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PRESENTS A

USA TAX SEMINAR

*International Tax Considerations  
Relevant to the International Investor and/or  
Professional Advisor*

Tuesday, February 27, 2007  
Hilton Hotel  
Kingston, Jamaica

**"International Tax Considerations  
Relevant to the  
International Investor and/or Professional Advisor"**

**Presented by:**

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**Date:**

February 27, 2007

**Location:**

Kingston, Jamaica

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**MICHAEL ROSENBERG**

Michael Rosenberg received his B.S. degree with a major in accounting from Penn State University, his J.D. degree from Brooklyn Law School and his LL.M. degree in Taxation from New York University Graduate School of Law. He is a licensed attorney in Florida, New York, and Pennsylvania, a Florida Certified Public Accountant, a Board Certified Tax Lawyer in Florida, and has been listed in The Best Lawyers in America since 1993, in the initial 1998 edition of the Guide to Leading American Attorneys, and in Chambers USA America's Leading Business Lawyers (Tax) since 2003.

Michael was formerly the International Tax Manager of the Touche Ross & Co. office in Miami (prior to its merger into Deloitte & Touche) and was a member of their U.S. International Tax Group. He has taught a course in International Taxation in the Executive Master of Science in Taxation ("EMST") Program at Florida International University and an international tax course at Florida Gulf Coast University, has co-authored a book with Bruce B. Packman published by the Florida Institute of Certified Public Accountants (FICPA) entitled "Foreign Investment in the United States Tax and Related Matters," and has authored an FICPA book entitled "Estate & Gift Taxation of Nonresident Aliens in the United States." Both books are used for FICPA continuing professional education courses for which Michael serves as the Discussion Leader.

In addition to Michael's general tax and estate planning practice, he has developed a substantial international taxation practice concentrating on foreign persons investing in, doing business in, and immigrating to the U.S., and U.S. persons investing in, doing business in, or expatriating to foreign countries.

Michael has been a frequent author and lecturer on topics of international taxation, is a member of numerous domestic and international tax-related organizations and/or committees, has been Chairman of the World Trade Institute's International Tax and Estate Planning Conference, has served as an Advisory Board Member of Florida International University's EMST Program, and has co-chaired the Annual International Tax Conference co-sponsored by the FICPA/Florida Bar since its inception in 1983.



**SHAWN. P. WOLF**

Shawn P. Wolf is a graduate of the University of Miami (B.B.A. in Business Administration, 1993). He received his law degree from The University of Pittsburgh (J.D., 1996), and his LL.M. (Taxation with Specialization in International Taxation) degree from the University of Miami (1997).

Shawn focuses his practice in the areas of international taxation (both inbound and outbound) and general taxation, including business planning and estate planning. He is admitted to practice in the State of Florida, and is a member of the Florida Bar Association.



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### **GILLIAN LORD BREAKSPEARE, CPA**

Gillian Lord Breakspeare graduated from Bishops High School, Mandeville and continued her education in London at the London College of Secretaries. Upon return from London she worked in Jamaica and then furthered her education at the University of Miami, graduating with a B.B.A. in Accounting 1976, cum laude, and later received a full scholarship which enabled her to achieve an M.S. in Accounting, 1978. Gillian was granted a CPA license from the State of Florida in 1980.

Gillian has over 25 years experience, having started her career in corporate accounting, she achieved the position of Vice President of Finance for a group of companies in the communications industry. In 1986 Gillian left the corporate world and entered the public accounting arena. In 1990 she started her own CPA firm in Miami.

Gillian has lectured at several local institutes of higher education and has conducted tax seminars. Her diverse background and extensive experience in the local and international business arena enables her to counsel her clients with real life solutions.

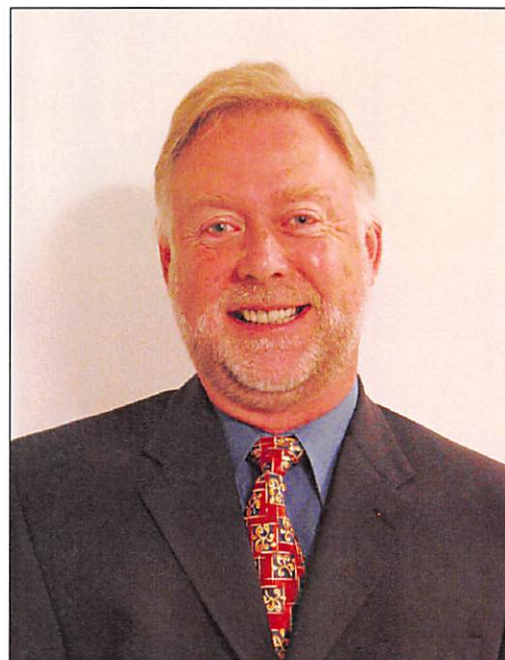
### **STEPHEN P CALLAGHAN, FCA. JP**

Stephen is a Fellow Member of the Institute of Chartered Accountants (England & Wales) and an Associate Member of the Institute of Chartered Accountants (Jamaica).

Stephen received his training as an apprentice at Kidsons Chartered Accountants of Manchester England and qualified as a Chartered Accountant in 1981.

Stephen has over 25 years experience in accounting, auditing and Management. He managed a regional office for Deloitte and Touche and later became involved in management and consulting for major corporate entities mainly in the Caribbean.

Stephen has a wealth of experience in dealing with international and local business. He has a commonsense approach to the decision making process and the implementation of viable and cost effective solutions.





**International Tax Considerations Relevant to  
the International Investor and/or Professional Advisor**

- A. U.S. Income Taxation In General
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- F. U.S. Tax Compliance, Forms, Reporting, Filings, Etc.

## **A.1.      Worldwide Taxation**



## **Worldwide Income Taxation: An Overview**

- ♦ U.S. citizens, resident aliens (“RA”) and domestic corporations (“U.S. Persons”) are taxed in the U.S. on a world wide basis. See the attached “Residency Letters.”
- ♦ This rule applies regardless of being taxed in a foreign jurisdiction.
- ♦ Section 911 exclusion minimizes U.S. income tax for certain eligible individuals.
- ♦ U.S. Foreign Tax Credit rules help minimize double taxation. Direct and Indirect Foreign Tax Credits may be available.
- ♦ Income Tax Treaties must be considered with respect to which jurisdiction has the right to tax income and applicable withholding tax rates.
- ♦ NOTE: 15% U.S. dividend rate only applicable for dividends from Qualified Foreign Corporations.

**A.2.      Resident Alien Versus  
Nonresident Alien Definition**



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August 1, 1984

Dear Friend:

On July 18, 1984, President Reagan signed into law the Tax Reform Act of 1984 (the "Act"). An objective statutory definition of resident alien and nonresident alien for Federal income tax purposes is included as one of the many provisions of the Act. As a result of the significant and far reaching consequences that this new provision will have, many aliens believing that they are nonresident for Federal income tax purposes will be surprised to find that the new definition results in resident alien status. Because resident alien status generally carried with it a significantly more burdensome tax regime, we urge you to consider its impact in your particular situation, and as it may apply to your family and friends. It is important to note that under the Act, given the proper circumstances, many aliens having nonresident status for immigration purposes will be taxed as resident aliens.

For those aliens who are currently nonresident for Federal income tax purposes, substantial pre-residency planning opportunities are available, and because the date as of which the statutory definition of "resident alien" is effective is not far away (i.e., January 1, 1985), we urge you to consult with us as to its impact as soon as possible so that we may assist you in undertaking the planning which may be necessary.

Very truly yours,

PACKMAN, NEUWAHL & ROSENBERG  
MICHAEL ROSENBERG

DEFINITION OF RESIDENT ALIEN AND NONRESIDENT ALIEN  
FOR FEDERAL INCOME TAX PURPOSES

I. INTRODUCTION

Section 138, Division A, of H.R. 4170 (the Tax Reform Act of 1984) amends Section 7701 of the Internal Revenue Code of 1954, as amended ("Code"), to include, as new Subsection 7701(b), a definition of resident alien and nonresident alien for Federal income tax purposes.

Earlier proposals relating to such definition had been introduced in the House of Representatives on June 30, 1983 as part of H.R. 3475 (Section 501), and thereafter as part of Title IV of H.R. 4170 (Section 451), the Tax Reform Bill of 1983 (which originated from H.R. 3475), and which was ordered reported by the House Ways and Means Committee (the "Committee") on October 21, 1983. Subsequently, on March 1, 1984, the Committee adopted a committee amendment to H.R. 4170 to be offered as a substitute for the previously reported bill. The substitute for the previously reported bill was designated as H.R. 4170, the Tax Reform Act of 1984. The Conference Committee completed its work on H.R. 4170 on June 22, 1984, and approval by Congress took place on June 27, 1984. Thereafter, President Reagan signed H.R. 417 into law on July 18, 1984.

Thus, effective for tax years beginning after 1984, objective definitions of the terms residents aliens ("RAs") and nonresidents aliens ("NRAs") for Federal income tax purposes are incorporated into the Code. However, the new definitions do not affect the determination of residence for Federal estate and gift tax purposes. In addition, the Joint Explanatory Statement of the Committee of Conference (the "Joint Statement") also makes it clear that it is not intended that the definitions of RA and NRA affect the determination of whether an estate or trust is a U.S. or



foreign estate or trust, "except insofar as that determination itself turns on the residence or nonresidence of particular alien individuals."

## II. RESIDENCE TESTS

### A. General Rules

Code Section 7701(b) sets forth the following two (2) tests pursuant to which an alien individual will be considered a RA with respect to any calendar year if he: (i) is a lawful permanent resident of the United States at any time during the calendar year (the "Green Card Test"); or (ii) is present in the U.S. for thirty-one (31) days or more during the current calendar year and has been present in the United States for a substantial period of time--one hundred eighty-three (183) days or more during a three (3) year period weighted toward the present year (the "Substantial Presence Test").

Pursuant to Section 7701(b)(1)(A), an alien individual is to be considered a RA for any calendar year, if and only if, he satisfies the requirements of the Green Card Test or Substantial Presence Test.

1. The Green Card Test: A lawful permanent resident is defined as an individual who has the status of having been lawfully accorded the privilege of residing permanently in the United States in accordance with the immigration laws, and if such status has not been revoked (and has not been administratively or judicially determined to have been abandoned). Thus, a lawful permanent resident continues to be a resident for income tax purposes until he officially loses or abandons the status of lawful permanent resident.

2. The Substantial Presence Test: An alien individual is classified as a RA as to a calendar year (the "current year") if he is present in the United States for thirty-one (31) or more days in the current year and has been present in the United States for one hundred eighty-

three (183) days or more during a three (3) year period, weighted toward the current year. This weighting takes place as follows: an alien is considered a RA during the current year if the sum of the days he is present in the United States during the current year, plus one-third (1/3) of the days present during the first preceding year, plus one-sixth (1/6) of the days present during the second preceding year, equals or exceeds one hundred eighty-three (183) days.

As an illustration of the application of the Substantial Presence Test, a NRA could be present for one hundred twenty (120) days on an annual basis over a period of years without being considered a RA.\* [The one hundred twenty (120) day number is not an absolute limit, but the average number of days a NRA can be present in the United States over a period of years without being considered a RA under the Substantial Presence Test].

There are certain exceptions to the Substantial Presence Test: (a) the closer connection/tax home exception; and (b) the exception for exempt individuals or for certain medical conditions.

The closer connection/tax home exception provides that if an alien: (i) is present in the United States for fewer than one hundred eighty-three (183) days during the current year; and (ii) establishes that he has a "closer connection" with a foreign country and a "tax home" in that country, then he will not be treated as a RA under the Substantial Presence Test for the current year [Section 7701(b)(3)(B)]. The commentary to Section 451 of H.R. 4170 by the House Ways and Means Committee (the "House Commentary") clarifies somewhat the interpretation to be given to the "closer connection/tax home" exception by providing that the "maintenance of a United States abode will not automatically prevent an individual from

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\*When the final regulations were issued on April 24, 1992, it became clear that one hundred twenty-one (121) days could be substituted for one hundred twenty (120) days. See the July 6, 1992 update residency letter.



establishing a tax home in a foreign country." The foregoing could be interpreted to mean that the maintenance of a dwelling in the United States solely for vacation purposes would not prevent the individual from establishing a tax home in a foreign country. Unfortunately, the House Commentary does not expand on the meaning of the term "abode."

Significantly, the "closer connection/tax home" exception will not apply with respect to an alien who has at any time during the current year, an application pending to change his status to permanent resident or who has taken other affirmative steps to apply for status as a lawful permanent U.S. resident. Therefore, an alien should give careful consideration to his actions before applying for a change in status to permanent resident or taking other affirmative steps to apply for status as a lawful permanent United States resident.

The exception for exempt individuals provides that under certain circumstances, "foreign government-related individuals", students and teachers or trainees are defined as exempt individuals and may avoid application of the Substantial Presence Test. However, the application of this exception in the case of students and teachers or trainees is limited to a certain number of years.

In addition, an alien individual who is unable to leave the United States because of a medical condition which arose while the individual was present in the United States is not treated as being present in the United States for purposes of the Substantial Presence Test on any day that such individual was unable to leave the United States because of the medical condition. It should be noted that this is a narrow exception limited to persons who require medical attention after arriving in the United States and are "unable" to leave the United States.

Two transitional rules will apply with respect to the Substantial Presence Test: pre-1985 presence of an alien in the United States who is a NRA under current law

at the close of 1984 will not be counted in applying the Substantial Presence Test; and pre-1984 presence in the United States of an alien who was a RA under current law at the close of 1984 but was a NRA at the close of 1983 will also not be taken into account in applying such test.

Also, a third important transitional rule applies with respect to the Green Card Test. Such rules provides that if an individual was a lawful permanent resident of the United States throughout calendar year 1984 or if he was present in the U.S. at any time during 1984 while he was a lawful permanent resident, then the individual is treated as a RA during 1984 for purposes of the individual's "first year of residency" and for determining the "residency starting date" for such individual (these concepts are discussed below in § II.B.). Thus, if such an individual meets these criteria, then he will be considered a RA as of January 1, 1985, whether or not that individual is present in the United States on that date or on a later date during 1985.

Section 7701(b)(6) defines presence in the United States as any day that an individual is physically present in the United States for any part of the day. However, if an individual regularly commutes to the U.S. from Canada or Mexico, such individual will not be treated as present in the U.S. on any day during which he so commutes.

Also, the Joint Committee modified the rules relating to presence in the United States to exclude individuals who are present in the United States in transit between two (2) foreign points. Thus, an individual who is in the United States for less than twenty-four (24) hours while in transit between two (2) points outside the United States will not be treated as present in the United States on any day during such transit.

One of the principal modifications made by the Joint Committee was to include, as Section 7701(b)(9) (titled "Coordination with Section 877"), a provision whereunder, if an alien is a RA for three (3) consecutive years under the new statutory definition (a period

defined as the "initial residency period"), and after ceasing to be a RA thereafter resumes U.S. residency within three (3) calendar years following the close of the initial residency period, such alien will be taxed during the intermediate period of nonresidency on the same items of income that would be taxed to a U.S. citizen who renounced U.S. citizenship for the principal purpose of avoiding U.S. tax. The Joint Statement provides that this rule will apply regardless of the subjective intent of the alien. However, this rule will apply only if the alien's tax, as determined under Code Section 877(b), exceeds the tax applicable to NRAs under Code Section 871.

Finally, the Joint Statement notes that the residence definition contained is not intended to override treaty obligations of the United States. Therefore, in the event of a conflict, the treaty definition of residence will prevail. However, the Joint Statement also stated that: "...notwithstanding the treatment of the alien as a resident of the other country for treaty purposes, the Conference Agreement will treat the alien as a U.S. resident for purposes of the internal tax laws of the United States. For example, if the alien owns more than fifty percent (50%) of the voting power of a foreign corporation, the foreign corporation will be a controlled foreign corporation."

#### B. Special Rules

The special rules relate to an alien's "first year of residency" and "last year of residency" and delineate during what portion of such years the alien will be considered a RA or a NRA. Thus, these rules clarify that in the case of an alien who was a NRA during the entire preceding calendar year, but who is a RA for the current year (the "first year of residency"), the alien will be considered a RA beginning on the "residency starting date", which may not necessarily be the beginning of the current year. In the case of an alien who is considered a RA under the Green Card Test, the "residency starting date" is the first day in the calendar year on which the alien

is present in the United States while a permanent lawful resident of the United States (subject, however, to the third transitional rule discussed in § II.A. above); and, in the case of an alien who is considered a RA under the Substantial Presence Test, the "residency starting date" is the first day on which the alien is present in the United States during the calendar year in which the alien meets such test.

In addition, for purposes of determining an alien individual's "residency starting date" in the "first year of residency" and the alien's "last year of residency", an exception to the Substantial Presence Test is also provided for certain nominal presence in the United States during the year. Thus, for purposes of an alien individual's "residency starting date" or "last year of residency", the individual will not be treated as present in the United States during any period not exceeding ten (10) days for which period the individual establishes that he has a closer connection to a foreign country than to the United States. In this connection, the Joint Statement states that: "[d]e minimis presence before start or after termination of substantial presence will generally be disregarded under the substantial presence test." Thus, the Joint Statement appears to confirm that this provision was not intended to allow multiple periods of nominal presence in the United States without triggering residence status, but intended to permit, without triggering residence status, brief presence in the United States (for example, for business or to find a house) before the alien moves to the United States.

Similarly, these special rules define, in the case of an alien who is a RA during the current year, but who is NRA for the following year, the alien's residence status in the "last year of residency."

With respect to the first year of residency, last year of residency and related rules, the House Commentary states that "aliens should not be able to switch back and forth between



resident and nonresident status for short periods, and that there should be no gap in resident status when an alien is a resident for part of two consecutive years."

### III. REPORTING - ANNUAL STATEMENTS

Unlike in the past when it was not necessary for aliens to file any statements supporting their claim of NRA status, Section 7701(b)(7) now provides that the Secretary may prescribe regulations under which individuals claiming the benefit of the "closer connection/tax home", the "exempt individual", or the "medical condition" exceptions must file annual statements establishing the basis for such claims.

### IV. TAXABLE YEARS

Under Section 7701(b)(8)(A), a taxpayer who has not established a taxable year for any prior period will be taxed on a calendar year basis. However, where an alien is treated as a RA for a calendar year but, after application of the foregoing sentence, he has a taxable year other than a calendar year, then he will be treated as a RA for the portion of his tax year within such calendar year. Section 7701(b)(8)(B). For example, an alien who is classified as a RA for 1985 because he becomes a lawful permanent resident of the United States on June 1, 1985, and who establishes that he has a fiscal year ending May 31, will be treated as RA with respect to that portion of his taxable year which is within the calendar year (i.e., June 1, 1985 to December 31, 1985).

V. EFFECTIVE DATE

The amendments to Section 7701 apply to taxable years beginning after December 31, 1984.

VI. CONCLUSION

This outline summarizes the new statutory provisions affecting the determination of residence status for Federal income tax purposes, and it is intended solely to serve as general information. As a result of the importance of these new statutory provisions and their impact, those alien individuals who may be potentially affected by the enactment of this legislation should carefully consider their respective situation in light of the foregoing changes.

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July 6, 1992

To: Clients and Friends

An UPDATE Regarding The Recently Issued  
Final Residency Regulations (the "Regulations")

On April 24, 1992, the Internal Revenue Service (the "Service") issued the Regulations in connection with the 1984 statutory definition of a U.S. income tax resident alien ("RA"). Although the Service had issued proposed regulations on September 9, 1987, such regulations, until recently finalized, were not binding, and with the RA statutory definition generally effective January 1, 1985, it had been difficult for both taxpayers and advisors to interpret the many complex statutory provisions.

As was the case with the proposed regulations, the Regulations are divided into nine (9) specific categories and this UPDATE highlights the key features. If you have not previously received a copy of our August 1, 1984 letter summarizing the then new RA definition (the "Letter") and would like a copy, please let us know.

1. RA Definition.

Because lawful permanent resident alien status for immigration purposes (so-called "Green Card" status) carries with it automatic RA status thus resulting in worldwide income taxation and significant disclosure and filing requirements, numerous aliens have abandoned (or wish to abandon) such status. If an alien does not hold a Green Card and does not otherwise constitute a RA under the statutory Substantial Presence Test (the "SPT"), such alien would be a U.S. income tax nonresident alien ("NRA") subject to a much more favorable and limited U.S. tax regime. Generally speaking, if an alien without a Green Card is physically present in the U.S. for 31 days or more during the current year (e.g., 1992), and when adding thereto one-third (1/3) and one-sixth (1/6) of the days of presence in the U.S. for the two prior years, respectively (e.g., 1/3 x 1991 days and 1/6 x 1990 days), the alien will satisfy the SPT if the sum obtained is equal to 183 days or more. Further details and exceptions are outlined in the Letter, but are not addressed herein.

To guide those aliens wishing to abandon the Green Card status, the Regulations provide that abandonment will occur if the alien files a letter (enclosing his or her Alien Registration Receipt Card, INS Form I-151 or Form I-551) with the INS or consular office stating therein his or her intent to abandon such status. In addition, the term "United States" which may be relevant when determining the number of days an alien is present in the U.S. for SPT purposes, has been amended to exclude the air space over the United States.

2. Closer Connection/Tax Home Exception.

For many presumed RAs meeting the SPT (but not actually present in the U.S. for 183 days or more during the taxable year), one of the primary exceptions is the Closer Connection/Tax Home exception (the "CCTH Exception"). In essence, if the alien can prove that his or her "closer connections" are to a foreign country that constitutes his or her "tax home," the alien can rebut the SPT/RA presumption. The Regulations clarify that an individual's tax home will be his or her regular place of abode if such individual is not engaged in a trade or business as that term is used in connection with the deductibility of certain expenses incurred when a U.S. taxpayer is away from home on business. Furthermore, the Regulations permit certain individuals (such as a transient executive) to change his or her tax home and closer connections from one foreign country to another foreign country once within a single calendar year.

Next, a taxpayer's "closer connections" are based on a facts and circumstances test and the determination thereof is far from clear. The Regulations have been modified to include as an additional factor, the location where the alien conducts business activities (other than those that constitute the individual's tax home).

For a discussion of the new and mandatory CCTH Exception filing requirements, see item 8. below.

3. Days of Presence in the U.S. That Are Excluded For Purposes of the SPT.

The Regulations clarify that any day the alien is physically present in the U.S. is excluded when applying the SPT if on such day, the alien is either an "exempt individual," physically unable to leave because of a medical condition, in transit between two points outside the U.S., or a commuter. An "exempt individual" includes certain foreign governmental related individuals, teachers or trainees, students, and professional athletes. The specific details relating to these exclusions are found in the Letter. In addition, the Regulations further restrict the availability of certain exclusion opportunities, and any alien planning to rely on any exclusion must carefully consider the Regulations.

In connection with the Medical Condition Exception (the "MC Exception") which many aliens are likely to rely upon, the Regulations are particularly restrictive. The MC Exception hinges on the involuntary nature of the alien's stay meaning he or she would leave the U.S., but is

unable to do so because of the medical condition. The Regulations provide that if the alien did not intend to leave, he or she is not staying involuntarily in the U.S. (i.e., the alien would have been in the U.S. regardless of the medical condition). In rejecting suggestions from practitioners that this intent test be eliminated, the Service responded that to do so would significantly increase the number of individuals qualifying for the MC Exception and would be contrary to what the Service perceives to be Congressional intent. The Regulations then provide guidance on how aliens may prove intent. One factor, for instance, is whether the individual leaves the U.S. within a reasonable period of time (i.e., time to make arrangements to leave) after becoming physically able to leave.

Next, the Service rejected suggestions that the term "pre-existing medical condition" include only medical conditions or problems of which the alien was aware and that required treatment before the alien entered the United States. In other words, it would appear under the Regulations that if an alien had, for example, a heart problem or heart surgery many years earlier, had fully recovered and had no problems since, and was present in the U.S. when a problem relating thereto were to once again arise, the condition would constitute a pre-existing condition not originally arising in the U.S. and would thus not entitle the alien to the benefit of the MC Exception. This rather harsh example will likely have an adverse effect on many aliens having similar facts. In the example in the Regulations, an alien enters the U.S. on a given day and has confirmed travel arrangements to leave on a later date. The Service concludes that if a medical condition were to arise in the interim, the days prior to the confirmed departure date would not qualify because the alien's intention was to remain in the U.S. for that period in any event.

Furthermore, the Regulations liberalize the availability of the commuter exception for aliens from Mexico or Canada who commute to employment in the United States.

#### 4. Residency Time Periods.

In connection with an alien's residency termination date, which date is important when his or her status converts back to that of an NRA, the Regulations clarify that the alien must also maintain a tax home in the foreign country to which he or she has a closer connection, after the U.S. RA termination. This clarification will also apply to the 10-day de minimis presence exception described in the Letter.

