

Withholding Amounts and Documentation

The following charts illustrate the withholding taxes and withholding certificates required for six types of income – employment income, self-employment income, scholarships and fellowships, prizes and awards, and royalties. The requirements vary with the U.S. tax status of the recipient - resident alien or nonresident alien – and in the case of scholarships and fellowship grants, with the immigration status of the recipient as well.

Employment Income

Recipient	No Treaty Claim	Withholding and Reporting	Treaty Claim	Rate if No W/H Form
Nonresident Alien	Form W-4	Single 0 or 1 unless an exception applies; "NRA" line 6; Form W-2 (additional wage gross up required*)	Form 8233 with Certifying Statement; Form 1042-S; excess wages on W-2.	Wage withholding at single 0
Resident Alien	Form W-4	Same rules as for U.S. citizen; Form W-2	Form W-9 with treaty article and saving clause exception; Form 1042-S; excess wages on W-2.	Wage withholding at single 0
Resident Alien by election based on marriage	Form W-4	Same rules as for U.S. citizen; Form W-2	Form W-9 with treaty article and saving clause exception; Form 1042-S; excess wages on W-2.	Wage withholding at single 0
Resident Alien election as student (Barbados, Hungary, Jamaica, only)	Form W-4, W-9 making treaty-based residency election	Same rules as for U.S. citizen; Form W-2	N/A	Wage withholding at single 0

*Payroll processing wage gross-up required for all NRA employees except business apprentices and students from India.

Note that the Form 1042-S reporting rules do not specify that treaty-exempt payments to residents are reportable on a Form 1042-S. However, the recipient needs information from the payer about the treaty- exempt income in order to complete a correct tax return with a treaty claim. The IRS will not complain about such a Form 1042-S since it will facilitate IRS processing of the individual's tax return.

The regulations provide that a Form 8233 must include the individual's taxpayer identification number, a copy of a completed Form W-7, or an SSA receipt letter showing that a number has been applied for. ITIN application procedures introduced December 17, 2003 require that the Form 8233 or Form W-8BEN be submitted with the original Form W-7 and documentation to the ITIN Unit.

Self-employment Income

Recipient	No Treaty Claim	Withholding and Reporting	Treaty Claim
Nonresident Alien	Form W-8BEN as Certificate of Foreign Status (no SSN or ITIN required)	30% Form 1042-S	Form 8233 with optional Certifying Statement; Form 1042-S
Resident Alien	Form W-9 with SSN or ITIN as Certificate of US Status	No withholding; Form 1099-MISC	N/A
Resident Alien by election based on marriage	Form W-8BEN as Certificate of Foreign Status (no SSN or ITIN required)	30% Form 1042-S	N/A
Recipient tax status unknown; reason to know that recipient is Nonresident Alien	No documentation	30%; Form 1042-S	N/A
Recipient tax status unknown; no reason to know that recipient is Nonresident Alien	No documentation	28% backup withholding; Form 1099-MISC	N/A

Note that the *Tax Navigator* creates a Certifying Statement for self-employment income exempt under a treaty for ease of automating the information required for the form.

The regulations provide that a Form 8233 must include the individual's taxpayer identification number, a copy of a completed Form W-7, or an SSA receipt letter showing that a number has been applied for. ITIN application procedures introduced December 17, 2003 require that the Form 8233 or Form W-8BEN be submitted with the original Form W-7 and documentation to the ITIN Unit.

Scholarships and Fellowships

Payment Type and Recipient	No Treaty Claim	Withholding and Reporting	Treaty Claim
Qualified scholarship or fellowship - any recipient	N/A	None	N/A
Taxable grant – Nonresident Alien in F-1, J-1, M-1, or Q-1, Q-2 status	No withholding form required per W-8BEN instructions.	14% ; Form 1042-S	Form W-8BEN Part I & II with SSN or ITIN** Form 1042-S.
Taxable grant – Nonresident Alien in any other status	No withholding form required per W-8BEN instructions.	30%; Form 1042-S	N/A – primary purpose not studying, training, or research; Form 1042-S.
Taxable grant - Resident Alien	Form W-9 as Certificate of U.S. Status	None	Form W-9 with explanation of article and exception to saving clause; Form 1042-S.
Taxable grant – Resident Alien by election based on marriage	No withholding form required per W-8BEN instructions.	14% if F, J, M, or Q status; otherwise 30%; Form 1042-S	Form W-8BEN Part I & II with SSN or ITIN Form 1042-S
Resident Alien election as student (Barbados, Hungary, Jamaica, only)	Form W-9 as Certificate of U.S. Status.	None	N/A
Taxable grant – Recipient a nonimmigrant but tax status unknown.	No documentation	30%; Form 1042-S	N/A

**Form 8233 may be used if also receiving treaty-exempt compensation.

A Form 8233 must be submitted annually. A Form W-8BEN that includes an SSN or ITIN is valid as long as it is used annually for Form 1042-S reporting to the IRS and the facts have not changed.

