

# Publication 515

## Withholding of Tax on Nonresident Aliens and Foreign Entities

For use in preparing

**2025** Returns

Volume 5 of 7



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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 in the United States.
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.

**Alternate withholding procedure.** You may choose to treat the taxable part of a U.S. source grant or scholarship as wages.

The student or grantee must have been admitted into the United States on an “F,” “J,” “M,” or “Q” visa. The student or grantee will know that you are using this alternate withholding procedure when you ask for a 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 take the deductions claimed on that form. If the individual is in the United States during more than 1 tax year,

they 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 they have 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.

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%).

After receipt and acceptance of the Form W-4, the payer must withhold at the graduated rates in Pub. 15-T as if the grant or scholarship income were wages.

The gross amount of the income is reduced by the total amount of any deductions on the Form W-4 and the withholding tax is figured on the rest.

**Pay for services rendered.** Pay for services rendered as an employee by an alien who is also the recipient of a scholarship or fellowship grant is usually subject to graduated withholding under chapter 3 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 (that is, compensatory scholarship or fellowship income).

Grants given to students, trainees, or researchers that 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 that apply to scholarships and fellowships to be applied to grants that 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 that has been reported to them on Form W-2 as wages.*

**Per diem paid by the U.S. Government.**

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 funded by the U.S. Agency for International Development are not subject to 14% or 30% withholding. This is true even if the alien is subject to income tax on those amounts.

**Tax treaties.** Many 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. See *Tax Treaties*, later, for information about treaty benefits.

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 can claim treaty exemptions on both kinds of income on Form 8233.

The scholarship or fellowship recipient who is claiming a treaty exemption must provide you with a foreign TIN on Form W-8BEN or, in the case of a recipient who also received wages from the same institution, a U.S. TIN on Form 8233, or you cannot allow the treaty exemption. A copy of a completed Form W-7, showing that a TIN has been applied for, can be given to you with a Form 8233.

See Form 8233, later, under *Pay for Personal Services Performed*.

***Nonresident alien who becomes a resident alien.*** In most cases, 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 not use the terms of a tax treaty due to a provision known as a “saving clause.” However, an exception to 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.

- The treaty country.
- The treaty article addressing the income.

- The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
- The type and amount of income that qualifies for the exemption from tax.
- Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**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 their 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 Subject to Chapter 3 Withholding**

Other grants, prizes, and awards made by grantors that reside in the United States are treated as income from sources within the United States. Those made for activities conducted outside the United States by a foreign person or by grantors that 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 that 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.

- The recipient was selected without any action on their part to enter the contest or proceeding.
- The recipient is not required to render substantial future services as a condition to receive the prize or award.
- 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 must generally 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.

Payments for personal services are not withholdable payments under chapter 4 when they are nonfinancial payments. See Regulations section 1.1473-1(a)(4)(iii) for a description of these payments and their exclusion as withholdable payments.

**Illegal aliens.** 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 U.S. Immigration and Customs Enforcement. 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 that apply to U.S. citizens who receive the same kind of income.

**Form 8233.** This form is used by a nonresident alien individual to claim a tax treaty exemption from withholding on some or all compensation paid for:

- Independent personal services (self-employment),
- Dependent personal services, or
- Personal services income and noncompensatory scholarship or

fellowship income from the same withholding agent.

A withholding agent that receives Form 8233 from a nonresident alien individual claiming a tax treaty exemption must review the form, sign to indicate its acceptance, and forward the form to the IRS within 5 days of its acceptance.

### **COVID-19 medical condition travel**

**exception.** For tax years after December 31, 2021, individuals cannot claim the COVID-19 medical condition travel exception to exclude any days of presence in the United States for the purpose of the “substantial presence test.” This was **solely** available for the 2020 tax year. However, days of presence in the United States in 2020 that were excluded for tax year 2020 may impact the application of the “substantial presence test” for tax year 2021. For more information, including guidance for withholding agents, see the [\*Instructions for Form 8233\*](#).

**Form W-4.** This form is used by a person providing dependent personal services to claim withholding allowances, but not a tax treaty exemption. 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.

**Compensation for independent personal services (Income Code 17).** 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 chapter 3 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).

**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 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 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 applies to the last payment of compensation, other than wages, for personal services rendered in the United States that the alien expects to receive from any withholding agent during the tax year.

To obtain the final payment exemption, the 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.

