



Department  
of the  
Treasury

Internal  
Revenue  
Service

Publication 515  
(Rev. December 1997)  
Cat. No. 15019L

# Withholding of Tax on Nonresident Aliens and Foreign Corporations

## For Withholding in 1998



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## Important Changes

**Electronic deposit requirement.** If you were not previously required to make electronic deposits and you made deposits of more than \$50,000 in 1995 or 1996, you may have to make electronic deposits for all depository tax liabilities that occur after 1997. See *Depositing Withheld Taxes*.

The penalty that applies to the failure to make electronic deposits does not apply to a failure that occurs before July 1, 1998, if you are first required to use that method on or after July 1, 1997.

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

**Foreign vessel crew members.** An individual is a resident alien under the substantial presence test if the individual is in the United States for a specified number of days. For tax years beginning after 1997, any day the individual is temporarily present in the United States as a regular member of the crew of a foreign vessel engaged in transportation be-

tween the United States and a foreign country or a possession of the United States is not counted unless the individual otherwise engages in any trade or business in the United States on that day.

Also, income received by a nonresident alien for services performed as a regular crew member of a foreign vessel engaged in such transportation generally is not U.S. source income.

**Income tax treaties.** A new income tax treaty with Kazakhstan and a new income tax protocol with Indonesia went into effect in 1997.

Treaties have recently been ratified with Austria, Luxembourg, Ireland, South Africa, Switzerland, Thailand, and Turkey. A protocol was recently ratified with Canada. These treaties and protocol are not reflected in this publication because instruments of ratification had not yet been exchanged at the time this publication went to print. The IRS will issue an announcement after the instruments have been exchanged.

## Important Reminders

**IRS taxpayer identification numbers for aliens.** The IRS will issue you an individual taxpayer identification number (ITIN) if you are an alien and you do not have and are not eligible to get a social security number (SSN).

An ITIN is for tax use only. It does not entitle you to social security benefits or change your employment or immigration status under U.S. law.

For more information on ITINs, see *Individual Taxpayer Identification Number (ITIN)* under *U.S. Taxpayer Identification Numbers*, later.

**Phone numbers on payee statements.** Information returns must include the name, address, and phone number of the information contact of the person required to make the return.

## Introduction

This publication is for withholding agents who pay income to nonresident aliens and foreign corporations.

It primarily discusses what income is subject to withholding and provides the general withholding rates, or lower treaty rates (see *Treaty Benefits* under *Withholding Exemptions and Reductions*). The publication also covers special withholding rules that apply to the income of a foreign partner and to the disposition of a U.S. real property interest by a foreign person.

### Useful Items

You may want to see:

#### Publication

- ☐ **15** Circular E, Employer's Tax Guide
- ☐ **15-A** Employer's Supplemental Tax Guide
- ☐ **51** Circular A, Agricultural Employer's Tax Guide
- ☐ **519** U.S. Tax Guide for Aliens
- ☐ **901** U.S. Tax Treaties

### Form (and Instructions)

- ☐ **SS-4** Application for Employer Identification Number
- ☐ **W-2** Wage and Tax Statement
- ☐ **W-4** Employee's Withholding Allowance Certificate
- ☐ **W-4P** Withholding Certificate for Pension or Annuity Payments
- ☐ **941** Employer's Quarterly Federal Tax Return
- ☐ **1042** Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
- ☐ **1042-S** Foreign Person's U.S. Source Income Subject to Withholding

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

## Withholding of Tax

Most income that is **effectively connected** with the conduct of a trade or business in the United States by a nonresident alien or a foreign corporation is subject to the same graduated income tax rates that apply to U.S. citizens, residents, and domestic corporations. For an explanation of effectively connected income, see *Definition of effectively connected income* discussed under *Withholding Exemptions and Reductions*, later.

Investment and other fixed or determinable annual or periodic income from sources in the United States, such as wages, rents, dividends, and interest, that is received by a nonresident alien or a foreign corporation and is **not effectively connected** with the conduct of a trade or business in the United States by the recipient is subject to a 30% tax rate, or lower treaty rate. This is true whether or not the recipient also engages in a trade or business in the United States.

**Special rules.** Different withholding rules apply to a partnership's payments of effectively connected income to foreign partners, and to dispositions of U.S. real property interests by foreign persons. See *Partnership Withholding on Effectively Connected Income*, and *U.S. Real Property Interest*, later.

## Withholding Agent

Any person who must withhold tax is a withholding agent. Generally, you must withhold tax if you pay or convey an item of U.S. source income to an alien individual or entity, or to the individual's or entity's foreign or domestic agent. More specifically, you must withhold income tax if you control, or are responsible for, the receipt, disposal, custody, or payment of an item of income subject to withholding, as discussed in this publication. If you must withhold income tax, you become liable for the tax payment, especially if the alien who receives the income fails to satisfy the U.S. tax liability.

A withholding agent can be an individual, trust, estate, partnership, corporation, government agency, association, or tax-exempt foundation, whether domestic or foreign. A withholding agent can be a tenant, manager, broker, agent, fiduciary, or spouse. Withholding agents include U.S. citizens and resi-

dents, and foreign nominees and fiduciary residents of treaty countries who must withhold additional U.S. tax under tax treaty provisions.

**Withholding for others.** It does not matter on whose behalf you make the payments. You may be making payments on your own behalf as a lessee or mortgagor of property, or other obligor, or on behalf of another fiduciary, etc. If you appoint a duly authorized agent to act on your behalf, you must file a notice of the appointment with the Internal Revenue Service, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024. You must file the notice before the first payment for which the authorized agent is to act. If the duly authorized agent becomes insolvent or fails to deposit the withheld tax, you are still liable.

For example, the local U.S. promoter of an entertainment event featuring a nonresident alien performer is usually the withholding agent. However, in the case of an extensive tour of the United States, a corporation or agency representing the performer may become the withholding agent for the entire tour if notice of the appointment is filed with the IRS.

**Fiduciaries.** Resident or domestic fiduciaries of trusts or estates are withholding agents on payments to beneficiaries who are nonresident alien individuals, foreign partnerships, or foreign corporations. Since the total amounts allocable to a beneficiary cannot be determined until the end of the tax year, the fiduciary must withhold tax on all distributions during the tax year. If tax is withheld before the income is actually distributed, withholding is not required when that income is later distributed.

**Spouse.** The spouse of a nonresident alien, if the spouses are domiciled in a community property state, must act as a withholding agent for the nonresident alien's interest in the spouse's community income arising from within the United States.

**Alimony.** Alimony or separate maintenance payments made to a nonresident alien spouse or former spouse are subject to withholding. If you make alimony payments to a nonresident alien spouse, you are a withholding agent. For more information on alimony, see Publication 504, *Divorced or Separated Individuals*.

**Foreign nominees and fiduciaries.** Under certain tax treaties, a foreign nominee or fiduciary in a treaty country may have to withhold additional U.S. tax from U.S. source dividends, interest, and other income.

Except for Canada, foreign nominees and fiduciaries must send the additional U.S. tax withheld to their own tax authorities, accompanied by whatever form may be prescribed by their national tax agencies. In turn, treaty tax authorities send the additional tax to the Internal Revenue Service Center, Philadelphia, PA 19255.

Canadian nominees and fiduciaries send the additional U.S. tax withheld, in U.S. currency, directly to the Internal Revenue Service Center in Philadelphia, accompanied by an annual Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*.

For specific details on the procedures and types of U.S. source income on which additional withholding is required, foreign nomi-

nees and fiduciaries should contact the taxing authority of their country.

**Conduit financing arrangement.** A withholding agent who is required to withhold tax on income from a conduit financing arrangement must withhold as if the IRS had determined that all of the conduit entities that are parties to the conduit financing arrangement should be disregarded. The withholding agent may withhold tax at a reduced rate if the financing entity establishes that it is entitled to the benefit of a treaty that provides a reduced rate of tax on a payment of the type deemed to have been paid to the financing entity.

For the definition of a conduit financing arrangement, see Treasury Regulation 1.881-3(a)(2).

**Liability of withholding agent.** A withholding agent is not liable for failing to deduct and withhold on a conduit financing arrangement unless the agent knows or has reason to know that the financing arrangement is a conduit financing arrangement.

## Persons Subject to Withholding

Nonresident aliens are subject to the withholding rules discussed in this publication. A nonresident alien is an individual who is not a U.S. citizen or resident. The term includes a nonresident alien fiduciary.

**Resident alien.** Resident aliens are not subject to the withholding rules discussed in this publication. A resident alien is an alien who meets either the green card test or the substantial presence test for the calendar year.

**Green card test.** An alien is a U.S. resident if the individual was a lawful permanent resident of the United States at any time during the calendar year. This is known as the "green card" test because these aliens hold immigrant visas (also known as "green cards").

**Substantial presence test.** An alien is also considered a U.S. resident if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the United States on at least:

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

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

For more information on resident and nonresident status, the tests for residence, and the exceptions to them, see Publication 519, *U.S. Tax Guide for Aliens*.

**Nonresident alien individuals married to either U.S. citizens or resident aliens** may choose to be treated as resident aliens for income tax purposes. However, these individuals are still subject to the withholding rules that apply to nonresident aliens for all income except wages. Wages paid to these

individuals are subject to the withholding rules that apply to U.S. citizens and residents. The rules explained later under *Pay Subject to Graduated Withholding* do not apply to these aliens. Instead, see Publication 15, Circular E, *Employer's Tax Guide*.

**A foreign corporation or partnership** is one that does not fit the definition of a domestic corporation or partnership. A **domestic corporation or partnership** is one that was created or organized in the United States, or under the laws of the United States or any of its states.

**Guam or Northern Mariana Islands corporations.** A corporation created or organized in, or under the laws of, Guam or the Commonwealth of the Northern Mariana Islands (CNMI) is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

- 1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons, and
- 2) At least 20% of the corporation's gross income is derived from sources within Guam or the CNMI for the 3-year period ending with the close of the preceding tax year of the corporation (or the period the corporation has been in existence, if less).

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

- 1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons,
- 2) At least 65% of the corporation's gross income is effectively connected with the conduct of a trade or business in the Virgin Islands, American Samoa, Guam, the CNMI, or the United States for the 3-year period ending with the close of the tax year of the corporation (or the period the corporation or any predecessor has been in existence, if less), and
- 3) No substantial part of the income of the corporation is used, directly or indirectly, to satisfy obligations to a person who is not a bona fide resident of the Virgin Islands, American Samoa, Guam, the CNMI, or the United States.

**Note:** The provisions discussed above for *Virgin Islands and American Samoa corporations* are extended to Guam and CNMI corporations when an implementing agreement is in effect between the United States and each of those possessions. For further information, write to the Internal Revenue Service, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

**Resident of Puerto Rico.** Even if an alien is a bona fide resident of Puerto Rico for the entire year and must pay taxes generally in the same way as a U.S. citizen, the alien is treated as a nonresident alien for the withholding rules explained here. This alien will be entitled to a credit against U.S. income tax for any income tax withheld under these rules.

**Trustee, administrator, or executor.** Income paid to a nonresident alien trustee, administrator, or executor of a trust or an estate is subject to these withholding rules even though all the beneficiaries of the trust or estate are citizens or residents of the United States.

**Foreign private foundation.** A private foundation that was created or organized under the laws of a foreign country is a foreign private foundation. Gross investment income from sources within the United States paid to a qualified foreign private foundation is subject to withholding of a 4% excise tax (unless exempted by a treaty) rather than the ordinary statutory 30% income tax.

**Other foreign organizations, associations, and charitable institutions.** An organization may be exempt from income tax under section 501(a) of the Internal Revenue Code even if it was formed under foreign law. Generally, you do not have to withhold tax on payments of income to these foreign tax-exempt organizations unless the IRS has determined that they are foreign private foundations.

Payments to these organizations, however, must be reported on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, even though no tax is withheld.

You must withhold tax on the unrelated business income (as described in Publication 598, *Tax on Unrelated Business Income of Exempt Organizations*) of foreign tax-exempt organizations in the same way that you would withhold tax on similar income of nonexempt organizations.

## Withholding Exemptions and Reductions

You should withhold any required tax if facts indicate that the individual, or the fiduciary, to whom you are to pay the income is a nonresident alien. However, the alien may be allowed an exemption from withholding or a reduced rate of withholding as explained here.

**Evidence of residence.** If an individual gives you a written statement stating that he or she is a citizen or resident of the United States, and you do not know otherwise, you do not have to withhold tax under the rules discussed in this publication. Instead, get Publication 15, Circular E, *Employer's Tax Guide*. An alien may claim U.S. residence by filing with you, Form 1078, *Certificate of Alien Claiming Residence in the United States*. Keep the statement or form for your records. Do not file it with the IRS. Holders of visas that do not permit permanent residence in the United States should write to the Internal Revenue Service, Assistant Commissioner (International), Attention: CP:IN:D:CS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, for advice about filing a Form 1078 and, if filing Form 1078 is proper, about the need to make estimated tax payments.

**Note:** If your employee is late in notifying you that his or her status changed from nonresident alien to resident alien, you may have

to make an adjustment to Form 941 if that employee was exempt from withholding of social security and Medicare taxes as a non-resident alien. For more information on making adjustments, see Section 13 of Circular E.

A U.S. bank that pays income subject to withholding may decide whether to accept an individual's proof of U.S. citizenship or residence given through a foreign bank to which income is paid. If the U.S. bank accepts this proof, it will not be liable for payment of tax if later it is shown that the individual was a nonresident alien. If it accepts the proof, the U.S. bank must file Form 1042-S showing the name, address, identification number, and the particular securities of the actual owner, and indicating that it is relying on proof provided by the foreign bank as its basis for not withholding under the rules in this publication.

**Partnerships and corporations.** You may rely on a written statement from a partnership or corporation claiming that it is not foreign as proof that the partnership or corporation is domestic and not subject to withholding tax. It must contain the entity's employer identification number, the address of its U.S. office or place of business, and the signature of a member of the partnership or the signature and official title of the corporate officer. Keep the statement for your records. Do not file it with the IRS.

**Withholding exemption for undue administrative burden.** Do not withhold on income paid to a foreign partnership or corporation engaged in a trade or business in the United States if the withholding would impose an undue administrative burden for the tax year and the collection of the tax would not be jeopardized by not withholding. These facts must be established to the satisfaction of the district director in whose district the related books and records are kept.

The withholding exemption is available to a foreign partnership or corporation only if it provides you with a copy of the determination it receives from the district director stating that the exemption applies.

Generally, withholding will impose an undue administrative burden only if:

- 1) The person entitled to the income, such as a foreign insurance company, receives income from you on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with the conduct of a trade or business within the United States, and
- 2) It is unduly difficult to determine the effective connection because of the circumstances under which the securities are held.

**Withholding on effectively connected income.** Generally, you do not need to withhold tax on income if:

- 1) The income is effectively connected with the conduct of a trade or business in the United States (see definition, later) by the person entitled to the income,
- 2) The income is includible in the recipient's gross income, and
- 3) A statement claiming exemption, such as Form 4224, has been given you by the person entitled to the income, as discussed later.

This withholding exemption applies to income for services performed by a foreign partnership or foreign corporation (unless item (4) below applies to the corporation).

The withholding exemption does not apply to any of the following:

- 1) Effectively connected taxable income of a partnership that is allocable to its foreign partners.
- 2) Income from the disposition of a U.S. real property interest.
- 3) Pay for personal services performed by an individual.
- 4) Payments to a foreign corporation for personal services if all of the following apply:
  - a) The foreign corporation otherwise qualifies as a personal holding company for income tax purposes,
  - b) The foreign corporation receives amounts under a contract for personal services of an individual whom the corporation has no right to designate, and
  - c) 25% or more in value of the outstanding stock of the foreign corporation at some time during the tax year is owned, directly or indirectly, by or for an individual who has performed, is to perform or may be designated as the one to perform, the services called for under the contract.

**Definition of effectively connected income.** Generally, when a nonresident alien individual or foreign corporation engages in a trade or business in the United States, all income from sources within the United States other than fixed or determinable annual or periodic income (such as wages, interest, dividends, and rent) and certain similar amounts is considered effectively connected with a U.S. business. Fixed or determinable annual or periodic income and similar amounts may or may not be effectively connected with a U.S. business. For example, effectively connected income includes rents from real property if the alien chooses to treat that income as effectively connected with a U.S. trade or business.

The factors to be considered in establishing whether fixed or determinable annual or periodic income and similar amounts from U.S. sources are effectively connected with a U.S. trade or business include:

- 1) Whether the income is from assets used in, or held for use in, the conduct of that trade or business, or
- 2) Whether the activities of that trade or business were a material factor in the realization of the income.

There is a special rule for determining whether income from securities is effectively connected with the active conduct of a U.S. banking, financing, or similar business.

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

**Form 4224, Exemption From Withholding of Tax on Income Effectively Connected With the Conduct of a Trade or Business in the United States.** Nonresident alien individuals, fiduciaries, foreign partnerships, or foreign corporations engaged in a trade or business in the United States at any time during their tax year must notify you as withholding agent as to the items of income for the tax year that will be effectively connected with that trade or business and that the income is includible in their gross income. They can do this by using Form 4224.

**Withholding on certain gambling winnings.** In general, nonresident aliens are subject to 30% withholding 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 respectively. However, no tax is imposed on nonbusiness gambling income of a nonresident alien playing blackjack, baccarat, craps, roulette, or big-6 wheel in the United States, but the winnings are reportable on Form 1042-S.

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

## Income of Foreign Governments and International Organizations

Investment income earned by a foreign government is not included in the gross income of the foreign government and is not subject to U.S. withholding tax. Investment income means income from investments in the United States in stocks, bonds, or other domestic securities, financial instruments held in the execution of governmental financial or monetary policy, and interest on money deposited by a foreign government in banks in the United States.

Income received by a foreign government from the conduct of a commercial activity or from sources other than those stated above, is subject to withholding. In addition, income received from a controlled commercial entity (including gain from the disposition of any interest in a controlled commercial entity) and income received by a controlled commercial entity is subject to withholding.

International organizations are exempt from U.S. tax on all U.S. source income. This income is not subject to withholding.

**Form 8709, Exemption From Withholding on Investment Income of Foreign Governments and International Organizations.** Foreign governments and international organizations may file Form 8709 with you to claim exemption from withholding on investment income. IRS does not require Form 8709, and there is no obligation on the foreign government or international organization to file the form with you, or on you to ask for the form to be filed. However, as the withholding agent, you must determine if the exemption from withholding is allowable. If you fail to obtain Form 8709 and fail to establish otherwise that the income was exempt from withholding, you will be liable for the tax.

You may request Form 8709 from the government or organization before you pay the income. If you do not receive a completed Form 8709, you may withhold. If you obtain Form 8709, you will be protected from liability unless either of the following applies:

- 1) You know or have reason to know that the government or organization is not eligible for the exemption from taxation under Internal Revenue Code section 892 either because it does not qualify as a foreign government or international organization, or the income does not qualify for the exemption, or
- 2) You know or have reason to know that any of the facts or assertions on Form 8709 may be false.

If you accept Form 8709 and later determine that one of the above situations applies, you must promptly notify, in writing, the Office of the Assistant Commissioner (International), Director, Office of International District Operations, Attn: CP:IN:D:C:E, 950 L'Enfant Plaza, SW, Washington, DC 20024, and withhold on any amounts not yet paid. You must also withhold if the office shown above notifies you that the government, organization, or the income may not be eligible for exemption from taxation.

Do not send Form 8709 to the IRS. Keep the form for at least 4 years after the end of the year in which the income to which it applies is paid.

## Treaty Benefits

Residents of certain foreign countries may be entitled to reduced rates of, or exemption from, tax under a tax treaty between their country of residence and the United States. These foreign residents, generally, must notify you, as withholding agent, that they are residents of a country with which the United States has an income tax treaty and qualify for reduced rates of, or exemption from, income tax withholding.

Some tax treaties have provisions that prevent a third country resident from obtaining treaty benefits. For example, a foreign corporation may not be entitled to reduced rates of withholding unless a minimum percentage of its owners are citizens or residents of the United States or the treaty country.

The exemptions from, or reduced rates of, U.S. tax vary under each treaty. Therefore, you must check the provisions of the tax treaty that applies.

If the treaty does not cover a particular type of income, or if no treaty exists with the country of which the alien is a resident, you must withhold on the income at the statutory rates shown in this publication. However, if the payment of income is covered by a treaty, you must follow the provisions of that treaty.

If a nonresident alien individual has made an election with his or her U.S. citizen or resident spouse to be treated as a U.S. resident for income tax purposes, the nonresident alien may not claim to be a foreign resident to obtain the benefits of a reduced rate of, or exemption from, U.S. income tax under an income tax treaty.

Tables at the end of this publication show the countries with which the United States has income tax treaties and the rates of withholding that apply in cases where all conditions of the particular treaty articles are satisfied.

**Foreign payee's status.** If, as a withholding agent, you are not able to easily determine the relationship between yourself and a foreign payee or the relationship of a foreign payee and a foreign corporation, you should withhold at a rate of 30%. The 30% rate also applies if you are unable to determine whether the alien is a nonresident or a resident of the United States.

**Form 1001, Ownership, Exemption, or Reduced Rate Certificate.** A foreign payee may claim an exemption or reduced tax rate by filing Form 1001 with you. For income other than dividends and pay for personal services, the payee should file Form 1001 as soon as practicable for any period of 3 successive calendar years during which the income is expected to be received. For interest on coupon bonds, the payee should file the form each time a coupon is presented for payment.

The payee must use a separate Form 1001 for each type of income. However, a payee who receives income from a trust, estate, or investment account uses a separate Form 1001 for each different trust, estate, or investment account, regardless of how many types of income are received.

**Payee no longer eligible for treaty benefits.** If, after filing Form 1001, a payee ceases to be eligible for the benefits of the treaty for the income, the payee must promptly notify you as the withholding agent by letter. When any change occurs in the ownership of the income as recorded on the books of the payer, the withholding exemption or reduction no longer applies unless the new owner of record also is entitled to a reduced rate of tax or is exempt under a treaty and properly files Form 1001 with you.

If you have reason to know that an owner of income is not eligible for treaty benefits claimed on a Form 1001, disregard the form and withhold tax at the statutory rate. However, before the time you have reason to have that knowledge, you are not responsible for misstatements made on a Form 1001.

**Dividends.** A foreign payee who receives only dividends does not need to file Form 1001. You generally may rely on the payee's address of record as the basis for allowing the benefit of an income tax treaty.

However, foreign corporations that receive dividends from other foreign corporations with income effectively connected with a U.S. trade or business may need to file Form 1001 to obtain treaty exemption. See the Form 1001 Instructions.

**Coupon bond interest.** Since coupons for interest payable on bonds, debentures, and similar evidences of indebtedness (including tax-free covenant bonds) are payable to the bearer, you as the payer must ascertain each time a coupon is presented for payment whether the payee is subject to withholding.

Foreign payees ordinarily must file a separate Form 1001 each time they present a coupon for payment of interest for each issue of bonds of a corporation or each time they are paid interest on obligations of the United States or its agencies or instrumentalities.

