

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.

Chart I

Employment Income

Recipient	No Treaty Claim	Withholding and Reporting	Treaty Claim	Rate if No W/H Form
Employment income – nonresident alien recipient	Form W-4	Single 1 with an additional amount or Single 0; Form W-2	Form 8233 with Certifying Statement; Form 1042-S	Wage withholding at single 0
Employment income – resident alien recipient	Form W-4	Same rules as for a US citizen Form W-2	Form W-9 with the treaty article and saving clause exception; Form 1042-S.	Wage withholding at single 0

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. Preparing a Form 1042-S with an automated process that already produces Forms 1042-S for treaty exempt income is much more efficient for the payer than providing the individual with a letter describing the treaty exempt situation. The IRS will never complain about such a Form 1042-S and it will facilitate IRS processing of the individual's tax return.

Chart II

Self-employment Income

Recipient	No Treaty Claim	Withholding and Reporting	Treaty Claim
Nonresident Alien	Form W-8BEN	30% Form 1042-S	Form 8233 with an SSN or ITIN or copy of a submitted Form W-7; Form 1042-S
Resident Alien	Form W-9 or documentation with an SSN or ITIN	No withholding; Form 1099MISC	N/A
Recipient tax status unknown; reason to know that the recipient is a Nonresident Alien	No documentation	30%; Form 1042-S	N/A
Recipient tax status unknown; no reason to know that the recipient is a Nonresident Alien	No documentation	28% back-up withholding; Form 1099MISC	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.

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 facts have not changed.

Chart III

Scholarships and Fellowships

Payment Type and Recipient	No Treaty Claim	Withholding and Reporting	Treaty Claim
Qualified scholarship/fellowship – any recipient	N/A	None	N/A
Taxable grant – a Nonresident Alien in F, M, J, or Q status	No withholding form required	14% ; Form 1042-S	Form W-8BEN Part 1 & 2 with SSN or ITIN or may use Form 8233 if also treaty exempt compensation; Form 1042-S.
Taxable grant – a Nonresident Alien in any other status	No withholding form required	30%; Form 1042-S	Form W-8BEN Part 1 & 2 with SSN or ITIN or may use Form 8233 if also treaty exempt compensation. Form 1042-S.
Taxable grant - a Resident Alien	Form W-9 or documentary evidence	None	Form W-9 with an explanation of the article and exception to the saving clause under which the treaty claim is made. Form 1042-S.
Taxable grant – Recipient a nonimmigrant but tax status unknown.	No documentation	30%; Form 1042-S	N/A

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 facts have not changed.

Note that 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 SS-5 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.

Chart IV

Prizes and Awards

Payment and Recipient	No Treaty Claim	Withholding and Reporting	Treaty Claim
Nonresident Alien in the United States who remains a resident of the treaty country	Form W-8BEN Part 1	30%; Form 1042-S	Form W-8BEN Part 1 & 2 with an SSN or ITIN; Form 1042-S
Nonresident Alien abroad	Form W-8BEN Part 1	30%; Form 1042-S	Form W-8BEN Part 1 & 2 with an SSN or ITIN; Form 1042-S
Resident Alien	Form W-9 or documentation with a TIN	No withholding; Form 1099MISC	N/A
Recipient tax status unknown. Reason to know that the recipient is a Nonresident Alien.	No documentation	30%; Form 1042-S	N/A
Recipient tax status unknown. No reason to know that the recipient is a Nonresident Alien	No documentation	28% back-up 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 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.

Chart V

Royalties

Payment and Recipient	No Treaty Claim	Withholding and Reporting	Treaty Claim
Nonresident Alien	Form W-8BEN Part 1	30%; Form 1042-S	Form W-8BEN Part 1 & 2 with an SSN or ITIN; Form 1042-S
Resident Alien	Form W-9 or documentation with a TIN	No withholding; Form 1099MISC	N/A
Recipient tax status unknown. Reason to know that the recipient is a Nonresident Alien.	No documentation	30%; Form 1042-S	N/A
Recipient tax status unknown. No reason to know that the recipient is a Nonresident Alien.	No documentation	28% back-up 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 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.