft in U.S. dollars to:

Financial Agent
Federal Tax Deposit Processing
P.O. Box 970030
St. Louis, MO 63197.

To eliminate possible late payment penalty charges, be prepared to show that the payment was mailed by the second day before the due date.

Obtaining coupon book. A preinscribed book of Federal Tax Deposit Coupons (Form 8109) automatically will be sent to you after you apply for an employer identification number. Apply by completing Form SS-4, available from the IRS. If you have not received the coupon book, you should contact your local IRS office.



Record of deposit. Before making a deposit, enter the amount of payment on the coupon and in your records. The coupon will not be returned to you, but will be used to credit your tax account as identified by your employer identification number.

Penalty for failure to make deposits on time. If you fail to make a required deposit within the time prescribed, a penalty is imposed on the underpayment (the excess of the required deposit over any actual timely deposit for a period). You can avoid the penalty if you can show that the failure to deposit was for reasonable cause and not because of willful neglect. Also, the IRS may waive the penalty if certain requirements are met.

Penalty rate. If the deposit is:

- 1 to 5 days late, the penalty is 2% of the underpayment,
- 6 to 15 days late, the penalty is 5%, or
- 16 or more days late, the penalty is 10%.

However, if the deposit is not made within 10 days after the IRS issues the first notice demanding payment, the penalty is 15%.

If you owe a penalty for failing to deposit tax for more than one deposit period, and you make a deposit, your deposit is applied to the earliest period first. If you receive a penalty notice for deposits of taxes required to be made after January 18, 1999, you can designate the deposit period or periods to which your deposit is to be applied. You can make this designation only during a 90-day period that begins on the date of the notice. The notice contains instructions on how to make this designation.

Adjustment for Overwithholding

What you do if you overwithheld tax depends on when you discover the overwithholding.

Overwithholding discovered before March 15 of following calendar year. If you discover that you overwithheld tax before March 15 of the following calendar year, you may use the undeposited amount of tax to make any necessary adjustments between you and the recipient of the income. However, if the undeposited amount is not enough to make any adjustments, or if you discover the overwithholding after the entire amount of tax has been deposited, you can use either the reimbursement or the setoff procedure to adjust the overwithholding.

Reimbursement. Under the reimbursement procedure, you repay the beneficial owner or payee the amount overwithheld. You use your own funds for this repayment. You must make the repayment by March 15 of the year after the calendar year in which the amount was overwithheld. For example, if you overwithheld tax in 2001, you must repay the beneficial owner by March 15, 2002.

You may reimburse yourself by reducing any subsequent deposits you make before the end of the year after 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 Form 1042 (not including extensions) that you are claiming a credit.

Example. James Smith is a resident of the United Kingdom. In December 2001, domestic corporation M paid a dividend of \$100 to James, at which time M Corporation withheld \$30 and paid the balance of \$70 to him. On February 11, 2002, James gave M Corporation a valid Form W-8BEN and advised M Corporation that according to the income tax convention with the United Kingdom, only \$15 tax should have been withheld from the dividend and requested repayment of \$15 which was overwithheld. Although M Corporation had already deposited the \$30, which was withheld, the corporation repaid James \$15 before the end of February.

During 2001, M Corporation made no other payments from which tax had to be withheld. On its timely filed 2001 Form 1042, M Corporation reports \$15 as its total tax liability and \$30 as its total deposits. M Corporation requests that the \$15 overpayment

be credited to its 2002 Form 1042 rather than refunded.

The Form 1042-S that M Corporation files for the dividend paid to James in 2001 must show a tax withheld of \$30 in box 7 and \$15 as an amount repaid in box 8.

During 2002, M Corporation made payments from which it withheld tax of \$200, all of which occurred in June of that year. On July 15, 2002, M Corporation deposited \$185, that is, \$200 less the \$15 credit claimed on its Form 1042 for 2001. M Corporation timely filed its Form 1042 for 2002, showing tax liability of \$200, \$185 deposited, and \$15 credit from 2001.

Set-offs. 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 a U.S. income tax return (Form 1040NR or Form 1040NR-EZ or Form 1120-F) or, if a tax return has already been filed, a claim for refund (amended Form 1040NR or 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 withholding unless an exception applies. Do not use Forms 1042 and 1042-S to report tax withheld on the following:

- Wages or salaries subject to graduated income tax withholding (see *Wages Paid to Employees—Graduated Withholding*, earlier under *Pay for Personal Services Performed*),
- Any portion of a U.S. or foreign partnership's 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 Property Interest*, later),
- Pensions, annuities, and certain other deferred income reported on Form 945, and
- Income, social security, and Medicare taxes withheld on wages paid to a

household employee reported on Schedule H (Form 1040).



The 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 though you were not required to withhold any income tax.



You must file Form 1042 with the

Internal Revenue Service Center
Philadelphia, PA 19255.

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 magnetically, electronically, or on paper. A separate Form 1042-S (or tape record) 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*, later.

You must furnish a Form 1042-S for each recipient even though 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.

Form 1042-T is a new transmittal form that is expected to be available in November 2001. It will be used for 2001 returns filed in 2002.

Magnetic media reporting. If Form 1042-S is filed on paper, it must be filed together with Form 1042-T. Withholding agents or their agents generally must use magnetic or electronic media to file 250 or more Forms 1042-S with the IRS. You are encouraged to file electronically or magnetically even if you are not required to.

A completed Form 4419, *Application for Filing Information Returns Magnetically/Electronically*, should be filed with the Martinsburg Computing Center at least 30 days before the due date of the return. Returns may not be filed magnetically or electronically until the application has been approved by the IRS.

For information and instructions on filing Forms 1042-S on magnetic media, get Publication 1187, *Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding Magnetically/Electronically*.

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 effec-

tively 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 1.6049-8(b) of the regulations if you pay that interest outside the United States.

How to report. Although you only have to report the interest paid to residents of Canada who are not U.S. citizens, you can comply by reporting payments to all foreign persons receiving bank deposit interest, if that way is easier for you.

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 (or magnetic media report) with the IRS by the due date for filing Forms 1042 and 1042-S. 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% 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 not, however, include more than one income line on the copy of the form filed with the IRS.

You must get prior annual approval to use a substitute Form 1042-S unless it meets the requirements listed in Publication 1167, *Substitute Printed, Computer-Prepared and Computer-Generated Tax Forms and Schedules*. Get Publication 1167 for more information.

Extension of time to file. You may request an extension of time to file Form 1042 by filing Form 2758, *Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns*. You may request an extension of time to file Form 1042-S by filing Form 8809, *Request for Extension of Time to File Information Returns*. You should send Forms 2758 and 8809 far enough in advance of the due date of Forms 1042 and 1042-S to allow the IRS time to consider your application and to reply before the due date of the return.

Penalties. The penalty for not filing Form 1042 when due (including extensions) is usually 5% 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 before August 2, 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 not more than \$5 million 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 on magnetic media. If you are required to file on magnetic media but you fail to do so, and you do not have an approved waiver, you may be subject to a penalty of \$50 per return for failure to file Form 1042-S on magnetic media unless you show reasonable cause. The penalty applies separately to original and corrected returns.

Partnership Withholding on Effectively Connected Income

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, unless it chooses to withhold under these rules. 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.

Foreign Partner

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

A partnership may rely on a partner's certification of nonforeign status and assume that a partner is not a foreign partner if the partner provides a certification to the partnership that:

- 1) States that the partner is not a foreign person,
- 2) Gives the partner's name, U.S. taxpayer identification number, and address,
- 3) States that the partner will notify the partnership within 60 days of a change to foreign status, and
- 4) Is signed under penalties of perjury.

Sample certifications are contained in section 5.04 of Revenue Procedure 89-31, in Cumulative Bulletin 1989-1.

The partnership must keep the certification 5 years after the last tax year in which the partnership relied on it.

Unless the partnership knows that the certification is incorrect, it may rely on it until one of the following happens.

- 1) The third year after the partnership's tax year in which the certification was made ends.
- 2) The partner notifies the partnership that it has become a foreign partner.
- 3) The partnership learns that the partner is a foreign partner.

Widely held and publicly traded partnerships. A partnership with more than 200 partners or a publicly traded partnership may rely on statements received on Form W-9 in lieu of the above certification. It may also rely on a certification from a nominee that a partner owning a partnership interest through the nominee is not a foreign partner. In this situation, the nominee may rely on a partner's certification of nonforeign status as described earlier, or it may rely on Form W-9.

Amount of Withholding Tax

The withholding tax that a partnership must pay for the partnership's tax year is based on its effectively connected taxable income that is allocable to its foreign partners for that tax year.

The amount of a partnership's effectively connected taxable income that is allocable to a foreign partner is the foreign partner's distributive share of the partnership's gross effectively connected income reduced by the partner's distributive share of partnership deductions for the year. For information on effectively connected income and how to figure a partner's distributive share of income and deductions, see the *Instructions for Forms 8804, 8805, and 8813*.

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.

Tax rate. The withholding tax rate on a partner's share of effectively connected income is 35% for a partner taxed as a corporation and 39.6% for all other partners, such as individuals, partnerships, trusts, and estates.

Amount of installment payment. 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 foreign partner's installment payment of withholding tax can be figured by using the worksheet in the *Instructions for Forms 8804, 8805, and 8813*.



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 months of its tax year for U.S. income tax purposes. Any additional amounts due are to be paid with Form 8804, the annual partnership withholding tax return.

A foreign partner's share of withholding tax paid by a partnership is treated as distributed to the partner on the earliest of:

- 1) The day on which the tax was paid by the partnership,
- 2) The last day of the partnership's tax year for which the tax was paid, or
- 3) The last day on which the partner owned an interest in the partnership during that year.

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 domestic partnership's compliance with these rules satisfies the requirements for withholding on the disposition of U.S. real property interests (discussed later). This also applies to publicly traded partnerships that elect to withhold based on effectively connected income instead of on actual distributions as discussed later.

Reporting and Paying the Tax

Three forms are required for reporting and paying over tax withheld on effectively connected income allocable to foreign partners.

Form 8804, Annual Return for Partnership Withholding Tax (Section 1446). The withholding tax liability of the partnership for its tax year is reported on Form 8804. Form 8804 is also a transmittal form for Forms 8805.

Any additional withholding tax owed for the partnership's tax year is paid (in U.S. currency) with Form 8804. A Form 8805 for each foreign partner must be attached to Form 8804, whether or not any withholding tax was paid.



File Form 8804 by the 15th day of the 4th month after the close of the partnership's tax year. However, a partnership made up of all nonresident alien partners has until the 15th day of the 6th month after the close of the partnership's tax year to file. If you need more time to file Form 8804, you may file Form 2758 to request an extension. Form 2758 does not extend the time to pay the tax.

Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax. Form 8805 is used to show the amount of effectively connected taxable income and any withholding tax payments allocable to a foreign partner for the partnership's tax year. At the end of the partnership's tax year, Form 8805 must be sent to each foreign partner whether or not any withholding tax is paid. It should 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 must also be attached to Form 8804 when it is filed.