**Gambling income.** Gambling income won in the United States by residents (as defined by treaty) of the following foreign countries is not taxable by the United States: Czech Republic, Finland, France, Germany, Hungary, Italy, Netherlands, Russian Federation, Slovakia Republic, Spain, Sweden, Tunisia, and the United Kingdom.

A foreign payee described in the preceding paragraph must file Form 1001 with you

to claim an exemption from withholding tax under a tax treaty.

## Pay for Personal Services

Most tax treaties to which the United States is a party provide for at least a partial exemption from tax for pay for labor or personal services performed in the United States by a qualifying individual. In most cases, the qualifying individual must be a resident of the treaty country. In some cases, the individual must be a citizen of the treaty country.

Under the treaty with Canada, for example, pay received by a resident of Canada for dependent personal services performed in the United States during the tax year is exempt from U.S. income tax if:

- 1) The Canadian resident is in the United States for not more than 183 days during the tax year, and the pay is not deductible by an employer who is a U.S. resident or by a permanent establishment or a fixed base the employer has in the United States, or
- 2) The individual's total pay for the year does not exceed \$10,000.

**Teacher, student, or trainee.** Another provision found in many treaties exempts from U.S. tax, pay received by a professor or teacher who is present in the United States temporarily for a specified activity, but only pay resulting from that specified activity. Many treaties also exempt from U.S. tax, amounts received from abroad by a student or trainee for maintenance or studies in the United States.

**Table 2.** See Table 2 at the end of this publication for treaty provisions that provide for partial or complete exemption from U.S. income taxes for compensation paid for personal services rendered, compensation paid to certain persons teaching or engaging in research, and amounts received by students and trainees.

## Claiming exemption from withholding.

The person entitled to receive salaries, wages, or any other pay for personal services performed in the United States must provide a statement to the withholding agent or employer to claim any exemption from either 30% withholding or graduated withholding.

**Independent personal services.** To qualify for an exemption from withholding because of a tax treaty, an individual who performs independent personal services (as distinguished from an employee) must give Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*, to each withholding agent from whom amounts are to be received. Form 8233 must be filed for each tax year of the alien individual. All information required by the form must be provided. The exemption from withholding is effective for payments made at least 10 days after a copy of the accepted Form 8233 is mailed to: Office of the Assistant Commissioner (International), Director, Office of International District Operations, CP:IN:D:C:SS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

You, as the withholding agent, must forward one copy of the form to the director within 5 days of your acceptance of the form. Before accepting Form 8233, you must review it. If you accept it, complete and sign Part II

of the form. If you know or have reason to know that any of the facts or assertions may be false, or that the eligibility of the individual's pay for the exemption cannot be readily determined, you may not accept Form 8233 and must withhold.

If you accept Form 8233 and later find that you should not have accepted it, you must promptly notify the Director, Office of International District Operations, by letter and withhold on any amounts still to be paid. If you are notified by that office that the eligibility of the individual's pay for the exemption is in doubt or is not eligible for the exemption, you must withhold.

If you forward an incorrect Form 8233, you will be notified that the form is not acceptable and that you must begin withholding immediately. A Form 8233 is incorrect if it:

- ❖ Claims a tax treaty benefit or exemption that doesn't exist or is obviously false, or
- ❖ Has not been completed in sufficient detail to allow determination of the correctness of the tax treaty benefit or exemption claimed.

You should keep a copy of Form 8233 for your records. You should give a copy to the nonresident alien individual and attach a copy to the Form 1042 that you file with the IRS. Each copy must include any attachments originally provided by the nonresident alien.

#### **Students, teachers, and researchers.**

Alien students, teachers, and researchers can also use Form 8233 to claim exemption from withholding of tax on pay for services that is exempt from U.S. tax under a tax treaty.

They must complete the form according to its instructions, attach the applicable statements listed in Appendix A or B of Publication 519, and deliver it to you.

You must follow the procedures discussed earlier under *Independent personal services*, for accepting Form 8233, forwarding the form to the IRS, and providing copies of the form and attachments. You cannot accept the form if you know that the alien is claiming an exemption for pay for a period of time, or for an amount, in excess of that provided in a treaty.

**Employees.** A nonresident alien employee who claims an exemption from tax under a provision of the Internal Revenue Code or an income tax treaty must file with the employer a statement for the tax year, in duplicate, giving name, address, and taxpayer identification number and certifying:

- 1) The individual is not a citizen or resident of the United States, and
- 2) The compensation to be paid during the tax year is, or will be, exempt from income tax, and the reason for the exemption.

If exemption from tax is claimed under an income tax treaty provision, the statement must indicate the tax treaty provision, the country of which the employee is a resident, and enough facts to justify the claim for exemption. Although no particular form is prescribed for this statement, to establish an exemption under the Code or an income tax treaty, the statement must:

- 1) Be dated,
- 2) Identify the tax year for which it applies and the pay to which it relates,

## **Chart A. Summary of Source Rules for Fixed or Determinable Annual or Periodic Income**

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

- 3) Be signed by the employee entitled to the pay, and
- 4) Contain, or be verified by, a written declaration that it is made under the penalties of perjury.

The duplicate copy of each statement must be attached to the Form 1042 that you must file with the IRS.

**Special events and promotions.** Unless the IRS has specifically advised you otherwise by letter, you should withhold at the statutory rates for payments that represent gate receipts (or television or other receipts) from rock music festivals, boxing promotions, and other entertainment or sporting events made to a nonresident alien or foreign corporation. This is because the exemption provided by certain tax treaties usually is based on factors not generally determinable until after the close of the tax year. In any situation where the nature of the relationship between you and the artist or athlete is not easily ascertainable, you should withhold at a rate of 30%. For example, when a foreign corporation provides you with an alien's services, the relationship may not be easily determined because of the need to resolve issues such as whether:

- 1) The relationship is one of agency rather than employment,
- 2) The foreign corporation is engaged in a trade or business in the United States, or
- 3) Assignment of income principles apply.

Foreign corporations must request the required letter from the IRS District Director in whose district its books and records are kept. Entertainers and athletes must request the letter as explained in *Central withholding agreements*, later, under *Artists and Athletes*.

## **Income Subject to Withholding**

This section explains how to determine if income is subject to withholding of U.S. tax.

Generally, fixed or determinable annual or periodic income from U.S. sources is subject to withholding. This includes interest, dividends, rents, salaries, wages, premiums, annuities, or other gains, profits or income unless specifically exempted under the Internal Revenue Code or a tax treaty.

## **Source of Income**

Generally, income is from U.S. sources if it is paid by domestic corporations or noncorporate residents of the United States, or if the property that produces the income is located in the United States. Exceptions to these basic source rules are summarized in *Chart A* and explained in detail in the separate discussions under *Withholding on Specific Income*, later.

**Personal service income.** If the income is for personal services performed in the United States, it is from U.S. sources. The place where the services are performed determines the source of the income, regardless of where the contract was made, the place of payment, or the residence of the payer.

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

If the income is for personal services performed partly in the United States and partly outside the United States, you must make an accurate allocation of income for services performed in the United States. In most cases, you make this allocation on a time basis. That is, U.S. source income is the amount that results from multiplying the total amount of pay by the following fraction:

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

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

**Territorial limits.** Wages received for services rendered inside the territorial limits of the United States and wages of an alien seaman earned on a voyage along the coast of the United States are regarded as from sources in the United States. Also treated as from sources in the United States are wages

or salaries for personal services performed in a mine or on an oil or gas well located or being developed on the continental shelf of the United States.

Income from the performance of services directly related to the use of a vessel or aircraft is treated as derived entirely from sources in the United States if the use begins and ends in the United States. This income is subject to 30% withholding if it is not effectively connected with a U.S. trade or business. If the use either begins or ends in the United States, see *Transportation income*, later.

**Crew members.** Income from the performance of services by a nonresident alien in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a U.S. possession is not income from U.S. sources.

**When withholding is not required.** Even though income arises from sources in the United States, withholding under the rules in this publication is not required in the following general situations:

- 1) The income is effectively connected with the conduct of a trade or business in the United States (or, under a treaty, is attributable to a permanent establishment in the United States) by a foreign payee entitled to the income, who has filed a Form 4224 (or similar statement), giving the payee's U.S. taxpayer identification number. (This exception does not apply, however, to income from personal services performed by an individual or services performed by a foreign corporation that has personal holding company income under personal service contracts.)
- 2) The income is paid to a foreign payee who is entitled under a tax treaty to exemption from withholding on the specified type of income, and the payee has filed a Form 1001 or a Form 8233.
- 3) The income is not included in gross income under the Internal Revenue Code.
- 4) The income is U.S. source gross transportation income.

**Transportation 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.

For personal service income other than income derived from, or in connection with, a vessel, the use must be between the United States and a U.S. possession. The recipient of U.S. source gross transportation income must pay tax at the rate of 4% unless the income is effectively connected with the conduct of a U.S. trade or business. However, the income is not subject to withholding. If the income is effectively connected with a U.S. trade or business, it is taxed on a net basis at a graduated rate of tax.

## Fixed or Determinable Annual or Periodic Income

In general, every kind of fixed or determinable annual or periodic income from U.S. sources is subject to withholding unless specifically exempt under the Code or a tax treaty, or unless that income is effectively connected with a U.S. trade or business or, under a treaty, is attributable to a permanent establishment in the United States.

Income is **fixed** when it is paid in amounts known ahead of time. Income is **determinable** whenever there is a basis for figuring the amount to be paid. The income need not be paid annually if it is paid periodically, that is to say, from time to time, whether or not at regular intervals. The fact that a payment is not made annually or periodically does not, however, necessarily prevent its being fixed or determinable annual or periodic income.

The following items are examples of fixed or determinable annual or periodic income and are subject to withholding:

- Annuities.
- Dividends.
- Gains.
- Interest.
- Patronage distributions.
- Pay.
- Premiums.
- Profits.
- Rents.
- Royalties.
- Salaries.
- Wages.
- A sales commission paid or credited monthly.
- A commission paid for a single transaction.
- The distributable net income of an estate or trust from U.S. sources that is fixed or determinable annual or periodic income and that must be distributed currently, or has been paid or credited during the tax year, to a nonresident alien beneficiary.
- Taxes, mortgage interest, or insurance premiums paid to, or for the account of, a nonresident alien landlord by a tenant under the terms of a lease.
- Prizes awarded to nonresident alien artists for pictures exhibited in the United States.
- Purses paid to nonresident alien boxers for prize fights in the United States.
- Prizes awarded to nonresident alien professional golfers in golfing tournaments in the United States.

**Installment payments.** It does not matter whether income is paid in a series of repeated payments or in a single lump sum. For example, \$5,000 in royalty income would come within the meaning of the term "fixed or determinable annual or periodic income" whether paid in 10 payments of \$500 each or in one payment of \$5,000.

**Insurance proceeds.** Income derived by an insured nonresident alien from U.S. sources upon the surrender of, or at the maturity of,

a life insurance policy, is fixed or determinable annual or periodic income and is subject to withholding. The proceeds are income to the extent they exceed the cost of the policy.

However, certain payments received under a life insurance contract on the life of a terminally or chronically ill individual before death (accelerated death benefits) may not be subject to tax. This also applies to certain payments received for the sale or assignment of any portion of the death benefit under the contract to a viatical settlement provider. See Publication 525, *Taxable and Nontaxable Income*, for more information.

**Racing purses.** Racetrack operators must withhold 30% on any purse paid to a nonresident alien racehorse owner in the absence of definite information filed on Form 1001 that the owner has not raced, or does not intend to enter, a horse in another race in the United States during the tax year. If available information indicates that the racehorse owner has raced a horse in another race in the United States during the tax year, then any Forms 1001 filed for that year are ineffective. The owner may be exempt from withholding of tax at 30% on the purses, if the owner files a statement or Form 4224 with you, which provides that the income is effectively connected with the conduct of a U.S. trade or business and that the income is includible in the taxpayer's gross income.

**Covenant not to compete.** Pay received for a promise not to compete is fixed or determinable annual or periodic income. Its source is the place where the promisor forfeited his or her right to act. Amounts paid to a nonresident alien for his or her promise not to compete in the United States are subject to withholding.

**Signing on.** A fee paid to a professional soccer player, for example, for "signing on"—with the effect of preventing any other team from negotiating with the player and preventing the player from negotiating with any other team—is basically pay for a covenant not to compete. The pay is fixed or determinable annual or periodic income and the source is the place where the right to play is given up. If a league is made up of both foreign and U.S. teams, the fee is from sources partly in and partly outside the United States. The part of the fee that is from U.S. sources is subject to withholding. If there is no reasonable basis for an allocation of the fee, the entire sign-on fee is income from the United States and is subject to withholding.

**Partnership distributions.** A domestic partnership that earns fixed or determinable annual or periodic income during the tax year that is not effectively connected with a U.S. trade or business must withhold 30% (or lower treaty rate) on the distributive share of a foreign partner. This is true whether or not the foreign partner's distributive share has actually been distributed to the partner.

The partnership should withhold by the date on which partnership forms (Schedule K-1 (Form 1065)) are sent to individual partners, but no later than the 15th day of the 3rd month after the close of the partnership's tax year.

Effectively connected income of foreign partners is subject to the rules discussed later under *Partnership Withholding on Effectively Connected Income*.

**Sale of property.** Income from the sale of real or personal property in the United States is not fixed or determinable annual or periodic income and generally not subject to this withholding tax. However, see *U.S. Real Property Interest*, for a discussion of a separate withholding tax on certain sales.

## Withholding on Specific Income

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

You must withhold tax at the statutory rates shown in *Chart B* unless a reduced rate or exemption under a tax treaty applies. For U.S. source gross income that is not effectively connected with a U.S. trade or business, the rate is usually 30%. Generally, you must withhold the tax at the time you pay the income to the nonresident alien individual, foreign partnership, or foreign corporation. However, a domestic partnership must withhold the tax on a foreign partner's distributive share of income, even if it has not been distributed. See *Partnership distributions*, under *Income Subject to Withholding*, earlier.

## Interest

The following types of interest paid to foreign payees are generally subject to withholding.

**Interest paid by U.S. obligors—general** (Income Code 1). With specific exceptions, such as payments of portfolio interest, this category includes interest paid or credited on bonds, debentures, notes, open account indebtedness, governmental obligations, or other evidences of indebtedness of U.S. obligors (other than those specifically described later under Income Codes 2, 3, and 4). It also includes unstated interest on certain deferred payment arrangements as provided in Internal Revenue Code section 483. U.S. obligors include the U.S. Government or its agencies or instrumentalities and any U.S. resident.

If, in a sale of a corporation's property, payment of the bonds or other obligations of the corporation is assumed by the buyer, that buyer, whether an individual, partnership, or corporation, must deduct and withhold the taxes that would be required to be withheld by the selling corporation as if there had been no sale or transfer. Also, if interest coupons are in default, the tax must be withheld on the gross amount of interest whether or not the payment is a return of capital or the payment of income. Claims for refund may be filed.

A resident alien individual paying interest on a margin account maintained with a nonresident foreign brokerage firm must withhold from the interest whether the interest is paid directly or constructively.

A foreign tax-exempt organization may claim exemption from withholding of tax on bond interest coupons presented for payment in the United States, but will be subject to withholding for any tax year in which the organization is a private foundation.

Interest on bonds of a U.S. corporation paid to a foreign corporation not engaged in

## Chart B. Withholding Tax Rates

(Note: You must withhold tax at the following rates on payments of income unless a reduced rate or exemption is authorized under a tax treaty. The President may apply higher tax rates on income paid to residents or corporations of foreign countries that impose burdensome or discriminatory taxes on U.S. persons.)

Type of Income	Rate
Taxable part of U.S. scholarship or fellowship grant paid to holder of "F," "J," "M," or "Q" visa (see <i>Scholarships and Fellowship Grants</i> , later)	14%
Tax-free covenant bond interest on bonds issued before January 1, 1934 (see <i>Interest on tax-free covenant bonds</i> , later under <i>Interest</i> )	2%, 27½% or 30%
Gross investment income from interest, dividends, rents, and royalties paid to a foreign private foundation	4%
Pensions paid for personal services (see <i>Pensions, Annuities, and Alimony</i> , later)	Graduated rates in
Wages paid to a nonresident alien employee (see <i>Pay for Personal Services Performed</i> , later)	Circular A or Circular E
Each foreign partner's share of effectively connected income of the partnership (see <i>Partnership Withholding on Effectively Connected Income</i> , later)	39.6% or 35%
Distributions of effectively connected income to foreign partners by publicly traded partnerships (see <i>Publicly Traded Partnerships</i> , later)	39.6%
Dispositions of U.S. real property interests (see <i>U.S. Real Property Interest</i> , later)	10% (or other amount)
All other income payments subject to withholding	30%

a trade or business in the United States is subject to withholding even though the interest is guaranteed by a foreign corporation that made payment outside the United States.

Domestic corporations must withhold on interest credited to foreign subsidiaries.

**Original issue discount.** If a bond or other evidence of indebtedness is an original issue discount obligation, the investor is subject to withholding on the original issue discount (OID) accrued while the obligation was held by the nonresident investor. However, a payment on the original issue discount obligation is taken into account as OID only to the extent that the discount was not previously taken into account, and only to the extent the tax on the OID does not exceed the interest payment less the tax on that payment. For information on the sale or exchange of an original issue discount obligation, see *Certain Gains*, later.

The term "original issue discount obligation" does not include any obligations payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer). It also does not include any obligation the interest on which is tax exempt under any provision of law without regard to the identity of the holder.

These provisions apply to obligations issued after March 31, 1972. Original issue discount on obligations issued before April 1, 1972, is not subject to withholding.

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

**Interest not subject to withholding.** The following types of interest of U.S. obligors paid to a foreign payee are not subject to withholding.

**Interest on deposits.** Interest that is not connected with a U.S. trade or business is not subject to withholding if it is from:

- 1) Deposits with persons carrying on the banking business,
- 2) Deposits or withdrawable accounts with savings institutions chartered and supervised under federal or state law as savings and loan or similar associations, such as credit unions, if the interest is or would be deductible by the institutions, or
- 3) Amounts left with an insurance company under an agreement to pay interest on them.

Deposits include certificates of deposit, open account time deposits, Eurodollar certificates of deposit, and other deposit arrangements.

You may have to file Form 1042-S to report certain payments of interest on deposits. See *Interest payments to a nonresident alien individual who resides in Canada and is not a U.S. citizen* under *Returns Required*, later.

**Payer having income from abroad.** In general, interest received from a resident alien individual or a domestic corporation is not subject to withholding if at least 80% of the payer's gross income from all sources has been from active foreign business for the 3 tax years of the payer before the year in which the interest is paid, or for the applicable part of those 3 years. However, limits apply if the recipient is considered to be a related person. See sections 861(a) and 861(c) of the Internal Revenue Code.

**Bankers' acceptances.** Income of a foreign central bank of issue from bankers' acceptances is not subject to withholding. A foreign central bank of issue is a bank that has by law or government sanction the main authority, other than the government itself, to issue instruments intended to circulate as currency. This type of bank generally is the custodian of the banking reserves of the country under whose laws it is organized.

**Sales of bonds between interest dates.**

Do not withhold tax on accrued interest you paid in connection with the purchase of bonds between interest dates.

**Income from U.S. Savings Bonds of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands.**

Do not withhold tax on interest from a Series E, Series EE, Series H, or Series HH U.S. Savings Bond if the nonresident alien individual acquired the bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

**Interest on obligations of the United States** received by a foreign central bank of issue or the Bank of International Settlements is not subject to withholding.

**Portfolio interest.** You need not withhold tax on portfolio interest. To qualify as portfolio interest, the interest must be otherwise subject to 30% withholding tax and must be paid on obligations issued after July 18, 1984, that meet certain requirements. Original issue discount may qualify as portfolio interest.

**Obligations that are not registered.** Portfolio interest includes interest paid on any obligation that is not in registered form (bearer obligations) and that is foreign-targeted. A bearer obligation is foreign-targeted if:

- 1) There are arrangements to ensure that the obligations will be sold, or resold in connection with the original issue, only to a person who is not a United States person,
- 2) Interest on the obligation is payable only outside the United States and its possessions, and
- 3) The face of the obligation contains a statement that any United States person who holds the obligation will be subject to limits under the United States income tax laws.

The interest on bearer obligations meeting these requirements is portfolio interest.

**Registered obligations.** Portfolio interest includes interest paid on an obligation that is in registered form, and for which the United States person (including a foreign paying agent of an issuer who is a United States person) who would otherwise be the withholding agent on this interest has received a statement that the beneficial owner of the obligation is not a United States person. The statement is made by the beneficial owner of the obligation, or a securities clearing organization, a bank, or other financial institution that holds customers' securities in the ordinary course of its trade or business.

If the obligation is not targeted to foreign markets, a statement made by the beneficial owner of the obligation must meet the following requirements:

- 1) It is signed by the beneficial owner under penalties of perjury,
- 2) It certifies that the owner is not a United States person, or if an individual, that the owner is not a citizen or a resident of the United States, and
- 3) It provides the name and address of the beneficial owner.

The statement may be made, at the option of the withholding agent, on a Form W-8, *Certificate of Foreign Status*, or on a substitute form. The beneficial owner must inform

the withholding agent of any changes in the information on the statement within 30 days of the change.

If the obligation is not targeted to foreign markets, a financial institution must send to the withholding agent a statement signed under penalties of perjury by an authorized representative. It must state that the institution has received from the beneficial owner a Form W-8 or a substitute form, or that it has received from another financial institution a similar statement that it, or another institution, has received a Form W-8 or a substitute form from the beneficial owner. The statement must provide the name and address of the beneficial owner. A copy of the Form W-8, provided by the beneficial owner, must be attached.

The withholding agent who receives a statement must file a Form 1042-S for the payment for which the statement is required for the calendar year in which payment is made. The statement (including Form W-8) must be attached to Form 1042.

**Registered obligations targeted to foreign markets.** The Form W-8 or substitute statement is not required for interest paid on a registered obligation that is targeted to foreign markets if the interest is paid by a United States person to a registered owner that is a financial institution at an address outside the United States. In this case, the interest is treated as portfolio interest if the withholding agent does not have actual knowledge that the beneficial owner is a United States person and receives a certificate, documentary evidence, or statement from a financial institution or member of a clearing organization, which member is the beneficial owner.

No particular form is required for the certificate or documentary evidence. However, see Temporary Regulation section 35a.9999-5(b), A-14, for what the certificate or documentary evidence must contain.

If the person providing the certificate has not provided a previous certificate for an obligation, the certificate must be provided within the period beginning 90 days before the first interest payment date. If it is not received by the date 30 days prior to the payment, the withholding agent may withhold tax. Thereafter, the certificate must be filed within the period beginning January 15 and ending on January 31 of each year. For other information, see Temporary Regulation section 35a.9999-5(b), A-15.