- 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 during the tax year. It must show the amount of income paid and the amount of tax withheld.

The withholding agent must sign the statement and include a declaration that it is made under penalties of perjury.

- 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.
- A statement by the alien that they do 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.
- The amount of tax that has been withheld (or paid) under any other provision of the Internal Revenue Code or regulations for any income effectively connected with the

conduct of a U.S. trade or business during the current tax year.

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

The alien must give a statement, signed and verified by a declaration that it is made under penalties of perjury, that all the information provided is true, and that to their 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'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 alien 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 alien due to the exemption. The amount of pay exempt from withholding cannot be more than \$5,000. The alien must give two copies of the letter to you and must also attach a copy of the letter to their 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 chapter 3 withholding if the payments are made under an accountable plan, as described in Regulations section 1.62-2. This treatment applies only to that part of a payment that represents the payment of travel and lodging expenses and not to that part that represents compensation for independent personal services.

***Tax treaties.*** Under some tax treaties, pay for independent personal services performed in the United States is treated as business income and taxed according to the treaty provisions for business profits.

Under other 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.

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



*Form 8233 should be used to claim a treaty benefit based on a business profits provision or an independent personal services provision.*

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 contractor must then file a U.S. income tax return (Form 1040-NR) to recover any overwithheld tax by providing the IRS with proof that they are entitled to a treaty exemption.

## **Wages Paid to Employees— Graduated Withholding**

Salaries, wages, bonuses, 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.

**Note.** Any wages paid to a nonresident alien for personal services performed as an employee for an employer are generally not subject to the 30% withholding if the wages are subject to graduated withholding.

Also, the 30% withholding does not apply to 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 exempted from the definition of wages.

Chapter 4 withholding does not apply to these payments. See *Pay that is not wages*, later.

**Special rule for certain agricultural workers.** The 30% withholding does not apply to pay for personal services performed by a foreign agricultural worker in the United States on an H-2A visa. However, if the total wages are \$600 or more and the worker does not give you a TIN, you may need to backup withhold. You may withhold at graduated rates if the employee asks you to by giving you a completed Form W-4.

Pay for personal services that is not subject to withholding is not subject to reporting on Form 1042-S. If the compensation is more than \$600, report it on Form W-2 (if the employee gave you a TIN) or on Form 1099-NEC, Nonemployee Compensation (if the employee did not give you a TIN). See the [\*Instructions for Forms 1099-MISC and 1099-NEC\*](#) for more information.

For more information on withholding on foreign agricultural workers, go to IRS.gov and enter “agricultural workers” in the search box.

### **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 time 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. In most cases, 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, 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:

- 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
- 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 Pub. 15-T.

**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. •  
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 [Pub. 15, \(Circular E\), Employer's Tax Guide](#).

- 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.
- 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.

- 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.
- 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.
- 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. territory, 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.

- 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 withholding.

***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.



*A nonresident alien cannot claim exemption from withholding on Form W-4. Use Form 8233 to claim a tax treaty exemption from withholding. See Form 8233, earlier.*

In completing Form W-4, nonresident aliens should use the following instructions instead of the instructions on Form W-4.

1. Check "Single or Married filing separately" on Step 1(c) (regardless of actual marital status).
2. Write "Nonresident Alien" or "NRA" in the space below Step 4(c).

For more information, see [Notice 1392](#).



*Nonresident alien employees are not required to request an additional withholding amount, but they can choose to have an additional amount withheld.*

## **Determining amount to withhold.**

Employers are required to add an amount to the wages of a nonresident alien employee solely for the purpose of calculating income tax withholding. The specific amounts depend on the payroll period. These amounts can be found in *Withholding Adjustment for Nonresident Alien Employees* in the *Introduction* of [Pub. 15-T](#). This adjustment does not apply to students and business apprentices from India.



*Do not include the additional amount on the employee's Form W-2, Wage and Tax Statement.*

**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, Employer's Quarterly Federal Return.

Household employers should see [Pub. 926](#) 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 chapter 3 withholding and the withheld taxes. You must give copies of this form to the employee. If the employee submits Form 8233 to claim exemption from withholding under a tax treaty, the wages are reported on Form 1042-S and not in box 1 of Form W-2. Wages exempt under a tax treaty may still be reported in the state and local wages boxes 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.

