

2011

Instructions for Form 1042-S



Department of the Treasury
Internal Revenue Service

Foreign Person's U.S. Source Income Subject to Withholding

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

General Instructions



Use the 2011 Form 1042-S only for income paid during 2011. Do not use the 2011 Form 1042-S for income paid during 2010.

What's New

Amounts paid for guarantee of indebtedness. New rules apply for payments made on certain guarantees of indebtedness issued after September 27, 2010. Use income code 41 for amounts paid for these guarantees of indebtedness.

Dividend equivalent payments. Use income code 40 for U.S.-source dividend equivalent payments other than substitute dividend payments (income code 34) or notional principal contract income (income code 32). Use exemption code 10 for payments to a qualified securities lender that assumes primary withholding responsibilities. Use recipient code 21 or 22 for a qualified securities lender.

Exemption from requirement to withhold for certain payments to qualified securities lenders. If you made U.S.-source substitute dividend payments to qualified securities lenders, and these payments are part of a chain of substitute dividend payments, you may be exempt from withholding tax on the payments. See *Amounts paid to qualified securities lenders* on page 7.

Penalties increased. The penalties for failure to file, or provide correct and complete, Forms 1042-S have increased.

Reminders

FIRE System. For files submitted on the FIRE System, it is the responsibility of the filer to check the status within 5 business days to verify the results of the transmission. The IRS will not mail error reports for files that are bad.

Purpose of Form

Use Form 1042-S to report income described under *Amounts Subject to Reporting on Form 1042-S* on page 4 and to report amounts withheld under Chapter 3 of the Internal Revenue Code.

Also use Form 1042-S to report distributions of effectively connected income by a publicly traded partnership or nominee. See *Publicly Traded Partnerships (Section 1446 Withholding Tax)* on page 6.



Every person required to deduct and withhold any tax under Chapter 3 of the Code is liable for such tax. Every person required to deduct and withhold any tax on payments made to expatriates is liable for such tax.

Do not use Form 1042-S to report an item required to be reported on—

- Form W-2 (wages and other compensation made to employees (other than compensation for dependent personal services for which the beneficial owner is claiming treaty benefits), including wages in the form of group-term life insurance),
- Form 1099, or
- Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests, or Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax. Withholding agents otherwise required to report a distribution partly on a Form 8288-A or Form 8805 and partly on a Form 1042-S may instead report the entire amount on Form 8288-A or Form 8805.

Who Must File

Every withholding agent (defined on page 2) must file an information return on Form 1042-S to report amounts paid during the preceding calendar year that are described under *Amounts Subject to Reporting on Form 1042-S* on page 4. However, withholding agents who are individuals are not required to report a payment on Form 1042-S if they are not making the payment as part of their trade or business and no withholding is required to be made on the payment. For example, an individual making a payment of interest that qualifies for the portfolio interest exception from withholding is not required to report the payment if the portfolio interest is paid on a loan that is not connected to the individual's trade or business. However, an individual paying an amount that actually has been subject to withholding is required to report the payment. Also, an individual paying an amount on which withholding is required must report the payment, whether or not the individual actually withholds. See *Multiple Withholding Agent Rule* on page 12 for exceptions to reporting when another person has reported the same payment to the recipient. Also see *Publicly Traded Partnerships (Section 1446 Withholding Tax)* on page 6.

You must file a Form 1042-S even if you did not withhold tax because the income was exempt from tax under a U.S. tax treaty or the Code, including the

exemption for income that is effectively connected with the conduct of a trade or business in the United States, or you released the tax withheld to the recipient. For exceptions, see *Amounts That Are Not Subject to Reporting on Form 1042-S* on page 5.

Amounts paid to bona fide residents of U.S. possessions and territories are not subject to reporting on Form 1042-S if the beneficial owner of the income is a U.S. citizen, national, or resident alien.



If you are required to file Form 1042-S, you also must file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons. See Form 1042 for more information.

Where, When, and How To File

Forms 1042-S, whether filed on paper or electronically, must be filed with the Internal Revenue Service by March 15, 2012. You also are required to furnish Form 1042-S to the recipient of the income by March 15, 2012.

Copy A is filed with the Internal Revenue Service. Send all paper Forms 1042-S with Form 1042-T, Annual Summary and Transmittal of Forms 1042-S, to the address in the Form 1042-T instructions. You must use Form 1042-T to transmit paper Forms 1042-S. Use a separate Form 1042-T to transmit each type of Form 1042-S. See *Payments by U.S. Withholding Agents* beginning on page 6 and the Form 1042-T instructions for more information. If you have 250 or more Forms 1042-S to file, follow the instructions under *Electronic Reporting* on page 2.



Attach only Copy A to Form 1042-T. Copies B, C, and D should be provided to the recipient of the income. Copy E should be retained by the withholding agent.

Extension of time to file. To request an extension of time to file Forms 1042-S, file Form 8809, Application for Extension of Time To File Information Returns. See the Form 8809 instructions for where to file that form. You should request an extension as soon as you are aware that an extension is necessary, but no later than the due date for filing Form 1042-S. By filing Form 8809, you will get an automatic 30-day extension to file Form 1042-S. If you need more time, a second Form 8809 may be submitted before the end of the initial extended due date. See Form 8809 for more information.



If you are requesting extensions of time to file for more than 10 withholding agents or 10 or more payers, you must submit the extension requests electronically. See Pub. 1187, Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically, for more information.

Recipient copies. You may request an extension of time to provide the statements to recipients by sending a letter to:

Internal Revenue Service
Information Returns Branch
Attn: Extension of Time Coordinator
240 Murall Drive, Mail Stop 4360
Kearneysville, WV 25430

See *Extension of time to file* in Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.



If you are requesting an extension of time to file for recipients of more than 10 withholding agents, you must submit the extension requests electronically. See Pub. 1187, Part D, Section 4, for more information.

Electronic Reporting

If you file 250 or more Forms 1042-S, you are required to submit them electronically.

Electronic submissions are filed using the Filing Information Returns Electronically (FIRE) System. The FIRE System operates 24 hours a day, 7 days a week, at <http://fire.irs.gov>. For more information, see Pub. 1187.

The electronic filing requirement applies separately to original and amended returns. Any person, including a corporation, partnership, individual, estate, and trust, that is required to file 250 or more Forms 1042-S must file such returns electronically. The filing requirement applies individually to each reporting entity as defined by its separate taxpayer identification number (TIN). This requirement applies separately to original and amended returns. For example, if you have 300 original Forms 1042-S, they must be filed electronically. However, if 200 of those forms contained erroneous information, the amended returns may be filed on paper forms because the number of amended Forms 1042-S is less than the 250-or-more filing requirement.



If you file electronically, do not file the same returns on paper. Duplicate filing may cause penalty notices to be generated.

Note. Even though as many as 249 Forms 1042-S may be submitted on paper to the IRS, the IRS encourages filers to transmit forms electronically.

Hardship waiver. To receive a hardship waiver from the required filing of Forms 1042-S electronically, submit Form 8508, Request for Waiver From Filing Information Returns Electronically. Waiver requests should be filed at least 45 days before the due date of the returns. See Form 8508 for more information.

Need assistance? For additional information and instructions on filing Forms 1042-S electronically, extensions of time to file (Form 8809), and hardship waivers (Form 8508), see Pub. 1187. You also may call the Information Reporting Program at 866-455-7438 (toll-free) or 304-263-8700 (not a toll-free number). Do not call the Information Reporting Program to answer tax law questions. See *Caution* below for additional information. The Information Reporting Program also may be reached by fax at 877-477-0572 and international fax at 304-579-4105 (not a toll-free number).



This call site does not answer tax law questions concerning the requirements for withholding of tax on payments of U.S. source income to foreign persons under Chapter 3 of the Code. If you need such assistance, you may call 267-941-1000 (not a toll-free number) from 6:00 a.m. to 11:00 p.m. Eastern time or write to:

Internal Revenue Service
International Section
Philadelphia, PA 19255-0725

Additional Information

For more information on the withholding of tax, see Pub. 515. To order this publication and other publications and forms, call 1-800-TAX-FORM (1-800-829-3676). You also can download forms and publications from IRS.gov.

Record Retention

Withholding agents should retain a copy of the information returns filed with the IRS, or have the ability to reconstruct the data, for at least 3 years after the reporting due date.

Substitute Forms

The official Form 1042-S is the standard for substitute forms. Because a substitute form is a variation from the official form, you should know the requirements of the official form for the year of use before you modify it to meet your needs. The IRS provides several means of obtaining the most frequently used tax forms. These include the Internet and DVD. For details on the requirements of substitute forms, see Pub. 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, W-2G, and 1042-S.



You are permitted to use substitute payee copies of Form 1042-S (that is, copies B, C, and D) that contain more than one type of income. This will reduce the number of Forms 1042-S you send to the recipient. Under no circumstances, however, may the copy of the form filed with the IRS (copy A) contain more than one type of income.

Deposit Requirements

For information and rules concerning federal tax deposits, see *Depositing Withheld Taxes* in Pub. 515 or *Deposit*

Requirements in the Instructions for Form 1042.

Definitions

Withholding agent. A withholding agent is 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. The withholding agent may be an individual, corporation, partnership, trust, association, or any other entity. The term withholding agent also includes, but is not limited to, a qualified intermediary (QI), a nonqualified intermediary (NQI), a withholding foreign partnership (WP), a withholding foreign trust (WT), a flow-through entity, a U.S. branch of a foreign insurance company or foreign bank that is treated as a U.S. person, a nominee under section 1446, and an authorized foreign agent. A person may be a withholding agent even if there is no requirement to withhold from a payment or even if another person has already withheld the required amount from a payment.

Generally, the U.S. person who pays (or causes to be paid) the item of U.S. source income to a foreign person (or to its agent) must withhold. However, other persons may be required to withhold. For example, if a payment is made by a QI (whether or not it assumes primary withholding responsibility) that knows that withholding was not done by the person from which it received the payment, then that QI is required to do the appropriate withholding. In addition, withholding must be done by any QI that assumes primary withholding responsibility under Chapter 3 of the Code, a WP, a WT, a U.S. branch of a foreign insurance company or foreign bank that agrees to be treated as a U.S. person, or an authorized foreign agent. Finally, if a payment is made by an NQI or a flow-through entity that knows, or has reason to know, that withholding was not done, that NQI or flow-through entity is required to withhold since it also falls within the definition of a withholding agent.

Authorized foreign agent. An agent is an authorized foreign agent only if all four of the following apply.

1. There is a written agreement between the withholding agent and the foreign person acting as agent.
2. The IRS International Section has been notified of the appointment of the agent before the first payment for which the authorized agent acts on behalf of the withholding agent. (This notification must be sent to the following address:

Internal Revenue Service
International Section
Philadelphia, PA 19255-0725

3. The books and records and relevant personnel of the foreign agent are available to the IRS so that the IRS may evaluate the withholding agent's

compliance with its withholding and reporting obligations.

4. The U.S. withholding agent remains fully liable for the acts of its agent and does not assert any of the defenses that otherwise may be available.

For further details, see Regulations section 1.1441-7(c).

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.

Foreign partnerships, foreign simple trusts, and foreign grantor trusts are not the beneficial owners of income paid to the partnership or trust. The beneficial owners of income paid to a foreign partnership are generally the partners in the partnership, provided that the partner is not itself a partnership, foreign simple or grantor trust, nominee, or other agent. The beneficial owner of income paid to a foreign simple trust (a foreign trust that is described in section 651(a)) is generally the beneficiary of the trust, if the beneficiary is not a foreign partnership, foreign simple or grantor trust, nominee, or other agent. The beneficial owner of a foreign grantor trust (a foreign trust to the extent that all or a portion of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679) is the person treated as the owner of the trust. The beneficial owner of income paid to a foreign complex trust (a foreign trust that is not a foreign simple trust or foreign grantor trust) is the trust itself.

The beneficial owner of income paid to a foreign estate is the estate itself.

A payment to a U.S. partnership, U.S. trust, or U.S. estate is not subject to 30% foreign-person withholding. A U.S. partnership, trust, or estate should provide the withholding agent with a Form W-9, Request for Taxpayer Identification Number and Certification. These beneficial owner rules generally apply for purposes of section 1446; however, there are exceptions.

Disregarded entity. A business entity that has a single owner and is not a corporation under Regulations section 301.7701-2(b) is disregarded as an entity separate from its owner.

Dividend equivalent. Under section 871(m) (formerly 871(l)), a dividend equivalent is a payment that, directly or indirectly, is contingent on, or determined by reference to, the payment of a

dividend from U.S. sources. Dividend equivalent payments include the following payments.

1. A substitute dividend made under a securities lending or sale-repurchase transaction involving a U.S. stock,

2. A payment made under a specified notional principal contract, and

3. Any payment determined by the IRS to be substantially similar to a payment in (1) or (2).

Exempt recipient. Generally, an exempt recipient is any payee that is not required to provide Form W-9 and is exempt from the Form 1099 reporting requirements. See the Instructions for the Requester of Form W-9 for a list of exempt recipients.

Expatriate. A person is considered an expatriate if he or she relinquishes U.S. citizenship or, in the case of a long-term resident of the United States, ceases to be a lawful permanent resident as defined in section 7701(b)(6).

Fiscally transparent entity. An entity is treated as fiscally transparent with respect to an item of income for which treaty benefits are claimed to the extent that the interest holders in the entity must, on a current basis, take into account separately their shares of an item of income paid to the entity, whether or not distributed, and must determine the character of the items of income as if they were realized directly from the sources from which realized by the entity. For example, partnerships, common trust funds, and simple trusts or grantor trusts are generally considered to be fiscally transparent with respect to items of income received by them.