If the withholding agent pays interest to the beneficial owner (neither a financial institution nor a member of a clearing organization), the owner must provide the withholding agent a Form W-8 or substitute statement. However, a withholding agent that is a foreign branch of a U. S. financial institution need not receive a Form W-8 or substitute statement if the withholding agent receives from the beneficial owner documentary evidence that the beneficial owner is not a United States person. See Temporary Regulation section 35a.9999-4, A-5, for what constitutes documentary evidence.

Documentary evidence must be provided within the period beginning 90 days before the first interest payment date. The beneficial owner must confirm the continuing validity of the documentary evidence within the period beginning 90 days before the first day of the third calendar year following the provision of the evidence and during the same period every three years thereafter while still the owner.

A registered obligation is targeted to foreign markets if it is sold (or resold in connection with its original issuance) only to foreign persons or to foreign branches of U. S. financial institutions in accordance with procedures similar to those provided under Regulation section 1.163-5(c)(2)(i), and Temporary Regulation section 35a.9999-5(b), A-13.

Form 1042-S does not have to be filed to report this interest on registered obligations targeted to foreign markets unless a Form W-8 or substitute statement is provided.

**Nonqualifying payees.** Interest paid to a 10% shareholder is not portfolio interest and does not qualify for the exemption from withholding. For an obligation issued by a corporation, a "10% shareholder" is any person who owns at least 10% of the total combined voting power of all classes of voting stock of the corporation. For an obligation issued by a partnership, a "10% shareholder" is any person who owns at least 10% of the capital or profits interest in the partnership. Generally, the constructive ownership of stock rules apply in determining if a person is a 10% shareholder of a corporation. Similar rules will apply in determining the ownership of the capital or the profits interest in a partnership.

For payments to foreign corporations, portfolio interest does not include interest that is paid to:

- 1) A bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business, except for interest paid on an obligation of the United States,
- 2) A 10% shareholder (described above), or
- 3) A controlled foreign corporation from a related person.

**Contingent interest rule.** Portfolio interest that is exempt from withholding generally does not include contingent interest. Contingent interest is any of the following:

- 1) Interest that is determined by reference to:
  - a) Any receipts, sales, or other cash flow of the debtor or related person,
  - b) Income or profits of the debtor or related person,
  - c) Any change in value of any property of the debtor or a related person, or
  - d) Any dividend, partnership distributions, or similar payments made by the debtor or a related person.
- 2) Any other type of contingent interest that is identified by the Secretary of the Treasury in regulations.

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

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

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

Also, the contingent interest rule does not apply to interest described in subparagraph (C) of section 871(h)(4).

**Interest on real property mortgages** (Income Code 2). Because there is no reduced rate or exemption under some tax treaties for interest paid or credited on real property mortgages, it is assigned a separate category for withholding purposes. This is interest paid on any type of debt instrument that is secured by a mortgage or deed of trust on real property located in the United States, regardless of whether the mortgagor (or grantor) is a U.S. citizen or a U.S. business entity.

**Interest paid to controlling foreign corporations** (Income Code 3). Under some tax treaties, there is no reduced rate or exemption for interest paid by a U.S. corporation to a controlling foreign corporation. This is interest that is paid or credited by a domestic corporation (as contrasted with a resident foreign corporation) on borrowings from a controlling foreign corporation. The interest may be on any type of debt including open or unsecured accounts payable, notes, certificates, bonds, or other evidences of indebtedness. A controlling foreign corporation is a corporation of the treaty country that controls, directly or indirectly, more than 50% of the entire voting power of the paying corporation.

**Interest paid by foreign corporations** (Income Code 4). If a foreign corporation is engaged in a U.S. trade or business, any interest paid by the foreign corporation's trade or business in the United States is subject to withholding as if paid by a domestic corporation.

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

**Tax treaties.** In general, recipients of interest from a U.S. trade or business of a foreign corporation are entitled to reduced rates of, or exemption from, tax under a treaty in the same manner and subject to the same conditions as if they had received the interest from a domestic corporation. However, a foreign corporation that receives interest paid by a U.S. trade or business of a foreign corporation must also be a qualified resident of its country of residence to be entitled to benefits under that country's tax treaty.

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

A foreign corporation that pays interest must be a qualified resident of its country of residence for the recipient to be entitled to treaty benefits with respect to that interest.

You should check the specific treaty provision. Table 3 at the end of this publication provides a list of the tax treaties and, if published, the Internal Revenue Cumulative Bulletins in which they appear.

**Interest on tax-free covenant bonds** (Income Code 5). Different withholding rates apply to interest on bonds and other obli-

gations issued before 1934 that contain a tax-free covenant. A tax-free covenant is an agreement of the obligor to pay or reimburse any part of the bondholder's income tax on the interest. Interest on tax-free covenant bonds issued after 1933 is subject to the general withholding provisions and rates just discussed in the other interest categories.

**Withholding rates.** The statutory withholding rates for tax-free covenant bond interest on bonds issued before 1934 are:

- 1) 2% on tax-free covenant bond interest on bonds issued before January 1, 1934, whose maturity date was not extended on or after that date, unless paragraph (2) applies to that interest.
- 2) 30% on tax-free covenant bond interest on bonds issued before January 1, 1934, whose maturity date was not extended on or after that date if the interest is paid to a nonresident alien individual, nonresident partnership made up entirely or partly of nonresident aliens, a nonresident foreign corporation, or an owner who is unknown to the withholding agent, and the tax liability assumed by the obligor is not more than 2% of the interest.
- 3) 27½% on tax-free covenant bond interest on bonds issued before January 1, 1934, whose maturity date was extended on or after that date and the tax liability assumed by the obligor is more than 27½% of the interest.

**Tax treaties.** Under most tax treaties, the tax rates for interest on tax-free covenant bonds issued before 1934 are the same as those shown at the end of this publication in Table 1 in the column for Income Code 1. But be sure to check the specific treaty provision. Use the treaty rate only if it is less than the statutory rate.

## Dividends

The following types of dividends paid to foreign payees are generally subject to withholding.

**Dividends paid by U.S. corporations — general** (Income Code 6). This category includes all distributions of domestic corporations (other than dividends paid by a U.S. subsidiary corporation to a foreign parent corporation—Income Code 7).

Subject to certain exceptions, you must withhold tax on the gross amount of all corporate distributions paid to nonresident payees, to the extent treated as gross income from sources within the United States.

Do not withhold tax on a nontaxable distribution payable in stock or stock rights, or a distribution that is treated as a distribution in part or full payment in exchange for stock. If part of the distribution is taxable, you must withhold on the entire distribution.

You must withhold tax on a domestic corporation's cash distribution made on its stock in the ordinary course of its business to foreign shareholders. You must withhold even though it may be later determined that part or all of the distribution is a return of capital or a gain from the sale or exchange of property.

A claim for refund, with appropriate supporting evidence, may be filed for the excess payment.

**Capital gain dividends** paid by a regulated investment company or real estate investment trust generally are not subject to withholding. However, capital gain dividends paid by a real estate investment trust are subject to withholding at a 35% rate as discussed later under *U.S. Real Property Interest*.

**Dividends paid to a shareholder whose status is not definite.** If the shareholder's address is in the United States, you may assume that the shareholder is a citizen or resident of the United States or a domestic partnership or corporation. In that case, you need not withhold tax. Unless the facts and circumstances indicate clearly that the shareholder is a nonresident alien, foreign partnership, or foreign corporation, an address in care of another person in the United States does not of itself warrant treating the shareholder as a nonresident alien, foreign partnership, or foreign corporation.

However, if you do not definitely know the status of a shareholder, you must withhold the tax if the shareholder's address is outside the United States. If a shareholder changes from an address outside the United States to an address in the United States, you must withhold the tax unless you receive proof showing that the individual is a citizen or resident of the United States. (A shareholder may claim U.S. citizenship or residence by filing a statement or Form 1078, as discussed earlier under *Withholding Exemptions and Reductions*.)

You must withhold tax on dividends to foreign shareholders at rates in effect on the date the dividend check is first issued even if the check is delivered when a new rate is in effect.

**Dividends paid by a domestic corporation (an "80/20" company).** Generally, a percentage of any dividend paid by a domestic corporation that received at least 80% of its gross income from an active foreign business for the testing period (the 3 tax years before the year in which the dividends are declared, or shorter period if the corporation was not in existence for 3 years) is not subject to withholding. The percentage is found by dividing the corporation's foreign gross income for the testing period by the corporation's total gross income for that period. See sections 871(i)(2)(B) and 881(d) of the Internal Revenue Code.

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

**Jointly-owned stock.** If stock is owned jointly by a nonresident alien individual and the U.S. citizen spouse of that individual, you must withhold tax only on the amount of the dividends considered paid to the nonresident alien.

**Consent dividends.** If the corporation receives a Form 972, *Consent of Shareholder To Include Specific Amount in Gross Income*, from a nonresident alien or other foreign shareholder who agrees to treat the amount as a taxable dividend, the corporation must pay and report on Form 1042 and Form 1042-S any withholding tax it would have withheld if the dividend had been actually paid.

**Dividends paid by U.S. subsidiaries to foreign parent corporations** (Income Code 7). Under certain tax treaties, there are reduced withholding rates for dividends from a U.S. subsidiary corporation to a foreign parent corporation. Accordingly, these dividends are a separate category for purposes of correctly applying the withholding rules.

The payment to a foreign corporation of a deemed dividend under Code section 304(a)(1) is subject to withholding to the extent it is from U.S. sources.

Under some treaties, the rate is reduced only if the foreign parent corporation is subject to tax on the dividends in the foreign country or only if the subsidiary corporation's dividend and interest income does not exceed a certain percentage of its total income. The percentage of stock ownership that the parent must have in the subsidiary corporation for the dividends to qualify for the reduced rate also may vary from treaty to treaty.

**Consent dividends.** If the U.S. subsidiary receives a Form 972, *Consent of Shareholder To Include Specific Amount in Gross Income*, from a foreign parent corporation, which agrees to treat the amount as a taxable dividend, the subsidiary must pay and report on Form 1042 and Form 1042-S any withholding tax it would have withheld if the dividend had been actually paid.

**Dividends paid by foreign corporations** (Income Code 8). Dividends paid by a foreign corporation are generally subject to withholding if 25% or more of its gross income is effectively connected (or treated as effectively connected) with a U.S. trade or business for the 3 tax years (or shorter period) before the year in which the dividends are paid. Taxes should be withheld in the same ratio that the effectively connected gross income is to the total gross income of the foreign corporation. If less than 25% of the corporation's gross income is effectively connected with a U.S. trade or business, then the dividends are not subject to withholding.

The payment to a foreign corporation by a foreign corporation of a deemed dividend under Code section 304(a)(1) is subject to withholding except to the extent it can be clearly determined to be from foreign sources.

**Corporation subject to branch profits tax.** If a foreign corporation is subject to branch profits tax for any tax year, withholding is not required on any dividends paid by the corporation out of its earnings and profits for that tax year.

Dividends may be subject to withholding if they are attributable to any earnings and profits when the branch profits tax is prohibited by a tax treaty.

**30% rate.** If there is no treaty provision or exemption under the Internal Revenue Code, you must withhold tax at the statutory rate of 30%.

**Tax treaties.** Certain treaties may exempt all or a part of these dividends from U.S. withholding tax. Some treaties provide for an exemption regardless of the payee's residence or citizenship; others provide for an exemption according to the payee's status as a resident or citizen of the payer's country.

A foreign corporation that pays dividends must be a qualified resident of its country of residence to be entitled to treaty benefits with respect to those dividends.

You should check the specific treaty provision. *Table 3* at the end of this publication provides a list of the tax treaties and, if published, the Internal Revenue Cumulative Bulletins in which they appear.

## Certain Gains

Generally, you need not withhold tax on income from the sale in the United States of real or personal property because it is not fixed or determinable annual or periodic income. However, if a disposition of a U.S. real property interest by a foreign person is involved, see the discussion under *U.S. Real Property Interest*, later.

**Capital gains** (Income Code 9). Certain gains are subject to withholding. You must withhold at 30% on the gross amount of the following items:

- 1) Gains on disposal of timber, coal, or domestic iron ore with a retained economic interest, unless an election is made to treat those gains as income effectively connected with a U.S. trade or business,
- 2) Gains on contingent payments received from the sale or exchange after October 4, 1966, of patents, copyrights, and similar property,
- 3) Gains on certain transfers of all substantial rights to, or an undivided interest in, patents if the transfers were made before October 5, 1966, and
- 4) Gains from the sale or exchange of original issue discount obligations issued after March 31, 1972. You must withhold tax on the amount of the original issue discount accruing while the obligation was held by the nonresident alien individual or foreign corporation. The amount of the original issue discount accruing does not include amounts previously taken into account as discussed earlier under *Interest*.

If you do not know the amount of the gain, you must withhold an amount necessary to assure that the tax withheld will not be less than 30% of the recognized gain. The amount to be withheld, however, must not be more than 30% of the amount payable because of the transaction.

Unless you have reason to believe otherwise, you may rely upon the written statement of the person entitled to the income as to the amount of the gain. The statement, prepared according to regulations, must show the computation of the gain and must be given to you in duplicate. You must forward the duplicate copy of the statement along with Form 1042 that you file with the IRS.

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

## Royalties

In general, you must withhold tax on the payment of royalties from sources in the United States. However, certain types of royalties are given reduced rates or exemptions under some tax treaties. Accordingly, these different types of royalties are treated as separate categories for withholding purposes.

**Industrial royalties** (Income Code 10). This category of income includes royalties for the use of, or for the privilege of using, patents, trademarks, secret processes and formulas, goodwill, franchises, "know-how," and similar rights. It also may include rents for the use or lease of personal property. Under certain tax treaties, different rates may apply to royalties for information concerning industrial, commercial, and scientific know-how.

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

**Other royalties (e.g., copyright, recording, publishing)** (Income Code 12). This category refers to the royalties paid for the use of copyrights on books, periodicals, articles, etc., except motion picture and television copyrights.

## Real Property Income

The following rules apply to withholding on real property income of foreign payees.

**Real property income and natural resources royalties** (Income Code 13). You must withhold tax on income from real property located in the United States and held for the production of income, unless the foreign payee elects to treat this income as effectively connected with a U.S. trade or business. If the foreign payee chooses to treat this income as effectively connected, the payee must file Form 4224 (discussed earlier). This real property income includes royalties from mines, wells, or other natural deposits, as well as ordinary rents for the use of real property. It does not include gains from disposition of U.S. real property interests.

## Pensions, Annuities, and Alimony

The following rules apply to withholding on pensions, annuities, and alimony of foreign payees. Use *Income Code 14 (Pensions, annuities, alimony, and/or insurance premiums)* when reporting these items on Form 1042-S.

**Pensions and annuities.** Generally, you must withhold tax on the gross amount of pensions and annuities that you pay. However, most tax treaties provide that private pensions and annuities are exempt from withholding.

A pension paid to a nonresident alien as a result of services performed by the alien in the United States is treated as income effectively connected with a U.S. trade or business. This income is generally subject to graduated withholding. See Publication 15-A, *Employer's Supplemental Tax Guide*, for information on these rules.

Report income tax withholding from pensions and annuities on Form 945, *Annual Return of Withheld Federal Income Tax*. You must furnish the recipients and the IRS with

Form 1099-R, *Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*

Each individual who receives a pension fills out Form W-4P, *Withholding Certificate for Pension or Annuity Payments*, to claim withholding allowances and to show marital status for withholding purposes. When the nonresident alien completes Form W-4P, only "Single" marital status should be checked and only one withholding allowance is allowed, unless the alien is a resident of Canada, Mexico, Japan, or South Korea, or is a U.S. national. A U.S. national is an individual who is either a citizen of American Samoa, or a Northern Mariana Islander who chose to become a U.S. national.

An alien may elect not to have tax withheld on periodic pension payments or nonperiodic pension distributions other than eligible rollover distributions (defined under *Rollovers* in Publication 575, *Pension and Annuity Income*). However, if the alien makes this no withholding election for the graduated tax, the pension income is subject to the 30% (or lower treaty rate) withholding tax. In this situation, the amounts must be reported using Forms 1042 and 1042-S.

**No withholding.** Do not withhold tax on an annuity payment to a nonresident alien if at the time of the first payment from the plan, 90% or more of the employees eligible for benefits under the plan are citizens or residents of the United States and the payment is:

- 1) Because of the nonresident's personal services performed outside the United States, or
- 2) Because of personal services by a nonresident individual present in the United States for 90 days or less during each tax year, whose pay for those services does not exceed \$3,000, for:
  - a) A nonresident alien individual, foreign partnership, or foreign corporation not engaged in a trade or business in the United States, or
  - b) An office or place of business of a U.S. resident or citizen which is maintained outside the United States.

If the payment otherwise qualifies under these rules, but less than 90% of the employees eligible for benefits are citizens or residents of the United States, you still need not withhold tax on the payment if:

- 1) The recipient is a resident of a country that gives a substantially equal exclusion to U.S. citizens and residents, or
- 2) The recipient is a resident of a beneficiary developing country under the Trade Act of 1974.

If you, as the withholding agent, are not the employer who established the annuity plan, the person entitled to the payments must file a statement with you for the exemption to apply. The statement must:

- 1) Be filed in duplicate for each tax year in which an annuity payment is made,
- 2) Contain the annuity owner's name, address, and taxpayer identification number, if any, and
- 3) Certify that the person entitled to the annuity is not a citizen or resident of the

United States and that the annuity income is excluded from gross income under Internal Revenue Code section 871(f).

The statement must be dated and signed, must identify the tax year to which it relates, and must either contain, or be accompanied by, a written declaration that it is made under penalties of perjury. You must attach the duplicate copy of the statement to the Form 1042 that you file with the IRS.

**Alimony payments.** Generally, alimony payments made by U.S. residents to nonresident aliens are taxable and subject to withholding whether the recipients are residing abroad or are temporarily present in the United States.

Many tax treaties, however, provide for an exemption from withholding for alimony payments. Treaties with a provision for alimony payments are shown in *Table 1*, by a footnote reference, under *Income code number 14*.

Alimony payments made to a nonresident alien by a U.S. ancillary administrator of a nonresident alien estate are from foreign sources and are not subject to withholding.

## Scholarships and Fellowship Grants

A scholarship or fellowship grant (Income Code 15) paid to a nonresident alien who is temporarily present in the United States may or may not be subject to withholding. First, determine the source of the grant. If the grant is from foreign sources, no withholding is required.

**Source of income.** Scholarships, fellowship grants, grants, prizes and awards made by domestic sources are generally treated as income from sources within the United States. However, see *Nonresident alien recipient*, next. Those made by foreign sources are treated as income from foreign sources.

**Nonresident alien recipient.** Scholarships, fellowship grants, grants, targeted grants, and achievement awards received by nonresident aliens for activities conducted outside the United States are treated as foreign source income.

## From U.S. Sources

Whether a fellowship grant from U.S. sources is subject to withholding depends on the nature of the payments and whether the recipient is a candidate for a degree.

**Candidate for a degree.** Do not withhold on a **qualified scholarship** from U.S. sources granted and paid to a candidate for a degree. A qualified scholarship means any amount paid to an individual as a scholarship or fellowship grant to the extent that, in accordance with the conditions of the grant, the amount is to be used for the following expenses:

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

You must withhold tax at 14% on amounts received from U.S. sources by an alien present in the United States on an "F," "J," "M,"

or "Q" visa that are related to the scholarship but are not for tuition and related expenses. You must withhold at 14% on additional amounts such as room, board, or incidental expenses received under the scholarship.

**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 on an "F," "J," "M," or "Q" visa, you must withhold tax at 14% on the total amount of the grant that is from U.S. sources if the following requirements are met:

- 1) The grant must be for study, training, or research at an educational organization in the United States, and
- 2) The grant must be made by:
  - a) A tax-exempt organization operated for charitable, religious, educational, etc. purposes,
  - b) A foreign government,
  - c) A federal, state, or local government agency, or
  - d) An international organization, or a binational or multinational educational or cultural organization created or continued by the Mutual Educational and Cultural Exchange Act of 1961 (known as the Fulbright-Hays Act).

If the grant does not meet both (1) and (2) above, you must withhold at 30% on the amount of the grant that is from U.S. sources.

**Reduced withholding.** Nonresident alien students or grantees who receive U.S. source grants or scholarships may be entitled to reduced withholding on the taxable part of the grant or scholarship. The students or grantees must have an "F," "J," "M," or "Q" visa.

Before applying the 14% withholding rate, you should allow the student or grantee to give you a Form W-4, *Employee's Withholding Allowance Certificate*. 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. The withholding agent will be liable for the tax to be withheld, and must file Form 1042 and a Form 1042-S (discussed later) for each student or grantee who files a Form W-4 with the agent.

Each student or grantee who files a Form W-4 must file an annual U.S. income tax return to be allowed the exemptions and deductions claimed on that form. If the individual is in the United States during more than one tax year, he or she must attach a statement to the annual Form W-4 indicating that the individual has filed a U.S. income tax return for the previous year. If he or she has not been in the United States long enough to have to file a return, the individual must attach a statement to the W-4 saying that a timely U.S. tax return will be filed.

A prorated portion of allowable personal exemptions based on the projected number of days he or she will be in this country is allowed. This is figured by multiplying the daily exemption amount (\$7.40 for 1998) by the number of days the student or grantee expects to be in the United States during the year. The prorated exemption amount should

be shown on line A of the *Personal Allowances Worksheet* that comes with Form W-4.

On Line B, a student or grantee who qualifies under Article 21(2) of the United States-India Income Tax Treaty can enter the standard deduction if he or she does not claim away-from-home expenses or other itemized deductions (discussed later). The standard deduction is \$4,250 for single persons and \$3,550 for married persons. All other nonresident aliens must enter "0".

Generally, a zero (-0-) should be shown on lines C and D of the worksheet. But, an additional daily exemption amount may be allowed for the spouse and each dependent if the student or grantee is:

- 1) A resident of Canada, Mexico, Japan, or South Korea,
- 2) A U.S. national, or
- 3) Eligible for the benefits of Article 21(2) of the United States-India Income Tax Treaty.

These additional amounts should be entered on lines C and D, as appropriate.

A **U.S. national** is an individual who is either a citizen of American Samoa, or a Northern Mariana Islander who chose to become a U.S. national.

As lines E and F of the worksheet do not apply to nonresident aliens subject to this procedure, there should be no entries on those lines.

The nonresident alien student or grantee may deduct away-from-home expenses (meals, lodging, and transportation) on Form W-4 if he or she expects to be away from his or her tax home for 1 year or less. The amount of the claimed expenses should be the anticipated actual amount, if known. If the amount of the expenses is not known at the time the W-4 is filed with you, the current per diem allowance in effect for participants in the Career Education Program under the Federal Travel Regulations may be claimed on Form W-4. The allowable amount is \$18.00 per day.

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

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

The student or grantee can also enter on line A of the worksheet, the part of the grant or scholarship that is tax exempt under the statute or a tax treaty.

Lines A through D of the *Personal Allowances Worksheet* are added and the total should be shown on the summation line.

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 W-4 and withhold at the appropriate rate. However, if the only incorrect information is that the student or grantee's stay in the United States has extended beyond 12 months, the withholding agent may withhold under these rules, but without a deduction for away-from-home expenses.