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 (Section 1446). This form is used to make payments of withheld tax to the United States Treasury. Payments must be made in U.S. currency by the payment dates (see *Date payments are due*, earlier).

Penalties. A penalty may be imposed for failure to file Form 8804 when due (including extensions). It is the same as the penalty for 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 when you file a correct Form 8805. The penalty for each Form 8805 is:

- 1) \$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
- 2) \$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 not more than \$5 million 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 that has effectively connected income, gain, or loss must pay withholding tax on any distributions of that income made to its foreign partners. In this situation, a publicly traded partnership must use Forms 1042 and 1042-S (Income

Code 27) to report withholding from distributions. The rate of withholding is 39.6%.

A publicly traded partnership is any partnership an interest in which is regularly traded on an established securities market regardless of the number of its partners. This does not include a publicly traded partnership treated as a corporation under section 7704 of the Internal Revenue Code.

Foreign partner. The partnership determines whether a partner is a foreign partner using the rules discussed earlier under *Foreign Partner*.

Election to withhold on effectively connected taxable income. A publicly traded partnership can elect to pay a withholding tax on its effectively connected taxable income allocable to foreign partners instead of on its actual distributions. The partnership makes this election by filing Forms 8804, 8805, and 8813 and by complying with the payment and reporting requirements for those forms, as discussed earlier. Once the election has been made, it can be revoked only with the consent of the IRS.

Distributions subject to NRA withholding. If the election to withhold on effectively connected taxable income is not made, the partnership must withhold tax on any actual distributions of money or property to foreign partners. 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:

- 1) The fair market value of U.S. real property interests distributed to a partner and potentially subject to withholding under section 1445(e)(4) of the Internal Revenue Code,
- 2) Amounts subject to NRA withholding under section 1445(e)(1) of the Internal Revenue Code on distributions pursuant to an election under section 1.1445-5(c)(3) of the regulations, and
- 3) Amounts not subject to NRA withholding under section 1445 of the Internal Revenue Code because the distributee 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 first considered to be paid out of the following types of income in the order listed. To the extent the partnership has this type of income, it is excluded from the distributions subject to withholding discussed in this section.

- 1) Amounts of noneffectively connected income distributed by the partnership and subject to NRA withholding discussed earlier.
- 2) Amounts attributable to recurring dispositions of crops and timber that are sub-

ject to NRA withholding under section 1.1445-5(c)(3)(iv) of the regulations.

- 3) Amounts attributable to the disposition of a U.S. real property interest subject to the withholding rules discussed next under *U.S. Real Property Interest*.

For more information about the withholding requirements for publicly traded partnerships, see Revenue Procedure 89-31 in Cumulative Bulletin 1989-1.

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. The transferee is the withholding agent. As the transferee, you must deduct and withhold a tax equal to 10% (or other amount) of the total amount realized on the disposition (i.e., 10% of the purchase price). 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.

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.

The term **transferor** means 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, partners of a partnership, and beneficiaries of a trust or estate.

The term **transferee** means any person, foreign or domestic, that acquires a U.S. real property interest by purchase, exchange, gift, or any other transfer.

The **amount realized** by the transferor is the sum of:

- 1) The cash paid, or to be paid (principal only),
- 2) The fair market value of other property transferred, or to be transferred, and
- 3) The amount of any liability assumed by the transferee or to which the property is subject immediately before and after the transfer.

The term **U.S. real property interest** means 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 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 at no time 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.

Corporations, partnerships, trusts, and estates. Withholding is required on certain distributions and other transactions by domestic or foreign corporations, partnerships, trusts, and estates.

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 shareholders.

A domestic corporation must withhold a tax equal to 10% of the fair market value of the property distributed to a foreign person if:

- 1) The foreign person's interest in the corporation is a U.S. real property interest, and
- 2) The property distributed is either in redemption of stock or in liquidation of the corporation.

Distributions from a domestic corporation that is a U.S. real property holding corporation (USRPHC) is generally subject to NRA withholding and withholding under the U.S. real property interest provisions. This also applies to a corporation that was a USRPHC at any time during the shorter of the period during which the U.S. real property interest was held, or the 5-year period ending on the date of disposition. A USRPHC can satisfy both withholding provisions if it withholds under one of the following procedures.

- Apply NRA withholding on the full amount of the distribution, whether or not any portion of the distribution represents a return of basis or capital gain. If a reduced tax rate applies under an income tax treaty, then the rate of withholding must not be less than 10%, unless the treaty specifies a lower rate for distributions from a USRPHC.
- Apply NRA withholding to the portion of the distribution that the USRPHC estimates is a dividend. Then, withhold 10% on the remainder of the distribution (or on a smaller amount if a withholding certificate is obtained and the amount of the distribution that is a return of capital is established).

The same procedure must be used for all distributions made during the year. A different procedure may be used each year.

If a domestic partnership that is not publicly traded disposes of a U.S. real property interest at a gain, the gain is treated as effectively connected income and is subject to the rules explained earlier under *Partnership Withholding on Effectively Connected Income*.

A publicly traded partnership that disposes of a U.S. real property interest must withhold tax on distributions to foreign partners, unless it elects to withhold based on effectively connected taxable income allocable to foreign partners as discussed earlier under *Publicly Traded Partnerships*.

You are a withholding agent if you are a trustee, fiduciary, or executor of a trust or estate having one or more foreign beneficiaries. You must establish a U.S. real property interest account. You enter in the account all gains and losses realized during the taxable year of the trust or estate from dispositions of U.S. real property interests. You must withhold 35% on any distribution to a foreign beneficiary that is attributable to the balance in the real property interest account on the day of the distribution. A distribution from a

trust or estate to a beneficiary (foreign or domestic) will be treated as attributable first to any balance in the U.S. real property interest account and then to other amounts.

A trust with more than 100 beneficiaries may elect to withhold from each distribution 35% of the amount 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). For more information about this election, see section 1.1445-5(c) of the regulations.

Publicly traded trusts and REITs must withhold on distributions of U.S. real property interests to foreign persons. The withholding rate is 35%. For more information, see section 1.1445-8 of the regulations.

Additional information. For additional information on the withholding rules that apply to corporations, trusts, estates, and REITs, see section 1445 of the Internal Revenue Code and the related regulations. For additional information on the withholding rules that apply to partnerships, see the previous discussion.



You may also write to the

Internal Revenue Service Center
P.O. Box 21086
Drop Point 8731 FIRPTA Unit
Philadelphia, PA 19114-0586.

Exceptions. You do not have to withhold if any of the following apply.

- 1) You (the transferee) acquire the property for use as a home 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 periods 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.
- 2) The property disposed of (other than certain dispositions of nonpublicly traded interests) is an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. However, if the class of stock had been held by a foreign person who beneficially owned more than 5% of the fair market value of that class at any time during the previous 5-year period, then that interest is a U.S. real property interest if the corporation qualifies as a USRPHC, and you must withhold on it.
- 3) The disposition is of an interest in a domestic 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 the corporation was not a USRPHC during the previous 5 years (or, if shorter, the period the interest was held by its present owner), or as of the date of disposition, the interest in the corporation is not a U.S. real

property interest by reason of section 897(c)(1)(B) of the Internal Revenue Code. The certification must be dated not more than 30 days before the date of transfer.

- 4) The transferor gives you a certification stating, under penalties of perjury, that the transferor is not a foreign person and containing the transferor's name, U.S. taxpayer identification number, and home address (or office address, in the case of an entity).
- 5) You receive a withholding certificate from the Internal Revenue Service that excuses withholding. See *Withholding Certificates*, later.
- 6) The transferor gives you written notice that no recognition of any gain or loss on the transfer is required because of a nonrecognition 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 Internal Revenue Service Center, P.O. Box 21086, Drop Point 8731 FIRPTA Unit, Philadelphia, PA 19114-0586.
- 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 political 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 (other than certain dispositions of nonpublicly traded interests) is of publicly traded partnerships or trusts. However, if an interest in a publicly traded partnership or trust was owned by a foreign person with a greater than 5% interest at any time during the previous 5-year period, then that interest is a U.S. real property interest if the partnership or trust would otherwise qualify as a USRPHC if it were a corporation, and you must withhold on it.

Certifications. The certifications in items (3) and (4) are not effective if you have actual knowledge, or receive a notice from an agent, that they are false. If you are required by regulations to furnish a copy of the certification to the IRS and you fail to do so in the time and manner prescribed, the certifications are not effective.

Liability of agents. If you receive either of the certifications discussed in item (3) or (4) and the transferor's agent or your agent (the transferee's agent) has actual knowledge that the certification is false, or in the case of (3), that the corporation is a foreign corporation, the agent must notify you, or the agent will be held liable for the tax. The agent's liability is limited to the amount of compensation the agent gets from the transaction.

An agent is any person who represents the transferor or transferee in any negotiation with another person (or another person's agent) relating to the transaction, or in settling the transaction. A person is not treated as an agent if the person only performs one or more of the following acts related to the transaction:

- Receipt and disbursement of any part of the consideration,
- Recording of any document,
- Typing, copying, and other clerical tasks,
- Obtaining title insurance reports and reports concerning the condition of the property, or
- Transmitting documents between the parties.

Reporting and Paying the Tax

Transferees must use Forms 8288 and 8288-A to report and pay to the IRS any tax withheld on the acquisition of U.S. real property interests. These forms must also be used by corporations, partnerships, estates, and trusts that must withhold tax on distributions and other transactions involving U.S. real property interests.

For partnerships disposing of U.S. real property interests, the manner of reporting and paying over the tax withheld is the same as discussed earlier under *Partnership Withholding on Effectively Connected Income*.

For publicly traded trusts and real estate investment trusts, you must use Forms 1042 and 1042-S for reporting and paying over tax withheld on distributions from dispositions of U.S. real property interests. Use Income Codes 24, 25, and 26 on Form 1042-S for transactions involving these entities.

Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests. The tax withheld on the acquisition of a U.S. real property interest from a foreign person is reported and paid using Form 8288. Form 8288 also serves as the transmittal form for copies A and B of Form 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*.



Generally, you must file Form 8288 by the 20th day after the date of the transfer.

If an application for a withholding certificate (discussed later) is submitted to the IRS before or on the date of a transfer and on the date of transfer the application is still pending with the IRS, the correct withholding tax must be withheld, but does not have to be reported and paid over immediately. The amount withheld (or lesser amount as determined by the IRS) must be reported and paid over within 20 days following the day on which a copy of the withholding certificate or notice of denial is mailed by the IRS.

If the principal purpose of applying for a withholding certificate is to delay paying over the withheld tax to the IRS, the transferee will be subject to interest and penalties. The interest and penalties will be assessed for the period beginning on the 21st day after the date of transfer and ending on the day the payment is made.

Form 8288-A. Each transferor or distributee must be notified of the amount of withholding tax paid to the IRS. Form 8288-A is used for this purpose. Attach copies A and B to Form 8288. IRS will stamp Copy B and send it to the person subject to withholding. Keep Copy C for your records.