Next, the Regulations clarify the rules permitting certain qualifying aliens to make a Special First Year Election (the "Special Election") to be treated as an RA. The Special Election will generally be made in situations where RA status will prove favorable. For instance, the Special Election will permit the alien to generate certain non-U.S. trade or business deductions (e.g., home mortgage interest), that would not otherwise be available to an NRA. It will also permit, where relevant, the filing of a joint return, the use of the standard deduction and the use of multiple personal exemptions. Of course, any alien considering the Special Election should first carefully compare the U.S. income tax consequences of RA versus NRA taxation to make certain that the benefits resulting therefrom are not outweighed by the worldwide income taxation and global disclosure requirements that accompany RA status.

5. Coordination With the IRC § 877 Expatriation Income Tax Rules.

The U.S. tax law has for many years included a special provision which in essence is intended to tax an individual who has expatriated (i.e., given up his or her U.S. citizenship) for tax avoidance purposes in a manner that may be more onerous than that otherwise applicable to a NRA. For instance, under the normal U.S. income tax rules, the gain from the sale of shares in a U.S. corporation which does not otherwise constitute a U.S. real property interest, would be income tax free to an NRA. However, if the NRA had expatriated within a 10-year period for tax avoidance purposes (which presumption is difficult to overcome), a special rule would subject such NRA expatriate to U.S. taxation on such gain. This same special expatriation provision is made applicable to aliens who have been RAs for 3 consecutive years (the "initial period"), and who then become NRAs for a period of less than 3 consecutive calendar years, and subsequently become RAs again before the close of the third calendar year beginning after the initial period. In response to an objection to the proposed regulation, the Regulations are slightly more liberal in that the expatriation rules are not applied unless the alien was a RA for at least 183 days in each of the 3 consecutive years of the initial period. Also, the Service rejected a suggestion that a tax avoidance motive be a factor during the intervening period and concluded instead that the expatriation provision automatically applies if the above requirements are met.

6. Taxable Year.

The Regulations provide that an alien who has adopted a fiscal year as his or her taxable year in a foreign country prior to the period for which he or she is subject to RA tax may adopt, without requesting a change in accounting period, the calendar year for U.S. income tax purposes.

7. Coordination With Income Tax Treaties.

The Regulations clarify that if an alien is a resident of both the U.S. and a foreign country with which the U.S. has an income tax treaty (a "Dual Resident Taxpayer"), he or she can elect to compute his or her U.S. income tax either as a NRA or RA; however, such alien will be treated as a RA for all other U.S. tax purposes. For instance, if U.S. shareholders control a foreign corporation, certain "tainted" income of such a corporation may be taxed at the U.S. shareholder level whether or not actual distributions are made. For purposes of the "control" test, a Dual Resident Taxpayer electing NRA status will be treated as a RA and this can adversely affect other U.S. shareholders. An alien who elects NRA status must compute his tax liability in full as an NRA and may not pick and choose certain benefits under a treaty while picking other RA benefits that may be available under the U.S. tax law. The Service rejected suggestions that an alien should be permitted NRA treatment solely for purposes of applying the treaty provisions under which a benefit is claimed. This conclusion is extremely important for a Dual Resident Taxpayer as many treaties, if the alien elects NRA status for U.S. income tax computational purposes, provide that the other treaty country has the exclusive right to tax certain sources of income such as income from



foreign bank accounts. If such income is not otherwise subject to tax in the Dual Resident Taxpayer's treaty country of residence, significant income tax savings may result.

Furthermore, the Regulations refer to newly proposed regulations, which if finalized, would permit Dual Resident Taxpayers electing NRA status to be treated as an RA shareholder of a so-called "S" corporation. This method of taxation permits a flow-through of the corporation's income or loss directly to the shareholders so as to avoid a corporate income tax. To obtain this benefit, certain elections and procedures will have to be followed which in essence assure the Service that no income tax avoidance will result.

Next, the Regulations confirm that if an alien claims NRA tax status as a Dual Resident Taxpayer, he or she must file a U.S. income tax return as a NRA on Form 1040NR on or before the date prescribed by law (including extensions). The Form 1040NR is filed with the Internal Revenue Service Center, Philadelphia, PA, 19255. The alien must attach to that return a statement in the form required by the Regulations setting forth therein the heading: "TREATY-BASED RETURN POSITION DISCLOSURE UNDER § 301.7701(b)-7(b) AND SECTION 6114." The statement must indicate that the alien is claiming a treaty benefit as a NRA and must include: the facts relied upon to support such position, the nature and approximate amount of income, and the specific treaty provision for which a benefit is being claimed.

Unfortunately, the Regulations clearly state that the filing of a Form 1040NR by a lawful permanent resident ("Green Card" holder) may affect the determination by the Immigration & Naturalization Service as to whether the individual qualifies to maintain his or her residency permit. Thus, any Dual Resident Taxpayer electing to compute his or her U.S. income tax as a NRA may be jeopardizing his or her right to U.S. permanent resident status for immigration purposes.

#### 8. Procedural Rules.

Of extreme importance are the filing requirements, for instance, in connection with an alien claiming the CCTH Exception. The Regulations provide that, even where the alien believes that he or she is entitled to the CCTH Exception and need not file a Form 1040 as a RA, nor a Form 1040NR as a NRA if the alien has no U.S. trade or business and no U.S. source fixed or determinable annual or periodical gains, profits, and income, a statement (the "Statement") must be filed with the Internal Revenue Service Center, Philadelphia, PA, 19255, in any event. If a return is required, the Statement must be attached thereto. The Service rejected objections to the filing of the Statement in such a case and based its rejection on the premise that in the absence of the Statement being filed, the statute would in effect be unenforceable as to the alien's claiming the benefit of the CCTH Exception. The Regulations further clarify that the Statement may be signed and filed for the alien by his or her agent in accordance with the usual agency rules applied by the Service.

The Regulation also confirms that a similar statement must be filed by any alien claiming a benefit as an exempt individual, under the MC Exception or pursuant to certain specific rules relating to the RA starting and/or termination dates. In connection with the Statement for an alien claiming the CCTH Exception, significant data must be included to provide the Service with sufficient assurance that the exception is in fact available. A review of the required information indicates that it may be "extremely uncomfortable" for many aliens who will likely rely on the CCTH Exception, especially noting the mandatory nature of this requirement. In connection with the Statement required by aliens claiming benefits as exempt individuals or under the MC Exception, relevant proof will also be required. In those situations where the final outcome leaves room for "interpretation," such claimants may be equally uncomfortable.

The penalty for failure to timely file the Statement is SEVERE. The alien will not be eligible for the CCTH Exception, will be required to include all days of presence in the U.S. for purposes of the SPT and will not benefit from other favorable rules dealing with the RA starting and termination dates. It appears from the Regulations that foreign government-related individuals are not required to file the Statement, and while a teacher, trainee or student is required to file, there is no penalty for their failure to do so. With regard to the penalty (where applicable) and in response to comments, an exception to the penalty is provided if the alien can show by clear and convincing evidence that he or she took reasonable actions to become aware of the filing requirement and significant affirmative steps to comply with those requirements. Needless to say, it might be extremely difficult for any alien to benefit from this exception to the penalty.

In an effort to make certain that an alien does not intentionally fail to timely file the Statement (e.g., in a situation where RA status may prove more favorable to the alien) notwithstanding the fact that an exception could in fact be claimed, the Regulations provide that the Service may disregard the alien's failure to file in determining the alien's days of presence in the United States.

9. Effective Dates.

The Dual Resident Taxpayer filing requirements apply to taxable years beginning after December 31, 1991, and consistent with the original proposed regulations, the procedural rules outlined in item 8. above (i.e., the Statements) apply to taxable years beginning after December 31, 1991. Thus, calendar year 1992 will pose a formidable test for any alien who will have to rely on one of the various exceptions. Also, although the procedural rules do not apply for the period January 1, 1985 through December 31, 1991, during which the RA definition was in effect, the substantive RA rules summarized in the Letter apply during that period. It is possible that the new procedural rules and filing deadlines could result in audits of aliens who may not have filed or who incorrectly filed during the period January 1, 1985 through December 31, 1991.

\* \* \*

July 6, 1992

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We realize that this UPDATE is rather lengthy but please understand that we have attempted to summarize approximately twenty pages of detailed final regulations by highlighting key modifications or clarifications to the proposed regulations and to the Letter. Because the content herein may be extremely important to you, your clients, or your friends, we urge you to contact us should you require any professional assistance. It should further be remembered that it is generally more beneficial to file a timely U.S. income tax return (or a Statement) where required before the Service requests one. In the absence of doing so, the Service is likely to take a more aggressive position upon audit.

Very truly yours,

PACKMAN, NEUWAHL & ROSENBERG  
MICHAEL ROSENBERG

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PACKMAN, NEUWAHL & ROSENBERG

### **A.3. Overview of Certain Important Concepts**

## **Overview of Certain Important Concepts**

### **Section 911 Exclusion: In General**

- ♦ Qualified individuals may elect to exclude both their foreign earned income and a housing cost amount from gross income, subject to certain limitations.
- ♦ The sum of the amounts that a qualified individual excludes as foreign earned income and as foreign housing costs may not exceed the individual's foreign earned income for the taxable year.
- ♦ The maximum amount of foreign earned income that an individual may exclude is currently limited to \$85,700 annually (subject to an annual inflation adjustment).
- ♦ Be aware of new limitations (floor and ceiling) applicable to the housing exclusion and Notice 2006-87 relating to increased amounts for particular countries / cities.
- ♦ Consider Forms 2555 and 2555EZ.

### **Foreign Tax Credit: In General**

- ♦ U.S. citizens, income tax residents and domestic corporations are taxed on their worldwide income. In order to prevent the double taxation that could result on income derived from foreign sources, the United States allows a credit for foreign taxes paid or accrued.
- ♦ Consider Form 1116.

### **Foreign Tax Credit: Limitation**

- ♦ Section 904 provides a limitation on the amount of foreign tax credit (“FTC”) that can be claimed. The purpose of the limitation is to prevent FTCs from offsetting U.S. tax on U.S. source income. Because the FTC is designed to ensure that the United States cedes taxing jurisdiction to foreign governments only over income earned abroad, the limitation is based on the amount of foreign source income earned. The limitation is as follows:

$$\text{U.S. Tax (Pre-Credit)} \quad \times \quad \frac{\text{Foreign Source Taxable Income}}{\text{Worldwide Taxable Income}}$$

- ♦ Other limitations (for example, income by baskets) may apply as well.

### **Foreign Tax Credit: Indirect Credit**

- ♦ In certain circumstances, a U.S. corporate shareholder of a foreign corporation (an “FC”) is entitled to a foreign tax credit for foreign taxes paid by the foreign corporations that are “deemed paid” by the shareholder.
- ♦ This indirect credit is available with respect to dividends (including §1248 dividends) and subpart F inclusions to U.S. corporate shareholders that own 10% or more of the voting stock of the FC.
- ♦ U.S. shareholders that are entitled to an indirect foreign tax credit must include the amount of the indirect credit in their income (the “gross-up”).



**B.1. Inbound Flowchart of Key Inbound  
Income Tax Concepts, Tax Rules  
and Citations**

## Notes Relating to Inbound Flowchart

### 1- Taxpayer Classification.

The status of the taxpayer as a U.S. versus a foreign person is of primary importance. For individuals, U.S. income tax resident alien ("RA") status carries with it worldwide income taxation plus significant disclosure requirements. The U.S. income taxation of an NRA is limited in accordance with the rules that follow.

In general, an alien will become an RA if the alien possesses a U.S. immigration and naturalization so-called "green card" (i.e., permanent resident alien immigration status) or the alien meets the Substantial Presence Test ("SPT"). The SPT is met (subject to statutory exceptions) if the alien spends at least 31 days in the U.S. in the current year (e.g., 2004) and the total of the current year's days plus one-third ( $1/3$ ) of the days spent in the U.S. in the prior year (2003) plus one-sixth ( $1/6$ ) of the days spent in the U.S. in the second prior year (2002) totals 183 days or more.

Two major exceptions to the SPT are the Closer Connection Tax Home and the Medical Condition exceptions. To use the Closer Connection Tax Home exception, the alien must: (a) have been present in the U.S. for less than 183 days during the year in question (e.g., 2004); (b) not have applied for an adjustment in immigration status to that of a green card permanent resident; and (c) present significant data to show that based on the "facts and circumstances," the alien has closer ties to a tax home abroad. The Medical Condition exception will apply only if the condition arose while the alien is in the U.S. and it is limited to that period of time until the alien is able to leave the United States. The regulations are restrictive so as to avoid abuses. Other exceptions to the SPT apply for exempt individuals such as foreign government related employees, students, teachers or trainees.

For most aliens wishing to avoid RA status, a safe harbor rule is to limit days in the U.S. to no more than 121 days on an annual basis. In connection with the RA definition, numerous transitional rules apply as well as other special provisions which can alter the general rules. Furthermore, any alien who meets the SPT and wishes to assert NRA status as a result of an exception may be required to satisfy certain timely reporting requirements (i.e., Forms 8840 or 8843) or otherwise lose the availability of an exception.

Aside from the RA/NRA determination, it is important to classify an NRA's entities for U.S. income tax purposes. For example, if an NRA's foreign corporation is treated for U.S. income tax purposes as a partnership, the U.S. income tax consequences may vary greatly. Effective January 1, 1997, the so-called "Check the Box" regulations apply to determine the status of certain business entities as corporation versus pass-through entities. The Check the Box regulations mark a significant and important change with respect to entity classification.

## 2, 13- Engaged in a U.S. Trade or Business or Not.

It is important to determine whether or not the NRA is or is not engaged in a U.S. trade or business ("ETB") as the U.S. income taxation differs depending upon such status. Generally, an NRA's activities in the U.S. will not cause the NRA to be ETB where such activities are passive in nature versus active, considerable, continuous and regular. Where the NRA's activity is considerable, continuous and regular, it will likely cause the NRA to be ETB. However, as an inducement for NRAs to invest and trade in U.S. stocks, securities and commodities for their own account, the number of transactions is generally not relevant. Such is the case even if the trading for the taxpayer's own account occurs through one or more discretionary agents or employees. However, the exception to ETB status does not apply if the NRA has dealer status. Furthermore, where trading occurs for others through a resident broker, commission agent, custodian or other independent agent, such activity shall not constitute ETB so long as at no time during the taxable year the taxpayer has a U.S. office or fixed place of business in order to effectuate such transactions. In addition, except for a de minimis rule which generally does not apply, the performance of services by an NRA in the U.S. will cause the NRA to be ETB.

## 3- Foreign Source Income.

Where an NRA who is not ETB generates foreign source income ("FSI"), or an NRA who is ETB generates FSI that is not effectively connected to such U.S. trade or business (see 14-19 below), there is insufficient nexus with the U.S. and thus no U.S. income tax will result. It is important that the NRA become familiar with the complex "U.S. versus foreign" source rules as certain of those rules are not as logical as one might otherwise expect.

## 4- Capital Gains Source Rules.

Many NRAs who are not ETB realize capital gains from sales or dispositions of personal property. For such NRAs, the personal property capital gain source rules follow the residence of the seller (i.e., if the seller is an NRA, the source will be foreign and if the seller is an RA, the source will be U.S.). Non-ETB foreign source capital gain is not subject to U.S. income tax and the favorable rule even applies in situations where the gain is attributable to shares of stock in a domestic corporation.

However, a special exception to the personal property capital gain source rule applies if the NRA had a "tax home" (generally thought to be such person's place of business) in the U.S. during the year of such sale or disposition. The special exception abandons the "residence" rule and sources the capital gain as U.S. source. A U.S. tax home for an NRA is rare but it can result. The special exception can be detrimental if the alien spends more than 182 days in the U.S. during the year of such gain as the U.S. source capital gain would then be subject to U.S. income tax at the flat thirty percent (30%) or lower treaty rate.

Because of the various exceptions applicable when determining RA versus NRA status, it is possible for an alien to be an NRA and still spend more than 182 days in the U.S. during a calendar year. If such an alien also has a U.S. tax home (e.g., a diplomat), the alien will be treated as “resident” solely for purposes of applying the personal property capital gain source rule and the result could be taxable U.S. source capital gains.

5- U.S. Source Income.

To determine source, the income must first be characterized as interest, dividends, rents, royalties, wages, capital gains, alimony, consulting fees, commissions, and so on. The U.S. versus foreign source determination is then based on rules which are generally logical (e.g., rent paid to use U.S. situated property is U.S. source while rent paid to use foreign situated property is foreign source). However, certain exceptions disrupt such logic so the source rules must be carefully examined.

6- Fixed or Determinable Annual or Periodical Gains, Profits and Income (“FDAPI”).

As mentioned in 5. above, common illustrations of FDAPI include interest, dividends, rents and wages. The category is broad enough to even include items such as alimony where the payor is a U.S. person. It is important to recognize that certain amounts constitute FDAPI even if not paid on a constant periodic basis so long as the type of income is normally associated with “regular” payments (e.g., dividends are FDAPI even if a corporation does not pay any for several years due to lack of profitability).

7- Real Estate Rental Net Election.

A special real estate net election is available for rental FDAPI which provides the NRA with the opportunity to utilize certain expenses, deductions, and credits as if the rental caused the NRA to be ETB. Oftentimes, this election permits the NRA to reduce or eliminate the otherwise thirty percent (30%) flat tax or lower treaty rate.

8- Tax Exemptions.

Next, as an inducement for NRAs to make certain passive investments in the U.S., exemptions from U.S. tax apply for interest on certain banking and similar deposits, dividends from certain domestic corporations which generate the bulk of their income from foreign business activities, and interest from certain portfolio investments if specific statutory and regulatory requirements are satisfied.

9- The Thirty Percent (30%) Flat Tax.

As previously noted, U.S. source FDAPI (unless the rental net election is made) is subject to a flat thirty percent (30%) or lower treaty rate tax with no benefit for expenses, deductions, and credits. Also, the payor of such income must withhold the tax and submit it to the Internal Revenue Service (the “Service”).

10, 11, 12- Capital Gains.

As stated in 4. above, if the NRA does not have a tax home in the U.S., personal property capital gains will be tax-free even if the gains are attributable to the shares of stock in a domestic corporation and whether or not the NRA spends more than 182 days in the U.S. during the taxable year of such capital gain. If the personal property capital gain is that of a foreign corporation which is not ETB, the gain will be tax-free. Special rules discussed in 28. tax gains from dispositions of U.S. real property interests.

14, 15- Effectively Connected Income or Not.

Where the NRA is ETB, it is important to determine whether or not U.S. source FDAPI or capital gains is or is not effectively connected income ("ECI"). If such income is not ECI, it is taxed according to the rules outlined above in 2. through 12. If such income is ECI, it will be taxed on a net basis (i.e., expenses, deductions and credits may be available) in accordance with the rules outlined in 16. through 24. below. Also, a condition for any foreign person wishing to obtain the benefits of ECI net taxation (where applicable) is the timely satisfaction of specific reporting requirements.

16, 17, 18,  
and 19- Foreign Source Effectively Connected Income.

FSI will never be subject to U.S. income tax if it is not ECI. However, if the NRA is ETB, FSI may be ECI and thus subject to U.S. income tax at net rates [i.e., business income is reduced by relevant business expenses and deductions and the resulting business net income is taxed, subject to certain possible credits, at the applicable progressive rates which for an NRA can reach as high as thirty-five percent (35%) and for a foreign corporation can reach as high as thirty-five percent (35%)].

In order for FSI to be ECI, it must be attributable to a U.S. fixed place of business of the foreign taxpayer and it must be of a certain type. The specific rules are intended to make certain that foreign persons cannot gain an undue advantage versus domestic taxpayers by utilizing their foreign status and the "sourcing" rules so as to generate business income with the hope of avoiding U.S. tax by sourcing such income as foreign. The types of FSI which can become ECI include: rents and royalties from the business of licensing intangibles located outside the U.S., dividends and interest generated by a financial institution or financial entity, and inventory sales.

20, 21, 22,  
23, 24- U.S. Source Effectively Connected Income.

Where the NRA is ETB and has U.S. source FDAPI or capital gains, two tests commonly referred to as the Asset Use Test and the Business Activities Test must be reviewed to determine whether or not such U.S. source FDAPI or capital gain is or is not ECI. These tests measure whether or not U.S. source FDAPI or capital gain is so closely related to the U.S. trade or business so as to be taxed at net rates as ECI. An example of how U.S. source FDAPI such as U.S. bank deposit interest (which as noted in 8. above is generally exempt from tax) may become ECI,

would be for an NRA who is ETB to secure his business related loans with his U.S. bank deposit. As ECI, the U.S. bank deposit interest would be subject to net taxation. If neither test is met, U.S. source FDAPI or capital gain will be subject to tax under the provisions in 4. through 12. above. Also, income from certain deferred payments or certain business related property transactions will constitute ECI under rules intended to preclude foreign persons from “arranging” certain transactions so as to avoid tax on income that would otherwise have been ECI in the absence of the rearrangement (e.g., an NRA who is ETB defers receiving payments until he is no longer ETB, or he sells business property when he is no longer ETB).

25- The Old Force of Attraction Rule.

If an NRA is ETB and has U.S. source income other than FDAPI or personal property capital gains, such income will automatically become ECI. This force of attraction rule rarely applies but the results can be surprising. For instance, if an NRA art dealer is on a two year assignment working in the U.S. as an employee providing personal services for an art museum, thus giving such person ETB status, and he sells a coin from his inventory at a profit, such profit (which will not constitute capital gain due to the NRA’s dealer status), will become ECI.

26- The Branch Profits Tax.

Any NRA that invests in the U.S. through an FC should know about the onerous branch profits tax (“BPT”). The BPT can result in any given year when an FC has current year’s earnings and profits notwithstanding significant loss carryovers may be available to offset the regular corporation income tax. The rules force the FC to reinvest such earnings and profits in the U.S. trade or business consistent with detailed regulations. To the extent such reinvestment regulations are not satisfied, a thirty percent (30%) or lower treaty rate tax is imposed as if the FC had made a dividend of such current year’s earnings and profits to its foreign shareholder(s). If appropriate regulatory rules are followed, many FCs can avoid the BPT by taking advantage of the so-called “Complete Termination Rule.”

27- Investing or Doing Business Through a Partnership.

If an NRA or FC is a partner in a partnership that is ETB, each foreign partner is deemed to be ETB and is subject to net taxation on its attributable ECI. Such foreign partners must also file timely returns to preserve their pro-rata business related deductions and credits. Furthermore, certain persons associated with the partnership must deduct and withhold the tax attributable to each foreign partner’s ECI at the highest applicable potential rates for each foreign partner [e.g., thirty-five percent (35%) for an NRA and thirty-five percent (35%) for an FC, etc.]. The amount to be withheld is calculated on a quarterly basis somewhat in the nature of an estimated tax payment. The withholding can result even in situations where the foreign partner has previously filed U.S. income tax returns establishing loss carryovers from the partnership’s operations.

28- Dispositions of U.S. Real Property Interests.

Any gain or loss of an NRA from the disposition of a U.S. real property interest ("USRPI") shall be subject to U.S. income tax as if the taxpayer were ETB and as if such gain or loss were ECI. This tax not only applies where the foreign person disposes of USRPIs like land and buildings, but also where the asset disposed of is the shares of stock in a certain type of domestic corporation. If the fair market value of a domestic corporation's USRPIs equals or exceeds fifty percent (50%) of the fair market value of its USRPIs plus its interest in real property located outside the U.S. plus any other of its assets which are used or held for use in a trade or business, the domestic corporation constitutes a U.S. real property holding corporation which is itself a USRPI. To assure that foreign persons do not dispose of USRPIs without paying the appropriate U.S. income tax, an intricate withholding tax regime applies and the transferee must generally withhold ten percent (10%) of the foreign transferor's amount realized.

29- Treaty Benefits.

Notwithstanding all of the rules outlined above, if a tax treaty exists between the United States and the country of the NRA or any other foreign investor, the tax treaty must be reviewed to determine if any benefits are available thereunder. In those situations where a treaty benefit is available, various disclosure and reporting requirements must be satisfied. Also, the Check the Box regulations and the possible denial of treaty benefits to certain hybrid entities or the investors therein, have added complexity to the treaty benefit rules.

30- Expatriation.

In August of 1996, substantial revisions were made involving expatriates, which provisions, in their prior form, always applied to U.S. citizens who renounce such citizenship and convert to NRA status. The revised provisions also include as an expatriate a lawful permanent resident alien so-called "Green Card" holder if such person held such status for 8 of the prior 15 years. The changes "tightened" the tax avoidance/tax minimization opportunities for expatriates and in situations involving Green Card holders where the Green Card has been held for less than 8 of the prior 15 years, and the individual has not received comprehensive tax advice with respect to the impact of such Green Card status, substantial planning opportunities may still be available for any such person willing to renounce the Green Card and convert to NRA status.