**Social security and Medicare tax.** In most cases, the employer must also withhold Federal Insurance Contributions Act (FICA) tax and file Form 941. In certain cases, wages paid to students and railroad and agricultural workers are exempt from FICA tax. 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 FICA. See [Pub. 15-T](#) for the rules on withholding.



In addition to withholding Medicare tax at 1.45%, you must withhold a 0.9% Additional Medicare Tax from wages you pay in excess of \$200,000 in a calendar year. See [Pub.15](#) for more information.

**Federal unemployment tax (FUTA).** The employer must pay FUTA tax and file Form 940. 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 Form 940](#).

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.

**Compensation for dependent personal services (Income Code 18).** 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 chapter 3 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, you do not have to withhold 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 territory 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. territory is not income from sources within the United States.

***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:

- A nonresident alien individual, foreign partnership, or foreign corporation; or

- An office or place of business maintained in a foreign country or in a U.S. territory 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 TIN 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 withholding. These aliens must either:

- 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

- 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 the employee's name, address, and identification number, and certifying that the resident:

- Is not a U.S. citizen or resident;
- Is a resident of Canada or Mexico, whichever applies; and
- 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 withholding.

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

- 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.
- 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:



- Is not a citizen or resident of the United States, and
- 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. See *Tax Treaties*, later, for information about treaty benefits.

**Compensation for teaching (Income Code 19).** This category is given a separate income code number because some tax treaties exempt a teacher from tax for a limited number of years. 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.

***Social security and Medicare tax.*** A nonresident alien temporarily in the United States 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.

***Example.*** A nonresident alien is issued a visa to teach for a university. While in the United States, they take a part-time job working for a chemical company. The wages earned while teaching at the university are exempt from social security and Medicare taxes. The wages earned at the chemical company are subject to social security and Medicare taxes.

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. Teachers, researchers, and

other employees temporarily present in the United States on other nonimmigrant visas or in refugee or asylee immigration statuses 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 (SSA) publishes the complete texts and explanatory pamphlets of the totalization agreements, which are available by calling 410-965-7306 or by going to [SSA.gov/international/totalization\\_agreements.html](http://SSA.gov/international/totalization_agreements.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 entry into the United States and who

is not a citizen of the United States. The U.S. educational institution paying the compensation must report the amount of compensation paid each year that is exempt from tax under a tax treaty on Form 1042-S. See *Tax Treaties*, later, for information about treaty benefits. The employer should also report the compensation in the state and local wages boxes of Form W-2 if the wages are subject to state and local taxes, or in the social security and Medicare wages boxes of Form W-2 if the wages are subject to social security and Medicare taxes. Claimants must give you either Form W-8BEN or Form 8233, as applicable, to obtain these treaty benefits.

**Compensation during studying and training (Income Code 20).** This category refers to pay (as contrasted with remittances, allowances, or other forms of scholarships or fellowship grants—see *Scholarships and Fellowship Grants Subject to Chapter 3 Withholding*, 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.

***Social security and Medicare tax.*** A nonresident alien temporarily in the United States 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 (CPT) and

Optional Practical Training (OPT), on or off campus, by foreign students in "F-1," "J-1," "M-1," or "Q" status as long as the employment is authorized by the U.S. Citizenship and Immigration Services.

**Example.** A nonresident alien is admitted to the United States to study surveying. As part of the course, they apprentice to a surveyor. The nonresident also works part-time at a restaurant to supplement their income. The wages earned as an apprentice are not subject to social security and Medicare taxes. The wages and tips earned at the restaurant are subject to social security and Medicare taxes.

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 [Pub.15.](#)

***Tax treaties.*** Certain tax treaties provide a limited 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 *Tax Treaties*, later, for information about treaty benefits. 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 Form 8233, as applicable, to obtain these treaty benefits.

## **Artists and Athletes (Income Codes 42 and 43)**

Because many tax treaties contain a provision for pay to artists and athletes, a separate category is assigned these payments for chapter 3 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.

Use Income Code 42 to report payments to nonresident alien athletes and entertainers (NRAAEs) who have not signed a central withholding agreement (CWA), discussed later. Use Income Code 43 to report payments to artists and athletes who have signed a CWA.

## **Income Code 42, Earnings as an artist or athlete—no central withholding**

**agreement.** 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 payer of the income and the artist or athlete is not ascertainable, you should withhold at a rate of 30%.

## **Income Code 43, Earnings as an artist or athlete—central withholding agreement.**

NRAAEs who perform or participate in events in the United States can request a CWA for a lower rate of withholding.

