

Publication 515

Withholding of Tax on Nonresident Aliens and Foreign Entities

For use in preparing

2025 Returns

Volume 1 of 7



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Contents	Regular Page	Large Print Page
Future Developments	1	6
What's New	1	7
Reminders	2	10
Introduction	2	13
Withholding of Tax	3	21
Withholding Agent	4	23
Withholding and Reporting Obligations (Other Than Forms 1042 and 1042-S Reporting for Chapter 3 or 4 Purposes)	5	34
Persons Subject to Chapter 3 or Chapter 4 Withholding	6	38
Identifying the Payee	6	41
Foreign Persons	12	81

Documentation	13	95
Documentation for Chapter 3	13	95
Documentation for Chapter 4	14	96
Standards of Knowledge for Purposes of Chapter 3	27	193
Reason To Know	27	194
Documentary Evidence	29	210
Standards of Knowledge for Purposes of Chapter 4	31	224
Notification by the IRS	31	224
Reason To Know	32	230
Withholding Certificates	33	232
Documentary Evidence	33	234
Income Subject to Withholding	35	245

Amounts Subject to Chapter 3 Withholding	35	246
Amounts Subject to Chapter 4 Withholding	35	248
Fixed or Determinable Annual or Periodical (FDAP) Income	37	265
Withholding on Specific Income	38	271
Effectively Connected Income	38	272
Dividends	44	314
Pay for Personal Services Performed	50	359
Wages Paid to Employees—Graduated Withholding	52	371
Other Income	57	404
Foreign Governments and Certain Other Foreign Organizations	58	414

U.S. or Foreign TINs	59	421
Depositing Withheld Taxes	61	432
When Deposits Are Required	61	433
Returns Required	62	443
Section 1446(f) Withholding	68	484
U.S. Real Property Interest	73	516
Reporting and Paying the Tax	76	541
Definitions	79	559
How To Get Tax Help	80	568
Index	85	594

Future Developments

For the latest information about developments related to Pub. 515, such as legislation enacted after it was published, go to *IRS.gov/Pub515*.

What's New

Partial Suspension of Income Tax Convention with USSR as it Relates to Belarus.

On December 17, 2024, the United States provided formal notice to the Republic of Belarus of the partial suspension of its tax treaty with the USSR as it relates to Belarus. The United States has suspended the operation of paragraph 1, subparagraph (g), of Article 3 of the Convention. The rest of the treaty articles will remain in place. The suspension went into effect December 17, 2024, and will continue until December 31, 2026, or earlier if mutually determined by the two governments.

Partial Suspension of Income Tax Convention with Russia. On June 17, 2024, the United States provided formal notice to the Russian Federation of the partial suspension of its treaty with Russia.

The United States has suspended the operation of paragraph 4 of Article 1, Articles 5 through 21, and Article 23 of the Convention, as well as the Protocol. The suspension went into effect both for taxes withheld at source and in respect of other taxes on August 16, 2024, and will continue until otherwise decided by the two governments. Beginning on or after August 16, 2024, withholding agents are required to withhold at the statutory 30% withholding tax rate on payments of U.S. source income made to recipients who may have previously qualified for treaty benefits under the [U.S.–Russia income tax treaty](#).

E-filing returns. The Taxpayer First Act of 2019 authorized the Department of the Treasury and the IRS to issue regulations that reduce the 250-return e-file threshold. [T.D. 9972](#), published February 23, 2023, lowered the e-file threshold to 10 (calculated by aggregating all information returns),

effective for information returns required to be filed on or after January 1, 2024. Go to [IRS.gov/InfoReturn](https://www.irs.gov/InfoReturn) for e-file options.

These final regulations also include requirements for withholding agents to e-file Form 1042, Annual Withholding Tax Returns for U.S. Source Income of Foreign Persons, effective for Form 1042 returns required to be filed on or after January 1, 2024. For more information, see the Instructions for Form 1042.

Also, see Pub. 1187, Specifications for Electronic Filing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding and Filing Information Returns Electronically (FIRE).

Termination of 1979 Tax Convention with Hungary. On July 15, 2022, the U.S. Treasury Department (Treasury) announced that Hungary was notified on July 8, 2022, that the United States would terminate its tax treaty with Hungary.

In accordance with the treaty's provisions on termination, termination of the treaty is effective on January 8, 2023. With respect to taxes withheld at source, the treaty ceases to have effect on January 1, 2024. Therefore, as of January 1, 2024, withholding agents are required to withhold at the statutory 30% withholding rate on payments of U.S. source income made to recipients who may have previously qualified for treaty benefits under the U.S.-Hungary income tax treaty. In respect of other taxes, the treaty ceases to have effect with respect to taxable periods beginning on or after January 1, 2024.

Reminders

Withholding and reporting under sections 1446(a) and (f) starting in 2023. T.D. 9926 ([85 FR 76910](#)), published on November 30, 2020 (as corrected at [86 FR 13191](#)), contains final regulations (section 1446(f) regulations) relating to the withholding and reporting required under

section 1446(f) on transfers of interests in certain partnership interests, which include withholding requirements that apply to brokers effecting transfers of interests in publicly traded partnerships (PTPs). While section 1446(f) withholding generally applies to transfers occurring on or after January 1, 2018, certain provisions of the section 1446(f) regulations apply to transfers on or after January 1, 2023, including:

- The requirements for withholding on transfers of interests in PTPs under section 1446(f)(1);
- Certain changes to the withholding requirements under Regulations section 1.1446-4 for distributions made by PTPs (PTP distributions), which include an allowance for Qualified Intermediaries (QIs) and U.S. branches to act as withholding agents for the distributions; and

- Partnership withholding under section 1446(f)(4) on distributions to transferees of non-PTP interests that failed to properly withhold under section 1446(f)(1).

For further information regarding the effective date of these provisions, see Notice 2021-51, 2021-36 I.R.B. 361, available at [IRS.gov/irb/2021-36_IRB#NOT-2021-51](https://www.irs.gov/irb/2021-36_IRB#NOT-2021-51). For additional guidance on certain issues related to the section 1446(f) regulations, see Notice 2023-8, 2023-2 I.R.B. 344, available at [IRS.gov/irb/2023-2_IRB#NOT-2021-51](https://www.irs.gov/irb/2023-2_IRB#NOT-2021-51).

