

Instructions for Form 8233



Department of the Treasury
Internal Revenue Service

(Rev. March 2009)

Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.



If you are a "resident of a treaty country," you must know the terms of the tax treaty between the United States and the treaty country to properly complete Form 8233.

Purpose of Form

In general, section 1441 requires 30% federal income tax withholding on compensation for independent personal services (defined on this page). Sections 1441, 3401, and 3402 require withholding, sometimes at 30% and sometimes at graduated rates, on compensation for dependent personal services (defined on page 2). However, some payments may be exempt from withholding because of a tax treaty or the personal exemption amount. Complete and give Form 8233 to your withholding agent if some or all of your compensation is exempt from withholding.

You can use Form 8233 to claim a tax treaty withholding exemption for noncompensatory scholarship or fellowship income only if you are also claiming a tax treaty withholding exemption for compensation for personal services (including compensatory scholarship or fellowship income) received from the same withholding agent.



Do not use Form 8233 if you have an office in the United States regularly available to you for performing personal services.

Additional information. You can get the complete text of most U.S. tax treaties from the IRS website at www.irs.gov. Technical explanations for many of those treaties are also available at that site. Also, see Pub. 901, U.S. Tax Treaties, for a quick reference guide to the provisions of U.S. tax treaties. You can get any of the forms or publications referred to in these instructions by calling 1-800-TAX-FORM (1-800-829-3676) or by downloading them from the website.

Giving Form 8233 to the Withholding Agent

You must complete Form 8233:

- For each tax year (be sure to specify the tax year in the space provided above Part I of the form),
- For each withholding agent, and
- For each type of income. However, you may use one Form 8233 to claim a tax treaty withholding exemption for both compensation for personal services (including compensatory scholarship or

fellowship income) and noncompensatory scholarship or fellowship income received from the same withholding agent.

Give the form to the withholding agent. The withholding agent's responsibilities are discussed in the Part IV instructions on page 4.

Example. A nonresident alien is primarily present in the United States as a professor, but also is occasionally invited to lecture at another educational institution. These lectures are not connected with his teaching obligations but are in the nature of self-employment. For each tax year, the professor must complete two Forms 8233 and give one to each withholding agent to claim tax treaty benefits on the separate items of income.

Definitions

Nonresident Alien

If you are an alien individual (that is, an individual who is not a U.S. citizen), specific rules apply to determine if you are a resident alien or a nonresident alien for tax purposes. Generally, you are a resident alien if you meet either the "green card test" or the "substantial presence test" for the calendar year. Any person not meeting either test is generally a nonresident alien. Additionally, an alien individual who qualifies as a "resident of a treaty country" (defined later) or a bona fide resident of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa is a nonresident alien individual.

For more information on the tests used to determine resident alien or nonresident alien status, see Pub. 519, U.S. Tax Guide for Aliens.



Even though a nonresident alien individual married to a U.S. citizen or resident alien may choose to be treated as a resident alien for certain purposes (for example, filing a joint income tax return), such individual is still treated as a nonresident alien for withholding tax purposes on all income except wages.

U.S. Person

For purposes of this form, a U.S. person is a U.S. citizen or resident alien.

Tax Treaty Withholding Exemption

This term refers to an exemption from withholding permitted by IRS regulations under section 1441 that is based on a tax treaty benefit. See *Resident of a Treaty Country* next for requirements for claiming a tax treaty benefit on this form.

See the instructions for line 4 on page 3 for additional information for determining residence for purposes of claiming a tax treaty withholding exemption on this form.

Resident of a Treaty Country

An alien individual may claim to be a resident of a treaty country if he or she qualifies as a resident of that country under the terms of the residency article of the tax treaty between the United States and that country. See *Nonresident Alien* earlier.

A nonresident alien may claim a tax treaty benefit on this form only if that individual is the beneficial owner of the income and meets the residency requirement and all other requirements for benefits under the terms of the tax treaty.

Compensation for Independent Personal Services

Independent personal services are services performed as an independent contractor in the United States by a nonresident alien who is self-employed rather than an employee. Compensation for such services includes payments for contract labor; payments for professional services, such as fees to an attorney, physician, or accountant, if the payments are made directly to the person performing the services; consulting fees; honoraria paid to visiting professors, teachers, researchers, scientists, and prominent speakers; and generally, payments for performances by public entertainers.