Flow-through entity. A flow-through entity is a foreign partnership (other than a withholding foreign partnership), a foreign simple or grantor trust (other than a withholding foreign trust), or, for any payments for which a reduced rate of withholding under an income tax treaty is claimed, any entity to the extent the entity is considered to be fiscally transparent under section 894 with respect to the payment by an interest holder's jurisdiction.

Foreign person. A foreign person includes a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, and any other person that is not a U.S. person. The term also includes a foreign branch or office of a U.S. financial institution or U.S. clearing organization if the foreign branch is a QI. Generally, a payment to a U.S. branch of a foreign person is a payment to a foreign person.

Intermediary. An intermediary is a person that acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether that other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary.

Qualified intermediary (QI). A QI is an intermediary that is a party to a withholding agreement with the IRS. An

entity must indicate its status as a QI on a Form W-8IMY submitted to a withholding agent. For information on a QI withholding agreement, see Rev. Proc. 2000-12, which is on page 387 of Internal Revenue Bulletin (IRB) 2000-4 at www.irs.gov/pub/irs-irbs/irb00-04.pdf. Also see the following documents.

- Notice 2001-4, which is on page 267 of Internal Revenue Bulletin 2001-2 at <http://www.irs.gov/pub/irs-irbs/irb01-02.pdf>;
- Rev. Proc. 2003-64, Appendix 3, 2003-32 I.R.B. 306, available at http://www.irs.gov/irb/2003-32_IRB/ar19.html;
- Rev. Proc. 2004-21, 2004-14 I.R.B. 702, available at http://www.irs.gov/irb/2004-14_IRB/ar10.html; and
- Rev. Proc. 2005-77, 2005-51 I.R.B. 1176, available at www.irs.gov/irb/2005-51_IRB/ar13.html.

A branch of a financial institution may not act as a QI in a country that does not have approved know-your-customer (KYC) rules. Countries having approved KYC rules are listed on IRS.gov. Branches that operate in non-KYC approved jurisdictions are required to act as nonqualified intermediaries.

Nonqualified intermediary (NQI). An NQI is any intermediary that is not a U.S. person and that is not a QI.

Private arrangement intermediary (PAI). A QI may enter into a private arrangement with another intermediary under which the other intermediary generally agrees to perform all of the obligations of the QI. See Section 4 of the sample withholding agreement in Rev. Proc. 2000-12 for details.

Non-exempt recipient. A non-exempt recipient is any person who is not an exempt recipient.

Nonresident alien individual. Any individual who is not a citizen or resident of the United States is a nonresident alien individual. An alien individual meeting either the "green card test" or the "substantial presence test" for the calendar year is a resident alien. Any person not meeting either test is a nonresident alien individual. Additionally, an alien individual who is a resident of a foreign country under the residence article of an income tax treaty, or an alien individual who is 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. See Pub. 519, U.S. Tax Guide for Aliens, for more information on resident and nonresident alien status.



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.

Payer. A payer is the person for whom the withholding agent acts as a paying agent pursuant to an agreement whereby

the withholding agent agrees to withhold and report a payment.

Presumption rules. The presumption rules are those rules prescribed under Chapter 3 and Chapter 61 of the Code that a withholding agent must follow to determine the status of a beneficial owner (for example, as a U.S. person or a foreign person) when it cannot reliably associate a payment with valid documentation. See, for example, Regulations sections 1.1441-1(b)(3), 1.1441-4(a), 1.1441-5(d) and (e), 1.1441-9(b)(3), 1.1446-1(c)(3), and 1.6049-5(d). Also see Pub. 515.

Publicly traded partnership (PTP). A PTP is any partnership in which interests are regularly traded on an established securities market (regardless of the number of its partners). However, it does not include a PTP treated as a corporation under section 7704.

Qualified securities lender (QSL). A QSL is a foreign financial institution that satisfies **all** of the following.

- It is a bank, custodian, broker-dealer, or clearing organization that is regulated by the government in its home jurisdiction and that regularly borrows and lends the securities of U.S. corporations to unrelated customers.
- It is subject to audit by the IRS under section 7602 or by an external auditor if it is a QI.
- It provides to the withholding agent an annual certification of its QSL status.
- For the transition period described in Notice 2010-46, it meets the requirements to qualify as a QSL.

Recipient. A recipient is any of the following:

- A beneficial owner of income.
- A QI.
- A WP or WT.
- An authorized foreign agent.
- A U.S. branch of certain foreign banks or insurance companies that is treated as a U.S. person.
- A foreign partnership or a foreign trust (other than a WP or WT), but only to the extent the income is effectively connected with its conduct of a trade or business in the United States.
- A payee who is not known to be the beneficial owner, but who is presumed to be a foreign person under the presumption rules.
- A PAI.
- A partner receiving a distribution of effectively connected income from a PTP or nominee.
- A QSL.

A recipient does not include any of the following:

- An NQI.
- A nonwithholding foreign partnership, if the income is not effectively connected with its conduct of a trade or business in the United States.
- A disregarded entity.
- A foreign trust that is described in section 651(a) (a foreign simple trust) if the income is not effectively connected

with the conduct of a trade or business in the United States.

- A foreign trust to the extent that all or a portion of the trust is treated as owned by the grantor or other person under sections 671 through 679 (a foreign grantor trust).
- A U.S. branch that is not treated as a U.S. person unless the income is, or is treated as, effectively connected with the conduct of a trade or business in the United States.

Specified notional principal contract (SNPC). An SNPC is any notional principal contract that satisfies **one** or more of the following.

- In connection with entering into the contract, any long party to the contract transfers the underlying security to any short party to the contract.
- In connection with the termination of the contract, any short party to the contract transfers the underlying security to any long party to the contract.
- The underlying security is not readily tradable on an established securities market.
- In connection with entering into the contract, the underlying security is posted as collateral by any short party to the contract with any long party to the contract.
- The IRS identifies the contract as an SNPC.

U.S. branch treated as a U.S. person.

The following types of U.S. branches (of foreign entities) may reach an agreement with the withholding agent to treat the branch as a U.S. person: (a) a U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or (b) a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, Territory, or the District of Columbia.

The U.S. branch must provide a Form W-8IMY evidencing the agreement with the withholding agent.



A U.S. branch that is treated as a U.S. person is treated as such solely for purposes of determining whether a payment is subject to withholding. The branch is, for purposes of information reporting, a foreign person, and payments to such a branch must be reported on Form 1042-S.

Withholding certificate. The term “withholding certificate” generally refers to Form W-8 or Form W-9.

Note. Throughout these instructions, a reference to or mention of “Form W-8” is a reference to Forms W-8BEN, W-8ECI, W-8EXP, and/or W-8IMY.

Withholding foreign partnership (WP) or withholding foreign trust (WT). A WP or WT is a foreign partnership or trust that has entered into a withholding agreement with the IRS in which it agrees to assume primary withholding responsibility for all payments that are

made to it for its partners, beneficiaries, or owners. For information on these withholding agreements, see Rev. Proc. 2003-64. Also see Rev. Proc. 2004-21 and Rev. Proc. 2005-77.

Amounts Subject to Reporting on Form 1042-S

Amounts subject to reporting on Form 1042-S are amounts paid to foreign persons (including persons presumed to be foreign) that are subject to withholding, even if no amount is deducted and withheld from the payment because of a treaty or Code exception to taxation or if any amount withheld was repaid to the payee. Amounts subject to withholding are amounts from sources within the United States that constitute (a) fixed or determinable annual or periodical (FDAP) income; (b) certain gains from the disposal of timber, coal, or domestic iron ore with a retained economic interest; and (c) gains relating to contingent payments received from the sale or exchange of patents, copyrights, and similar intangible property. Amounts subject to withholding also include distributions of effectively connected income by a publicly traded partnership. Amounts subject to reporting include, but are not limited to, the following U.S. source items.

- **Corporate distributions.** The entire amount of a corporate distribution (whether actual or deemed) must be reported, regardless of any estimate of the portion of the distribution that represents a taxable dividend. Any distribution, however, that is treated as gain from the redemption of stock is not an amount subject to withholding. For information on dividends paid by a qualified investment entity (QIE), see Pub. 515.
- **Interest.** This includes the portion of a notional principal contract payment that is characterized as interest.
- **Rents.**
- **Royalties.**
- **Compensation for independent personal services performed in the United States.**
- **Compensation for dependent personal services performed in the United States (but only if the beneficial owner is claiming treaty benefits).**
- **Annuities.**
- **Pension distributions and other deferred income.**
- **Most gambling winnings.** However, proceeds from a wager placed in blackjack, baccarat, craps, roulette, or big-6 wheel are not amounts subject to reporting.
- **Cancellation of indebtedness.** Income from the cancellation of indebtedness must be reported unless the withholding agent is unrelated to the debtor and does not have knowledge of the facts that give rise to the payment.
- **Effectively connected income (ECI).** ECI includes amounts that are (or are presumed to be) effectively connected with the conduct of a trade or business in

the United States even if no withholding certificate is required, as, for example, with income on notional principal contracts. Note that bank deposit interest, which generally is not subject to Form 1042-S reporting, is subject to Form 1042-S reporting if it is effectively connected income. ECI of a PTP distributed to a foreign partner must be reported on Form 1042-S.

• **Notional principal contract income.** Income from notional principal contracts that the payer knows, or must presume, is effectively connected with the conduct of a U.S. trade or business is subject to reporting using income code 32. The amount to be reported is the amount of cash paid on the contract during the calendar year. Any amount of interest determined under the provisions of Regulations section 1.446-3(g)(4) (dealing with interest in the case of a significant non-periodic payment) is reportable as interest and not as notional principal contract income. See, however, the separate reporting for other U.S.-source dividend equivalent payments.

• **REMIC excess inclusions.** Excess inclusions from REMICs (income code 02) and withheld tax must be reported on Form 1042-S. A domestic partnership must separately state a partner's allocable share of REMIC taxable income or net loss and the excess inclusion amount on Schedule K-1 (Form 1065). If the partnership allocates all or some portion of its allocable share of REMIC taxable income to a foreign partner, the partner must include the partner's allocated amount in income as if that amount was received on the earlier of the following dates.

- The date of distribution by the partnership.
- The date the foreign partner disposes of its indirect interest in the REMIC residual interest.
- The last day of the partnership's tax year.

The partnership must withhold tax on the portion of the REMIC amount that is an excess inclusion.

An excess inclusion allocated to the following foreign persons must be included in that person's income at the same time as other income from the entity is included in income.

- Shareholder of a real estate investment trust.
- Shareholder of a regulated investment company.
- Participant in a common trust fund.
- Patron of a subchapter T cooperative organization.

• **Students, teachers, and researchers.** Amounts paid to foreign students, trainees, teachers, or researchers as scholarship or fellowship income, and compensation for personal services (whether or not exempt from tax under an income tax treaty), must be reported. However, amounts that are exempt from

tax under section 117 are not subject to reporting.

• **Amounts paid to foreign governments, foreign controlled banks of issue, and international organizations.** These amounts are

subject to reporting even if they are exempt under section 892 or 895.

• **Foreign targeted registered obligations.** Interest paid on registered obligations targeted to foreign markets paid to a foreign person other than a financial institution or a member of a clearing organization is an amount subject to reporting.

• **Original issue discount (OID) from the redemption of an OID obligation.**

The amount subject to reporting is the amount of OID actually includible in the gross income of the foreign beneficial owner of the income, if known. Otherwise, the withholding agent should report the entire amount of OID as if the recipient held the instrument from the date of original issuance. See Pub. 1212, Guide to Original Issue Discount (OID) Instruments.

• **Certain dispositions of U.S. real property interests.** See *Withholding on Dispositions of U.S. Real Property Interests by Publicly Traded Trusts and Qualified Investment Entities (QIEs)* on page 6.

• **Other U.S.-source dividend equivalent payments.** Other U.S.-source dividend equivalent payments are payments other than substitute dividends that qualify as U.S.-source dividends under section 871(m) (formerly 871(l)). Report these amounts using income code 40.

• **Guarantee of indebtedness.** This includes amounts paid, directly or indirectly, for the provision of a guarantee of indebtedness issued after September 27, 2010. They must be paid by a non-corporate resident or U.S. corporation or by any foreign person if the amounts are effectively connected with the conduct of a U.S. trade or business. Report these amounts using income code 41.

Amounts That Are Not Subject to Reporting on Form 1042-S

Interest on deposits. Generally, no withholding (or reporting) is required on interest paid to foreign persons on deposits if such interest is not effectively connected with the conduct of a trade or business in the United States. For this purpose, the term "deposits" means amounts that are on deposit with a U.S. bank, savings and loan association, credit union, or similar institution, and from certain deposits with an insurance company.

Exception for interest payments to Canadian residents who are not U.S. citizens. If you pay \$10 or more of U.S. source bank deposit interest to a nonresident alien who is a resident of

Canada, you generally must report the interest on Form 1042-S. This reporting requirement applies to interest on a deposit maintained at a bank's office in the United States. However, this reporting requirement does not apply to interest paid on certain bearer certificates of deposit if paid outside the United States. Although you only have to report payments you make to residents of Canada, you can comply by reporting bank deposit interest to all foreign persons if that is easier.

When completing Form 1042-S, use income code 29 in box 1 and exemption code 02 in box 6.

On the statements furnished to the Canadian recipients, you must include an information contact phone number in addition to the name in box 12a on Form 1042-S. You also must include a statement that the information on the form is being furnished to the United States Internal Revenue Service and may be provided to the government of Canada.