After receipt and acceptance of the Form W-4, the payer must withhold as if the grant or scholarship income were wages. The gross amount of the income is reduced by the total amount of exemptions and deductions on the Form W-4 and the withholding tax is figured on the rest.

When completing Form 1042-S for the student or grantee, enter the gross scholarship or fellowship grant in column (b), enter the withholding allowance amount from the summation line of the *Personal Allowances Worksheet* of Form W-4 in column (c), and show the net of these two amounts in column (d).

**Pay for services rendered** as an employee by an alien who also is the recipient of a scholarship or fellowship grant usually is subject to graduated withholding according to the rules discussed later in *Pay Subject to 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. An exception to this requirement for alien students, teachers, and researchers can be found under *Treaty Benefits*, discussed earlier.

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

## Other Grants, Prizes and Awards

Other grants, prizes, and awards made by domestic sources are treated as income from sources within the United States (however, see *Nonresident alien recipient*, earlier). Those made by foreign sources are treated as income from foreign sources. These provisions do not apply to salaries or other pay for services.

**Grant defined.** The purpose of a grant must be to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee. A grant must also be an amount which does not qualify as a scholarship, fellowship grant or prize or award.

**Prizes and awards defined.** Prizes and awards are amounts received as prizes primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement. An amount is a prize or award only if:

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

## Targeted grants and achievement awards.

Targeted grants and achievement awards received by nonresident aliens for activities conducted outside the United States are treated as income from foreign sources. Targeted grants and achievement awards are issued by exempt organizations or by the United States (or one of its instruments or agencies), a State (or a political subdivision of a State), or the District of Columbia for an activity (or past activity in the case of an achievement award) undertaken in the public interest.

## Pay for Personal Services Performed

This section explains the rules for withholding tax from pay for personal services. Pay for personal services is subject to withholding at either the 30% rate or graduated rates.

### Pay Subject to 30% Withholding

You generally must withhold tax at the 30% rate on compensation you pay to a nonresident alien individual for labor or personal services performed in the United States, unless that pay is specifically exempted from withholding or subject to graduated withholding. This rule applies regardless of your place of residence, the place where the contract for service was made, or the place of payment.

### Pay for independent personal services

(Income Code 16). Independent personal services (a term commonly used in tax treaties) are personal services performed by an independent nonresident alien contractor as contrasted with those performed by an employee. This category of pay includes payments for professional services, such as fees of an attorney, physician, or accountant made directly to the person performing the services.

Pay for independent personal services is subject to withholding and reporting as follows.

**30% rate.** You must withhold at the statutory rate of 30% on all payments unless the alien enters into a withholding agreement or receives a final payment exemption (discussed later).

The amount of pay subject to 30% withholding may be reduced by the personal exemption amount (\$2,700 for 1998) if the alien gives you a properly completed Form 8233. A nonresident alien is allowed only one personal exemption. However, individuals who are residents of Canada, Mexico, Japan, or South Korea, or are U.S. nationals (defined below) are generally entitled to the same exemptions as U.S. citizens.

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

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

services in the United States. Multiply the number of these days by \$7.40 (the daily exemption amount for 1998) to figure the prorated amount. Residents of Japan and South Korea must make a further proration of their additional exemptions based on their gross income effectively connected with a U.S. trade or business. The rules for this proration are discussed in detail in Publication 519, *U.S. Tax Guide for Aliens*.

A **U.S. national** is an individual who is either a citizen of American Samoa, or a Northern Mariana Islander who chose to become a U.S. national.

**Example 1.** Hans Schmidt, who is a resident of Germany, worked (not as an employee) for a U.S. company in the United States for 100 days during 1998 before returning to his country. He earned \$6,000 for the services performed (not considered wages) in the United States. Hans is married and has three dependent children. His wife did not work and had no income subject to U.S. tax. Hans is allowed \$740 as a deduction against the payments for his personal services performed in the United States (100 days × \$7.40). Tax is withheld at 30% on the rest of his earnings, \$5,260 (\$6,000 – \$740). A tax of \$1,578 was withheld from Hans' earnings (30% of \$5,260).

**Example 2.** If, in Example 1, Hans were a resident of Canada or Mexico or a national of the United States, working under contract with a domestic corporation, \$3,700 (100 days × \$7.40 per day for each of five exemptions) would be allowed against the payments for personal services performed in the United States. Tax would be withheld at 30% on \$2,300 (\$6,000 – \$3,700), the rest of his earnings. A tax of \$690.00 would have been withheld from Hans' earnings (30% of \$2,300).

**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 Assistant Commissioner (International) and the alien individual as to the amount of withholding required. This agreement will be effective for payments covered by the agreement that are made after the agreement is executed by all parties. The alien individual must agree to timely file an income tax return for the current tax year.

**Final payment exemption.** The final payment of compensation for independent personal services may be wholly or partially exempt from withholding at the statutory rate. The nonresident alien must have been engaged during the tax year in the conduct of a U.S. trade or business. This exemption is available only once during an alien individual's tax year. It applies to the last payment of compensation, other than wages, for personal services rendered in the United States that the individual expects to receive from any withholding agent during the tax year.

To obtain the final payment exemption, the nonresident alien, or the alien's agent, must file the forms and provide the information required by the Assistant Commissioner (International). This information includes, but is not limited to, the following items:

- 1) A statement by each withholding agent from whom amounts of gross income effectively connected with the conduct of a U.S. trade or business have been received by the alien individual during

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

- 2) A statement by the withholding agent from whom the final payment of compensation for personal services will be received showing the amount of final payment and the amount that would be withheld if a final payment exemption is not granted. The withholding agent must sign the statement and include a declaration that it is made under penalties of perjury.
- 3) A statement by the individual that he or she does not intend to receive any other amounts of gross income effectively connected with the conduct of a U.S. trade or business during the current tax year.
- 4) The amount of tax that has been withheld (or paid) under any other provision of the Code or regulations for any income effectively connected with the conduct of a U.S. trade or business during the current tax year.
- 5) The amount of any outstanding tax liabilities, including any interest and penalties, from the current tax year or prior tax periods.
- 6) The provision of any income tax treaty under which a partial or complete exemption from withholding may be claimed, the country of the individual's residence, and a statement of sufficient facts to justify an exemption under that treaty.

The alien individual must give a statement, signed and verified by a declaration that it is made under the penalties of perjury, that all the information provided is true, and that to his or her knowledge no relevant information has been omitted.

If satisfied with the information provided, the Assistant Commissioner (International) will determine the amount of the alien individual's tentative income tax for the tax year on gross income effectively connected with the conduct of a U.S. trade or business. Ordinary and necessary business expenses may be taken into account if proved to the satisfaction of the Assistant Commissioner (International).

The Assistant Commissioner (International) will provide the individual with a letter to you, the withholding agent, stating the amount of the final payment of compensation for personal services that is exempt from withholding, and the amount that would otherwise be withheld that may be paid to the individual due to the exemption. The amount of pay exempt from withholding cannot be more than \$5,000. The alien individual must give two copies of the letter to you and must also attach a copy of the letter to his or her income tax return for the tax year for which the exemption is effective.

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

pay is not exempt from U.S. tax if the contractor is a U.S. resident.

Independent nonresident alien contractors use Form 8233 to claim an exemption from withholding under a tax treaty. For more information, see *Treaty Benefits*, earlier, under *Withholding Exemptions and Reductions*.

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

## Pay Subject to Graduated Withholding

Salaries, wages, or any other pay for personal services (referred to collectively as wages) paid to nonresident alien employees are subject to graduated withholding in the same way as for U.S. citizens and residents if the wages are effectively connected with the conduct of a U.S. trade or business. Any wages paid to a nonresident alien individual for personal services performed as an **employee for an employer** are generally exempt from the 30% withholding.

Also exempt from the 30% withholding is pay for personal services performed as an employee for an employer if it is effectively connected with the conduct of a U.S. trade or business and would be treated as wages subject to graduated withholding except that it is specifically excepted from wages. See *Pay that is not wages*, later for examples of employment for which pay is not wages.

**Employer-employee relationship.** For pay for personal services to qualify as wages, there must be an employer-employee relationship.

Under the common law rules, every individual who performs services subject to the will and control of an employer, both as to what shall be done and how it shall be done, is an employee. It does not matter that the employer allows the employee considerable discretion and freedom of action, as long as the employer has the **legal right to control** both the method and the result of the services.

If an employer-employee relationship exists, it does not matter what the parties call the relationship. It does not matter if the employee is called a partner, coadventurer, agent, or independent contractor. It does not matter how the pay is measured, how the individual is paid, or what the payments are called. Nor does it matter whether the individual works full- or part-time.

The existence of the employer-employee relationship under the usual common law rules will be determined, in doubtful cases, by an examination of the facts of each case.

**Employee.** An employee generally includes any individual who performs services if the relationship between the individual and the person for whom the services are performed is the legal relationship of employer and employee. This includes an individual who receives a supplemental unemployment pay benefit that is treated as wages.

**No distinction is made between classes of employees.** Superintendents, managers, and other supervisory personnel are employ-

ees. Generally, an officer of a corporation is an employee, but a director acting in this capacity is not. An officer who does not perform any services, or only minor services, and neither receives nor is entitled to receive any pay is not considered an employee.

**Employer.** An employer is any person or organization for whom an individual performs or has performed any service, of whatever nature, as an employee.

The term "employer" includes not only individuals and organizations in a trade or business, but organizations exempt from income tax, such as religious and charitable organizations, educational institutions, clubs, social organizations, and societies. It also includes the governments of the United States, the states, Puerto Rico, and the District of Columbia, as well as their agencies, instrumentalities, and political subdivisions.

Two special definitions of employer that may have considerable application to non-resident aliens are:

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

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

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

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

**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:

- 1) Agricultural labor if the total cash wages paid to an individual worker during the year is less than \$150 and the total paid to all workers during the year is less than \$2,500. But even if the total amount paid to all workers is \$2,500 or more, wages of less than \$150 per year paid to a worker are not subject to income tax withholding if certain conditions are met. For these conditions, see Publication 51, Circular A, *Agricultural Employer's Tax Guide*.
- 2) Services of a household nature performed in or about the private home of an employer, or in or about the clubrooms or house of a local college club, fraternity, or sorority. A local college club, fraternity, or sorority does not include an alumni club or chapter and may not be operated primarily as a business enterprise. Examples of these

services include those performed as a cook, janitor, housekeeper, governess, gardener, or houseparent.

- 3) Certain services performed **outside** the course of the employer's trade or business for which cash payment is less than \$50 for the calendar quarter.
- 4) Services performed as an employee of a foreign government, without regard to citizenship, residence, or where services are performed. These include services performed by ambassadors, other diplomatic and consular officers and employees, and nondiplomatic representatives. They do not include services for a U.S. or Puerto Rican corporation owned by a foreign government.
- 5) Services performed within or outside the United States by an employee or officer (regardless of citizenship or residence) of an international organization designated under the International Organizations Immunities Act.
- 6) Services performed by a duly ordained, commissioned, or licensed minister of a church, but only if performed in the exercise of the ministry and not as an employee of the United States, a U.S. possession, or a foreign government, or any of their political subdivisions. These also include services performed by a member of a religious order in carrying out duties required by that order.
- 7) Tips paid to an employee if they are paid in any medium other than cash or, if in cash, they amount to less than \$20 in any calendar month in the course of employment.

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

**Withholding exemptions.** The amount of wages subject to graduated withholding may be reduced by the personal exemption amount (\$2,700 for 1998). The personal exemptions allowed in figuring wages subject to graduated withholding are the same as those discussed earlier under *Pay for independent personal services (Income Code 16)*, except that an employee must claim them on Form W-4, *Employee's Withholding Allowance Certificate*.

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

- 1) Check only "Single" marital status on line 3 (regardless of actual marital status).
- 2) Claim only one withholding allowance on line 5, unless a resident of Canada, Mexico, Japan, or South Korea, or a U.S. national.
- 3) Request that additional tax of \$4.00 per week be withheld on line 6. If the pay period is two weeks, request that \$8.00 be withheld instead.

- 4) Do not claim "Exempt" withholding status on line 7.

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

**Students and business apprentices from India.** Students and business apprentices who are eligible for the benefits of Article 21(2) of the United States-India Income Tax Treaty can claim additional withholding allowances on line 5 for the standard deduction and their spouses. They can claim an additional withholding allowance for each dependent not admitted to the United States on F-2, J-2, or M-2 visas. Also, they do not have to request additional withholding on line 6.

**Reporting requirements for wages and withheld taxes.** 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 Tax Return*. Household employers should see Publication 926, *Household Employer's Tax Guide* for information on reporting and paying employment taxes on wages paid to household employees.

**Form W-2.** The employer must also report on Form W-2, *Wage and Tax Statement*, the wages subject to withholding and withheld taxes and give copies of this form to the employee. For more information, see the instructions for these forms.

**Trust fund recovery penalty.** If you are a person responsible for withholding, accounting for, or depositing or paying employment taxes, and willfully fail to do so, you can be held liable for a penalty equal to the full amount of the unpaid trust fund tax, plus interest. A responsible person for this purpose can be an officer of a corporation, a partner, a sole proprietor, or an employee of any form of business. A trustee or agent with authority over the funds of the business can also be held responsible for the penalty.

"Willfully" in this case means voluntarily, consciously, and intentionally. You are acting willfully if you pay other expenses of the business instead of the withholding taxes.

**Federal unemployment (FUTA) tax.** The employer must pay federal unemployment tax and file Form 940 or 940-EZ, *Employer's Annual Federal Unemployment (FUTA) Tax Return*. Only the employer pays this tax; it is not deducted from the employee's wages. In certain cases, wages paid to students and railroad and agricultural workers are exempt from FUTA tax. For more information, see the instructions for these forms.

**Pay for dependent personal services (Income Code 17).** Dependent personal services are personal services performed in the United States by a nonresident alien individual as an employee rather than as an independent contractor.

Pay for dependent personal services is subject to withholding and reporting as follows.

**Graduated rates.** Ordinarily, you must withhold on pay (wages) for dependent personal services using graduated rates. The nonresident alien must complete Form W-4 as discussed earlier, under *Special instructions for Form W-4*, and you must report

wages and income tax withheld on Form W-2. However, the nonresident alien may be exempt from tax or withholding of tax if any of the following four exceptions applies.

**Exception 1.** Compensation paid for labor or personal services performed in the United States is deemed not to be income from sources within the United States and is exempt from U.S. income tax if:

- 1) The labor or services are performed by a nonresident alien temporarily present in the United States for a period or periods not exceeding a total of 90 days during the tax year,
- 2) The total pay does not exceed \$3,000, and
- 3) The pay is for labor or services performed as an employee of, or under a contract with:
  - a) A nonresident alien individual, foreign partnership, or foreign corporation that is not engaged in a trade or business in the United States, or
  - b) A U.S. citizen or resident individual, a domestic partnership, or a domestic corporation, if the labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by this individual, partnership, or corporation.

If the total pay is more than \$3,000, the entire amount is income from sources in the United States and is subject to U.S. tax.

Also, compensation paid for labor or services performed in the United States by a nonresident alien in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a U.S. possession is not income from sources within the United States. However, this income will be treated as U.S. source income for purposes of the rules relating to pension, profit-sharing, and stock bonus plans, including the minimum participation rules. Amounts includible in the employee's income for the cost of group-term life insurance coverage provided by the employer and amounts received under an employer's accident and health plan will also be treated as U.S. source income.

**Exception 2.** Compensation paid by a foreign employer to a nonresident alien for the period the alien is temporarily present in the United States on an "F," "J," "M," or "Q" visa is exempt from U.S. income tax. For this purpose, a foreign employer means:

- 1) A nonresident alien individual, foreign partnership, or foreign corporation, or
- 2) An office or place of business maintained in a foreign country or in a U.S. possession by a domestic corporation, a domestic partnership, or an individual U.S. citizen or resident.

To qualify for the exemption from withholding, the alien must give the employer a statement in duplicate with the alien's name, address, and taxpayer identification number, certifying that:

- 1) The alien is not a citizen or resident of the United States, and

- 2) The income to be paid to the alien is exempt from U.S. income tax, and why the income is exempt.

The statement must be dated, must identify the tax year and the income to which it applies, and must be signed by the alien including a written declaration that it is made under the penalties of perjury. Attach the duplicate copy of the statement to the Form 1042 that you file with the IRS.

**Exception 3.** Compensation paid to certain residents of Canada or Mexico who enter or leave the United States at frequent intervals is not subject to graduated income tax withholding or 30% withholding. These aliens must either:

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

To qualify for the exemption from withholding during a tax year, a Canadian or Mexican resident must give the employer a statement in duplicate with name, address, and identification number, and certifying that the resident:

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

The statement can be in any form, but it must be dated and signed by the employee, and must include a written declaration that it is made under penalties of perjury. Attach the duplicate copy of each statement to the Form 1042 that you file with the IRS.

**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 wage withholding if the alien does not expect to be a resident of Puerto Rico during the entire tax year.

- 1) Services performed outside the United States but not in Puerto Rico by a nonresident alien who is a resident of Puerto

Rico for an employer other than the United States or one of its agencies, or

- 2) Services performed outside the United States by a nonresident alien who is a resident of Puerto Rico, as an employee of the United States or any of its agencies.

To qualify for the exemption from withholding for any tax year, the employee must give the employer a statement showing the employee's name and address and certifying that the employee:

- 1) Is not a citizen or resident of the United States, and
- 2) Is a resident of Puerto Rico who does not expect to be a resident for that entire tax year.

The statement must be signed and dated by the employee and contain a written declaration that it is made under penalties of perjury.

**Tax treaties.** Pay for dependent personal services under some tax treaties is exempt from U.S. income tax only if both the employer and the employee are treaty country residents and the nonresident alien employee performs the services while temporarily living in the United States (usually for not more than 183 days). Other treaties provide for exemption from U.S. tax on pay for dependent personal services if the employer is any foreign resident and the employee is a treaty country resident, and the nonresident alien employee performs the services while temporarily in the United States. See *Claiming exemption from withholding*, discussed earlier under *Treaty Benefits*.

**Pay for teaching** (Income Code 18). This category is given a separate income code number because most tax treaties provide at least partial exemption from withholding and from U.S. tax. Pay for teaching means payments to a nonresident alien professor, teacher, or researcher by a U.S. university or other accredited educational institution for teaching or research work at the institution.

**Graduated rates.** Graduated withholding of income tax usually applies to all wages, salaries, and other pay for teaching and research paid by a U.S. educational institution during the period the nonresident alien is teaching or performing research at the institution.

A nonresident alien temporarily in the United States as a nonimmigrant on an "F-1," "J-1," "M-1," or "Q-1" visa is not subject to social security and Medicare taxes on pay for services performed to carry out the purpose for which the alien was admitted to the United States. Social security and Medicare taxes should not be withheld or paid on this amount. However, if an alien is considered a resident alien, as discussed earlier, that pay is subject to social security and Medicare taxes even though the alien still has a nonimmigrant status. This rule also applies to FUTA (unemployment) taxes paid by the employer.

**Tax treaties.** Under most tax treaties, pay for teaching 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 is a resident of the treaty country and not a citizen of the United States (see *Table 2*). The U.S. educational institution paying the compensation must report the amount of compensation paid each year on

Form 1042-S. See *Claiming exemption from withholding*, discussed earlier under *Treaty Benefits*.

**Pay during training** (Income Code 19). This category refers to pay (as contrasted with remittances, allowances, or other forms of scholarships or fellowship grants—see *Scholarships and Fellowship Grants*, earlier) for personal services performed while a nonresident alien is temporarily in the United States as a student, trainee, or apprentice, or while acquiring technical, professional, or business experience.

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

A nonresident alien temporarily in the United States as a nonimmigrant on an "F-1," "J-1," "M-1," or "Q-1" visa is not subject to social security and Medicare taxes on pay for services performed to carry out the purpose for which the alien was admitted to the United States. Social security and Medicare taxes should not be withheld or paid on this amount. However, if an alien is considered a resident alien, as discussed earlier, that pay is subject to social security and Medicare taxes even though the alien still has a nonimmigrant status. This rule also applies to FUTA (unemployment) taxes paid by the employer.

Any student who is enrolled and regularly attending classes at a school may be exempt from social security, Medicare, and FUTA taxes on pay for services performed for that school. See Publication 15.

**Tax treaties.** Many tax treaties provide an exemption from U.S. income tax and from graduated withholding, on compensation paid to nonresident alien students or trainees during training for a limited period, up to a maximum dollar amount per year. See *Claiming exemption from withholding*, discussed earlier under *Treaty Benefits*. In addition, some treaties provide an exemption from tax and withholding for compensation paid by the U.S. Government or its contractor to a nonresident alien student or trainee who is temporarily present in the United States as a participant in a program sponsored by the U.S. Government (see *Table 2*). However, a U.S. resident, the U.S. Government agency, or its contractor must report the amount of pay on Form 1042-S.

## Artists and Athletes

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

**Withholding rate.** You must withhold tax at a 30% rate on payments to artists and athletes for services performed as independent contractors. See *Pay for independent personal services*, earlier for more information. You must withhold tax at graduated rates on payments to artists and athletes for services performed as employees. See *Pay for dependent personal services*, earlier for more information. However, in any situation where

the nature of the relationship between the payor of the income and the artist or athlete is not ascertainable, you should withhold at a rate of 30%. See *Special events and promotions*, earlier under *Treaty Benefits* for more information.

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

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

- 1) A list of the names and addresses of the nonresident aliens to be covered by the agreement.
- 2) Copies of all contracts that the aliens or their agents and representatives have entered into regarding the time period and performances or events to be covered by the agreement including, but not limited to, contracts with:
  - a) Employers, agents, and promoters,
  - b) Exhibition halls,
  - c) Persons providing lodging, transportation, and advertising, and
  - d) Accompanying personnel, such as band members or trainers.
- 3) An itinerary of dates and locations of all events or performances scheduled during the period to be covered by the agreement.
- 4) A proposed budget containing itemized estimates of all gross income and expenses for the period covered by the agreement, including any documents to support these estimates.
- 5) The name, address, and telephone number of the person the IRS should contact if additional information or documentation is needed.
- 6) The name, address, and employer identification number of the agent or agents who will be the central withholding agents for the aliens and who will enter into a contract with the IRS. A central withholding agent ordinarily receives contract payments, keeps books of account for the aliens covered by the agreement, and pays expenses (including tax liabilities) for the aliens during the period covered by the agreement.

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

Generally, each withholding agent must agree to withhold income tax from payments made to the nonresident alien; to pay over the withheld tax to the IRS on the dates and in the amounts specified in the agreement; and to have the IRS apply the payments of withheld tax to the withholding agent's Form 1042 ac-

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

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

Internal Revenue Service  
Chief, Technical Services  
CP:IN:D:C:SS:TS  
Room 4417  
950 L'Enfant Plaza South, S.W.  
Washington, DC 20024

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

Independent contractors may claim an exemption from withholding under a tax treaty by filing Form 8233. Employees may claim an exemption from withholding under a tax treaty by filing a statement with their employers. For more information, see *Treaty Benefits*, discussed earlier under *Withholding Exemptions and Reductions*.