Form 1099-S, Proceeds From Real Estate Transactions. Generally, the real estate broker or other person responsible for closing the transaction must report the sale of the property to the IRS using Form 1099-S. For more information about Form 1099-S, see the *Instructions for Form 1099-S* and the *General Instructions for Forms 1099, 1098, 5498, and W-2G*.

Withholding Certificates

The amount that must be withheld from the disposition of a U.S. real property interest can be adjusted pursuant to a withholding certificate issued by the IRS. The transferee, the transferee's agent, or the transferor may request a withholding certificate. The IRS will generally act on these requests within 90 days after receipt of a complete application.

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 providing security for the tax liability, entered into by the transferee or transferor.

Categories. All applications for withholding certificates are divided into six basic categories. This categorizing provides for specific information that is needed to process the applications. The six categories are:

- 1) Applications based on a claim that the transfer is entitled to nonrecognition treatment or is exempt from tax,
- 2) Applications based solely on a calculation of the transferor's maximum tax liability,
- 3) Applications under special installment sale rules,
- 4) Applications based on an agreement for the payment of tax with conforming security,
- 5) Applications for blanket withholding certificates, and
- 6) Applications on any other basis.

Format for Applications

Use Form 8288-B, *Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests*, to apply for a withholding certificate under categories (1), (2), and (3).

Do not use Form 8288-B for applications under categories (4), (5), and (6). For these categories follow the instructions given here.

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.



The application must be sent to:

Internal Revenue Service Center
P. O. Box 21086
Drop Point 8731 FIRPTA Unit
Philadelphia, PA 19114-0586.

All applications for withholding certificates must use the following format. The information must be provided in paragraphs labeled to correspond with the numbers and letters set forth below. If the information requested does not apply, place "N/A" in the relevant space.

- 1) Information on the application category:
 - a) State which category describes the application (see *Categories*, earlier),
 - b) If a category (4) application:
 - i) State whether the proposed agreement secures (A) the transferor's maximum tax liability, or (B) the amount that would otherwise have to be withheld, and
 - ii) State whether the proposed agreement and security instrument conform to the standard formats.
- 2) Information on the transferee or transferor:
 - a) State the name, address, and taxpayer identification number, if required by the regulations, of the person applying for the withholding certificate,
 - b) State whether that person is the transferee or transferor, and
 - c) State the name, address, and taxpayer identification number, if required by the regulations, of all other transferees and transferors of the U.S. real property interest for which the withholding certificate is sought. If a person does not have a TIN, the application must state that fact. If the transferor is requesting an early refund, the transferor's TIN must be on the application.
- 3) Information on the U.S. real property interest for which the withholding certificate is sought, state the:
 - a) Type of interest (such as, interest in real property, in associated personal property, or in a domestic U.S. real property holding corporation),
 - b) Contract price,
 - c) Date of transfer,

- d) Location and general description if an interest in real property,
- e) Class or type and amount of the interest in a U.S. real property holding corporation, and
- f) Whether in the three preceding tax years: (1) U.S. income tax returns were filed relating to the U.S. real property interest, and if so, when and where those returns were filed, and if not, why returns were not filed, and (2) U.S. income 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 basis for the issuance of the withholding certificate. Although the information to be included in this section of the application will vary from case to case, the following rules provide general guidelines for the inclusion of appropriate information for each category of application.

Category (4) applications. If the application is based on an agreement for the payment of tax, the application must include:

- 1) Information establishing the transferor's maximum tax liability, or the amount that otherwise has to be withheld,
- 2) A signed copy of the agreement proposed by the applicant, and
- 3) 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:

- 1) A detailed description of the rights and obligations of each, and
- 2) A security instrument or other form of security acceptable to the Commissioner or his delegate.

For more information on the agreement for the payment of tax, including a sample agreement, see section 5 of Revenue Procedure 2000-35. Revenue Procedure 2000-35 is in Internal Revenue Bulletin 2000-35.

There are four major types of security acceptable to the IRS. They are:

- 1) Bond with surety or guarantor,
- 2) Bond with collateral,
- 3) Letter of credit, and
- 4) 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 Revenue Procedure 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 Revenue Procedure 2000-35.

Category (6) applications. These are non-standard 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.



Availability of records. The applicant must make available to the IRS, within the time prescribed, all information required to verify that representations relied upon in accepting the agreement are accurate, and that the obligations assumed by the applicant will be performed pursuant to the agreement. Failure to provide requested information promptly will usually result in re-

jection of the application, unless the IRS grants an extension of the target date.

Amendments to Applications

An applicant for a withholding certificate may amend an otherwise complete application by sending an amending statement to the Commissioner or his delegate. There is no particular form required, but the amending statement must provide the following information:

- 1) The name, address, and taxpayer identification number (if any) of the person providing the amending statement specifying whether that person is the transferee or transferor,
- 2) The date of the original application for a withholding certificate that is being amended,
- 3) A brief description of the real property interest for which the original application for a withholding certificate was provided, and
- 4) 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 (discussed earlier under *Format for Applications*).

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 by the Commissioner or his delegate 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.

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.

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

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 2001

Income code number		1	2	3	6	7	9	10	11	12	13	14
Country of residence of payee		Interest paid by U.S. obligors General ^{dd}	Interest on real property mortgages ^{dd}	Interest paid to controlling foreign corporations ^{dd}	Dividends		Capital Gains ^{e,u,dd}	Industrial Royalties ^{dd}	Copyright royalties ^{dd}		Real Property Income and Natural Resources Royalties ^u	Pensions and Annuities
Name	Code				Paid by U.S. corporations—general ^{a,dd}	Qualifying for direct dividend rate ^{a,dd}			Motion Picture and Television	Other		
Australia	AS	g ¹⁰	g ¹⁰	g ¹⁰	g ¹⁵	g ¹⁵	30	g ¹⁰	g ¹⁰	g ¹⁰	30	d ⁰
Austria	AU	g ¹⁰	g ^{ee,jj} 0	g ¹⁰	g ^{w,15}	g ^{w,5}	g ⁰	g ⁰	g ¹⁰	g ⁰	30	0
Barbados	BB	g ⁵	g ⁵	g ⁵	g ^{w,15}	b,g,w ⁵	g ⁰	g ⁵	g ⁵	g ⁵	30	d,f ⁰
Belgium	BE	g ¹⁵	g ¹⁵	g ¹⁵	g ¹⁵	b,g ⁵	g ⁰	g ⁰	h ⁰	g ⁰	30	d,f ⁰
Canada	CA	g ¹⁰	g ^{ee} 10	g ¹⁰	g ^{w,15}	g ^{w,5}	30	g ⁰	g ¹⁰	g ⁰	30	15
China, People's Republic of Commonwealth of Independent States	CH	g ¹⁰	g ¹⁰	g ¹⁰	g ¹⁰	g ¹⁰	30	g ^{w,10}	g ¹⁰	g ¹⁰	30	d,t ⁰
Cyprus	CY	n ⁰	30	30	30	30	g ⁰	0	0	0	30	30
Czech Republic	EZ	g ¹⁰	g ¹⁰	g ¹⁰	g ¹⁵	b,g ⁵	g ⁰	g ⁰	g ⁰	g ⁰	30	d,f ⁰
Denmark	DA	g ^{kk} 0	g ^{ee,kk} 0	g ^{kk} 0	g ¹⁵	b,g,mm ⁵	g ⁰	g ⁰	g ⁰	g ⁰	30	d,t,nn ³⁰
Egypt	EG	h ¹⁵	30	h ¹⁵	h ¹⁵	b,h ⁵	h ⁰	h ⁰	h ⁰	g ¹⁵	30	d,f ⁰
Estonia	EN	g ^{kk} 10	g ^{ee,kk} 10	g ^{kk} 10	g ^{w,15}	b,g,w ⁵	g ⁰	g ^{aa} 5	g ¹⁰	g ¹⁰	30	d,f ⁰
Finland	FI	g ⁰	g ⁰	g ⁰	g ^{w,15}	b,g,w ⁵	g ⁰	g ⁵	g ⁰	g ⁰	30	d,f ⁰
France	FR	g ⁰	g ^{ee} 0	g ⁰	g ^{w,15}	b,g ⁵	g ⁰	g ⁵	g ⁰	g ⁰	30	f,bb ⁰
Germany	GM	g ⁰	g ⁰	g ⁰	g ^{w,15}	b,g,w ⁵	g ⁰	g ⁰	g ^{cc} 0	g ⁰	30	d,f ⁰
Greece	GR	h ⁰	h ⁰	30	30	30	30	h ⁰	30	h ⁰	30	d ⁰
Hungary	HU	g ⁰	g ⁰	g ⁰	g ¹⁵	b,g ⁵	g ⁰	g ⁰	g ⁰	g ⁰	30	d,f ⁰
Iceland	IC	g ⁰	g ⁰	g ⁰	g ¹⁵	b,g ⁵	g ⁰	g ⁰	30	g ⁰	30	d,f ⁰
India	IN	g ^{z,15}	g ^{z,15}	g ¹⁵	g ^{w,25}	b,g,w ¹⁵	30	g ^{aa} 10	g ¹⁵	g ¹⁵	30	d,f ⁰
Indonesia	ID	g ¹⁰	g ¹⁰	g ¹⁰	g ¹⁵	b,g ¹⁰	g ⁰	g ^{aa} 10	g ¹⁰	g ¹⁰	30	d,q ¹⁵
Ireland	EI	g ⁰	g ^{ee} 0	g ⁰	g ^{w,15}	g ^{w,5}	g ⁰	g ⁰	g ⁰	g ⁰	30	d,f ⁰
Israel	IS	z,gg ^{17 1/2}	z,ee,gg ^{17 1/2}	z,gg ^{17 1/2}	w,gg ²⁵	b,w,gg ^{12 1/2}	gg ⁰	gg ¹⁵	gg ¹⁰	gg ¹⁰	u ³⁰	f ⁰
Italy	IT	g ¹⁵	g ¹⁵	g ¹⁵	g ¹⁵	b,g ⁵	g ⁰	g ^{s,10}	g ⁸	g ⁵	30	d,f ⁰
Jamaica	JM	g ^{12 1/2}	g ^{12 1/2}	g ^{12 1/2}	g ¹⁵	b,g ¹⁰	g ⁰	g ¹⁰	g ¹⁰	g ¹⁰	30	d,f,p ⁰
Japan	JA	g ¹⁰	g ¹⁰	g ¹⁰	g ¹⁵	b,g ¹⁰	g ⁰	g ¹⁰	g ¹⁰	g ¹⁰	30	d ⁰
Kazakstan	KZ	g ¹⁰	g ^{ee} 10	g ¹⁰	g ^{ff,15}	b,g,ff ⁵	g ⁰	g ¹⁰	g ¹⁰	g ¹⁰	30	d,f ⁰
Korea, Rep. of	KS	g ¹²	g ¹²	g ¹²	g ¹⁵	b,g ¹⁰	g ⁰	g ¹⁵	g ¹⁰	g ¹⁰	30	d,f ⁰
Latvia	LG	g ^{kk} 10	g ^{ee,kk} 10	g ^{kk} 10	g ^{w,15}	b,g,w ⁵	g ⁰	g ^{aa} 5	g ¹⁰	g ¹⁰	30	d,f ⁰
Lithuania	LH	g ^{kk} 10	g ^{ee,kk} 10	g ^{kk} 10	g ^{w,15}	b,g,w ⁵	g ⁰	g ^{aa} 5	g ¹⁰	g ¹⁰	30	d,f ⁰
Luxembourg ^k	LU	g ^{oo} 0	g ^{ee,oo} 0	g ^{oo} 0	g ^{w,15}	b,g,w ⁵	g ⁰	g ⁰	g ⁰	g ⁰	30	d ⁰
Mexico	MX	g ^{hh} 15	g ^{ee,hh} 15	g ¹⁵	g ^{w,10}	b,g,w ⁵	g ⁰	g ¹⁰	g ¹⁰	g ¹⁰	30	d ⁰
Morocco	MO	g ¹⁵	g ¹⁵	g ¹⁵	g ¹⁵	b,g ¹⁰	g ⁰	h ¹⁰	g ¹⁰	g ¹⁰	30	d,f ⁰
Netherlands ^m	NL	g ⁰	g ⁰	g ⁰	g ^{w,15}	b,g,w ⁵	0	g ⁰	g ^{cc} 0	g ⁰	30	d,f,ii ⁰
New Zealand	NZ	g ¹⁰	g ¹⁰	g ¹⁰	g ¹⁵	g ¹⁵	g ⁰	g ¹⁰	g ¹⁰	g ¹⁰	30	d ⁰
Norway	NO	g ⁰	g ⁰	g ⁰	g ¹⁵	g ¹⁵	g ⁰	g ⁰	h ⁰	g ⁰	30	d,f ⁰