Interest and OID from short-term obligations. Interest and OID from any obligation payable 183 days or less from the date of original issue should not be reported on Form 1042-S.

Registered obligations targeted to foreign markets. Interest on a registered obligation that is targeted to foreign markets and qualifies as portfolio interest is not subject to reporting if it is paid to a registered owner that is a financial institution or member of a clearing organization and you have received the required certifications.

Bearer obligations targeted to foreign markets. Do not file Form 1042-S to report interest not subject to withholding on bearer obligations if a Form W-8 is not required.

Notional principal contract payments that are not ECI. Amounts paid on a notional principal contract other than a specified notional principal contract (SNPC) that are not effectively connected with the conduct of a trade or business in the United States should not be reported on Form 1042-S. All amounts paid on an SNPC should be reported on Form 1042-S.

Accrued interest and OID. Interest paid on obligations sold between interest payment dates and the portion of the purchase price of an OID obligation that is sold or exchanged in a transaction other than a redemption is not subject to reporting unless the sale or exchange is part of a plan, the principal purpose of which is to avoid tax, and the withholding agent has actual knowledge or reason to know of such plan.

Exception for amounts previously withheld upon. A withholding agent should report on Form 1042-S any amounts, whether or not subject to withholding, that are paid to a foreign payee and that have been withheld upon, including backup withholding, by another

withholding agent under the presumption rules.

Example. A withholding agent (WA) makes a payment of bank deposit interest to a foreign intermediary that is a nonqualified intermediary (NQI-B). NQI-B failed to provide any information regarding the beneficial owners to whom the payment was attributable. Under the presumption rules, WA must presume that the amounts are paid to a U.S. non-exempt recipient. WA withholds 28% of the payment under the backup withholding provisions of the Code and files a Form 1099-INT reporting the interest as paid to an unknown recipient. A copy of Form 1099-INT is sent to NQI-B. The beneficial owners of the bank deposit interest are two customers of NQI-B, X and Y. Both X and Y have provided NQI-B with documentary evidence establishing that they are foreign persons and therefore not subject to backup withholding. NQI-B must file a Form 1042-S reporting the amount of bank deposit interest paid to each of X and Y and the proportionate amount of withholding that occurred.

Withholding on Dispositions of U.S. Real Property Interests by Publicly Traded Trusts and Qualified Investment Entities (QIEs)

In general, when a publicly traded trust makes a distribution to a foreign person attributable to the disposition of a U.S. real property interest, it must withhold tax under section 1445. However, this withholding liability is shifted to the person who pays the distribution to a foreign person (or to the account of the foreign person) if the special notice requirement of Regulations section 1.1445-8(f) and other requirements of Regulations section 1.1445-8(b)(1) are satisfied.

The amount subject to withholding for a distribution by a publicly traded trust is determined under the large trust rules of Regulations section 1.1445-5(c)(3).

The rate of withholding is as follows:

1. Distribution by a publicly traded trust that makes recurring sales of growing crops and timber—10%.
2. Distribution by a publicly traded trust not described in (1) above—35%.

Special rules apply to qualified investment entities (QIEs). A QIE is any real estate investment trust (REIT) or any regulated investment company (RIC) that is a U.S. real property holding corporation. Generally, any distribution from a QIE attributable to gain from the sale or exchange of a U.S. real property interest is treated as such gain by the nonresident alien, foreign corporation, or other QIE receiving the distribution.

A distribution by a QIE to a nonresident alien or foreign corporation

that is treated as gain from the sale or exchange of a U.S. real property interest by the shareholder is subject to withholding at 35%.

Any distribution by a QIE on stock regularly traded on a securities market in the United States is not treated as gain from the sale or exchange of a U.S. real property interest if the shareholder did not own more than 5% of that stock at any time during the 1-year period ending on the date of the distribution. These distributions are included in the shareholder's gross income as a dividend (income code 06) from the QIE, not as long-term capital gain.

After 2011, a RIC will be treated as a QIE only on distributions the RIC makes to a nonresident alien or foreign corporation that are attributable to distributions the RIC received from a REIT.

Use Forms 1042-S and 1042 to report and pay over the withheld amounts. All other withholding required under section 1445 is reported and paid over using Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests, and Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.

For more information on reporting income from real property interests, see *U.S. Real Property Interest* in Pub. 515.

Publicly Traded Partnerships (Section 1446 Withholding Tax)

A publicly traded partnership (PTP) (defined on page 4) that has effectively connected income, gain, or loss must pay a withholding tax on distributions of that income made to its foreign partners and file Form 1042-S using income code 27. A nominee that receives a distribution of effectively connected income from a PTP is treated as the withholding agent to the extent of the amount specified in the qualified notice received by the nominee. For this purpose, a nominee is a domestic person that holds an interest in a PTP on behalf of a foreign person. See Regulations section 1.1446-4 and Pub. 515 for details.

TIP *If you are a nominee that is the withholding agent under section 1446, enter the PTP's name and other required information in boxes 17 through 20 on Form 1042-S.*

Other partnerships that have effectively connected gross income allocable to foreign partners must pay a withholding tax under section 1446. These amounts are reported on Form 8804, Annual Return for Partnership Withholding Tax (Section 1446), and Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax.

Payments by U.S. Withholding Agents

In general. U.S. withholding agents making payments described under *Amounts Subject to Reporting on Form 1042-S* on page 4 must file a separate Form 1042-S for each recipient who receives the income. Furthermore, withholding agents filing paper Forms 1042-S are not permitted to report multiple types of income on copy A filed with the IRS. These filers must use a separate Form 1042-S for information reportable on a single type of income.

 *These filers cannot use a single Form 1042-S to report income if that income is reportable under different income, recipient, or exemption codes, or is subject to different rates of withholding.*

A withholding agent may be permitted to use substitute payee copies of Form 1042-S (copies B, C, and D) that contain more than one type of income. See *Substitute Forms* on page 2 for details.

See *Payments Made to Persons Who Are Not Recipients* beginning on page 8 if the payment is made to a foreign person that is not a recipient.

Payments to Recipients

Payments directly to beneficial owners. A U.S. withholding agent making a payment directly to a beneficial owner must complete Form 1042-S and treat the beneficial owner as the recipient. Boxes 17 through 20 should be left blank. A U.S. withholding agent should complete box 21 only if it is completing Form 1042-S as a paying agent acting pursuant to an agreement.

Under a grace period rule, a U.S. withholding agent may, under certain circumstances, treat a payee as a foreign person while the withholding agent waits for a valid withholding certificate. A U.S. withholding agent who relies on the grace period rule to treat a payee as a foreign person must file Form 1042-S to report all payments during the period that person was presumed to be foreign even if that person is later determined to be a U.S. person based on appropriate documentation or is presumed to be a U.S. person after the grace period ends.

In the case of foreign joint owners, you may provide a single Form 1042-S made out to the owner whose status you relied upon to determine the applicable rate of withholding (the owner subject to the highest rate of withholding). If, however, any one of the owners requests its own Form 1042-S, you must furnish a Form 1042-S to the person who requests it. If more than one Form 1042-S is issued for a single payment, the aggregate amount paid and tax withheld that is reported on all Forms 1042-S cannot exceed the total amounts paid to joint owners and the tax withheld on those payments.

Payments to a qualified intermediary, withholding foreign partnership, or

withholding foreign trust. A U.S. withholding agent that makes payments to a QI (whether or not the QI assumes primary withholding responsibility), a withholding foreign partnership (WP), or a withholding foreign trust (WT) generally should complete Forms 1042-S treating the QI, WP, or WT as the recipient. However, see *Payments allocated, or presumed made, to U.S. non-exempt recipients* on this page for exceptions. The U.S. withholding agent must complete a separate Form 1042-S for each withholding rate pool of the QI, WP, or WT. For this purpose, a withholding rate pool is a payment of a single type of income, determined in accordance with the income codes used to file Form 1042-S, that is subject to a single rate of withholding. A QI that does not assume primary withholding responsibility provides information regarding the proportions of income subject to a particular withholding rate to the withholding agent on a withholding statement associated with Form W-8IMY. A U.S. withholding agent making a payment to a QI, WP, or WT must use recipient code 12 (qualified intermediary) or 04 (withholding foreign partnership or withholding foreign trust). A U.S. withholding agent must not use recipient code 13 (private arrangement intermediary withholding rate pool—general), 14 (private arrangement intermediary withholding rate pool—exempt organizations), 15 (qualified intermediary withholding rate pool—general), or 16 (qualified intermediary withholding rate pool—exempt organizations). Use of an inappropriate recipient code may cause a notice to be generated.



A QI, WP, or WT is required to act in such capacity only for designated accounts. Therefore, such an entity also may provide a Form W-8IMY in which it certifies that it is acting as an NQI or flow-through entity for other accounts. A U.S. withholding agent that receives a Form W-8IMY on which the foreign person providing the form indicates that it is not acting as a QI, WP, or WT may not treat the foreign person as a recipient. A withholding agent must not use the EIN that a QI, WP, or WT provides in its capacity as such to report payments that are treated as made to an entity in its capacity as an NQI or flow-through entity. In that case, use the EIN, if any, that is provided by the entity on its Form W-8IMY in which it claims that it is acting as an NQI or flow-through entity.

Payments allocated, or presumed made, to U.S. non-exempt recipients. You may be given Forms W-9 or other information regarding U.S. non-exempt recipients from a QI together with information allocating all or a portion of the payment to U.S. non-exempt recipients. You must report income allocable to a U.S. non-exempt recipient on the appropriate Form 1099 and not on

Form 1042-S, even though you are paying that income to a QI.

You also may be required under the presumption rules to treat a payment made to a QI as made to a payee that is a U.S. non-exempt recipient from which you must withhold 28% of the payment under the backup withholding provisions of the Code. In this case, you must report the payment on the appropriate Form 1099. See the General Instructions for Certain Information Returns (Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

Example 1. WA, a U.S. withholding agent, makes a payment of U.S. source dividends to QI, a qualified intermediary. QI provides WA with a valid Form W-8IMY with which it associates a withholding statement that allocates 95% of the payment to a 15% withholding rate pool and 5% of the payment to C, a U.S. individual. QI provides WA with C's Form W-9. WA must complete a Form 1042-S, showing QI as the recipient in box 13a and recipient code 12 (qualified intermediary) in box 13b, for the dividends allocated to the 15% withholding rate pool. WA also must complete a Form 1099-DIV reporting the portion of the dividend allocated to C.

Example 2. WA, a withholding agent, makes a payment of U.S. source dividends to QI, a qualified intermediary. QI provides WA with a valid Form W-8IMY with which it associates a withholding statement that allocates 40% of the payment to a 15% withholding rate pool and 40% to a 30% withholding rate pool. QI does not provide any withholding rate pool information regarding the remaining 20% of the payment. WA must apply the presumption rules to the portion of the payment (20%) that has not been allocated. Under the presumption rules, that portion of the payment is treated as paid to an unknown foreign payee. WA must complete three Forms 1042-S: one for dividends subject to 15% withholding, showing QI as the recipient in box 13a and recipient code 12 (qualified intermediary) in box 13b; one for dividends subject to 30% withholding, showing QI as the recipient in box 13a and recipient code 12 (qualified intermediary) in box 13b; and one for dividends subject to 30% withholding, showing QI as the recipient in box 13a and recipient code 20 (unknown recipient) in box 13b.

Amounts paid to qualified securities lenders. A withholding agent that makes payments of substitute dividends to a qualified securities lender (QSL) should complete Form 1042-S treating the QSL as the recipient. Use income code 34. Use recipient code 21 or 22.

The withholding agent is not required to withhold on a substitute dividend payment that is part of a series of dividend equivalent payments if it receives, at least annually, a certificate from the QSL that includes a statement with the following information.

- The recipient of the substitute dividend is a QSL, and
- With respect to the substitute dividend it receives from the withholding agent, the QSL states that it will withhold and remit or pay the proper amount of U.S. gross-basis tax. Use exemption code 10.

If the QSL is also a QI with primary withholding responsibility, use exemption code 10 and not exemption code 06.

Amounts paid to certain U.S. branches. A U.S. withholding agent making a payment to a "U.S. branch treated as a U.S. person" (defined on page 4) completes Form 1042-S as follows:

- If a withholding agent makes a payment to a U.S. branch that has provided the withholding agent with a Form W-8IMY that evidences its agreement with the withholding agent to be treated as a U.S. person, the U.S. withholding agent treats the U.S. branch as the recipient.
- If a withholding agent makes a payment to a U.S. branch that has provided a Form W-8IMY to transmit information regarding recipients, the U.S. withholding agent must complete a separate Form 1042-S for each recipient whose documentation is associated with the U.S. branch's Form W-8IMY. If a payment cannot be reliably associated with recipient documentation, the U.S. withholding agent must complete Form 1042-S in accordance with the presumption rules.
- If a withholding agent cannot reliably associate a payment with a Form W-8IMY from a U.S. branch, the payment must be reported on a single Form 1042-S treating the U.S. branch as the recipient and reporting the income as effectively connected income.



The rules above apply only to U.S. branches treated as U.S. persons (defined on page 4). In all other cases, payments to a U.S. branch of a foreign person are treated as payments to the foreign person.

Amounts paid to authorized foreign agents. If a U.S. withholding agent makes a payment to an authorized foreign agent (defined on page 2), the withholding agent files Forms 1042-S for each type of income (determined by reference to the income codes used to complete Form 1042-S) treating the authorized foreign agent as the recipient, provided that the authorized foreign agent reports the payments on Forms 1042-S to each recipient to which it makes payments. If the authorized foreign agent fails to report the amounts paid on Forms 1042-S for each recipient, the U.S. withholding agent remains responsible for such reporting.