Business profits. Certain treaties do not have an independent personal services article. Payments for independent personal services may be covered under the business profits article of an applicable income tax treaty. If you are eligible to claim exemption from withholding on this type of income, complete and give Form 8233 to the withholding agent.

Public entertainers. Special restrictions on exemption from or reduction of withholding apply to nonresident alien public entertainers (such as actors, musicians, artists, and athletes). Generally, Form 8233 cannot be accepted because the exemption may be based on factors that cannot be determined until after the end of the year. These individuals are subject to 30% withholding from gross income paid for personal services performed unless a reduced rate of withholding is applied for using Form 13930, Application for Central Withholding Agreement. In addition, many tax treaties contain separate articles that apply to public entertainers. If present,

these articles take precedence over the "independent personal services" and "dependent personal services" articles of the treaties.

Required Withholding Form

For compensation you receive for independent personal services, complete Form 8233 to claim a tax treaty withholding exemption for part or all of that income and/or to claim the daily personal exemption amount.

Compensation for Dependent Personal Services

Dependent personal services are services performed as an employee in the United States by a nonresident alien. Dependent personal services include compensatory scholarship or fellowship income (see definition later). Compensation for such services includes wages, salaries, fees, bonuses, commissions, and similar designations for amounts paid to an employee.

Required Withholding Form(s)

Complete Form 8233 for compensation you receive for dependent personal services only if you are claiming a tax treaty withholding exemption for part or all of that income. Do not use Form 8233 to claim the daily personal exemption amount. For compensation for which you are not claiming a tax treaty withholding exemption, use Form W-4, Employee's Withholding Allowance Certificate.

Completing Form W-4. You should complete Form W-4 as follows:

Line 2. You are required to enter a social security number (SSN) on line 2 of Form W-4. If you do not have an SSN, you must apply for one on Form SS-5, Application for a Social Security Card. You may get Form SS-5 from a Social Security Administration (SSA) office. Fill in Form SS-5 and return it to the SSA.



You cannot enter an individual taxpayer identification number (ITIN) on line 2 of Form W-4.

Line 3. Check the single box regardless of your actual marital status.

Line 5. You should generally claim one withholding allowance. However, if you are a resident of Canada, Mexico, or the Republic of (South) Korea; a student from India; or a U.S. national; you may be able to claim additional withholding allowances for your spouse and children. See Pub. 519 for more information.

If you are completing Form W-4 for more than one withholding agent (for example, you have more than one employer), figure the total number of allowances you are entitled to claim (see the previous paragraph) and claim no more than that amount on all Forms W-4 combined. Your withholding usually will be most accurate when all allowances are claimed on the Form W-4 for the highest-paying job and zero allowances are claimed on the others.

Line 6. Write "nonresident alien" or "NRA" above the dotted line on line 6. If you would like to have an additional amount withheld, enter the amount on line 6.

Line 7. Do not claim that you are exempt from withholding on line 7 of Form W-4 (even if you meet both of the conditions listed on that line).

Compensatory Scholarship or Fellowship Income

In general, scholarship or fellowship income is compensatory to the extent it represents payment for past, present, or future services (for example, teaching, research, etc.) performed by a nonresident alien as an employee and the performance of those services is a condition for receiving the scholarship or fellowship (or tuition reduction).

Example. XYZ University awards a scholarship to N, a nonresident alien student. The only condition of the scholarship is that N attends classes and maintains a minimum level of academic performance. The scholarship income is not compensatory because N is not required to perform services as an employee as a condition for receiving the scholarship.

Required Withholding Form(s)

Compensatory scholarship or fellowship income is considered to be dependent personal services income. Therefore, complete Form 8233 for this income only if you are claiming a tax treaty withholding exemption for part or all of that income. Do not complete Form 8233 to claim the daily personal exemption amount.

For any part of this compensatory income for which you are not claiming a tax treaty withholding exemption, use Form W-4. See *Completing Form W-4* earlier.

Noncompensatory Scholarship or Fellowship Income

Noncompensatory scholarship or fellowship income is scholarship or fellowship income that is not compensatory scholarship or fellowship income (defined earlier).

The taxable portion of noncompensatory scholarship or fellowship income (defined below) paid to a nonresident alien is generally subject to withholding at a rate of 30% (the rate is generally 14% in the case of a nonresident alien temporarily present in the United States under an "F," "J," "M," or "Q" visa).