Photographs of missing children. The IRS is a proud partner with the [National Center for Missing & Exploited Children® \(NCMEC\)](https://www.ncmec.org/). Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

This publication is for withholding agents who pay income to foreign persons, including nonresident aliens, foreign corporations, foreign partnerships, foreign trusts, foreign estates, foreign governments, and international organizations. Specifically, it describes the persons responsible for withholding (withholding agents), the types of income subject to withholding, and the information return and tax return filing obligations of withholding agents. In addition to discussing the rules that apply generally to payments of U.S. source income to foreign persons, it also contains sections on the withholding that applies to the disposition of U.S. real property interests (USRPIs) and the withholding by partnerships on income effectively connected with the active conduct of a U.S. trade or business.

Comments and suggestions. We welcome your comments about this publication and suggestions for future editions.

You can send us comments through [IRS.gov/FormComments](https://www.irs.gov/FormComments). Or, you can write to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments and suggestions as we revise our tax forms, instructions, and publications.

Don't send tax questions, tax returns, or payments to the above address.

Getting answers to your tax questions. If you have a tax question not answered by this publication or the *How To Get Tax Help* section at the end of this publication,

go to the IRS Interactive Tax Assistant page at [IRS.gov/ Help/ITA](https://www.irs.gov/Help/ITA) where you can find topics by using the search feature or viewing the categories listed.

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Useful Items

You may want to see:

Publication

- ☐ **15** (Circular E), Employer's Tax Guide
- ☐ **15-A** Employer's Supplemental Tax Guide
- ☐ **15-B** Employer's Tax Guide to Fringe Benefits
- ☐ **15-T** Federal Income Tax Withholding Methods
- ☐ **505** 505 Tax Withholding and Estimated Tax
- ☐ **519** U.S. Tax Guide for Aliens
- ☐ **901** U.S. Tax Treaties
- ☐ **1179** General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns

- ❑ **1187** Specifications for Electronic Filing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding
- ❑ **5124** FATCA XML User Guide
- Form (and Instructions)**
- ❑ **SS-4** Application for Employer Identification Number
- ❑ **W-2** Wage and Tax Statement
- ❑ **W-4** Employee's Withholding Certificate
- ❑ **W-4P** Withholding Certificate for Periodic Pension or Annuity Payments
- ❑ **W-7** Application for IRS Individual Taxpayer Identification Number
- ❑ **W-8BEN** Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)

- ❑ **W-8BEN-E** Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)
- ❑ **W-8ECI** Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States
- ❑ **W-8EXP** Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting
- ❑ **W-8IMY** Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting
- ❑ **W-8 Inst.** Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY
- ❑ **W-9** Request for Taxpayer Identification Number and Certification

- ☐ **W-9 Inst.** Instructions for the Requester of Form W-9
- ☐ **941** Employer's QUARTERLY Federal Tax Return
- ☐ **945** Annual Return of Withheld Federal Income Tax
- ☐ **1042** Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
- ☐ **1042-S** Foreign Person's U.S. Source Income Subject to Withholding
- ☐ **1042-T** Annual Summary and Transmittal of Forms 1042-S
- ☐ **13930** Instructions on how to apply for a Central Withholding Agreement
- ☐ **13930-A** Simplified Central Withholding Agreement Application
- ☐ **8233** Exemption From Withholding on Compensation for Independent (and

Certain Dependent) Personal Services
of a Nonresident Alien Individual

- ☐ **8288** U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons
- ☐ **8288-A** Statement of Withholding on Certain Dispositions by Foreign Persons
- ☐ **8288-B** Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests
- ☐ **8288-C** Statement of Withholding Under Section 1446(f)(4) on Disposition by Foreign Persons of Partnership Interests
- ☐ **8966** FATCA Report

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

Withholding of Tax

In most cases, a foreign person is subject to U.S. tax on its U.S. source income. Most types of U.S. source income received by a foreign person are subject to U.S. tax of 30%. A reduced rate, including exemption, may apply if there is a tax treaty between the foreign person's country of residence and the United States. The tax is generally withheld (chapter 3 withholding) from the payment made to the foreign person.

The term “chapter 3 withholding” is used in this publication descriptively to refer to withholding required under sections 1441, 1442, and 1443. In most cases, chapter 3 withholding describes the withholding regime that requires withholding on a payment of U.S. source income.

Payments to foreign persons, including nonresident alien individuals, foreign entities, and governments, may be subject to chapter 3 withholding.

Withholding may also be required on a payment to the extent required under chapter 4. “Chapter 4” refers to chapter 4 of Subtitle A (sections 1471 through 1474). See Chapter 4 Withholding Requirements, later.



Chapter 3 withholding, when referenced in (and not provided otherwise) in this publication, does not include withholding under section 1445 (see U.S. Real Property Interest, later) or under section 1446 (see Partnership Withholding on Effectively Connected Taxable Income (ECTI) and Section 1446(f) Withholding, later).

A withholding agent (defined next) is the person responsible for withholding on payments made to a foreign person. However, a withholding agent that can reliably associate the payment with valid documentation (discussed later) from a U.S. person is not required to withhold.

In addition, a withholding agent may apply a reduced rate of withholding (including an exemption from withholding) if it can reliably associate the payment with documentation from a beneficial owner that is a foreign person entitled to a reduced rate of withholding.

If an amount subject to chapter 3 withholding is also a withholdable payment and chapter 4 withholding is applied to the payment, no withholding is required under chapter 3. See *Chapter 4 Withholding Requirements*, later.

Withholding Agent

Chapter 3 Withholding Requirements

You are a withholding agent if you are a U.S. or foreign person, in whatever capacity acting, that has control, receipt, custody, disposal, or payment of an amount subject to chapter 3 withholding. A withholding agent may be an individual, corporation, partnership, trust, association, nominee

(under section 1446), or any other entity, including any foreign intermediary, foreign partnership, or U.S. branch of certain foreign banks and insurance companies. You may be a withholding agent even if there is no requirement to withhold from a payment or even if another person has withheld the required amount from the payment.

Although several persons may be withholding agents for a single payment, the full tax is required to be withheld only once. In most cases, the U.S. person who pays an amount subject to chapter 3 withholding is the person responsible for withholding. However, other persons may be required to withhold. For example, a payment made by a flow-through entity or nonqualified intermediary (NQI) that knows, or has reason to know, that the full amount of chapter 3 withholding was not done by the person from which it receives a payment is required to do the appropriate withholding since it also falls within the

definition of a withholding agent. In addition, withholding must be done by any qualified intermediary (QI), withholding foreign partnership, or withholding foreign trust in accordance with the terms of its withholding agreement, discussed later.

Liability for tax. As a withholding agent, you are personally liable for any tax required to be withheld. This liability is independent of the tax liability of the foreign person to whom the payment is made. If you fail to withhold and the foreign payee fails to satisfy its U.S. tax liability, then both you and the foreign person are liable for tax, as well as interest and any applicable penalties.