In box 13b, use recipient code 17 (authorized foreign agent).

Amounts paid to a complex trust or an estate. If a U.S. withholding agent makes a payment to a foreign complex trust or a foreign estate, a Form 1042-S

must be completed showing the complex trust or estate as the recipient. Use recipient code 05 (trust) or 10 (estate). See *Payments Made to Persons Who Are Not Recipients* beginning on page 8 for the treatment of payments made to foreign simple trusts and foreign grantor trusts.

Dual claims. A U.S. withholding agent may make a payment to a foreign entity (for example, a hybrid entity) that is simultaneously claiming a reduced rate of tax on its own behalf for a portion of the payment and a reduced rate on behalf of persons in their capacity as interest holders in that entity on the remaining portion. If the claims are consistent and the withholding agent has accepted the multiple claims, a separate Form 1042-S must be filed for the entity for those payments for which the entity is treated as claiming a reduced rate of withholding and separate Forms 1042-S must be filed for each of the interest holders for those payments for which the interest holders are claiming a reduced rate of withholding. If the claims are consistent but the withholding agent has not chosen to accept the multiple claims, or if the claims are inconsistent, a separate Form 1042-S must be filed for the person(s) being treated as the recipient(s).

Special instructions for U.S. trusts and estates. Report the entire amount of income subject to reporting, regardless of estimates of distributable net income.

Payments Made to Persons Who Are Not Recipients

Disregarded entities. If a U.S. withholding agent makes a payment to a disregarded entity but receives a valid Form W-8BEN or W-8ECI from a foreign person that is the single owner of the disregarded entity, the withholding agent must file a Form 1042-S in the name of the foreign single owner. The taxpayer identifying number (TIN) on the Form 1042-S, if required, must be the foreign single owner's TIN.

Example. A withholding agent (WA) makes a payment of interest to LLC, a foreign limited liability company. LLC is wholly-owned by FC, a foreign corporation. LLC is treated as a disregarded entity. WA has a Form W-8BEN from FC on which it states that it is the beneficial owner of the income paid to LLC. WA reports the interest payment on Form 1042-S showing FC as the recipient. The result would be the same if LLC was a domestic entity.

A disregarded entity can claim to be the beneficial owner of a payment if it is a hybrid entity claiming treaty benefits. See Form W-8BEN and its instructions for more information. If a disregarded entity claims on a valid Form W-8BEN to be the beneficial owner, the U.S. withholding agent must complete a Form 1042-S treating the disregarded entity as a recipient and use recipient code 02 (corporation).

Amounts paid to a nonqualified intermediary or flow-through entity. If a U.S. withholding agent makes a payment to an NQI or a flow-through entity, it must complete a separate Form 1042-S for each recipient on whose behalf the NQI or flow-through entity acts as indicated by its withholding statement and the documentation associated with its Form W-8IMY. If a payment is made through tiers of NQIs or flow-through entities, the withholding agent must nevertheless complete Form 1042-S for the recipients to which the payments are remitted. A withholding agent completing Form 1042-S for a recipient that receives a payment through an NQI or a flow-through entity must include in boxes 17 through 20 of Form 1042-S the name, country code, address, and TIN, if any, of the NQI or flow-through entity from whom the recipient directly receives the payment. A copy of the Form 1042-S need not be provided to the NQI or flow-through entity unless the withholding agent must report the payment to an unknown recipient. See *Example 4* on page 9.

If a U.S. withholding agent makes payments to an NQI or flow-through entity and cannot reliably associate the payment, or any portion of the payment, with a valid withholding certificate (Forms W-8 or W-9) or other valid appropriate documentation from a recipient (either because a recipient withholding certificate has not been provided or because the NQI or flow-through entity has failed to provide the information required on a withholding statement), the withholding agent must follow the appropriate presumption rules for that payment. If, under the presumption rules, an unknown recipient of the income is presumed to be foreign, the withholding agent must withhold 30% of the payment and report the payment on Form 1042-S. For this purpose, if the allocation information provided to the withholding agent indicates an allocation of more than 100% of the payment, then no portion of the payment should be considered to be associated with a Form W-8, Form W-9, or other appropriate documentation. The Form 1042-S should be completed by entering "Unknown Recipient" in box 13a and recipient code 20 in box 13b.

Pro-rata reporting. If the withholding agent has agreed that an NQI may provide information allocating a payment to its account holders under the alternative procedure of Regulations section 1.1441-1(e)(3)(iv)(D) (no later than February 14, 2012) and the NQI fails to allocate more than 10% of the payment in a withholding rate pool to the specific recipients in the pool, the withholding agent must file Forms 1042-S for each recipient in the pool on a pro-rata basis. If, however, the NQI fails to timely allocate 10% or less of the payment in a withholding rate pool to the specific recipients in the pool, the withholding agent must file Forms 1042-S for each

recipient for which it has allocation information and report the unallocated portion of the payment on a Form 1042-S issued to "Unknown Recipient." In either case, the withholding agent must include the NQI information in boxes 17 through 20 on that form. See *Example 6* and *Example 7* on page 9.

The following examples illustrate Form 1042-S reporting for payments made to NQIs and flow-through entities.

Example 1. NQI, a nonqualified intermediary, has three account holders, A, B, and QI. All three account holders invest in U.S. securities that produce interest and dividends. A and B are foreign individuals and have provided NQI with Forms W-8BEN. QI is a qualified intermediary and has provided NQI with a Form W-8IMY and the withholding statement required from a qualified intermediary. QI's withholding statement states that QI has two withholding rate pools: one for interest described by income code 01 (interest paid by U.S. obligors—general) and one for dividends described by income code 06 (dividends paid by U.S. corporations—general). NQI provides WA, a U.S. withholding agent, with its own Form W-8IMY, with which it associates the Forms W-8BEN of A and B and the Form W-8IMY of QI. In addition, NQI provides WA with a complete withholding statement that allocates the payments of interest and dividends WA makes to NQI among A, B, and QI. All of the interest and dividends paid by WA to NQI are described by income code 01 (interest paid by U.S. obligors—general) and income code 06 (dividends paid by U.S. corporations—general). WA must file a total of six Forms 1042-S: two Forms 1042-S (one for interest and one for dividends) showing A as the recipient, two Forms 1042-S (one for interest and one for dividends) showing B as the recipient, and two Forms 1042-S (one for interest and one for dividends) showing QI as the recipient. WA must show information relating to NQI in boxes 17 through 20 on all six Forms 1042-S.

Example 2. The facts are the same as in Example 1, except that A and B are account holders of NQI2, which is an account holder of NQI. NQI2 provides NQI with a Form W-8IMY with which it associates the Forms W-8BEN of A and B and a complete withholding statement that allocates the interest and dividend payments it receives from NQI to A and B. NQI provides WA with its Form W-8IMY and the Forms W-8IMY of NQI2 and QI and the Forms W-8BEN of A and B. In addition, NQI associates a complete withholding statement with its Form W-8IMY that allocates the payments of interest and dividends to A, B, and QI. WA must file six Forms 1042-S: two Forms 1042-S (one for interest and one for dividends) showing A as the recipient, two Forms 1042-S (one for interest and one for dividends) showing B as the recipient, and two Forms 1042-S (one for interest and one for dividends) showing

QI as the recipient. The Forms 1042-S issued to A and B must show information relating to NQI2 in boxes 17 through 20 because A and B receive their payments directly from NQI2, not NQI. The Forms 1042-S issued to QI must show information relating to NQI in boxes 17 through 20.

Example 3. FP is a nonwithholding foreign partnership and therefore a flow-through entity. FP establishes an account with WA, a U.S. withholding agent, from which FP receives interest described by income code 01 (interest paid by U.S. obligors—general). FP has three partners, A, B, and C, all of whom are individuals. FP provides WA with a Form W-8IMY with which it associates the Forms W-8BEN from each of A, B, and C. In addition, FP provides a complete withholding statement with its Form W-8IMY that allocates the interest payments among A, B, and C. WA must file three Forms 1042-S, one each for A, B, and C. The Forms 1042-S must show information relating to FP in boxes 17 through 20.

Example 4. NQI is a nonqualified intermediary. It has four customers: A, B, C, and D. NQI receives Forms W-8BEN from each of A, B, C, and D. NQI establishes an account with WA, a U.S. withholding agent, in which it holds securities on behalf of A, B, C, and D. The securities pay interest that is described by income code 01 (interest paid by U.S. obligors—general) and that may qualify for the portfolio interest exemption from withholding if all of the requirements for that exception are met. NQI provides WA with a Form W-8IMY with which it associates the Forms W-8BEN of A, B, C, and D. However, NQI does not provide WA with a complete withholding statement in association with its Form W-8IMY. Because NQI has not provided WA with a complete withholding statement, WA cannot reliably associate the payments of interest with the documentation of A, B, C, and D, and must apply the presumption rules. Under the presumption rules, WA must treat the interest as paid to an unknown recipient that is a foreign person. The payments of interest are subject to 30% withholding. WA must complete one Form 1042-S, entering “Unknown Recipient” in box 13a and recipient code 20 in box 13b. WA must include information relating to NQI in boxes 17 through 20 and must provide the recipient copies of the form to NQI. Because NQI has failed to provide all the information necessary for WA to accurately report the payments of interest to A, B, C, and D, NQI must report the payments on Form 1042-S. See *Amounts Paid by Nonqualified Intermediaries and Flow-Through Entities* beginning on page 11. The results would be the same if WA’s account holder was a flow-through entity instead of a nonqualified intermediary.

Example 5. The facts are the same as in Example 4, except that NQI

provides the Forms W-8BEN of A and B, but not the Forms W-8BEN of C and D. NQI also provides a withholding statement that allocates a portion of the interest payment to A and B but does not allocate the remaining portion of the payment. WA must file three Forms 1042-S: one showing A as the recipient in box 13a, one showing B as the recipient in box 13a, and one showing “Unknown Recipient” in box 13a (and recipient code 20 in box 13b) for the unallocated portion of the payment that cannot be associated with valid documentation from a recipient. In addition, WA must send the Form 1042-S for the unknown recipient to NQI. All Forms 1042-S must contain information relating to NQI in boxes 17 through 20. The results would be the same if WA’s account holder was a flow-through entity instead of a nonqualified intermediary.

Example 6. NQI is a nonqualified intermediary. It has four customers: A, B, C, and D. NQI receives Forms W-8BEN from each of A, B, C, and D. NQI establishes an account with WA, a U.S. withholding agent, in which it holds securities on behalf of A, B, C, and D. The securities pay interest that is described by income code 01 (interest paid by U.S. obligors—general) and that may qualify for the portfolio interest exemption from withholding if all of the requirements for that exception are met. NQI provides WA with a Form W-8IMY with which it associates the Forms W-8BEN of A, B, C, and D. WA and NQI agree that they will apply the alternative procedures of Regulations section 1.1441-1(e)(3)(iv)(D). Accordingly, NQI provides a complete withholding statement that indicates that it has one 0% withholding rate pool. WA pays \$100 of interest to NQI. NQI fails to provide WA with the allocation information by February 14, 2012. Therefore, WA must report 25% of the payment to each of A, B, C, and D using pro-rata basis reporting. Accordingly, for each of the Forms 1042-S, WA must enter \$25 in box 2 (gross income), “30.00” in box 5 (tax rate), \$0 in box 7 (federal tax withheld), and \$0 in box 9 (total withholding credit). In addition, WA must check the PRO-RATA BASIS REPORTING box at the top of the form and include NQI’s name, address, country code, and TIN, if any, in boxes 17 through 20. WA must enter “30.00” in box 5 (tax rate) because without allocation information, WA cannot reliably associate the payment of interest with documentation from a foreign beneficial owner and therefore may not apply the portfolio interest exception. See the instructions for box 6 (exemption code) on page 15 for information on completing that box.

Example 7. The facts are the same as in Example 6, except that NQI timely provides WA with information allocating 70% of the payment to A, 10% of the payment to B, and 10% of the payment to C. NQI fails to allocate any of the

payment to D. Because NQI has allocated 90% of the payment made to the 0% withholding rate pool, WA is not required to report to NQI’s account holders on a pro-rata basis. Instead, WA must file Forms 1042-S for A, B, and C, entering \$70, \$10, and \$10, respectively, in box 2 (gross income), “00.00” in box 5 (tax rate), exemption code 05 (portfolio interest) in box 6, \$0 in box 7 (federal tax withheld), and \$0 in box 9 (total withholding credit). WA must apply the presumption rules to the \$10 that NQI has not allocated and file a Form 1042-S showing “Unknown Recipient” in box 13a and recipient code 20 in box 13b. On that Form 1042-S, WA also must enter “30.00” in box 5 (tax rate) because the portfolio interest exemption is unavailable, \$0 in box 7 (federal tax withheld), and \$0 in box 9 (total withholding credit) because no amounts actually were withheld from the interest. In addition, WA must send the Form 1042-S for the unknown recipient to NQI. All Forms 1042-S must contain information relating to NQI in boxes 17 through 20.

Payments allocated, or presumed made, to U.S. non-exempt recipients.

You may be given Forms W-9 or other information regarding U.S. non-exempt recipients from an NQI or flow-through entity together with information allocating all or a portion of the payment to U.S. non-exempt recipients. You must report income allocable to a U.S. non-exempt recipient on the appropriate Form 1099 and not on Form 1042-S, even though you are paying that income to an NQI or a flow-through entity.