April 20, 2006

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**EXPLANATION OF ABBREVIATIONS  
TO INBOUND INCOME TAX FLOWCHART**

BLIT.....	Branch Level Interest Tax
BPT.....	Branch Profits Tax
ECI.....	Effectively Connected Income
ETB.....	Engaged in a U.S. Trade or Business
FC.....	Foreign Corporation
FDAPL.....	Fixed or Determinable Annual or Periodical Gains, Profits and Income
FSI.....	Foreign Source Income
GI.....	Gross Income
N/A.....	Not Applicable
NRA.....	Nonresident Alien
P.E. ....	Permanent Establishment
R.E. ....	Real Estate
RR.....	Revenue Ruling
TY.....	Taxable Year
US.....	United States
USSI.....	United States Source Income

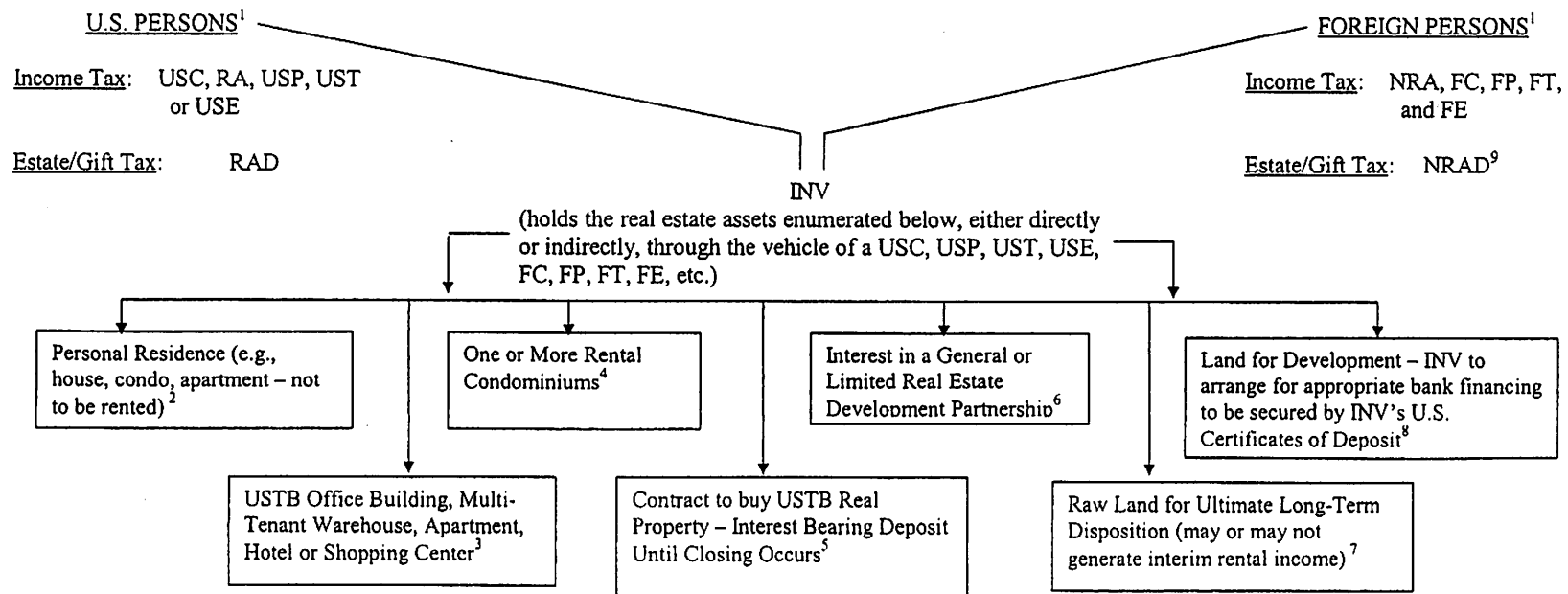
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## **B.2. A Primer for the Professional When Advising the Foreign Investor**

A Primer for the Professional When  
Advising the Foreign Investor

NOTE: The objective of this presentation is to introduce the attendee to many of the relevant U.S. tax considerations associated with foreigners investing in U.S. real estate. This handout will be supplemented with numerous illustrations during the presentation, which illustrations should prove useful; however, the subject matter is extremely complex and no specific recommendations should be made based on this Primer without the advice of appropriate tax counsel.



Footnotes With Relevant Explanations

[All Section (§) References are to the  
Internal Revenue Code of 1986, as amended]

- 1- A significant determination is whether or not INV is a U.S. versus a foreign person. For U.S. income tax purposes, U.S. persons are generally taxed on worldwide income while foreign persons are only taxed by the U.S. on certain types of income [i.e., U.S. source FDAPI (e.g., rents and interest) and ECI]. In the case of a non-U.S. citizen, resident versus nonresident status is determined by either the green card test or the 3-year weighted average substantial presence test. Numerous and oftentimes misunderstood limitations, exceptions, and procedural requirements apply, and all should be carefully considered.

For U.S. estate and gift tax purposes, residents are subjected to tax on worldwide assets and worldwide gifts, subject to the normal exemptions, exclusions and deductions. Nonresidents are subject to U.S. estate tax only with regard to U.S. situs assets and to U.S. gift tax with regard to gifts of U.S. situs tangible property. Furthermore, the availability of deductions, exemptions, and certain credits are more limited for nonresidents than for residents. It is important to note that "residence" for U.S. estate and gift tax purposes hinges on a facts and circumstances "domiciliary" test, and is not determined by applying the U.S. income tax test outlined in the preceding paragraph. Also, many aliens are oftentimes RAs for U.S. income tax purposes, but NRADs for U.S. estate and/or gift tax purposes.

With regard to entities such as corporations, partnerships, trusts and estates, the appropriate U.S. tax principles must be examined to determine if a foreign entity's classification under foreign law will in fact result in similar classification of that entity for U.S. tax purposes. Effective January 1, 1997, an eligible entity can file the Form 8832 and "Check the Box" as to its status for U.S. tax purposes. However, certain foreign entities are listed in the regulations as "per se" corporations and as such, are not eligible entities and thus cannot elect their status for U.S. tax purposes.

- 2- If this asset is ultimately disposed of while owned by a foreign person, the transferee will be required to withhold under § 1445(a) - generally 10% of the amount realized. Under § 1445(b), various exemptions from withholding may apply (i.e., if the transferor furnishes a non-foreign affidavit; if the asset disposed of is shares in a non-publicly traded domestic corporation and a non-USRPI affidavit is supplied; if a qualifying statement/withholding certificate is applied for and received; if the disposition involves a residence where the amount realized does not exceed \$300,000 in the case of an individual transferee; and if the asset is stock regularly traded on an established securities market).
- 3- Assuming these investments are active in nature and do generate rental income from operations, U.S. income tax consequences will result from the operations of the investment. Most income will be subject to U.S. income tax on a net basis (i.e., appropriate deductions, expenses and credits will be allowed), and the requisite U.S. tax filings must be made. In addition, when the property is ultimately disposed of by a foreign person, § 1445 withholding, as outlined in footnote 2 above, must be considered. Agents (which are broadly defined and clearly can include the real estate attorney) of either the transferor or the transferee must notify the transferee if such agent has actual knowledge that a non-foreign affidavit is false. Failure on the part of the agent to do so shall cause such agent to be responsible for the tax that should have been deducted and withheld, but liability hereunder is limited to the amount of the compensation derived from the transaction by the agent. However, if a person merely receives and disburses any portion of the consideration and/or records documents in connection with the transaction, such person shall not be treated as an agent of the transferor or transferee. More complex § 1445

withholding rules must be analyzed in situations where a USP, UST, or USE disposes of a USRPI, where an FC distributes a USRPI, where a USC distributes a USRPI to a foreign shareholder, where any partnership, trust or estate (whether domestic or foreign) distributes a USRPI to a foreign person, and where the disposition involves an interest in a partnership, trust, or estate.

- 4- In a situation where the real estate investment does not involve active, continuous and regular activity, a determination must be made as to whether or not the investment rises to the status of a USTB. If so, the U.S. income tax consequences are similar to those discussed in footnote 3 above. If not, INV may not be entitled to net taxation, but instead might be subject to a flat 30% withholding tax (possibly at a lesser rate if INV is from a treaty country and the treaty provides a rate reduction) on the gross rentals (which amount can include owner type expenses paid for by the tenant pursuant to the terms of any written or oral lease (e.g., real property taxes, mortgage interest, insurance, maintenance, etc.). If the real estate professional is handling the rental accounts for INV, such professional may be responsible for withholding of the tax under §§ 1441 and 1442. Failure to withhold can result in liability to such professional should INV not pay the appropriate tax due. In any situation where INV asserts that no withholding is required because the investment constitutes a USTB subject to net taxation, the professional should obtain a Form 4224 (effective January 1, 2000, to become new Form W-8ECI). In any situation where INV claims a rate reduction from the flat tax, any professional handling the rental accounts should request a Form 1001 (effective January 1, 2000, to become new Form W-8BEN) or equivalent thereof. Other relevant considerations (e.g., use of the net election, use of net operating carryforwards, and the filing of an appropriate U.S. Income Tax Return to benefit from expenses, deductions and credits) are found in footnotes 3 and 7.
- 5- Oftentimes, the real estate acquisition contract calls for INV to put up a deposit which is placed in an interest bearing bank account, such interest payable to the buyer at closing unless the interest is forfeited as part of a default by the buyer. Generally, a U.S. certificate of deposit or certain other U.S. interest bearing obligations generate tax-free interest income to a foreign person, but if such interest income is ECI with the foreign person's USTB, such interest becomes subject to tax on a net basis. Until the closing occurs, the foreign person may not have a USTB and if the interest income would otherwise be free of U.S. income tax, it should not inadvertently be included in USTB income generated from operating the property until the closing occurs.
- 6- If INV, a foreign person, is a partner in a partnership that is engaged in a USTB, § 875 attributes such USTB status to INV and INV thus has USTB status, thereby activating similar requirements to those discussed in footnote 3 above. However, additional withholding burdens are imposed under § 1446 which in essence requires that a partnership having ECI and any foreign partner, withhold the U.S. tax allocable to such foreign partners' allocable partnership ECI. Taking into account the possible withholding consequences associated with foreign persons investing in U.S. real estate, especially where U.S. persons are also involved, it is imperative that the partnership agreement address the many issues associated with the withholding issues and how the professional fees and costs associated with complying therewith will be handled. As an aside, many foreigners can obtain tax-free interest income without an adverse U.S. estate tax risk, and with minimal U.S. filing requirements, by making loans that qualify for the §§ 871(h) and/or 881(c) portfolio indebtedness exemption. If properly structured, some strong arguments can be made that a partnership interest held by an NRAD at the time of death may not be subject to U.S. estate tax, but the answer is far from clear.
- 7- If the land is not income-producing, the consequences are similar to those discussed in footnote 2. However, if the land is income-producing (e.g., it is net leased to a farmer, or as parking space to one tenant), such activity may not constitute a USTB and in order to reduce the adverse effect of the flat 30% withholding tax, a special net election might have to be made under § 871(d). Such election permits allocable deductions, expenses, credits, etc., thus creating "net" taxation. Although the IRS originally argued otherwise,

if the net election creates a net operating loss carryover, such a carryover should be available to offset income and/or gains in future years. The situation is more significant with depreciable property such as the facts in footnote 4 above, assuming the rental of one condominium does not give rise to a USTB. If INV is a foreign corporation, a similar election can be made under § 882(d). Another concern is how the foreign person investing in raw land, especially if non-income producing, benefits from expenses such as real property taxes and mortgage interest which in the case of U.S. investors are generally capitalized. In general, § 266 permits capitalization of certain expenses that are otherwise deductible, but in the case of a foreign investor having no USTB, no expenses would otherwise be deductible. When FIRPTA was enacted, the objective was to "equate" foreigners with U.S. persons owning real estate (i.e., to tax foreigners on gains that prior to FIRPTA were potentially tax-free), and although equity would seem to indicate that the foreign investor should be no worse off than the U.S. investor, the issue is still far from clear. To be conservative, the foreign investor should attempt to generate some rental income, a prerequisite for the net election. The net election establishes deemed USTB status and the § 266 capitalization versus deductibility choice should then be available.

Next, § 874 permits the foreign investor to benefit from expenses, deductions, credits, etc. attributable to a USTB, but such benefits are contingent upon the filing of an appropriate U.S. income tax return. The IRS has issued regulations that "forever disallow" all such benefits if the appropriate U.S. income tax return is not timely filed. Many of us have foreign investors owning one condominium that is oftentimes leased. If no tax is being withheld on the rental payments, a timely return is not filed, and the IRS eventually audits the foreign investor, the 30% flat tax plus interest and penalties would likely be assessed without the foreign investor ever having the benefit of offsetting the expenses, deductions, credits, etc. by making the § 871(d) or § 882(d) election. It is important to note that on January 26, 2006, the Tax Court held that the "timely filed requirement" of such regulation is invalid. See Swallows Holding, Ltd., 126 T.C. No. 6. Unless this case is successfully appealed by the IRS, the applicability of the "timely filed requirement" appears to have been deemed invalid.

- 8- As mentioned in footnote 5 above, if a foreign person has an interest bearing U.S. certificate of deposit which is not ECI with a USTB, such interest income is tax free. The facts herein pose a potential problem (i.e., whether or not securing a business related debt with the deposit, or entering into some type of "back-to-back" loan arrangement) might convert such interest-free income into taxable interest income. In 1993, Congress enacted a provision directing the IRS to prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the IRS determines that such recharacterization is appropriate to prevent avoidance of income tax.
- 9- In footnotes 1-8 above, significant U.S. income tax filing, withholding, and substantive provisions were introduced, but no mention was made as to the U.S. estate and gift tax consequences. If investments 2-8 were made through the vehicle of an FC, and assuming the FC was properly incorporated, structured, and maintained, INV should avoid U.S. estate tax upon his(her) untimely death, while direct ownership would result in significant U.S. estate tax and possibly costly, tedious and oftentimes "dangerous" administration aspects, especially if INV is from a country with political turmoil, foreign investment restrictions, U.S. currency restrictions, etc. A recommended structure would be for INV to hold investments 2-8 through the vehicle of one or more FCs with such FC(s) in turn being held by a UST or a FT, which trust will in essence serve as a "probate substitute" in the event of INV's untimely death. The choice as to a UST versus a FT is beyond the scope of this presentation and requires significant analysis of the facts and objectives of INV.

For U.S. gift tax purposes, investments 2, 3, 4, 7, and 8 would clearly constitute U.S. situs tangible property, thus resulting in possible U.S. gift taxation notwithstanding the donor, INV, is an NRAD. Arguments are available for investments 5 and 6 to the effect that such investments are "intangible" in nature, and thus should not result in U.S. gift tax consequences. If instead, such investments were held through one or more FCs as noted above, the gift would be shares of the company (an intangible), and no U.S. gift tax would result. Finally, changes enacted as part of TAMRA increased the potential U.S. estate and gift tax consequences for foreigners who have not planned accordingly. Also, because transfers of investments 2-8 to one or more FCs for U.S. estate and/or gift tax avoidance purposes may result in significant adverse U.S. income tax consequences if not done properly, no "knee-jerk" transaction should be entered into without first obtaining appropriate advice.

Regardless of the potential benefits of utilizing an FC to avoid or minimize potential adverse U.S. estate and gift tax consequences, there is currently no favorable corporate capital gains tax rate while a favorable 15% long-term capital gains tax rate may apply to an individual or pass-through taxpayer. Thus, before placing real estate which has appreciated or is likely to appreciate in value into an FC, it would be best to compare the potential income tax consequences with the potential estate and/or gift tax consequences. Any such analysis requires careful planning.

An additional consideration associated with using an FC to own U.S. real estate is the onerous BPT. Depending upon the specific facts, the structure may require the interposing of a USCO between the FC and the real estate investment. Furthermore, this Primer focuses primarily on the U.S. income tax consequences associated with the "more common" methods by which an NRA/NRAD may own U.S. real estate, and a more detailed analysis is required to fully understand the potential U.S. estate and gift tax avoidance and/or minimization alternatives.

## INDEX OF ABBREVIATIONS

BPT.....	Branch Profits Tax
ECI.....	Effectively Connected Income
FC.....	Foreign Corporation
FDAPI.....	Fixed or Determinable Annual or Periodical Gains, Profits and Income
FIRPTA.....	Foreign Investment in Real Property Tax Act
FP.....	Foreign Partnership
FT.....	Foreign Trust
INV.....	Investor
IRS.....	Internal Revenue Service
NRA.....	Nonresident Alien for Income Tax Purposes
NRAD.....	Nonresident Alien Decedent or Donor for Estate and Gift Tax Purposes
RA.....	Resident Alien for Income Tax Purposes
TAMRA.....	Technical & Miscellaneous Revenue Act of 1988
USC.....	U.S. Corporation
USE.....	U.S. Estate
USP.....	U.S. Partnership
USRPI.....	A U.S. Real Property Interest as Defined in § 897(c)
UST.....	U.S. Trust
USTB.....	United States Trade or Business

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**B.3. 7-Column Chart – U.S. Investment  
Alternatives for the Foreign Investor**

## U.S. Investment Alternatives for the Foreign Investor

THE FOLLOWING CHART IS A SUMMARY OF CERTAIN INVESTMENT ALTERNATIVES WITH SIGNIFICANT GENERAL ADVANTAGES AND DISADVANTAGES. THE SPECIFIC STATUTES, REGULATIONS AND OTHER RELATED AUTHORITY MUST BE EXAMINED TO DETERMINE THEIR IMPACT, IF ANY, ON THESE GENERAL RULES. THE CHART ASSUMES THAT THE USRPI (MEANING REAL ESTATE FOR PURPOSES HEREIN) IS ULTIMATELY SOLD AT A PROFIT, AND IT IS NOT EXHAUSTIVE AS OTHER INVESTMENT ALTERNATIVES AND/OR OTHER ADVANTAGES AND DISADVANTAGES MAY REQUIRE CONSIDERATION. ALSO, WHERE INV IS AN ENTITY, ASSUME THAT AN NRA OWNS OR HAS THE BENEFICIAL INTEREST IN SUCH ENTITY.

(A) INV (NRA)	(B) INV (FC)	(C) INV (FC) ↓ USCO	(D) INV (USCO)	(E) INV (LLC)	(F) INV (NRA) ↓ USP or FP	(G) INV (NRA) ↓ UST or FT
↓ USRPI	↓ USRPI	↓ USRPI	↓ USRPI	↓ USRPI	↓ USRPI	↓ USRPI
<b>Advantages:</b> Possibly lowest income tax rate 15% capital gain or 35% maximum ordinary income) if an individual and, less likely, trust or estate; in event, only one income tax.  Least complex structure.    Can pay out U.S. tax-free foreign source interest on U.S. business related debt and obtain deduction where business assets secure such debt or where debt is "booked" to a U.S. trade or business, subject to a percentage limitation.  No BPT or BLIT. See NOTE 7.	<b>Advantages:</b> 34/35% income tax rate plus state income tax, but only one tax if BPT termination rules are followed.  No U.S. estate or gift tax.  Limited legal liability.  Some anonymity.  Limited application of §1441/1442 where no E&P (e.g., from refinancing).  See NOTE 7.	<b>Advantages:</b> 34/35% income tax rate plus state income tax, but only one tax.  No U.S. estate or gift tax.  Limited legal liability.  Extra level of anonymity  No BPT or BLIT.  No §1445 FIRPTA withholding on sale.  USCO may not be subject to the accumulated earnings tax.	<b>Advantages:</b> 34/35% income tax rate plus state income tax, but only one tax.  No U.S. gift tax.  Limited legal liability.  No BPT or BLIT.  Some anonymity.  No §1445 FIRPTA withholding on sale.	<b>Advantages:</b> 35% maximum ordinary pass-through individual federal tax rate (15% capital gains rate) if classified as partnership or disregarded as an entity for federal tax purposes and only one tax.  Limited legal liability.  Arguably, no U.S. gift tax, but not clear. A real risk.  No BPT or BLIT.  Some anonymity possible if management via a manager or managers in lieu of by the members.	<b>Advantages:</b> Pass-through income tax rate and one tax.  Possibility for favorable 15% long-term capital gains rate.  If limited partnership and a limited partner, limited legal liability.  No BPT or BLIT considerations.  Arguably, no U.S. gift tax, but not clear, and maybe same if a foreign partnership.  See NOTE 7.	<b>Advantages:</b> Pass-through income tax rate and one tax.  Possibility for favorable 15% long-term capital gains rate.  No BPT BLIT considerations.  Arguably, no U.S. gift tax, but not clear. A real risk.  If a FT, can pay out U.S. tax-free foreign source interest on U.S. business related debt and obtain deduction where such business assets secure such debt or where debt is "booked" to a U.S. trade or business subject to a percentage limitation.
<b>Disadvantages:</b> No anonymity.  Individual tax return filing.  §1445 FIRPTA withholding on sale.  Unlimited legal liability (unless a disregarded entity is utilized).  U.S. estate and gift tax.	<b>Disadvantages:</b> BPT or BLIT and possible regulatory elimination of the BPT complete termination exception.  Possibly more income tax than individual ownership, and no favorable capital gains rate.  §1445 FIRPTA withholding on sale.  Expense of FC.  §163(j) interest-stripping limitation and the related foreign person guarantee rule.	<b>Disadvantages:</b> Occasional proposals, if enacted, could result in more than 56% federal double taxation.  Income tax rate may be greater than individual rate.  Expensive structure.  §163(j) interest-stripping limitation and the related foreign person guarantee rule.	<b>Disadvantages:</b> U.S. estate tax.  Income tax rate may be greater than individual rate.  Occasional proposals, if enacted, could result in more than 56% federal double taxation.  §163(j) interest-stripping limitation and the related foreign person guarantee rule.	<b>Disadvantages:</b> Probable U.S. estate tax.  §1445 withholding (with no adjustment for NOL carryovers) as LLC may be treated as a partnership for federal tax purposes.  Possibly U.S. gift tax.	<b>Disadvantages:</b> Trade or business status, or permanent establishment of partnership causes such status at NRA partner level.  No real anonymity.  No limited legal liability if a general partner unless provided by a specific state law.  Difficult to avoid U.S. estate tax, if at all.  §1446 withholding on ECTI	<b>Disadvantages:</b> Trade or business status or permanent establishment of trust causes such status at NRA beneficiary level.  No real anonymity.  No limited liability.  If irrevocable and no tainted rights, powers, benefits, interests, etc. are retained, can likely avoid U.S. estate tax (otherwise U.S. estate tax and possibly gift tax).

(cont.)

Disadvantages:

Disadvantages:

BPT/BLIT/Passive investment problems as to: (i) sale using §453; (ii) reinvestments of any earnings in passive property. Limitations on PIE benefits when using BPT/§453 rule.

Disadvantages:

Application of §1441/1442 even where no current/accumulated E&P (e.g., refinancings).

Disadvantages:

Application of §1441/1442 even where no current accumulated E&P (e.g., refinancings).

Disadvantages:

Disadvantages:

of any foreign partner (with no adjustment for NOL carryovers).  
Possibly U.S. gift tax.

Disadvantages:

Undistributed ECTI may be subject to 35% tax rate at a relatively low level of taxable income.