The applicable tax will be collected only once. If the foreign person satisfies its U.S. tax liability, you are not liable for the tax but remain liable for any interest and penalties for failure to withhold.

Determination of amount to withhold.

You must withhold on the gross amount subject to chapter 3 withholding. You cannot reduce the gross amount by any deductions.

If the determination of the source of the income or the amount subject to tax depends on facts that are not known at the time of payment, you must withhold an amount sufficient to ensure that at least 30% of the amount subsequently determined to be subject to withholding is withheld. In no case, however, should you withhold more than 30% of the total amount paid. You may elect to hold 30% of the payment in escrow until the earlier of the date that the amount of income from U.S. sources or the taxable amount can be determined or 1 year from the date the amount is placed in escrow, at which time the withholding becomes due, or, to the extent that withholding is not required, the escrowed amount must be paid to the payee.

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

A U.S. partnership should withhold when any distributions that include amounts subject to withholding are made. However, if a foreign partner's distributive share of income subject to withholding is not actually distributed, the U.S. partnership must withhold on the foreign partner's distributive share of the income on the earlier of the date that a Schedule K-1

(Form 1065) is furnished or mailed to the partner or the due date for furnishing that schedule.

Note. If the foreign distributable share of income includes effectively connected income (ECI), see Partnership Withholding on ECTI, later.

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

Note. Proposed regulations issued on December 18, 2018 (83 FR 64757) would allow partnerships or trusts that are permitted to withhold in a subsequent year,

with respect to a foreign partner's or beneficiary's share of income for the prior year, to designate the deposit of the withholding as attributable to the preceding year. In such a case, the partnership or trust will be required to report the associated amount and tax withheld on Forms 1042 and 1042-S for the preceding year. See the Instructions for Form 1042 and the Instructions for Form 1042-S for additional information.

Chapter 4 Withholding Requirements

You are a withholding agent for purposes of chapter 4 if you are a U.S. or foreign person, in whatever capacity you are acting, that has control, receipt, custody, disposal, or payment of a withholdable payment. Similar rules for determining who is a withholding agent as those described in Chapter 3 Withholding Requirements, earlier, also apply for chapter 4. For purposes of chapter 4,

a withholding agent includes a participating foreign financial institution (FFI) (including a reporting Model 2 FFI) or registered deemed-compliant FFI to the extent such FFI makes a withholdable payment.

Under chapter 4, a withholding agent that makes a withholdable payment to a payee that is an FFI must withhold 30% on the payment unless the withholding agent is able to treat the FFI as a participating FFI, deemed-compliant FFI, or exempt beneficial owner. A withholding agent must also withhold 30% on a withholdable payment made to a payee that is a foreign entity other than an FFI (that is, a nonfinancial foreign entity, or NFFE) that fails to identify its substantial U.S. owners (or certify that it does not have any substantial U.S. owners) unless the payment is excepted from withholding under the regulations to section 1472.

A participating FFI is a withholding agent under chapter 4 and is required to withhold on a withholdable payment to the extent required under the FFI agreement, including on a payment made to an account holder that the FFI is required to treat as a recalcitrant account holder. A reporting Model 1 FFI is required to withhold under chapter 4 to the extent required in the applicable Intergovernmental Agreement (IGA). A registered deemed-compliant FFI (other than a reporting Model 1 FFI) is required to withhold under chapter 4 to the extent required under the conditions applicable to its registered deemed-compliant FFI status. See Regulations section 1.1471-5(f)(1) for a description of the types of registered deemed-compliant FFIs that may have withholding requirements.

Generally, a withholdable payment is a payment of U.S. source fixed or determinable annual or periodical (FDAP) income.

Specific exceptions to withholdable payments apply instead of the exemptions from withholding or taxation provided under chapter 3. See *Income Subject to Withholding*, later, for more information on payments of U.S. source FDAP income that are excepted from the definition of withholdable payment.

If a withholding agent makes a payment subject to both chapter 4 withholding and chapter 3 withholding, the withholding agent must apply the withholding provisions of chapter 4, and need not withhold on the payment under chapter 3 to the extent that it has withheld under chapter 4.

Similar rules for withholding agent liability for tax, determination of amount to withhold, and when to withhold as those described in *Chapter 3 Withholding Requirements*, earlier, also apply for chapter 4.

Forms 1042 and 1042-S Reporting Obligations

You are required to report payments subject to chapter 3 withholding on Form 1042-S and to file a tax return on Form 1042. (See Returns Required, later.) You are also required to report withholdable payments to which chapter 4

withholding was (or should have been) applied on Form 1042-S and to file a tax return on Form 1042 to report the payments. An exception from reporting may apply for chapter 3 purposes to individuals who are not required to withhold from a payment and who do not make the payment in the course of their trade or business. A similar exception from reporting for chapter 4 purposes may apply to an individual making a withholdable payment outside the course of the individual's trade or business (including as an agent with respect to making or receiving such payment).

Withholding and Reporting Obligations (Other Than Forms 1042 and 1042-S Reporting for Chapter 3 or 4 Purposes)

Form 1099 reporting and backup

withholding. You may also be responsible as a payer for reporting payments to a U.S. person, generally on Form 1099. You must withhold 24% (backup withholding rate) from certain reportable payments made to a U.S. person that is subject to Form 1099 reporting if any of the following apply.

- The U.S. person has not provided its taxpayer identification number (TIN) in the manner required.
- The IRS notifies you that the TIN furnished by the payee is incorrect.
- There has been a notified payee underreporting.

- There has been a payee certification failure.

In most cases, a TIN must be provided by a U.S. nonexempt recipient (a U.S. person subject to Form 1099 reporting) on Form W-9.

A payer files a tax return on Form 945 to report backup withholding.

You may be required to file Form 1099 and, if appropriate, backup withhold, even if you do not make the payments directly to that U.S. person. For example, you are required to report income paid to a foreign intermediary or flow-through entity that collects for a U.S. person subject to Form 1099 reporting. However, you may not be required to report on Form 1099 if you make a payment to a participating FFI or registered deemed-compliant FFI that provides a withholding statement allocating the payment to a chapter 4 withholding rate pool of U.S. payees.

See Identifying the Payee, later, for more information. Also see [Section S. Special Rules for Reporting Payments Made Through Foreign Intermediaries and Foreign FlowThrough Entities on Form 1099](#) in the General Instructions for Certain Information Returns.



Foreign persons who provide a valid Form W-8 (or applicable documentary evidence when permitted in lieu of a Form W-8) are exempt from backup withholding and Form 1099 reporting.

