

Publication 515

Withholding of Tax on Nonresident Aliens and Foreign Entities

For use in preparing

2025 Returns

Volume 3 of 7



Get forms and other information faster and easier at:

- [IRS.gov](https://www.irs.gov) (English)
- [IRS.gov/Korean](https://www.irs.gov/korean) (한국어)
- [IRS.gov/Spanish](https://www.irs.gov/spanish) (Español)
- [IRS.gov/Russian](https://www.irs.gov/russian) (Русский)
- [IRS.gov/Chinese](https://www.irs.gov/chinese) (中文)
- [IRS.gov/Vietnamese](https://www.irs.gov/vietnamese) (Tiếng Việt)



Publication 515 (Rev 2025) Catalog Number 39256H
Department of the Treasury **Internal Revenue Service** www.irs.gov

Visit the Accessibility
Page on [IRS.gov](https://www.irs.gov)

This page is intentionally left blank

A WP acting as a WP for an indirect partner is not required to forward to its withholding agent the documentation and the withholding statement of the pass-through partner and indirect partner that the WP would have otherwise been required to provide under the requirements of a nonwithholding foreign partnership. See *Not acting as a WP*, later. However, a WP must provide the withholding agent with documentation and any other information from any pass-through partner whose direct or indirect partner, beneficiary, or owner is a U.S. nonexempt recipient unless the recipient is included in the pass-through partner's chapter 4 withholding rate pool of recalcitrant account holders or U.S. payees.

If a WP is making a payment that is a withholdable payment, the pass-through partner's withholding statement must meet the requirements of Regulations section 1.1471-3(c)(3)(iii)(B).

The pass-through partner's withholding statement must include the account holders or interest holders of the pass-through partner in chapter 4 withholding rate pools (to the extent permitted), and, for an amount subject to chapter 3 withholding that is not a withholdable payment or is a withholdable payment for which chapter 4 withholding is not required, valid documentation provided by the account holders or interest holders of the pass-through partner that are not themselves QIs or flow-through entities.

For more information on applying these rules, see section 9.03 of the WP agreement in section 6 of Revenue Procedure 2017-21, available at [IRS.gov/irb/ 2017-06 IRB#RP-2017-21](https://www.irs.gov/irb/2017-06_IRB#RP-2017-21).

Not acting as a WP. A foreign partnership that is not acting as a WP is a nonwithholding foreign partnership. This occurs if a WP is not acting in that capacity for some or all of the amounts it receives from you.

You must treat payments made to a nonwithholding foreign partnership as made to the partners of the partnership. The partnership must provide you with a Form W-8IMY (with Part VIII completed), a withholding statement identifying the amounts, the withholding certificates or documentary evidence of the partners, and the information shown earlier under Withholding statement under *Nonqualified Intermediary (NQI)*.

Withholding Foreign Trusts (WTs)

If you are making payments to a WT for chapter 3 or 4 purposes, you do not have to withhold if the WT is acting in that capacity. The WT must assume primary chapters 3 and 4 withholding responsibility for amounts that are distributed to, or included in the distributive share of, any direct beneficiary or owner and may assume primary chapters 3 and 4 withholding responsibility for certain of its indirect beneficiaries or owners.

The WT must withhold the amount required to be withheld. A WT must provide you with a Form W-8IMY that certifies that the WT is acting in that capacity and provides all other information and certifications required by the form. The Form W-8IMY must contain the WT-EIN and GIIN (if applicable).

A WT can be either an FFI or an NFFE. An FFI (other than a retirement fund) that is a WT must be a participating FFI, a registered deemed-compliant FFI, or an FFI treated as a deemed-compliant FFI under an applicable Model 1 IGA that is subject to similar due diligence and reporting requirements with respect to its U.S. accounts as those applicable to a registered deemed-compliant FFI under Regulations section 1.1471-5(f)(1) (including the requirement to register with the IRS) (defined in the WT agreement as a “registered deemed-compliant Model 1 IGA FFI”).

Thus, you must identify the chapter 4 status of an FFI certifying its status as a WT as one of the chapter 4 statuses referenced in the preceding sentence on a Form W-8IMY when a chapter 4 status is required for chapter 4 purposes.

Responsibilities of a WT. The WT must withhold on the date it makes a distribution of a withholdable payment or an amount subject to chapter 3 withholding to a direct foreign beneficiary or owner. If the beneficiary's or owner's distributive share has not been distributed, the WT must withhold on the beneficiary's or owner's distributive share on the earlier of the date that the trust must mail or otherwise provide to the beneficiary or owner the statement required under section 6048(b) or the due date for furnishing the statement (whether or not the WT is required to furnish the statement).

The WT may determine the amount of withholding based on a reasonable estimate of the beneficiary's or owner's distributive share of income subject to withholding for the year. The WT must correct the estimated withholding to reflect the actual distributive share on the earlier of the dates mentioned in the preceding paragraph. If that date is after the earlier of the due date (including extensions) for filing the WT's Form 1042-S or the date the WT actually issues Form 1042-S for the calendar year, the WT may withhold and report any adjustments required by correcting the information for the following calendar year.

Form 1042 filing. The WT must file Form 1042 even if no amount was withheld. In addition to the information that is required for the Form 1042, the WT must attach a statement showing the amounts of any over- or under-withholding adjustments and an explanation of those adjustments.