A CWA is an agreement entered into by the athlete or entertainer, a designated withholding agent, and the IRS. Under no circumstances will a CWA reduce taxes withheld to less than the anticipated amount of income tax liability.

We've temporarily waived the income requirement for which form to use when applying for a CWA. Form 13930-A is currently unavailable. While the waiver is in effect, individuals with income below \$10,000 can apply for a CWA using Form 13930, Application for Central Withholding. For more information on how to apply for a CWA, see Form 13930.

For more information on the CWA program, go to [IRS.gov/Individuals/International-Taxpayers/CentralWithholding-Agreements](https://www.irs.gov/Individuals/International-Taxpayers/CentralWithholding-Agreements).

**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 if the

artist or athlete derives receipts for the tax year concerned, including expenses reimbursed to them or borne on their behalf, not in excess of \$10,000, or in more recent treaties, \$20,000. See *Tax Treaties*, later, for information about treaty benefits.

Employees and independent contractors may claim an exemption from withholding under a tax treaty by filing Form 8233. 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).** In general, nonresident aliens are subject to chapter 3 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. Chapter 4 withholding does not apply to these proceeds.

No tax is imposed on nonbusiness gambling income a nonresident alien wins 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 chapter 3 withholding is not subject to reporting on Form 1042-S.

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

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

Gambling income of residents of Malta is taxed at 10%.

Claimants must give you a Form W-8BEN (with a U.S. or foreign TIN) to claim treaty benefits on gambling income that is not effectively connected with a U.S. trade or business.

See U.S. or Foreign TINs, later, for when you can accept a Form W-8BEN without a TIN.

The provisions of the Hungary and Russia treaties exempting taxation on gambling winnings in the United States are no longer in operation. As a result gambling winnings are taxable and subject to 30% withholding as of August 16, 2024, for Russia and January 1, 2024, for Hungary.

**Transportation income.** U.S. source gross transportation income (USSGTI), as defined in section 887, is not subject to 30% gross withholding tax, and chapter 4 withholding does not apply to this income. 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.

USSGTI does not include transportation income of a foreign corporation taxable in a U.S. territory. The recipient of USSGTI must pay tax on it annually at the rate of 4% on Section I of Form 1120-F, unless the income is effectively connected with the conduct of a U.S. trade or business and is reportable on Section II of Form 1120-F. Special rules apply to determine if a foreign corporation's USSGTI is effectively connected with a U.S. trade or business.

***Canadian truck and rail income.*** Under Article VIII (Transportation) of the U.S.–Canada treaty, any U.S. source income derived by a Canadian company engaged in the operation of trucks or a railway as a common carrier or contract carrier, and attributable to the transportation of property between Canada and the United States, is exempt from tax in the United States, provided the company is otherwise eligible for treaty benefits.



Payments for the use of trucks (including trailers) or railway rolling stock, or from the use, maintenance, or rental of containers (including trailers and related equipment for the transport of containers) used to transport property between Canada and the United States are also exempt from U.S. tax, provided the company is otherwise eligible for treaty benefits. Canadian companies must file Form 1120-F and Form 8833 to claim an exemption from tax for profits from their operating income. Canadian corporations are subject to chapter 3 withholding on rental payments for the use of such equipment in the United States and may claim an exemption on Form W8-BEN-E.

***Foreign freight charges or rental of equipment used outside the United States.*** Payments for transportation of property, whether by ship, air, or truck, solely between points outside the United States or rental of tangible property in connection with

transportation solely for use between points outside the United States is not U.S. source income and not subject to chapter 3 withholding.

**Payments to certain expatriates.** Certain payments to nonresident aliens who are covered expatriates under section 877A(g)(1) are subject to withholding at 30%. In general, nonresident aliens are covered expatriates if they were U.S. citizens or long-term residents who renounced their citizenship or ceased to be long-term residents for U.S. tax purposes after June 16, 2008, and satisfied other tests for average annual net income tax or net worth. For more information on the definition of covered expatriates, see the Instructions for Form 8854.

A covered expatriate should have provided you with Form W-8CE notifying you of their covered expatriate status and the fact that they may be subject to special tax rules with respect to certain items.

For more information, see the Instructions for Form W-8CE.

***Eligible deferred compensation items (Income Code 38).*** In general, you must withhold tax at a 30% rate on any payment of an eligible deferred compensation item paid to a covered expatriate. The amount subject to tax is the amount of the payment that would have been included in the nonresident alien's U.S. gross income if they had continued to be taxed as a U.S. citizen or resident.