The regulations provide that a Form 8233 must include the individual's taxpayer identification number or a copy of a completed Form W-7 or SSA receipt letter showing that a number has been applied for. Treas. Reg. 1.1441-6 that applies to claims of reduced withholding under an income tax treaty using Form W-8BEN does not provide this exception for the TIN requirement on the form. ITIN application procedures introduced December 17, 2003 require that the Form 8233 or Form W-8BEN be submitted with the original Form W-7 and documentation to the ITIN Unit.

Prizes and Awards

Payment and Recipient	No Treaty Claim	Withholding and Reporting	Treaty Claim
Nonresident Alien in US who remains resident of treaty country	Form W-8BEN as Certificate of Foreign Status	30%; Form 1042-S	Form W-8BEN Part I & II with SSN or ITIN; Form 1042-S
Nonresident Alien abroad	Form W-8BEN as Certificate of Foreign Status	30%; Form 1042-S	Form W-8BEN Part I & II with SSN or ITIN; Form 1042-S
Resident Alien	Form W-9 with SSN or ITIN as Certificate of U.S. Status	No withholding; Form 1099-MISC	N/A
Resident Alien by election based on marriage	Form W8-BEN as Certificate of Foreign Status	30%; Form 1042-S	N/A
Resident Alien election as student (Barbados, Hungary, Jamaica, only)	Form W-9 with SSN or ITIN as Certificate of U.S. Status	No withholding; Form 1099-MISC	N/A
Recipient tax status unknown - Reason to know that recipient is Nonresident Alien.	No documentation	30%; Form 1042-S	N/A
Recipient tax status unknown - No reason to know that recipient is Nonresident Alien	No documentation	28% backup withholding; Form 1099MISC	N/A

A Form W-8BEN that includes an SSN or ITIN is valid as long as it is used annually for Form 1042-S reporting to the IRS and the facts have not changed. Otherwise the W-8BEN is valid for three years through December 31 of the last year. Note that the regulations for claims of reduced withholding under an income tax treaty require that the W-8BEN have a TIN. There is no exception for a TIN that is applied for but not yet received.

ITIN application procedures introduced December 17, 2003 require that the Form W-8BEN be submitted with the original Form W-7 and documentation to the ITIN Unit.

Royalties

Payment and Recipient	No Treaty Claim	Withholding and Reporting	Treaty Claim
Nonresident Alien in US who remains resident of treaty country	Form W-8BEN as Certificate of Foreign Status	30%; Form 1042-S	Form W-8BEN Part I & II with SSN or ITIN; Form 1042-S
Nonresident Alien abroad	Form W-8BEN as Certificate of Foreign Status	30%; Form 1042-S	Form W-8BEN Part I & II with SSN or ITIN; Form 1042-S
Resident Alien	Form W-9 with SSN or ITIN as Certificate of U.S. Status	No withholding; Form 1099-MISC	N/A
Resident Alien by election based on marriage	Form W8-BEN as Certificate of Foreign Status	30%; Form 1042-S	N/A
Resident Alien election as student (Barbados, Hungary, Jamaica, only)	Form W-9 with SSN or ITIN as Certificate of U.S. Status	No withholding; Form 1099-MISC	N/A
Recipient tax status unknown - Reason to know that recipient is Nonresident Alien.	No documentation	30%; Form 1042-S	N/A
Recipient tax status unknown - No reason to know that recipient is Nonresident Alien	No documentation	28% backup withholding; Form 1099MISC	N/A

A Form W-8BEN that includes an SSN or ITIN is valid as long as it is used annually for Form 1042-S reporting to the IRS and the facts have not changed. Otherwise the W-8BEN is valid for three years through December 31 of the last year. Note that Treas. Reg. 1.1441-6 that applies to claims of reduced withholding under an income tax treaty requires that the W-8BEN have a TIN. There is no exception for a TIN that is applied for but not yet received.

ITIN application procedures introduced December 17, 2003 require that the Form W-8BEN be submitted with the original Form W-7 and documentation to the ITIN Unit.