Taxable portion of noncompensatory scholarship or fellowship income. If you were a degree candidate, the amount of this type of income that you used for expenses other than tuition and course-related expenses (fees, books, supplies, and equipment) is generally taxable. For example, amounts used for room, board, and travel are generally taxable. If you were not a degree candidate, the full amount of the scholarship or fellowship income is generally taxable.

Required Withholding Form

You should generally complete Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, to claim a tax treaty withholding exemption for this type of

income. No Form W-8BEN is required unless a treaty benefit is being claimed.

Exception. If you are receiving both compensation for personal services (including compensatory scholarship or fellowship income) and noncompensatory scholarship or fellowship income from the same withholding agent, you may use one Form 8233 for both types of income. However, this exception applies only if you are claiming a tax treaty withholding exemption for both types of income.

Alternate withholding election. A withholding agent may elect to withhold on the taxable portion of noncompensatory scholarship or fellowship income of a nonresident alien temporarily present in the United States under an "F," "J," "M," or "Q" visa as if it were compensatory scholarship or fellowship income (provided the nonresident alien is not claiming treaty benefits with respect to that income). The withholding agent makes this election by requesting that the nonresident alien complete Form W-4 using the instructions in Rev. Proc. 88-24, 1988-1 C.B. 800. Indian students should also see Rev. Proc. 93-20, 1993-1 C.B. 528.

Withholding Agent

Any person, U.S. or foreign, that has control, receipt, or custody of an amount subject to withholding or who can disburse or make payments of an amount subject to withholding is a withholding agent. The withholding agent may be an individual, corporation, partnership, trust, association, or any other entity, including (but not limited to) any foreign intermediary, foreign partnership, and U.S. branches of certain foreign banks and insurance companies. Generally, the person who pays (or causes to be paid) the amount subject to withholding to the nonresident alien individual (or to his or her agent) must withhold.

Beneficial Owner

For payments other than those for which a reduced rate of withholding is claimed under an income tax treaty, the beneficial owner of income is generally the person who is required under U.S. tax principles to include the income in gross income on a tax return. A person is not a beneficial owner of income, however, to the extent that person is receiving the income as a nominee, agent, or custodian, or to the extent the person is a conduit whose participation in a transaction is disregarded. In the case of amounts paid that do not constitute income, beneficial ownership is determined as if the payment were income.

Avoid Common Errors

To ensure that your Form 8233 is promptly accepted, be sure that you:

- Answer all applicable questions completely.
- Specify the tax year for which this form will be effective in the space provided above Part I of the form.
- Enter your complete name, addresses, and identifying number(s) in Part I.
- Have attached the required statement described in the line 10 instructions if you

are a foreign student, trainee, professor/teacher, or researcher.

- Are not trying to claim tax treaty benefits for a country with which the United States does not have a ratified tax treaty.
- Are not trying to claim tax treaty benefits that do not exist in your treaty.
- Complete lines 11 through 14 in sufficient detail to allow the IRS to determine the tax treaty benefit you are claiming.
- Claim the proper number of personal exemptions on line 15.
- Complete the required certification in Part III.

Specific Instructions

Part I

Line 2

You are required to furnish a U.S. taxpayer identifying number on this form. You are generally required to enter your social security number (SSN) on line 2. To apply for an SSN, get Form SS-5 from a Social Security Administration (SSA) office. Fill in Form SS-5 and return it to the SSA.

If you do not have an SSN and are not eligible to get one, you must get an individual taxpayer identification number (ITIN). To apply for an ITIN, file Form W-7, Application for IRS Individual Taxpayer Identification Number, with the IRS. Generally, you apply for an ITIN when you file your tax return for which the ITIN is needed. However, if the reason for your ITIN request is because you need to provide Form 8233 to the withholding agent, you must file Form W-7 and provide proof that you are not eligible for an SSN (your Form SS-5 was rejected by the SSA) and include a Form 8233. It usually takes about 4-6 weeks to get an ITIN. For more information on requesting an ITIN, see the Form W-7 instructions.

If you have applied for a U.S. taxpayer identifying number but have not yet received it, you may attach a copy of a completed Form W-7 or SS-5 showing that a number has been applied for.

 **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.**

Line 3

If your country of residence for tax purposes has issued you a tax identifying number, enter it here. For example, if you are a resident of Canada, enter your Social Insurance Number.