- ^a No U.S. tax is imposed on a percentage of any dividend paid by a U.S. corporation that received at least 80% of its gross income from an active foreign business for the 3-year period before the dividend is declared. (See sections 871(i)(2)(B) and 881(d) of the Internal Revenue Code.)
- ^b The reduced rate applies to dividends paid by a subsidiary to a foreign parent corporation that has the required percentage of stock ownership. In some cases, the income of the subsidiary must meet certain requirements (e.g. a certain percentage of its total income must consist of income other than dividends and interest). In the case of Italy, the reduced rate is 10% if the foreign corporation owns 10% to 50% of the voting stock (for a 12-month period) of the company paying the dividends.
- ^c The exemption or reduction in rate applies only if the recipient is subject to tax on this income in the country of residence. Otherwise a 30% rate applies.
- ^d Exemption does not apply to U.S. Government (federal, state, or local) pensions and annuities; a 30% rate applies to these pensions and annuities. U.S. government pensions paid to an individual who is both a resident and national of China, Denmark, Estonia, Finland, Hungary, India, Ireland, Latvia, Lithuania, Luxembourg, Mexico, The Netherlands, Portugal, Russia, South Africa, Spain, Switzerland, Thailand, Turkey, the United Kingdom, or Venezuela are exempt from U.S. tax. U.S. government pensions paid to an individual who is both a resident and citizen of Kazakhstan, New Zealand, or Sweden are exempt from U.S. tax.
- ^e No withholding is required on capital gains other than those listed earlier under *Capital Gains*, even if the gain is subject to U.S. tax.
- ^f Includes alimony.
- ^g The exemption or reduction in rate does not apply if the recipient has a permanent establishment in the United States and the property giving rise to the income is effectively connected with this permanent establishment. Under certain treaties, the exemption or reduction in rate also does not apply if the property giving rise to the income is effectively connected with a fixed base in the United States from which the recipient performs independent personal services. Even with the treaty, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a permanent establishment in the United States under IRC section 894(b).
- ^h The exemption or reduction in rate does not apply if the recipient is engaged in a trade or business in the United States through a permanent establishment that is in the United States. However, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a permanent establishment in the United States for the purpose of applying the reduced treaty rate to that item of income. IRC section 894(b).
- ⁱ The rate is 5% for royalties on the use of any copyright of literary, artistic, or scientific work, including software.
- ^j Exemption is not available when paid from a fund, under an employees' pension or annuity plan, if contributions to it are deductible under U.S. tax laws in determining taxable income of the employer.
- ^k Exemption from or reduction in rate of tax does not apply to income of holding companies entitled to special tax benefits under the laws of Luxembourg.
- ^l Annuities that were purchased while the annuitant was not a resident of the United States are not taxable in the United States. The reduced rate applies if the distribution is not subject to a penalty for early withdrawal.
- ^m Contingent interest that does not qualify as portfolio interest is treated as a dividend and is subject to the rates under income codes 6 and 7, as appropriate.
- ⁿ The exemption applies only to interest on credits, loans, and other indebtedness connected with the financing of trade between the United States and C.I.S. member countries. It does not include interest from the conduct of a general banking business.
- ^o The exemption applies only to gains from the sale or other disposition of property acquired by gift or inheritance.
- ^p The exemption does not apply if the recipient was a resident of the United States when the pension was earned or when the annuity was purchased.
- ^q Annuities paid in return for other than the recipient's personal services are exempt.
- ^r 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.
- ^s The reduced rate for royalties with respect to tangible personal property is 7%.
- ^t Does not apply to annuities. For Denmark, annuities are exempt.
- ^u 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.
- ^v Tax imposed on 70% of gross royalties for rentals of industrial or scientific equipment.
- ^w 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 REIT only if the beneficial owner of the dividends is an individual holding less than a 10% interest (25% in the case of the Netherlands, Portugal, Spain, Thailand, and Tunisia) in the REIT.
- ^x Royalties not taxed at the 5% or 8% rate are taxed at a 10% rate, unless footnote (g) applies.
- ^y The exemption does not apply to 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.
- ^z 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.
- ^{aa} 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.
- ^{bb} Exemption applies to U.S. Government (federal, state, or local) pensions only if the individual is both a resident and national of France and is not a U.S. national.
- ^{cc} 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.
- ^{dd} 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.
- ^{ee} Exemption or reduced rate does not apply to an excess inclusion for a residual interest in a real estate mortgage investment conduit (REMIC).
- ^{ff} The rate in column 6 applies to dividends paid by a regulated investment company (RIC). Dividends paid by a real estate investment trust (REIT) are subject to a 30% rate.
- ^{gg} Under the treaty the exemption or reduction in rate does not apply if the recipient has a permanent establishment in the U.S. and the income is effectively connected with this permanent establishment. Instead, tax is not withheld at source and the provisions of Article 8 (Business Profits) apply. Additionally, even if interest income is not effectively connected with a U.S. permanent establishment, the recipient may choose to treat net interest income as industrial or commercial profits subject to Article 8 of the treaty.
- ^{hh} The rate is 4.9% for interest derived from (1) loans granted by banks and insurance companies and (2) bonds or securities that are regularly and substantially traded on a recognized securities market. The rate is 10% for interest not described in the preceding sentence and paid (i) by banks or (ii) by the buyer of machinery and equipment to the seller due to a sale on credit.
- ⁱⁱ The exemption does not apply if (1) the recipient was a U.S. resident during the 5-year period before the date of payment, (2) the amount was paid for employment performed 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.
- ^{jj} The rate is 15% 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.
- ^{kk} 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.
- ^{ll} The rate is 4.95% if the interest is beneficially owned by a financial institution (including an insurance company).
- ^{mmm} 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.
- ⁿⁿ Generally, if the person was receiving pension distributions before March 31, 2000, the distributions continue to be exempt from U.S. tax.
- ^{oo} The rate is 15% for interest determined with reference to the profits of the issuer or one of its associated enterprises.

Table 2. Compensation for Personal Services Performed in United States Exempt from Withholding and U.S. Income Tax Under Income Tax Treaties

Country (1)	Code ¹ (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)				
Australia	16	Independent personal services ^{7,22}	183 days	Any contractor	No limit	14
	20	Public entertainment ²²	183 days	Any contractor	\$10,000	17
	17	Dependent personal services ¹⁷	183 days	Any foreign resident	No limit	15
	20	Public entertainment ¹⁷	183 days	Any foreign resident	\$10,000	17
	19	Studying and training: Remittances or allowances ¹¹	No limit	Any foreign resident	No limit	20
Austria	16	Independent personal services ⁷	No limit	Any contractor	No limit	14
	20	Public entertainment ²²	No limit	Any contractor	\$20,000 ²⁵	17
	17	Dependent personal services ¹⁷	183 days	Any foreign resident	No limit	15
	20	Public entertainment ²²	No limit	Any U.S. or foreign resident	\$20,000 ²⁵	17
	19	Studying and training: Remittances or allowances	3 years ⁴⁵	Any foreign resident	No limit	20
Barbados	16	Independent personal services ^{7,8,22}	89 days	Any foreign contractor	No limit	14
	20	Public entertainment ²²	89 days	Any U.S. contractor	\$5,000 p.a.	14
	17	Dependent personal services ^{8,17}	No limit	Any contractor	\$250 per day or \$4,000 p.a. ⁶	17
	20	Public entertainment	183 days	Any foreign resident	\$5,000 p.a.	15
	19	Studying and training: ²³ Remittances or allowances ¹¹	No limit	Any U.S. or foreign resident	\$250 per day or \$4,000 p.a. ⁶	17
Belgium	15	Scholarship or fellowship grant ¹⁵	No limit	Any foreign resident	No limit	20
	16	Independent personal services ^{7,22}	5 years	Any U.S. or foreign resident ⁵	No limit	21(1)
	20	Public entertainment ²²	182 days	Any contractor	No limit	14(2)(a)(b)
	17	Dependent personal services ¹⁷	90 days	Any contractor	\$3,000	14(2)(c)
	18	Teaching ⁴	182 days	Belgian resident	No limit	15
	19	Studying and training: Remittances or allowances	2 years	U.S. educational institution	No limit	20
		Compensation during training	5 years	Any foreign resident	No limit	21(1)
	Compensation while gaining experience ²	5 years	Other foreign or U.S. resident	\$2,000 p.a.	21(1)	
	Compensation under U.S. Government program	12 consec. mo. 12 consec. mo.	Belgian resident	\$5,000	21(2)(b)	
			Belgian resident	\$5,000	21(2)(a)	
			1 year	U.S. Government or its contractor	\$10,000	21(3)
Canada	16	Independent personal services ^{7,22}	No limit	Any contractor	No limit ¹³	XIV
	17	Dependent personal services	No limit	Any U.S. or foreign resident	\$10,000	XV
	19	Studying and training: Remittances or allowances ¹¹	183 days	Any foreign resident ¹⁷	No limit ¹³	XV
China, People's Rep. of	15	Scholarship or fellowship grant ¹⁵	No limit	Any foreign resident	No limit	XX
	16	Independent personal services ^{7,22}	No limit	Any U.S. or foreign resident ⁵	No limit	20(b)
	20	Public entertainment ²⁹	183 days	Any contractor	No limit	13
	17	Dependent personal services ^{8,17}	No limit	Any contractor	No limit	16
	20	Public entertainment ²⁹	183 days	Any foreign resident	No limit	14
	18	Teaching ⁴	No limit	Any U.S. or foreign resident	No limit	16
	19	Studying and training: Remittances or allowances	3 years	U.S. educational or research institute	No limit	19
	Compensation during training or while gaining experience	No limit	Any foreign resident	No limit	20(a)	
		No limit	Any U.S. or foreign resident	\$5,000 p.a.	20(c)	