***Distributions from a nongrantor trust (Income Code 39).*** In general, you must withhold tax at a 30% rate on any direct or indirect distribution from a nongrantor trust. The amount subject to tax is the part of the distribution that would have been included in the nonresident alien's U.S. gross income if they had continued to be taxed as a U.S. citizen or resident.

If the nonresident alien was not a beneficiary of the nongrantor trust on the day before they gave up their U.S. citizenship or long-term residence, you do not have to withhold tax. See section 7 of Notice 2009-85, 2009-45 I.R.B. 598, available at [IRS.gov/irb/ 2009-45 IRB#NOT-2009-85](https://www.irs.gov/irb/2009-45_IRB#NOT-2009-85).

**Guarantee of indebtedness (Income Code 41).** An amount paid to a foreign payee for the provision of a guarantee of indebtedness issued after September 27, 2010, may be subject to chapter 3 withholding. The amounts must be paid by one of the following.

1. A noncorporate U.S. resident.
2. A domestic corporation.
3. Any foreign person if the amount paid is connected with income that is effectively connected, or treated as effectively connected, with a U.S. trade or business.

An indirect payment includes a payment by a foreign bank to a foreign corporation for the foreign corporation's guarantee of indebtedness owed to the foreign bank by the foreign corporation's domestic subsidiary, where the cost of the guarantee fee is passed on to the domestic subsidiary through additional interest charged on the indebtedness.

The amounts described above for a guarantee of indebtedness are withholdable payments, such that chapter 4 withholding may apply absent an exclusion from withholding under chapter 4.

**Other income (Income Code 23).** 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 *Amounts Subject to Chapter 3 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 chapter 3 withholding unless the income is specifically exempt under the Internal Revenue Code or a tax treaty. You must generally withhold at the 30% rate on this income. As a payment of U.S. source FDAP is generally a withholdable payment, you should review Regulations section 1.1473-1(a) (definition of withholdable payment) to determine if the payment is excluded from the definition of a withholdable payment.

## **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 chapter 3 withholding. The term “foreign government” means an integral part of a foreign government or an entity that is controlled by a foreign government. See Temporary Regulations section 1.892-2T. “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 paid to a foreign government is subject to reporting on Form 1042-S.

The following types of income received by a foreign government are subject to chapter 3 withholding.

1. Income (including investment income) received from the conduct of a commercial activity or from sources other than those stated above.

2. 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.

If the foreign government is a partner in a partnership carrying on a trade or business in the United States, the ECTI allocable to the foreign government is considered derived from a controlled commercial activity and is subject to withholding under section 1446.

3. Gain derived from the disposition of a USRPI. Withholding on these gains is discussed later under U.S. Real Property Interest.



For chapter 4 purposes, payments to a foreign government (other than earnings inuring to the benefit of a private person) are not payments to which chapter 4 withholding applies unless the payment is made to a controlled entity of the foreign government that is engaged in a commercial financial activity. See Regulations section 1.1471-6(h) for a description of a commercial financial activity. See Regulations section 1.1471-3(d)(9) for the documentation required to establish an entity's chapter 4 status as a foreign government. Similar rules apply for chapter 4 purposes to a payment to a foreign central bank of issue.

A government of a U.S. territory is exempt from U.S. tax on all U.S. source income. This income is not subject to chapter 3 withholding, and chapter 4 withholding does not apply to income paid to a government of a U.S. territory.

See Regulations section 1.1471-3(d)(9) for the documentation required to establish an entity's chapter 4 status as a government of a U.S. territory. These governments should use Form W-8EXP to claim this exemption for both chapters 3 and 4 purposes (as required).

**International organizations.** International organizations are exempt from U.S. tax on all U.S. source income. Income paid to an international organization (within the meaning of section 7701(a)(18)) is not subject to chapter 3 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.

Payments made to an international organization, as defined for chapter 4 purposes, are not payments to which chapter 4 withholding applies.

An “international organization” for purposes of chapter 4 means any entity described in section 7701(a)(18). The term also includes any intergovernmental or supranational organization that is comprised primarily of foreign governments, that is recognized as an intergovernmental or supranational organization under certain foreign laws, or that has in effect a headquarters agreement with a foreign government, and whose income does not inure to the benefit of private persons. See Regulations section 1.1471-3(d)(9) for the documentation required to establish an entity’s chapter 4 status as an international organization.