Form 1042-S reporting. The WT can elect to report payments made to its foreign direct beneficiaries or owners on a pooled basis for chapter 3 purposes rather than reporting payments made to each foreign direct beneficiary or owner in addition to reporting payments in a chapter 4 withholding rate pool to the extent the WT is permitted to do so based on its chapter 4 status. A WT can treat as its direct beneficiaries or owners those indirect beneficiaries or owners of the WT for which it applies joint account treatment or the agency option (described later). A WT must otherwise issue a Form 1042-S to each beneficiary or owner to the extent it is required to do so under the WT agreement. You may issue a single Form 1042-S for all payments you make to a WT other than payments for which the entity does not act as a WT. You may, however, have Form 1099 requirements for certain indirect beneficiaries or owners of a WT that are U.S. nonexempt recipients.

Collective refund procedures. A WT may seek a refund of tax withheld under chapters 3 and 4 on behalf of its beneficiaries or owners when the WT has not issued a Form 1042-S to the beneficiaries or owners that received the payment that was subject to overwithholding. The beneficiaries or owners, therefore, are not required to file claims for refund with the IRS to obtain refunds, but rather may obtain them from the WT. A WT may obtain a refund of tax withheld under chapter 4 to the extent permitted under the WT agreement.

Reporting of U.S. beneficiaries or owners. If the WT is a grantor trust with U.S. owners, the WT is required to file Form 3520-A, and to provide statements to a U.S. owner, as well as each U.S. beneficiary who is not an owner and receives a distribution. If the WT is an FFI, it is required to report each of its U.S. accounts (or U.S. reportable accounts if a reporting Model 1 FFI) on Form 8966

consistent with its FATCA requirements or the requirements of an IGA. If the WT is an NFFE, the WT must file Form 8966 to report any beneficiary or owner that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or, under an applicable IGA, controlling persons that are specified U.S. persons) if the NFFE is the beneficial owner of a withholdable payment received by the WT.

The WT must also file a Form 8966 to report withholdable payments made to a pass-through beneficiary or owner for which the WT acts under the WT agreement that provides information on an account holder (or interest holder) that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners (or, under an applicable IGA, controlling persons that are specified U.S. persons) and that is the beneficial owner of the withholdable payment received by the WT,

unless the pass-through beneficiary or owner certifies to the WT that it is reporting on the account holder (or interest holder) pursuant to its U.S. account reporting requirements. The preceding sentence applies with respect to a pass-through beneficiary or owner to which the WT applies the agency option or which has partners, beneficiaries, or owners that are indirect beneficiaries or owners of the WT. In addition, if the WT is not a participating FFI, a registered deemed-compliant FFI, or a registered deemed-compliant Model 1 IGA FFI and is not required to report with respect to a U.S. beneficiary of the WT on Form 3520-A, then the WT must report with respect to such beneficiary on Form 8966, as required in the WT agreement. A beneficiary for this purpose means a beneficiary that receives a distribution from the WT during the year or that is required to include an amount in gross income with respect to the WT under sections 652(a) or 662(a).

Joint account treatment. Under special procedures provided in the WT agreement, a WT may apply joint account treatment to a partnership or trust that is a direct beneficiary or owner of the WT. A WT that applies the joint account option must elect to perform pool reporting for amounts subject to chapter 3 withholding that either are not withholdable payments or are withholdable payments for which no chapter 4 withholding is required and that the WT distributes to, or includes in the distributive share of, a foreign direct beneficiary or owner. These rules only apply to a partnership or trust that meets the following conditions.

- It is a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust.
- It is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI, as defined in the WT agreement), an owner-

documented FFI, an exempt beneficial owner, or an NFFE (other than a WP or WT).

- It is a direct beneficiary or owner of the WT.
- None of its partners, beneficiaries, or owners is a flow-through entity or intermediary.
- None of the partnership's or trust's partners, beneficiaries, or owners is a U.S. person or is subject to withholding or reporting under chapter 4.
- It agrees to make available upon request to the WT (or the WT's auditor) records that establish it has provided the WT with documentation for purposes of chapters 3 and 4 for all of its partners, beneficiaries, or owners.

For more information on applying these rules, see section 9.01 of the WT agreement found in section 7 of Revenue Procedure 2017-21, available at [IRS.gov/irb/ 2017-06 IRB#RP-2017-21](https://www.irs.gov/irb/2017-06_IRB#RP-2017-21).

Agency option. A WT may apply the agency option to a partnership or trust under which the partnership or trust agrees to act as an agent of the WT and to apply the provisions of the WT agreement to its partners, beneficiaries, or owners. A WT that applies the agency option must elect to perform pool reporting for amounts subject to chapter 3 withholding that either are not withholdable payments or are withholdable payments for which no chapter 4 withholding is required and that the WT distributes to, or includes in the distributive share of, a foreign direct beneficiary or owner. A WT and a partnership or trust may only apply the agency option if the partnership or trust meets the following conditions.

- It is a nonwithholding foreign partnership or nonwithholding foreign trust that is either a simple or grantor trust.
- It is either a direct beneficiary or owner of the WT or an indirect beneficiary or owner of the WT that is a direct partner, beneficiary, or owner of a partnership or trust to which the WT also applies the agency option.
- It is an FFI that is a certified deemed-compliant FFI (other than a registered deemed-compliant Model 1 IGA FFI, as defined in the WT agreement), an owner-documented FFI, an NFFE, or an exempt beneficial owner.
- None of its partners, beneficiaries, or owners is a WT, WP, participating FFI, registered deemed-compliant

FFI, registered deemed-compliant Model 1 IGA FFI (as defined in the WT agreement), or a QI acting as an intermediary for a payment made by the WT to the partnership or trust.

- The WT may not act as a withholding foreign trust with respect to any direct or indirect beneficiary or owner of the partnership or trust that is a U.S. nonexempt recipient, unless the U.S. nonexempt recipient is a beneficiary or owner of an owner-documented FFI or passive NFFE to which the WT applies the agency option and is included in the WT's U.S. payee pool.
- It agrees to comply with the compliance procedures described in section 8.05 of the WT agreement by providing the WT with the certification described in section 8.03 of the WT agreement and providing the WT with documentation or other information for review.