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. See *Special events and promotions*, earlier, under *Treaty Benefits*.

## Other Income

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

**Gambling winnings** (Income Code 28). Use this income code to report gambling winnings and any tax withheld on those winnings.

**Other income** (Income Code 50). Use this category to report U.S. source fixed or determinable annual income that is not reportable under any of the other income categories. Examples of income that may be reportable under this category are commissions, insurance proceeds, patronage distributions, prizes, and racing purses.

As discussed earlier under *Income Subject to Withholding*, every kind of fixed or determinable annual or periodic income from U.S. sources that is not effectively connected with a U.S. trade or business is subject to withholding unless the income is specifically exempt under the Code or a tax treaty. You generally must withhold at the 30% rate on this income. For more details on fixed or determinable income, including specific types of income that may be reportable under Income Code 50, see *Income Subject to Withholding*, earlier.

# U.S. Taxpayer Identification Numbers

Any recipient whose income is effectively connected with a U.S. trade or business must obtain, and furnish you with, a U.S. taxpayer identification number. If you do not have the recipient's number, you must request it. You can use Form W-9, *Request for Taxpayer Identification Number and Certification*, to request recipients to furnish a taxpayer identification number and to certify that the number furnished is correct. You must have this number before allowing the recipient an exemption from withholding.

You must furnish these required identification numbers on the Forms 1042-S filed with the IRS for nonresident aliens with effectively connected income. You must also furnish your employer identification number on your annual Form 1042 and on each Form 1042-S. Do not use on Forms 1042 and 1042-S, or on the Federal Tax Deposit Coupon, the identification number of the principal or person for whom you are making payments of income subject to withholding. Since the amounts on these forms are checked by the IRS, matching you (the withholding agent) with your tax deposits during the year is essential to avoid unnecessary correspondence, deficiency assessments, penalties, interest, or refunds.

The U.S. taxpayer identification number is a social security number or an individual taxpayer identification number in the case of an individual and an employer identification number in all other cases. An individual may obtain a social security number by completing Form SS-5, *Application for a Social Security Card*, available from Social Security Administration (SSA) offices. An employer identification number can be obtained by completing Form SS-4, *Application for Employer Identification Number*. You can get this form at IRS or SSA offices.

**Individual Taxpayer Identification Number (ITIN).** The IRS will issue an ITIN to a nonresident or resident alien who does not have and is not eligible to get a social security number (SSN). To apply for an ITIN, Form W-7 must be filed with the IRS. It usually takes about 30 days to get an ITIN. The ITIN is entered wherever an SSN is requested on a tax return. If you are required to include another person's SSN on your return and that person does not have and cannot get an SSN, enter that person's ITIN.

**Backup withholding.** A payer of interest, dividends, patronage dividends, or royalties, a broker, or a barter exchange may have to withhold 31% of each payment or transaction if the payee does not provide a correct taxpayer identification number. Generally, nonresident alien individuals and foreign corporations, partnerships, and estates and trusts that are not engaged in a U.S. trade or business and do not have an office or place of business in the United States are not required to have U.S. taxpayer identification numbers. Although they have no identification numbers to provide a payer or broker, these nonresident aliens are not subject to any backup withholding.

Except in the case of dividends, the payee should use Form W-8, *Certificate of Foreign Status*, to tell the payer, broker, or barter exchange that the payee is a nonresident alien and is not subject to backup withholding. Form W-8 does not exempt the payee from the 30% (or lower treaty) withholding rate. Absent definite knowledge that a payee is a U.S. person, the payer of dividends may treat the payments to a payee with a foreign address as exempt from the possible application of backup withholding.

## Depositing Withheld Taxes

This section discusses the rules for depositing income tax withheld on fixed or determinable annual or periodic income. The deposit rules discussed here do not apply to the following:

- Tax withheld on pay subject to graduated withholding as discussed earlier. (See Form 941 for the deposit rules.)
- Tax withheld on pensions and annuities subject to graduated withholding or the 10% tax on nonperiodic distributions. (See Form 945 for the deposit rules.)
- Tax withheld on a foreign partner's share of effectively connected income of a partnership. See *Partnership Withholding on Effectively Connected Income*, later.
- Tax withheld on dispositions of U.S. real property interests by foreign persons. See *U.S. Real Property Interest*, later.
- Additional U.S. tax withheld by Canadian withholding agents. They should pay the additional tax with their annual Form 1042.

## When Deposits Are Required

A deposit required for any period occurring in one calendar year must be made separately from a deposit for any period occurring in another calendar year. A deposit of this tax must be made separately from a deposit of any other type of tax.

How much tax you are required to withhold determines the frequency of your deposits. The following rules show how often deposits must be made:

- 1) If at the end of a calendar year the total amount of undeposited taxes is less than \$200, you may either deposit the entire amount or remit it with Form 1042 by the due date of your Form 1042.
- 2) If at the end of any month the total amount of undeposited taxes is \$200 or more but less than \$2,000, you must deposit the taxes within 15 days after the end of the month. If you made a deposit of \$2,000 or more during the month (except December) under rule 3 below, carry over any end of the month balance of less than \$2,000 to the next month. If you made a deposit of \$2,000 or more during December, any end of December balance of less than \$2,000 should be paid directly to IRS along with your Form 1042 by the due date.
- 3) If at the end of any quarter-monthly period the total amount of undeposited

taxes is \$2,000 or more, you must deposit the taxes within 3 banking days after the end of the quarter-monthly period. (A quarter-monthly period ends on the 7th, 15th, 22nd, and last day of the month.) In figuring banking days, exclude any local holidays observed by authorized financial institutions, as well as Saturdays, Sundays, and legal holidays.

You are considered to meet the deposit requirements in (3) if:

- 1) You deposit at least 90% of the actual tax liability for the deposit period, and
- 2) You deposit any underpayment with the first deposit that you must make after the 15th day of the following month, if the quarter-monthly period is in a month other than December. You must deposit any underpayment of \$200 or more for a quarter-monthly period that occurs during December by January 31.

**Electronic deposit requirement.** If you were required to make deposits by electronic funds transfer in prior years, continue to do so in 1998. If you were not previously required to make electronic deposits and

- Your total deposits of social security, Medicare, railroad retirement, and withheld income taxes on wages were more than \$50,000 in 1996, or
- You did not deposit any of those taxes, but your total deposits of other depository taxes were more than \$50,000 in 1995 or 1996,

you should make electronic deposits for all depository tax liabilities that occur after 1997. Depository taxes include the income tax withheld on fixed or determinable annual or periodic income.

The penalty that applies to the failure to make electronic deposits does not apply to a failure that occurs before July 1, 1998, if you are first required to use that method on or after July 1, 1997.

If you are not required to make electronic deposits, you may choose to use this method to make your deposits.

For information about the Electronic Federal Tax Payment System (EFTPS), see Revenue Procedure 97-33, 1997-30 Internal Revenue Bulletin.

**Federal tax deposit coupons.** If you do not make electronic deposits, you must deposit the income tax withheld on fixed or determinable annual or periodic income using Form 8109, *Federal Tax Deposit Coupon*, according to the instructions provided with the form. If you don't have your coupons when a deposit is due, contact your local IRS office.

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

Federal Reserve Bank of Philadelphia  
Attn: Treasury Tax and Loan Unit  
P.O. Box 44  
Philadelphia, PA, 19105, USA

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

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

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

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

**Penalty rate.** If the deposit is:

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

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

## Adjustment for Overwithholding

To obtain a refund of tax withheld by graduated withholding on wages, nonresident alien employees must timely file Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, or Form 1040NR-EZ. That tax cannot be refunded by the employer.

To obtain a refund or credit of tax withheld at source on other income, the actual owner of the income should timely file Form 1040NR or Form 1040NR-EZ. Or, you may be able to reimburse the owner for the overwithheld amount.

For example, when you as the withholding agent must withhold \$300 tax from rents paid to a nonresident alien, and you mistakenly withhold \$320 and mistakenly pay \$350 to the IRS, \$30 will be credited or refunded to you and \$20 will be credited or refunded to the actual owner of the income.

You may recover this overpayment of \$30 by adjusting the federal tax deposits if the erroneous withholding occurred during the same calendar year. Or you may claim it on the Form 1042, which you file after the end of the year. This would create an overpaid return that would be processed as a claim for refund or credit.

If you reimburse the recipient \$20 during the same year (before filing the Form 1042), you would enter \$50 on the line for overpayments on Form 1042.

### Overwithholding during a calendar year.

If you overwithhold tax during the calendar year, you may use the undeposited amount of tax to make any necessary adjustments between you and the recipient of the income. However, if the undeposited amount is not enough to make any adjustments, or if you discover the overwithholding after the entire amount of tax has been deposited, you can make either a reimbursement or repayment

to correct the overwithholding. A **reimbursement** is a credit of the excess tax previously withheld from a recipient of income against the tax to be withheld from income later paid to the same recipient. It does not have to be shown on Form 1042. There can be no reduction of a deposit of tax made after filing Form 1042 for the year in which the overwithholding took place.

A **repayment** is a refunding out of your own funds of the overwithholding (after its deposit) to the recipient from whose income the amount was withheld. It must be shown on Form 1042. You may adjust amounts overwithheld by repayment any time before filing the Form 1042 for the year involved. You may make this repayment at any time up to the due date of Form 1042. If you adjust by repayment, you may adjust accounts by reducing a later deposit by an amount equal to the amount repaid to the recipient. You may make this reduction in any deposit during the year of overwithholding or during the year following the year of overwithholding. Using this method, you report the correct tax liability (the amount that should have been withheld) in the *Record of Federal Tax Liability* (lines 1-60) on Form 1042 for the period in which the overwithholding occurred. Because the federal tax deposit for the affected period (line 64) will exceed the amount of the liability reported (line 61c), Form 1042 will show an overpayment on line 68. You may choose to have the overpayment refunded to you or apply it to the following year.

**Example.** James Smith is a resident of the United Kingdom. In December 1996, domestic corporation M paid a dividend of \$100 to James, at which time M Corporation withheld \$30 and paid the balance of \$70 to him. On February 17, 1997, James advised M Corporation that according to the income tax convention with the United Kingdom, only \$15 tax should have been withheld from the \$100 dividend and requested repayment of the \$15 which was erroneously withheld. Although M Corporation had already deposited the \$30, which was withheld, the corporation repaid James the \$15.

During 1996, M Corporation made no other payments from which tax had to be withheld. On its timely filed 1996 Form 1042, M Corporation includes \$15 in its total tax liability on line 61 and \$30 in its total deposits on line 64. M Corporation requested that the \$15 overpayment be credited to its 1997 Form 1042 rather than refunded.

The Form 1042-S that M Corporation files for the dividend of \$100 paid to James in 1996 must show net tax withheld of \$15. Form 1042-S must accompany the Form 1042 for 1996. No additional explanation is needed to be filed with Form 1042 for 1996.

During 1997, M Corporation made payments from which it withheld tax of \$200, all of which occurred in June of that year. On July 11, 1997, M Corporation deposited \$185, that is, \$200 less the \$15 credit claimed on its Form 1042 for 1996. M Corporation timely filed its Form 1042 for 1997, showing tax liability of \$200, \$185 deposited, and the \$15 credit from 1996.

### Overwithholding discovered in later year.

If you discover after the close of the calendar year and after filing Form 1042 for the year that tax was overwithheld, do not adjust the amount of tax reported on Forms 1042-S (and Form 1042) or on any deposit or payment for a prior year.

If you do not discover the erroneous withholding before the due date of Form 1042, do not file an amended Form 1042 for the prior tax year to recover the overpayment or deposit. In this situation, the recipient will have to file a U.S. income tax return (Form 1040NR or Form 1040NR-EZ or Form 1120-F) or, if a tax return has already been filed, a claim for refund (amended Form 1040NR or 1120-F) to recover the amount overwithheld.

The procedure for handling adjustments of overwithheld tax makes it easier to reconcile the amount of your tax liability with the amount of tax deposited or paid for a calendar year, and prevents a foreign payee from obtaining a refund from both you and the U.S. Government. Also, this procedure will relieve you from having to refund the overwithholding out of your own funds after the overwithheld tax has been deposited or paid and Form 1042 filed for the calendar year.

## Returns Required

You must file Forms 1042 and 1042-S to report tax withheld on fixed or determinable annual or periodic income. Do not use these forms to report tax withheld on the following:

- ☛ Wages or salaries subject to graduated income tax withholding (see *Pay Subject to Graduated Withholding*, earlier, under *Pay for Personal Services Performed*).
- ☛ Effectively connected income allocable to foreign partners (see *Partnership Withholding on Effectively Connected Income*, later).
- ☛ Dispositions of U.S. real property interests by foreign persons (see *U.S. Real Property Interest*, later).
- ☛ Pensions, annuities, and certain other deferred income reported on Form 945.
- ☛ Income, social security, and Medicare taxes withheld on wages paid to a household employee reported on Schedule H (Form 1040).

**Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.** Every U.S. withholding agent who has the control, receipt, custody, disposal, or payment of fixed or determinable annual or periodic income (as previously defined) and each Canadian withholding agent described earlier under *Withholding Agent*, must file an annual return on Form 1042 by March 15 of the year following the end of a calendar year. (If March 15 falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.) You must file Form 1042 even though you did not withhold or deduct any income tax because of a specific exemption under Chapter 3 or under an income tax treaty between the United States and a foreign country.

You must file Form 1042 with the Internal Revenue Service Center, Philadelphia, PA 19255.

**Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.** Every U.S. withholding agent must transmit with the annual Form 1042 the information called for on Form 1042-S. Form 1042-S must be filed by the due date for filing Form 1042. This information is furnished magnetically, electronically, or on an original paper Form 1042-S. A separate Form 1042-S (or tape record) is

required for each payee (recipient) of income to whom you made payments during the preceding calendar year regardless of whether you withheld or were required to withhold tax. You may use a separate Form 1042-S for each type of income that you paid to the same payee; or you may report more than one specific type of income on the same Form 1042-S for the same payee.

You must furnish a Form 1042-S for each recipient even though you did not withhold tax because you released the tax withheld to the recipient or because the income payment was exempt from tax under certain provisions of the Internal Revenue Code, under a regulation, ruling, or procedure issued by the IRS, or under a U.S. income tax treaty. When you have adjusted the amount of the tax withheld during the calendar year for overwithheld amounts, show the net amount of tax withheld on the Form 1042-S. Any required certificate, statement, letter, or form relating to certain exemptions from withholding must be attached to the Form 1042 relating to the income subject to the exemption. See the earlier instructions to withholding agents under the various withholding exemptions and the related forms and instructions.

Be sure to enter on Form 1042-S the country in which the payee is a resident, for purposes of that country's tax laws and the appropriate country code.

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

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

Standard mail shipments of magnetic media should be sent to Internal Revenue Service, Martinsburg Computing Center, Information Reporting Program, P.O. Box 1359, MS-360, Martinsburg, WV 25402-1359. Shipments by other carriers should be sent to Internal Revenue Service, Martinsburg Computing Center, Information Reporting Program, Route 9 and Needy Road, MS-360, Martinsburg, WV 25401.

**Interest payments to a nonresident alien individual who resides in Canada and is not a U.S. citizen.** If you pay interest to a nonresident alien individual who resides in Canada and is not a U.S. citizen, you may have to report it on Form 1042-S. This reporting requirement generally applies to interest that a) is on a deposit maintained at a bank's office in the United States and b) is not effectively connected with a trade or business within the United States. However, this reporting requirement does not apply to interest paid on certain bearer certificates of deposit, as described in section 1.6049-8(b) of the Treasury Regulations if you pay that interest outside the United States.

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

way is easier for you. This interest is not subject to backup withholding.

**When to report.** This information reporting is being phased in over a three-year period that began in 1997. As Forms W-8 are received or come up for renewal, you must report on Form 1042-S the bank deposit interest paid, after you receive the Form W-8, to a Canadian resident.

**Determining residency.** You determine whether a payee is a Canadian resident based on the address in the country of permanent residence required to be provided on the Form W-8. If you have actual knowledge that the payee is a U.S. person, you must report the payment on Form 1099-INT.

**Statements to payees.** You must furnish a statement to each payee for whom you are filing a Form 1042-S (or magnetic media report) with the IRS by the due date for filing Forms 1042 and 1042-S. You may use a copy of the official Form 1042-S for this purpose. Or, you may provide payees with the information together with or on other (commercial) statements or notices. These statements must clearly identify the type of income (as described on the official form), the amount of tax withheld, the withholding rate (including 0% if exempt), and the country involved.

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

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

**Penalties.** The penalty for not filing Form 1042 when due (including extensions) is usually 5% of the unpaid tax for each month or part of a month the return is late, but not more than 25% of the unpaid tax.

A penalty may be imposed for failure to file Form 1042-S when due (including extensions), or for failure to provide complete and correct information. The amount of the penalty depends on when you file a correct Form 1042-S. The penalty for each Form 1042-S is:

- \$15 if you file a correct form within 30 days, with a maximum penalty of \$75,000 per year (\$25,000 for a small business).
- \$30 if you file after 30 days but before August 2, with a maximum penalty of \$150,000 (\$50,000 for a small business).
- \$50 if you file after August 1 or do not file a correct form, with a maximum penalty of \$250,000 per year (\$100,000 for a small business).

A small business is a business that has average annual gross receipts of not more than \$5 million for the most recent 3 tax years

(or for the period of its existence, if shorter) ending before the calendar year in which the Forms 1042-S are due.

If you fail to provide a complete and correct statement to each payee, a penalty of \$50 for each failure may be imposed. The maximum penalty is \$100,000 per year.

If you intentionally disregard the requirement to report correct information, the penalty for each Form 1042-S (or payee statement) is the greater of \$100 or 10% of the total amount of the items that must be reported, with no maximum penalty.

**Failure to file on magnetic media.** If you are required to file on magnetic media but you fail to do so, and you do not have an approved waiver, you may be subject to a penalty of \$50 per return for failure to file Form 1042-S on magnetic media unless you show reasonable cause. The penalty applies separately to original and corrected returns.

## Partnership Withholding on Effectively Connected Income

A partnership (foreign or domestic) that has income effectively connected with a U.S. trade or business (or income treated as effectively connected) must pay a withholding tax on the effectively connected taxable income that is allocable to its foreign partners. A publicly traded partnership must withhold tax on actual distributions of effectively connected income, unless it chooses to withhold under these rules. See *Publicly Traded Partnerships*, later.

This withholding tax does not apply to income that is not effectively connected with the partnership's U.S. trade or business. That income is subject to withholding tax at 30%, or a lower treaty rate, as discussed earlier in this publication.

### Who Must Withhold

The partnership, or a withholding agent for the partnership, must pay the withholding tax. A partnership that must pay the withholding tax but fails to do so, may be liable for the payment of the tax, and any penalties and interest.

### Foreign Partner

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

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

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

Sample certifications are contained in section 5.04 of Revenue Procedure 89-31, 1989-1 C.B. 895.

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

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

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

**Widely held and publicly traded partnerships.** A partnership with more than 200 partners or a publicly traded partnership may rely on statements received on Form 1001, Form W-8, or Form W-9 in lieu of the above certification. It may also rely on a certification from a nominee that a partner owning a partnership interest through the nominee is not a foreign partner. In this situation, the nominee may rely on a partner's certification of non-foreign status as described earlier, or it may rely on statements provided it on Forms 1001, W-8, or W-9.

## Amount of Withholding Tax

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

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

A partnership must make installment payments of withholding tax on its foreign partners' share of effectively connected taxable income whether or not distributions are made during the partnership's tax year.

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

**Amount of installment payment.** The amount of a partnership's installment payment is the sum of the installment payments for each of its foreign partners. The amount of each foreign partner's installment payment of withholding tax can be figured by using the worksheet in the *Instructions for Forms 8804, 8805, and 8813*.

**Date payments are due.** Payments of withholding tax must be made during the partnership's tax year in which the effectively connected taxable income is derived. A partnership must pay the IRS a portion of the annual withholding tax for its foreign partners by the 15th day of the 4th, 6th, 9th, and 12th months of its tax year for U.S. income tax

purposes. Any additional amounts due are to be paid with Form 8804, the annual partnership withholding tax return.

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

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

**Real property gains.** If a domestic partnership disposes of a U.S. real property interest, the gain is treated as effectively connected income and the partnership or withholding agent must withhold following the rules discussed here. A domestic partnership's compliance with these rules satisfies the requirements for withholding on the disposition of U.S. real property interests (discussed later). This also applies to publicly traded partnerships that elect to withhold based on effectively connected income instead of on actual distributions as discussed later.

## Reporting and Paying the Tax

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

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

Any additional withholding tax owed for the partnership's tax year is paid to the IRS (in U.S. currency) with Form 8804. A Form 8805 for each foreign partner must be attached to Form 8804, whether or not any withholding tax was paid. The Form 8804 is not filed as part of Form 1065, *U.S. Partnership Return of Income*.

File Form 8804 by the 15th day of the 4th month after the close of the partnership's tax year. However, a partnership made up of all nonresident alien partners has until the 15th day of the 6th month after the close of the partnership's tax year to file. If you need more time to file Form 8804, you may file Form 2758, *Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns*, to request an extension. Form 2758 does not extend the time to pay the tax.

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

A copy of Form 8805 must be attached to the foreign partner's U.S. income tax return to take a credit on its Form 1040NR or Form 1120-F.

**Form 8813, Partnership Withholding Tax Payment (Section 1446).** This form is used to make payments of withheld tax to the IRS. Payments must be made in U.S. currency by the payment dates (see *Date payments are due, earlier*).

**Penalties.** A penalty may be imposed for failure to file Form 8804 when due (including extensions). It is the same as the penalty for Form 1042 discussed earlier under *Returns Required*.

A penalty may be imposed for failure to file Form 8805 when due (including extensions), or for failure to provide complete and correct information. The amount of the penalty depends on when you file a correct Form 8805. The penalty for each Form 8805 is:

- 1) \$15 if you file a correct form within 30 days, with a maximum penalty of \$75,000 per year (\$25,000 for a small business).
- 2) \$50 if you file after 30 days or do not file a correct form, with a maximum penalty of \$250,000 per year (\$100,000 for a small business).

A **small business** is a business that has average annual gross receipts of not more than \$5 million for the most recent 3 tax years (or for the period of its existence, if shorter) ending before the calendar year in which the Forms 8805 are due.

If you fail to provide a complete and correct Form 8805 to each partner, a penalty of \$50 for each failure may be imposed. The maximum penalty is \$100,000 per year.

If you intentionally disregard the requirement to report correct information, the penalty for each Form 8805 is the greater of \$100 or 10% of the total amount of the items that must be reported, with no maximum penalty.

**Identification numbers.** A partnership that has not been assigned a U.S. identification number (Employer Identification Number) must obtain one. If a number has not been assigned by the due date of the first withholding tax payment, the partnership should enter the date the number was applied for on Form 8813 when making its payment. As soon as the partnership receives its identification number, it must immediately provide that number to the IRS.