You also may be required under the presumption rules to treat a payment made to an NQI or flow-through entity as made to a payee that is a U.S. non-exempt recipient from which you must withhold 28% of the payment under the backup withholding provisions of the Code. In this case, you must report the payment on the appropriate Form 1099. See the General Instructions for Certain Information Returns (Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G).

Example 1. FP is a nonwithholding foreign partnership and therefore a flow-through entity. FP establishes an account with WA, a U.S. withholding agent, from which FP receives interest described by income code 01 (interest paid by U.S. obligors—general). FP has three partners, A, B, and C, all of whom are individuals. FP provides WA with a Form W-8IMY with which it associates Forms W-8BEN from A and B and a Form W-9 from C, a U.S. person. In addition, FP provides a complete withholding statement in association with its Form W-8IMY that allocates the interest payments among A, B, and C. WA must file two Forms 1042-S, one each for A and B, and a Form 1099-INT for C.

Example 2. The facts are the same as in Example 1, except that FP does not provide any documentation from its partners. Because WA cannot reliably

associate the interest with documentation from a payee, it must apply the presumption rules. Under the presumption rules, the interest is deemed paid to an unknown U.S. non-exempt recipient. WA must, therefore, apply backup withholding at 28% to the payment of interest and report the payment on Form 1099-INT. WA must file a Form 1099-INT and send a copy to FP.

Amounts Paid by Qualified Intermediaries

In general. A QI reports payments on Form 1042-S in the same manner as a U.S. withholding agent. However, payments that are made by the QI directly to foreign beneficial owners (or that are treated as paid directly to beneficial owners) may generally be reported on the basis of reporting pools. A reporting pool consists of income that falls within a particular withholding rate and within a particular income code, exemption code, or recipient code as determined on Form 1042-S. A QI may not report on the basis of reporting pools in the circumstances described in *Recipient-by-Recipient Reporting* on this page. A QI may use a single recipient code 15 (qualified intermediary withholding rate pool—general) for all reporting pools, except for amounts paid to foreign tax-exempt recipients for which recipient code 16 should be used. Note, however, that a QI should only use recipient code 16 for pooled account holders that have claimed an exemption based on their tax-exempt status and not some other exemption (tax treaty or other Code exception). See *Amounts Paid to Private Arrangement Intermediaries* on this page if a QI is reporting payments to a PAI.

Example 1. QI, a qualified intermediary, has four direct account holders, A and B, foreign individuals, and X and Y, foreign corporations. A and X are residents of a country with which the United States has an income tax treaty and have provided documentation that establishes that they are entitled to a lower treaty rate of 15% on withholding of dividends from U.S. sources. B and Y are not residents of a treaty country and are subject to 30% withholding on dividends. QI receives U.S. source dividends on behalf of its four customers. QI must file one Form 1042-S for the 15% withholding rate pool. This Form 1042-S must show income code 06 (dividends paid by U.S. corporations—general) in box 1, “15.00” in box 5 (tax rate), “Withholding rate pool” in box 13a (recipient’s name), and recipient code 15 (qualified intermediary withholding rate pool—general) in box 13b. QI also must file one Form 1042-S for the 30% withholding rate pool that contains the same information as the Form 1042-S filed for the 15% withholding rate pool, except that it will show “30.00” in box 5 (tax rate).

Example 2. The facts are the same as in Example 1, except that Y is an

organization that has tax-exempt status in the United States and in the country in which it is located. QI must file three Forms 1042-S. Two of the Forms 1042-S will contain the same information as in Example 1. The third Form 1042-S will contain information for the withholding rate pool consisting of the amounts paid to Y. This Form 1042-S will show income code 06 (dividends paid by U.S. corporations—general) in box 1, “00.00” in box 5 (tax rate), exemption code 02 (exempt under an Internal Revenue Code section (income other than portfolio interest)) in box 6, “Zero rate withholding pool—exempt organizations,” or similar designation, in box 13a (recipient’s name), and recipient code 16 (qualified intermediary withholding rate pool—exempt organizations) in box 13b.



Under the terms of its withholding agreement with the IRS, the QI may be required to report the amounts paid to U.S. non-exempt recipients on Form 1099 using the name, address, and TIN of the payee to the extent those items of information are known. These amounts must not be reported on Form 1042-S. In addition, amounts paid to U.S. exempt recipients are not subject to reporting on Form 1042-S or Form 1099.

Amounts Paid to Private Arrangement Intermediaries

A QI generally must report payments made to each private arrangement intermediary (PAI) (defined on page 3) as if the PAI’s direct account holders were its own. Therefore, if the payment is made directly by the PAI to the recipient, the QI may report the payment on a pooled basis. A separate Form 1042-S is required for each withholding rate pool of each PAI. However, the QI must include the name and address of the PAI and use recipient code 13 or 14 in boxes 13a through 13e. If the PAI is providing recipient information from an NQI or flow-through entity, the QI may not report the payments on a pooled basis. Instead, it must follow the same procedures as a U.S. withholding agent making a payment to an NQI or flow-through entity.

Example. QI, a qualified intermediary, pays U.S. source dividends to direct account holders that are foreign persons and beneficial owners. It also pays a portion of the U.S. source dividends to two private arrangement intermediaries, PAI1 and PAI2. The private arrangement intermediaries pay the dividends they receive from QI to foreign persons that are beneficial owners and direct account holders in PAI1 and PAI2. All of the dividends paid are subject to a 15% rate of withholding. QI must file a Form 1042-S for the dividends paid to its own direct account holders that are beneficial owners. QI also must file two Forms 1042-S, one for the dividends paid to the direct account holders of each of PAI1 and PAI2. Each of the Forms 1042-S that QI files for payments made to

PAI1 and PAI2 must contain the name and address of PAI1 or PAI2 and recipient code 13 (private arrangement intermediary withholding rate pool—general) in boxes 13a through 13e.

Amounts Paid to Certain Related Partnerships and Trusts

A QI that is applying the rules of Section 4A.02 of the QI agreement to a partnership or trust must file separate Forms 1042-S reflecting reporting pools for each partnership or trust that has provided reporting pool information in its withholding statement. However, the QI must file separate Forms 1042-S for partners, beneficiaries, or owners of such partnership or trust that are indirect partners, beneficiaries, or owners, and for direct partners, beneficiaries, or owners of such partnership or trust that are intermediaries or flow-through entities.

Recipient-by-Recipient Reporting

If a QI is not permitted to report on the basis of reporting pools, it must follow the same rules that apply to a U.S. withholding agent. A QI may not report the following payments on a reporting pool basis, but rather must complete Form 1042-S for each appropriate recipient.

Payments made to another QI, WP, or WT. The QI must complete a Form 1042-S treating the other QI, QSL, WP, or WT as the recipient.

Payments made to an NQI (including an NQI that is an account holder of a PAI). The QI must complete a Form 1042-S for each recipient who receives the payment from the NQI. A QI that is completing Form 1042-S for a recipient that receives a payment through an NQI must include in boxes 17 through 20 the name, country code, address, and TIN, if any, of the NQI from whom the recipient directly receives the payment.

Example. QI, a qualified intermediary, has NQI, a nonqualified intermediary, as an account holder. NQI has two account holders, A and B, both foreign persons who receive U.S. source dividends from QI. NQI provides QI with a valid Form W-8IMY, with which it associates Forms W-8BEN from A and B and a complete withholding statement that allocates the dividends paid to NQI between A and B. QI must complete two Forms 1042-S, one for A and one for B, and include information relating to NQI in boxes 17 through 20.

Payments made to a flow-through entity. The QI must complete a Form 1042-S for each recipient who receives the payment from the flow-through entity. A QI that is completing a Form 1042-S for a recipient that receives a payment through a flow-through entity must include in boxes 17 through 20 the name, country code, address, and TIN, if any, of the flow-through entity from which the recipient directly receives the payment.

Example. QI, a qualified intermediary, has FP, a nonwithholding foreign partnership, as an account holder. QI pays interest described by income code 01 (interest paid by U.S. obligors—general) to FP. FP has three partners, A, B, and C, all of whom are individuals. FP provides QI with a Form W-8IMY with which it associates the Forms W-8BEN from each of A, B, and C. In addition, FP provides a complete withholding statement in association with its Form W-8IMY that allocates the interest payments among A, B, and C. QI must file three Forms 1042-S, one each for A, B, and C. The Forms 1042-S must show information relating to FP in boxes 17 through 20.

Amounts Paid by Withholding Foreign Partnerships and Trusts

In general. Generally, a withholding foreign partnership (WP) or withholding foreign trust (WT) is required to file a separate Form 1042-S for each direct partner, beneficiary, or owner to whom the WP or WT distributes, or in whose distributive share is included, an amount subject to withholding under Chapter 3 of the Code, in the same manner as a U.S. withholding agent. However, if the WP or WT has made a pooled reporting election in its WP or WT agreement, the WP or WT may instead report payments to such direct partners, beneficiaries, or owners on the basis of reporting pools and file a separate Form 1042-S for each reporting pool. A reporting pool consists of income that falls within a particular withholding rate and within a particular income code, exemption code, and recipient code, as determined on Form 1042-S. A WP or WT may use a single recipient code 15 (qualified intermediary withholding rate pool—general) for all reporting pools, except for amounts paid to foreign tax-exempt recipients for which a separate recipient code 16 must be used. For this purpose, a foreign tax-exempt recipient includes any organization that is not subject to withholding and is not liable to tax in its country of residence because it is a charitable organization, pension fund, or foreign government.

Amounts paid to certain related partnerships and trusts. A WP or WT that is applying the rules of Section 10.02 of the WP or WT agreement to a partnership or trust must file separate Forms 1042-S reflecting reporting pools for each partnership or trust that has provided reporting pool information in its withholding statement. However, the WP or WT must apply the provisions of Regulations sections 1.1441-1 and 1.1441-5 to partners, beneficiaries, or owners of such partnership or trust that are indirect partners, beneficiaries, or owners, and to direct partners, beneficiaries, or owners of such partnership or trust that are intermediaries or flow-through entities.

Amounts Paid by Nonqualified Intermediaries and Flow-Through Entities

An NQI and a flow-through entity are withholding agents and must file Forms 1042-S for amounts paid to recipients. However, an NQI or flow-through entity is not required to file Form 1042-S if it is not required to file Form 1042-S under the *Multiple Withholding Agent Rule* on page 12. An NQI or flow-through entity must report payments made to recipients to the extent it has failed to provide to another withholding agent the appropriate documentation and complete withholding statement, including information allocating the payment to each recipient.

If another withholding agent withheld tax but did not report the payment on Form 1042-S to the recipient, even if the recipient should have been exempt from taxation, the NQI or flow-through entity must file Form 1042-S. Failure to file Forms 1042-S may not only result in penalties for the NQI or flow-through entity, but may result in the denial of any refund claim made by a recipient.

If another withholding agent has withheld tax on an amount that should have been exempt (for example, where the withholding agent applied the presumption rules because it did not receive proper documentation or other required information from the NQI or flow-through entity), the NQI or flow-through entity should report the correct tax rate and the combined amount of U.S. federal tax withheld by the NQI or flow-through entity and any other withholding agent and should enter the applicable exemption code using the instructions for box 6 on page 15.

If another withholding agent underwithholds, even though it received proper documentation from the NQI or flow-through entity, the NQI or flow-through entity must withhold additional amounts to bring the total withholding to the correct amount. Furthermore, the NQI or flow-through entity must complete Form 1042-S and must include the correct tax rate and the combined amount of U.S. federal tax withheld by the NQI or flow-through entity.

Example 1. A foreign bank acts as a nonqualified intermediary (NQI) for four different foreign persons (A, B, C, and D) who own securities from which they receive interest. The interest is paid by a U.S. withholding agent (WA) as custodian of the securities for NQI. A, B, C, and D each own a 25% interest in the securities. NQI has furnished WA a Form W-8IMY to which it has attached Forms W-8BEN from A and B. NQI's Form W-8IMY contains an attachment stating that 25% of the securities are allocable to each of A and B, and 50% to undocumented owners. WA pays \$100 of interest during the calendar year. WA treats the \$25 of

interest allocable to A and the \$25 of interest allocable to B as portfolio interest and completes a Form 1042-S for A and for B as the recipients. WA includes information relating to NQI in boxes 17 through 20 on the Forms 1042-S for A and B. WA subjects the remaining \$50 of interest to 30% withholding under the presumption rules and reports the interest on a Form 1042-S by entering "Unknown Recipient" in box 13a (and recipient code 20 in box 13b), "30.00" in box 5 (tax rate), and \$15 as the amount withheld in box 7 and box 9. WA also includes information relating to NQI in boxes 17 through 20 of the Form 1042-S and sends a copy of the form to NQI. Because NQI has not provided WA with beneficial owner information for C and D, NQI must report the interest paid to C and D on Forms 1042-S. (Note that under the multiple withholding agent rule, NQI is not required to file a Form 1042-S for A or B.) The Forms 1042-S for C and D should show \$25 in box 2 (gross income) and \$7.50 in boxes 7 and 9. The rate of tax NQI includes on the Form 1042-S for C and D depends on the rate of withholding to which they should be subject. Thus, if C and D provided NQI with documentation prior to the payment of interest that would qualify the interest as portfolio interest, the rate entered in box 5 should be "00.00." If they do not qualify for a reduced rate of withholding, NQI should enter "30.00" in box 5. In any event, NQI also must enter "99" in box 6 (exemption code) of the Forms 1042-S it prepares for C and D. See the instructions for box 6 on page 15.