Table 2. (Continued)

Country (1)	Code ¹ (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)				
Commonwealth of Independent States	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident	Limited ¹⁹	VI(1)
	16	Independent personal services ²²	183 days	Any U.S. or foreign contractor	No limit	VI(2)
	17	Dependent personal services	183 days	Any U.S. or foreign resident	No limit	VI(2)
	18	Teaching ^{4,20}	2 years	U.S. educational or scientific institution	No limit	VI(1)
	19	Studying and training: Remittances or allowances Compensation while gaining experience Compensation under U.S. Government program	5 years 1 year	Any U.S. or foreign resident C.I.S. resident	Limited No limit ²¹	VI(1) VI(1)
Cyprus	15	Scholarship or fellowship grant ¹⁵	Generally, 5 years	Any U.S. or foreign resident ⁵	No limit	21(1)
	16	Independent personal services ^{7,22}	182 days	Any contractor	No limit	17
	20	Public entertainment ²²	No limit	Any contractor	\$500 per day or \$5,000 p.a. ⁶	19(1)
	17	Dependent personal services ¹⁷	182 days	Any foreign resident	No limit	18
	20	Directors' fees Public entertainment	No limit No limit	U.S. corporation Any U.S. or foreign resident	No limit ²⁴ \$500 per day or \$5,000 p.a. ⁶	20 19(1)
	19	Studying and training: Remittances or allowances	Generally, 5 years	Any foreign resident	No limit	21(1)
		Compensation during training Compensation while gaining experience ² Compensation under U.S. Government program	Generally, 5 years 1 year	Any U.S. or foreign resident Cyprus resident U.S. Government or its contractor	\$2,000 p.a. \$7,500 \$10,000	21(1) 21(2) 21(3)
Czech Republic	15	Scholarship or fellowship grant ^{4,15}	5 years	Any U.S. or foreign resident ⁵	No limit	21(1)
	16	Independent personal services ^{7,22}	183 days	Any contractor	No limit	14
	20	Public entertainment ²²	183 days	Any contractor	\$20,000 p.a. ³⁰	18
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment	183 days	Any foreign resident	\$20,000 p.a. ³⁰	18
	18	Teaching ^{4,35}	2 years	Any U.S. educational or research institution	No limit	21(5)
	19	Studying and training: ⁴ Remittances and allowances Compensation during training Compensation while gaining experience ² Compensation under U.S. Government program	5 years 5 years 12 consec. mos. 1 year	Any foreign resident Any U.S. or foreign resident Czech resident U.S. Government	No limit \$5,000 p.a. \$8,000 \$10,000	21(1) 21(1) 21(2) 21(3)
Denmark	16	Independent personal services ⁷ Public entertainment	No limit No limit	Any contractor Any contractor	No limit \$20,000 p.a. ²⁵	14 17
	17	Dependent personal services ^{8,17} Public entertainment ²²	183 days 183 days	Any foreign resident Any foreign resident	No limit \$20,000 p.a. ²⁵	15 17
	19	Studying and training: ^{4,11} Remittances or allowances	3 years ⁴⁵	Any foreign resident	No limit	20

Table 2. (Continued)

Country (1)	Code ¹ (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)				
Egypt	15	Scholarship or fellowship grant ¹⁵	Generally, 5 years	Any U.S. or foreign resident ⁵	No limit	23(1)
	16	Independent personal services ²²	89 days	Any foreign contractor	No limit	15
	20	Public entertainment ²²	No limit	Any contractor	\$400 per day	17
	17	Dependent personal services ^{16,17}	89 days	Egyptian resident	No limit	16
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$400 per day	17
	18	Teaching ⁴	2 years	U.S. educational institution	No limit	22
	19	Studying and training: Remittances or allowances	Generally, 5 years	Any foreign resident	No limit	22(1)
		Compensation during training	Generally, 5 years	U.S. or any foreign resident	\$3,000 p.a.	22(1)
		Compensation while gaining experience ²	12 consec. mos.	Egyptian resident	\$7,500	23(2)
		Government program	1 year	U.S. Government or its contractor	\$10,000	23(3)
Estonia	15	Scholarship or fellowship grants ⁴	5 years	Any U.S. or foreign resident ⁵	No limit	20(1)
	16	Independent personal services	183 days	Any contractor	No limit	14
	20	Public entertainment ²²	No limit	Any contractor	\$20,000 ³⁰	17
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment ²²	No limit	Any U.S. or foreign resident	\$20,000 ³⁰	17
	19	Studying and training: Remittances or allowances	5 years	Any foreign resident	No limit	20(1)
		Compensation during training	12 consec. mos.	Estonian resident	\$8,000	20(2)
		Compensation while gaining experience ²	5 years	Other foreign or U.S. resident	\$5,000 p.a.	20(1)
		Compensation under U.S. Gov't. program	12 consec. mos.	Estonian resident	\$8,000	20(2)
			1 year	U.S. Government or its contractor	\$10,000	20(3)
Finland	16	Independent personal services ^{7,22}	No limit	Any contractor	No limit	14
	20	Public entertainment ²²	No limit	Any contractor	\$20,000 p.a. ²⁵	17
	17	Dependent personal services ¹⁷	183 days	Any foreign resident	No limit	15
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$20,000 p.a. ²⁵	17
	19	Studying and training: Remittances or allowances ¹¹	No limit	Any foreign resident	No limit	20
France	15	Scholarship or fellowship grant ¹⁵	5 years ⁴³	Any U.S. or foreign resident ⁵	No limit	21(1)
	16	Independent personal services ^{7,22}	No limit	Any contractor	No limit	14
	20	Public entertainment	No limit	Any contractor	\$10,000 ³⁰	17
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$10,000 ³⁰	17
	18	Teaching ^{4,44}	2 years ⁴³	U.S. educational or research institution	No limit	20
	19	Studying and training: Remittances or allowances	5 years ⁴³	Any foreign resident	No limit	21(1)
		Compensation during study or training	12 consec. mos.	French resident	\$8,000	21(2)
		Compensation while gaining experience ²	5 years ⁴³	Other foreign or U.S. resident	\$5,000 p.a.	21(1)
			12 consec. mos.	French resident	\$8,000	21(2)
Germany	15	Scholarship or fellowship grant ¹⁵	No limit	Any U.S. or foreign resident ⁵	No limit	20(3)
	16	Independent personal services ^{7,8,22}	No limit	Any contractor	No limit	14
	20	Public entertainment ^{7,22}	No limit	Any contractor	\$20,000 p.a. ³⁰	17
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment ¹⁷	183 days	Any foreign resident	\$20,000 p.a. ³⁰	17
	18	Teaching ⁴	2 years	U.S. educational or research institution	No limit	20(1)
	19	Studying and training: Remittances or allowances ¹¹	No limit	Any foreign resident	No limit	20(2)
		Compensation during study or training	4 years	Any U.S. or foreign resident	\$5,000 p.a.	20(4)
		Compensation while gaining experience ²	1 year	Any German enterprise or foreign organization or institution	\$10,000 ²⁸	20(5)

Table 2. (Continued)

Country (1)	Code ¹ (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)				
Greece	16	Independent personal services ²²	183 days	Greek resident contractor	No limit	X
	17	Dependent personal services	183 days	Other foreign or U.S. resident contractor	\$10,000	X
	18	Teaching	183 days	Greek resident	No limit	X
	19	Studying and training: Remittances or allowances	183 days 3 years	Other foreign or U.S. resident U.S. educational institution	\$10,000 No limit	X XII
Hungary	16	Independent personal services ^{7,22}	No limit	Any foreign resident	No limit	XIII
	17	Dependent personal services ¹⁷	183 days	Any contractor	No limit	13
	18	Teaching ⁴	2 years	Any foreign resident	No limit	14
	19	Studying and training: ²³ Remittances or allowances ¹¹	No limit	U.S. educational institution	No limit	17
Iceland	15	Scholarship or fellowship grant ¹⁵	5 years	Any U.S. or foreign resident ⁵	No limit	22(1)
	16	Independent personal services ^{7,22}	182 days	Any contractor	No limit	18
	20	Public entertainment ²²	90 days	Any resident contractor	\$100 per day	18
	17	Dependent personal services ¹⁷	182 days	Iceland resident ¹⁸	No limit	19
	18	Teaching ⁴	2 years	U.S. educational institution	No limit	21
	19	Studying and training: Remittances or allowances	5 years	Any foreign resident	No limit	22(1)
			Compensation during training Compensation while gaining experience ² Compensation under U.S. Government program	5 years 12 consec. mo. 1 year	U.S. or any foreign resident Iceland resident U.S. Government or its contractor	\$2,000 p.a. \$5,000 \$10,000
India	16	Independent personal services ^{7,8,22}	89 days	Any contractor	No limit	15
	20	Public entertainment ^{7,22}	89 days	Any contractor	\$1,500 p.a. ²⁶	18
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	16
	20	Public entertainment ¹⁷	183 days	Any foreign resident	\$1,500 p.a. ²⁶	18
	18	Teaching ⁴	2 years	U.S. educational institution	No limit	22
	19	Studying and training: Remittances or allowances	No limit	Any foreign resident ²⁷	No limit	21(1)
Indonesia	15	Scholarship or fellowship grant ¹⁵	5 years	Any U.S. or foreign resident ⁵	No limit	19(1)
	16	Independent personal services ^{7,22}	119 days	Any contractor	No limit	15
	20	Public entertainment ²²	No limit	Any contractor	\$2,000 p.a. ²⁵	17
	17	Dependent personal services ¹⁷	119 days	Any foreign resident	No limit	16
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$2,000 p.a. ²⁵	17
	18	Teaching ⁴	2 years	U.S. educational institution	No limit	20
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience	5 years 5 years 12 consec. mo.	Any foreign resident Any foreign or U.S. resident Any U.S. or foreign resident	No limit \$2,000 p.a. \$7,500	19(1) 19(1) 19(2)
Ireland	16	Independent personal services ⁷	No limit	Any contractor	No limit	14
	20	Public entertainment ²²	No limit	Any contractor	\$20,000 ²⁵	17
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment ²²	No limit	Any U.S. or foreign resident	\$20,000 ²⁵	17
	19	Studying and training: ¹¹ Remittances or allowances	1 year ⁴⁵	Any foreign resident	No limit	20

Table 2. (Continued)