Line 4

Your permanent residence address is the address in the country where you claim to be a resident for purposes of that country's income tax. If you are completing Form 8233 to claim a tax treaty withholding exemption, you must determine your residency in the manner required by the treaty. Do not show the address of a financial institution, a post

office box, or an address used solely for mailing purposes. If you are an individual who does not have a tax residence in any country, your permanent residence is where you normally reside.

Most tax treaties that provide for a tax treaty withholding exemption require that the recipient be a resident of the treaty country at the time of, or immediately prior to, entry into the United States. Thus, a student or researcher may generally claim the withholding exemption even if he or she no longer has a permanent address in the treaty country after entry into the United States. If this is the case, you may provide a U.S. address on line 4 and still be eligible for the withholding exemption if all other conditions required by the tax treaty are met. You must also identify on line 12a and/or line 13b the tax treaty country of which you were a resident at the time of, or immediately prior to, your entry into the United States.

Line 6

Enter your U.S. visa type. For example, foreign students are usually granted an "F-1" visa. Foreign professors, teachers, or researchers are usually granted a "J-1" visa. Business/vocational trainees are usually granted an "M-1" visa; however, some persons granted a "J-1" visa may also be considered business/vocational trainees (for example, a person admitted to complete a postgraduate residency in medicine).

If you do not have, or do not require, a visa, write "None."

 **Spouses and dependents admitted on secondary visas (for example, "F-2," "J-2," "H-4," and "O-3" visas) are not usually eligible to claim the same treaty benefits as the primary visa holder.**

Line 8

You are generally required to enter your date of entry into the United States that pertains to your current nonimmigrant status. For example, enter the date of arrival shown on your current Immigration Form I-94, Arrival-Departure Record.

Exception. If you are claiming a tax treaty benefit that is determined by reference to more than one date of arrival, enter the earlier date of arrival. For example, you are currently claiming treaty benefits (as a teacher or a researcher) under article 15 of the tax treaty between the United States and Norway. You previously claimed treaty benefits (as a student) under article 16(1) of that treaty. Under article 16(4) of that treaty, the combination of exemptions under articles 15 and 16(1) may not extend beyond 5 tax years from the date you entered the United States. If article 16(4) of that treaty applies, enter on line 8 the date you entered the United States as a student.

Line 9a

Enter your current nonimmigrant status. For example, enter your current nonimmigrant status shown on your current Immigration Form I-94.

Line 9b

Enter the date your current nonimmigrant status expires. For example, you may enter the date of expiration shown on your current Immigration Form I-94. Enter "DS" on line 9b if the date of expiration is based on "duration of status."

Line 10

Nonresident alien students, trainees, professors/teachers, and researchers using Form 8233 to claim a tax treaty withholding exemption for compensation for personal services must attach to Form 8233 a statement. The format and contents of the required statements are shown in Appendix A and Appendix B in Pub. 519.

Part II

Line 11a

For compensation for independent personal services, examples of acceptable descriptions to enter on this line include: "Consulting contract to design software" or "give three lectures at XYZ University."

For compensation for dependent personal services, examples of acceptable descriptions to enter on this line include:

- A nonresident alien student may enter "part-time library assistant," "part-time restaurant worker," or "teaching one chemistry course per semester to undergraduate students."
- A nonresident alien professor or teacher may enter "teaching at ABC University."
- A nonresident alien researcher may enter "research at ABC University's school for liquid crystal research."
- A nonresident alien business/vocational trainee may enter "neurosurgical residency at ABC Hospital" or "one-year internship in hydraulic engineering at XYZ Corporation."

Line 11b

Enter the total amount of compensation for personal services you will receive from this withholding agent during the tax year. Enter an estimated amount if you do not know the exact amount.

Line 12a

Enter the specific treaty and article on which you are basing your claim for exemption from withholding (for example, "U.S./Germany tax treaty, Article 20(4)" or "U.S./Belgium tax treaty, Article 7 (business profits)").

Line 12b

If all income received for the services performed to which this Form 8233 applies is exempt, write "All." If only part is exempt, enter the exact dollar amount that is exempt from withholding.

Line 12c

Generally, you may claim a withholding exemption based on a U.S. tax treaty with the country in which you claim permanent (or indefinite) residence. This is the foreign country in which you live most of the time. It is not necessarily the country of your citizenship. For example, you are

a citizen of Pakistan but maintain your home in England. You cannot claim a withholding exemption based on the U.S./Pakistan tax treaty. Any withholding exemption you claim must be based on the U.S./United Kingdom tax treaty.