Form 8966 reporting. For chapter 4 purposes, you may be required to report on Form 8966, FATCA Report, if you make a withholdable payment to an entity you agree to treat as an owner-documented FFI or to a passive NFFE. See Returns Required, later.

Wages paid to employees. If you are the employer of a nonresident alien, you must generally withhold taxes at graduated rates.

See *Pay for Personal Services Performed*, later.

Effectively connected income by partnerships. A withholding agent that is a partnership (whether U.S. or foreign) is also responsible for withholding on its income effectively connected with a U.S. trade or business that is allocable to foreign partners. In the case of a publicly traded partnership, however, either the partnership or a nominee may be responsible for this withholding, as applied to distributions by the partnership (PTP distributions). See *Partnership Withholding on ECTI*, later, for more information.

Transfers of interests in partnerships engaged in the conduct of a U.S. trade or business. A withholding agent is also responsible for withholding on the amount realized on the transfer by a foreign partner of an interest in a partnership (domestic or foreign) engaged in the conduct of a U.S.

trade or business. See Section 1446(f) Withholding, later, for more information, including withholding requirements applicable to brokers effecting transfers of PTP interests.

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

Persons Subject to Chapter 3 or Chapter 4 Withholding

Chapter 3 withholding applies only to payments made to a payee that is a foreign person. It does not apply to payments made to U.S. persons.

Usually, you determine the payee's status as a U.S. or foreign person or, if you are making a withholdable payment to an entity

(or are an FFI making a payment to an account holder), the payee's chapter 4 status, based on the documentation that person provides. See Documentation, discussed later. However, if you have received no documentation or you cannot reliably associate all or a part of a payment with documentation upon which you can rely, then you must apply certain presumption rules, discussed later.

Chapter 4 withholding applies to withholdable payments made to an entity payee that is an FFI unless the withholding agent is able to treat the FFI as a participating FFI, deemed-compliant FFI, or exempt beneficial owner. Chapter 4 withholding also applies to withholdable payments made to a passive NFFE that fails to identify its substantial U.S. owners (or certify that it does not have any substantial U.S. owners).

You must establish the payee's chapter 4 status to determine if withholding applies by applying the documentation requirements of chapter 4, generally by obtaining a Form W-8 (or, under an applicable IGA, a similar agreed form) associated with the payment, or other documentation for payments made outside of the United States on offshore obligations. See Regulations section 1.1471-3(d) for details on these documentation requirements. Withholding under chapter 4 also applies to account holders of a participating FFI or registered deemed-compliant FFI that the FFI is required to treat as recalcitrant account holders.

This section applies to both chapters 3 and 4 except where otherwise indicated and except where the text clearly applies to one or the other (for example, reduced rates and exemptions under income tax treaties).

Identifying the Payee

In most cases, the payee is the person to whom you make the payment, regardless of whether that person is the beneficial owner of the income. However, there are situations in which the payee is a person other than the one to whom you actually make a payment.

U.S. agent of foreign person. For purposes of chapter 3, if you make a payment to a U.S. person and you have actual knowledge that the U.S. person is receiving the payment as an agent of a foreign person, you must treat the payment as made to the foreign person. However, if the U.S. person is a financial institution, you may treat the institution as the payee provided you have no reason to believe that the institution will not comply with its own obligation to withhold under chapter 3.

For chapter 4 purposes, if you make a withholdable payment to a U.S. person and you have actual knowledge that the U.S. person is receiving the payment as an intermediary or agent of a foreign person, you must treat the foreign person as the payee. However, if you make a withholdable payment to a U.S. financial institution or a U.S. insurance broker (to the extent the withholdable payment is a payment of an insurance premium) that is receiving the payment as an intermediary or agent, you may treat the financial institution or insurance broker as the payee if you do not have reason to know that the financial institution or insurance broker will not comply with its obligations to withhold under chapter 4. See Definitions, later, for the definition of financial institution.

If the payment is not subject to chapter 3 withholding and is not a withholdable payment,

you must treat the payment as made to a U.S. person and not as a payment to a foreign person. You may be required to report the payment on Form 1099 and, if applicable, backup withhold.

Disregarded entities. In general, a business entity that is not a corporation and that has a single owner may be disregarded as an entity separate from its owner (a disregarded entity) for federal tax purposes. The payee of a payment made to a disregarded entity is the owner of the entity.

If the owner of the entity is a foreign person, you must apply chapter 3 withholding unless you can treat the foreign owner as a beneficial owner entitled to a reduced rate of withholding.

If the owner is a U.S. person, you do not apply chapter 3 withholding. However, you may be required to report the payment on Form 1099 and, if applicable, backup withhold.

You may assume that a foreign entity is not a disregarded entity unless you can reliably associate the payment with documentation provided by the owner or you have actual knowledge or reason to know that the foreign entity is a disregarded entity.

Special chapter 4 rules. If you make a withholdable payment to a disregarded entity owned by an FFI, for chapter 4 purposes you must determine whether you must treat the payment as made to a payee that is a nonparticipating FFI (to which chapter 4 withholding applies) or a payee that is an FFI with another chapter 4 status (such as a participating FFI). If you make a withholdable payment to a disregarded entity that is treated as a disregarded entity that is a branch of an FFI that cannot comply with the requirements of an applicable IGA or the regulations under chapter 4, you must treat the payment as made to a nonparticipating FFI and withhold 30% of the payment.

See the Instructions for Form W-8BEN-E for more information on payments to disregarded entities.

Flow-Through Entities

Chapter 3 payees. The payees of payments (other than income effectively connected with a U.S. trade or business and dispositions of interests in partnerships engaged in a trade or business within the United States) made to a foreign flow-through entity are the owners or beneficiaries of the flow-through entity. This rule applies for purposes of chapter 3 withholding and for Form 1099 reporting and backup withholding. Income that is, or is deemed to be, effectively connected with the conduct of a U.S. trade or business of a flow-through entity is treated as paid to the entity.

The following are flow-through entities.

- A foreign partnership (other than a withholding foreign partnership).

- A foreign simple or foreign grantor trust (other than a withholding foreign trust).

If the chapter 3 payee is a disregarded entity or flow-through entity for U.S. tax purposes, but the payee is claiming treaty benefits, see *Fiscally transparent entities claiming treaty benefits*, later.

Chapter 4 payees. For purposes of chapter 4, however, a foreign entity that is a flow-through entity is a payee with respect to a payment (other than income effectively connected with the conduct of a U.S. trade or business) if the flow-through entity is:

- An FFI that is not a participating FFI or deemed-compliant FFI, or restricted distributor (an entity that operates as a distributor that holds debt or equity interests in a restricted fund as a nominee and meets the requirements described in Regulations section 1.1471-5(f)(4)) receiving the payment on behalf of its owners (in such a case, the entity is a

nonparticipating FFI subject to withholding under chapter 4); or

- An excepted NFFE that is not acting as an agent or intermediary with respect to the payment.