To ensure proper crediting of the withholding tax when reporting to the IRS, the partnership must include each partner's U.S. identification number on Form 8805. If there are partners in the partnership without identification numbers, the partnership should inform them of the need to get a number.

## Publicly Traded Partnerships

A publicly traded partnership that has effectively connected income, gain, or loss, must pay withholding tax on any distributions of that income made to its foreign partners. In this situation, a publicly traded partnership must use Forms 1042 and 1042-S (Income Code 27) to report withholding from distributions. The rate of withholding is 39.6%.

A publicly traded partnership is any partnership an interest in which is regularly traded on an established securities market regardless of the number of its partners. This does not include a publicly traded partnership

treated as a corporation under section 7704 of the Internal Revenue Code.

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

**Election to withhold on effectively connected taxable income.** A publicly traded partnership can elect to pay a withholding tax on its effectively connected taxable income allocable to foreign partners instead of on its actual distributions. The partnership makes this election by filing Forms 8804, 8805, and 8813 and by complying with the payment and reporting requirements for those forms, as discussed earlier. Once the election has been made, it cannot be revoked without the consent of the IRS.

**Distributions subject to withholding.** If the election to withhold on effectively connected taxable income is not made, the partnership must withhold tax on any actual distributions of money or property to foreign partners. In the case of a partnership that receives a partnership distribution from another partnership (a tiered partnership), the distribution also includes the tax withheld from that distribution.

If the distribution is in property other than money, the partnership cannot release the property until it has enough funds to pay over the withholding tax.

A publicly traded partnership that complies with these withholding requirements satisfies the requirements discussed later under *U.S. Real Property Interest*. Distributions subject to withholding include:

- 1) The fair market value of U.S. real property interests distributed to a partner and potentially subject to withholding under section 1445(e)(4),
- 2) Amounts subject to withholding under section 1445(e)(1) on distributions pursuant to an election under section 1.1445-5(c)(3) of the regulations, and
- 3) Amounts not subject to withholding under section 1445 because the distributee is a partnership or is a foreign corporation that has made an election to be treated as a domestic corporation.

**Excluded amounts.** Partnership distributions are first considered to be paid out of the following types of income in the order listed. To the extent the partnership has this type of income, it is excluded from the distributions discussed here.

- 1) Amounts of noneffectively connected income distributed by the partnership and subject to the 30% withholding tax discussed earlier in this publication.
- 2) Amounts attributable to recurring dispositions of crops and timber that are subject to withholding under section 1.1445-5(c)(3)(iv) of the regulations.
- 3) Amounts attributable to the disposition of a U.S. real property interest subject to the withholding rules discussed next under *U.S. Real Property Interest*.

For more information about the withholding requirements for publicly traded partnerships, get Revenue Procedure 89-31, 1989-1 C.B. 895.

## U.S. Real Property Interest

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to income tax withholding. The transferee is the withholding agent. As the transferee, you must deduct and withhold a tax equal to 10% (or other amount) of the total amount realized on the disposition (i.e., 10% of the purchase price). You must find out if the transferor is a foreign person. If the transferor is a foreign person and you fail to withhold, you may be held liable for the tax.

A **foreign person** is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. It does not include a resident alien individual.

The term **transferor** means any foreign person that disposes of a U.S. real property interest by sale, exchange, gift, or any other transfer. A **transfer** includes distributions to shareholders of a corporation, partners of a partnership, and beneficiaries of a trust or estate.

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

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

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

The term **U.S. real property interest** means an interest, other than as a creditor, in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, as well as certain personal property that is associated with the use of real property (such as farming machinery). It also means any interest, other than as a creditor, in any domestic corporation unless it is established that the corporation was at no time a U.S. real property holding corporation during the shorter of the period during which the interest was held, or the 5-year period ending on the date of disposition. If on the date of disposition, the corporation did not hold any U.S. real property interests, and all the interests held at any time during the shorter of the applicable periods were disposed of in transactions in which the full amount of any gain was recognized, then an interest in the corporation is not a U.S. real property interest.

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

A foreign corporation that distributes a U.S. real property interest must withhold a tax equal to 35% of the gain it recognizes on the distribution to its shareholders. However, this withholding requirement does not apply if the foreign corporation has elected under section

897(i) to be treated as a domestic corporation.

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

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

Similarly, a domestic corporation, that is or was a U.S. real property holding corporation during the shorter of the period during which the U.S. real property interest was held, or the 5-year period ending on the date of disposition, must generally withhold a tax equal to 10% of the fair market value of any money, securities, or any other property it distributes to a foreign person and which is not out of the domestic corporation's earnings and profits.

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

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

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

A trust with more than 100 beneficiaries may elect to withhold from each distribution 35% of the amount attributable to the foreign beneficiary's proportionate share of the current balance of the trust's real property interest account. This election does not apply to publicly traded trusts or real estate investment trusts (REITs). For more information about this election, see section 1.1445-5(c) of the Income Tax regulations.

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

**Additional information.** For additional information on the withholding rules that apply to corporations, trusts, estates, and REITs, see Code section 1445 and the regulations under that section. For additional information on the withholding rules that apply to partnerships, see Code section 1446 and Revenue Procedure 89-31, 1989-1 C.B. 895. You may also write to the Internal Revenue Ser-

vice, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

**Exceptions.** You do not have to withhold if any of the following applies:

- 1) You (the transferee) acquire the property for use as a home and the amount realized (sales price) is not more than \$300,000. You or a member of your family must have definite plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. When counting the number of days the property is used, do not count the days the property will be vacant.
- 2) The property disposed of (other than certain dispositions of nonpublicly traded interests) is an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market.
- 3) The disposition is of an interest in a domestic corporation and that corporation furnishes you a certification stating, under penalties of perjury, that the interest is not a U.S. real property interest, or as of the date of disposition, the interest in the corporation is not a U.S. real property interest by reason of Code section 897(c)(1)(B). The certification must be dated not more than 30 days before the date of transfer.
- 4) The transferor gives you a certification stating, under penalties of perjury, that the transferor is not a foreign person, and containing the transferor's name, U.S. taxpayer identification number, and home address (or office address, in the case of an entity).
- 5) You receive a withholding certificate from the Internal Revenue Service that excuses withholding. See *Withholding Certificates*, later.
- 6) The transferor gives you written notice that no recognition of any gain or loss on the transfer is required because of a nonrecognition provision in the Internal Revenue Code or a provision in a U.S. tax treaty. You must file a copy of the notice by the 20th day after the date of transfer with the Director, Philadelphia Service Center, 11601 Roosevelt Blvd., Philadelphia, PA 19255, Attn: Drop Point 543X.
- 7) The amount the transferor realizes on the transfer of a U.S. real property interest is zero.
- 8) The property is acquired by the United States, a U.S. state or possession, a political subdivision, or the District of Columbia.
- 9) The grantor realizes an amount on the grant or lapse of an option to acquire a U.S. real property interest. However, you must withhold on the sale, exchange, or exercise of that option.
- 10) The disposition (other than certain dispositions of nonpublicly traded interests) is of publicly traded partnerships or trusts.

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

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

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

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

## Reporting and Paying the Tax

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

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

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

**Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests.** The tax withheld on the acquisition of a U.S. real property interest from a foreign person is reported and paid using Form 8288. Form 8288 also serves as the transmittal form for copies A and B of Form 8288-A. Generally, you must file Form 8288 by the 20th day after the date of the transfer with the FIRPTA Unit, Internal Revenue Service, Philadelphia, PA 19255.

If an application for a withholding certificate (discussed later) is provided on the day of, or at any time before, the date of a transfer, and on the date of transfer the application is still pending with the IRS, the amount that must be withheld by the transferee does not have to be reported and paid over imme-

diately. That amount (or other appropriate amount) must be reported and paid over within 20 days following the day on which a copy of the withholding certificate or notice of denial is mailed by the IRS.

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

**Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.** Each transferor or distributee must be notified of the amount of withholding tax paid to the IRS. Form 8288-A is used for this purpose. Attach copies A and B to Form 8288. IRS will stamp Copy B and send it to the person subject to withholding. Keep Copy C for your records.

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

## Withholding Certificates

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

A withholding certificate may be issued due to:

- 1) A determination by the IRS that reduced withholding is appropriate because either:
  - a) The amount that must be withheld would be more than the transferor's maximum tax liability, or
  - b) Withholding of the reduced amount would not jeopardize collection of the tax,
- 2) The exemption from U.S. tax of all gain realized by the transferor, or
- 3) An agreement for the payment of tax providing security for the tax liability, entered into by the transferee or transferor.

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

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

- 5) Applications for blanket withholding certificates.
- 6) Applications on any other basis.

An application for a withholding certificate under categories 1, 2, and 3 must be sent to the Director, Internal Revenue Service Center, P.O. Box 21086, Philadelphia, PA, 19114. An application for a withholding certificate under categories 4, 5, and 6 must be sent to:

Internal Revenue Service Center  
P. O. Box 21086  
Drop Point 543/FIRPTA  
Philadelphia, PA 19114

## Format for Applications

Use Form 8288-B, *Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests*, to apply for a withholding certificate under categories 1, 2, and 3. Follow the instructions given here for applications under categories 4, 5, and 6.

The application must be signed by the individual, or a duly authorized agent (with a copy of the power of attorney attached), a responsible officer in the case of a corporation, a general partner in the case of a partnership, or a trustee, executor, or equivalent fiduciary in the case of a trust or estate. The person signing the application must verify under penalties of perjury that all representations are true, correct, and complete to that person's knowledge and belief. If the application is based in whole or in part on information provided by another party to the transaction, that information must be supported by a written verification signed under penalties of perjury by that party and attached to the application.

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

- 1) Information on the application category:
  - a) State which category describes the application (see *Categories*, earlier),
  - b) If a Category 4 application:
    - i) State whether the proposed agreement secures (A) the transferor's maximum tax liability, or (B) the amount that would otherwise have to be withheld, and
    - ii) State whether the proposed agreement and security instrument conform to the standard formats.
- 2) Information on the transferee or transferor:
  - a) The name, address, and identification number, if any, of the person applying for the withholding certificate.
  - b) State whether that person is the transferee or transferor.
  - c) The name, address, and identification number, if any, of all other transferees and transferors of the

U.S. real property interest for which the withholding certificate is sought.

- 3) Information on the U.S. real property interest for which the withholding certificate is sought:
  - a) Type of interest (such as, interest in real property, in associated personal property, or in a domestic U.S. real property holding corporation),
  - b) Contract price,
  - c) Date of transfer,
  - d) Location and general description if an interest in real property, and
  - e) Class or type and amount of the interest in a U.S. real property holding corporation.
- 4) Provide full information concerning the basis for the issuance of the withholding certificate. Although the information to be included in this section of the application will vary from case to case, the following rules provide general guidelines for the inclusion of appropriate information for each category of application.

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

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

Either the transferee or the transferor may enter into an agreement for the payment of tax. The agreement is a contract between the IRS and any other person and consists of two necessary elements. Those elements are:

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

For more information on the agreement for the payment of tax, including a sample agreement, see section 5 of Revenue Procedure 88-23.

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

- 1) Bond with surety or guarantor,
- 2) Bond with collateral,
- 3) Letter of credit, and
- 4) Guarantee (corporate transferors).

The IRS may, in unusual circumstances and at its discretion, accept any additional form of security that it finds to be adequate.

For more information on acceptable security instruments, including sample forms of these instruments, see section 6 of Revenue Procedure 88-23.

**Category 5 applications.** A blanket withholding certificate may be issued if the transferor holding the U.S. real property interests provides an irrevocable letter of credit

or a guarantee and enters into a tax payment and security agreement with the IRS. A blanket withholding certificate excuses withholding concerning multiple dispositions of those property interests by the transferor or the transferor's legal representative during a period of no more than 12 months.

For more information, see section 9 of Revenue Procedure 88-23.

**Category 6 applications.** These are non-standard applications and may be of the following types.

**Agreement for payment of tax with nonconforming security.** An applicant seeking to enter into an agreement for the payment of tax but wanting to provide a nonconforming type of security must include the following in the application:

- 1) The information required for *Category 4 applications*, discussed earlier,
- 2) A description of the nonconforming security proposed by the applicant, and
- 3) A memorandum of law and facts establishing that the proposed security is valid and enforceable and that it adequately protects the government's interest.

**Other nonstandard applications.** An application for a withholding certificate not previously described must explain in detail the proposed basis for the issuance of the certificate and set forth the reasons justifying the issuance of a certificate on that basis.

**Availability of records.** The applicant must make available to the IRS, within the time prescribed, all information required to verify that representations relied upon in accepting the agreement are accurate, and that the obligations assumed by the applicant will be performed pursuant to the agreement. Failure to provide requested information promptly will usually result in rejection of the application, unless the IRS grants an extension of the target date.

## Amendments to Applications

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

- 1) The name, address, and identification number (if any) of the person providing the amending statement specifying whether that person is the transferee or transferor.
- 2) The date of the original application for a withholding certificate that is being amended.
- 3) A brief description of the real property interest for which the original application for a withholding certificate was provided.
- 4) The basis for the amendment including any change in the facts supporting the original application for a withholding certificate and any change in the terms of the withholding certificate.

The statement must be signed and accompanied by a penalties of perjury statement (discussed earlier under *Format for Applications*).

If an amending statement is provided, the time in which the IRS must act upon the application is extended by 30 days. If the amending statement substantially changes the original application, the time for acting upon the application is extended by 60 days. If an amending statement is received after the withholding certificate has been signed by the Assistant Commissioner (International) or his or her delegate but has not been mailed to the applicant, the IRS will have a 90-day extension of time in which to act.

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## How To Get More Information



You can get help from the IRS in several ways.

**Free publications and forms.** To order free publications and forms, call 1-800-TAX-FORM (1-800-829-3676). You can also write to the IRS Forms Distribution Center nearest you. Check your income tax package for the address. Your local library or post office also may have the items you need.

For a list of free tax publications, order Publication 910, *Guide to Free Tax Services*. It also contains an index of tax topics and related publications and describes other free tax information services available from IRS,

including tax education and assistance programs.

If you have access to a personal computer and modem, you also can get many forms and publications electronically. See *Quick and Easy Access to Tax Help and Forms* in your income tax package for details.

**Tax questions.** You can call the IRS with your tax questions. Check your income tax package or telephone book for the local number, or you can call 1-800-829-1040.

**TTY/TDD equipment.** If you have access to TTY/TDD equipment, you can call 1-800-829-4059 to ask tax questions or to order forms and publications. See your income tax package for the hours of operation.

**Evaluating the quality of our telephone services.** To ensure that IRS representatives give accurate, courteous, and professional answers, we evaluate the quality of our "800 number" telephone services in several ways.

- A second IRS representative sometimes monitors live telephone calls. That person only evaluates the IRS assistor and does not keep a record of any taxpayer's name or tax identification number.
- We sometimes record telephone calls to evaluate IRS assistants objectively. We hold these recordings no longer than one week and use them only to measure the quality of assistance.
- We value our customers' opinions. Throughout this year, we will be survey-

ing our customers for their opinions on our service.

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## Tax Treaty Tables

The United States has income tax treaties (or conventions) with a number of foreign countries under which residents (sometimes limited to citizens) of those countries are taxed at a reduced rate or are exempt from U.S. income taxes on certain income received from within the United States.

### Three tables follow:

**Table 1** lists the withholding rates on income other than personal service income.

**Table 2** lists the different types of personal service income that are entitled to an exemption from, or reduction in, withholding.

**Table 3** shows where the full text of each treaty and protocol may be found in the *Internal Revenue Bulletins* or *Cumulative Bulletins* if it has been published.

These tables are not meant to be a complete guide to all provisions of every income tax treaty. For detailed information, you must consult the provisions of the tax treaty that apply to the country of the nonresident alien to whom you are making payment.

Income that is exempt from U.S. income taxes under these treaties is not included in gross income of the nonresident alien for U.S. income tax purposes. Income that is exempt under a treaty is also not subject to withholding at source under the statutory rules discussed in this publication.

Table 1. Withholding Tax Rates on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties—For Withholding in 1998

Income code number		1	2	3	6	7	9	10	11	12	13	14
Country of residence of payee		Interest paid by U.S. obligors General <sup>dd</sup>	Interest on real property mortgages <sup>dd</sup>	Interest paid to controlling foreign corporations <sup>dd</sup>	Dividends paid by		Capital Gains <sup>u,dd</sup>	Indus-trial Royalties <sup>dd</sup>	Copyright royalties <sup>dd</sup>		Real Property Income and Natural Resources Royalties <sup>u</sup>	Pensions and Annuities
Name	Code				U.S. Corporations General <sup>a,dd</sup>	U.S. sub-sidiaries to foreign parent corporations <sup>a,dd</sup>			Motion Pictures and Television	Other		
Australia . . . . .	AS	910	910	910	915	915	30	910	910	910	30	d0
Austria . . . . .	AU	h0	30	h0	h15	b,h15	30	h0	h10	h0	30	d0
Barbados . . . . .	BB	95	95	95	g,w15	b,gw15	90	95	95	95	30	d10
Belgium . . . . .	BE	915	915	915	915	b,g15	e,g10	90	h0	90	30	d10
Canada . . . . .	CA	910	g,ee10	910	g,w15	gw15	r30	90	910	90	30	15
China, People's Republic of Commonwealth of	CH	910	910	910	910	910	30	9,v10	910	910	30	d10
Independent States . . . . .		h0	30	30	30	30	90	0	0	0	30	30
Cyprus . . . . .	CY	910	910	910	915	b,g15	910	90	90	90	30	d10
Czech Republic . . . . .	EZ	90	g,ee0	90	g,w15	b,gw15	910	910	90	90	30	d10
Denmark . . . . .	DA	h0	h0	h0	h15	b5	30	h0	h0	h0	30	d0
Egypt . . . . .	EG	h15	30	h15	h15	b,h15	e,h10	h0	h0	915	30	d10
Finland . . . . .	FI	90	90	90	g,w15	b,gw15	910	95	90	90	30	d10
France . . . . .	FR	90	g,ee0	90	g,w15	b,g15	910	95	90	90	30	f,bb0
Germany . . . . .	GM	90	90	90	g,w15	b,gw15	910	90	g,cc0	90	30	d10
Greece . . . . .	GR	h0	h0	30	30	30	30	h0	30	h0	30	d0
Hungary . . . . .	HU	90	90	90	915	b,g15	910	90	90	90	30	d10
Iceland . . . . .	IC	90	90	90	915	b,g15	e,g10	90	30	90	30	d10
India . . . . .	IN	g,z15	g,z15	915	g,w25	b,gw15	30	g,aa10	915	915	30	d10
Indonesia . . . . .	ID	910	910	910	915	b,g10	g,l,y0	g,aa10	910	910	30	d,915
Ireland . . . . .	EI	c,h0	c,h0	30	c,h15	b,c,h15	30	c,h0	c,h0	c,h0	c,h15	d0
Israel . . . . .	IS	z,gg17 1/2	z,ee,gg17 1/2	z,gg17 1/2	w,gg25	b,w,gg12 1/2	e,l,gg0	gg15	gg10	gg10	30	f0
Italy . . . . .	IT	915	915	915	915	b,g15	910	g,s10	98	95	30	d10
Jamaica . . . . .	JM	912 1/2	912 1/2	912 1/2	915	b,g10	910	910	910	910	30	d10
Japan . . . . .	JA	910	910	910	915	b,g10	e,g10	910	910	910	30	d0
Kazakstan . . . . .	KZ	910	g,ee10	910	g,l15	b,g,l15	910	910	910	910	30	d10
Korea, Rep. of . . . . .	KS	912	912	912	915	b,g10	e,g10	915	910	910	30	d10
Luxembourg <sup>k</sup> . . . . .	LU	h0	30	h0	h15	b,h15	30	h0	h0	h0	30	d0
Mexico . . . . .	MX	g,ph15	g,ee,hh15	915	g,w15	b,gw15	910	910	910	910	30	d0
Morocco . . . . .	MO	915	915	915	915	b,g10	e,g10	h10	910	910	30	d10
Netherlands <sup>m</sup> . . . . .	NL	90	90	90	g,w15	b,gw15	b0	90	g,cc0	90	30	d,f,l10
New Zealand . . . . .	NZ	910	910	910	915	915	910	910	910	910	30	d0
Norway . . . . .	NO	90	90	90	915	915	e,g10	90	h0	90	30	d10
Pakistan <sup>i</sup> . . . . .	PK	30	30	30	30	b,h15	30	h0	30	h0	30	d10
Philippines . . . . .	RP	915	915	915	925	b,g,z0	910	915	915	915	30	930

Table 1. Withholding Tax Rates on Income Other Than Personal Service Income Under Chapter 3, Internal Revenue Code, and Income Tax Treaties—For Withholding in 1998

Income code number		1	2	3	6	7	9	10	11	12	13	14
Country of residence of payee		Interest paid by U.S. obligors General <sup>dd</sup>	Interest on real property mortgages <sup>dd</sup>	Interest paid to controlling foreign corporations <sup>dd</sup>	Dividends paid by		Capital Gains <sup>u,dd</sup>	Industrial Royalties <sup>dd</sup>	Copyright royalties <sup>dd</sup>		Real Property Income and Natural Resources Royalties <sup>u</sup>	Pensions and Annuities
Name	Code				U.S. Corporations General <sup>a,dd</sup>	U.S. subsidiaries to foreign parent corporations <sup>a,dd</sup>			Motion Pictures and Television	Other		
Poland . . . . .	PL	90	90	90	915	b,95	e,910	910	910	910	30	30
Portugal . . . . .	PO	h10	h,ee10	h10	h,w15	h,w10	910	h10	h10	h10	30	d10
Romania . . . . .	RO	910	910	910	910	910	e,910	915	910	910	30	d10
Russia . . . . .	RS	90	g,ee0	90	g,ff10	b,g,ff5	910	90	90	90	30	d0
Slovak Republic . . . . .	LO	90	g,ee0	90	g,w15	b,g,w5	910	910	90	90	30	d10
Spain . . . . .	SP	910	910	910	g,w15	b,g,w10	910	g,x8	g,x8	g,x5	30	d10
Sweden . . . . .	SW	h0	h,ee0	h0	h,w15	b,h5	910	90	90	90	30	d0
Switzerland . . . . .	SZ	h5	h5	h5	h15	b,h5	30	h0	h0	h0	30	d0
Trinidad & Tobago . . . . .	TD	30	30	30	30	30	30	915	30	90	30	d10
Tunisia . . . . .	TS	915	915	915	g,w20	b,g,w14	910	g,aa10	915	915	30	10
United Kingdom . . . . .	UK	90	90	90	915	b,95	30	90	h0	90	30	d10
Other countries . . . . .		30	30	30	30	30	30	30	30	30	30	30

- <sup>a</sup> No U.S. tax is imposed on a percentage of any dividend paid by a U.S. corporation that received at least 80% of its gross income from an active foreign business for the 3-year period before the dividend is declared. (See sections 871(i)(2)(B) and 881(d) of the Internal Revenue Code.)
- <sup>b</sup> The reduced rate applies to dividends paid by a subsidiary to a foreign parent corporation that has the required percentage of stock ownership. In some cases, the income of the subsidiary must meet certain requirements (e.g. a certain percentage of its total income must consist of income other than dividends and interest). In the case of Italy, the reduced rate is 10% if the foreign corporation owns 10% to 50% of the voting stock (for a 12-month period) of the company paying the dividends.
- <sup>c</sup> The exemption or reduction in rate applies only if the recipient is subject to tax on this income in the country of residence. Otherwise a 30% rate applies.
- <sup>d</sup> Exemption does not apply to U.S. Government (federal, state, or local) pensions and annuities; a 30% rate applies to these pensions and annuities. U.S. government pensions paid to individuals who are both residents and nationals of China, Finland, India, Mexico, The Netherlands, Portugal, Russia, Spain, or the United Kingdom are exempt from U.S. tax. U.S. government pensions paid to an individual who is both a resident and citizen of Kazakhstan or Sweden are exempt from U.S. tax.
- <sup>e</sup> The treaty exemption that applies to U.S. source capital gains includes capital gains under section 871(a)(2) if they are received by a nonresident alien who is in the U.S. for not more than 183 days. (182 days for Belgium, Egypt, and Israel.)
- <sup>f</sup> Includes alimony.
- <sup>g</sup> The exemption or reduction in rate does not apply if the recipient has a permanent establishment in the United States and the property giving rise to the income is effectively connected with this permanent establishment. In the case of Australia, Barbados, Canada, China, Cyprus, the Czech Republic, Finland, France, Germany, Hungary, India, Indonesia, Italy, Jamaica, Kazakhstan, Mexico, the Netherlands, New Zealand, Philippines, Portugal, Russia, the Slovak Republic, Spain, Sweden, Tunisia, and the United Kingdom, the exemption or reduction in rate also does not apply if the property giving rise to the income is effectively connected with a fixed base in the United States from which the recipient performs independent personal services (professional services for royalties paid to a Philippines resident). Even with the treaty, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a permanent establishment in the United States under IRC section 894(b).
- <sup>h</sup> The exemption or reduction in rate does not apply if the recipient is engaged in a trade or business in the United States through a permanent establishment that is in the United States. However, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a permanent establishment in the United States for the purpose of applying the reduced treaty rate to that item of income. IRC section 894(b).