**Foreign tax-exempt organizations.** A foreign organization that is a tax-exempt organization under section 501(c) is not subject to a withholding tax on amounts that are not income includible under section 512 as unrelated business taxable income.

In addition, withholdable payments made to a tax-exempt organization under section 501(c) are not payments to which chapter 4 withholding applies.

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 under chapter 3 or 4 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, or the income is unrelated business taxable income, the organization must provide a Form W-8BEN-E or W-8ECI. Income paid to foreign tax-exempt organizations is subject to reporting on Form 1042-S.

If the organization is a partner in a partnership carrying on a trade or business in the United States, the ECI allocable to the organization is subject to withholding under section 1446.

**Foreign financial institutions.** For payments made to a reporting Model 1 FFI or reporting Model 2 FFI, see the applicable IGA for definitions of entities described under this heading. You may generally rely on documentation provided by such an FFI to treat an entity as described under this heading (included under the class of a nonreporting IGA FFI). See the [\*Instructions for Form W-8BEN-E\*](#).

## **U.S. or Foreign TINs**

As the withholding agent, in many cases you must request that the payee provide you with its U.S. TIN.

You must in such a case 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, go to [SSA.gov/ssnumber/](https://ssa.gov/ssnumber/) for more information. The SSA will tell the individual if they are 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, they 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.



*Under certain circumstances, a financial institution may be required to get a GIIN for purposes of chapter 4.*

See Global Intermediary Identification Numbers, later. See the [Instructions for Form 8957](#) for information on whether a GIIN is needed.

A U.S. or foreign TIN (as applicable) must generally be on a withholding certificate if the beneficial owner is claiming any of the following.

- Tax treaty benefits (see Exceptions to TIN requirement, later).
- Income is effectively connected with a U.S. trade or business.
- Exemption for certain annuities (see Pensions, Annuities, and Alimony, earlier).
- Exemption based on exempt organization or private foundation status.

A foreign TIN may also be required for certain account holders (see *Foreign TIN requirement for account holders*, later). In addition, a U.S. TIN must be on a withholding certificate from a person claiming to be any of the following.

- QI.
- QSL.
- Withholding foreign partnership.
- Withholding foreign trust.
- An organization claiming an exemption or reduced rate of withholding based solely on a claim of tax-exempt status under section 501(c) or private foundation status (unless only the 4% tax under section 4948(a) applies to the private foundation).
- U.S. branch of a foreign person treated as a U.S. person (see Regulations section 1.1441-1(b)(2)(iv)), and a U.S. branch of



an FFI acting as an intermediary that is not treated as a U.S. person.

- U.S. person.

**Exceptions to U.S. TIN requirement.** A foreign person does not have to provide a U.S. TIN to claim a reduced rate of withholding under a tax treaty if the requirements for the following exceptions are met. Instead of requesting a U.S. TIN from a foreign payee, you may request a foreign TIN issued by the payee's country of residence except when the payee is a nonresident alien individual claiming an exemption from withholding on Form 8233.

- Income from marketable securities (discussed earlier under *Beneficial Owners*).
- Unexpected payment to an individual in the case of a payment made by a U.S.

financial institution to an account maintained at a U.S. office (discussed next).

***Unexpected payment.*** A Form W-8BEN or a Form 8233 provided by a nonresident alien to get treaty benefits does not need a U.S. TIN if you, the withholding agent, meet all the following requirements.

- You are an acceptance agent.
- You can request an ITIN for a payee on an expedited basis.
- You are required to make an unexpected payment to the nonresident alien.
- You cannot get the ITIN because the IRS is not issuing ITINs at the time you make the payment or at any earlier time after you know you have to make the payment.
- You cannot reasonably delay making the unexpected payment.

- You submit a completed Form W-7 for the payee, with a certification that you have reviewed the required documentation and have no actual knowledge or reason to know that the documentation is not complete or accurate, to the IRS during the first business day after you made the payment.

An acceptance agent is a person who, under a written agreement with the IRS, is authorized to help alien individuals and other foreign persons get ITINs or EINs. For information on the application procedures for becoming an acceptance agent, go to

[IRS.gov/Individuals/New-ITINAcceptance-Agent-Program-Changes](https://www.irs.gov/Individuals/New-ITINAcceptance-Agent-Program-Changes).