**NOTE:**

1. WHERE THE ALTERNATIVE SELECTED WILL RESULT IN U.S. ESTATE TAX [E.G., COLUMNS (A), (D), (E), AND POSSIBLY (F) AND/OR (G)], CONSIDER OBTAINING U.S. LIFE INSURANCE TO COVER SUCH TAX, AS SUCH INSURANCE IS FOREIGN SITUS PROPERTY AND THUS EXEMPT FROM U.S. ESTATE TAX IF THE DECEDENT INSURED IS A NRAD. ALSO, CHECK RELEVANT TAX TREATIES.
2. WHERE A CORPORATE TAXPAYER MAY BE SUBJECT TO THE BPT [ALTERNATIVE (B)] OR THE SECONDARY DIVIDEND WITHHOLDING TAX [ALTERNATIVES (C) AND (D)], CONSIDER USING A NON-INTEREST-BEARING FOREIGN PERSON LOAN TO THE CORPORATE TAXPAYER TO GET E&P OUT AS A "LOAN REPAYMENT." THE LENDER MAY OR MAY NOT BE A SHAREHOLDER OF THE CORPORATE BORROWER BUT §482 MUST BE CONSIDERED AND THE IRS COULD RECAST THE LOAN AS EQUITY. A CONSERVATIVE ALTERNATIVE MAY BE INTEREST-BEARING DEBT, EVEN IF IT CANNOT QUALIFY FOR THE PIE, AS THE 30% BLIT (IF PAID FROM AN FC), OR THE 30% WITHHOLDING TAX (IF PAID FROM A USCO), IS LESS THAN THE 34/35% FEDERAL PLUS STATE INCOME TAX IN THE ABSENCE OF INTEREST EXPENSE. ALSO, INTEREST PAYMENTS WILL REDUCE E&P. AGGRESSIVE TAXPAYERS MAY CONSIDER TREATY COUNTRY FINANCE COMPANIES SUBJECT TO ITS SCRUTINY AND THE REGULATIONS ISSUED RECHARACTERIZING MULTI-PARTY FINANCING ARRANGEMENTS (BACK-TO-BACK LOANS, GUARANTEES, EQUITY INVESTMENTS, ETC.) AND/OR STRUCTURING THE CORPORATION AND/OR NON-CONTINGENT PORTION OF THE DEBT OBLIGATION TO QUALIFY FOR THE PIE.
3. IN ALTERNATIVES (F) AND (G), IF THE NRA OWNS AN FC WHICH IS THE RESPECTIVE PARTNER OR BENEFICIARY, THE "PASS THROUGH" NATURE OF PARTNERSHIPS AND TRUSTS LEADS TO RESULTS LIKE THOSE IN ALTERNATIVE (B). IF NRA USES A USCO, SEE ALTERNATIVE (D).
4. WHERE THE INCOME TAX IMPACTS AN INDIVIDUAL, ESTATE OR TRUST TAXPAYER, AS THE DIRECT INVESTOR OR VIA A PASS-THROUGH ENTITY, CONSIDER THE 15% CAPITAL GAINS RATE WHERE APPLICABLE.
5. REMEMBER, IF AN ASSET THAT WILL GIVE RISE TO GAIN ON THE SALE OR DISPOSITION THEREOF IS OWNED IN CORPORATE FORM, THERE IS NO FAVORABLE CAPITAL GAINS RATE AS THERE IS TO AN INDIVIDUAL OR A PASS-THROUGH ENTITY, AND IF THE ASSET IS A PERSONAL RESIDENCE, THERE IS NO § 121 PRINCIPAL RESIDENCE EXCLUSION AS THERE WILL BE TO A PRINCIPAL RESIDENCE OWNED BY AN INDIVIDUAL.
6. THE CHART ILLUSTRATES VARIOUS ALTERNATIVES WHILE FOCUSING ON THE UNDERLYING ASSET BEING A USRPI. HOWEVER, A FOREIGN INVESTOR OR THE INTERNATIONAL TAX ADVISOR SHOULD FIND THE CHART BENEFICIAL WHERE THE UNDERLYING ASSET IS NOT A USRPI (WHICH AS A RESULT OF FIRPTA AUTOMATICALLY HAS U.S. TRADE OR BUSINESS STATUS), BUT WHERE THE NON-USRPI BUSINESS ASSETS WILL OTHERWISE GENERATE U.S. TRADE OR BUSINESS EFFECTIVELY CONNECTED INCOME. IN THAT SITUATION, IF THE INVESTMENT IS MADE THROUGH A DOMESTIC CORPORATION, THE NRA OR FC SHAREHOLDER WILL GENERALLY BE ABLE TO SELL OR EXCHANGE SUCH SHARES AND RECEIVE U.S. TAX-FREE CAPITAL GAINS TREATMENT; HOWEVER, IF THE NON-USRPI U.S. TRADE OR BUSINESS ASSETS ARE INSTEAD OWNED THROUGH A PARTNERSHIP, AN LLC, OR POSSIBLY ANOTHER PASS-THROUGH, IT IS THE POSITION OF THE IRS THAT THE U.S. TRADE OR BUSINESS AND EFFECTIVELY CONNECTED INCOME OF SUCH ENTITY FLOWS UP TO THE NRA OR FC INVESTOR AND THUS ANY GAIN FROM THE INVESTOR'S SALE OR EXCHANGE OF ITS PASS-THROUGH ENTITY INTEREST WILL BE SUBJECT TO U.S. INCOME TAX AS EFFECTIVELY CONNECTED INCOME OF SUCH INVESTOR. NEEDLESS TO SAY, THIS MAY BE AN IMPORTANT ISSUE DEPENDING UPON THE RELEVANT FACTS.
7. FOR ENTITIES FORMED AFTER OCTOBER 22, 2003, IT MIGHT BE POSSIBLE, IN VERY LIMITED CIRCUMSTANCES, FOR AN ELIGIBLE FOREIGN ENTITY TO AVOID CLASSIFICATION FOR U.S. TAX PURPOSES UNTIL SUCH ENTITY BECOMES "RELEVANT." IN THESE LIMITED SITUATIONS, IT MIGHT BE POSSIBLE TO: (1) OBTAIN PASS-THROUGH STATUS [DISREGARDED ENTITY STATUS FOR A SINGLE MEMBER ENTITY, SEE COLUMN (A), OR PARTNERSHIP STATUS FOR A MULTI-MEMBER ENTITY, SEE COLUMN (F)] PRIOR TO A SALE VIA AN INITIAL "CHECK-THE-BOX" CLASSIFICATION ELECTION; OR (2) "DEFAULT" INTO CORPORATE STATUS [SEE COLUMN (B)] AS OF THE DATE OF A SHAREHOLDER'S DEATH.

## Abbreviations to 7-Column Chart

BLIT.....	Branch Level Interest Tax
BPT.....	Branch Profits Tax
E&P.....	Earnings and Profits
ECTI.....	Effectively Connected Taxable Income
FC.....	Foreign Corporation
FIRPTA.....	Foreign Investment Real Property Tax Act of 1980
FP.....	Foreign Partnership
FT.....	Foreign Trust
INV.....	Investor
IRS.....	Internal Revenue Service
LLC.....	Limited Liability Company
NOL.....	Net Operating Loss
NRA.....	U.S. Income Tax Nonresident Alien
NRAD.....	U.S. Estate and Gift Tax Nonresident Alien Domiciliary
PIE.....	Portfolio Interest Exemption
USCO.....	U.S. (Domestic) Corporation
USP.....	U.S. Partnership
USRPI.....	U.S. Real Property Interest
UST.....	U.S. (Domestic) Trust

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**C. A Flowchart Introduction to the World  
of Outbound International Tax Issues**

## **D.1. Taxpayer Residence – Domicile**

## TAXPAYER RESIDENCE

### I. Resident Versus Nonresident Status.

#### A. U.S. Residence for U.S. Estate and Gift Tax Purposes.

Preliminarily, it should be emphasized that the concept of “residence” for income tax purposes should not be equated with “residence” for estate and gift tax purposes. The objective residence definitions under § 7701(b) (and the final regulations thereunder issued on April 24, 1992) do not affect the definition of residence for Federal estate and gift tax purposes. For estate and gift tax purposes, residence in the U.S. requires physical presence in some place in the U.S. and the intention to make that place a fixed and permanent home. Christina de Bourbon Patino, 51-1 USTC ¶9123 (4th Cir.), aff’d, 13 T.C. 816 (1949). Therefore, the determination of residence in this context must be made independently from the determination of residence for income tax purposes. Also, as discussed elsewhere in this Chapter, one’s immigration status is not determinative of such person’s U.S. estate and gift tax residence, but is merely a factor in that determination.

Because the estate and gift tax regulations in this area are unclear and inconclusive, the determination of a person’s residence for estate and gift tax purposes constitutes a difficult and subjective factual determination.

#### 1. Intention and Overt Act.

The estate and gift tax regulations define “residence” in terms of domicile:

“A ‘resident’ decedent is a decedent who, at the time of his death, had a domicile in the United States . . . A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.” See Regs. §§ 20.0-1(b)(1) and 25.2501-1(b).

#### 2. Illustrative Cases.

“Domicile” for estate and gift tax purposes is a rather nebulous concept. Thus, although many cases have dealt with the issue, no clear-cut rule has evolved. However, even though most of such cases are old, the decisive factors noted therein may serve as useful guidelines.

a. In Fifth Ave. Bank of New York, Ex'r., 36 B.T.A. 534 (1937):

The decedent, a U.S. citizen, was born in New York in 1870. Between 1912 and 1920 she traveled back and forth between the U.S. and France. In March 1920 she returned to France, and lived there until her death in 1932.

The decedent's purpose for remaining in France was to seek medical advice for her diabetes and to help her cousin who was experiencing marital difficulties. In addition, she had often stated to a cousin that she intended to return to the U.S. when she regained her health and her cousin's problems were resolved. Whenever she renewed her passports, she stated her reason to travel abroad to be "temporary residence and travel" but in later renewals she stated her foreign stay to be "indefinite." She always stated her domicile as the U.S., paid U.S. taxes until her death, and never claimed foreign citizenship.

The Service attempted to classify her as a nonresident decedent for estate tax purposes by arguing that her prolonged stay in France caused her domicile to change. Under the applicable rules at the time of her death, non-resident decedent status would have adversely affected her estate's right to an exemption and deduction of certain expenses.

The Court, in finding her to be a resident decedent, stated:

"Two facts must exist to effect a change over to a new domicile of choice, both residence in the new place and an intention to make the new residence a permanent home. There must be both the fact and the intent." (at p. 538).

b. In Estate of Bloch-Sulzberger, 6 T.C.M. 1201 (1947):

The decedent, who was born in Switzerland in 1883 and died there in 1941, had stated under oath in various documents and in visas, reentry permits, and tax returns, that he was a U.S. resident. Upon the decedent's death, the Service attempted to tax him as a U.S. resident. In addition to his dying in Switzerland, the decedent had retained his home and business interests there, and had remained active with Swiss charities and civic organizations.

To the Court, the problem was not whether or not the decedent had obtained various benefits by perjured statements, but whether or not he was a resident for U.S. estate tax purposes. In finding him not to be, the Court stated:

"[a] resident for estate tax purposes . . . is one who at the time of his death had his domicile in the United States. Intention of the person is extremely important. Domicile is the place which he regards as his home, and where he intends to live. His old domicile continues until it appears that he intends to live there no longer but has an intention to make his home henceforth at some other place and to remain there indefinitely." (at p. 1203).



Because the decedent died in Switzerland, retained his home and business interests there, and remained active with Swiss charities and civic organizations, the Court concluded that he intended for that country to remain his domicile.

c. In Estate of Paquette, 46 T.C.M. 1400 (1983):

The decedent, a Canadian citizen, was born in Canada in 1897. He operated two retail stores in Montreal. In addition, he owned two houses in Canada, one of which was located near his stores in Montreal. The other house was utilized by the decedent as a country house. Beginning in 1950 and up to the time of his death in 1975, the decedent made yearly vacation trips to Florida, generally during the winter months. Thus, the decedent would generally remain in Florida from October through April, returning to Canada for the summer. In 1955, the decedent retired and sold his business. In 1956, the decedent sold his house in Montreal, and in the early part of 1957 he purchased a house in Florida which was furnished with the contents of the house he had sold in Montreal.

After 1971, the decedent's wife became ill and was not able to accompany the decedent when he returned to Canada for the summer. In the fall of 1971, the decedent sold his country house because it required too much work to maintain and he intended to buy a small house or rent an apartment in Montreal. In 1972, the decedent began to experience a series of illnesses and he was hospitalized and treated in Florida. However, he continued to return to Canada to meet with his professional advisors and friends. In 1974, the decedent executed his Last Will and Testament while in Montreal and stated therein that he was a resident of Canada. He returned to Florida in November 1974, and he remained there until he died in January 1975.

In concluding that the decedent was domiciled in Canada, the Court stated:

"In addition to his yearly visits to Canada, decedent maintained numerous contacts with his country of citizenship which evidenced his intention to retain his Canadian domicile. Up until the date of his death, he filed income tax returns in Canada, he voted in Canada, and he maintained a valid Canadian driver's license as well as a valid Canadian passport. In addition, decedent's automobile was purchased, registered, and insured in Canada. Moreover, it is not without significance that most of decedent's assets, valued at \$556,351.76, were located in Canada. He met with Mr. Larouche and Mr. Bourgeois regularly in Canada concerning his investments. In order to keep his assets liquid, decedent's portfolio was divided between deposits in Canadian banks and stocks and bonds of Canadian corporations. Decedent returned yearly to actively manage his investments. Decedent met at least twice a year with Mr. Larouche at which time he personally made the decisions of when and where to invest his money. In fact, Mr. Larouche was prohibited

from making changes in decedent's portfolio unless he received personal authorization.

\* \* \*

After careful evaluation of all the evidence, including testimony by those who were well acquainted with decedent, we find that decedent never had any intention to establish a United States domicile. Decedent maintained many contacts with his native country, and followed a 25-year old practice of spending winters in Florida. We find that decedent never intended to remain in the United States indefinitely." (at p. 1404).

d. In Estate of Barkat A. Khan, T.C. Memo 1998-22:

The decedent, a Pakistani citizen, had obtained an immigration long-term permanent resident alien green card and a social security number in part to help preserve certain U.S. subsidies, but the decedent died in Pakistan in 1991 and although the 1986 through 1990 U.S. Individual Income Tax Returns for the decedent had incorrectly been filed as nonresident Forms 1040NR, amended Forms 1040 were filed subsequent to decedent's death. Decedent's estate was desirous of resident alien domiciliary status (e.g., it wanted to use the larger unified exemption available to an estate of a U.S. citizen or resident alien domiciliary, but not to an estate of a nonresident alien domiciliary) and based its argument largely on decedent's possession of a green card. However, the Service's position was that decedent and his wife were not resident alien domiciliaries of the U.S. at the time of his death and that decedent's estate was not entitled to the full unified credit or the marital deduction. In a decision which, in the author's opinion, had numerous factors both for and against resident alien domiciliary status, the court, in finding resident alien domiciliary status, placed significant weight in the decedent's obtaining a permanent resident alien "green card" plus a re-entry permit when he left the U.S. to return to Pakistan. The case further substantiates that possession of a green card is not conclusive in determining resident alien domiciliary status, although when taking into account all of the facts and circumstances, it can be an adverse factor.

e. In Estate of Jack, 54 Fed. Cl. 590 (2002):

The parties filed cross-motions for summary judgment to determine whether a Canadian citizen employed in the U.S. on the date of his death, having been admitted to the U.S. under a non-immigration, temporary professional classification, was legally capable of forming an intent to be domiciled in the U.S. for Federal estate tax purposes. The decedent's estate argued that the intent to establish domicile by the holder of a temporary professional visa would be in direct violation of the terms of the visa, so that such an intent would be precluded. The Court granted summary judgment to the Service holding that for Federal estate tax purposes, a Canadian citizen employed in the U.S. on the date of his death, who was admitted to the U.S. under non-immigrant, temporary professional classifications, was legally capable of forming an intent to be domiciled in the United States.

### 3. Immigration Status--Illegal Aliens.

With respect to the impact of immigration status upon residence status for purposes of estate and gift taxation, so long as the individual in fact resides in the U.S. with no definite present intention of leaving [regardless of what "legal ability" or "disability" the immigration law places him under (compare Rev. Rul. 80-363, 1980-2 C.B. 249 with Rev. Rul. 74-364, 1974-2 C.B. 321 revoked by Rev. Rul. 80-363, 1980-2 C.B. 249, which it revoked, and which are discussed below)], he has formed the necessary intent to become a U.S. domiciliary.

In Elkins v. Moreno, 435 U.S. 647 (1978), the U.S. Supreme Court held in a non-tax related decision that under Federal law, a non-immigrant alien holding a G-4 visa has the legal capacity to establish domicile in the U.S. when the Federal law which governs the granting of the visa does not impose restrictions on intent or duration of stay. The Supreme Court continued to note that even though permanent immigration would normally occur through immigration channels, nonrestricted non-immigrant aliens could adopt the U.S. as their domicile under certain circumstances.

Following the Elkins decision, the Service issued Rev. Rul. 80-363, above, in which it concluded that the decedent therein formed the intent and did in fact reside in the U.S. with no definite present intention of leaving, and was therefore a resident decedent (i.e., domiciled in the U.S.):

"The Supreme Court of the United States, in Elkins v. Moreno, 435 U.S. 647 (1978), held that, under federal law, a nonimmigrant alien holding a 'G-4' visa has the legal capacity to establish domicile within the United States. The Court concluded that when federal law, such as the statute that governs the granting of 'G-4' visas, did not impose restrictions on intent or duration of stay, Congress intended that, while permanent immigration would normally occur through immigrant channels, nonrestricted nonimmigrant aliens could adopt the United States as their domicile under certain circumstances.

The question of domicile depends on whether the decedent had formed the intent to remain in the United States indefinitely. In the present situation, decedent was a resident decedent since, at the time of death, domicile had been established in the United States, and decedent had formed the intent and did, in fact, reside in the United States with no definite, present intention of leaving. This is true notwithstanding that decedent had entered and remained in the United States with a 'G-4' visa." (at 1980-2 C.B. 250).

See also, TAM 8137027 (a National Office Technical Advice Memorandum which further discussed the relevant issues).

In connection with illegal aliens, in Rev. Rul. 80-209, 1980-2 C.B. 248, the Service concluded that an illegal alien who lived in the U.S. for 19 years with his family, had purchased a U.S. residence and had established strong community ties, was domiciled in the U.S. at the time of his death:

“The requirements for acquiring a domicile are (1) legal capacity to do so; (2) physical presence; and (3) a current intention to make a home in the place. . .

\* \* \*

. . . Some of the factors used in determining such requisite intention are home ownership, local community ties and living with one’s family in the claimed domicile.

See *Farmer’s Loan & Trust Co. v. United States*, 60 F.2d 618 (S.D.N.Y. 1932).

In the present case, the fact that the decedent lived in the United States for a long time with the decedent’s family and that the decedent established strong community ties indicates an absence of any fixed intention of returning to the native country.

\* \* \*

. . . The facts in the present case thus indicate that the decedent intended to remain in the United States indefinitely.” (at 1980-2 C.B. 249).

#### 4. Factors Indicative of Domicile.

As indicated by the illustrative cases above, the factors which are considered in making the determination of whether an alien is a resident for U.S. estate and gift taxation must demonstrate a certain degree of permanence in the U.S. on the part of the alien before he is classified as having a U.S. domicile. As expressed by the Court in Safe Deposit & Trust Co. of Baltimore, 42 B.T.A. 145 (1940), rev’d on other grounds, 316 U.S. 56 (1942):

“ . . . the acquisition of a domicile of choice involves actual physical presence at a dwelling place in another state, coupled with the concurrent intent to make it a home. Intention involves the idea of fixity, of some degree of permanence in the new abode, and must be more than the mere intention to acquire a new domicile.” (citing Restatement of Conflicts §§ 15, 16, 18, and 19 at pp. 162 and 163).

In connection with the determination of domicile, some of the most common factors analyzed in the estate and gift tax context are:

a. The amount of time spent by the decedent in the U.S., in other countries, and the frequency of travel both between the U.S. and other countries and between places abroad. However, a period of extended physical presence in the U.S. alone will not suffice to establish U.S. domicile.

b. The size, cost and nature of houses or other dwellings, and whether those places were owned or rented by the decedent. In Estate of Fokker, 10 T.C. 1225 (1948), the decedent maintained a large home in New York and a smaller home in Switzerland. The Tax Court found the decedent to be a U.S. domiciliary. The Court compared the size of the houses and their localities, and stressed that the location of the Swiss home (in St. Moritz) constituted a resort, pleasure oriented community with international appeal.

c. The area or locality in which the houses and dwelling places are located. See, Estate of Fokker, above.

d. The location of expensive and cherished personal possessions of the decedent. See, Farmers' Loan & Trust Co. v. U.S., 60 F.2d 618 (S.D.N.Y. 1932).

e. The location of the decedent's family and close friends. See, Estate of Nienhuys, 17 T.C. 1149 (1952).

f. The places where the decedent has maintained and participated in civic leagues, churches, clubs, etc. See, Farmers' Loan & Trust Co., above, and Estate of Nienhuys, above.

g. The location of the decedent's business interests. See, Estate of Fokker, above.

h. The location of the bulk of the decedent's assets, and the location of his professional advisors. See, Estate of Paquette, above.

i. Where did the decedent file tax returns up until his death. See, Estate of Paquette, above.

j. Declarations of residence or intent made in visa applications for reentry permits, wills, deeds of gift, trust instruments, letters, and oral statements made by the decedent. For example, in Bank of New York & Trust Co., 21 B.T.A. 197 (1930), the decedent, a U.S. citizen, spent the last 5 years of her life traveling in France, Italy and other countries in Europe. The Court found that she was a U.S. resident, and that she did not have the intention to abandon her U.S. residence while in Europe since her purposes for being there were pleasure and health. The decedent's declarations and actions indicated that her home was in the U.S. (e.g., when applying for passport renewals she stated that she was abroad only temporarily, and

in two trust instruments and a Will executed by her she described herself as a resident of Washington, D.C.). See also, Estate of Fokker, above, Frederick Rodiek, 33 B.T.A. 1020 (1936), aff'd, 37-1 USTC ¶9032 (2d Cir.), Estate of Bloch-Sulzberger, above.

k. Whether the decedent used traveler's checks and international credit cards while in the U.S. rather than U.S. issued credit cards and local accounts.

l. Whether the decedent obtained and used a U.S. driver's license as opposed to an international one.

m. Whether the decedent acquired in his own name (as opposed to renting) an automobile in the U.S.

n. Whether the decedent spent holiday periods with his family, and if so, where.

o. Whether the decedent brought his family to the U.S.

p. Whether the decedent was engaged in political activity such as voting, public, or military service, abroad.

q. Reasons or motivation for presence of the decedent in the U.S., e.g. health, pleasure, business, war or terrorism in home country or avoidance of political repression or instability in home country.

**D.2. A Workshop Problem Emphasizing the  
General Taxation Rules Relevant to NRADs  
and NRATs as Well as Planning Techniques  
With Regard to Their U.S. Investments**

## WORKSHOP PROBLEM

I. A Workshop Problem Emphasizing the General Taxation Rules Relevant to NRADs and NRATs as Well as Planning Techniques With Regard to Their U.S. Investments.

Antonio Wealthamini, a citizen and resident of Venezuela (hereafter "W"), will be taxed as an NRAD and NRAT for respective U.S. estate and gift tax purposes. See § 2101 and Reg. § 20.0-1(b). W is married, has 3 children, is 64 years old and is in fair health. W does spend some time each year in New York and Florida and is aware of the RA substantial presence test for U.S. income tax purposes. See § 7701(b). W "believes" he is an NRA for U.S. income tax purposes. W owns the assets described herein and visits your office for estate planning. It is assumed that all of the assets are held for investment and do not give rise to any U.S. effectively connected income.

A. Estate Tax Situs Rules.

[Variations for U.S. gift tax purposes are referred to in B. below where relevant]

	<u>Assets</u>	<u>U.S. Situs</u>	<u>Foreign Situs</u>	<u>U.S. or Foreign</u>	<u>Statutory, Regulatory, or Other Citation</u>
1.	2000 acres in Florida	X	---	---	§ 2104 and Reg. § 20.2104-1(a)(1)
2.	New York condominium	X	---	---	§ 2104 and Reg. § 20.2104-1(a)(1)
3.	Furniture and personalty in New York condo	X	---	---	§ 2104 and Reg. § 20.2104-1(a)(2)
4.	Art in New York museum	---	---	X	§ 2105(c), Reg. § 20.2105-1(b)
5.	Real estate in Venezuela	---	X	---	Reg. § 20.2105-1(a)(1)



	<u>Assets</u>	<u>U.S. Situs</u>	<u>Foreign Situs</u>	<u>U.S. or Foreign</u>	<u>Statutory, Regulatory, or Other Citation</u>
6.	Swiss bank deposits	---	X	---	Reg. § 20.2105-1(k)
7.	Jewelry in Venezuela	---	X	---	Reg. § 20.2105-1(a)(2)
8.	Jewelry on W at time of death	---	---	X	<u>Delaney v. Murchie</u> , 49-2 USTC ¶10,741 (1st Cir.)
9.	AT&T shares (or shares in a closely-held domestic corporation)	X	---	---	§ 2104(a), Reg. § 20.2104-1(a)(5). Also see item 30.
10.	IBM bonds - interest Bearing [portfolio debt per § 871(h) or 881(c)]	---	X	---	§ 2105(b)(3), but <u>caution</u> if a RA for U.S. income tax purposes.
11.	Florida or foreign real estate partnership interest	---	---	X	<u>Sanchez v. Bowers</u> , 70 F. 2d 715 (2d. Cir. 1934). Also see item 30.
12.	U.S. bank deposits	---	X	---	§ 2105(b)(1), but <u>caution</u> if a RA for U.S. income tax purposes. TAMRA § 1012(g)(4)
13.	Florida real estate trust interest	---	---	X	Rev. Rul. 55-163, 1955-1 C.B. 674
14.	Note receivable – U.S. individual debtor [assume not of the portfolio debt type described in §§ 871(h) or 881(c)]	X	---	---	§ 2104(c)(1), Reg. § 20.2104-1(a)(7)
15.	Note receivable - Swiss debtor	---	X	---	§ 2104(c), Reg. § 20.2105-1(e)

	<u>Assets</u>	<u>U.S. Situs</u>	<u>Foreign Situs</u>	<u>U.S. or Foreign</u>	<u>Statutory, Regulatory, or Other Citation</u>
16.	Foreign bank - US branch deposit	---	X	---	Cf. §§ 2104(c) and 2105(b)(1), but <u>caution</u> if an RA for U.S. income tax purposes. TAMRA § 1012(g)(4)
17.	Funds in N.Y. safe Deposit box	X	---	---	Rev. Rul. 55-143, 1955-1, C.B. 465
18.	Life insurance policy With N.Y. Life on W's life	---	X	---	§ 2105(a) and Reg. § 20.2105-1(g)
19.	Annuity payments from N.Y. Life	X	---	---	Such payments are not insurance and are U.S. situs. § 2104(c)(1)
20.	Life insurance policy With N.Y. Life on his son's life	---	---	X	<u>Cf.</u> § 2105(a) and Reg. § 20.2105-1(g)
21.	Life insurance policy with Venco, a Vene- zuelan company on W's life	---	X	---	§ 2105(a)
22.	Furniture and per- sonalty in Venezuela	---	X	---	Reg. § 20.2105-1(a)(2)
23.	Shares in an electing § 897(i) Barbados company	---	X	---	Reg. § 20.2105-1(f); <u>But Cf. Fillman v. U.S.</u> , 66-1 USTC ¶12,374 (Ct. Cl.), and <u>Bigio v. Comm'r</u> , 62 T.C.M. 119 (1991), <u>aff'd</u> , 981 F.2d 1263 (11th Cir. 1992). Also see item 30.