- <sup>i</sup> Bangladesh has not indicated that it wishes to assume the responsibilities or exercise the rights of the United States—Pakistan income tax treaty.
- <sup>j</sup> Exemption is not available when paid from a fund, under an employees' pension or annuity plan, if contributions to it are deductible under U.S. tax laws in determining taxable income of the employer.
- <sup>k</sup> Exemption from or reduction in rate of tax does not apply to income of holding companies entitled to special tax benefits under the laws of Luxembourg.
- <sup>l</sup> Exemption does not apply to gains from the sale of real property.
- <sup>m</sup> The current treaty does not apply to the Netherlands Antilles. The 1948 treaty had been extended to that country. The extension was terminated as of January 1, 1988. However, article VIII(j) of the 1948 treaty continues to apply to the Netherlands Antilles. That article only applies to interest paid on debt instruments issued on or before October 15, 1984, by a U.S. person to certain related controlled foreign corporations.
- <sup>n</sup> The exemption applies only to interest on credits, loans, and other indebtedness connected with the financing of trade between the United States and C.I.S. member countries. It does not include interest from the conduct of a general banking business.
- <sup>o</sup> The exemption applies only to gains from the sale or other disposition of property acquired by gift or inheritance.
- <sup>p</sup> The exemption does not apply if the recipient was a resident of the United States when the pension was earned or when the annuity was purchased.
- <sup>q</sup> Annuities paid in return for other than the recipient's personal services are exempt.
- <sup>r</sup> Generally, if the property was owned by the Canadian resident on September 26, 1980, not as part of the business property of a permanent establishment or fixed base in the U.S., the taxable gain is limited to the appreciation after 1984. Capital gains on personal property not belonging to a permanent establishment or fixed base of the taxpayer in the U.S. are exempt.
- <sup>s</sup> The reduced rate for royalties with respect to tangible personal property is 7%.
- <sup>t</sup> Does not apply to annuities.
- <sup>u</sup> Withholding at 30% may not be required on the disposition of U.S. real property interests. See U.S. Real Property Interest earlier in this publication.
- <sup>v</sup> Tax imposed on 70% of gross royalties for rentals of industrial or scientific equipment.
- <sup>w</sup> The rate in column 6 applies to dividends paid by a regulated investment company (RIC) or a real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is an individual holding less than a 10% interest (25% in the case of the Netherlands, Portugal, Spain, and Tunisia) in the REIT.
- <sup>x</sup> Royalties not taxed at the 5% or 8% rate are taxed at a 10% rate, unless footnote (g) applies.

- <sup>y</sup> The exemption does not apply if the recipient of the gain is an individual who is present in the United States for more than 119 days during the year.
- <sup>z</sup> The rate is 10% if the interest is paid on a loan granted by a bank or similar financial institution.
- <sup>aa</sup> This is the rate for royalties for the use of, or the right to use, industrial, commercial, and scientific equipment. The rate for royalties for information concerning industrial, commercial and scientific know-how is subject to the rate in column 12, but use Income Code 10 for reporting purposes.
- <sup>bb</sup> Exemption applies to U.S. Government (federal, state, or local) pensions only if the individual is both a resident and national of France and is not a U.S. national.
- <sup>cc</sup> The exemption does not apply to cinematographic films, or works on film, tape, or other means of reproduction for use in radio or television broadcasting.
- <sup>dd</sup> Under some treaties, the reduced rates of withholding may not apply to a foreign corporation unless a minimum percentage of its owners are citizens or residents of the United States or the treaty country.
- <sup>ee</sup> Exemption or reduced rate does not apply to an excess inclusion for a residual interest in a real estate mortgage investment conduit (REMIC).
- <sup>ff</sup> The rate in column 6 applies to dividends paid by a regulated investment company (RIC). Dividends paid by a real estate investment trust (REIT) are subject to a 30% rate.
- <sup>gg</sup> Under the treaty the exemption or reduction in rate does not apply if the recipient has a permanent establishment in the U.S. and the income is effectively connected with this permanent establishment. Instead, tax is not withheld at source and the provisions of Article 8 (Business Profits) apply. Additionally, even if interest income is not effectively connected with a U.S. permanent establishment, the recipient may choose to treat net interest income as industrial or commercial profits subject to Article 8 of the treaty.
- <sup>hh</sup> The rate is 10% for interest derived from (1) loans granted by banks and insurance companies and (2) bonds or securities that are regularly and substantially traded on a recognized securities market.
- <sup>ii</sup> The exemption does not apply if (1) the recipient was a U.S. resident during the 5-year period before the date of payment, (2) the amount was paid for employment performed in the United States, and (3) the amount is not a periodic payment, or is a lump-sum payment in lieu of a right to receive an annuity.

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

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

Table 2. (Continued)

Country (1)	Code <sup>1</sup> (2)	Category of Personal Services		Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)					
Commonwealth of Independent States	15	Scholarship or fellowship grant <sup>22</sup>		5 years	Any U.S. or foreign resident	Limited <sup>19</sup>	VI(1)
	16	Independent personal services <sup>22</sup>		183 days	Any U.S. or foreign contractor	No limit	VI(2)
	17	Dependent personal services <sup>20</sup>		183 days	Any U.S. or foreign resident	No limit	VI(2)
	18	Teaching <sup>20</sup>		2 years	U.S. educational or scientific institution	No limit	VI(1)
	19	Studying and training: Remittances or allowances. Compensation while gaining experience Compensation under U.S. Government program		5 years 1 year	Any U.S. or foreign resident. C.I.S. resident	Limited No limit <sup>21</sup>	VI(1) VI(1)
				1 year	Any U.S. or foreign resident.	No limit	VI(1)
Cyprus	15	Scholarship or fellowship grant <sup>15</sup>		Generally, 5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	21(1)
	16	Independent personal services <sup>7,22</sup>		182 days	Any contractor	No limit	17
	20	Public entertainment <sup>22</sup>		No limit	Any contractor	\$500 per day or \$5,000 p.a. <sup>6</sup>	19(1)
	17	Dependent personal services <sup>17</sup>		182 days	Any foreign resident	No limit <sup>24</sup>	18
	20	Directors' fees Public entertainment		No limit No limit	U.S. corporation Any U.S. or foreign resident.	\$500 per day or \$5,000 p.a. <sup>6</sup>	20 19(1)
	19	Studying and training: Remittances or allowances. Compensation during training Compensation while gaining experience <sup>2</sup> Compensation under U.S. Government program		Generally, 5 years Generally, 5 years 1 year	Any foreign resident Any U.S. or foreign resident Cyprus resident	No limit \$2,000 p.a. \$7,500	21(1) 21(1) 21(2)
				1 year	U.S. Government or its contractor.	\$10,000	21(3)
Czech Republic	15	Scholarship or fellowship grant <sup>15</sup>		5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	21(1)
	16	Independent personal services <sup>7,22</sup>		183 days	Any contractor	No limit	14
	20	Public entertainment <sup>22</sup>		183 days	Any contractor	\$20,000 p.a. <sup>30</sup>	18
	17	Dependent personal services <sup>8,17</sup>		183 days	Any foreign resident	No limit	15
	20	Public entertainment <sup>4,35</sup>		183 days	Any foreign resident	\$20,000 p.a. <sup>30</sup>	18
	18	Teaching <sup>4,35</sup>		2 years	Any U.S. educational or research institution	No limit	21(5)
	19	Studying and training: Remittances and allowances Compensation during training Compensation while gaining experience <sup>2</sup> Compensation under U.S. Government program		5 years 5 years 12 consec. mos.	Any foreign resident Any U.S. or foreign resident Czech resident	No limit \$5,000 p.a. \$8,000	21(1) 21(1) 21(2)
				1 year	U.S. Government	\$10,000	21(3)
Denmark	16	Independent personal services <sup>22</sup>		180 days	Danish resident contractor	No limit	XI
	17	Dependent personal services		90 days	Other foreign or U.S. resident contractor	\$3,000	XI
	18	Teaching		180 days	Danish resident	No limit	XI
	19	Studying and training: Remittances or allowances		90 days 2 years	Other foreign or U.S. resident U.S. educational institution	\$3,000 No limit	XI XIV
				No limit	Any foreign resident	No limit	XIII

Table 2. (Continued)

Country (1)	Category of Personal Services (3)		Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
	Code <sup>1</sup> (2)	Purpose (3)				
Egypt	15	Scholarship or fellowship grant <sup>15</sup>	Generally, 5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	23(1)
	16	Independent personal services <sup>22</sup>	89 days	Any foreign contractor	No limit	15
	20	Public entertainment <sup>22</sup>	No limit	Any contractor	\$400 per day	17
	17	Dependent personal services <sup>16,17</sup>	89 days	Egyptian resident	No limit	16
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$400 per day	17
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	22
	19	Studying and training: Remittances or allowances	Generally, 5 years	Any foreign resident	No limit	22(1)
Finland		Compensation during training	Generally, 5 years	U.S. or any foreign resident	\$3,000 p.a.	22(1)
		Compensation while gaining experience <sup>2</sup>	12 consec. mos.	Egyptian resident	\$7,500	23(2)
		Government program	1 year	U.S. Government or its contractor	\$10,000	23(3)
	16	Independent personal services <sup>7,22</sup>	No limit	Any contractor	No limit	14
	20	Public entertainment <sup>22</sup>	No limit	Any contractor	\$20,000 p.a. <sup>25</sup>	17
	17	Dependent personal services <sup>17</sup>	183 days	Any foreign resident	No limit	15
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$20,000 p.a. <sup>25</sup>	17
France	19	Studying and training: Remittances or allowances <sup>11</sup>	No limit	Any foreign resident	No limit	20
	15	Scholarship or fellowship grant <sup>15</sup>	5 years <sup>43</sup>	Any U.S. or foreign resident <sup>5</sup>	No limit	21(1)
	16	Independent personal services <sup>22</sup>	No limit	Any contractor	No limit	14
	20	Public entertainment	No limit	Any contractor	\$10,000 <sup>30</sup>	17
	17	Dependent personal services <sup>8,17</sup>	183 days	Any foreign resident	No limit	15
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$10,000 <sup>30</sup>	17
	18	Teaching <sup>4,44</sup>	2 years <sup>43</sup>	U.S. educational or research institution	No limit	20
Germany	19	Studying and training: Remittances or allowances	5 years <sup>43</sup>	Any foreign resident	No limit	21(1)
		Compensation during study or training	12 consec. mos.	French resident	\$8,000	21(2)
		Compensation while gaining experience <sup>2</sup>	5 years <sup>43</sup>	Other foreign or U.S. resident	\$5,000 p.a.	21(1)
			12 consec. mos.	French resident	\$8,000	21(2)
	15	Scholarship or fellowship grant <sup>15</sup>	No limit	Any U.S. or foreign resident <sup>5</sup>	No limit	20(3)
	16	Independent personal services <sup>7,8,22</sup>	No limit	Any contractor	No limit	14
	20	Public entertainment <sup>22</sup>	No limit	Any contractor	\$20,000 p.a. <sup>30</sup>	17
Greece	17	Dependent personal services <sup>8,17</sup>	183 days	Any foreign resident	No limit	15
	20	Public entertainment <sup>17</sup>	183 days	Any foreign resident	\$20,000 p.a. <sup>30</sup>	17
	18	Teaching <sup>4</sup>	2 years	U.S. educational or research institution	No limit	20(1)
	19	Studying and training: Remittances or allowances <sup>11</sup>	No limit	Any foreign resident	No limit	20(2)
		Compensation during study or training	4 years	Any U.S. or foreign resident	\$5,000 p.a.	20(2)
		Compensation while gaining experience <sup>2</sup>	1 year	Any German enterprise or foreign organization or institution	\$10,000 <sup>28</sup>	20(4)
						20(5)
Greece	16	Independent personal services <sup>22</sup>	183 days	Greek resident contractor	No limit	X
	17	Dependent personal services	183 days	Other foreign or U.S. resident contractor	\$10,000	X
	18	Teaching	183 days	Greek resident	No limit	X
	19	Studying and training: Remittances or allowances	3 years	Other foreign or U.S. resident	\$10,000	X
Hungary				U.S. educational institution	No limit	XII
			No limit	Any foreign resident	No limit	XIII
	16	Independent personal services <sup>7,22</sup>	183 days	Any contractor	No limit	13
	17	Dependent personal services <sup>17</sup>	183 days	Any foreign resident	No limit	14
	18	Teaching	2 years	U.S. educational institution	No limit	17
	19	Studying and training: <sup>23</sup> Remittances or allowances <sup>11</sup>	No limit	Any foreign resident	No limit	18(1)

Table 2. (Continued)

Country (1)	Category of Personal Services (3)		Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
	Code <sup>1</sup> (2)	Purpose (3)				
Iceland	15	Scholarship and fellowship grant <sup>15</sup>	5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	22(1)
	16	Independent personal services <sup>7,22</sup>	182 days	Any contractor	No limit	18
	20	Public entertainment <sup>22</sup>	90 days	Any resident contractor	\$100 per day	18
	17	Dependent personal services <sup>17</sup>	182 days	Iceland resident <sup>8</sup>	No limit	19
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	21
	19	Studying and training: Remittances or allowances. Compensation during training Compensation while gaining experience <sup>2</sup> Compensation under U.S. Government program	5 years 5 years 12 consec. mo. 1 year	Any foreign resident U.S. or any foreign resident Iceland resident U.S. Government or its contractor	No limit \$2,000 p.a. \$5,000 \$10,000	22(1) 22(1) 22(2) 22(3)
India	16	Independent personal services <sup>7,8,22</sup>	89 days	Any contractor	No limit	15
	20	Public entertainment <sup>7,22</sup>	89 days	Any contractor	\$1,500 p.a. <sup>26</sup>	18
	17	Dependent personal services <sup>8,17</sup>	183 days	Any foreign resident	No limit	16
	20	Public entertainment <sup>17</sup>	183 days	Any foreign resident	\$1,500 p.a. <sup>26</sup>	18
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	22
	19	Studying and training: Remittances or allowances.	No limit	Any foreign resident <sup>27</sup>	No limit	21(1)
Indonesia	15	Scholarship or fellowship grant <sup>15</sup>	5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	19(1)
	16	Independent personal services <sup>7,22</sup>	119 days	Any contractor	No limit	15
	20	Public entertainment <sup>22</sup>	No limit	Any contractor	\$2,000 p.a. <sup>25</sup>	17
	17	Dependent personal services <sup>17</sup>	119 days	Any foreign resident	No limit	16
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$2,000 p.a. <sup>25</sup>	17
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	20
	19	Studying and training: Remittances or allowances. Compensation during training Compensation while gaining experience	5 years 5 years 12 consec. mo.	Any foreign resident Any foreign or U.S. resident Any U.S. or foreign resident	No limit \$2,000 p.a. \$7,500	19(1) 19(1) 19(2)
Ireland	16	Independent personal services <sup>22</sup>	183 days	Irish resident contractor	No limit	XI
	17	Dependent personal services	183 days	Irish resident	No limit	XI
	18	Teaching	2 years	U.S. educational institution	No limit	XVIII
	19	Studying and training: Remittances or allowances <sup>11</sup>	No limit	Irish resident	No limit	XIX
Israel	15	Scholarship or fellowship grant	5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	24(1)
	16	Independent personal services <sup>22</sup>	182 days	Any contractor	No limit	16
	20	Public entertainment <sup>22</sup>	No limit	Any contractor	\$400 per day <sup>37</sup>	18
	17	Dependent personal services	182 days	Israeli resident <sup>6,17,18</sup>	No limit	17
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$400 per day <sup>37</sup>	18
	18	Teaching <sup>39</sup>	2 years	U.S. educational institution	No limit	23
	19	Studying and training: Remittances or allowances. Compensation during study or training Compensation while gaining experience <sup>2</sup> Compensation under U.S. Government program	5 years 5 years 12 consec. mo. 1 year	Any foreign resident Any U.S. or foreign resident Israeli resident U.S. Government or its contractor	No limit \$3,000 p.a. \$7,500 \$10,000	24(1) 24(1) 24(2) 24(3)

Table 2. (Continued)

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

Table 2. (Continued)

Country (1)	Code <sup>1</sup> (2)	Category of Personal Services (3)		Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)					
Luxembourg	15	Scholarship or fellowship grant <sup>22</sup>		No limit	Any foreign resident <sup>5</sup>	No limit	XIV(1)
	16	Independent personal services <sup>8,17</sup>		180 days	Luxembourg resident <sup>40</sup>	No limit	XII
	17	Dependent personal services <sup>8</sup>		180 days	Any U.S. or foreign resident	\$3,000	XII
	18	Teaching <sup>9</sup>		180 days	Luxembourg resident <sup>40</sup>	No limit	XII
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience <sup>2</sup> Government program		2 years	Any U.S. or foreign resident U.S. educational institution	\$3,000 No limit	XII XIII
Mexico	16	Independent personal services <sup>7,22</sup>		No limit	Any foreign resident	No limit	XIV(1)
	20	Public entertainment <sup>22</sup>		1 year	Any foreign resident	No limit	XIV(1)
	17	Dependent personal services <sup>8,17</sup>		1 year	Any foreign resident	\$5,000	XIV(2)
	20	Public entertainment		1 year	U.S. Government, its contractor, or a foreign resident	\$10,000	XIV(3)
	19	Studying and training: Remittances and allowances		183 days	Any contractor	No limit	14
Morocco	16	Independent personal services <sup>15</sup>		No limit	Any contractor	\$3,000 p.a. <sup>30</sup>	18
	17	Dependent personal services <sup>17,18</sup>		183 days	Any foreign resident	No limit	14
	19	Studying and training: Remittances or allowances Compensation during training		No limit	Any U.S. or foreign resident	\$3,000 p.a. <sup>30</sup>	15
	15	Scholarship or fellowship grant <sup>15</sup>		No limit	Any foreign resident	No limit	18
	16	Independent personal services <sup>22</sup>		No limit	Any U.S. or foreign resident <sup>5</sup>	\$2,000 p.a.	18
Netherlands	15	Scholarship or fellowship grant <sup>15,33</sup>		5 years	Any foreign resident	No limit	22(2)
	16	Independent personal services <sup>7,22</sup>		3 years	U.S. or any foreign resident	No limit	15
	20	Public entertainment <sup>22</sup>		No limit	Any contractor	No limit	16
	17	Dependent personal services <sup>8,17</sup>		183 days	Any foreign resident	\$10,000 p.a. <sup>30</sup>	18
	20	Public entertainment		183 days	Any foreign resident	No limit	21(1)
New Zealand	18	Teaching <sup>3,34</sup>		2 years	U.S. educational institution	No limit	22(1)
	19	Studying and training: Remittances or allowances Compensation while gaining experience Compensation while recipient of scholarship or fellowship grant		No limit	Any foreign resident	No limit	22(1)
	16	Independent personal services <sup>7,22</sup>		No limit	Any U.S. or foreign resident	\$2,000 p.a. <sup>36</sup>	22(2)
	20	Public entertainment <sup>22</sup>		3 years	Any U.S. or foreign resident	No limit	14
	17	Dependent personal services <sup>17</sup>		183 days	Any contractor	No limit	17
New Zealand	20	Public entertainment <sup>17</sup>		183 days	Any foreign resident	\$10,000 <sup>25</sup>	15
	19	Studying and training: Remittances or allowances <sup>11</sup>		183 days	Any foreign resident	\$10,000 <sup>25</sup>	17
	16	Independent personal services <sup>7,22</sup>		No limit	Any foreign resident	No limit	20
	20	Public entertainment		No limit	Any foreign resident	No limit	20
	19	Studying and training: Remittances or allowances <sup>11</sup>		No limit	Any foreign resident	No limit	20

Table 2. (Continued)