**Note.** All acceptance agents will be required to adhere to new quality standards established and monitored by the IRS.

A payment is unexpected if you or the beneficial owner could not have reasonably anticipated the payment during a time when

an ITIN could be obtained. This could be due to the nature of the payment or the circumstances in which the payment is made. A payment is not considered unexpected solely because the amount of the payment is not fixed.

**Example.** Mary, a citizen and resident of Ireland, visits the United States and wins \$5,000 playing a slot machine in a casino. Under the treaty with Ireland, the winnings are not subject to U.S. tax. Mary claims the treaty benefits by providing a Form W-8BEN to the casino upon winning at the slot machine. However, she does not have an ITIN or foreign TIN. The casino is an acceptance agent that can request an ITIN on an expedited basis.

Situation 1. Assume that Mary won the money on Sunday. Since the IRS does not issue ITINs on Sunday, the casino can pay \$5,000 to Mary without withholding U.S. tax.

The casino must, on the following Monday, fax a completed Form W-7 for Mary, including the required certification, to the IRS for an expedited ITIN.

Situation 2. Assume that Mary won the money on Monday. To pay the winnings without withholding U.S. tax, the casino must apply for and get an ITIN for Mary because an expedited ITIN is available from the IRS at the time of the payment.

**Foreign TIN requirement for account holders.** If you are a U.S. office or branch of a depository institution, custodial institution, investment entity, or specified insurance company (each as defined in Regulations section 1.1471-5(e)) documenting an account holder (as defined in Regulations section 1.1471-5(a)(3)) of an account that is a financial account (as defined in Regulations section 1.1471-5(b)), you must obtain the account holder's TIN for its jurisdiction of tax residence (foreign TIN) on a Form W-8 that is

a beneficial owner withholding certificate in order for the form to not be invalid for a payment of U.S. source income reportable on Form 1042-S, unless:

- The account holder is a resident of a jurisdiction that is not listed in section 3 of Revenue Procedure 2021-32, 2021-42 I.R.B. 465, available at [IRS.gov/irb/2021-42\\_IRB#REV-PROC-2021-32](https://www.irs.gov/irb/2021-42_IRB#REV-PROC-2021-32), which may be further updated in future published guidance;
- The account holder is a resident in a jurisdiction that has been identified by the IRS on a list of jurisdictions that do not issue foreign TINs. See [IRS.gov/Businesses/Corporations/List-of-Jurisdictions-That-Do-Not-Issue-Foreign-TINs](https://www.irs.gov/Businesses/Corporations/List-of-Jurisdictions-That-Do-Not-Issue-Foreign-TINs);
- The account holder is a government, international organization, foreign central bank of issue, or resident of a U.S. territory; or

- The account holder obtains a reasonable explanation for why the account holder has not been issued a foreign TIN, including by checking the applicable box on the applicable Form W-8 indicating that the account holder is not legally required to obtain an FTIN from the account holder's jurisdiction of residence (including if the jurisdiction does not issue TINs).

A reasonable explanation that an account holder does not have a foreign TIN must address why the account holder was not issued a foreign TIN to the extent provided in the instructions for the applicable Form W-8. If an account holder provides an explanation other than the one described in the instructions for the applicable Form W-8, you must determine whether the explanation is reasonable.

## **Global Intermediary Identification Numbers (GIINs)**

If you make a withholdable payment to an entity claiming certain chapter 4 statuses, you may be required to obtain and verify the entity's GIIN against the published IRS FFI list within 90 days to rely on such a claim. See *GIIN Verification* under *Standards of Knowledge for Purposes of Chapter 4*, earlier, for which chapter 4 statuses require a GIIN.

## **Depositing Withheld Taxes**

This section discusses the rules for depositing income tax withheld on FDAP income, including tax withheld pursuant to chapter 4. The deposit rules discussed here do not apply to the following items.

- Taxes 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 allocable share of ECTI of a partnership, other than a publicly traded partnership. See [Partnership Withholding on ECTI](#), later.
- Tax withheld on dispositions of USRPI by foreign persons. See [U.S. Real Property Interest](#), later.
- Taxes on household employees. See [Schedule H](#) (Form 1040) 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 1 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, but you need not identify whether the deposit is of tax withheld under chapter 3 or 4.

The amount of tax you are required to withhold determines the frequency of your deposits. For more information, see *Deposit Requirements* in the Instructions for Form 1042.