- It agrees to comply with the documentation requirements of a WT in the WT agreement.

For more information on applying these rules, see section 9.02 of the WT agreement in section 7 of Revenue Procedure 2017-21, available at [IRS.gov/irb/ 2017-06 IRB#RP-2017-21](https://www.irs.gov/irb/2017-06_IRB#RP-2017-21).

WT acting for indirect beneficiaries or owners. A WT may act as a WT with respect to an indirect beneficiary or owner of the WT that is not a U.S. nonexempt recipient. However, a WT may act as a WT for an indirect beneficiary or owner that is a U.S. nonexempt recipient if the indirect beneficiary or owner is included in a pass-through beneficiary's or owner's chapter 4 withholding rate pool of recalcitrant account holders or U.S. payees. A WT acting as a WT for an indirect beneficiary or owner is not required to forward to its withholding agent the documentation and the withholding statement

of the pass-through beneficiary or owner and indirect beneficiary or owner that the WT would have otherwise been required to provide under the requirements of a nonwithholding foreign trust. See *Not acting as a WT*, later. However, a WT must provide the withholding agent with documentation and any other information from any pass-through beneficiary or owner whose direct or indirect partner, beneficiary, or owner is a U.S. nonexempt recipient unless the recipient is included in the pass-through beneficiary's or owner's chapter 4 withholding rate pool of recalcitrant account holders or U.S. payees. If a WT is making a payment that is a withholdable payment, the pass-through beneficiary's or owner's withholding statement must meet the requirements of Regulations section 1.1471-3(c)(3)(iii)(B). The pass-through beneficiary's or owner's withholding statement must include the account holders or interest holders of the pass-through beneficiary or owner in chapter

4 withholding rate pools (to the extent permitted), and, for an amount subject to chapter 3 withholding that is not a withholdable payment or is a withholdable payment for which chapter 4 withholding is not required, valid documentation provided by the account holders or interest holders of the pass-through beneficiary or owner that are not themselves QIs or flow-through entities.

For more information on applying these rules, see section 9.03 of the WT agreement in section 7 of Revenue Procedure 2017-21, available at [IRS.gov/irb/ 2017-06 IRB#RP-2017-21](https://www.irs.gov/irb/2017-06_IRB#RP-2017-21).

Not acting as a WT. A foreign trust that is not acting as a WT is a nonwithholding foreign trust. This occurs if a WT is not acting in that capacity for some or all of the amounts it receives from you.

In most cases, you must treat payments made to a nonwithholding foreign trust as made to the beneficiaries of a simple trust or

the owners of a grantor trust. The trust must provide you with a Form W-8IMY (with Part VIII completed), a withholding statement identifying the amounts, the withholding certificates or documentary evidence of the beneficiaries or owners, and the information shown earlier under Withholding statement under *Nonqualified Intermediary (NQI)*.

Standards of Knowledge for Purposes of Chapter 3

You must withhold in accordance with the presumption rules (discussed later) if you know or have reason to know that a withholding certificate or documentary evidence provided by a payee is unreliable or incorrect to establish the payee's status for chapter 3 purposes. 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 for this purpose.

If you receive notification from the IRS that a payee's claim of status for chapter 3 purposes is incorrect or unreliable, you may not rely upon the claim except to the extent indicated by the IRS.

Reason To Know

In general, 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.

For an obligation that is not a preexisting obligation (that is, an obligation, including an account, held by an individual that is outstanding on June 30, 2014, or an obligation, including an account, held by an entity that is opened, executed, or issued before January 1, 2015),

you have reason to know that an account holder's chapter 3 claim is unreliable or incorrect if any information contained in your account opening files or other account information conflicts with the account holder's claim. For an obligation other than a preexisting obligation, you will not be considered to have reason to know that a person's chapter 3 claim is unreliable or incorrect based on documentation collected for anti-money laundering (AML) purposes until 30 days after the obligation is executed, or 30 days after the account is opened for such person, whichever is applicable.

Financial institutions, insurance companies, or brokers or dealers in securities have reason to know that documentation provided by a direct account holder is unreliable or incorrect only in the circumstances discussed next. If the documentation is considered unreliable or incorrect, you must get new documentation to

support the payee's claimed status or may rely on the original documentation if you receive the additional statements and/or documentation discussed later and are a withholding agent described above with respect to a direct account holder (defined in Regulations section 1.1441-7(b)(3)(i)). Such documentation is described in Regulations section 1.1471-3(c)(5)(i).

The circumstances, discussed next, also apply to other withholding agents. 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.

Withholding Certificates

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:

- 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;
- The Form W-8 contains any information that is inconsistent with the account holder's claim;
- The Form W-8 lacks information necessary to establish entitlement to a reduced rate of withholding, if a reduced rate is claimed; or
- You have information not contained on the form that is inconsistent with the claims made on the form.

The rules below apply to withholding agents that are financial institutions, insurance companies, or brokers or dealers in securities.

Limits on reason to know for preexisting obligations. With respect to a preexisting obligation (that is, an obligation, including an account, held by an individual that is outstanding on June 30, 2014, or an obligation, including an account, held by an entity that is opened, executed, or issued before January 1, 2015), if you have documented the foreign status of an account holder for purposes of chapter 3 or 61 prior to July 1, 2014, you may continue to rely on that documentation. In addition, if you make a payment to a new entity account holder that you treat as a preexisting entity account under Notice 2014-33, 2014-20 I.R.B. 1006, available at [IRS.gov/irb/2014-21_IRB#NOT-2014-33](https://www.irs.gov/irb/2014-21_IRB#NOT-2014-33), you may apply the standards of knowledge in Regulations sections 1.1441-7(b)(5) and (b)(8), that were applicable prior to the issuance of the temporary regulations. See Notice 2014-59, 2014-44 I.R.B. 747, available at [IRS.gov/irb/2014-44_IRB#NOT-2014-59](https://www.irs.gov/irb/2014-44_IRB#NOT-2014-59).