Country (1)	Code ¹ (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)				
Israel	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident ⁵	No limit	24(1)
	16	Independent personal services ²²	182 days	Any contractor	No limit	16
	20	Public entertainment ²²	No limit	Any contractor	\$400 per day ³⁷	18
	17	Dependent personal services	182 days	Israeli resident ^{16,17,18}	No limit	17
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$400 per day ³⁷	18
	18	Teaching ^{4,39}	2 years	U.S. educational institution	No limit	23
	19	Studying and training: Remittances or allowances. Compensation during study or training	5 years	Any foreign resident	No limit	24(1)
		Compensation while gaining experience ² Compensation under U.S. Government program	5 years 12 consec. mo.	Any U.S. or foreign resident Israeli resident	\$3,000 p.a. \$7,500	24(1) 24(2)
			1 year	U.S. Government or its contractor	\$10,000	24(3)
Italy	16	Independent personal services ^{7,8,22}	183 days	Any contractor	No limit	14
	20	Public entertainment ²²	90 days	Any contractor	\$12,000 p.a. ²⁵	17(1)
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment	90 days	Any U.S. or foreign resident	\$12,000 p.a. ²⁵	17(1)
	18	Teaching ⁴	2 years	U.S. educational institution	No limit	20
	19	Studying and training: Remittances or allowances	No limit	Any foreign resident	No limit	21
Jamaica	16	Independent personal services ^{7,22}	89 days	Any foreign contractor	No limit	14
	20	Public entertainment ²²	89 days No limit	Any U.S. contractor Any contractor	\$5,000 p.a. \$400 per day or \$5,000 p.a.	14 18 15
	17	Dependent personal services ¹⁷	183 days	Any foreign resident	\$5,000 p.a.	18
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$400 per day or \$5,000 p.a.	16 18
	18	Directors' fees	No limit	U.S. resident	\$400 per day ⁶	16
	18	Teaching ⁴	2 years	U.S. educational institution	No limit	22
	19	Studying and training: Remittances or allowances ¹¹ Compensation during study Compensation while gaining experience ²	No limit 12 consec. mo. 12 consec. mo.	Any foreign resident Jamaican resident Jamaican resident	No limit \$7,500 p.a. \$7,500 p.a.	21(1) 21(2) 21(2)
Japan	15	Scholarship or fellowship grant ¹⁵	5 years	Any U.S. or foreign resident ⁵	No limit	20(1)
	16	Independent personal services ^{7,22}	183 days	Any contractor	No limit	17
	20	Public entertainment ²²	90 days	Any contractor	\$3,000 ⁶	17
	17	Dependent personal services ^{17,18,19}	183 days	Japanese resident	No limit	18
	18	Teaching ⁴	2 years	U.S. educational institution	No limit	19
	19	Studying and training: Remittances or allowances	5 years	Any foreign resident	No limit	20(1)
			Compensation during training Compensation while gaining experience ² Compensation under U.S. Government program	5 years 12 consec. mo. 1 year	U.S. or any foreign resident Japanese resident U.S. Government or its contractor	\$2,000 p.a. ⁶ \$5,000 ⁶ \$10,000 ⁶
Kazakstan	15	Scholarship or fellowship grant ^{4,15,41}	5 years ³¹	Any U.S. or foreign resident ⁵	No limit	19
	16	Independent personal services ⁷	183 days	Any contractor	No limit	14
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	19	Studying and training: Remittances or allowances	5 years	Any foreign resident	No limit	19

Table 2. (Continued)

Country (1)	Code ¹ (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)				
Korea, Rep. of	15	Scholarship or fellowship grant ¹⁵	5 years	Any U.S. or foreign resident ⁵	No limit	21(1)
	16	Independent personal services ^{7,22}	182 days	Any contractor	\$3,000 p.a.	18
	17	Dependent personal services ¹⁷	182 days	Korean resident ¹⁸	\$3,000 p.a.	19
	18	Teaching ⁴	2 years	U.S. educational institution	No limit	20
	19	Studying and training: Remittances or allowances	5 years	Any foreign resident	No limit	21(1)
		Compensation during training	5 years	Any foreign or U.S. resident	\$2,000 p.a.	21(1)
		Compensation while gaining experience ²	1 year	Korean resident	\$5,000	21(2)
		Compensation under U.S. Government program	1 year	U.S. Government or its contractor	\$10,000	21(3)
Latvia	15	Scholarship or fellowship grants ⁴	5 years	Any U.S. or foreign resident ⁵	No limit	20(1)
	16	Independent personal services ⁷	183 days	Any contractor	No limit	14
	20	Public entertainment ²²	No limit	Any contractor	\$20,000 ³⁰	17
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment ²²	No limit	Any U.S. or foreign resident	\$20,000 ³⁰	17
19	Studying and training: ⁴ Remittances or allowances	5 years	Any foreign resident	No limit	20(1)	
		Compensation during training	12 consec. mos.	Latvian resident	\$8,000	20(2)
			5 years	Other foreign or U.S. resident	\$5,000 p.a.	20(1)
		Compensation while gaining experience ²	12 consec. mos.	Latvian resident	\$8,000	20(2)
		Compensation under U.S. Gov't. program	1 year	U.S. Government or its contractor	\$10,000	20(3)
Lithuania	15	Scholarship or fellowship grants ⁴	5 years	Any U.S. or foreign resident ⁵	No limit	20(1)
	16	Independent personal services ⁷	183 days	Any contractor	No limit	14
	20	Public entertainment ²²	No limit	Any contractor	\$20,000 ³⁰	17
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment ²²	No limit	Any U.S. or foreign resident	\$20,000 ³⁰	17
19	Studying and training: ⁴ Remittances or allowances	5 years	Any foreign resident	No limit	20(1)	
		Compensation during training	12 consec. mos.	Lithuanian resident	\$8,000	20(2)
			5 years	Other foreign or U.S. resident	\$5,000 p.a.	20(1)
		Compensation while gaining experience ²	12 consec. mos.	Lithuanian resident	\$8,000	20(2)
		Compensation under U.S. Gov't. program	1 year	U.S. Government or its contractor	\$10,000	20(3)
Luxembourg	16	Independent personal services ⁷	No limit	Any contractor	No limit	15
	20	Public entertainment ²²	No limit	Any contractor	\$10,000 ²⁵	18
	17	Dependent personal services ^{12, 17}	183 days	Any foreign resident	No limit	16
	20	Public entertainment ²²	No limit	Any U.S. or foreign resident	\$10,000 ²⁵	18
	18	Teaching ⁹	2 years	Any U.S. or foreign resident	No limit	21
19	Studying and training: ¹¹ Remittances or allowances	2 years ⁴⁵	Any U.S. or foreign resident	No limit	21	
Mexico	16	Independent personal services ^{7,22}	183 days	Any contractor	No limit	14
	20	Public entertainment ²²	No limit	Any contractor	\$3,000 p.a. ³⁰	18
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$3,000 p.a. ³⁰	18
	19	Studying and training: Remittances and allowances	No limit	Any foreign resident	No limit	21

Table 2. (Continued)

Country (1)	Code ¹ (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)				
Morocco	15	Scholarship or fellowship grant ¹⁵	No limit	Any U.S. or foreign resident ⁵	No limit	18
	16	Independent personal services ^{7,22}	182 days	Any contractor ¹³	\$5,000	14
	17	Dependent personal services ^{17,18}	182 days	Moroccan resident ¹³	No limit	15
	19	Studying and training: Remittances or allowances Compensation during training	5 years 5 years	Any foreign resident U.S. or any foreign resident	No limit \$2,000 p.a.	18 18
Netherlands	15	Scholarship or fellowship grant ^{15,33}	3 years	Any U.S. or foreign resident ⁵	No limit	22(2)
	16	Independent personal services ^{7,22}	No limit	Any contractor	No limit	15
	20	Public entertainment ²²	No limit	Any contractor	\$10,000 p.a. ³⁰	18
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	16
	20	Public entertainment	183 days	Any foreign resident	\$10,000 p.a. ³⁰	18
	18	Teaching ^{4,34}	2 years	U.S. educational institution	No limit	21(1)
	19	Studying and training: ³³ Remittances or allowances Compensation while gaining experience Compensation while recipient of scholarship or fellowship grant	No limit No limit	Any foreign resident Any U.S. or foreign resident	No limit \$2,000 p.a.	22(1) 22(1)
New Zealand	16	Independent personal services ^{7,22}	183 days	Any contractor	No limit	14
	20	Public entertainment ²²	183 days	Any contractor	\$10,000 ²⁵	17
	17	Dependent personal services ¹⁷	183 days	Any foreign resident	No limit	15
	20	Public entertainment ¹⁷	183 days	Any foreign resident	\$10,000 ²⁵	17
	19	Studying and training: Remittances or allowances ¹¹	No limit	Any foreign resident	No limit	20
Norway	15	Scholarship or fellowship grant ¹⁵	5 years	Any U.S. or foreign resident ⁵	No limit	16(1)
	16	Independent personal services ^{7,22}	182 days	Any resident contractor	No limit	13
	20	Public entertainment ²²	90 days	Any resident contractor	\$10,000 p.a.	13
	17	Dependent personal services ¹⁸	182 days	Norwegian resident ¹⁸	No limit	14
	18	Teaching ⁴	2 years	U.S. educational institution	No limit	15
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience ² Compensation under U.S. Government program	5 years 5 years 12 consec. mo. 1 year	Any foreign resident U.S. or any foreign resident Norwegian resident	No limit \$2,000 p.a. \$5,000	16(1) 16(1) 16(2)
				1 year	U.S. Government or its contractor	\$10,000
Pakistan	15	Scholarship or fellowship grant ¹⁵	No limit	Pakistani nonprofit organization	No limit	XIII(1)
	16	Independent personal services ^{16,22}	183 days	Pakistani resident contractor	No limit	XI
	17	Dependent personal services ¹⁶	183 days	Pakistani resident	No limit	XI
	18	Teaching	2 years	U.S. educational institution	No limit	XII
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience ² Compensation under U.S. Government program	No limit No limit 1 year No limit	Any foreign resident U.S. or any foreign resident Pakistani resident	No limit \$5,000 p.a. \$6,000	XIII(1) XIII(1) XIII(2)
				No limit	U.S. Government, its contractor, or any foreign resident employer	\$10,000

Table 2. (Continued)