If you make a withholdable payment to a flow-through entity that is not one of the types described above, you must treat the partner, beneficiary, or owner (as applicable) of the flow-through entity as the payee for chapter 4 purposes (similar to the determination of the payee for chapter 3 purposes) (looking through partners, beneficiaries, and owners that are themselves flow-through entities that are not one of the types described above).

In most cases, you treat a payee as a flow-through entity if it provides you with a Form W-8IMY (see Documentation, later) on which it claims such status.

You may also be required to treat the entity as a flow-through entity under the presumption rules, discussed later.

For purposes of chapter 3, you must determine whether the owners or beneficiaries of a flow-through entity are U.S. or foreign persons, how much of the payment relates to each owner or beneficiary, and, if the owner or beneficiary is foreign, whether a reduced rate of chapter 3 withholding applies. For purposes of chapter 4, you must determine the chapter 4 status of the owners or beneficiaries of a flow-through entity (subject to the exceptions described above), how much of the payment relates to each owner or beneficiary, and whether withholding under chapter 4 applies. You make these determinations based on the documentation and other information (contained in a withholding statement) that is associated with the flow-through entity's Form W-8IMY.

If you do not have all of the information that is required to reliably associate a payment with a specific payee, you must apply the presumption rules. See Documentation and Presumption Rules, later.

Withholding foreign partnerships and withholding foreign trusts are not flow-through entities.

Foreign partnerships. A foreign partnership is any partnership (including an entity classified as a partnership) that is not organized under the laws of any state of the United States or the District of Columbia or any partnership that is treated as foreign under the income tax regulations. If a foreign partnership is not a withholding foreign partnership, the payees of income are the partners of the partnership, provided the partners are not themselves flow-through entities or foreign intermediaries.

However, the payee is the partnership itself if the partnership is claiming treaty benefits on the basis that it is not treated as fiscally transparent in the treaty jurisdiction and that it meets all the other requirements for claiming treaty benefits. If a partner is a foreign flow-through entity or a foreign intermediary, you apply the payee determination rules to that partner to determine the payees.

For purposes of chapter 4, a foreign partnership is a payee of a withholdable payment if the partnership is a withholding foreign partnership that is not acting as an agent or intermediary with respect to the payment. If the partnership is not a withholding foreign partnership, the payees are the partners (looking through any partners that are flow-through entities that are not treated as payees under the chapter 4 regulations).

Example 1. A nonwithholding foreign partnership has three partners: a nonresident alien individual, a foreign corporation, and a U.S. citizen. You make a payment of

U.S. source interest to the partnership. Assume that the payment is subject to chapter 3 withholding but is not a withholdable payment. The partnership gives you a Form W-8IMY with which it associates Form W-8BEN from the nonresident alien, Form W-8BEN-E from the foreign corporation, and Form W-9 from the U.S. citizen. The partnership also gives you a complete withholding statement that enables you to associate a part of the interest payment to each partner.

You must treat all three partners as the payees of their part of the interest payment as if the payment were made directly to them. Report the payments to the nonresident alien and the foreign corporation on Forms 1042-S.

Report the payment to the U.S. citizen on Form 1099-INT. You do not need to determine the chapter 4 status of the partnership because the payment is not a withholdable payment.

Example 2. A nonwithholding foreign partnership has two partners: a foreign corporation and a nonwithholding foreign partnership. The second partnership has two partners, both nonresident alien individuals. You make a payment of U.S. source interest to the first partnership. Assume that the payment is subject to chapter 3 withholding but is not a withholdable payment. The partnership gives you a valid Form W-8IMY with which it associates a Form W-8BEN-E from the foreign corporation and a Form W-8IMY from the second partnership. In addition, Forms W-8BEN from the partners are associated with the Form W-8IMY from the second partnership.

The Forms W-8IMY from the partnerships have complete withholding statements associated with them. Because you can reliably associate a part of the interest payment with the Form W-8BEN-E provided by the foreign corporation and the Forms W-8BEN provided by the nonresident alien individual partners as a result of the withholding statements, you must treat them as the payees of the interest. You do not need to determine the chapter 4 status of the partnership because the payment is not a withholdable payment.

Example 3. You make a payment of U.S. source dividends to a withholding foreign partnership. Assume that the payment is subject to chapter 3 withholding and is not a withholdable payment. The partnership has two partners, both foreign corporations. You can reliably associate the payment with a valid Form W-8IMY from the partnership on which it represents that it is a withholding

foreign partnership. You must treat the partnership as the payee of the dividends for purposes of both chapter 3 and chapter 4, and you must determine the chapter 4 status of the partnership.

Foreign simple and grantor trust.

A trust is foreign unless it meets both of the following tests.

- A court within the United States is able to exercise primary supervision over the administration of the trust.
- One or more U.S. persons have the authority to control all substantial decisions of the trust.

In most cases, a foreign simple trust is a foreign trust that is required to distribute all of its income annually. A foreign grantor trust is a foreign trust that is treated as a grantor trust under sections 671 through 679.

The payees of a payment made to a foreign simple trust are the beneficiaries of the trust. The payees of a payment made to a foreign grantor trust are the owners of the trust. However, the payee is the foreign simple or grantor trust itself if the trust is claiming treaty benefits on the basis that it is not fiscally transparent and that it meets all the other requirements for claiming treaty benefits. If the beneficiaries or owners are themselves flow-through entities or foreign intermediaries, you apply the payee determination rules to that beneficiary or owner to determine the payees.

Example. A foreign simple trust has three beneficiaries: two nonresident alien individuals and a U.S. citizen. You make a payment of U.S. source interest to the foreign trust. Assume that the payment is subject to chapter 3 withholding but is not a withholdable payment.

The foreign trust gives you a Form W-8IMY with which it associates Forms W-8BEN from the nonresident aliens and a Form W-9 from the U.S. citizen. The trust also gives you a complete withholding statement that enables you to associate the interest payment with the forms provided by each beneficiary. You must treat all three beneficiaries as the payees of their part of the interest payment as if the payment were made directly to them. Report the payment to the nonresident aliens on Forms 1042-S. Report the payment to the U.S. citizen on Form 1099-INT. You do not need to establish the chapter 4 status of the trust because the payment is not a withholdable payment.