However, if you review documentation for an individual account holder claiming foreign status that contains a U.S. place of birth or if you are notified of a change in circumstances, the obligation will be treated as having a change in circumstances as of the date you review the documentation or receive the notification, and you will then have reason to know that the documentation is unreliable or incorrect. However, if you are reviewing documentation provided by an entity before January 1, 2015, you will not be required to treat the additional U.S. indicia added to Regulations section 1.1441-7(b) by the temporary regulations as a change in circumstances. See Notice 2014-59, for more information.

Establishment of foreign status by certain withholding agents. You have reason to know that a Form W-8BEN or W-8BEN-E is unreliable or incorrect to

establish a direct account holder's status as a foreign person if:

1. The Form W-8 has a current permanent residence address in the United States,
2. The Form W-8 has a current mailing address in the United States,
3. You have a current residence or current mailing address as part of your account information that is an address in the United States,
4. The account holder notifies you of a new residence or mailing address in the United States,
5. You have classified the account holder as a U.S. person in your account information, or
6. You have a current telephone number for the account holder in the United States and no telephone number for

the account holder outside the United States (only to the extent described in Regulations section 1.1441-7(b)(5)).

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-8BEN from an individual and:
 - a. You possess or obtain documentary evidence (that does not contain a U.S. address) that supports the claim of foreign status, and the individual provides you with a reasonable explanation, in writing, supporting the claim of foreign status;
 - b. If you make a payment outside the United States with respect to an offshore obligation and you possess or obtain documentary

evidence establishing foreign status that does not contain a U.S. address;

- c. With respect to an offshore obligation, if you classify the individual as a resident of the country where the obligation is maintained and you are required to report payments to the individual annually to the tax authority of the country where the obligation is maintained and that country has a tax treaty or information exchange agreement in effect with the United States; or
- d. You have classified the account holder as a U.S person in your account information and you possess or obtain documentary evidence evidencing

citizenship in a country other than the United States.

2. You receive the Form W-8BEN-E from an entity that is not a flow-through entity and:
 - a. You have in your possession or obtain documentation establishing foreign status that substantiates that the entity is organized or created under foreign law; or
 - b. With respect to an offshore obligation, if you classify the entity as a resident of the country where the obligation is maintained and you are required to report payments to the entity annually to the tax authority of the country where the obligation is maintained and that country has a tax treaty or information

exchange agreement in effect with the United States.

3. The account holder (whether an individual or an entity) has provided standing instructions to make payments with respect to an offshore obligation to an address in, or an account maintained in, the United States, unless the account holder provides a reasonable explanation, in writing, that supports its foreign status or provides documentary evidence supporting its foreign status.
4. If an individual account holder provides a Form W-8BEN to establish the individual's foreign status, and you have, either an accompanying documentation or as part of your account information, an unambiguous indication of a place of birth for the individual in the United States, you may not rely on the Form W-8BEN

unless you possess or obtain documentary evidence evidencing citizenship in a country other than the United States, and either (i) a copy of the individual's Certificate of Loss of Nationality of the United States, or (ii) a reasonable written explanation for the individual's renunciation of U.S. citizenship (or, under an applicable IGA, the reason the individual does not have a Certificate of Loss of Nationality of the United States despite relinquishing its U.S. citizenship), or the reason the individual did not obtain U.S. citizenship at birth.

Claim of reduced rate of withholding under treaty by certain withholding agents. You have reason to know that a Form W-8BEN or W-8BEN-E 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:

- The permanent residence address on the Form W-8 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,
- The permanent residence address on the Form W-8 is in the treaty country but the withholding certificate (or your account information) contains a mailing address that is not in the treaty country,
- You have a current mailing address in your account information outside the treaty country, or
- 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-8 as establishing an account holder's claim of a reduced rate of withholding under a treaty if any of the following apply.

1. 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 described in Regulations section 1.1471-3(c)(5)(i) that establishes residency in a treaty country.
2. The mailing address is not in the treaty country and:
 - a. You possess or obtain documentary evidence described in Regulations section 1.1471-3(c)(5)(i) (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 the account holder 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. 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 or you possess or obtain documentary evidence described in Regulations section 1.1471-3(c)(5)(i) establishing the account holder's residence in the treaty country.

Hold mail instruction. An address that is provided subject to an instruction to hold all mail to that address is not a permanent residence address such that you may not rely upon the Form W-8. However, the address can be used as a permanent residence address if the person has provided you with the documentary evidence that is permitted under Regulations section 1.1441-1(c)(38)(ii). If, after a Form W-8 is provided, a person's permanent residence address is subsequently subject to a hold mail instruction, this is a change in circumstances requiring the person to provide the

documentary evidence described in the preceding sentence in order to use the address as a permanent residence address.

Documentary Evidence

You have reason to know that documentary evidence provided by a direct account holder to support a claim of foreign status is unreliable or incorrect if:

- The documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence;
- The documentary evidence contains information that is inconsistent with the account holder's claim of a reduced rate of withholding; or
- 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.

Establishment of 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 any of the following apply.