	<u>Assets</u>	<u>U.S. Situs</u>	<u>Foreign Situs</u>	<u>U.S. or Foreign</u>	<u>Statutory, Regulatory, or Other Citation</u>
24.	Shares in Investco, a Panamanian company	---	X	---	Reg. § 20.2105-1(f); <u>But Cf. Fillman v. U.S.</u> , 66-1 USTC ¶12,374 (Ct. Cl.), and <u>Bigio v. Comm'r</u> , 62 T.C.M. 119 (1991), <u>aff'd</u> , 981 F2d 1263 (11th Cir. 1992). Also see item 30.
25.	Interest in a Stiftung	---	---	X	<u>Cf.</u> Reg. § 20.2105-1(f), and Rev. Rul. 55-163, 1955-1 C.B. 674. Also see item 30.
26.	Note receivable – U.S. corporate debtor [non-portfolio debt that does not satisfy §§ 871(h) or 881(c)]	---	---	X	§ 2104(c), Reg. § 20.2104-1(a)(7). TAMRA § 1012(q)(11). Unlike 10., 12., and 16. above, RA income tax status should not be a factor.
27.	Contract right to buy U.S. real estate from a U.S. person	X	---	---	Reg. § 20.2104-1(a)(4)
28.	Short-term Treasury Bills (e.g., 6 or 3-month duration)				
a.	For estates of decedents dying on or before August 5, 1997	X	---	---	§ 2104(c) and § 2105(b). Because the interest is exempt from income tax under §§ 871- (a)(1)(A) and (C), and 871- (g)(1)(B)(i) and (ii), and not under § 871(h), the § 2105(b) foreign situs rule technically does not apply. PLR 9422001.
b.	For estates of decedents dying after August 5, 1997	---	X	---	TRA-97 makes this favorable modification by adding § 2105(b)(4).

	<u>Assets</u>	<u>U.S. Situs</u>	<u>Foreign Situs</u>	<u>U.S. or Foreign</u>	<u>Statutory, Regulatory, or Other Citation</u>
29.	Municipal Bonds	X	---	---	§§ 2104(c) and 2105(b). Because the interest is exempt from income tax under § 103(a), and not under § 871(h)(1) [nor would be but for § 871(g)-(1)(B)(i) thereof], the § 2105(b) foreign situs rule does not apply.
30.	Shares of a limited liability company	---	---	X	To determine situs, consider the so-called "Check the Box" regulations. Reg. §§ 301.7701-1, 2, and 3. See 9. above for domestic "corporate" treatment, 23. and 24. above for foreign "corporate" treatment, 11. above for "partnership" treatment, and 25. above for possible alternative treatment of a "unique" entity.
31.	American Depositary Receipt ("ADR") or a Foreign country's Equivalent (e.g., a Swiss Certificate)	---	---	X	Arguably, the ADR is foreign situs – a nominee type relationship where an American bank (or its authorized foreign bank "agent") holds shares of a foreign corporation and then issues a security instrument (i.e., the ADR) to the investor. ADRs are traded on U.S. stock exchange. Gains, losses and dividends flow to the investor. See Rev. Rul. 65-218, 1965-2 C.B. 566, and Rev. Rul. 72-271, 1972-1 C.B. 369, declared obsolete by Rev. Rul. 74-625 1974-2 C.B. 407, but its principles are favorable. As to a foreign equivalent of the ADR, if reverse logic applies, such

<u>Assets</u>	<u>U.S. Situs</u>	<u>Foreign Situs</u>	<u>U.S. or Foreign</u>	<u>Statutory, Regulatory, or Other Citation</u>
				equivalent may constitute a U.S. situs asset. Also consider PLR 200243031 where ADRs owned by a Grantor revocable foreign trust were found to be foreign situs assets.
32. Interest in a retirement plan of a domestic corporation	X	---	---	§ 2104(c), Reg. § 20.2104-1(a)(7) and Rev. Proc. 2004-37, 2004-26 I.R.B. 1099.
33. Domestic Regulated Investment Company ("RIC") or Mutual Fund	---	---	X	Pre-the AJCA, the entire value would constitute a U.S. situs asset. The AJCA revises the § 2105(d) so in the case of an NRAD dying after December 31, 2004 and before January 1, 2008, a portion of the value [e.g., the portion attributable to assets such as U.S. bank deposits (item 12.), portfolio interest exempt debt (item 10.), and non-portfolio interest exempt debt obligations of a domestic corporation meeting the 80% foreign business requirements test (item 26.), may be foreign situs "as if" the NRAD had held such assets directly.

B. Key Concepts.

Estate Tax

Taxable Estate ("TE")-

The gross estate less certain deductions. §§ 2103 and 2106.

Gross Estate ("GE")-

Must be U.S. situated (U.S. situs) property. See § I.A. above. Can include certain lifetime transfers in trust or otherwise of assets having U.S. situs either at the time of transfer or the date of NRAD's death. § 2104(b).

Deductions - (1) Prorated: (Full disclosure of the worldwide estate often results in practical problems).

Expenses, indebtedness, taxes and losses (§ 2053-2054 type) based on following ratio [see Reg. § 20.2106-2(a)(2)]:

GE in U.S.

Total GE Wherever Situated X Above Items = Deductions

(2) Non-Prorated:

- (a) non-recourse mortgages. Estate of Johnstone, 19 T.C. 44 (1952), acq., 1953-1 C.B. 5.
- (b) charitable - to or for use of U.S., state or political subdivision, or D.C., or to or for the use of a qualified U.S. charity. § 2106(a)(2). Also, full disclosure of the worldwide estate is required. § 2106(b).
- (c) marital deduction - pre-TAMRA, none, but post-TAMRA, the unlimited marital deduction is available under § 2056 principles if the surviving spouse is a U.S. citizen. §§ 2106(a)(3) and 2056(d). RRA-89 amended § 2106(a)(3) to clarify that the estate of an NRAD can obtain a marital deduction even if the spouse is a non-U.S. citizen by utilizing a Qualified Domestic Trust ("QDT"). § 2040(b)(2) qualified joint interest rule is no longer available. See post-TAMRA § 2056(d)(1)(B) and the legislative history. RRA-89 added a transition rule so that any consideration furnished before July 14, 1988 by the decedent shall be treated as consideration originally belonging to the surviving spouse (and never having been acquired by such spouse from the decedent), to the extent treated as a gift to the spouse for gift tax purposes. RRA-90 modified the RRA-89 transitional rule as to joint tenancy transfers. Community property laws may cause a similar result as § 2040(b),

but with full basis step-up. § 1014(b)(6), Rev. Rul. 87-98, 1987-2, C.B. 206, and Rev. Rul. 92-37, 1992-1 C.B. 195.

### Computation of Tax -

- (1) Tentative Tax: TE plus post-12/31/76 adjusted taxable gifts -post-TAMRA, rates range from 18% to 47% - TAMRA requires the same rates as those applicable to estates of U.S. citizens and RADs in lieu of the old 6% to 30% rates. §§ 2001(b) and (c), and 2101.
- (2) "Fake" Gift Tax Credit: Pre-TAMRA differences in gift versus estate tax rates caused a problem. Gift tax credit was at NRAD estate tax rates while tax paid was at higher rates (same gift tax table as U.S. citizen donor or RAD). TAMRA changes correct this situation. § 2101(b)-(d).
- (3) Credits:
  - (a) Unified - \$3,600 limit pre-TAMRA but \$13,000 post-TAMRA. Special rules may apply for NRADs from U.S. possessions or certain treaty countries. § 2102(c).
  - (b) State death taxes. §§ 2102(a) and 2101.
  - (c) For certain pre-1977 gifts made within 3 years of death (is a full credit). §§ 2102(a) and 2102.
  - (d) Tax on prior transfers. § 2013. If a U.S. citizen decedent or RAD has a non-U.S. citizen spouse, TAMRA disallows the marital deduction in the absence of a QDT. If the non-U.S. citizen spouse is ultimately subject to U.S. estate tax on this "same" property post-TAMRA, a full § 2013 credit will be available regardless of when the first decedent spouse died. RRA-89 clarified that the estate of a non-U.S. citizen surviving spouse of any decedent (whether or not such decedent is a U.S. citizen, RAD, or NRAD) who receives property that has been subjected to estate tax, shall be allowed a full credit under § 2013, notwithstanding when the first decedent died, and notwithstanding whether or not the surviving spouse's estate is subject to tax as a U.S. citizen or RAD estate versus an NRAD estate. Prior to this change, the TAMRA provisions technically limited the availability of this credit to those situations where the surviving spouse's estate was taxed as a U.S. citizen or RAD estate, but not as an NRAD estate. § 2056(d)(3).

(4) Other Benefits Not Available:

- (a) Foreign death tax credit. § 2014(a) and Reg. § 20.2014-1(a).
- (b) Special use valuation for farms and closely held business realty. § 2032A(a)(1).
- (c) The family - owned business exclusion. § 2057.
- (d) Extensions to pay estate tax. § 6166(a)(1).

- (5) Certain expatriates - special rules apply. §§ 2107 and 6039G. Also, expatriates include not only former U.S. citizens but certain specifically defined former long-term permanent resident aliens as defined in § 877(e).

Always Consider Treaties -

May override certain provisions. Reg. § 20.0-1(a)(1). For instance, RRA-89 provided that the TAMRA marital deduction disallowance rule (i.e., the requirement that a QDT be utilized in the case of a non-U.S. citizen surviving spouse) would not apply to the extent such rules were inconsistent with a treaty marital deduction provision such as those found in the French and German marital deduction treaty provisions. Also, RRA-89 provided that for a U.S. citizen domiciled in certain treaty jurisdictions such as France and Germany, the TAMRA provision disallowing the marital deduction for property passing to a non-U.S. citizen spouse except for property satisfying the QDT requirements, would not override a conflicting treaty marital deduction provision until three years after the date of enactment of RRA-89 (i.e., three years from December 19, 1989). However, in this regard, the German Protocol in effect provides certain expanded marital deduction benefits for the estate of decedents who died after November 10, 1988, provided that any related return or claim for refund is filed by no later than December 14, 2001 or within the otherwise applicable period for filing such claims under U.S. tax law. Pursuant to TRA-97, the § 2102 unified credit for certain treaty residents will be coordinated with the eventual increase in the U.S. citizen and RAD unified exemption and credit amounts. Also, with regard to treaty based positions taken on tax returns, see §§ 6114, 6712, and 7852(d) changes as enacted by TAMRA as well as the regulations thereunder.

Gift Tax

Taxable

gifts - all non-excludable transfers of non-exempt property situated in the U.S. §§ 2501(a)(1); 2511(b).

Exclusion - any gift of a present interest of \$10,000 or less per year per donee, or certain transfers for educational or medical expenses. §§ 2503(b) and 2503(e), respectively. For gifts made in a calendar year after 1998, TRA-97 introduces an inflation adjustment to the \$10,000 exclusion and for the year 2005, the amount is \$11,000. § 2503(b)(2).



Non-exempt - except in the case of certain expatriates, all property situated in the U.S. which is not intangible property. §§ 2501(a)(1) and (2), and Reg. §§ 25.2511-1(b), 25.2511-3(a)(1), and 25.2513(b)(1). U.S. situs rules are similar to estate tax rules (see § I.A. above) but some distinctions apply if the donor is an expatriate. §§ 2501(a)(3) and 6039G. Also, the conservative view would be to treat currency as tangible property. PLR 7737063, Reg. § 20.2104-1(a)(7) (final sentence).

Computation

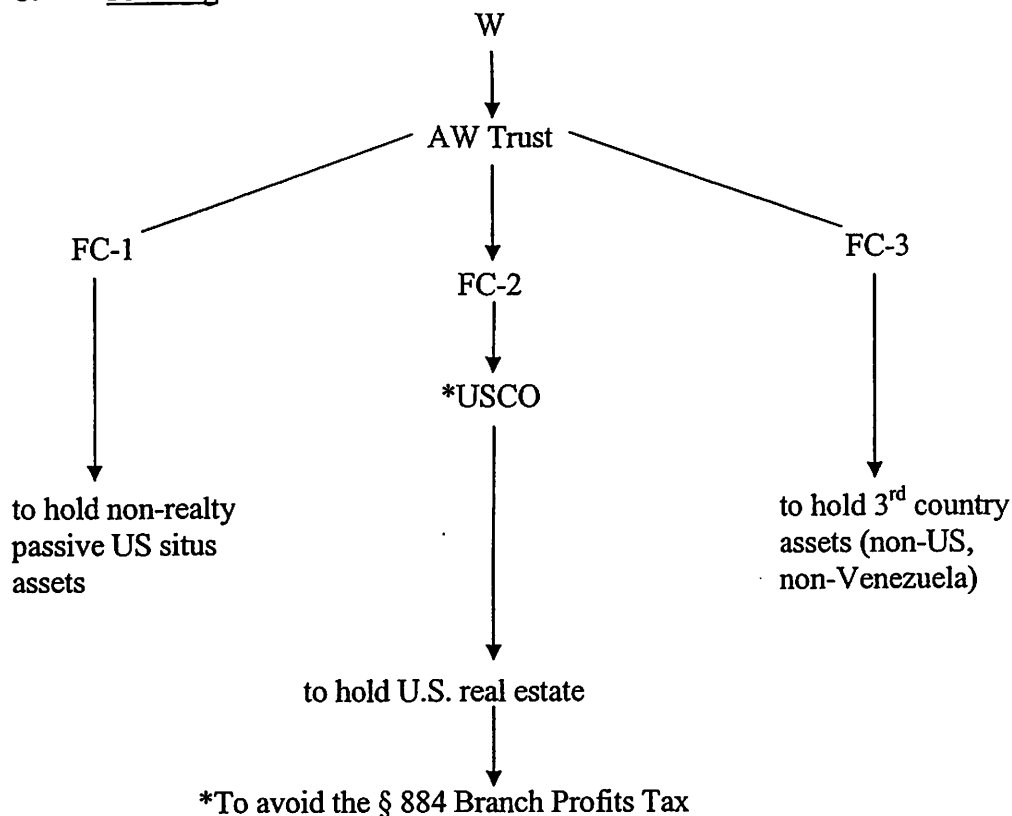
of Tax - Current calendar year gifts are added to prior years' gifts, a tentative tax is determined, and taxes paid on such prior gifts are subtracted - rates are those that apply to RATs. § 2502.

Credits and Deductions -

- (1) No gift splitting if either spouse is an NRAT. § 2513(a)(1).
- (2) Charitable deduction only if to or for the use of the U.S., a state or political subdivision, or D.C., or to or for the use of a qualified U.S. charity. § 2522(b).
- (3) RRA-89 clarified that a full marital deduction may also be available to an NRAT under § 2523(a) if the donee spouse is a U.S. citizen. Post-TAMRA gifts from a U.S. citizen or RAT to a non-U.S. citizen spouse (which pre-TAMRA qualified for the unlimited marital deduction) are limited to an inflation adjusted \$100,000 per year, which for 2005 is \$117,000 (in lieu of the inflation adjusted \$10,000 annual per donee exclusion). § 2523(i). Furthermore, an inflation adjusted \$100,000 annual spousal exclusion, which for 2005 is \$117,000, also applies to gifts by an NRAT. RRA-89 and RRA-90 further clarified that the inflation adjusted \$100,000 annual exclusion limitation is further limited by the fact that the excess of the inflation adjusted \$100,000 of such gift over the inflation adjusted \$10,000 annual per donee exclusion would have otherwise had to qualify for the marital deduction if the donee were a U.S. citizen (e.g., a gift in trust would not qualify unless it is within one of the exceptions to the terminable interest rule).
- (4) No unified credit. § 2505(a).
- (5) Certain expatriates - special rules apply. §§ 2501(a)(3) and 6039G. Also, expatriates include not only former U.S. citizens but certain specifically defined former long-term permanent resident aliens as defined in § 877(e).

Always Consider Treaties - See the comments under this heading in the Estate Tax summary section above.

C. Planning



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Variations of the above plan are likely based on income tax consequences, effects to the beneficiaries, administrative needs, cost factors and similar considerations. Also, the U.S. tax law is constantly changing, and the reader should consult appropriate tax counsel before finalizing a particular structure.

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1. Set up structure while status would be that of a NRAD, and preferably that of a NRA.
2. Trust could be domestic or foreign depending upon income tax benefits (if any) sought, and revocable or irrevocable, depending upon what powers, rights and interests the settlor is willing to relinquish.
3. Terms of trust will comply with grantor's wishes during his lifetime and after his death.

4. Use of trust will likely bypass potential probate proceedings and home country or third country interference.
5. If a domestic trust is desired, satisfy the court test and the control test of § 7701(a)(30). Also consult the regulations. If a foreign trust is desired, fail either or both the court test or the control test. § 7701(a)(31)(B). Provide flexibility in the trust document so that the trust may move from one jurisdiction to another, if necessary or desirable, but if a domestic trust becomes a foreign trust as a result thereof, consider the potential gain recognition consequences of § 684(c) enacted as part of TRA-97.
6. Avoids many problems especially for persons seeking as much confidentiality as possible (e.g., notice requirements to heirs, ancillary administration, choice of representative, choice of law conflicts, situs rules, characterization of assets, consular treaties, immigration laws, foreign language requirements, elective share and forced heirship rules, etc.).
7. Consider U.S. tax return and other reporting requirements (e.g., Form 1040NR; Form 1041; Form 3520; Reg. §§ 1.671-4 and 6012(a)(5); do grantor rules cause result to be as if grantor owns FCs directly for U.S. income tax purposes? Form 5471 and Form 90.22-1 - who files if a revocable domestic trust - the grantor or the trustee? What about Form 8832 and the eligible entity "Check-the-Box" rules, and Forms 8858 and 8865? Similar issues apply to the filing of other informational returns and forms. Also, consider the possible applicability of state intangible personal property tax or similar taxes). The SBJPA introduced new reporting requirements for foreign trust related transactions and for large gifts to U.S. persons from foreign persons.
8. If first to die has presumed structure and is a U.S. citizen or RAD taxed on worldwide estate, can use marital deduction to avoid tax if spouse is a U.S. citizen. If spouse is a non-U.S. citizen, a QDT is necessary to obtain a marital deduction. Any U.S. heir or beneficiary gets basis step-up in inherited property, including foreign situs assets such as foreign real estate.
9. For income tax purposes, a NRAT settlor could create a § 672(f) foreign person settlor grantor trust (consider Rev. Rul. 69-70, 1969-1 C.B. 182); keep favorable income tax benefits of NRA income tax status while the NRAT settlor retains such status. This can result in significant tax-free conversion of the proper types of income to principal so that upon the death of the NRAT settlor, any accumulations which had not been distributed to a U.S. citizen or RA beneficiary during such NRAT grantor's lifetime, can be distributed tax-free upon the NRAT grantor's death. Even subsequent to the death of the NRAT grantor of a foreign trust, when the trust no longer constitutes a foreign person grantor trust, the potential may exist for the deferral of U.S. income tax to a U.S. citizen or RA beneficiary by utilizing the specific bequest rule found in § 663. However, a proposal which was not enacted would eliminate the use of § 663 with respect to distributions from foreign trusts. See President Clinton's Tax Simplification Proposal issued April 16, 1997. With the changes enacted in the foreign trust area as part of the SBJPA, there can be significant adverse tax consequences associated with accumulating income and gains in a foreign trust which does not constitute a foreign person grantor trust. Pre-TRA-97, the "domestication"

of a foreign trust arguably may have minimized such adverse consequences; however, new § 665(c) and the relevant legislative history likely eliminate this possibility for taxable years beginning after August 5, 1997.

10. The prior §§ 899 and 1447 proposals, which have never been enacted, would cause double taxation when a foreign person owning 10% or more (by applying broad ownership rules) of a domestic corporation disposes of shares in such corporation. Disposition, for instance, would include a sale, exchange or liquidation, and withholding procedures similar to the § 1445 FIRPTA withholding procedures would back up the proposed tax. Although the §§ 899 and 1447 proposals have not been enacted, consider § 332(d) imposed by the AJCA as it introduces double taxation potential to the complete liquidation of certain domestic corporations by a foreign corporation.
11. Compliance provision in TRA-86 requires any individual who applies to be lawfully accorded the privilege of residing permanently in the U.S. as an immigrant in accordance with the immigration laws, to include with such application certain data aimed at determining such person's U.S. income tax obligations (if any). Such data might also be used for U.S. estate and gift tax purposes, especially if advantageous to the Service.

**E. Recognizing Key Pre-Immigration,  
Post-Mortem and Spousal Issues When  
Dealing With the International Tax Client**

## **Recognizing Key Pre-Immigration, Post-Mortem and Spousal Issues When Dealing With the International Tax Client**

By: Michael Rosenberg, Esq. and  
Dennis Ginsburg, Esq.

**All section ("§") references herein shall refer to the Internal Revenue Code of 1986, as amended "Code", or the Regulations issued thereunder (hereinafter "Regulations" or "Regs.").**

### **A. Pre-Immigration Tax Planning.**

**In every situation involving a foreign or international taxpayer, any relevant tax treaty must be considered and any U.S. tax advice must be coordinated with the advice of foreign counsel.**

#### **1. Income Tax Planning.**

The best income tax planning technique for the Immigrating Taxpayer could well be to retain his or her NRA status for as long as possible. Once the Immigrating Taxpayer becomes an RA or (eventually) a U.S. citizen, he or she will be subject to U.S. income taxation with respect to his or her worldwide income and gains, and to extensive tax reporting requirements with respect to his or her interests in foreign business entities, foreign trusts and foreign financial accounts. There are several techniques the Immigrating Taxpayer can use to avoid or minimize these U.S. income tax consequences. There are techniques available before he or she becomes an RA, and there are other techniques that are available once the Immigrating Taxpayer becomes an RA. Also, some of these techniques may have a much better result if the Immigrating Taxpayer's stay in the U.S. will be temporary. Although the following list of techniques is not exclusive, based on our firm's experiences, it should provide a good "menu" from which to choose.