Country (1)	Code <sup>1</sup> (2)	Category of Personal Services		Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
		Purpose (3)					
Norway	15	Scholarship or fellowship grant <sup>15</sup>	5 years.	Any U.S. or foreign resident <sup>5</sup>	No limit	16(1)	
	16	Independent personal services <sup>22</sup>	182 days	Any resident contractor	No limit	13	
	20	Public entertainment <sup>22</sup>	90 days	Any resident contractor	\$10,000 p.a.	13	
	17	Dependent personal services <sup>18</sup>	182 days	Norwegian resident <sup>16</sup>	No limit	14	
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	15	
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience <sup>2</sup> Compensation under U.S. Government program.	5 years. 5 years. 12 consec. mo. 1 year	Any foreign resident U.S. or any foreign resident Norwegian resident U.S. Government or its contractor	No limit \$2,000 p.a. \$5,000 \$10,000	16(1) 16(1) 16(2) 16(3)	
Pakistan <sup>12</sup>	15	Scholarship or fellowship grant <sup>15</sup>	No limit	Pakistani nonprofit organization	No limit	XIII(1)	
	16	Independent personal services <sup>16,22</sup>	183 days	Pakistani resident contractor	No limit	XI	
	17	Dependent personal services <sup>16</sup>	183 days	Pakistani resident	No limit	XI	
	18	Teaching	2 years	U.S. educational institution	No limit	XII	
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience <sup>2</sup> Compensation under U.S. Government program.	No limit No limit 1 year No limit	Any foreign resident U.S. or any foreign resident Pakistani resident U.S. Government, its contractor, or any foreign resident employer	No limit \$5,000 p.a. \$6,000 \$10,000	XIII(1) XIII(1) XIII(2) XIII(3)	
Philippines	15	Scholarship or fellowship grant <sup>15</sup>	5 years.	Any U.S. or foreign resident <sup>5</sup>	No limit	22(1)	
	16	Independent personal services <sup>7,22</sup>	89 days	Any foreign contractor	No limit	15	
	20	Public entertainment <sup>22</sup>	89 days	Any U.S. contractor	\$10,000 p.a.	15	
	17	Dependent personal services <sup>17</sup>	No limit	Any contractor	\$100 per day or \$3,000 p.a.	17	
	20	Public entertainment	89 days	Any Philippines resident <sup>18</sup>	No limit	16	
	18	Teaching <sup>4,38</sup>	No limit	Any U.S. or foreign resident	\$100 per day or \$3,000 p.a.	17	
	19	Studying and training: Remittances or allowances Compensation during study Compensation while gaining experience <sup>2</sup> Compensation under U.S. Government program.	2 years. 5 years. 5 years. 12 consec. mo. 1 year	U.S. educational institution Any foreign resident Any U.S. or foreign resident Philippines resident U.S. Government or its contractor	No limit No limit \$3,000 p.a. \$7,500 p.a. \$10,000 p.a.	21, 22(4) 22(1) 22(1) 22(2) 22(3)	
Poland	15	Scholarship or fellowship grant <sup>15</sup>	5 years.	Any U.S. or foreign resident <sup>5</sup>	No limit	18(1)	
	16	Independent personal services <sup>22</sup>	182 days	Any contractor	No limit	15	
	17	Dependent personal services <sup>17</sup>	182 days	Any foreign resident	No limit	16	
	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	17	
	19	Studying and training: Remittances or allowances Compensation during training Compensation while gaining experience <sup>2</sup> Compensation under U.S. Government program.	5 years. 5 years. 1 year 1 year	Any foreign resident U.S. or any foreign resident Polish resident U.S. Government or its contractor	No limit No limit \$2,000 p.a. \$5,000 \$10,000	18(1) 18(1) 18(2) 18(3)	

Table 2. (Continued)

Country (1)	Category of Personal Services (3)		Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
	Code <sup>1</sup> (2)	Purpose (3)				
Portugal	15	Scholarship or fellowship grant <sup>15</sup>	5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	23(1)
	16	Independent personal services <sup>7,22</sup>	182 days	Any contractor	No limit	15
	20	Public entertainment <sup>22</sup>	No limit	Any contractor	\$10,000 p.a. <sup>30</sup>	19
	17	Dependent personal services <sup>8,17</sup>	183 days	Any foreign resident	No limit	16
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$10,000 p.a. <sup>30</sup>	19
Romania	18	Teaching <sup>4,42</sup>	2 years	U.S. educational or research institution	No limit	22
	19	Studying and training: <sup>4</sup>				
		Remittances or allowances	5 years	Any foreign resident	No limit	23(1)
		Compensation during training	5 years	Any foreign or U.S. resident	\$5,000 p.a.	23(1)
		Compensation while gaining experience <sup>2</sup>	12 consec. mos.	Portuguese resident	\$8,000	23(2)
Romania	15	Scholarship or fellowship grant <sup>15</sup>	5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	20(1)
	16	Independent personal services <sup>22</sup>	182 days	Any contractor	No limit	14
	20	Public entertainment <sup>22</sup>	90 days	Any contractor	\$3,000	14
	17	Dependent personal services <sup>17</sup>	182 days	Romanian resident	No limit	15
	20	Public entertainment	89 days	Romanian resident	\$2,999.99	15
Russia	18	Teaching <sup>4</sup>	2 years	U.S. educational institution	No limit	19
	19	Studying and training: <sup>4</sup>				
		Remittances or allowances	5 years	Any foreign resident	No limit	20(1)
		Compensation during training	5 years	U.S. or any foreign resident	\$2,000 p.a.	20(1)
		Compensation while gaining experience <sup>2</sup>	1 year	Romanian resident	\$5,000	20(2)
Russia		Compensation while under U.S. Government program	1 year	U.S. Government or its contractor	\$10,000	20(3)
	15	Scholarship or fellowship grant <sup>15,41</sup>	5 years <sup>31</sup>	Any U.S. or foreign resident <sup>5</sup>	No limit	18
	16	Independent personal services <sup>22</sup>	183 days	Any contractor	No limit	13
	17	Dependent personal services <sup>8,17,32</sup>	183 days	Any foreign resident	No limit	14
	19	Studying and training: <sup>4</sup>	5 years <sup>31</sup>	Any foreign resident	No limit	18
Slovak Republic		Remittances and allowances				
	15	Scholarship or fellowship grant <sup>15</sup>	5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	21(1)
	16	Independent personal services <sup>7,22</sup>	183 days	Any contractor	No limit	14
	20	Public entertainment <sup>22</sup>	183 days	Any contractor	\$20,000 p.a. <sup>30</sup>	18
	17	Dependent personal services <sup>8,17</sup>	183 days	Any foreign resident	No limit	15
Slovak Republic	20	Public entertainment	183 days	Any foreign resident	\$20,000 p.a. <sup>30</sup>	18
	18	Teaching <sup>4,35</sup>	2 years	Any U.S. educational or research institution	No limit	21(5)
	19	Studying and training: <sup>4</sup>				
		Remittances and allowances	5 years	Any foreign resident	No limit	21(1)
		Compensation during training	5 years	Any U.S. or foreign resident	\$5,000 p.a.	21(1)
Spain		Compensation while gaining experience <sup>2</sup>	12 consec. mos.	Slovak resident	\$8,000	21(2)
		Compensation under U.S. Government program	1 year	U.S. Government	\$10,000	21(3)
	15	Scholarship or fellowship grant <sup>15</sup>	5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	22(1)
	16	Independent personal services <sup>7,22</sup>	No limit	Any contractor	No limit	15
	20	Public entertainment <sup>22</sup>	No limit	Any contractor	\$10,000 p.a. <sup>30</sup>	19
Spain	17	Dependent personal services <sup>17</sup>	183 days	Any foreign resident	No limit	16
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$10,000 p.a. <sup>30</sup>	19
	19	Studying and training: <sup>4</sup>				
		Remittances or allowances	5 years	Any foreign resident	No limit	22(1)
		Compensation during training	5 years	Any U.S. or foreign resident	\$5,000 p.a.	22(1)
Spain		Compensation while gaining experience <sup>2</sup>	12 consec. mo.	Spanish resident	\$8,000	22(2)

Table 2. (Continued)

Country (1)	Category of Personal Services		Maximum Presence in U.S. (4)	Required Employer or Payer (5)	Maximum Amount of Compensation (6)	Treaty Article Citation (7)
	Code <sup>1</sup> (2)	Purpose (3)				
Sweden	16	Independent personal services <sup>7</sup>	No limit	Any contractor	No limit	14
	20	Public entertainment	No limit	Any contractor	\$6,000 <sup>25</sup>	18
	17	Dependent personal services <sup>8,17</sup>	183 days	Any foreign resident	No limit	15
	20	Public entertainment	No limit	Any U.S. or foreign resident	\$6,000 <sup>25</sup>	18
19	Studying and training: Remittances or allowances <sup>11</sup>	No limit	Any foreign resident			
Switzerland	16	Independent personal services <sup>10,22</sup>	183 days	Swiss resident contractor	No limit	21
	17	Dependent personal services <sup>10</sup>	183 days	Other foreign or U.S. contractor	No limit	X
	18	Teaching	183 days	Swiss resident	No limit	X
	19	Studying and training: Remittances or allowances	183 days	Other foreign or U.S. resident	\$10,000	X
Trinidad and Tobago	15	Teaching	2 years	U.S. educational institution	No limit	XII
	16	Scholarship or fellowship grant <sup>15</sup>	No limit	Any foreign resident	No limit	XIII
	17	Independent personal services <sup>14,22</sup>	5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	19(1)
	18	Dependent personal services <sup>14</sup>	183 days	Any foreign resident contractor	No limit	17
Tunisia	15	Teaching <sup>4</sup>	183 days	Any U.S. contractor	\$3,000 <sup>6</sup>	17
	16	Studying and training: Remittances or allowances	183 days	Any foreign resident	No limit	17
	17	Compensation during training	2 years	Any U.S. resident	\$3,000 <sup>6</sup>	18
	19	Compensation while gaining experience	5 years	U.S. educational institution or U.S. Government	No limit	19(1)
United Kingdom	15	Compensation under U.S. Government program	5 years	Any foreign resident	No limit	19(1)
	16	Scholarship or fellowship grant <sup>11,15</sup>	5 years	U.S. or any foreign resident	\$2,000 p.a. <sup>6</sup>	19(1)
	17	Independent personal services <sup>7,22</sup>	5 years	U.S. or any foreign resident	\$5,000 p.a. <sup>6</sup>	19(1)
	20	Public entertainment <sup>22</sup>	1 year	Trinidad—Tobago resident	\$5,000 <sup>6</sup>	19(2)
Tunisia	15	Compensation during training	1 year	U.S. Government or its contractor	\$10,000 <sup>6</sup>	19(3)
	16	Dependent personal services <sup>17</sup>	1 year	U.S. Government or its contractor		
	17	Public entertainment	5 years	Any U.S. or foreign resident <sup>5</sup>	No limit	20
	19	Studying and training: Remittances or allowances	183 days	U.S. resident contractor	\$7,500 p.a. <sup>25</sup>	14
United Kingdom	16	Dependent personal services <sup>17</sup>	No limit	Any contractor	No limit	17
	17	Public entertainment	183 days	Any foreign resident	No limit	15
	18	Studying and training: Remittances or allowances <sup>11</sup>	No limit	Any U.S. or foreign resident	\$7,500 p.a. <sup>25</sup>	17
	19	Teaching	5 years	Any foreign resident		
United Kingdom	16	Studying and training: Remittances or allowances	5 years	Any foreign resident	No limit	20
	17	Compensation during training	5 years	Any U.S. or foreign resident	\$4,000 p.a.	20
	18	Independent personal services <sup>7,22</sup>	183 days	Any U.S. or foreign resident		
	19	Dependent personal services <sup>17</sup>	183 days	Any contractor	No limit <sup>13</sup>	14
United Kingdom	15	Teaching	2 years	Any foreign resident	No limit	15
	16	Studying and training: Remittances or allowances <sup>11</sup>	No limit	U.S. educational institution	No limit	20
	17	Compensation during training	No limit	Any foreign resident	No limit	21
	19	Teaching	No limit	Any foreign resident		

- <sup>1</sup> Refers to income, code numbers described in this publication and to be reported on Forms 1042-S. Personal services must be performed by a nonresident alien individual who is a resident of the specified treaty country.
- <sup>2</sup> Applies only if training or experience is received from a person other than the alien's employer.
- <sup>3</sup> Annual compensation for services wherever performed.
- <sup>4</sup> Does not apply to compensation for research work primarily for private benefit.
- <sup>5</sup> Grant must be from a nonprofit organization. In many cases, the exemption applies to amounts from either the U.S. or foreign government. In the case of Indonesia and the Netherlands, the exemption also applies if the amount is awarded under a technical assistance program entered into by the United States or foreign government, or its political subdivisions or local authorities.
- <sup>6</sup> Reimbursed expenses are not taken into account in figuring any maximum compensation to which the exemption applies. For Japan and Trinidad and Tobago, only reimbursed travel expenses are disregarded in figuring maximum compensation.
- <sup>7</sup> Exemption does not apply to the extent income is attributable to the recipient's fixed U.S. base. For residents of Japan, this fixed base must be maintained in the U.S. for more than 183 days during the tax year for the exemption not to apply; for residents of Belgium, Iceland, Korea, and Norway, the fixed base must be maintained for more than 182 days; for residents of Morocco, the fixed base must be maintained for more than 89 days.
- <sup>8</sup> Does not apply to fees of a foreign director of a U.S. corporation.
- <sup>9</sup> Does not apply to compensation for research work for other than the U.S. educational institution involved.
- <sup>10</sup> Applies to public entertainment in accordance with U.S. reservation rejecting exclusion contained in Art. X(4) of the Switzerland treaty.
- <sup>11</sup> Applies only to full-time student or trainee.
- <sup>12</sup> Bangladesh has not indicated that it wishes to assume the responsibilities or exercise the rights of the United States—Pakistan income tax treaty.
- <sup>13</sup> Does not apply to compensation paid to public entertainers (actors, artists, musicians, athletes, etc.). For Canadian and U.K. resident public entertainers, the exemption does not apply if the gross receipts (including reimbursements) are more than \$15,000 in any year.
- <sup>14</sup> Does not apply to compensation paid to public entertainers in excess of \$100 a day.
- <sup>15</sup> Does not apply to payments from the National Institutes of Health under its Visiting Associate Program and Visiting Scientist Program.
- <sup>16</sup> Exemption applies only if the compensation is subject to tax in the country of residence.

- <sup>17</sup> The exemption does not apply if the employee's compensation is borne by a permanent establishment or in some cases a fixed base that the employer has in the United States.
- <sup>18</sup> The exemption applies if the employer is a permanent establishment in the treaty country but is not a resident of the treaty country.
- <sup>19</sup> This exemption does not apply in certain cases if the employee is a substantial owner of that employer and the employer is engaged in certain defined activities.
- <sup>20</sup> The exemption is also extended to journalists and correspondents who are temporarily in the U.S. for periods not exceeding 2 years and who receive compensation from abroad.
- <sup>21</sup> Also exempt are amounts of up to \$10,000 received from U.S. sources to provide ordinary living expenses. For students, the amount will be less than \$10,000, determined on a case-by-case basis.
- <sup>22</sup> Withholding at 30% may be required because the factors on which the treaty exemption is based may not be determinable until after the close of the tax year. However, see Withholding agreements, and Final payment exemption, under Pay for independent personal services, and Central Withholding Agreements, under Artists and Athletes, discussed in this publication.
- <sup>23</sup> A student or trainee may choose to be treated as a U.S. resident for tax purposes. If the choice is made, it may not be revoked without the consent of the U.S. competent authority.
- <sup>24</sup> Does not apply to amounts received in excess of reasonable fees payable to all directors of the company for attending meetings in the United States.
- <sup>25</sup> Exemption does not apply if gross receipts (including reimbursements) exceed this amount during the year (or during any 12-month period for Sweden).
- <sup>26</sup> Exemption does not apply if net income exceeds this amount.
- <sup>27</sup> Exemption does not apply to payments borne by a permanent establishment in the United States or paid by a U.S. citizen or resident of the federal, state, or local government.
- <sup>28</sup> Exemption does not apply if compensation exceeds this amount.
- <sup>29</sup> The exemption applies only to income from activities performed under special cultural exchange programs agreed to by the U.S. and Chinese governments.
- <sup>30</sup> Exemption does not apply if gross receipts (or compensation for Portugal) including reimbursements, exceed this amount during the year. Income is fully exempt if visit to the United States is substantially supported by public funds of the treaty country or its political subdivisions or local authorities.

- <sup>31</sup> The 5-year limit pertains only to training or research.
- <sup>32</sup> Compensation from employment directly connected with a place of business that is not a permanent establishment is exempt if the alien is present in the United States for a period not exceeding 12 consecutive months. Compensation for technical services directly connected with the application of a right or property giving rise to a royalty is exempt if the services are provided as part of a contract granting the use of the right or property.
- <sup>33</sup> Exemption does not apply if, during the immediately preceding period, the individual claimed the benefits of Article 21.
- <sup>34</sup> Exemption does not apply if, during the immediately preceding period, the individual claimed the benefits of Article 22.
- <sup>35</sup> Exemption does not apply if the individual either (a) claimed the benefit of Article 21(5), previously, or (b) during the immediately preceding period, claimed the benefit of Article 21(1), (2), or (3).
- <sup>36</sup> Exemption applies only to compensation for personal services performed in connection with, or incidental to, the individual's study, research, or training.
- <sup>37</sup> If the compensation exceeds \$400 per day, the entertainer may be taxed on the full amount. If the individual receives a fixed amount for more than one performance, the amount is prorated over the number of days the individual performs the services (including rehearsals).
- <sup>38</sup> Exemption does not apply if during the immediately preceding period, the individual derived any benefits of Article 22(1).
- <sup>39</sup> Exemption does not apply if during the immediately preceding period, the individual derived any benefits of Article 24(1).
- <sup>40</sup> The exemption also applies if the income is borne by an employer that is a permanent establishment of a U.S. enterprise in Luxembourg.
- <sup>41</sup> Applies to grants, allowances, and other similar payments received for studying or doing research.
- <sup>42</sup> Exemption does not apply if the individual either (a) previously claimed the benefit of this Article, or (b) during the immediately preceding period, claimed the benefit of Article 23. The benefits under Articles 22 and 23 cannot be claimed at the same time.
- <sup>43</sup> The combined period of benefits under Articles 20 and 21(1) cannot exceed 5 years.
- <sup>44</sup> The exemption does not apply if the individual previously claimed the benefit of this Article.

Table 3. List of Tax Treaties

Country	Official Text Symbol <sup>1</sup>	General Effective Date	Citation	Applicable Treasury Explanations or Treasury Decision (T.D.)
Australia	TIAS 10773	Dec. 1, 1983	1986-2 C.B. 220	1986-2 C.B. 246.
Austria	TIAS 3923	Jan. 1, 1957	1957-2 C.B. 985	T.D. 6322, 1958-2 C.B. 1038.
Barbados	TIAS 11090	Jan. 1, 1984	1991-2 C.B. 436	1991-2 C.B. 466
Protocol	TIAS	Jan. 1, 1994		
Belgium	TIAS 7463	Jan. 1, 1971	1973-1 C.B. 619	
Protocol	TIAS 11254	Various		
Canada <sup>2</sup>	TIAS 11087	Jan. 1, 1985	1986-2 C.B. 258	1987-2 C.B. 298.
Protocol	TIAS	Jan. 1, 1996		
China, People's Republic of <sup>5</sup>	TIAS	Jan. 1, 1987	1988-1 C.B. 414	1988-1 C.B. 447.
Commonwealth of Independent States <sup>4</sup>	TIAS 8225	Jan. 1, 1976	1976-2 C.B. 463	1976-2 C.B. 475.
Cyprus	TIAS 10965	Jan. 1, 1986	1989-2 C.B. 280	1989-2 C.B. 314.
Czech Republic	TIAS	Jan. 1, 1993		
Denmark	TIAS 1854	Jan. 1, 1948	1950-1 C.B. 77	T.D. 5692, 1949-1 C.B. 104;
				T.D. 5777, 1950-1 C.B. 76.
Egypt	TIAS 10149	Jan. 1, 1982	1982-1 C.B. 219	1982-1 C.B. 243.
Finland	TIAS	Jan. 1, 1991		
France	TIAS	Jan. 1, 1996		
Germany	TIAS	Jan. 1, 1990 <sup>3</sup>		
Greece	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1054	T.D. 6109, 1954-2 C.B. 638.
Protocol	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1059	
Hungary	TIAS 9560	Jan. 1, 1980	1980-1 C.B. 333	1980-1 C.B. 354.
Iceland	TIAS 8151	Jan. 1, 1976	1976-1 C.B. 442	1976-1 C.B. 456.
India	TIAS	Jan. 1, 1991		
Indonesia	TIAS	Jan. 1, 1990		
Protocol	TIAS	Feb. 1, 1997		
Ireland	TIAS 2356	Jan. 1, 1951	1958-2 C.B. 1060	T.D. 5897, 1952-1 C.B. 89.
Israel	TIAS	Feb. 1, 1995		
Italy	TIAS 11064	Jan. 1, 1985	1992-1 C.B. 442	1992-1 C.B. 473.
Jamaica	TIAS 10207	Jan. 1, 1982	1982-1 C.B. 257	1982-1 C.B. 291.
Japan	TIAS 7365	Jan. 1, 1973	1973-1 C.B. 630	1973-1 C.B. 653.
Kazakstan	TIAS	Jan. 1, 1996		
Korea, Republic of	TIAS 9506	Jan. 1, 1980	1979-2 C.B. 435	1979-2 C.B. 458.
Luxembourg	TIAS 5726	Jan. 1, 1964	1965-1 C.B. 615	1965-1 C.B. 642.
Mexico	TIAS	Jan. 1, 1994	1994-2 C.B. 424	1994-2 C.B. 489.
Protocol	TIAS	Oct. 26, 1995		
Morocco	TIAS 10195	Jan. 1, 1981	1982-2 C.B. 405	1982-2 C.B. 427.
Netherlands	TIAS	Jan. 1, 1994		
New Zealand	TIAS 10772	Jan. 1, 1984	1990-2 C.B. 274	1990-2 C.B. 303.
Norway	TIAS 7474	Jan. 1, 1971	1973-1 C.B. 669	1973-1 C.B. 693.
Protocol	TIAS 10205	Jan. 1, 1982	1982-2 C.B. 440	1982-2 C.B. 454.
Pakistan	TIAS 4232	Jan. 1, 1959	1960-2 C.B. 646	T.D. 6431, 1960-1 C.B. 755.
Philippines	TIAS 10417	Jan. 1, 1983	1984-2 C.B. 384	1984-2 C.B. 412.
Poland	TIAS 8486	Jan. 1, 1974	1977-1 C.B. 416	1977-1 C.B. 427.
Portugal	TIAS	Jan. 1, 1996		
Romania	TIAS 8228	Jan. 1, 1974	1976-2 C.B. 492	1976-2 C.B. 504.
Russia	TIAS	Jan. 1, 1994		
Slovak Republic	TIAS	Jan. 1, 1993		
Spain	TIAS	Jan. 1, 1991		
Sweden	TIAS	Jan. 1, 1996		
Switzerland	TIAS 2316	Jan. 1, 1951	1955-2 C.B. 815	T.D. 5867, 1951-2 C.B. 75;
				T.D. 6149, 1955-2 C.B. 814.
Trinidad and Tobago	TIAS 7047	Jan. 1, 1970	1971-2 C.B. 479	
Tunisia	TIAS	Jan. 1, 1990		
United Kingdom	TIAS 9682	Jan. 1, 1975	1980-1 C.B. 394	1980-1 C.B. 455.

<sup>1</sup> Treaties and Other International Act Series.

<sup>2</sup> The Canadian Treaty also may be found in Publication 597, *Information on the United States—Canada Income Tax Treaty*.

<sup>3</sup> The general effective date for the area that comprises the former German Democratic Republic is January 1, 1991.

<sup>4</sup> The U.S.—U.S.S.R. income tax treaty applies to the countries of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

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

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