- For documentary evidence received prior to January 1, 2001, if you have actual knowledge that the account holder is a U.S. person or if you have a mailing or residence address for the account holder in the United States.
- For documentary evidence received after December 31, 2000, if you do not have a permanent residence address for the

account holder, if you have classified the account holder as a U.S. person in your account information, if you have a current mailing or current permanent residence address (whether or not on the documentation) for the account holder in the United States, if the account holder notifies you of a new residence or mailing address in the United States, or if you have a current telephone number for the account holder in the United States and no telephone number for the account holder outside the United States.

- If the account holder is an individual and you have, either on the documentary evidence or as part of your account information, an unambiguous place of birth for the individual in the United States.
- With respect to an offshore obligation, 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. The mailing or residence address or sole telephone number 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 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

- c. For a payment made with respect to an offshore obligation, if you classify the individual as a resident of the country where the obligation is maintained, you are required to report a payment made to the individual annually on a tax information statement filed with that country's tax authority as part of the resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.

2. The mailing or residence address or sole telephone number 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 or created 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 a reasonable explanation, in writing, supporting the account holder's foreign status); or

- c. For a payment made with respect to an offshore obligation, if you classify the entity as a resident of the country where the obligation is maintained and you are required to report a payment made to the entity annually on a tax information statement filed with that country's tax authority as part of the resident reporting requirements, and that country has a tax information exchange agreement or income tax treaty in effect with the United States.
- 3. 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 or a valid beneficial owner withholding certificate claiming foreign status.

4. You have an unambiguous place of birth in the United States for an individual account holder and you possess or obtain documentary evidence demonstrating the individual's citizenship in a country other than the United States and a copy of the individual's Certificate of Loss of Nationality of the United States. Alternatively, you may treat such an individual as a foreign person if you obtain a valid beneficial owner withholding certificate that establishes the individual's foreign status, documentary evidence evidencing citizenship in a country other than the United States, and a reasonable explanation, in writing, of the individual's renunciation of U.S. citizenship (or, under an applicable IGA, the reason the individual does not have a Certificate of Loss of Nationality of the United States despite

relinquishing U.S. citizenship) or the reason the individual did not obtain U.S. citizenship at birth.

Claim of reduced rate of withholding under 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:

- You have a mailing or residence address for the account holder that is outside the applicable treaty country,
- You have no permanent residence for the account holder, or
- 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. 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-8 that contains a permanent residence address and a mailing address in the applicable treaty country.
- 2. 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 or a valid beneficial owner withholding certificate that contains a permanent residence address and a mailing address in the applicable treaty country.

Indirect Account Holders'

Chapter 3 Status

A withholding agent that receives documentation from a payee through an NQI, a flow-through entity, or a U.S. branch of a foreign bank or insurance company subject to U.S. or state regulatory supervision or a territory financial institution (other than a

U.S. branch treated as a U.S. person) has reason to know that the documentary evidence is unreliable or incorrect for purposes of a claim of foreign status or a treaty claim if a reasonably prudent person in the withholding agent's position would question the claims made. This standard requires, but is not limited to, compliance with the following rules.

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 the withholding statement is accompanied by a valid withholding certificate and documentary evidence or a reasonable explanation is provided, by the NQI, flow-through entity, or U.S. branch supporting the payee's foreign status or residency in a 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 NQI, flow-through entity, or U.S. branch to correct the withholding statement, or, alternatively, you may apply the presumption rules, discussed later in *Presumption Rules*, to the payee.

If you choose to rely on the withholding certificate, you must, in addition to instructing the NQI, flow-through entity, or U.S. branch to correct the withholding statement, instruct the NQI, flow-through entity, or U.S. branch to confirm that it does not know or have reason to know that the withholding certificate is unreliable or inaccurate.

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 NQI, 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).

Standards of Knowledge for Purposes of Chapter 4

If you make a withholdable payment, you must withhold in accordance with the presumption rules (discussed later) if you know or have reason to know that a withholding certificate or documentary evidence provided by the payee is unreliable or incorrect to establish a payee's chapter 4 status. 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 for this purpose.

Notification by the IRS

If you receive notification from the IRS that a claim of status as a U.S. person, a participating FFI, a deemed-compliant FFI, or other entity entitled to a reduced rate of withholding under chapter 4 is incorrect,

you are considered to have knowledge that such a claim is incorrect beginning 30 days after you receive the notice.

GIIN Verification

If you have received a Form W-8BEN-E or Form W-8IMY from an entity payee that is claiming certain chapter 4 statuses, you must obtain and verify the entity's GIIN against the published IRS FFI list. The IRS FFI list can be found at

[IRS.gov/Businesses/Corporations/FFI-List-Resources-Page](https://www.irs.gov/Businesses/Corporations/FFI-List-Resources-Page). You must obtain and verify against the published IRS FFI list a GIIN for the following chapter 4 statuses.

- Participating FFIs (including reporting Model 2 FFIs).
- Registered deemed-compliant FFIs (including reporting Model 1 FFIs).
- Sponsored FFIs.
- Direct reporting NFFEs.

- Sponsored direct reporting NFFEs.
- Certain nonreporting IGA FFIs (as described below).

If you receive a Form W-8BEN-E or Form W-8IMY from a nonreporting IGA FFI that is a trustee-documented trust with a foreign trustee, you must obtain the GIIN of a foreign trustee, but you are not required to verify the GIIN. The GIIN that the trustee must provide is the GIIN that it received when it registered as a participating FFI or reporting Model 1 FFI, not the GIIN that it received when it registered as a trustee of a trustee-documented trust.