#### **a. General Income Tax Planning Techniques.**

i. Accelerate the recognition of income or gain not taxable in the U.S. while an NRA by entering into taxable transactions (i.e., sales, liquidations, taxable exchanges, etc.) with appreciated assets so as to eliminate any unrealized appreciation and/or obtain a step-up in the tax basis of such assets.

ii. Consider selling any appreciated property in exchange for a note payable in installments to realize gain at the time of sale and to receive tax free payments of principal once an RA.

iii. Accelerate the receipt of income or receivables (e.g., compensation, deferred interest, etc.).

iv. Qualify any outstanding debts, to the extent possible, under the PIE to avoid possible problems with a creditor if the debtor's "new" RA status brings with it U.S. source income plus the flat U.S. withholding tax. If the Immigrating Taxpayer is divorced or is considering divorce and the former spouse is an NRA or may become an NRA, note that similar issues may arise as to alimony payments.

v. Try to discount and possibly pay off any debt obligations to foreign persons in contemplation of U.S. withholding tax consequences, especially where such debt may not be convertible to satisfy the PIE requirements (e.g., a foreign bank loan). Consider the same opportunity if alimony is being paid to a former spouse who is an NRA or may become an NRA.

vi. If possible, avoid retaining an interest in an FC that derives excessive passive income, or plan for the possible consequences thereof including income tax at unfavorable rates and extensive reporting requirements.

vii. To the extent the Immigrating Taxpayer retains an interest in an FC, he or she should consider whether, based upon its activities, it should continue to be classified as an FC for U.S. tax purposes, versus whether it should be recognized as a "pass-through" or "fiscally transparent" entity for U.S. tax purposes.

viii. To the extent possible, effectuate distributions of retained earnings of any FC in which the Immigrating Taxpayer will retain an interest.

ix. Take advantage of the U.S. tax free transfer rules for an NRA and an NRAD to achieve income splitting among a number of donees.

x. Offset and utilize foreign operating losses against foreign income.

xi. Take advantage of the § 121 principal residence gain exclusion, but not too soon, as NRAD status is important in planning and the retention of one's domicile in the country of principal residence can be an important factor.

xii. Once an RA, the Immigrating Taxpayer could defer the current recognition of income by investing, directly or indirectly, in assets that permit income tax deferral through properly selected investments (e.g., real estate, certain mutual funds and offshore investment products, annuities, life insurance products, Section 529 Plans, etc.). Pre-immigration income tax planning may include purchasing these products while an NRA in trust in order to avoid gift tax limits on funding.

xiii. Consider obtaining loans from foreign lenders as a method of deferring the current recognition of income.

b. More Detailed Income Tax Planning Techniques.

i. Maintain NRA and NRAD status for as long as possible as doing so will give the taxpayer his or her best opportunity to maximize U.S. pre-immigration tax planning opportunities.

ii. Focus on the differences between the RA versus NRA income tax definition and the RAD versus NRAD U.S. estate and gift tax definitions. One can be an RA but an NRAD.

iii. Understand the significance of the RA residency starting date and utilize the rule accordingly.

iv. Understand the maximum 10-day nominal presence exception to the SPT and do not eliminate or overlook its value by inadvertently violating the exception and thus accelerating your residency starting date. Doing so might subject substantial pre-immigration activities or transactions to U.S. income taxation which may have otherwise been avoided.

v. For those who may have not planned accordingly, examine the application of § 7701(b)(10) and if flexibility is still available thereunder, take the appropriate pre-immigration planning steps prior to becoming trapped under this broad-reaching but somewhat little-known tax trap.

vi. Consider whether or not the taxpayer's home country has an income tax treaty with the U.S. which includes an income tax residency tie-breaker provision. Such a provision might result in foreign country residence status and U.S. NRA status for purposes of computing one's U.S. income tax liability. Such status could prove extremely useful during the pre-immigration stage, especially where the taxpayer wishes to have his or her U.S. income tax computed as an NRA and/or wishes to eliminate certain filing requirements such as the Form 3520 required by a U.S. person who receives a large gift from a "foreign" person. An RA under either the Green Card test or the SPT is a U.S. person for all other purposes of the Code even if such RA can compute his or her U.S. income tax as an NRA under a tax treaty. With respect to the Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts," required of each U.S. person where the balance in the account exceeds \$10,000 in the aggregate at any time during a calendar year, until now, "U.S. person" has been interpreted to include only a U.S. citizen or a U.S. lawful permanent resident alien so-called "Green Card" holder. Caution, however, is in order as it appears that under the revised instructions for the filing of Form TD F 90-22.1, a non-U.S. citizen/non-U.S. Green Card holder would be considered a U.S. person taxpayer for purposes of having to file that form if said taxpayer is an RA under the SPT and notwithstanding such taxpayer may otherwise qualify under an income tax treaty residency tie-breaker provision to compute his or her tax as an NRA for U.S. income tax purposes. Also consider Form 8833, "Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)."



vii. For the taxpayer who spends substantial time in the U.S. in one or more years prior to his or her becoming a definitive RA, and especially where maintaining NRA status for as long as possible may be important, make certain that the appropriate reporting such as Form 8840 or Form 8843 is timely and properly filed so as to maintain NRA status.

viii. Carefully confirm how assets of an Immigrating Taxpayer, and especially a married couple, are held so as to maximize the U.S. pre-immigration planning opportunities. For instance, the community property basis step-up (particularly with respect to the portion of such property owned by the surviving spouse) can be extremely advantageous but if certain actions are taken during the U.S. pre-immigration phase that sever the community property ownership relationship, the basis step-up might be lost. With respect to a non-tax consideration such as asset protection, does community property ownership provide some protection similar to that associated with situations where spouses jointly own non-community property as tenants-by-the-entirety?

ix. If the Immigrating Taxpayer is contemplating purchasing a U.S. personal residence in connection with becoming an RA, consider a PIE mortgage from a family member, relative or friend who might benefit from U.S. income tax-free interest income while the new U.S. RA taxpayer can benefit from the home mortgage interest deduction.

x. Consider that certain foreign deferred compensation plans, investments and other activities abroad which may be exempt from tax or taxed minimally by the Immigrating Taxpayer's home country may not receive any similar benefit in the U.S. [see §§ 72(w) and 83(c)(4)] and, thus, efforts should be made to "cash in" tax-free abroad so as to create new basis for tax purposes when investing as an RA. Similarly, the sale of a principal residence abroad may be tax-free but if it is sold as an RA and the § 121 parameters are not satisfied, U.S. income tax may be due. Also, § 1031 U.S. income tax-free like-kind exchange treatment does not apply to an exchange of foreign property for U.S. property (or vice versa). The typical Canadian registered retirement savings plan or registered retirement savings fund would not be qualified plans under U.S. tax law so consider making the special election under Rev. Proc. 2002-23.

xi. Assuming the Immigrating Taxpayer owns an "eligible entity," consider making the Form 8832, "Entity Classification Election," so-called Check-The-Box election prior to becoming an RA. The election arguably should be treated as a pre-RA non-taxable liquidation with the Immigrating Taxpayer receiving a basis step-up for those assets treated as his or hers for U.S. income tax purposes beginning with his or her RA status. If an eligible entity exists, should the Check-the-Box election work or could the Service argue no relevancy or no economic substance until RA status attached thus asserting that the Check-the-Box consequences should be viewed as having occurred simultaneously with the start of RA status and possibly activating adverse U.S. tax consequences?

xii. Many NRAs purchase a U.S. personal residence when being transferred to the U.S. on a temporary basis (e.g., for a 3-year assignment), and they retain such residence after returning home again. In those cases, if the taxpayer thereafter decides to immigrate to the U.S. and to sell that residence in order to upgrade, if the § 121 parameters have

been satisfied, the gross income exclusion as limited thereunder may be in order even if the residence is sold while the Immigrating Taxpayer still has NRA status.

xiii. Although many NRAs believe that their basis in individual assets should receive a step-up (i.e., be increased, free of tax cost) to the fair market value of such property at the date they become RAs, the Service has held that a step-up is not in order. See Rev. Rul. 55-62, 1955-1 C.B. 212. The RA retains a basis equal to his or her original cost in the property as adjusted under the provisions of § 1016.

xiv. If an RAD or U.S. citizen inherits foreign property from an NRAD, he or she will receive a step-up in basis under § 1014 even though the property is not includible in the value of the NRAD's U.S. gross estate. Rev. Rul. 84-139, 1984-2 C.B. 168.

xv. If an NRA owns and has used depreciable property in a business abroad at the time his or her status changes to that of an RA, is his or her basis for U.S. income tax purposes the original cost or must § 1016 adjustments for depreciation be taken into account notwithstanding neither the former NRA nor the foreign business to which such foreign depreciable property was associated ever had anything to do with the United States? If the Immigrating Taxpayer will be using the depreciable property as an RA, a depreciation adjustment may be required under § 1016(a)(3)(B). Consider PLR 8749008 where an FC that was going to use property in its U.S. trade or business, which property had originally been placed in service in a foreign country, was required to reduce its basis by the amount which would have been allowable as depreciation for the portion of its useful life prior to its use in the United States.

xvi. Many NRAs have foreign operating losses available upon obtaining RA status. However, the U.S. tax provisions do not permit foreign losses to be carried forward to offset income subject to U.S. taxation, notwithstanding the fact that such losses may have been available to offset the taxpayer's income in his or her prior country of residency or citizenship. See § 172(c) and Rev. Rul. 72-421, 1972-2 C.B. 166. Plan accordingly for this possibility.

xvii. The Immigrating Taxpayer should consider pre-RA installment sales, especially of non-FIRPTA, non-U.S. trade or business property so as to avoid U.S. income tax when receiving principal payments thereon subsequent to becoming an RA. In PLRs 8708002 and 9412008, the Service considered similar factual situations in which an NRA sold property to an unrelated FC, payments were to be received over a period of years, and the income therefrom was neither from U.S. sources nor effectively connected with a U.S. trade or business. Correctly, the Service determined what the U.S. tax treatment would have been had the RAs been NRAs in the year of sale and held that the installment method rules of § 453 are inapplicable to payments received after an NRA becomes an RA. However, in PLR 9412008, the Service states that the ruling, although applicable to gain attributable to principal payments, does not apply to the interest income or any realized currency gains or losses (those amounts should logically be taxed under the regular income tax rules).

xviii. If the Immigrating Taxpayer needs to retain his or her NRA status for a short period of time for planning purposes, he or she might consider qualifying for one of the exceptions to the SPT.

xix. The Immigrating Taxpayer should meet with a U.S. tax advisor experienced in the international taxation field in order to discuss any foreign entities he or she owns in order to determine if any actions can be taken prior to such taxpayer becoming an RA and/or RAD for overall tax minimization purposes (for example, to avoid CFC status).

xx. Many Immigrating Taxpayers, while having NRA status, previously established one or more FCs to hold U.S. real estate or other assets, whether for personal, business or investment purposes, and restructuring of those FCs prior to becoming an RA is extremely important. For instance, for the Immigrating Taxpayer having an FC which in turn owns a USRPI or a U.S. trade or business, it is possible that three levels of taxation can apply (i.e., the regular C corporation income tax, the branch profits tax, and the U.S. shareholder level tax on dividends).

xxi. The Immigrating Taxpayer must, in advance of becoming an RA, become aware of § 482 "Allocation of Income and Deductions Among Taxpayers," as well as the relevant reporting requirements, especially where the taxpayer, once an RA, will maintain businesses both abroad and in the United States.

xxii. The Immigrating Taxpayer should discuss with his or her U.S. tax advisor the numerous relevant U.S. tax forms and filing requirements generally associated with international tax issues. In fact, by simply reviewing a list of such forms, both the Immigrating Taxpayer and his or her U.S. tax advisor will get a good understanding of what issues must be considered. Such a review may also assist with the pre-immigration tax planning stage.

xxiii. Where the Immigrating Taxpayer still has thoughts of possibly someday returning to his or her home country, he or she must be made aware of the broad-reaching and complex U.S. income, estate and gift tax expatriation provisions of §§ 877, 2107, and 2501(a)(3). Interestingly, if the Immigrating Taxpayer ultimately becomes a U.S. citizen and eventually decides to expatriate, he or she will have to analyze the special expatriation income tax provisions by looking to his or her adjusted basis in any property affected. On the other hand, if such taxpayer instead remained a Green Card holder, then solely for the purpose of determining the impact of the special expatriation tax provisions, his or her tax basis would be the fair market value of the property in question on the date the taxpayer first became an RA. § 877(e)(3)(B). If the taxpayer's adjusted basis would exceed the fair market value basis, the taxpayer can elect otherwise. As you can see, there are numerous opposing forces at play with respect to Immigrating Taxpayers (e.g., obtaining U.S. citizenship as fast as possible can be helpful for U.S. estate and gift tax purposes but if that same taxpayer eventually decides to expatriate, U.S. citizenship status may adversely affect his or her basis for determining any expatriation income tax consequences).

xxiv. Where the Immigrating Taxpayer has previously established a revocable foreign trust for the benefit of himself or herself and/or one or more U.S. person beneficiaries, and where such trust is administered under the laws of a state within the U.S., the taxpayer's move to the U.S. and his or her subsequent RA status can result in the trust's becoming a domestic trust. If the trust constitutes a grantor trust, the Immigrating Taxpayer, now an RA, will bear the U.S. tax consequences directly.

xxv. If the Immigrating Taxpayer is a trustee of a foreign non-grantor trust established by an NRA/NRAD (for instance, a foreign relative), and said trust is administered under the laws of a particular state in the U.S., then in the absence of appropriate and timely action, the change to RA status of the Immigrating Taxpayer trustee may result in the trust becoming a domestic trust, thereafter subject to U.S. income tax.

xxvi. The Immigrating Taxpayer should be made aware of the potential adverse consequences of § 684. In the event the Immigrating Taxpayer has previously settled a foreign grantor trust that has "grandfathered" grantor status notwithstanding it does not meet the current § 672(f) foreign grantor rules, and where the assets of the trust are not included in the estate of the Immigrating Taxpayer at the time of his or her death, if he or she dies having RA status and the trust has appreciated assets, § 684(a) will treat the situation as if a U.S. person had transferred appreciated property to a foreign trust and in the last year of the RA decedent's U.S. income tax filing, he or she will have to recognize the gain. Also, if the Immigrating Taxpayer settles a domestic trust that holds appreciated assets, which trust has a U.S. person trustee who later emigrates abroad, if caution is not used, the domestic trust could become a foreign trust and under § 684(c), similar U.S. income tax gain recognition would result.

xxvii. The Immigrating Taxpayer may anticipate receiving large gifts from relatives abroad and he or she should become familiar with the Form 3520 filing requirements. It is possible that the Service could examine the form and in the event the Immigrating Taxpayer previously owned interests in family entities abroad, the Service might attempt to view such "gifts" as income distributions associated with said foreign entities. In addition, where the Immigrating Taxpayer has wealthy relatives abroad who own foreign corporations or foreign partnerships, the Immigrating Taxpayer should be cautioned against receiving any "purported" gifts from a foreign corporation or a foreign partnership, or the result can be undesirable adverse U.S. income tax consequences.

## 2. Estate and Gift Tax Planning.

Once an RAD (or, eventually, a U.S. citizen), the Immigrating Taxpayer's estate will be subject to U.S. estate tax with respect to worldwide property including, but not limited to, real estate, interests in business entities, property held through certain trusts including revocable trusts, and personal property. Similar to the income tax planning techniques, some estate planning techniques may be implemented before the Immigrating Taxpayer becomes an RAD and others may be implemented once an RAD.

Once a U.S. gift tax RAD (or eventually a U.S. citizen), the Immigrating Taxpayer's gifts of worldwide property will be subject to U.S. gift tax. On the other hand, an NRAD transferor is presently only subject to U.S. gift tax on his or her gifts of U.S. real estate or tangible property located in the United States. As a result, to the extent the Immigrating Taxpayer is considering making large gifts to his or her family members, he or she should complete such gifts before becoming an RAD.

a. General Estate and Gift Tax Planning Techniques.

i. Reduce the value of one's gross estate prior to becoming an RA/RAD by gifting assets that would be includible in the U.S. gross estate.

ii. Consider the use of the installment sale method to "freeze" the value of the U.S. gross estate as well as other asset freeze techniques that might not be available while an RAD (for example, preferred stock freezes).

iii. Try to prolong NRAD status by retaining extensive family, business and other social ties to one's country of domicile and minimize ties to the U.S., and in connection therewith, consider preparing a U.S. state (e.g., Florida) "nondomiciliary" will or trust, to administer any U.S. state (e.g., Florida) situs assets currently owned.

iv. Take advantage of the unlimited marital deduction and determine if a QDT will be required in which case pre-immigration spousal gifts may be advisable.

v. Coordinate with wealthy relatives the manner in which gifts or inheritances will be received from them to avoid unnecessarily increasing the value of the Immigrating Taxpayer's worldwide estate.

vi. In connection with the suggestion in A.2.a.v. above, the Immigrating Taxpayer's wealthy relatives should consider creating one or more revocable trusts that will eventually benefit the Immigrating Taxpayer and his or her spouse and issue.

vii. Provide liquidity in anticipation of any U.S. estate tax liability by settling an irrevocable trust to purchase life insurance and consider a joint and survivor policy in the case of an Immigrating Taxpayer couple. Funding while an NRAD should be considered in order to avoid gift tax limitations that will apply while an RAD.

viii. Once an RAD, the Immigrating Taxpayer should continue planning for the U.S. estate tax by entering into U.S. gift-tax-free annual gifting programs for spouse, issue, and others in order to reduce the value of his or her estate.

ix. Once an RAD, the Immigrating Taxpayer should consider certain sales or gift techniques with deferred payments to "freeze" the value of any property that is rapidly increasing in value.

x. Make gifts before becoming an RAD to avoid U.S. gift tax on these gifts and to reduce the value of the U.S. gross estate.

xi. Create irrevocable trusts for the benefit of younger family members to hold gifted assets.

xii. Gift property which may appreciate.

xiii. Take advantage of the gift tax inflation-adjusted \$10,000 per donee, per year exclusion amount (currently \$12,000), and the inflation-adjusted \$100,000 per year spousal exclusion amount (currently \$120,000) with respect to a non-U.S. citizen spouse.

xiv. To the extent practical and desirable, and after making certain that such trusts will not result in a U.S. estate tax inclusion, consider drafting trusts as grantor trusts so that the Immigrating Taxpayer pays the income tax liability thereon, thus reducing the U.S. taxable estate further.

b. More Detailed Estate and Gift Tax Planning Techniques.

i. Gifting, in trust or otherwise, is generally an important step in U.S. pre-immigration tax planning. Maximize estate tax protection for the beneficiaries and future generations. If the Immigrating Taxpayer has NRAD status and irrevocably gifts non-U.S. situs property to a domestic trust for his or her issue so as to avoid future U.S. estate or gift tax once he or she is an RAD, and the taxpayer is an RA under the Green Card test or the SPT but is able to compute his or her U.S. income liability as an NRA under an income tax treaty residency tie-breaker provision, then except for the purpose of computing his or her U.S. income tax, he or she would be considered an RA and as such, the donee domestic trust would be not required to file the Form 3520.

ii. Substantiate all desired consequences to the maximum extent possible, both abroad and in the U.S. by planning in advance, by not being lazy and by recognizing that proper coordination can be extremely important in overcoming the adverse consequences that may result should the Service utilize the taxpayer's lack of planning properly so as to assert adverse positions against the taxpayer.

iii. Plan to maintain NRAD status for as long as possible and supplement that plan by taking the appropriate steps, for instance: (a) maintain a principal personal residence abroad prior to and while completing U.S. pre-immigration estate and gift tax planning while simultaneously taking into account the § 121 time parameters; (b) maintain foreign home country estate planning documents reflecting home country domicile such as wills, trusts, foundations, or other equivalents; (c) maintain all other indicia of foreign domicile such as driver's license, voting rights, credit cards, club memberships, professional organizations, business organizations, etc., (d) be cognizant of immigration status (i.e., avoid becoming illegal), and (e) maintain only nonresident status U.S. credit cards, club memberships, etc. during the U.S. pre-immigration planning phase.

iv. While still having NRAD status, maximize gifts of intangibles and preferably via gifts to discretionary trusts for U.S. person beneficiaries. Use special powers of appointment for flexibility.

v. Consider having a personalized domicile analysis prepared in order to assist in making certain that NRAD status is preserved for as long as necessary to complete any pre-immigration planning requiring such status.

vi. Although the Immigrating Taxpayer may soon establish U.S. domicile and RAD status, thus providing him or her with certain benefits such as the U.S. estate tax maximum applicable exclusion amount (currently \$2 Million) and the U.S. gift tax maximum lifetime exemption (currently \$1 Million), the lack of U.S. citizenship status of the surviving or donee spouse, will deny the unlimited estate tax marital deduction and will deny the unlimited gift tax marital deduction (the \$100,000 inflation-adjusted annual spousal exclusion amount, currently \$120,000, will instead apply). Also, the favorable 50% joint interest rule for U.S. estate tax purposes under § 2040(b) will not apply in the case of a non-U.S. citizen surviving spouse, thus activating the § 2040(a) contribution rule. If a couple that immigrates to the U.S. plans on remaining in the U.S. permanently, they should weigh all of the relevant facts as quickly as possible and consider obtaining U.S. citizenship if appropriate.

vii. For the Immigrating Taxpayer couple that may not have planned accordingly while still having NRAD status, once they become RADs, they should consider whether or not a split-gift under § 2513(a) might be beneficial. It would appear that said couple could then gift up to \$2 Million (each utilizing their respective \$1 Million gift tax lifetime exemption) even in a situation where one spouse has no assets or has less than \$1 Million to gift. This is a great result noting that if the wealthier now-RAD spouse having substantial assets tried to gift \$1 Million to his or her non-U.S. citizen RAD spouse, said gift would be limited to the \$100,000 inflation-adjusted annual spousal exclusion amount (currently \$120,000) unless the wealthier spouse used up his or her \$1 Million lifetime gift tax exemption.

viii. For the Immigrating Taxpayer who may have an opportunity to eventually obtain U.S. citizenship, and where such Immigrating Taxpayer is married, a discussion of the QDT rules as they relate to the unlimited U.S. estate tax marital deduction should take place as soon as possible. Anyone who has experienced utilizing the QDT provisions understands how complex and onerous the application thereof may ultimately be. Should a surviving spouse obtain U.S. citizenship prior to the death of his or her spouse, no QDT will be required and even if a QDT is initially required, there are procedures available for the eventual elimination thereof should the surviving spouse become a U.S. citizen prior to his or her death.

ix. As noted in A.2.b.vi. above, with respect to jointly-held and tenancy-by-the-entireties ownership involving a non-citizen surviving spouse, § 2056(d)(1)(B) denies the § 2040(b) 50% each inclusion rule and instead applies the § 2040(a) general contribution rule. Consider PLR 9521031 which illustrates the application of the contribution rule. However, with respect to community property ownership, the gross estate of the first spouse to die should include only one-half of the value of the U.S. situs property (see Rev. Rul.