Fiscally transparent entities claiming treaty benefits. For purposes of claiming treaty benefits, if an entity is fiscally transparent for U.S. tax purposes (for example, a disregarded entity or flow-through entity for U.S. tax purposes)

and the entity is or is treated as a resident of a treaty country, it will derive the item of income and may be eligible for treaty benefits. In such case, the entity is the payee for chapter 3 purposes. It does not need to be taxed by the treaty country on such item, but the item must be accounted for as the entity's income, not the interest holders' income, under the law of the treaty country whose treaty it is invoking. It must also meet any other requirements for claiming benefits, including the provisions of the limitation on benefits article, if any, in the treaty. The entity should provide a Form W-8BEN-E to the U.S. withholding agent in such circumstances. If, for chapter 3 purposes, the payee is a foreign corporation or other non-flow-through entity for U.S. tax purposes, it is nonetheless not entitled to claim treaty benefits if the entity is fiscally transparent in its country of residence (that is, a foreign reverse hybrid).

Instead, any interest holder resident in that country will derive its allocable share of the items of income paid to the foreign reverse hybrid and may be eligible for benefits. If an interest holder is a resident of a third country, the interest holder may claim treaty benefits under the third country's treaty with the United States, if any, only if the foreign reverse hybrid is fiscally transparent under the laws of the third country. If an interest holder is entitled to treaty benefits under a treaty between the United States and its country of residence, the payee may provide a Form W-8IMY and attach Form W-8BEN or W-8BEN-E from any interest holder that claims treaty benefits on such income.

The determination of whether an entity is fiscally transparent is made on an item of income basis (that is, the determination is made separately for interest, dividends, royalties, etc.).

An interest holder in an entity makes the determination by applying the laws of the jurisdiction where the interest holder is organized, incorporated, or otherwise considered a resident. An entity is considered to be fiscally transparent with respect to the income to the extent the laws of that jurisdiction require the interest holder to separately take into account on a current basis the interest holder's share of the income, whether or not distributed to the interest holder, and the character and source of the income to the interest holder are determined as if the income was realized directly from the source that paid it to the entity. Subject to the Standards of Knowledge for Purposes of Chapter 3 and Standards of Knowledge for Purposes of Chapter 4, discussed later, you generally make the determination that an entity is fiscally transparent based on a Form W-8IMY provided by the entity.

For chapter 3 purposes, the payees of a payment made to a fiscally transparent entity are the interest holders of the entity if the interest holders are claiming treaty benefits with respect to the payment.

For chapter 4 purposes, if you are making a withholdable payment to a fiscally transparent entity, you must apply the rules of chapter 4 to determine the payee (applying the rules described earlier) and whether chapter 4 withholding applies to the payment based on the payee's chapter 4 status. Thus, chapter 4 withholding may apply to a withholdable payment made to a fiscally transparent entity based on the chapter 4 status of the entity even when the interest holders in the entity would be eligible for reduced withholding under an income tax treaty with respect to the payment.

Treaty benefits may be granted to the interest holder when the payment made is not subject to chapter 4 withholding based on the chapter 4 status of both the entity and the interest holder.

Example. Entity A is a business organization organized under the laws of country X that has an income tax treaty in force with the United States. A has two interest holders, B and C. B is a corporation organized under the laws of country Y. C is a corporation organized under the laws of country Z. Both countries Y and Z have an income tax treaty in force with the United States.

A receives royalty income from U.S. sources that is not effectively connected with the conduct of a trade or business in the United States and that is not a withholdable payment. The chapter 4 status of A does not need to be determined because the payment is not a withholdable payment.

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

A and C are not fiscally transparent under the laws of their respective countries of incorporation. Country Y requires B to separately take into account on a current basis B's share of the income paid to A, and the character and source of the income to B is determined as if the income were realized directly from the source that paid it to A. Accordingly, A is fiscally transparent for that

income under the laws of country Y, and B is treated as deriving its share of the U.S. source royalty income for purposes of the U.S.–Y income tax treaty. Country Z, on the other hand, treats A as a corporation and does not require C to take into account its share of A's income on a current basis whether or not distributed. Therefore, A is not treated as fiscally transparent under the laws of country Z. Accordingly, C is not treated as deriving its share of the U.S. source royalty income for purposes of the U.S.–Z income tax treaty.

Foreign Intermediaries

In most cases, if you make payments to a foreign intermediary, the payees are the persons for whom the foreign intermediary collects the payment, such as account holders or customers, not the intermediary itself. This rule applies for purposes of chapter 3 withholding and for Form 1099 reporting and backup withholding and chapter 4

withholding, provided the intermediary is not a nonparticipating FFI to which you make a withholdable payment to which chapter 4 withholding applies. You may, however, treat a QI that has assumed primary withholding responsibility for a payment as the payee, and you are not required to withhold.

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

For purposes of chapter 3, you must determine whether the customers or account holders of a foreign intermediary are U.S. or foreign persons and, if the account holder or customer is foreign, whether a reduced rate of, or exemption from, chapter 3 withholding applies.

For purposes of chapter 4, you must generally determine the chapter 4 status of the account holders of a foreign intermediary if the payment is a withholdable payment. The determination for chapter 3 purposes is not required when withholding applies under chapter 4 (that is, when the chapter 4 status of the foreign intermediary is a nonparticipating FFI or an entity or branch treated as a nonparticipating FFI under an applicable IGA). You make these determinations based on the foreign intermediary's Form W-8IMY and associated information and documentation. If you do not have all of the information or documentation that is required to reliably associate a payment with a payee, you must apply the presumption rules of chapter 3, and must apply the presumption rules of chapter 4 to

the foreign intermediary if the chapter 4 status of the entity (when required) cannot be determined. See Documentation and Presumption Rules, later.

Special rule for chapter 4. For purposes of chapter 4, a foreign person acting as an intermediary is generally not the payee if the foreign person is:

- An NFFE, unless the NFFE is a QI that has assumed primary chapters 3 and 4 withholding responsibility; or
- A participating FFI, deemed-compliant FFI, or restricted distributor, unless such entity is a QI that has assumed primary chapters 3 and 4 withholding responsibility.

If you make a withholdable payment to one of the types of entities described above, the payee is the person for whom the agent or intermediary collects the payment.

Nonqualified intermediary (NQI).

An NQI is any intermediary that is a foreign person and that is not a QI. The payees of a payment made to an NQI for both chapter 3 and chapter 4 purposes are the customers or account holders on whose behalf the NQI is acting.

Example. You make a payment of interest to a foreign bank that is an NQI. Assume the payment is subject to chapter 3 withholding but is not a withholdable payment. The bank gives you a Form W-8IMY, the Forms W-8BEN of two foreign persons, and a Form W-9 from a U.S. person for whom the bank is collecting the payments. The bank also associates with its Form W-8IMY a withholding statement on which it allocates the interest payment and provides all other information required to be on the withholding statement. The account holders are the payees of the interest payment.