If you receive a Form W-8BEN-E or Form W-8IMY from a nonreporting IGA FFI that checks Model 2 IGA in Part XII of Form W-8BEN-E or Part XIX of Form W-8IMY (as applicable) and identifies a category of entity that is a registered deemed-compliant FFI under Annex II of an applicable Model 2 IGA, you must obtain and verify the GIIN of the

nonreporting IGA FFI. Additionally, if you receive a Form W-8BEN-E or Form W-8IMY from a nonreporting IGA FFI that provides a citation to a section of the regulations for its registered deemed-compliant status in Part XII of Form W-8BEN-E or Part XIX of Form W-8IMY (as applicable), you must obtain and verify the GIIN of the nonreporting IGA FFI. You will have reason to know that such payee is not such a financial institution if the payee's name (including a name reasonably similar to the name the withholding agent has on file for the payee) and GIIN do not appear on the most recently published IRS FFI list within 90 days of the date that the claim is made.

If you receive a Form W-8BEN-E or Form W-8IMY from an entity payee and the form contains "Applied for" in the box for the GIIN, the payee must provide you its GIIN within 90 days of providing the form. A Form W-8BEN-E or Form W-8IMY from such payee that does not include a GIIN, or includes a GIIN that

does not appear on the published IRS FFI list, will be invalid for chapter 4 purposes 90 days after the date the form is provided.

The GIIN that you must confirm is the GIIN assigned to the FFI identifying its country of residence for tax purposes (or place of organization if the FFI has no country of residence), except as otherwise provided.

Branches and disregarded entities. If you make a withholdable payment to a branch of, or an entity that is disregarded as an entity separate from, a participating FFI or registered deemed-compliant FFI located outside of the FFI's country of residence or organization, the GIIN you must verify is the GIIN of the branch or disregarded entity receiving the payment. You must identify a GIIN associated with a disregarded entity to the extent provided in the Instructions for Form W-8BEN-E or the Instructions for Form W-8IMY.

You will have reason to know that a withholdable payment is made to a branch (including a disregarded entity) of a participating FFI or registered deemed-compliant FFI that is not itself a participating FFI or registered deemed-compliant FFI when you are directed to make the payment to an address in a jurisdiction other than that of the participating FFI or registered deemed-compliant FFI (or branch of, or disregarded entity wholly owned by, such FFI) that is identified as the FFI (or branch of, or disregarded entity wholly owned by, such FFI) that is supposed to receive the payment and for which the FFI's GIIN is not confirmed, as described in the preceding paragraphs.

The preceding sentence does not apply to an FFI that is an investment entity. If an FFI (other than an investment entity) directs you to make the payment to an account held by the FFI and maintained by another financial institution, the FFI must provide to you a

statement, in writing, that the FFI is not directing the payment to any branch of such FFI that is not a participating FFI or a registered deemed-compliant FFI.

Sponsored, closely held investment vehicles. If you make a withholdable payment to a certified deemed-compliant FFI that is a sponsored, closely held investment vehicle, you must obtain a GIIN for the sponsoring entity and verify it against the published IRS FFI list.

Reason To Know

In general, you have reason to know that a claim of chapter 4 status is unreliable or incorrect if your knowledge of relevant facts or statements contained in the withholding certificate or other documentation is such that a reasonably prudent person would question the claim being made. For an obligation other than a preexisting obligation (that is, an obligation other than an obligation, including

an account, held by an individual that is outstanding on June 30, 2014, or an obligation, including an account, held by an entity that is opened, executed, or issued before January 1, 2015), you have reason to know that a claim of chapter 4 status is unreliable or incorrect if any information contained in the account opening files or other customer account files, including documentation collected for AML due diligence purposes, conflicts with the chapter 4 status being claimed. You will not have reason to know that a claim of chapter 4 status is unreliable or incorrect based on documentation collected for AML due diligence purposes until the date that is 30 days after the obligation is created.

If you have classified an entity as engaged in a particular type of business based on your records, such as through the use of a standardized industry coding system, you have reason to know that the chapter 4

status claimed by the entity is unreliable or incorrect only if the entity's claim conflicts with the withholding agent's classification of the entity's business type.

Withholding Certificates

In general, you have reason to know that a withholding certificate from a person is unreliable or incorrect with respect to a claim of chapter 4 status if:

- The withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claim made by the person;
- The withholding certificate contains any information that is inconsistent with the person's claim;
- You have other account information that is inconsistent with the person's claim;

- The withholding certificate lacks information necessary to establish entitlement to an exemption from withholding for chapter 4 purposes; or
- With respect to an alternative certification under an applicable IGA included with a withholding certificate, if you know or have reason to know the certification is incorrect.

If you obtain a withholding certificate associated with a withholdable payment to a participating FFI, a registered deemed-compliant FFI, a sponsoring entity, or a sponsored FFI, you do not need to apply the standards of knowledge described earlier with respect to an account holder's claim of foreign status if you have confirmed the FFI's GIIN on the current published IRS FFI list within 90 days of receipt of the withholding certificate.



A withholding certificate used for chapter 4 purposes must also include the information required for chapter 3 purposes (that is, the entity's tax classification) with regard to a payment that is a reportable amount under Regulations section 1.1441-1(e)(3)(vi).

Documentary Evidence

You have reason to know that documentary evidence provided by a person is unreliable or incorrect with respect to a claim of chapter 4 status if:

- The documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence,
- The documentary evidence contains information that is inconsistent with the person's claim as to its chapter 4 status,

- You have other account information that is inconsistent with the person's chapter 4 status, or
- The documentary evidence lacks information necessary to establish the person's chapter 4 status.

For standards of knowledge applicable to specific types of documentary evidence, see Regulations section 1.1471-3.