Country (1)	Code ¹ (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)				
Philippines	15	Scholarship or fellowship grant ¹⁵	5 years	Any U.S. or foreign resident ⁵	No limit	22(1)
	16	Independent personal services ^{7,22}	89 days	Any foreign contractor	No limit	15
	20	Public entertainment ²²	89 days	Any U.S. contractor	\$10,000 p.a.	15
	17	Dependent personal services ¹⁷	No limit	Any contractor	\$100 per day or \$3,000 p.a.	17
	20	Public entertainment	89 days	Any Philippines resident ¹⁸	No limit	16
	18	Teaching ^{4,38}	No limit	Any U.S. or foreign resident	\$100 per day or \$3,000 p.a.	17
	19	Studying and training: Remittances or allowances Compensation during study Compensation while gaining experience ² Compensation under U.S. Government program	2 years 5 years 5 years 12 consec. mo. 1 year	U.S. educational institution Any foreign resident Any U.S. or foreign resident Philippines resident U.S. Government or its contractor	No limit \$3,000 p.a. \$7,500 p.a. \$10,000 p.a.	21, 22(4) 22(1) 22(1) 22(2) 22(3)
Poland	15	Scholarship or fellowship grant ¹⁵	5 years	Any U.S. or foreign resident ⁵	No limit	18(1)
	16	Independent personal services ²²	182 days	Any contractor	No limit	15
	17	Dependent personal services ¹⁷	182 days	Any foreign resident	No limit	16
	18	Teaching ⁴	2 years	U.S. educational institution	No limit	17
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience ² Compensation under U.S. Government program	5 years 5 years 1 year 1 year	Any foreign resident U.S. or any foreign resident Polish resident U.S. Government or its contractor	No limit \$5,000 p.a. \$5,000 \$10,000	18(1) 18(1) 18(2) 18(3)
Portugal	15	Scholarship or fellowship grant ¹⁵	5 years	Any U.S. or foreign resident ⁵	No limit	23(1)
	16	Independent personal services ^{7,22}	182 days	Any contractor	No limit	15
	20	Public entertainment ²²	No limit	Any contractor	\$10,000 p.a. ³⁰	19
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	16
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$10,000 p.a. ³⁰	19
	18	Teaching ^{4,42}	2 years	U.S. educational or research institution	No limit	22
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience ²	5 years 5 years 12 consec. mos. 12 consec. mos.	Any foreign resident Any foreign or U.S. resident Portuguese resident Portuguese resident	No limit \$5,000 p.a. \$8,000 \$8,000	23(1) 23(1) 23(2) 23(2)
Romania	15	Scholarship or fellowship grant ¹⁵	5 years	Any U.S. or foreign resident ⁵	No limit	20(1)
	16	Independent personal services ²²	182 days	Any contractor	No limit	14
	20	Public entertainment ²²	90 days	Any contractor	\$3,000	14
	17	Dependent personal services ¹⁷	182 days	Romanian resident	No limit	15
	20	Public entertainment	89 days	Romanian resident	\$2,999.99	15
	18	Teaching ⁴	2 years	U.S. educational institution	No limit	19
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience ² Compensation while under U.S. Government program	5 years 5 years 1 year 1 year	Any foreign resident U.S. or any foreign resident Romanian resident U.S. Government or its contractor	No limit \$2,000 p.a. \$5,000 \$10,000	20(1) 20(1) 20(2) 20(3)
Russia	15	Scholarship or fellowship grant ^{4,15,41}	5 years ³¹	Any U.S. or foreign resident ⁵	No limit	18
	16	Independent personal services ^{7,22}	183 days	Any contractor	No limit	13
	17	Dependent personal services ^{8,17,32}	183 days	Any foreign resident	No limit	14
	19	Studying and training: Remittances and allowances	5 years ³¹	Any foreign resident	No limit	18

Table 2. (Continued)

Country (1)	Code ¹ (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)				
Slovak Republic	15	Scholarship or fellowship grant ^{4,15}	5 years	Any U.S. or foreign resident ⁵	No limit	21(1)
	16	Independent personal services ^{7,22}	183 days	Any contractor	No limit	14
	20	Public entertainment ²²	183 days	Any contractor	\$20,000 p.a. ³⁰	18
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment ²²	183 days	Any foreign resident	\$20,000 p.a. ³⁰	18
	18	Teaching ^{4,35}	2 years	Any U.S. educational or research institution	No limit	21(5)
	19	Studying and training: ⁴ Remittances or allowances Compensation during training Compensation while gaining experience ² Compensation under U.S. Government program	5 years 5 years 12 consec. mos. 1 year	Any foreign resident Any U.S. or foreign resident Slovak resident U.S. Government	No limit \$5,000 p.a. \$8,000 \$10,000	21(1) 21(1) 21(2) 21(3)
So. Africa	16	Independent personal services ^{7,22}	183 days	Any contractor	No limit	14
	20	Public entertainment ²²	No limit	Any contractor	\$7,500 ³⁰	17
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment ²²	No limit	Any U.S. or foreign resident	\$7,500 ³⁰	17
	19	Studying and training: ¹¹ Remittances or allowances	1 year ⁴⁵	Any foreign resident	No limit	20
Spain	15	Scholarship or fellowship grant ^{4,15}	5 years	Any U.S. or foreign resident ⁵	No limit	22(1)
	16	Independent personal services ^{7,22}	No limit	Any contractor	No limit	15
	20	Public entertainment ²²	No limit	Any contractor	\$10,000 p.a. ³⁰	19
	17	Dependent personal services ¹⁷	183 days	Any foreign resident	No limit	16
	20	Public entertainment ²²	No limit	Any U.S. or foreign resident	\$10,000 p.a. ³⁰	19
	19	Studying and training: ⁴ Remittances or allowances Compensation during training Compensation while gaining experience ²	5 years 5 years 12 consec. mo.	Any foreign resident Any U.S. or foreign resident Spanish resident	No limit \$5,000 p.a. \$8,000	22(1) 22(1) 22(2)
Sweden	16	Independent personal services ⁷	No limit	Any contractor	No limit	14
	20	Public entertainment	No limit	Any contractor	\$6,000 ²⁵	18
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$6,000 ²⁵	18
	19	Studying and training: Remittances or allowances ¹¹	No limit	Any foreign resident	No limit	21
Switzerland	16	Independent personal services ⁷	No limit	Any contractor	No limit	14
	20	Public entertainment ²²	No limit	Any contractor	\$10,000 ²⁵	17
	17	Dependent personal services ^{8,17}	183 days	Any foreign resident	No limit	15
	20	Public entertainment ²²	No limit	Any U.S. or foreign resident	\$10,000 ²⁵	17
	19	Studying and training: Remittances or allowances	No limit	Any foreign resident	No limit	20
Thailand	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident ⁵	No limit	22(1)
	16	Independent personal services ^{7,22}	89 days	Any U.S. resident	\$10,000	15
	20	Public entertainment ²²	89 days	Any foreign contractor	No limit ⁴⁹	15
			No limit	Any contractor	\$100 per day or \$3,000 p.a. ⁴⁸	19
	17	Dependent personal services ^{17,47}	183 days	Any foreign resident	No limit	16
	20	Public entertainment ²²	No limit	Any U.S. or foreign resident	\$100 per day or \$3,000 p.a. ⁴⁸	19
	18	Teaching or research ^{4,38}	2 years	Any U.S. or foreign resident	No limit	23
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience Compensation while under U.S. Government program	5 years 5 years 12 consec. mos. 1 year	Any foreign resident Any U.S. or foreign resident Thai resident ^t U.S. Government	No limit \$3,000 p.a. \$7,500 \$10,000 ³⁶	22(1) 22(1) 22(2) 22(3)

Table 2. (Continued)

Country (1)	Code ¹ (2)	Category of Personal Services	Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)	
		Purpose (3)					
Trinidad and Tobago	15	Scholarship or fellowship grant ¹⁵	5 years	Any U.S. or foreign resident ⁵	No limit	19(1)	
	16	Independent personal services ^{14,22}	183 days	Any foreign resident contractor	No limit	17	
	17	Dependent personal services ¹⁴	183 days	Any U.S. contractor	\$3,000 ⁹	17	
	18	Teaching ⁴	183 days	Any foreign resident	No limit	17	
	19	Studying and training:	2 years	Any U.S. resident	\$3,000 ⁹	17	
			Remittances or allowances	5 years	U.S. educational institution or U.S. Government	No limit	18
			Compensation during training	5 years			
Tunisia	15	Scholarship or fellowship grant ^{11,15}	5 years	Any U.S. or foreign resident ⁵	No limit	20	
	16	Independent personal services ^{7,22}	183 days	U.S. resident contractor	\$7,500 p.a.	14	
	20	Public entertainment ²²	No limit	Any contractor	\$7,500 p.a. ²⁵	17	
	17	Dependent personal services ¹⁷	183 days	Any foreign resident	No limit	15	
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$7,500 p.a. ²⁵	17	
	19	Studying and training: ¹¹					
			Remittances or allowances	5 years	Any foreign resident	No limit	20
Turkey	16	Independent personal services ⁷	183 days	Any contractor	No limit	14	
	20	Public entertainment ^{22,50}	No limit	Any contractor	\$3,000 ¹⁶	17	
	17	Dependent personal services ^{12,17}	183 days	Any foreign resident	No limit	15	
	20	Public entertainment ^{22,50}	No limit	Any U.S. or foreign resident	\$3,000 ¹⁶	17	
	18	Teaching or research	2 years	Any foreign resident	No limit	20(2)	
	19	Studying and training: ¹¹					
			Remittances or allowances	No limit	Any foreign resident	No limit	20(1)
Ukraine	15	Scholarship or fellowship grants ⁴¹	5 years ³¹	Any U.S. or foreign resident ⁵	No limit	20	
	16	Independent personal services ^{7,51}	No limit	Any contractor	No limit	14	
	17	Dependent personal services ^{3,17,51}	183 days	Any foreign resident	No limit	15	
	19	Studying and training:					
United Kingdom	16	Independent personal services ^{7,22}	183 days	Any contractor	No limit ¹³	14	
	17	Dependent personal services ¹⁷	183 days	Any foreign resident	No limit ¹³	15	
	18	Teaching ⁴	2 years	U.S. educational institution	No limit	20	
	19	Studying and training:					
			Remittances or allowances ¹¹	No limit	Any foreign resident	No limit	21
Venezuela	15	Scholarship or fellowship grants ⁴	5 years ¹⁰	Any U.S. or foreign resident ⁵	No limit	21(1)	
	16	Independent personal services ^{7,12}	No limit	Any contractor	No limit	14	
	20	Public entertainment ²²	No limit	Any contractor	\$6,000 ³⁰	18	
	17	Dependent personal services ^{12,17}	183 days	Any foreign resident	No limit	15	
	20	Public entertainment ²²	No limit	Any U.S. or foreign contractor	\$6,000 ³⁰	18	
	18	Teaching ⁴	2 years ⁴⁰	Any U.S. or foreign resident	No limit	21(3)	
	19	Studying and training: ⁴					
			Remittances or allowances	5 years ¹⁰	Any foreign resident	No limit	21(1)
			Compensation during training	12 mos. ¹⁰	Venezuelan resident	\$8,000	21(2)
			Compensation while gaining experience ²	5 years ¹⁰	Other foreign or U.S. resident	\$5,000 p.a.	21(1)
			12 mos.	Venezuelan resident	\$8,000	21(2)	