72-443, 1972-2 C.B. 531) and notwithstanding this partial inclusion rule, the entire U.S. situs property should receive a date of death value basis step-up. See § 1014(b)(6), Rev. Rul. 87-98, 1987-2 C.B. 206 and Rev. Rul. 92-37, 1992-1 C.B. 195.

x. Aside from basis step-up concerns, the Immigrating Taxpayer should use caution before severing community property, for instance, by titling U.S. real estate as tenants-by-the-entireties. Although there may be non-tax reasons to do so, from a U.S. tax viewpoint, a U.S. estate tax fractional interest discount would likely be denied at the death of the first spouse. Under §§ 2031 and 2040, fractional interest discounts and lack of marketability discounts are inapplicable to the valuation of joint tenancy property. Had the property instead retained community property ownership, one-half would have belonged to each spouse with no right of survivorship, thus leaving an opportunity for some discounts. Consider Estate of Wayne-Chi Young, 110 T.C. 297 (1998).

xi. In preparing U.S. estate planning documents, the Immigrating Taxpayer and his or her U.S. counsel must coordinate with foreign counsel to avoid major adverse surprises which oftentimes are missed notwithstanding the professionals are conscientious and are attempting to provide the Immigrating Taxpayer with the best advice possible. For example, assume a German couple with substantial assets in Germany "leaves" Germany and moves to the U.S. on a permanent basis with neither spouse being a U.S. citizen. In order to take advantage of the maximum U.S. estate tax marital deduction, and assuming that, at the time of the death of the first spouse, the surviving spouse is not yet a U.S. citizen, the QDT provisions must be relied on. The inheritance tax rules in Germany may not recognize a QDT and as a result, although deferral from U.S. estate tax may be possible, immediate German inheritance tax may be due. The example assumes that pursuant to the German tax law, the first death occurs within that time period where Germany can exercise its inheritance tax provisions. Assume further that a UK couple moves permanently to the U.S. and in connection with their U.S. estate planning, assets are eventually transferred to a QDT for U.S. estate tax deferral purposes. Recent changes in the UK inheritance tax law view many transfers to trusts as intended for abusive purposes and the result may be an adverse UK tax consequence. Similar illustrations can be found in many jurisdictions which have an estate, death, inheritance, or similar tax, and thus the necessity for U.S. tax counsel to coordinate with foreign counsel.

xii. Where a wealthy NRAD immigrating spouse is married to a U.S. citizen spouse whose estate would be under-funded in the event of a death, the wealthy spouse should consider U.S. tax-free marital gifts so that the U.S. citizen spouse will have sufficient assets to benefit from the U.S. estate tax applicable exclusion amount. See §§ 2523(a) and (i)(1). Compare this possibility with § 2523(i)(2) where the donee spouse is a non-U.S. citizen and the inflation-adjusted \$100,000 annual spousal exclusion (currently \$120,000) applies.

xiii. Notwithstanding that a gift to a non-U.S. citizen spouse is limited to the inflation-adjusted \$100,000 annual spousal exclusion (currently \$120,000), partial relief applies to the creation of a tenancy-by-the-entireties or a joint tenancy with the right of survivorship in real property as the creation will not be deemed to be a gift. Consider § 2523(i)(3) and Reg. § 25.2523(i)-2(a). However, a gift may occur upon the expiration of such



a tenancy pursuant to some detailed rules [Reg. § 25.2523(i)-2(b)(2)], and in the event of the death of a spouse, the repeal of the § 2040(b) 50% inclusion rule will cause a similar result.

xiv. It should be noted that when dealing with community property, even if one spouse appears on the relevant title documentation with respect to a particular asset and a death of either spouse occurs, split ownership should apply under the § 2040(a) contribution rule as in reality each spouse contributed equally to the acquisition of the asset in question.

xv. Florida Statute § 731.106(2) gives the testate NRAD greater control over the determination of the situs and character of assets which may be critical when Florida succession law differs significantly from the law of the NRAD's domicile, or when certain Florida laws (such as the elective share law) do not apply to NRADs. Also consider In Re Renard, 437 N.Y.S. 2d 860 (1981), aff'd, 56 N.Y. 2d 973 (1982). Similar choice of law opportunities may apply with respect to a Florida trust where Florida law should determine the validity of such a trust and its Florida-situs property even if such law conflicts with the law of the NRAD settlor's domicile. See Fla. Stat. § 685.101. The appropriate trustee and corpus requirements should be complied with. As to so-called Totten trusts, consider Fla. Stat. § 655.55, and Sanchez v. Sanchez de Davila, 547 So. 2d 943 (Fla. 3d DCA 1989), rev. denied, 554 So. 2d 1167 (Fla. 1989). For an Immigrating Taxpayer who will take up residence in Florida, consider Fla. Stat. § 732.216 – 732.228 also known as the Florida Uniform Disposition of Community Property Rights at Death Act.

xvi. For the Immigrating Taxpayer having substantial foreign situs assets and assuming such taxpayer's domicile country does not have burdensome estate, death, or inheritance tax consequences, maintaining NRAD status for as long as possible would be appropriate notwithstanding such taxpayer's substantial presence in the U.S. may result in RA income tax status under the SPT.

xvii. If the Immigrating Taxpayer has previously established a revocable foreign trust for the benefit of his or her issue, he or she would likely want to re-evaluate the situation so as to structure the trust so that its underlying assets will avoid a U.S. estate tax inclusion at the death of such taxpayer and assuming such taxpayer would then be an RAD or possibly a U.S. citizen. For instance, while still an NRAD, the Immigrating Taxpayer should give up the power to revoke as well as any other rights, powers, controls or interests that could result in an estate tax inclusion. Caution must be applied as § 679 could trap the unwary Immigrating Taxpayer who brings trust beneficiaries to the U.S. with him or her. In other situations, § 679 can be used affirmatively for the wealthy Immigrating Taxpayer who wishes to be taxed as the grantor of such trust. Grantor status can help reduce his or her otherwise U.S. gross estate on those assets he or she had retained when becoming an RAD as the RAD grantor would be responsible for any U.S. income tax liability.

xviii. If the Immigrating Taxpayer maintains NRAD status until the time of his or her death and is the settlor of a revocable trust, and especially a revocable trust holding foreign situs assets where the taxpayer's death would thereafter result in a foreign non-grantor irrevocable trust with potential accumulation throwback problems (even with respect to foreign

source income), such problems may arguably be minimized or possibly avoided by electing under § 645 to have such trust treated as part of the NRAD decedent's estate. In the case of a foreign estate or foreign trust, DNI starts with the taxable income and although non-effectively connected/non-U.S. trade or business foreign source income is generally not included in the taxable income of a foreign estate or a foreign trust, one modification under § 643(a)(6)(A) with respect to a foreign trust is an add back of foreign source net income. No such add-back is required for a foreign estate. Thus, if a foreign estate exists and it has foreign source income, it appears that said income can be paid to a U.S. person beneficiary U.S. income tax-free and without any adverse accumulation throwback consequences.

xix. If the Immigrating Taxpayer has wealthy relatives abroad, e.g., parents or grandparents, and said Immigrating Taxpayer will ultimately inherit from such NRAD, the favorable foreign estate rule discussed in A.2.b.xviii. above should be considered. In addition, the Immigrating Taxpayer, especially if he or she will ultimately have RAD or eventually U.S. citizen status, should encourage his or her foreign relatives from whom he or she may inherit to plan accordingly and preferably through the vehicle of trusts so that neither the Immigrating Taxpayer nor his or her family will find the trust assets subject to adverse U.S. estate tax, adverse creditor claims, or adverse marital claims. These benefits would be lost if the Immigrating Taxpayer inherited the assets directly.

xx. While retaining NRAD status, foreign situs property and U.S. situs intangible property may be transferred to or among those persons who will eventually receive such property upon one's death. In the case of gifts of money, conservative planning dictates that any transfer be made from the foreign account of the NRAD or, if such a transfer cannot be arranged, by gifting stocks or bonds instead. As a result, any property transferred is removed from the eventual U.S. gross estate. However, the loss of the date of death basis step up should be compared with the income versus estate and gift tax rates, as well as any other relevant considerations, before making any such transfers. Delay gifting of U.S. situs tangible property until RAD status is obtained. An NRAD has no gift tax unified credit while an RAD or U.S. citizen has a lifetime credit equivalent of \$1,000,000.

xxi. Consider the use of a revocable U.S. trust. Such a trust could help avoid costly and time-consuming administrative problems associated with the probate of non-home country assets, especially where the holding of assets outside of the home country is viewed unfavorably by the home country.

xxii. Consider the use of a U.S. (state) will. A will in lieu of a trust is oftentimes not as desirable because the probate of a will (if allowed by the relevant state probate court) could result in correspondence with the home country fiduciary administering the estate, and may cause problems with the intended disposition of assets.

xxiii. Consider the use of an irrevocable trust to hold life insurance policies whether an NRAD, RAD or U.S. citizen at the time of death to fund potential U.S. estate tax, or in the absence of estate tax liability, to increase the value of the estate. Because of the limitations on the payment of principal of a QDT, it is generally preferable to use a "life insurance trust" to provide for a surviving spouse so that, where the proceeds of policies are not

included in the decedent's estate, principal can be provided to a surviving spouse without incurring the "deemed" estate tax that generally applies to principal distributions from a QDT. Pre-immigration funding of such a trust may be advisable, especially where premium payments will create adverse gift tax effects if made while an RAD.

xxiv. The unlimited marital deduction on gifts from an RAD or U.S. citizen to a non-U.S. citizen spouse no longer applies, the annual gift tax exclusion for gifts made to a non-U.S. citizen spouse is currently \$120,000 (to be adjusted upward for inflation) and these changes should be considered if one spouse remains a non-U.S. citizen. An NRAD donor of U.S. situs property gets this same \$120,000 annual gift tax exclusion (to be adjusted upward for inflation) for gifts made to a non-U.S. citizen spouse, as well as an unlimited gift tax marital deduction if the donee spouse is a U.S. citizen. Consideration might be given to establishing lifetime gift tax marital deduction trusts for the benefit of a non-U.S. citizen spouse (subject to the current \$120,000 annual exclusion as adjusted upward for inflation) because later principal distributions from such a trust during the lifetime of the surviving spouse will not be subject to the deemed death tax under § 2056A while similar payments from a QTIP/QDT established in a will or by the surviving spouse after the decedent spouse's death would be.

xxv. Although § 2036(c) was repealed and replaced with §§ 2701-2704, such provisions do not adversely affect certain pre-immigration estate planning for a married NRAD. Under old § 2036(c), based on the so-called "spousal unity" rule, if the spouse were an income beneficiary, the trust corpus could have been included in the eventual RAD's or U.S. citizen's gross estate. Now, estate tax inclusion is not the "punishment" but instead special valuation rules are applied for gift tax purposes. The result is that an NRAD who plans on becoming an RAD or a U.S. citizen can irrevocably gift intangible property and/or non-U.S. situs tangible assets in trust tax-free and thus avoid estate tax at the time of both his and his spouse's death, although the spouse may have been an income beneficiary during her lifetime. (Query the effect if the property gifted is community property). This may likewise apply to an otherwise non-qualifying grantor retained income trust established by the NRAD prior to becoming an RAD or a U.S. citizen provided he or she outlives the term of his or her income interest. Consideration might also be given to "crossed" trusts where separate property is gifted into trusts with different terms.

In the appropriate case, consideration might be given to establishing an irrevocable trust of which the grantor and his or her family are beneficiaries. However, there are significant restrictions on who may be trustee, where the trust may be established, and the understanding that may exist between the grantor and the trustee as to who can benefit from the trust that render this planning as less certain than many people are willing to adopt. In addition, because a creditor of a settlor who is also a beneficiary may generally have access to the assets of a discretionary trust established in most U.S. states under the so-called "self-settled trust" rule, any such trust must be established in a state (such as Delaware) with a domestic asset protection statute (the effectiveness of which is still uncertain) or in certain offshore jurisdictions where such self-settled trusts are effective against creditors. Any such trust will likely be a "grantor" trust which will reduce the grantor's estate.

xxvi. An NRAD planning to become an RAD or a U.S. citizen should evaluate the tax status of his or her FCs because, upon his or her death having RAD or U.S. citizen status, the tax basis of a PFIC may not be increased to its date of death value. Consider qualified electing fund elections where appropriate.

xxvii. An NRAD planning to become an RAD or a U.S. citizen should consider “domesticating” his or her FCs which hold appreciated U.S. real property and/or appreciated U.S. trade or business assets. Thereafter, efforts might be made to elect S corporation treatment subject to a built-in gains analysis and the passive investment income tax imposed on certain S corporations deriving excess passive investment income. If an RAD or a U.S. citizen dies holding any such FC stock, although there may be a step-up in tax basis for such stock (subject to the comments about PFICs in A.2.b.xxvi. above), a U.S. corporate tax will result with capital loss treatment on the immediate liquidation of the FC. However, if S corporation treatment is obtained and to the extent the built-in gains tax (applicable to appreciation attributable to pre-C corporation years recognized for 10 years after conversion) and passive investment income tax are avoided, the corporate tax will be avoided. In addition, an RAD or a U.S. citizen holding an FC subject to the corporate income tax and branch profits tax will incur an additional personal income tax upon the receipt of dividends from the FC. Under § 884(e)(3), an FC that is subject to the branch profits tax for a taxable year is not subject to the NRA or FC shareholder tax and withholding requirements on any dividends paid by such FC out of its earnings and profits for such taxable year; however, no such provision applies where the dividend from the FC is paid to a U.S. person taxpayer.

xxviii. In connection with a PFIC, Prop. Reg. § 1.1291-6(c)(2)(iii)(B) would cause gain recognition upon the transfer of stock of a § 1291 fund to a shareholder’s estate if the estate: (i) has a foreign beneficiary (regardless of whether or not such beneficiary receives an actual distribution of such stock); or (ii) establishes a trust to which the stock of the § 1291 fund may be transferred under the terms of the will. Noting the “required” use of a QDT where the surviving spouse is a non-U.S. citizen, and the “preferred” use of so-called unified credit by-pass trusts and/or the many marital deduction trusts (e.g., QTIPs or Estate Trusts) for which both the tax law and regulations provide, adoption of this proposed regulation could result in serious and surprising adverse results. For these reasons (of which the drafters may not have been aware), our office has suggested that the proposed regulation not be adopted in its current form.

xxix. Prior to becoming an RAD or a U.S. citizen, determine whether or not the Immigrating Taxpayer’s trust (even if irrevocable) contains “tainted” powers which may have to be relinquished or which could alter the pre-immigration planning (e.g., what if the NRAD settlor has retained the right to appoint a substitute “non-independent” trustee or can appoint a “Protector” (a term familiar to English law foreign trusts) who in turn can appoint a substitute “non-independent” trustee?). Consider Rev. Rul. 79-353, 1979-2 C.B. 325, revoked by Rev. Rul. 95-58, 1995-2 C.B. 191; Estate of Wall, 101 T.C. 300 (1993); Rev. Rul. 81-51, 1981-1 C.B. 458; and also, PLRs 8916032, 8922003, and 8922062. See also Vak v. Comm’r., 973 F.2d 1409 (8th Cir. 1992).

xxx. Although it is often recommended that distributions be made from an irrevocable non-grantor foreign trust to an Immigrating Taxpayer beneficiary before he or she immigrates and obtains RA or U.S. citizen status so as to avoid U.S. income taxation, §§ 667(a) and 872(a) can arguably be read as not taxing any distribution of income (even after the Immigrating

Taxpayer becomes an RA or a U.S. citizen) to the extent said beneficiary would not have been subject to U.S. tax on such income had he or she received it while an NRA.

3. Post-Mortem and Miscellaneous Planning Considerations.

a. Examine the domicile issue carefully as the U.S. estate taxation of an RAD is potentially far more detrimental than the estate taxation of an NRAD. If NRAD status is determined, also examine the U.S. estate tax situs rules carefully so that assets otherwise exempt from U.S. estate tax in the case of an NRAD are not inadvertently included in the U.S. situs gross estate.

b. Examine the status of the NRAD for U.S. income tax purposes as such income tax status may oftentimes differ from U.S. estate tax status and can determine an asset's situs for U.S. estate tax purposes (e.g., a U.S. certificate of deposit or a U.S. PIE bond otherwise qualifying for estate tax exemption if owned by an NRA will be U.S. situs assets if the NRAD is an RA). Perhaps FCs should be retained in this situation. Consider the risk of the estate tax proration deduction, especially if the NRAD sought anonymity or had recently filed a Form 1040 as an RA. The problem results from the requirement that the NRAD's worldwide assets be disclosed.

c. Consider utilizing a QDT to benefit from the U.S. estate tax unlimited marital deduction where the surviving spouse is not a U.S. citizen.

d. Consider any relevant U.S. estate and/or gift tax treaty benefits.

e. Consider whether or not any state death tax, foreign death tax, or prior transfer tax credits are available. However, for decedents dying after December 31, 2004, no state death tax credit is available.

f. Review the terms of any foreign trust, especially in the case of an RA or U.S. citizen beneficiary, to determine the extent (if any) that such beneficiary may obtain tax-free distributions from such trust if an NRAD was treated during his or her lifetime as the foreign person grantor of such trust under § 672(f). If an RA or U.S. citizen is the beneficiary of a foreign trust, pre-TRA-97, domesticating the trust may have arguably eliminated the compound interest charge on accumulation distributions from foreign trusts. It is the position of the Service that, if a foreign trust accumulates income, changes its situs so as to become a domestic trust, and then makes a distribution that under the accumulation distribution rules of § 666 is deemed to have been made in a year in which the trust was a foreign trust, the distribution is treated as a distribution from a foreign trust for purposes of the "throwback" rules including that which imposes the compound interest charge. Rev. Rul. 91-6, 1991-1 C.B. 89. The TRA-97 repeal of the throwback rules as to most domestic but not foreign trusts, and the reference in the legislative history to the continued applicability of Rev. Rul. 91-6 to foreign trusts, now makes the domestication argument for eliminating the interest charge less powerful. Congress could have removed any doubt by enacting appropriate legislation. For a discussion of the concepts relevant to the domestication of a foreign trust, consider PLRs 7917037 and 7917063.

g. Consider whether or not any distributions from an irrevocable non-grantor foreign trust may be exempt in the hands of an NRA beneficiary (e.g., U.S. bank deposit interest, interest on PIE or debt or non-FIRPTA capital gain).

h. Consider distributing to NRA beneficiaries those assets which in their hands might yield tax-free income or capital gains.

i. Consider distributing to a beneficiary whose status will likely be that of an NRA/NRAD, appreciating non-U.S. situs assets (e.g., shares of stock in an FC), especially if such beneficiary is likely to eventually leave such asset to an RAD or a U.S. citizen beneficiary so that the basis step-up will result without U.S. estate tax on the death of the interim beneficiary.

j. In the case of an NRAD beneficiary, and to the extent possible, choose assets for distribution that will result in minimum disclosures and maximum anonymity (where appropriate). Where the assets to be received by an RA or a U.S. citizen include stock of a PFIC, consider making the Qualified Electing Fund election under § 1295 so as not to lose the benefit of the long-term capital gains tax rates.

k. If otherwise appropriate, where a long-term lawful permanent Green Card RA or U.S. citizen spouse inherits an estate which consists primarily of shares of stock in an FC which in fact has significant foreign situated assets, he or she should consider expatriation under § 2107 and becoming an NRAD. Although a special tax regime applies to such an individual under § 2107, such facts can result in significant tax savings.

l. Where an RA or a U.S. citizen is the beneficiary of a foreign estate, the distribution of foreign source income “may” result in surprising tax-free income. Thus, the foreign estate’s income should be reviewed as to its U.S. versus foreign source and where planning is possible, foreign source income should be considered. The tax-free possibility results from § 643(a)(6) which includes foreign source income in the distributable net income (“DNI”) of a foreign trust but does not do so with respect to a foreign estate. Under § 662, such distributions in excess of the estate’s DNI arguably are not taxable. Furthermore, where the estate has DNI in excess of its prior years’ distributions, the accumulation throwback rules do not apply to a foreign estate. § 665(a). In this regard, consider the § 645 election which considers certain revocable trusts as part of an estate.

m. Consider expatriation if a long-term lawful permanent RA or a U.S. citizen beneficiary, assuming the facts are appropriate and tax savings can result. §§ 877, 7701(b)(10), 2107, 2501(a)(3), and 6039G. CAUTION: Prop. Reg. § 1.1291-3(b)(2) generally provides that if a U.S. shareholder of a § 1291 fund becomes an NRA (e.g., expatriates), such shareholder will be treated as having disposed of his or her stock in the PFIC, thus triggering both a realization and recognition event. Our office has suggested that this proposed regulation not be adopted, that such a marked change in the determination of events that result in income taxation should only be made with express Congressional action, and that, if adopted, the tax liability be limited to the interest that would be due. Furthermore, noting that recent tax acts did not enact the so-called “mark to market” or “deemed disposition” consequence with respect to expatriates as was originally proposed, this proposed regulation seems overly broad.

n. Distributions to U.S. beneficiaries of income and capital gains accumulated by an irrevocable non-grantor foreign trust may result in the loss of long-term capital gains benefits and a variable interest charge for the period of accumulation. There are a number of tax planning ideas which can be implemented including, but not limited to: (a) investing so as not to produce income (for example, tax advantaged mutual funds, life insurance, tax-exempt bonds, and raw land); (b) domesticating the trust (or any part for U.S. beneficiaries) so as to subject the income and gains to tax; (c) distributing income to non-U.S. beneficiaries; (d) using the "3-payment" rule in drafting so that a single non-taxable amount is left to U.S. beneficiaries under § 663(a)(1); and (e) accumulating taxable income in a vehicle so that such income is not included on the trust's fiduciary accounting income until it is distributed. At that time, distributions by the trust of less than the amount of fiduciary accounting income will arguably not result in a throwback.

o. Where appropriate, and taking into account the \$1 Million lifetime gift tax exemption as to an RAD or U.S. citizen donor, and the annual inflation adjusted \$100,000 non-U.S. citizen spousal donee exclusion (currently \$120,000), consider transfers of property between spouses if the transferee spouse is an NRA. Please note that some practitioners interpret § 1041 [which generally provides that no gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of) a spouse, with any such transfer being treated as acquired by the transferee by gift and to have as its basis the adjusted basis of the transferor, but which is not applicable if the transferee spouse is an NRA], in such a way that they believe it could result in income tax on a gift from an RAD or U.S. citizen donor to an NRA spouse in all situations; however, we believe that the better view is that § 1041 is a non-recognition provision and that gain arising on a gift must arise under another gain recognition rule.

p. In certain situations, where a divorce results and the spouse to receive alimony reverts to NRA status (e.g., an RA or a U.S. citizen husband and his RA wife divorce causing the wife, who is to receive alimony, to move abroad and become an NRA), the alimony payments constitute U.S. source income of the type normally subject to the flat thirty percent (30%) withholding tax. See Housden v. Comm'r., 63 T.C.M. 2063 (1992). Oftentimes, such tax causes monetary disputes and the potential for the recipient spouse to petition for additional income. A so-called "Alimony Trust" under § 682 might prove useful although the deduction to the paying spouse is lost under § 215(d). In essence, under § 682, the gross income of the trust is not treated as income of the settlor spouse (i.e., the "payor" for U.S. withholding tax purposes), but instead is treated as gross income of the beneficiary spouse. It would appear that the trust could invest in a manner that provides the NRA beneficiary spouse with U.S. tax exempt income and/or tax-free foreign source income. Arguably, the recipient spouse should be entitled to benefit from the favorable rules found in §§ 871 and 872 as to NRAs.

q. In cases where a disclaimer of property passing from an NRAD is contemplated, the disclaimer must be within the provisions of § 2518. See Reg. §§ 25.2518-2(c)(3), (4) and (5) for more specifics and Examples.

r. Upon the death of the NRAD settlor of a foreign trust owning FCs, consideration should be given to: (i) Check-the-Box elections effective within 30 days of the death to avoid CFC status; (ii) Check-the-Box elections some time within 75 days of death to minimize the pass-through of gain, if any, on corporate portfolio assets and/or the shareholder gain, if any, on liquidations; and (iii) sales of FC stock to other family members who are NRAs in lieu of liquidation of the FC.



## Abbreviations

CFC.....	Controlled Foreign Corporation
DNI.....	Distributable Net Income
FC.....	Foreign Corporation
FIRPTA.....	The Foreign Investment in U.S. Real Property Tax Act of 1980, As Amended
Green Card.....	Lawful Permanent Resident Alien Immigration Status
NRA.....	Nonresident Alien
NRAD.....	Nonresident Alien Decedent
PFIC.....	Passive Foreign Investment Company
PIE.....	Portfolio Interest Exemption
PLR.....	Private Letter Ruling
QDT.....	Qualified Domestic Trust
QTIP.....	Qualified Terminable Interest Property
RA.....	Resident Alien
RAD.....	Resident Alien Decedent
Rev. Rul. ....	Revenue Ruling
Service.....	Internal Revenue Service
SPT.....	U.S. Income Tax Resident Alien Substantial Presence Test
TRA-97.....	The Taxpayer Relief Act of 1997
USRPI.....	U.S. Real Property Interest

**F. U.S. Tax Compliance, Forms, Reporting,  
Filings, Etc.**

**United States Estate (and Generation-Skipping Transfer) Tax Return**  
**Estate of nonresident not a citizen of the United States**  
 To be filed for decedents dying after December 31, 2005.  
 ▶ See separate instructions.

Attach supplemental documents and translations. Show amounts in U.S. dollars.

**Part I Decedent, Executor, and Attorney**

<b>1a</b> Decedent's first (given) name and middle initial		<b>b</b> Decedent's last (family) name		<b>2</b> U.S. taxpayer ID number (if any) : :	
<b>3</b> Place of death		<b>4</b> Domicile at time of death		<b>5</b> Citizenship (nationality)	
<b>6</b> Date of death					
<b>7a</b> Date of birth		<b>b</b> Place of birth		<b>8</b> Business or occupation	
<b>In United States</b>	<b>9a</b> Name of executor			<b>10a</b> Name of attorney for estate	
	<b>b</b> Address			<b>b</b> Address	
<b>Outside United States</b>	<b>11a</b> Name of executor			<b>12a</b> Name of attorney for estate	
	<b>b</b> Address			<b>b</b> Address	

**Part II Tax Computation**

<b>1</b> Taxable estate from Schedule B, line 9	<b>1</b>	
<b>2</b> Total taxable gifts of tangible or intangible property located in the U.S., transferred (directly or indirectly) by the decedent after December 31, 1976, and not included in the gross estate (see section 2511)	<b>2</b>	
<b>3</b> Total. Add lines 1 and 2	<b>3</b>	
<b>4</b> Tentative tax on the amount on line 3 (see instructions)	<b>4</b>	
<b>5</b> Tentative tax on the amount on line 2 (see instructions)	<b>5</b>	
<b>6</b> Gross estate tax. Subtract line 5 from line 4	<b>6</b>	
<b>7</b> Unified credit. Enter smaller of line 6 amount or maximum allowed (see instructions)	<b>7</b>	
<b>8</b> Balance. Subtract line 7 from line 6	<b>8</b>	
<b>9</b> Other credits (see instructions)	<b>9</b>	
<b>10</b> Credit for tax on prior transfers. Attach Schedule Q, Form 706	<b>10</b>	
<b>11</b> Total. Add lines 9 and 10	<b>11</b>	
<b>12</b> Net estate tax. Subtract line 11 from line 8	<b>12</b>	
<b>13</b> Total generation-skipping transfer tax. Attach Schedule R, Form 706	<b>13</b>	
<b>14</b> Total transfer taxes. Add lines 12 and 13	<b>14</b>	
<b>15</b> Earlier payments. See instructions and attach explanation	<b>15</b>	
<b>16</b> Balance due. Subtract line 15 from line 14 (see instructions)	<b>16</b>	

Under penalties of perjury, I declare that I have examined this return, including any additional sheets attached, and to the best of my knowledge and belief, it is true, correct, and complete. I understand that a complete return requires listing all property constituting the part of the decedent's gross estate (as defined by the statute) situated in the United States.