Payee Documentation From Intermediaries or Flow-Through Entities

In general. If you receive documentation for a payee of a withholdable payment through one or more intermediaries or flow-through entities, you must, in addition to determining each such entity's chapter 4 status when required for chapter 4 purposes, review all documentation obtained with respect to the payee. Under certain circumstances, you may rely on a withholding certificate with an electronic signature provided by an account

holder that is an NQI, when you are permitted to do so under Regulations section 1.1441-1(e)(4)(i)(B). When withholding under chapter 4 is not applied based on the chapter 4 status of an intermediary or flow-through entity, you are not required to obtain documentation for a payee through an intermediary or flow-through entity that is a QI, WP, or WT, or a payee that is included in a chapter 4 withholding rate pool of U.S. payees.

Withholding statement. You must review the withholding statement provided and may not rely on information in the statement to the extent the information does not support the claims made regarding the chapter 4 status of the payee. You may not treat a person as a foreign person if a U.S. address is provided, unless the withholding statement is accompanied by a valid withholding certificate and documentary evidence establishing foreign status.

Withholding certificate. You must review each withholding certificate, written statement (as permitted for chapter 4 purposes with respect to certain payments to entities), or documentary evidence, and must verify that the information is consistent with the information on the withholding statement. If there is a discrepancy, you may rely on the documentation provided such documentation is valid and the intermediary or flow-through entity does not indicate that the documentation is unreliable or incorrect, or, alternatively, you may apply the presumption rules. If you choose to rely on the documentation, you must instruct the intermediary or flow-through entity to correct the withholding statement and confirm that the intermediary or flow-through entity does not know or have reason to know that the documentation is unreliable or incorrect. See Regulations section 1.1471-3(d) for when a written statement is permitted for chapter 4 purposes.

Documentation from participating FFIs and registered deemed-compliant FFIs.

If you receive documentation for a payee of a withholdable payment through a participating FFI or registered deemed-compliant FFI that is an intermediary or flow-through entity receiving the payment, you may rely on the chapter 4 status provided in the withholding statement, including a chapter 4 status determined under the requirements of (and documentation or information that is publicly available that determines the chapter 4 status of the payee permitted under) an applicable IGA, provided that you have the information necessary to report on Form 1042-S, unless you have information that conflicts with the chapter 4 status provided. If underlying documentation is provided for the payee and information in the documentation or in your records conflicts with the chapter 4 status claimed, you have reason to know that the chapter 4 status claimed is unreliable or incorrect.

However, you are not required to verify the information contained in the documentation that is not factually incorrect, and you are generally not required to obtain supporting documentation for the payee. You may determine the recipient code of a payee for chapter 4 purposes (for filing Form 1042-S) that is not identified on a withholding statement when you are able to do so based on other information included on or with the withholding statement or in your records with respect to the payee.

Preexisting obligation of entities. If you make a withholdable payment with respect to a preexisting obligation to an entity, the scope of review is limited with respect to the time in which you must determine the entity's chapter 4 status. For more information, see Regulations section 1.1471-3(e)(4)(vii) or, if you are a reporting Model 1 FFI or a reporting Model 2 FFI, the requirements of the applicable IGA.

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. In the case of a withholdable payment you make to an entity, you must apply the presumption rules for chapter 4 purposes to treat the entity as a nonparticipating FFI when you cannot reliably associate the payment with documentation

permitted for chapter 4 purposes. You are not permitted to apply a reduced rate of chapter 3 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.

In the case of a participating FFI or registered deemed-compliant FFI that cannot report with respect to an individual account holder, the FFI must classify the account holder under the requirements (as applicable) of the FFI agreement, Regulations section 1.1471-5(f), or an applicable IGA. Whether withholding applies to payments made to such account holders classified as recalcitrant account holders (including payments to intermediaries or flow-through entities allocating payments to such account holders on an applicable withholding statement) differs under these requirements.

The presumption rules, in the absence of documentation, for the subject matter are discussed in the regulations section indicated in Chart A.

Chart A. **Presumption Rules in the Absence of Documentation**

For the presumption rules related to:	See Regulations section:
Payee's status	1.1441-1(b)(3); 1.6049-5(d); 1.1471-3(f) (chapter 4 payees)
Effectively connected income	1.1441-4(a)(2)
Partnership and its partners	1.1441-5(d); 1.1446-1(c)(3)
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)

Presumption Rules for Chapter 4

If you determine that you are making a withholdable payment to an entity and cannot reliably associate the payment with a valid Form W-8 or other documentation that you are permitted to rely upon and that is sufficient to determine the chapter 4 status of the entity, you are required to treat the entity payee as a nonparticipating FFI such that withholding applies. For purposes of determining whether the payment is made to an individual or an entity, or to a U.S. person or a foreign person, if you cannot reliably associate a payment with a valid Form W-8 or other documentation that you are permitted to rely upon and from which you are able to determine the payee's status as an individual or entity, or U.S. or foreign status, you must apply the presumption rules of Regulations section 1.1441-1(b)(3)(ii) to determine the payee's status as an individual or entity and

Regulations section 1.1441-1(b)(3) (iii) to determine the payee's U.S. or foreign status.

If you are making a withholdable payment to joint payees and cannot reliably associate the payment with valid documentation from each payee and each of the payees appears to be an individual, the payment is presumed made to an unidentified U.S. person. If any of the joint payees does not appear, by its name or other information in its account file, to be an individual, then the entire payment is treated as made to a nonparticipating FFI. However, if you receive from one of the joint payees a Form W-9, the payment shall be treated as made to that payee.

Income Subject to Withholding

This section explains how to determine if a payment is subject to chapter 3 withholding or is a withholdable payment.