- ¹ Refers to income code numbers described in this publication and to be reported on Forms 1042-S. Personal services must be performed by a nonresident alien individual who is a resident of the specified treaty country.
- ² Applies only if training or experience is received from a person other than the alien's employer.
- ³ Fees paid to a resident of Ukraine for services as a director of a U.S. corporation are subject to U.S. tax, unless the services are rendered in Ukraine.
- ⁴ Does not apply to income for research work primarily for private benefit.
- ⁵ Grant must be from a nonprofit organization. In many cases, the exemption applies to amounts from either the U.S. or foreign government. In the case of Indonesia and the Netherlands, the exemption also applies if the amount is awarded under a technical assistance program entered into by the United States or foreign government, or its political subdivisions or local authorities.
- ⁶ Reimbursed expenses are not taken into account in figuring any maximum compensation to which the exemption applies. For Japan and Trinidad and Tobago, only reimbursed travel expenses are disregarded in figuring maximum compensation.
- ⁷ Exemption does not apply to the extent income is attributable to the recipient's fixed U.S. base. For residents of Japan, this fixed base must be maintained in the U.S. for more than 183 days during the tax year for the exemption not to apply; for residents of Belgium, Iceland, Korea, and Norway, the fixed base must be maintained for more than 182 days; for residents of Morocco, the fixed base must be maintained for more than 89 days.
- ⁸ Does not apply to fees of a foreign director of a U.S. corporation.
- ⁹ Does not apply to compensation for research work for other than the U.S. educational institution involved.
- ¹⁰ Applies to any additional period that a full-time student needs to complete the educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution.
- ¹¹ Applies only to full-time student or trainee.
- ¹² Fees paid to a resident of the treaty country for services performed in the United States as a director of a U.S. corporation are subject to U.S. tax.
- ¹³ Does not apply to compensation paid to public entertainers (actors, artists, musicians, athletes, etc.). For Canadian and U.K. resident public entertainers, the exemption does not apply if the gross receipts (including reimbursements) are more than \$15,000 in any year.
- ¹⁴ Does not apply to compensation paid to public entertainers in excess of \$100 a day.
- ¹⁵ Does not apply to payments from the National Institutes of Health under its Visiting Associate Program and Visiting Scientist Program.
- ¹⁶ Exemption applies only if the compensation is subject to tax in the country of residence.
- ¹⁷ The exemption does not apply if the employee's compensation is borne by a permanent establishment or in some cases a fixed base that the employer has in the United States.
- ¹⁸ The exemption applies if the employer is a permanent establishment in the treaty country but is not a resident of the treaty country.
- ¹⁹ This exemption does not apply in certain cases if the employee is a substantial owner of that employer and the employer is engaged in certain defined activities.
- ²⁰ The exemption is also extended to journalists and correspondents who are temporarily in the U.S. for periods not exceeding 2 years and who receive compensation from abroad.
- ²¹ Also exempt are amounts of up to \$10,000 received from U.S. sources to provide ordinary living expenses. For students, the amount will be less than \$10,000, determined on a case-by-case basis.
- ²² Withholding at 30% may be required because the factors on which the treaty exemption is based may not be determinable until after the close of the tax year. However, see *Withholding agreements*, and *Final payment exemption*, under *Pay for independent personal services*, and *Central withholding agreements*, under *Artists and Athletes*, discussed in this publication.
- ²³ A student or trainee may choose to be treated as a U.S. resident for tax purposes. If the choice is made, it may not be revoked without the consent of the U.S. competent authority.
- ²⁴ Does not apply to amounts received in excess of reasonable fees payable to all directors of the company for attending meetings in the United States.
- ²⁵ Exemption does not apply if gross receipts (including reimbursements) exceed this amount during the year (or during any 12-month period for Sweden).
- ²⁶ Exemption does not apply if net income exceeds this amount.
- ²⁷ Exemption does not apply to payments borne by a permanent establishment in the United States or paid by a U.S. citizen or resident or the federal, state, or local government.
- ²⁸ Exemption does not apply if compensation exceeds this amount.
- ²⁹ The exemption applies only to income from activities performed under special cultural exchange programs agreed to by the U.S. and Chinese governments.
- ³⁰ Exemption does not apply if gross receipts (or compensation for Portugal) including reimbursements, exceed this amount during the year. Income is fully exempt if visit to the United States is substantially supported by public funds of the treaty country or its political subdivisions or local authorities.
- ³¹ The 5-year limit pertains only to training or research.
- ³² Compensation from employment directly connected with a place of business that is not 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.
- ³³ Exemption does not apply if, during the immediately preceding period, the individual claimed the benefits of Article 21.
- ³⁴ Exemption does not apply if, during the immediately preceding period, the individual claimed the benefits of Article 22.
- ³⁵ 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).
- ³⁶ Exemption applies only to compensation for personal services performed in connection with, or incidental to, the individual's study, research, or training.
- ³⁷ 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).
- ³⁸ Exemption does not apply if during the immediately preceding period, the individual derived any benefits of Article 22(1).
- ³⁹ Exemption does not apply if during the immediately preceding period, the individual derived any benefits of Article 24(1).
- ⁴⁰ The combined period of benefits for teaching cannot exceed 5 tax years.
- ⁴¹ Applies to grants, allowances, and other similar payments received for studying or doing research.
- ⁴² 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.
- ⁴³ The combined period of benefits under Articles 20 and 21(1) cannot exceed 5 years.
- ⁴⁴ The exemption does not apply if the individual previously claimed the benefit of this Article.
- ⁴⁵ The time limit pertains only to an apprentice or business trainee.
- ⁴⁶ Exemption does not apply if gross receipts exceed this amount.
- ⁴⁷ Fees paid to a resident of Thailand for services as a director of a U.S. corporation are subject to U.S. tax, unless the services are performed in Thailand.
- ⁴⁸ Exemption does not apply if gross receipts exceed this amount. Income is fully exempt if visit to the United States is substantially supported by public funds of the treaty country or its political subdivisions or local authorities.
- ⁴⁹ A \$10,000 limit applies if the expense is borne by a permanent establishment or a fixed base in the United States.
- ⁵⁰ This provision does not apply if these activities are substantially supported by a nonprofit organization of the treaty country or by public funds of the treaty country or its political subdivisions or local authorities.
- ⁵¹ The exemption does not apply to income received for performing services in the United States as an entertainer or a sportsman. However, this income is exempt from U.S. income tax if the visit is (a) substantially supported by public funds of Ukraine, its political subdivisions, or local authorities, or (b) made under a specific arrangement agreed to by the governments of the treaty countries.

Table 3. List of Tax Treaties

Country	Official Text Symbol ¹	General Effective Date	Citation ⁶	Applicable Treasury Explanations or Treasury Decision (T.D.)
Australia	TIAS 10773	Dec. 1, 1983	1986-2 C.B. 220	1986-2 C.B. 246.
Austria	TIAS	Jan. 1, 1999		
Barbados	TIAS 11090	Jan. 1, 1984	1991-2 C.B. 436	1991-2 C.B. 466
Protocol	TIAS	Jan. 1, 1994		
Belgium	TIAS 7463	Jan. 1, 1971	1973-1 C.B. 619	
Protocol	TIAS 11254	Various		
Canada ²	TIAS 11087	Jan. 1, 1985	1986-2 C.B. 258	1987-2 C.B. 298.
Protocol	TIAS	Jan. 1, 1996		
China, People's Republic of ⁵	TIAS	Jan. 1, 1987	1988-1 C.B. 414	1988-1 C.B. 447.
Commonwealth of Independent States ⁴	TIAS 8225	Jan. 1, 1976	1976-2 C.B. 463	1976-2 C.B. 475.
Cyprus	TIAS 10965	Jan. 1, 1986	1989-2 C.B. 280	1989-2 C.B. 314.
Czech Republic	TIAS	Jan. 1, 1993		
Denmark ³	TIAS	Jan. 1, 2001		
Egypt	TIAS 10149	Jan. 1, 1982	1982-1 C.B. 219	1982-1 C.B. 243.
Estonia		Jan. 1, 2000		
Finland	TIAS	Jan. 1, 1991		
France	TIAS	Jan. 1, 1996		
Germany	TIAS	Jan. 1, 1990		
Greece	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1054	T.D. 6109, 1954-2 C.B. 638.
Protocol	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1059	
Hungary	TIAS 9560	Jan. 1, 1980	1980-1 C.B. 333	1980-1 C.B. 354.
Iceland	TIAS 8151	Jan. 1, 1976	1976-1 C.B. 442	1976-1 C.B. 456.
India	TIAS	Jan. 1, 1991		
Indonesia	TIAS	Jan. 1, 1990		
Protocol	TIAS	Feb. 1, 1997		
Ireland	TIAS	Jan. 1, 1998		
Israel	TIAS	Feb. 1, 1995		
Italy	TIAS 11064	Jan. 1, 1985	1992-1 C.B. 442	1992-1 C.B. 473.
Jamaica	TIAS 10207	Jan. 1, 1982	1982-1 C.B. 257	1982-1 C.B. 291.
Japan	TIAS 7365	Jan. 1, 1973	1973-1 C.B. 630	1973-1 C.B. 653.
Kazakistan	TIAS	Jan. 1, 1996		
Korea, Republic of	TIAS 9506	Jan. 1, 1980	1979-2 C.B. 435	1979-2 C.B. 458.
Latvia		Jan. 1, 2000		
Lithuania		Jan. 1, 2000		
Luxembourg		Jan. 1, 2001		
Mexico	TIAS	Jan. 1, 1994	1994-2 C.B. 424	1994-2 C.B. 489.
Protocol	TIAS	Oct. 26, 1995		
Morocco	TIAS 10195	Jan. 1, 1981	1982-2 C.B. 405	1982-2 C.B. 427.
Netherlands	TIAS	Jan. 1, 1994		
New Zealand	TIAS 10772	Jan. 1, 1984	1990-2 C.B. 274	1990-2 C.B. 303.
Norway	TIAS 7474	Jan. 1, 1971	1973-1 C.B. 669	1973-1 C.B. 693.
Protocol	TIAS 10205	Jan. 1, 1982	1982-2 C.B. 440	1982-2 C.B. 454.
Pakistan	TIAS 4232	Jan. 1, 1959	1960-2 C.B. 646	T.D. 6431, 1960-1 C.B. 755.
Philippines	TIAS 10417	Jan. 1, 1983	1984-2 C.B. 384	1984-2 C.B. 412.
Poland	TIAS 8486	Jan. 1, 1974	1977-1 C.B. 416	1977-1 C.B. 427.
Portugal	TIAS	Jan. 1, 1996		
Romania	TIAS 8228	Jan. 1, 1974	1976-2 C.B. 492	1976-2 C.B. 504.
Russia	TIAS	Jan. 1, 1994		
Slovak Republic	TIAS	Jan. 1, 1993		
South Africa	TIAS	Jan. 1, 1998		
Spain	TIAS	Jan. 1, 1991		
Sweden	TIAS	Jan. 1, 1996		
Switzerland	TIAS	Jan. 1, 1998		
Thailand	TIAS	Jan. 1, 1998		
Trinidad and Tobago	TIAS 7047	Jan. 1, 1970	1971-2 C.B. 479	
Tunisia	TIAS	Jan. 1, 1990		
Turkey ³	TIAS	Jan. 1, 1998		
Ukraine	TIAS	Jan. 1, 2001		
United Kingdom	TIAS 9682	Jan. 1, 1975	1980-1 C.B. 394	1980-1 C.B. 455.
Venezuela		Jan. 1, 2000		

¹ Treaties and Other International Act Series.

² Information on treaty can be found in Publication 597, *Information on the United States—Canada Income Tax Treaty*.

³ The general effective date may be delayed a year if the person was entitled to benefits under the previous treaty.

⁴ 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.

⁵ The United States—People's Republic of China income tax treaty does not apply to Hong Kong.

⁶ Most of these treaties can be viewed online at <http://www.irs.gov>

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