Line 13b

Enter the specific treaty and article on which you are basing your claim for exemption from withholding (for example, "U.S./Germany tax treaty, Article 20(3)").

Line 14

Provide sufficient facts to justify the exemption from withholding claimed on line 12 and/or line 13. Be sure you provide enough details to allow the IRS to determine the tax treaty benefit you are claiming.

Lines 15 through 18 (for certain independent personal services)

Do not complete lines 15 through 18 if you are claiming an exemption from withholding based on the "business profit" article of a treaty or claiming on line 12b that all of the compensation you are receiving for independent personal services is exempt from withholding.

Line 15

For compensation for independent personal services for which an exemption from withholding is not available, 30% must be withheld from that compensation after subtracting the value of one personal exemption. You will generally enter "1" on line 15; however, if the exception below applies to you, enter the total number of personal exemptions you are entitled to on line 15.

Exception. If you are a resident of Canada, Mexico, or the Republic of (South) Korea; a student from India; or a U.S. national; you may be able to claim additional personal exemptions for your spouse and children. See Pub. 519 for more information.

Lines 16 and 17

Each allowable personal exemption must be prorated for the number of days during the tax year you will perform the personal services in the United States. Enter the number of days on line 16 that pertain to the independent personal services described in line 11a. To figure the daily personal exemption amount to enter on line 17, divide the personal exemption amount for the tax year (\$3,500 for 2008) by 365 (366 for leap year) and multiply the result by the amount you entered on line 15. For example, if you are entitled to one personal exemption for 2008, enter \$9.56 (that is, \$3,500 / 366 days = \$9.56 x 1 personal exemption = \$9.56) on line 17.

Part IV

Withholding Agent's Responsibilities

When the nonresident alien individual gives you Form 8233, review it to see if

you are satisfied that the exemption from withholding is warranted. If you are satisfied, based on the facts presented, complete and sign the certification in Part IV.

You will need three copies of the completed Form 8233. Each copy of Form 8233 must include any attachments submitted by the nonresident alien individual. Give one copy of the completed Form 8233 to the nonresident alien individual. Keep a copy for your records. Within 5 days of your acceptance, forward one copy to:



Internal Revenue Service
International Section
P.O. Box 920
Bensalem, PA 19020-8518



You can also fax Form 8233 to: (215) 516-3216. You are limited to 25 pages at one time.

The exemption from withholding is effective for payments made retroactive to the date of the first payment covered by Form 8233, even though you must wait at least 10 days after you have properly mailed Form 8233 to the IRS to see whether the IRS has any objections to the Form 8233.

You must not accept Form 8233, and you must withhold, if either of the following applies:

- You know, or have reason to know, that any of the facts or statements on Form 8233 may be false, or
- You know, or have reason to know, that the nonresident alien's eligibility for the exemption from withholding cannot be readily determined (for example, you know the nonresident alien has a fixed base or permanent establishment in the United States).

If you accept Form 8233 and later find that either of the situations described above applies, you must promptly notify the IRS (by writing to the above address) and you must begin withholding on any amounts not yet paid. Also, if you are notified by the IRS that the nonresident alien's eligibility for the exemption from withholding is in doubt or that the nonresident alien is not eligible for exemption from withholding, you must begin withholding immediately. See Regulations section 1.1441-4(b)(2)(iii) for examples illustrating these rules.

If you submit an incorrect Form 8233, you will be notified by the IRS that the form submitted is not acceptable and that you must begin withholding immediately. Examples of incorrect Forms 8233 include:

- Any Form 8233 that claims a tax treaty benefit that does not exist or is obviously false.
- Any Form 8233 that has not been completed in sufficient detail to allow determination of the correctness of the tax treaty benefit or exemption claimed.

Signature

You or your authorized agent must sign and date Form 8233. See Regulations section 1.1441-7(c) for information about authorized agents.

Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. If you want to receive exemption from withholding on compensation for independent (and certain dependent) personal services, you are required to give us the information. Our legal right to ask for information is Internal Revenue Code sections 1441, 3401, and 3402. Code section 6109 requires that you provide your social security number or individual taxpayer identification number. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. If you fail to provide a properly completed form, the withholding agent cannot accept it and is required to withhold.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 1 hr. 5 min.; **Learning about the law or the form**, 31 min.; **Preparing and sending the form to IRS**, 57 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this address. Instead, give it to your withholding agent.