You should report the part of the interest paid to the two foreign persons on Forms 1042-S and the part paid to the U.S. person on Form 1099-INT. You do not need to establish the chapter 4 status of the NQI because the payment is not a withholdable payment.

Qualified intermediary (QI). A QI is generally a foreign intermediary (or foreign branch of a U.S. intermediary) that has entered into a QI agreement (discussed later) with the IRS. Certain entities may also act as QIs even when they are not intermediaries. You may treat a QI as a payee to the extent it assumes primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility for a payment. In this situation, the QI is required to withhold the tax. You can determine whether a QI has assumed responsibility from the Form W-8IMY provided by the QI.

A payment to a QI to the extent it does not assume primary chapters 3 and 4 withholding responsibility is considered made to the person on whose behalf the QI acts. If a QI does not assume Form 1099 reporting and backup withholding responsibility, you must report on Form 1099 and, if applicable, backup withhold as if you were making the payment directly to the U.S. person. See Qualified Intermediary (QI), later, for a discussion of withholding rate pools and when a QI may include a U.S. nonexempt recipient in a U.S. payee pool.

Additionally, starting January 1, 2023, a QI may also assume primary withholding responsibilities with respect to PTP distributions (including withholding under section 1446(a)) and transfers of PTP interests for section 1446(f) purposes.

For discussion of those provisions, see *Publicly Traded Partnership Distributions (PTP Distributions)* and *Section 1446(f): PTP Interests*, later.

Qualified derivatives dealers (QDDs). For the definition of QDD, see *Qualified derivatives dealer (QDD)*, later. For QDD liability, see *Amounts paid to QDDs*, later.

Branches of financial institutions.

Branches of financial institutions are not permitted to operate as QIs if they are located outside of countries having approved “know-your-customer” (KYC) rules. The countries with approved KYC rules are listed at [IRS.gov/Businesses/ International-Businesses/List-of-Approved-KYC-Rules](https://www.irs.gov/Businesses/International-Businesses/List-of-Approved-KYC-Rules).

QI agreement. FFIs, foreign clearing organizations, and foreign branches of U.S. financial institutions or clearing organizations can enter into an agreement with the IRS to become a QI. An eligible entity (as defined in Regulations section 1.1441-1(e)(6)(ii)) may

also enter into a QI agreement for purposes of becoming a QDD. To enter into a QI agreement, an FFI must have a chapter 4 status as:

- A participating FFI (including a reporting Model 2 FFI);
- A registered deemed-compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed-compliant); 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 U.S. accounts as those applicable to a registered deemed-compliant FFI (a “registered deemed-compliant Model 1 IGA FFI”).

Certain foreign corporations that are NFFEs acting on behalf of persons other than shareholders or foreign central banks of issue may also apply to the IRS to become QIs.

See Revenue Procedure 2022-43, 2022-52 I.R.B. 570, available at [IRS.gov/irb/2022-43_IRB#RP-2022-52](https://www.irs.gov/irb/2022-43_IRB#RP-2022-52), for more information on becoming a QI.

An entity may apply for QI status at [IRS.gov/Businesses/Corporations/Qualified-Intermediary-System](https://www.irs.gov/Businesses/Corporations/Qualified-Intermediary-System).

Note. A QI (other than an NFFE acting on behalf of persons other than shareholders and certain central banks) must also register at [IRS.gov/FATCA](https://www.irs.gov/FATCA) to obtain its applicable chapter 4 status and global intermediary identification number (GIIN).

Documentation requirements. For documentation requirements applicable to payments made to QIs, for chapters 3 and 4 purposes,

see Responsibilities and Documentation, discussed later under *Qualified Intermediary (QI)*.

Reporting requirements. For the reporting requirements of QIs, see Form 1042-S reporting and Collective refund procedures, discussed later under *Qualified Intermediary (QI)*.

U.S. branches of foreign banks and foreign insurance companies. Special rules apply to a U.S. branch of a foreign bank subject to Federal Reserve Board supervision or a foreign insurance company subject to state regulatory supervision. If you make a payment of an amount subject to chapter 3 withholding or a withholdable payment to a U.S. branch of a foreign bank or insurance company that agrees to be treated as a U.S. person, you may treat the U.S. branch as a payee that is a U.S. person, provided you receive a Form W-8IMY from the U.S. branch that you can reliably associate with the

payment. If you treat the branch as a U.S. person, you are not required to withhold on an amount subject to chapter 3 withholding or a withholdable payment. Even though you agree to treat the branch as a U.S. person, you must report the payments made to the branch on Form 1042-S.

A territory financial institution is a financial institution as defined for chapter 4 purposes (except when it is an investment entity that is not also a depository institution, custodial institution, or specified insurance company) incorporated or organized under the laws of a territory of the United States. A territory financial institution that is an intermediary or flow-through entity is treated as a U.S. branch that agrees to be treated as a U.S. person. The special rules described in this section apply to a territory financial institution.

If you are paying a U.S. branch an amount that is not subject to chapter 3 withholding and is not a withholdable payment, treat the payment as made to a foreign person, irrespective of any agreement to treat the branch as a U.S. person for such amounts. Consequently, amounts not subject to chapter 3 withholding and that are not withholdable payments that are paid to a U.S. branch are not subject to Form 1099 reporting or backup withholding.

Alternatively, a U.S. branch may provide you with a Form W-8IMY with which it associates the documentation of the persons on whose behalf it acts. In this situation, the U.S. branch is not treated as a U.S. person, and the payees are the persons on whose behalf the branch acts provided you can reliably associate the payment with valid documentation from those persons. See *Nonqualified Intermediary (NQI)* under *Documentation*, later.

If you cannot reliably associate the payment with a Form W-8IMY from the U.S. branch but you have obtained an employer identification number (EIN) for the branch, you should treat the payment as a payment to a foreign person of income that is effectively connected with the conduct of a trade or business in the United States. If you cannot reliably associate the payment with a Form W-8IMY from the U.S. branch and you have not obtained an EIN for the branch, you should treat the payment as a payment to a foreign person of income that is not effectively connected with the conduct of a trade or business in the United States.

Withholding foreign partnership and withholding foreign trust. A withholding foreign partnership (WP) is any foreign partnership that has entered into a WP agreement with the IRS and is acting in that capacity with respect to its partners.