Example 2. A U.S. withholding agent (WA) makes a \$100 dividend payment to a foreign bank (NQI) that acts as a nonqualified intermediary. NQI receives the payment on behalf of A, a resident of a treaty country who is entitled to a 15% rate of withholding, and B, a resident of a country that does not have a tax treaty with the United States and who is subject to 30% withholding. NQI provides WA with its Form W-8IMY to which it associates the Forms W-8BEN from both A and B and a complete withholding statement that allocates 50% of the dividend to A and 50% to B. A's Form W-8BEN claims a 15% treaty rate of withholding. B's Form W-8BEN does not claim a reduced rate of withholding. WA, however, mistakenly withholds only 15%, \$15, from the entire \$100 payment. WA completes a Form 1042-S for each A and B as the recipients, showing on each form \$50 of dividends in box 2, a withholding rate of "15.00" in box 5 (tax rate), and \$7.50 as the amount withheld in boxes 7 and 9. Under the multiple withholding agent rule, NQI is not required to file a Form 1042-S for A. However, because NQI knows (or should know) that B is subject to a 30% rate of withholding, and assuming it knows that WA only withheld 15%, the multiple withholding agent rule does not apply to the dividend paid to B, and NQI must withhold an additional 15%

from the payment to B. NQI then must file a Form 1042-S for B showing \$50 of dividends in box 2, "30.00" in box 5 (the correct tax rate), and \$7.50 withheld by NQI in box 7, \$7.50 withheld by WA in box 8, and \$15 in box 9 (the combined amount withheld). NQI also must enter "00" in box 6 (exemption code). See the instructions for box 6 on page 15.

Example 3. A withholding agent (WA) receives a Form W-8IMY from a nonqualified intermediary (NQI). NQI's Form W-8IMY relates to payments of bank deposit interest. NQI collects the bank deposit interest on behalf of A, B, C, and D, but does not associate Forms W-8, W-9, or other documentary evidence with the Form W-8IMY that NQI provides WA. A, B, and C are foreign persons for whom NQI has valid documentation establishing their foreign status. D is a U.S. person and has provided NQI with a Form W-9. Under the presumption rules, WA must treat the bank deposit interest as being paid to an unknown U.S. person and apply backup withholding at 28%. WA must complete one Form 1099 for an unknown payee showing 28% backup withholding. A copy of the form must be sent to NQI. Because NQI failed to provide the requisite documentation to WA and because the amounts have been subject to withholding, NQI must report the amounts paid to A, B, C, and D. Accordingly, NQI must file a Form 1042-S for each A, B, and C showing deposit interest (income code 29) as the type of payment in box 1; "00.00" in box 5 (the correct tax rate); "0" in box 7 (the amount withheld by NQI); the actual amount withheld by WA that is allocable to A, B, and C in box 8; the total withheld (box 7 plus box 8) in box 9; and exemption code 99 in box 6. (See the instructions for box 6 on page 15.) NQI also must file a Form 1099 for D to report the actual amounts paid and withheld.

Multiple Withholding Agent Rule

A withholding agent is not required to file Form 1042-S if a return is filed by another withholding agent reporting the same amount to the same recipient (the multiple withholding agent rule). If an NQI or flow-through entity has provided another withholding agent with the appropriate documentation and complete withholding statement, including information allocating the payment to each recipient, the NQI or flow-through entity may presume that the other withholding agent filed the required Forms 1042-S unless the NQI or flow-through entity knows, or has reason to know, that the required Form 1042-S reporting has not been done.

The multiple withholding agent rule does not relieve withholding agents from Form 1042-S reporting responsibility in the following circumstances.

- Any withholding agent making a payment to a QI, QSL, WP, or WT must

report that payment as made to the QI, QSL, WP, or WT.

- Any U.S. withholding agent making a payment to an authorized foreign agent must report that payment to the authorized foreign agent.
- Any withholding agent making a payment to a U.S. branch treated as a U.S. person must report the payment as made to that branch.
- Any withholding agent making a payment to a flow-through entity must report the payment as made to a beneficial owner, QI, WP, or WT that has a direct or indirect interest in that entity.
- Any withholding agent that withholds an amount from a payment under Chapter 3 of the Code must report that amount to the recipient from whom it was withheld, unless the payment is reportable on another IRS form.

Furthermore, the multiple withholding agent rule does not relieve the following from Form 1042-S reporting responsibility.

- Any QI, WP, or WT required to report an amount to a withholding rate pool.
- An NQI or flow-through entity that has not transmitted a valid Form W-8 or other valid documentation to another withholding agent together with the required withholding statement.

Penalties

The following penalties apply to the person required to file Form 1042-S. The penalties apply to both paper filers and to electronic filers.

Late filing of correct Form 1042-S. A penalty may be imposed for failure to file each correct and complete Form 1042-S when due (including extensions), unless you can show that the failure was due to reasonable cause and not willful neglect. The penalty, based on when you file a correct Form 1042-S, is:

- \$30 per Form 1042-S if you correctly file within 30 days; maximum penalty \$250,000 per year (\$75,000 for a small business). A small business, for this purpose, is defined as having average annual gross receipts of \$5 million or less for the 3 most recent tax years (or for the period of its existence, if shorter) ending before the calendar year in which the Forms 1042-S are due.
- \$60 per Form 1042-S if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$500,000 per year (\$200,000 for a small business).
- \$100 per Form 1042-S if you file after August 1 or you do not file correct Forms 1042-S; maximum penalty \$1,500,000 per year (\$500,000 for a small business).

If you intentionally disregard the requirement to report correct information, the penalty per Form 1042-S is increased to \$250 or, if greater, 10% of the total amount of items required to be reported, with no maximum penalty.

Failure to furnish correct Form 1042-S to recipient. If you fail to provide correct statements to recipients and

cannot show reasonable cause, a penalty of \$100 may be imposed for each failure to furnish Form 1042-S to the recipient when due. The penalty also may be imposed for failure to include all required information or for furnishing incorrect information on Form 1042-S. The maximum penalty is \$1,500,000 for all failures to furnish correct recipient statements during a calendar year. If you intentionally disregard the requirement to report correct information, each \$100 penalty is increased to \$250 or, if greater, 10% of the total amount of items required to be reported, with no maximum penalty.

Failure to file electronically. If you are required to file electronically but fail to do so, and you do not have an approved waiver on record, you may be subject to a \$50 penalty per return unless you establish reasonable cause. The penalty applies separately to original returns and amended returns. The maximum penalty is \$100,000.

Avoid Common Errors

To ensure that your Forms 1042-S can be correctly processed, be sure that you:

- Carefully read the information provided in Pub. 515 and these instructions.
- If you are an electronic filer, comply with the requirements in Pub. 1187.
- Complete all required fields. At a minimum, you must enter information in boxes 1, 2, 5, 6, 7, 9, 11, 12a through 12d, 13a, 13b, and 16. Other boxes must be completed if the nature of the payment requires it.

Note. You may leave box 6 blank if you are applying backup withholding to the payment being reported.

- Use only income, recipient, exemption, and country codes specifically listed in these instructions.
- Use only tax rates that are allowed by statute, regulation, or treaty. Do not attempt to "blend" rates. Instead, if necessary, submit multiple Forms 1042-S to show changes in tax rate. See the Valid Tax Rate Table on page 15.

All information you enter when reporting the payment must correctly reflect the intent of statute and regulations. Generally, you should rely on the withholding documentation you have collected (Form W-8 series, Form 8233, etc.) to complete your Form 1042-S submissions.

Also note the following:

- The gross income you report in box 2 cannot be zero.
- The income code you report in box 1 must correctly reflect the type of income you pay to the recipient.
- The withholding agent's name, address, and EIN, QI-EIN, WP-EIN, or WT-EIN must be reported in boxes 11, 12a, 12b, 12c, and 12d in all cases.
- The recipient's name, recipient code, address, and TIN, if any, must be reported in boxes 13 and 14. Generally, you must report a foreign address. See the instructions for box 13 on page 16. If

you want, you can put the recipient's account number in box 22.

- The recipient code you report in box 13b must correctly identify the recipient's

status. Use recipient code 20 only if you do not know who the recipient is.

Note. If you cannot identify the recipient, the tax withheld must be 30%.

- The recipient's country code that you report in box 16 must be present and

Income Codes, Exemption Codes, and Recipient Codes

Box 1. Enter the appropriate income code.

Code Interest Income

- 01 Interest paid by U.S. obligors—general
- 02 Interest paid on real property mortgages
- 03 Interest paid to controlling foreign corporations
- 04 Interest paid by foreign corporations

- 05 Interest on tax-free covenant bonds
- 29 Deposit interest
- 30 Original issue discount (OID)
- 31 Short-term OID
- 33 Substitute payment—interest

Code Dividend Income

- 06 Dividends paid by U.S. corporations—general

- 07 Dividends qualifying for direct dividend rate
- 08 Dividends paid by foreign corporations
- 34 Substitute payment—dividends

- 40 Other U.S.-source dividend equivalents under IRC section 871(m) (formerly 871(l))

Code Other Income

- 09 Capital gains
- 10 Industrial royalties
- 11 Motion picture or television copyright royalties
- 12 Other royalties (for example, copyright, recording, publishing)
- 13 Real property income and natural resources royalties
- 14 Pensions, annuities, alimony, and/or insurance premiums
- 15 Scholarship or fellowship grants
- 16 Compensation for independent personal services¹
- 17 Compensation for dependent personal services¹
- 18 Compensation for teaching¹
- 19 Compensation during studying and training¹
- 20 Earnings as an artist or athlete²
- 24 Real estate investment trust (REIT) distributions of capital gains
- 25 Trust distributions subject to IRC section 1445
- 26 Unsevered growing crops and timber distributions by a trust subject to IRC section 1445
- 27 Publicly traded partnership distributions subject to IRC section 1446
- 28 Gambling winnings⁶

- 32 Notional principal contract income³
- 35 Substitute payment—other
- 36 Capital gains distributions
- 37 Return of capital
- 38 Eligible deferred compensation items subject to IRC section 877A(d)(1)
- 39 Distributions from a nongrantor trust subject to IRC section 877A(f)(1)
- 41 Guarantee of indebtedness
- 50 Other income

Box 6. If the tax rate entered in box 5 is 00.00, generally you must enter the appropriate exemption code from the list below (but see the **Caution** below).

Code Authority for Exemption

- 01 Income effectively connected with a U.S. trade or business
- 02 Exempt under an Internal Revenue Code section (income other than portfolio interest)
- 03 Income is not from U.S. sources⁴
- 04 Exempt under tax treaty
- 05 Portfolio interest exempt under an Internal Revenue Code section
- 06 Qualified intermediary that assumes primary withholding responsibility
- 07 Withholding foreign partnership or withholding foreign trust
- 08 U.S. branch treated as a U.S. person
- 09 Qualified intermediary represents income is exempt
- 10 Qualified securities lender that assumes primary withholding responsibility for substitute dividends

Caution: See the instructions for box 6 on page 15 for information on additional codes ("00" and "99") that may be required.

Box 13b. Enter the appropriate recipient code.

Code Type of Recipient

- 01 Individual²
- 02 Corporation²
- 03 Partnership other than a withholding foreign partnership²
- 04 Withholding foreign partnership or withholding foreign trust
- 05 Trust
- 06 Government or international organization
- 07 Tax-exempt organization (IRC section 501(a))
- 08 Private foundation
- 09 Artist or athlete²
- 10 Estate

- 11 U.S. branch treated as U.S. person
- 12 Qualified intermediary

- 13 Private arrangement intermediary withholding rate pool—general⁵
- 14 Private arrangement intermediary withholding rate pool—exempt organizations⁵
- 15 Qualified intermediary withholding rate pool—general⁵
- 16 Qualified intermediary withholding rate pool—exempt organization⁵
- 17 Authorized foreign agent
- 18 Public pension fund
- 20 Unknown recipient

- 21 Qualified securities lender—qualified intermediary
- 22 Qualified securities lender—other

¹ If compensation that otherwise would be covered under Income Codes 16 through 19 is directly attributable to the recipient's occupation as an artist or athlete, use Income Code 20 instead.

² If Income Code 20 is used, Recipient Code 09 (artist or athlete) should be used instead of Recipient Code 01 (individual), 02 (corporation), or 03 (partnership other than withholding foreign partnership).

³ Use appropriate Interest Income Code for embedded interest in a notional principal contract.

⁴ Non-U.S. source income paid to a nonresident alien is not subject to U.S. tax. Use Exemption Code 03 when entering an amount for information reporting purposes only.

⁵ May be used only by a qualified intermediary.

⁶ Subject to 30% withholding rate unless the recipient is from one of the treaty countries listed under *Gambling winnings (Income Code 28)* in Pub. 515.

correctly coded and cannot be "US." Additionally, do not use "OC" or "UC" except as specifically allowed in these instructions.

• The exemption code you report in box 6 must correctly identify the proper tax status for the type of income you pay to the recipient.

Note. If you use exemption code 04 (exempt under tax treaty), the country code that you report in box 16 must be a valid treaty country. Countries with which the United States has a tax treaty are shown in bold italics in the country code list beginning on page 18.



You, the withholding agent, are liable for the tax if you know, or should have known, that underwithholding on a payment has occurred.

Specific Instructions for Withholding Agents



All amounts must be reported in U.S. dollars.

Rounding Off to Whole Dollars

You may round off cents to whole dollars. If you do round to whole dollars, you must round all amounts. To round off amounts to the nearest whole dollar, drop amounts under 50 cents and increase amounts from 50 to 99 cents to the next dollar. For example, \$1.39 becomes \$1 and \$2.50 becomes \$3. If you have to add two or more amounts to figure the amount to enter on a line, include cents when adding and only round off the total.

AMENDED Checkbox

See *Amended Returns* on page 17.