Amounts Subject to Chapter 3 Withholding

A payment is subject to chapter 3 withholding if it is from sources within the United States, and it is fixed or determinable annual or periodical (FDAP) income. Generally, excluding gains but including certain gains from the disposal 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 chapter 3 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 chapter 3 withholding even though a part of the distribution may be a return of capital or capital gain that is not FDAP income.

Amounts not subject to chapter 3 withholding. The following amounts are not subject to chapter 3 withholding.

- Portfolio interest paid on obligations that meet certain requirements.
See Interest, later.
- Bank deposit interest that is not effectively connected with the conduct of a U.S. trade or business.
See Interest, later.
- Original issue discount on certain short-term obligations. See Original issue discount, later.
- Nonbusiness gambling income of a nonresident alien playing blackjack, baccarat, craps, roulette, or big-6 wheel in the United States. See Gambling winnings, later.

- Amounts paid as part of the purchase price of an obligation sold between interest payment dates.
See Interest, later.
- Original issue discount paid on the sale of an obligation other than a redemption.
See Original issue discount, later.
- Insurance premiums paid on a contract issued by a foreign insurer subject to the excise tax under section 4371.
- U.S. source transportation income subject to a 4% tax on gross income.

Amounts Subject to Chapter 4 Withholding

U.S. source FDAP income for purposes of chapter 4 is similar to U.S. source FDAP income for purposes of chapter 3, subject to certain modifications such as the exclusion of certain types of non-financial payments and the inclusion (as U.S. source interest) of

deposit interest paid by a foreign branch of a U. S. corporation or partnership. Also, see *Fixed or Determinable Annual or Periodical Income (FDAP)*, later.

A withholding agent must withhold on a payment of U.S. source FDAP income that is a withholdable payment to which an exception does not apply under chapter 4.

Amounts not subject to withholding under chapter 4. The following amounts are not subject to withholding under chapter 4.

- Interest or original issue discount from a short-term obligation.
- Payments made under a grandfathered obligation (for example, obligations outstanding on July 1, 2014).

Source of Income

In most cases, 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 or the income is a dividend equivalent. 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. Other source rules are summarized in Chart B and explained in detail in the separate discussions under *Withholding on Specific Income*, later.

In most cases, interest on an obligation of a foreign corporation or foreign partnership is foreign-source income. If the entity is engaged in a trade or business in the United States during its tax year,

interest paid by such entity is treated as from U.S. sources only if the interest is paid by a U.S. trade or business conducted by the entity or is allocable to income that is treated as effectively connected with the conduct of a U.S. trade or business. This applies to a foreign partnership only if it is predominantly engaged in the active conduct of a trade or business outside the United States.

Guarantee income. Certain amounts paid, directly or indirectly, for the provision of a guarantee of indebtedness issued after September 27, 2010, are from U.S. sources. The amounts must be paid by one of the following.

1. A noncorporate U.S. resident or a U.S. corporation for the provision of a guarantee of the resident or corporation.
2. Any foreign person for the provision of a guarantee if the payment of income is effectively connected, or treated as

effectively connected, with the conduct of a U.S. trade or business.

Personal service income (for purposes of chapter 3 withholding). 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 information on this exception, see *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 based on the facts and circumstances.

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.

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

Multiyear compensation. Generally, the source of multiyear compensation is determined on a time basis over the period to which the compensation is attributable.

Multiyear compensation is compensation that is included in the taxable income of a recipient in 1 tax year but that is attributable to a period that includes 2 or more tax years. The determination of the period to which the compensation is attributable, for purposes of determining its source, is based on the facts and circumstances of each case.

For example, an amount of compensation that specifically relates to a period of time that includes several calendar years is attributable to the entire multiyear period. Where determining the source of multiyear compensation on a time basis is appropriate, the amount of compensation treated as from U.S. sources is figured by multiplying the total multiyear compensation by a fraction. The numerator of the fraction is the number of days (or unit of time less than a day, if appropriate) that labor or personal services were performed in the United States in connection with the project. The denominator of the fraction is the total number of days (or unit of time less than a day, if appropriate) that labor or personal services were performed in connection with the project.

Employees. If the services are performed partly in the United States and partly outside the United States by an employee, the allocation of pay, other than certain fringe

benefits, is determined on a time basis. The following fringe benefits are sourced on a geographical basis as shown in the following list.

- Housing—employee's main job location.
- Education—employee's main job location.
- Local transportation—employee's main job location.
- Tax reimbursement—jurisdiction imposing tax.
- Hazardous or hardship duty pay—location of pay zone.
- Moving expense reimbursement—employee's new main job location.

For information on what is included in these benefits, see Regulations section 1.861-4(b)(2)(ii)(D).

An employee's main job location (principal place of work) is usually the place where the employee spends most of their working time. If there is no one place where most of the work time is spent, the main job location is the place where the work is centered, such as where the employee reports for work or is otherwise required to base their work.

An employee can use an alternative basis based on facts and circumstances, rather than the time or geographical basis. The employee, not the employer, must demonstrate that the alternative basis more properly determines the source of the pay or fringe benefits.

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 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 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. territory is not income from U.S. sources.

Multilevel marketing. Certain companies sell products through a multilevel marketing arrangement, such that an upper-tier distributor, who has sponsored a lower-tier distributor, is entitled to a payment from the company based on certain activities of that lower-tier distributor. Generally, depending on the facts, payments from such multilevel marketing companies to independent (nonemployee) distributors (upper-tier distributors) that are based on the sales or purchases of persons whom they have sponsored (lower-tier distributors) constitute income for the performance of personal services in recruiting, training, and supporting the lower-tier distributors. The source of such income is generally based on where the services of the upper-tier distributor are performed, and may, depending on the facts, be considered multiyear compensation, with the source of income determined over the period to which such compensation is attributable.