A withholding foreign trust (WT) is a foreign simple or grantor trust that has entered into a WT agreement with the IRS and is acting in that capacity with respect to its owners and beneficiaries. In order to enter into a WP or WT agreement with the IRS, a WP or WT that is an FFI must have chapter 4 status as a:

- Participating FFI (including a reporting Model 2 FFI),
- Registered-deemed compliant FFI (including a reporting Model 1 FFI and a nonreporting Model 2 FFI treated as registered deemed compliant),
- Registered deemed-compliant Model 1 IGA FFI, or
- Retirement fund.

A WP or WT that is an NFFE may also enter into a WP or WT agreement with the IRS. An FFI that is a foreign reverse hybrid entity may apply to enter into a WP agreement,

provided that the FFI is a participating FFI, a registered deemed-compliant FFI, or a registered deemed-compliant Model 1 IGA FFI.

A WP or WT must act in that capacity for reportable amounts that are distributed to, or included in the distributive share of, its direct partners, beneficiaries, or owners. A WP or WT may act in that capacity for reportable amounts that are distributed to, or included in the distributive share of, its indirect partners, beneficiaries, or owners that are not U.S. nonexempt recipients (except for a U.S. nonexempt recipient that is included in a chapter 4 withholding rate pool of U.S. payees). A WP or WT acting in that capacity must assume primary chapters 3 and 4 withholding responsibility for payments subject to withholding and must assume certain reporting requirements with respect to its U.S. partners, beneficiaries, and owners.

You may treat a WP or WT as a payee if it has provided you with documentation (discussed later) that represents that it is acting as a WP or WT for such amounts.

See Revenue Procedure 2017-21, 2017-6 I.R.B. 791, available at [IRS.gov/irb/2017-06_IRB#RP-2017-21](https://www.irs.gov/irb/2017-06_IRB#RP-2017-21), for more information on becoming a WP or WT.

WP agreement and WT agreement. The WP agreement and WT agreement and the application procedures for the agreements are in Revenue Procedure 2017-21, earlier. An entity applies for WP or WT status at [IRS.gov/Businesses/Corporations/Qualified-Intermediary-System](https://www.irs.gov/Businesses/Corporations/Qualified-Intermediary-System). The WP or WT will be assigned a WP-EIN or WT-EIN to be used only when acting in that capacity.

A WP or WT that is an FFI (other than a retirement fund) must also register with the IRS at [IRS.gov/Businesses/Corporations/FATCA-Foreign-FinancialInstitution-Registration-System](https://www.irs.gov/Businesses/Corporations/FATCA-Foreign-FinancialInstitution-Registration-System)

to obtain its applicable chapter 4 status and GIIN.

Documentation. A WP or WT must provide you with a Form W-8IMY that certifies that the WP or WT is acting in that capacity and provides all other information and certifications required by the form, including its WP-EIN or WT-EIN. When you make a withholdable payment to a WP or WT, the WP or WT generally may also provide a certificate of a chapter 4 status permitted of a WP or WT (and GIIN, if applicable). The WP or WT, when acting in such capacity, is not required to provide a withholding statement and is not required to disclose any information regarding its direct partners, beneficiaries, or owners, or any indirect partner, beneficiary, or owner for which it acts as a WP or WT that is not a U.S. nonexempt recipient (except for a U.S. nonexempt recipient included in a chapter 4 withholding rate pool of U.S. payees).

A chapter 4 withholding rate pool also means a payment of a single type of income that is allocated to U.S. payees when the WP provides the certification required on Form W-8IMY for allocating payments to this pool. When a WP or WT is not acting as a WP or WT with respect to an amount distributed to, or included in the distributive share of, an indirect partner, beneficiary, or owner, it must provide you with a nonwithholding foreign partnership or nonwithholding foreign trust withholding certificate on a Form W-8IMY and documentation for its indirect partners, beneficiaries, and owners that are not included in a chapter 4 withholding rate pool.

Foreign Persons

Rules relevant to chapters 3 and 4. A payee is subject to withholding only if it is a foreign person. A foreign person includes a nonresident alien individual, foreign corporation, foreign partnership, foreign trust,

foreign estate, and any other person that is not a U.S. person. It also includes a foreign branch of a U.S. financial institution if the foreign branch is a QI. In most cases, the U.S. branch of a foreign corporation or partnership is treated as a foreign person. The determination of whether a foreign person is treated as an entity (that is, as opposed to being disregarded as separate from its owner), or as a foreign corporation, foreign partnership, or foreign trust is made under U.S. tax rules.

If an amount is both a withholdable payment and an amount subject to chapter 3 withholding and the withholding agent withholds under chapter 4, it may credit this amount against any tax due under chapter 3.

Nonresident alien. A nonresident alien is an individual who is not a U.S. citizen or a resident alien.

A resident of a foreign country under the residence article of an income tax treaty is a nonresident alien individual for purposes of withholding.

Married to U.S. citizen or resident alien.

Nonresident alien individuals married to U.S. citizens or resident aliens may choose to be treated as resident aliens for certain income tax purposes. However, these individuals are still subject to the chapter 3 withholding rules that apply to nonresident aliens for all income except wages. Wages paid to these individuals are subject to graduated withholding. See *Wages Paid to Employees—Graduated Withholding*, later.

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

- ***Green card test.*** An alien is a resident alien if the individual was a lawful permanent resident of the United States at any time during the calendar year. This is known as the green card test because these aliens hold immigrant visas (also known as green cards).
- ***Substantial presence test.*** An alien is considered a resident alien if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the United States on at least:
 1. 31 days during the current calendar year; and
 2. 183 days during the current year and the 2 preceding years, counting all the days of physical presence in the current year, but only $\frac{1}{3}$ the number of days of presence in the first preceding year,

and only $\frac{1}{6}$ the number of days in the second preceding year.

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

For more information on resident and nonresident status, the tests for residence, and the exceptions to them, see [Pub. 519](#).

Note. If your employee is late in notifying you that their status changed from nonresident alien to resident alien, you may have to make an adjustment to Form 941 if that employee was exempt from withholding of social security and Medicare taxes as a nonresident alien. For more information on making adjustments, see chapter 13 of [Pub. 15 \(Circular E\)](#) .

Resident of a U.S. territory. A bona fide resident of Puerto Rico, the U.S. Virgin Islands (USVI), Guam, the Commonwealth of the Northern Mariana Islands (CNMI), or American Samoa who is not a U.S. citizen or a U.S. national is treated as a nonresident alien for the withholding rules explained here. A bona fide resident of a territory is someone who:

- Meets the presence test,
- Does not have a tax home outside the territory, and
- Does not have a closer connection to the United States or to a foreign country than to the territory.

For more information, see [Pub. 570](#).

Foreign corporations. A foreign corporation is one that does not fit the definition of a domestic corporation.