PRO-RATA BASIS REPORTING Checkbox

Withholding agents must check this box to notify the IRS that an NQI that used the alternative procedures of Regulations section 1.1441-1(e)(3)(iv)(D) failed to properly comply with those procedures. See *Pro-rata reporting* on page 8 for additional information and examples.

Box 1, Income Code

All filers must enter the appropriate 2-digit income code from the list on page 13. Use the income code that is the most specific. See Publication 515 for further explanation of the income codes. Below are examples on how to use some of the income codes.

1. Use code 09 for the following types of capital gain:
 - a. 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,

- b. Gains on contingent payments received from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property,

- c. 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

- d. Certain gains from the sale or exchange of original issue discount obligations issued after March 31, 1972.

2. Use code 16 for payments for personal services performed by an independent contractor as contrasted with those performed by an employee. This includes payments that are subject to the business profits article of a treaty.

3. Use code 29 if you are paying bank deposit interest, not code 01 (interest paid by U.S. obligors—general).

4. Use code 24 for distributions of capital gains from a real estate investment trust (REIT). Use code 36 for capital gain distributions (dividends) paid or credited by mutual funds (or other regulated investment companies). Include short-term capital gain dividends (use exemption code 02 in box 6).

Note. Exempt-interest dividends should be reported under income code 01 (use exemption code 02 in box 6).

5. Use code 37 for a nondividend distribution (return of capital). This is a distribution that is not paid out of the earnings and profits of a corporation. It represents a distribution in part or full payment in exchange for stock.

6. Substitute payment income codes (codes 33, 34, and 35) are to be used for all substitute payment transactions. For more information, see Regulations sections 1.861-2(a)(7) and 1.861-3(a)(6) and Notice 2010-46.

7. Use code 40 for other U.S.-source dividend equivalents. These are dividend equivalent payments under section 871(m) (formerly 871(l)) that are not substitute dividend payments identified with income code 34.

8. Use code 41 for certain guarantee of indebtedness payments. These are amounts received for the provision of a guarantee of indebtedness after September 27, 2010.

If you paid more than one type of income to or on behalf of the same recipient, you must complete a separate Form 1042-S, Copy A, for each income type.

Note. Although income codes are provided for deposit interest, short-term OID, and notional principal contract income, those items are not always subject to reporting on Form 1042-S. For example, bank deposit interest is reportable if it is effectively connected with the conduct of a U.S. trade or business or is paid to a resident of

Canada. Short-term OID or bank deposit interest may need to be reported by an NQI or flow-through entity if those amounts are paid to foreign persons and another withholding agent backup withheld on those amounts under the presumption rules. (See *Example 3* on page 12.) Notional principal contract income is reportable if it is effectively connected with the conduct of a trade or business in the United States or results in the payment of interest under Regulations section 1.446-3(g)(4) or a dividend equivalent under section 871(m) (formerly 871(l)). For more information, see the regulations under Chapter 3 of the Code and Pub. 515.

Box 2, Gross Income

For each income type, enter the gross amount you paid to or on behalf of the recipient during calendar year 2011, including withheld tax. The following special procedures apply to the reporting of gross income.

- You must report the entire amount of a corporate distribution made with respect to stock even if you elect to reduce the amount of withholding on the distribution because all or a portion of the distribution is nontaxable or represents a capital gain dividend.

- You must report the entire amount of a payment if you do not know at the time of payment the amount that is subject to withholding because the determination of the source of the income or the calculation of the amount of income subject to tax depends upon facts that are not known at the time of payment.

- You must report the entire amount of gains relating to the disposal of timber, coal, or domestic iron ore with a retained economic interest and gains relating to contingent payments received from the sale or exchange of patents, copyrights, and similar intangible property.

- You must report only the amount of cash paid on notional principal contracts.

Box 3, Withholding Allowances

This box should only be completed if the income code reported in box 1 is 15 (scholarship or fellowship grants), 16 (compensation for independent personal services), 17 (compensation for dependent personal services), 18 (compensation for teaching), 19 (compensation during studying and training), or 20 (earnings as an artist or athlete). See Pub. 515 for more information.

Box 4, Net Income

Complete this box only if you entered an amount in box 3. Otherwise, leave it blank.

Box 5, Tax Rate

Enter the correct rate of withholding that applies to the income in box 2 (gross income) or box 4 (net income), as

appropriate. (See Valid Tax Rate Table on this page.) The correct tax rate should be included even if you withheld at a different rate. For example, if an NQI is reporting dividends paid to a beneficial owner who is a resident of a country with which the United States does not have a tax treaty and a U.S. withholding agent paid the dividend and withheld only 15% (rather than the required 30%) and the NQI withholds an additional 15%, the NQI should report "30.00" in box 5. See *Example 2* on page 11.

The tax rate on dividends paid to a corporation created or organized in, or under the law of, the Commonwealth of Puerto Rico may be 10%, rather than 30%. See Pub. 515 for more information.

Enter the tax rate using the following format: two digits, a decimal, and two digits (for example, "30.00" for 30%). However, if the income is exempt from tax under a U.S. tax treaty or the Code, enter "00.00." If the tax rate is less than 10%, enter a zero before the tax rate (for example, "04.00" for 4%).



If you withheld at more than one tax rate for a specific type of income that you paid to the same recipient, you must file a separate Form 1042-S, Copy A, for each amount to which a separate rate was applied.

Valid Tax Rate Table

| | | | |
|-------|-------|-------|-------|
| 00.00 | 07.00 | 14.00 | 27.50 |
| 04.00 | 08.00 | 15.00 | 28.00 |
| 04.90 | 10.00 | 17.50 | 30.00 |
| 04.95 | 12.00 | 20.00 | 35.00 |
| 05.00 | 12.50 | 25.00 | |

Box 6, Exemption Code

Note. If you are filing a Form 1042-S to correct certain information already provided to you by another withholding agent on a Form 1099 or Form 1042-S (for example, as required under *Amounts Paid by Nonqualified Intermediaries and Flow-Through Entities* beginning on page 11), see item 5 under this heading.

Generally, if the tax rate you entered in box 5 is 00.00, you should enter the appropriate exemption code (01 through 10) from the list on page 13.

If an amount was withheld under Chapter 3 of the Code (the tax rate you entered in box 5 is greater than zero and is not due to backup withholding), enter "00" in box 6. If the tax rate you entered in box 5 is due to backup withholding, leave box 6 blank.

1. If exemption code 01 (income effectively connected with a U.S. trade or business) may apply, you must enter the recipient's U.S. TIN in box 14. If the recipient's U.S. TIN is unknown or unavailable, you must withhold tax at the foreign-person rate of 30% (30.00) and enter "00" in box 6.

2. A withholding agent should use exemption code 06 (qualified intermediary that assumes primary withholding responsibility) only if it is making a payment to a QI that has represented on its Form W-8IMY that it is assuming primary withholding responsibility under Chapter 3 of the Code.

3. A withholding agent should use exemption code 07 (withholding foreign partnership or withholding foreign trust) only if it is making a payment to a foreign partnership or trust that has represented that it is a withholding foreign partnership or trust.

4. A withholding agent should use exemption code 09 (qualified intermediary represents income is exempt) only if it makes a payment to a QI that has not assumed primary withholding responsibility under Chapter 3 of the Code or primary backup withholding responsibility, but has represented on a withholding statement associated with its Form W-8IMY that the income is exempt from withholding.

5. A withholding agent should use exemption code 10 (qualified securities lender that assumes primary withholding responsibility for substitute dividends) only if the withholding agent makes a substitute dividend payment to a financial institution that is a QSL.

6. If you have failed to provide another withholding agent with appropriate information regarding the status of the person to whom you are making a payment, the other withholding agent may be required to withhold on the payment based on the presumption rules. If the income is in fact exempt from withholding, you must submit a Form 1042-S providing the correct information. In this situation, you must:

- Indicate the correct rate at which the income should have been subject to withholding in box 5 (usually 00.00),
- Enter "99" in box 6, and
- Enter the actual amount of U.S. federal tax withheld by the other withholding agent in box 8.

You also must provide the correct recipient code and the name and address of the actual recipient in boxes 13a through e.

Boxes 7 Through 9, Federal Tax Withheld

Box 7. Enter the total amount of U.S. federal tax you actually withheld in box 7. If you did not withhold any tax, enter "-0-."

Box 8. If you are a withholding agent filing a Form 1042-S to report income that has already been subject to withholding by another withholding agent, enter the amount actually withheld by the other agent(s) in box 8. Further, report in box 8 any credit forward of prior withholding as determined under Notice 2010-46 with respect to substitute dividend payments.

Box 9. Enter the aggregate amount of tax withheld by you and any other withholding agent in box 9.



Boxes 7 and 9 must be completed in all cases, even if no tax has actually been withheld.

Box 10, Amount Repaid to Recipient

This box should be completed only if:

- You repaid a recipient an amount that was overwithheld, and
- You are going to reimburse yourself by reducing, by the amount of tax actually repaid, the amount of any deposit made for a payment period in the calendar year following the calendar year of withholding.

Generally, a QI should not enter an amount in box 10 unless it is a QI that has represented on its Form W-8IMY that it is assuming primary withholding responsibility under Chapter 3 of the Code.

You also must state on a timely filed Form 1042 for the calendar year of overwithholding that the filing of the Form 1042 constitutes a claim for refund.



The adjustment for amounts overwithheld does not apply to partnerships or nominees required to withhold under section 1446.

Box 11, Withholding Agent's Employer Identification Number (EIN)

Generally, you are required to enter your EIN. However, if you are filing Form 1042-S as a QI, withholding foreign partnership, or withholding foreign trust, enter your QI-EIN, WP-EIN, or WT-EIN and check the QI-EIN box.

If you do not have an EIN, you can apply for one online at www.irs.gov/businesses/small or by telephone at 1-800-829-4933. Also, you can apply for an EIN by filing Form SS-4, Application for Employer Identification Number. File amended Forms 1042-S when you receive your EIN.

To get a QI-EIN, WP-EIN, or WT-EIN, submit Form SS-4 with your application for that status. (See the definitions for *Qualified intermediary (QI)* on page 3 and *Withholding foreign partnership (WP)* or *withholding foreign trust (WT)* on page 4 for more information.)

Box 12, Withholding Agent's Name and Address

Enter your name and address in the appropriate boxes. If your post office does not deliver mail to the street address and you have a P.O. box, show the box number instead of the street address.

If you are a nominee that is the withholding agent under section 1446, enter the PTP's name and other information in boxes 17 through 20.

Note. On statements furnished to Canadian recipients of U.S. source deposit interest, in addition to your name and address, you must include the telephone number of a person to contact. This number must provide direct access to an individual who can answer questions about the statement. The telephone number is not required on Copy A of paper forms or on electronically filed forms. You also must include a statement that the information on the form is being furnished to the United States Internal Revenue Service and may be furnished to Canada.

Box 13, Recipient's Name, Recipient Code, and Address

Name. Enter the complete name of the recipient in box 13a.

- If you do not know the name of the recipient, enter "Unknown Recipient."
- If Form 1042-S is being completed by a QI, WP, or WT for a withholding rate pool, enter "Withholding rate pool" in box 13a. No address is necessary.
- A QI reporting payments made to a PAI on a withholding rate pool basis must include the name and address of the PAI in boxes 13a through 13e.

Recipient code. Enter the recipient code from the list on page 13 in box 13b. The following special instructions apply.

- If applicable, use recipient code 09 (artist or athlete) instead of recipient code 01 (individual), 02 (corporation), or 03 (partnership other than a withholding foreign partnership).
- Use recipient code 12 if you are making a payment to a QI and 04 if you are making a payment to a WP or a WT.
- If you are making a payment to an NQI or flow-through entity, you generally must use the recipient code that applies to the type of recipient who receives the income from the NQI or flow-through entity.
- Use recipient code 03 (partnership other than withholding foreign partnership) only if you are reporting a payment of income that is effectively connected with the conduct of a trade or business of a nonwithholding foreign partnership in the United States. Otherwise, follow the rules that apply to payments to flow-through entities.
- Use recipient code 20 (unknown recipient) only if you have not received a withholding certificate or other documentation for a recipient or you cannot determine how much of a payment is reliably associated with a specific recipient. Do not use this code because you cannot determine the recipient's status as an individual, corporation, etc. The regulations under Chapter 3 of the Code provide rules on how to determine a recipient's status when a withholding agent does not have the necessary information.
- Use recipient code 21 (qualified securities lender—qualified intermediary)

or 22 (qualified securities lender—other) if you make a payment to a QSL.

- Only QIs may use recipient codes 13 (private arrangement intermediary withholding rate pool—general), 14 (private arrangement intermediary withholding rate pool—exempt organizations), 15 (qualified intermediary withholding rate pool—general), and 16 (qualified intermediary withholding rate pool—exempt organizations). A QI should use recipient code 14 or 16 only for pooled account holders that have claimed an exemption based on their tax-exempt status and not some other exemption (for example, treaty or other Code exception). A U.S. withholding agent making a payment to a QI should use recipient code 12.

Address. Generally, you must enter a foreign address in boxes 13c through 13e. However, there are limited exceptions. For example, you may enter a U.S. address when reporting payments of scholarship or fellowship grants (income code 15).

For addresses outside the United States or its possessions, follow the foreign country's practice for entering the postal code.

For addresses within the United States, use the U.S. Postal Service 2-letter abbreviation for the state name. Do not enter "United States" or "U.S."

If you want to enter the recipient's account number, use box 22.

Box 14, Recipient's U.S. Taxpayer Identification Number (TIN)

You must obtain and enter a U.S. taxpayer identification number (TIN) for:

- Any recipient whose income is effectively connected with the conduct of a trade or business in the United States.

Note. For these recipients, exemption code 01 should be entered in box 6.

- Any foreign person claiming a reduced rate of, or exemption from, tax under a tax treaty between a foreign country and the United States, unless the income is an unexpected payment (as described in Regulations section 1.1441-6(g)) or consists of dividends and interest from stocks and debt obligations that are actively traded; dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (mutual fund); dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were, upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933; and amounts paid with respect to loans of any of the above securities.

- Any nonresident alien individual claiming exemption from tax under section 871(f) for certain annuities received under qualified plans.

- A foreign organization claiming an exemption from tax solely because of its status as a tax-exempt organization under section 501(c) or as a private foundation.
- Any QI.
- Any WP or WT.
- Any nonresident alien individual claiming exemption from withholding on compensation for independent personal services.
- Any U.S. branch of a foreign bank or foreign insurance company that is treated as a U.S. person.

In all other cases, if you know the recipient's TIN or if a foreign person provides a TIN on a Form W-8, but is not required to do so, you must include the TIN on Form 1042-S.

Box 15, Recipient's Foreign Tax Identifying Number

Enter the recipient's identifying number used in the country of residence for tax purposes (optional).

Box 16, Recipient's Country Code

You must enter the code (from the list that begins on page 18) for the country of which the recipient claims residency under that country's tax laws. Enter "OC" (other country) only when the country of residence does not appear on the list or the payment is made to an international organization (for example, the United Nations). Enter "UC" (unknown country) only if the payment is to an unknown recipient. If you are making a payment to a QI, WP, or WT, or if you are a QI, WP, or WT and are making a payment to a QI, WP, or WT withholding rate pool, enter the country code of the QI, WP, or WT.



If exemption code 04 (exempt under tax treaty) appears in box 6 or if a reduced rate of withholding based on a tax treaty is entered in box 5, the country code entered in box 16 must be a country with which the United States has entered into an income tax treaty.

Boxes 17 Through 20, NQI's/Flow-Through Entity's Name, Country Code, Address, and TIN

If you are reporting amounts paid to a recipient whose withholding certificates or other documentation has been submitted to you with a Form W-8IMY provided by an NQI or flow-through entity, you must include the name, address, and TIN, if any, of the NQI or flow-through entity with whose Form W-8IMY the recipient's Form W-8 or other documentation is associated.

Note. An NQI or flow-through entity will leave these boxes blank unless it is making the payment to an NQI or flow-through entity.

For box 18, you must enter the country code from the list beginning on page 18 for the country where the NQI or flow-through entity is located.

If you are a nominee that is the withholding agent under section 1446, enter the PTP's name and other information in these boxes.

Box 21, Payer's Name and Taxpayer Identification Number (TIN)

See the definition of a payer on page 3. Include the payer's name and TIN if different from that in boxes 11 and 12.

Box 22, Recipient's Account Number

You may use this box to enter the account number assigned by you to the recipient.

Boxes 23 Through 25, State Income Tax Withheld and Related Information

Include in these boxes information relating to any state income tax withheld.

Amended Returns

If you filed a Form 1042-S with the IRS and later discover you made an error on it, you must correct it as soon as possible. To correct a previously filed Form 1042-S, you will need to file an amended Form 1042-S.



You may be required to submit amended Forms 1042-S electronically. See Electronic Reporting on page 2 and Pub. 1187.

If any information you correct on Form(s) 1042-S changes the information you previously reported on Form 1042,

you also must correct the Form 1042 by filing an amended return. To do this, see the Form 1042 instructions.

If you are filing electronically, see *Amended Returns* in Pub. 1187.

If you are not filing electronically, follow these steps to amend a previously filed Form 1042-S.

Step 1. Prepare a paper Form 1042-S.

- Enter all the correct information on the form, including the recipient name and address, money amounts, and codes.
- Enter an "X" in the AMENDED box at the top of the form.

AMENDED checkbox. Enter an "X" in the AMENDED checkbox of Copy A only if you are amending a Form 1042-S you previously filed with the IRS. Enter an "X" in the AMENDED checkbox on the copy you give to the recipient only if you are correcting a Form 1042-S previously furnished to the recipient. You must provide statements to recipients showing the corrections as soon as possible.

Step 2. File the amended paper Form 1042-S with a Form 1042-T. See the Form 1042-T instructions for information on filing these forms.



If you fail to correct Form(s) 1042-S, you may be subject to a penalty. See Penalties on page 12.

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. Sections 1441, 1442, and 1446 (for PTPs) require withholding agents to report and pay over to the IRS taxes withheld from certain U.S. source income of foreign persons. Form 1042-S is used to report the amount of income and withholding to the payee. Form 1042 is

used to report the amount of withholding that must be paid over to the IRS. Section 6109 requires you to provide your taxpayer identification number (SSN, EIN, or ITIN). Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and cities, states, and the District of Columbia 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 this information in a timely manner, you may be liable for penalties and interest.

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 36 minutes.

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 form to this address. Instead, see *Where, When, and How To File* on page 1.

Country Codes

Select the appropriate code from the following list and enter it in box 16 (country code of recipient). Also use the following codes to complete box 18 (country code of NQI), if applicable. See the instructions for box 16 (and box 18 if applicable) beginning on page 16 before selecting a country code. **Note.**

Countries bolded and italicized are those with which the United States had entered into an income tax treaty at the time these instructions were printed.

| Country | Code | | Code |
|--|------|--|------|
| Afghanistan | AF | Coral Sea Islands Territory ² | CR |
| Akrotiri | AX | Costa Rica | CS |
| Albania | AL | Cote D'Ivoire (Ivory Coast) | IV |
| Algeria | AG | Croatia | HR |
| American Samoa | AQ | Cuba | CU |
| Andorra | AN | Cyprus | CY |
| Angola | AO | Czech Republic | EZ |
| Anguilla | AV | Denmark | DA |
| Antarctica | AY | Dhekelia | DX |
| Antigua and Barbuda | AC | Djibouti | DJ |
| Argentina | AR | Dominica | DO |
| Armenia¹ | AM | Dominican Republic | DR |
| Aruba | AA | Ecuador | EC |
| Ashmore and Cartier Islands² | AT | Egypt | EG |
| Australia | AS | El Salvador | ES |
| Austria | AU | Equatorial Guinea | EK |
| Azerbaijan¹ | AJ | Eritrea | ER |
| Bahamas, The | BF | Estonia | EN |
| Bahrain | BA | Ethiopia | ET |
| Baker Island | FQ | Falkland Islands (Islas Malvinas) | FK |
| Bangladesh | BG | Faroe Islands | FO |
| Barbados | BB | Fiji | FJ |
| Belarus¹ | BO | Finland | FI |
| Belgium | BE | France | FR |
| Belize | BH | French Guiana² | FG |
| Benin | BN | French Polynesia | FP |
| Bermuda | BD | French Southern and Antarctic Lands | FS |
| Bhutan | BT | Gabon | GB |
| Bolivia | BL | Gambia, The | GA |
| Bosnia-Herzegovina | BK | Georgia¹ | GG |
| Botswana | BC | Germany | GM |
| Bouvet Island | BV | Ghana | GH |
| Brazil | BR | Gibraltar | GI |
| British Indian Ocean Territory | IO | Great Britain (United Kingdom) | UK |
| Brunei | BX | Greece | GR |
| Bulgaria | BU | Greenland | GL |
| Burkina Faso | UV | Grenada | GJ |
| Burma | BM | Guadeloupe³ | GP |
| Burundi | BY | Guam | GQ |
| Cambodia | CB | Guatemala | GT |
| Cameroon | CM | Guernsey | GK |
| Canada | CA | Guinea | GV |
| Cape Verde | CV | Guinea-Bissau | PU |
| Cayman Islands | CJ | Guyana | GY |
| Central African Republic | CT | Haiti | HA |
| Chad | CD | Heard Island and McDonald Islands | HM |
| Chile | CI | Holy See | VT |
| China | CH | Honduras | HO |
| Christmas Island² | KT | Hong Kong ⁵ | HK |
| Clipperton Island | IP | Howland Island | HQ |
| Cocos (Keeling) Islands² | CK | Hungary | HU |
| Colombia | CO | Iceland | IC |
| Comoros | CN | India | IN |
| Congo (Brazzaville) | CF | Indonesia | ID |
| Congo, Democratic Republic of (Kinshasa) | CG | Iran | IR |
| Cook Islands | CW | Iraq | IZ |
| | | Ireland | EI |
| | | Isle of Man | IM |
| | | Israel | IS |
| | | Italy | IT |
| | | Jamaica | JM |
| | | Jan Mayen | JN |
| | | Japan | JA |
| | | Jarvis Island | DQ |
| | | Jersey | JE |
| | | Johnston Atoll | JQ |
| | | Jordan | JO |
| | | Kazakhstan | KZ |
| | | Kenya | KE |
| | | Kingman Reef | KQ |
| | | Kiribati | KR |
| | | Korea, North | KN |
| | | Korea, South | KS |
| | | Kosovo | KV |
| | | Kuwait | KU |
| | | Kyrgyzstan¹ | KG |
| | | Laos | LA |
| | | Latvia | LG |
| | | Lebanon | LE |
| | | Lesotho | LT |
| | | Liberia | LI |
| | | Libya | LY |
| | | Liechtenstein | LS |
| | | Lithuania | LH |
| | | Luxembourg | LU |
| | | Macau | MC |
| | | Macedonia | MK |
| | | Madagascar (Malagasy Republic) | MA |
| | | Malawi | MI |
| | | Malaysia | MY |
| | | Maldives | MV |
| | | Mali | ML |
| | | Malta | MT |
| | | Marshall Islands | RM |
| | | Martinique³ | MB |
| | | Mauritania | MR |
| | | Mauritius | MP |
| | | Mayotte | MF |
| | | Mexico | MX |
| | | Micronesia, Federated States of | FM |
| | | Midway Islands | MQ |
| | | Moldova¹ | MD |
| | | Monaco | MN |
| | | Mongolia | MG |
| | | Montenegro | MJ |
| | | Montserrat | MH |
| | | Morocco | MO |
| | | Mozambique | MZ |
| | | Namibia | WA |
| | | Nauru | NR |
| | | Navassa Island | BQ |
| | | Nepal | NP |
| | | Netherlands | NL |
| | | Netherlands Antilles | NT |
| | | New Caledonia | NC |
| | | New Zealand | NZ |
| | | Nicaragua | NU |
| | | Niger | NG |
| | | Nigeria | NI |
| | | Niue | NE |
| | | Norfolk Island² | NF |
| | | Northern Ireland⁴ | UK |
| | | Northern Mariana Islands | CQ |
| | | Norway | NO |
| | | Oman | MU |
| | | Pakistan | PK |
| | | Palau | PS |
| | | Palmyra Atoll | LQ |
| | | Panama | PM |
| | | Papua New Guinea | PP |
| | | Paracel Islands | PF |
| | | Paraguay | PA |
| | | Peru | PE |
| | | Philippines | RP |
| | | Pitcairn Island | PC |
| | | Poland | PL |
| | | Portugal | PO |
| | | Puerto Rico | RQ |
| | | Qatar | QA |

| | | | | | |
|---|----|---|----|--|----|
| Reunion ³ | RE | Spratlly Islands | PG | Uruguay | UY |
| Romania | RO | Sri Lanka | CE | Uzbekistan ¹ | UZ |
| Russia | RS | Sudan | SU | Vanuatu | NH |
| Rwanda | RW | Suriname | NS | Venezuela | VE |
| St. Barthelemy | TB | Svalbard | SV | Vietnam | VM |
| St. Helena | SH | Swaziland | WZ | Virgin Islands (British) | VI |
| St. Kitts (St. Christopher and Nevis) | SC | Sweden | SW | Virgin Islands (U.S.) | VQ |
| St. Lucia | ST | Switzerland | SZ | Wake Island | WQ |
| St. Martin | RN | Syria | SY | Wallis and Futuna | WF |
| St. Pierre and Miquelon | SB | Taiwan | TW | Western Sahara | WI |
| St. Vincent and the Grenadines | VC | Tajikistan ¹ | TI | Yemen | YM |
| Samoa | WS | Tanzania | TZ | Zambia | ZA |
| San Marino | SM | Thailand | TH | Zimbabwe | ZI |
| Sao Tome and Principe | TP | Timor-Leste | TT | Other Country | OC |
| Saudi Arabia | SA | Togo | TO | Unknown Country | UC |
| Senegal | SG | Tokelau | TL | | |
| Serbia | RB | Tonga | TN | | |
| Seychelles | SE | Trinidad and Tobago | TD | | |
| Sierra Leone | SL | Tunisia | TS | | |
| Singapore | SN | Turkey | TU | | |
| Slovak Republic (Slovakia) | LO | Turkmenistan ¹ | TX | | |
| Slovenia | SI | Turks and Caicos Islands | TK | | |
| Solomon Islands | BP | Tuvalu | TV | | |
| Somalia | SO | Uganda | UG | | |
| South Africa | SF | Ukraine | UP | | |
| South Georgia and the South Sandwich Islands | SX | United Arab Emirates | AE | | |
| Spain | SP | United Kingdom (England, Wales, Scotland, No. Ireland) | UK | | |

¹ These countries are parties to the United States treaty with the Commonwealth of Independent States.

² These countries are covered under the United States treaty with Australia.

³ These countries are covered under the United States treaty with France.

⁴ Northern Ireland is covered under the United States treaty with the United Kingdom.

⁵ Hong Kong is not covered under the United States treaty with China.