(Signature of executor)

(Date)

(Signature of preparer (other than executor))

(Address)

(Date)

**Part III General Information**

	Yes	No		Yes	No
<b>1a</b> Did the decedent die testate? . . . . .			<b>7</b> Did the decedent make any transfer (of property that was located in the United States at either the time of the transfer or the time of death) described in sections 2035, 2036, 2037, or 2038 (see the instructions for Form 706, Schedule G)? . . . . . If "Yes," attach Schedule G, Form 706.		
<b>b</b> Were letters testamentary or of administration granted for the estate? . . . . . If granted to persons other than those filing the return, include names and addresses on page 1.					
<b>2</b> Did the decedent, at the time of death, own any:			<b>8</b> At the date of death, were there any trusts in existence that were created by the decedent and that included property located in the United States either when the trust was created or when the decedent died? . . . . . If "Yes," attach Schedule G, Form 706.		
<b>a</b> Real property located in the United States? . . . . .					
<b>b</b> U.S. corporate stock? . . . . .					
<b>c</b> Debt obligations of (1) a U.S. person, or (2) the United States, a state or any political subdivision, or the District of Columbia? . . . . .					
<b>d</b> Other property located in the United States? . . . . .			<b>9</b> At the date of death, did the decedent:		
<b>3</b> Was the decedent engaged in business in the United States at the date of death? . . . . .			<b>a</b> Have a general power of appointment over any property located in the United States? . . . . .		
<b>4</b> At the date of death, did the decedent have access, personally or through an agent, to a safe deposit box located in the United States? . . . . .			<b>b</b> Or, at any time, exercise or release the power? . . . . . If "Yes" to either a or b, attach Schedule H, Form 706.		
<b>5</b> At the date of death, did the decedent own any property located in the United States as a joint tenant with right of survivorship; as a tenant by the entirety; or, with surviving spouse, as community property? . . . . . If "Yes," attach Schedule E, Form 706.			<b>10a</b> Have federal gift tax returns ever been filed? . . . . .		
<b>6a</b> Had the decedent ever been a citizen or resident of the United States (see instructions)? . . . . .			<b>b</b> Periods covered ▶ . . . . .		
<b>b</b> If "Yes," did the decedent lose U.S. citizenship or residency within 10 years of death? (see instructions).			<b>c</b> IRS offices where filed ▶ . . . . .		
			<b>11</b> Does the gross estate in the United States include any interests in property transferred to a "skip person" as defined in the instructions to Schedule R of Form 706? . . . . . If "Yes," attach Schedules R and/or R-1, Form 706.		

**Schedule A. Gross Estate in the United States** (see instructions)

Yes No

Do you elect to value the decedent's gross estate at a date or dates after the decedent's death (as authorized by section 2032)? ▶

To make the election, you must check this box "Yes." If you check "Yes," complete **all** columns. If you check "No," complete columns (a), (b), and (e); you may leave columns (c) and (d) blank or you may use them to expand your column (b) description.

(a) Item no.	(b) Description of property and securities For securities, give CUSIP number.	(c) Alternate valuation date	(d) Alternate value in U.S. dollars	(e) Value at date of death in U.S. dollars
1				
(If you need more space, attach additional sheets of same size.)				
<b>Total.</b> . . . . .				

**Schedule B. Taxable Estate****Caution. You must document lines 2 and 4 for the deduction on line 5 to be allowed.**

<b>1</b> Gross estate in the United States (Schedule A total) . . . . .	<b>1</b>	
<b>2</b> Gross estate outside the United States (see instructions) . . . . .	<b>2</b>	
<b>3</b> Entire gross estate wherever located. Add amounts on lines 1 and 2 . . . . .	<b>3</b>	
<b>4</b> Amount of funeral expenses, administration expenses, decedent's debts, mortgages and liens, and losses during administration. Attach itemized schedule. (see instructions). . . . .	<b>4</b>	
<b>5</b> Deduction for expenses, claims, etc. Divide line 1 by line 3 and multiply the result by line 4 . . . . .	<b>5</b>	
<b>6</b> Charitable deduction (attach Schedule O, Form 706) and marital deduction (attach Schedule M, Form 706, and computation) . . . . .	<b>6</b>	
<b>7</b> State death tax deduction (see instructions) . . . . .	<b>7</b>	
<b>8</b> Total deductions. Add lines 5, 6, and 7 . . . . .	<b>8</b>	
<b>9</b> Taxable estate. Subtract line 8 from line 1. Enter here and on line 1 of Part II . . . . .	<b>9</b>	

**Return by a U.S. Transferor of Property  
to a Foreign Corporation**

▶ Attach to your income tax return.

OMB No. 1545-0026

Attachment  
Sequence No. **128**

**Part I U.S. Transferor Information** (see instructions)

Name of transferor	Identifying number (see instructions)
--------------------	---------------------------------------

**1** If the transferor was a corporation, complete questions 1a, 1b, and 1c.

- a** If the transfer was a section 361(a) or (b) transfer, was the transferor controlled (under section 368(c)) by 5 or fewer domestic corporations? ☐ Yes ☐ No
- b** Did the transferor remain in existence after the transfer? ☐ Yes ☐ No

If not, list the controlling shareholder(s) and their identifying number(s):

Controlling shareholder	Identifying number

- c** If the transferor was a member of an affiliated group filing a consolidated return, was it the parent corporation? ☐ Yes ☐ No

If not, list the name and employer identification number (EIN) of the parent corporation:

Name of parent corporation	EIN of parent corporation

**2** If the transferor was a partner in a partnership that was the actual transferor (but is not treated as such under section 367), list the name and EIN of the transferor's partnership:

Name of partnership	EIN of partnership

**Part II Transferee Foreign Corporation Information** (see instructions)

<b>3</b> Name of transferee (foreign corporation)	<b>4</b> Identifying number, if any
---	-------------------------------------

**5** Address (including country)

**6** Country of incorporation or organization

**7** Foreign law characterization (see instructions)

**8** Is the transferee foreign corporation a controlled foreign corporation? ☐ Yes ☐ No

**Part III Information Regarding Transfer of Property** (see instructions)**9** Date of transfer**10** Type of nonrecognition transaction (see instructions)**11** Description of property transferred:**12** Did this transfer result from a change in the classification of the transferee to that of a foreign corporation? ☐ Yes ☐ No**13** Was the transferor required to recognize income under Temporary Regulations sections 1.367(a)-4T through 1.367(a)-6T (e.g., for tainted property, depreciation recapture, branch loss recapture, etc.)? ☐ Yes ☐ No**14a** Was intangible property (within the meaning of section 936(h)(3)(B)) transferred as a result of the transaction? ☐ Yes ☐ No**b** If yes, describe the nature of the rights to the intangible property that was transferred in the transfer:

## General Instructions

### Purpose of Form

Use Form 926 to report certain transfers of tangible or intangible property to a foreign corporation required by section 6038B.

### Who Must File

Generally, a U.S. citizen or resident, a domestic corporation, or a domestic estate or trust must file Form 926 to report transfers of property described in section 6038B(a)(1)(A) to a foreign corporation.

### Special Rules

- **Transfers by a partnership.** If the transferor is a partnership (domestic or foreign), the domestic partners of the partnership, not the partnership itself, are required to comply with section 6038B and file Form 926. Each domestic partner is treated as a transferor of its proportionate share of the property.
- **Transfers by a husband and wife.** A husband and wife may file Form 926 jointly, but only if they file a joint income tax return.
- **Transfers of cash.** A U.S. person that transfers cash to a foreign corporation must report the transfer on Form 926 if (a) immediately after the transfer the person holds directly or indirectly at least 10% of the total voting power or the total value of the foreign corporation or (b) the amount of cash transferred by the person to the foreign corporation during the 12-month period ending on the date of the transfer exceeds \$100,000. See Regulations section 1.6038B-1(b)(3).

### Exceptions to Filing

1. For exchanges described in section 354, a U.S. person does not have to file Form 926 if:
  - a. The U.S. person exchanges stock of a foreign corporation in a reorganization described in section 368(a)(1)(E) or
  - b. The U.S. person exchanges stock of a domestic or foreign corporation for stock of a foreign corporation under an asset reorganization described in section 368(a)(1)(C), (D), or (F), that is not treated as an indirect stock transfer under section 367(a).
2. Generally, a domestic corporation that distributes stock or securities of a domestic corporation under section 355 is not required to file Form 926. However, this exception does not apply if the distribution is of stock or securities of a foreign controlled corporation to a distributee shareholder who is not a U.S. citizen or resident or a domestic corporation.
3. A U.S. person that transfers stock or securities under section 367(a) does not have to file Form 926 if either a or b below applies.
  - a. The U.S. transferor owned less than 5% of both the total voting power and the total value of the transferee foreign corporation immediately after the transfer and either:
    - The U.S. transferor qualified for nonrecognition treatment with respect to the transfer, or
    - The U.S. transferor is a tax-exempt entity and the income was not unrelated business income, or

- The transfer was taxable to the U.S. transferor and such person properly reported the income on its timely filed return, or
- The transfer is considered to be to a foreign corporation solely by reason of Regulations section 1.83-6(d)(1) and the fair market value of the property transferred did not exceed \$100,000.

b. The U.S. transferor owned 5% or more of the total voting power or the total value of the transferee foreign corporation immediately after the transfer and either:

- The transferor (or one or more successors) properly entered into a gain recognition agreement, or
- The U.S. transferor is a tax-exempt entity and the income was not unrelated business income, or
- The transfer was taxable to the U.S. transferor and such person properly reported the income on its timely filed return, or
- The transfer is considered to be to a foreign corporation solely by reason of Regulations section 1.83-6(d)(1) and the fair market value of the property transferred did not exceed \$100,000.

### When and How To File

Form 926 (and the additional information required under Regulations section 1.6038B-1(c) and Temporary Regulations sections 1.6038B-1T(c)(1) through (5) and 1.6038B-1T(d)) must be filed with the U.S. transferor's income tax return for the tax year that includes the date of the transfer.

### Other Forms That May Be Required

Persons filing this form may be required to file **Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts**.

A U.S. transferor that is required to enter into a gain recognition agreement under section 367 to qualify for nonrecognition treatment must file **Form 8838, Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Agreement**, or a similar statement, to extend the statute of limitations with respect to the gain realized but not recognized on the transfer.

### Penalties for Failure To File

If a taxpayer fails to comply with section 6038B, the penalty equals 10% of the fair market value of the property at the time of the transfer. The penalty will not apply if the failure to comply is due to reasonable cause and not to willful neglect. The penalty is limited to \$100,000 unless the failure to comply was due to intentional disregard. Moreover, the period of limitations for assessment of tax upon the transfer of that property is extended to the date that is 3 years after the date on which the information required to be reported is provided.

## Specific Instructions

### Part I—U.S. Transferor Information

#### Identifying Number

The identifying number of an individual is his or her social security number (SSN). The identifying number of all others is their employer identification number (EIN).

**Lines 1 and 2**

**Line 1a.** If you answered "Yes" to question 1a and the asset is a tangible asset, section 367(a)(5) may require basis adjustments. If you answered "No" to question 1a and the asset is a tangible asset, the transfer is taxable under sections 367(a)(1) and (a)(5). If the asset transferred is an intangible asset, see section 367(d) and its regulations.

**Line 1b.** If the transferor went out of existence pursuant to the transfer (e.g., as in a reorganization described in section 368(a)(1)(C)), list the controlling shareholders.

**Line 1c.** If the transferor was a member of an affiliated group filing a consolidated tax return (see sections 1501 through 1504), but was not the parent corporation, list the name and EIN of the parent corporation and file Form 926 with the parent corporation's consolidated return.

**Line 2.** If the actual transferor was a partnership, the domestic partners of the partnership, not the partnership itself, are deemed to be the transferors. See Temporary Regulations section 1.367(a)-1T(c)(3). List the name and identification number of the partnership.

**Part II—Transferee Foreign Corporation Information**

**Line 7.** List the entity classification (e.g., partnership, corporation, etc.) of the transferee foreign corporation under the laws of the country of incorporation or organization.

**Line 8.** See section 957(a) to determine whether the corporation is a controlled foreign corporation immediately after the transfer.

**Part III—Information Regarding Transfer of Property**

**Line 10.** List the type of nonrecognition transaction that gave rise to the reporting obligation (e.g., section 332, 351, 354, 356, or 361).

**Line 11.** Give a brief description of the property transferred and attach to Form 926 the information required under Regulations sections 1.6038B-1(c) and Temporary Regulations sections 1.6038B-1T(c)(1) through 1.6038B-1T(c)(5) and 1.6038B-1T(d).

**Line 12.** If this transfer resulted from a change in the classification of the transferee to that of a foreign corporation (a deemed transfer resulting from a classification change on Form 8832, Entity Classification

Election, or a termination of a section 1504(d) election), check the "Yes" box. If the transfer was an actual transfer of property to a foreign corporation, check the "No" box.

**Line 13.** See Temporary Regulations sections 1.367(a)-4T through 1.367-6T for instances in which a transferor must recognize income on the transfer of tangible property that qualifies for nonrecognition treatment (see section 367(a)(3) and Temporary Regulations section 1.367(a)-2T). Additional information is required to be attached to this form. See Temporary Regulations sections 1.6038B-1T(c)(4)(iii) and (vii), and 1.6038B-1T(c)(5).

**Line 14a.** If you checked the "Yes" box, additional information is required to be attached to this form. See Temporary Regulations section 1.6038B-1T(d).

**Line 14b.** See Temporary Regulations section 1.6038B-1T(d).

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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 burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

<b>Recordkeeping</b> . . . . .	5 hr., 30 min.
<b>Learning about the law or the form</b> . . . . .	4 hr., 10 min.
<b>Preparing and sending the form to the IRS</b> . . . . .	4 hr., 26 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.



## Label

(See instructions on page 16.)  
Use the IRS label.  
Otherwise, please print or type.

L  
A  
B  
E  
L  
  
H  
E  
R  
E

For the year Jan. 1–Dec. 31, 2006, or other tax year beginning

, 2006, ending

, 20

OMB No. 1545-0074

Your first name and initial

Last name

Your social security number

If a joint return, spouse's first name and initial

Last name

Spouse's social security number

Home address (number and street). If you have a P.O. box, see page 16.

Apt. no.

▲ You must enter your SSN(s) above. ▲

City, town or post office, state, and ZIP code. If you have a foreign address, see page 16.

Checking a box below will not change your tax or refund.

## Presidential

Election Campaign ▶ Check here if you, or your spouse if filing jointly, want \$3 to go to this fund (see page 16) ▶ ☐ You ☐ Spouse

## Filing Status

Check only one box.

- 1 ☐ Single  
2 ☐ Married filing jointly (even if only one had income)  
3 ☐ Married filing separately. Enter spouse's SSN above and full name here. ▶  
4 ☐ Head of household (with qualifying person). (See page 17.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶  
5 ☐ Qualifying widow(er) with dependent child (see page 17)

## Exemptions

If more than four dependents, see page 19.

- 6a ☐ Yourself. If someone can claim you as a dependent, do not check box 6a  
b ☐ Spouse  
c Dependents:  
(1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) ☒ if qualifying child for child tax credit (see page 19)  
d Total number of exemptions claimed
- Boxes checked on 6a and 6b  
No. of children on 6c who:  
• lived with you  
• did not live with you due to divorce or separation (see page 20)  
Dependents on 6c not entered above  
Add numbers on lines above ▶

## Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see page 23.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

- 7 Wages, salaries, tips, etc. Attach Form(s) W-2  
8a Taxable interest. Attach Schedule B if required  
b Tax-exempt interest. Do not include on line 8a  
9a Ordinary dividends. Attach Schedule B if required  
b Qualified dividends (see page 23)  
10 Taxable refunds, credits, or offsets of state and local income taxes (see page 24)  
11 Alimony received  
12 Business income or (loss). Attach Schedule C or C-EZ  
13 Capital gain or (loss). Attach Schedule D if required. If not required, check here ☐  
14 Other gains or (losses). Attach Form 4797  
15a IRA distributions  
b Taxable amount (see page 25)  
16a Pensions and annuities  
b Taxable amount (see page 26)  
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E  
18 Farm income or (loss). Attach Schedule F  
19 Unemployment compensation  
20a Social security benefits  
b Taxable amount (see page 27)  
21 Other income. List type and amount (see page 29)  
22 Add the amounts in the far right column for lines 7 through 21. This is your total income ▶

## Adjusted Gross Income

- 23 Archer MSA deduction. Attach Form 8853  
24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ  
25 Health savings account deduction. Attach Form 8889  
26 Moving expenses. Attach Form 3903  
27 One-half of self-employment tax. Attach Schedule SE  
28 Self-employed SEP, SIMPLE, and qualified plans  
29 Self-employed health insurance deduction (see page 29)  
30 Penalty on early withdrawal of savings  
31a Alimony paid b Recipient's SSN ▶  
32 IRA deduction (see page 31)  
33 Student loan interest deduction (see page 33)  
34 Jury duty pay you gave to your employer  
35 Domestic production activities deduction. Attach Form 8903  
36 Add lines 23 through 31a and 32 through 35  
37 Subtract line 36 from line 22. This is your adjusted gross income ▶

**Tax and Credits****Standard Deduction for—**

• People who checked any box on line 39a or 39b or who can be claimed as a dependent, see page 34.

• All others:

Single or Married filing separately, \$5,150

Married filing jointly or Qualifying widow(er), \$10,300

Head of household, \$7,550

38	Amount from line 37 (adjusted gross income)	38	
39a	Check <input type="checkbox"/> You were born before January 2, 1942, <input type="checkbox"/> Blind. <input type="checkbox"/> Spouse was born before January 2, 1942, <input type="checkbox"/> Blind. Total boxes checked <input type="checkbox"/> 39a		
b	If your spouse itemizes on a separate return or you were a dual-status alien, see page 34 and check here <input type="checkbox"/> 39b		
40	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	40	
41	Subtract line 40 from line 38	41	
42	If line 38 is over \$112,875, or you provided housing to a person displaced by Hurricane Katrina, see page 36. Otherwise, multiply \$3,300 by the total number of exemptions claimed on line 6d	42	
43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	
44	Tax (see page 36). Check if any tax is from: a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972	44	
45	Alternative minimum tax (see page 39). Attach Form 6251	45	
46	Add lines 44 and 45	46	
47	Foreign tax credit. Attach Form 1116 if required	47	
48	Credit for child and dependent care expenses. Attach Form 2441	48	
49	Credit for the elderly or the disabled. Attach Schedule R	49	
50	Education credits. Attach Form 8863	50	
51	Retirement savings contributions credit. Attach Form 8880	51	
52	Residential energy credits. Attach Form 5695	52	
53	Child tax credit (see page 42). Attach Form 8901 if required	53	
54	Credits from: a <input type="checkbox"/> Form 8396 b <input type="checkbox"/> Form 8839 c <input type="checkbox"/> Form 8859	54	
55	Other credits: a <input type="checkbox"/> Form 3800 b <input type="checkbox"/> Form 8801 c <input type="checkbox"/> Form	55	
56	Add lines 47 through 55. These are your total credits	56	
57	Subtract line 56 from line 46. If line 56 is more than line 46, enter -0-	57	

**Other Taxes**

58	Self-employment tax. Attach Schedule SE	58	
59	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	59	
60	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	60	
61	Advance earned income credit payments from Form(s) W-2, box 9	61	
62	Household employment taxes. Attach Schedule H	62	
63	Add lines 57 through 62. This is your total tax	63	

**Payments**

If you have a qualifying child, attach Schedule EIC.

64	Federal income tax withheld from Forms W-2 and 1099	64	
65	2006 estimated tax payments and amount applied from 2005 return	65	
66a	Earned income credit (EIC)	66a	
b	Nontaxable combat pay election <input type="checkbox"/> 66b		
67	Excess social security and tier 1 RRTA tax withheld (see page 60)	67	
68	Additional child tax credit. Attach Form 8812	68	
69	Amount paid with request for extension to file (see page 60)	69	
70	Payments from: a <input type="checkbox"/> Form 2439 b <input type="checkbox"/> Form 4136 c <input type="checkbox"/> Form 8885	70	
71	Credit for federal telephone excise tax paid. Attach Form 8913 if required	71	
72	Add lines 64, 65, 66a, and 67 through 71. These are your total payments	72	

**Refund**

Direct deposit? See page 61 and fill in 74b, 74c, and 74d, or Form 8888.

73	If line 72 is more than line 63, subtract line 63 from line 72. This is the amount you overpaid	73	
74a	Amount of line 73 you want refunded to you. If Form 8888 is attached, check here <input type="checkbox"/>	74a	
b	Routing number <input type="text"/>	c	Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings
d	Account number <input type="text"/>		

**Amount You Owe**

75	Amount of line 73 you want applied to your 2007 estimated tax	75	
76	Amount you owe. Subtract line 72 from line 63. For details on how to pay, see page 62	76	
77	Estimated tax penalty (see page 62)	77	

**Third Party Designee**

Do you want to allow another person to discuss this return with the IRS (see page 63)? ☐ Yes. Complete the following. ☐ No

Designee's name <input type="text"/>	Phone no. <input type="text"/>	Personal identification number (PIN) <input type="text"/>
--------------------------------------	--------------------------------	---

**Sign Here**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature <input type="text"/>	Date <input type="text"/>	Your occupation <input type="text"/>	Daytime phone number <input type="text"/>
Spouse's signature. If a joint return, both must sign. <input type="text"/>	Date <input type="text"/>	Spouse's occupation <input type="text"/>	<input type="text"/>

**Paid Preparer's Use Only**

Preparer's signature <input type="text"/>	Date <input type="text"/>	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN <input type="text"/>
Firm's name (or yours if self-employed), address, and ZIP code <input type="text"/>	EIN <input type="text"/>	Phone no. <input type="text"/>	

# U.S. Nonresident Alien Income Tax Return

For the year January 1–December 31, 2006, or other tax year

OMB No. 1545-0074

**2006**

beginning

, 2006, and ending

, 20

Please print or type.

Also attach Form(s) 1099-R if tax was withheld.

Enclose, but do not attach, any payment.

Your first name and initial Last name Identifying number (see page 8 of inst.)

Present home address (number, street, and apt. no., or rural route). If you have a P.O. box, see page 8.

Check if: ☐ Individual  
☐ Estate or Trust

City, town or post office, state, and ZIP code. If you have a foreign address, see page 8.

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 31.

Country ▶

Of what country were you a citizen or national during the tax year? ▶

Give address **outside the United States** to which you want any refund check mailed. If same as above, write "Same."

Give address in the country where you are a **permanent resident**. If same as above, write "Same."

## Filing Status and Exemptions for Individuals (see page 8)

Filing status. Check only one box (1–6 below).

- 1 ☐ Single resident of Canada or Mexico, or a single U.S. national
- 2 ☐ Other single nonresident alien
- 3 ☐ Married resident of Canada or Mexico, or a married U.S. national
- 4 ☐ Married resident of the Republic of Korea (South Korea)
- 5 ☐ Other married nonresident alien
- 6 ☐ Qualifying widow(er) with dependent child (see page 9)

If you check box 7b, enter your spouse's identifying number ▶

**Caution: Do not** check box 7a if your parent (or someone else) can claim you as a dependent. **Do not** check box 7b if your spouse had any U.S. gross income.

No. of boxes checked on 7a and 7b ▶

No. of children on 7c who:

- lived with you ▶
- did not live with you due to divorce or separation ▶

Dependents on 7c not entered above ▶

Add numbers entered on lines above ▶

### 7c Dependents: (see page 9)

(1) First name	Last name	(2) Dependent's identifying number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if qualifying child for child tax credit (see page 9)
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

d Total number of exemptions claimed

8 Wages, salaries, tips, etc. Attach Form(s) W-2

9a Taxable interest

b Tax-exempt interest. Do not include on line 9a

9b

10a Ordinary dividends

b Qualified dividends (see page 11)

10b

11 Taxable refunds, credits, or offsets of state and local income taxes (see page 11)

12 Scholarship and fellowship grants. Attach Form(s) 1042-S or required statement (see page 12)

13 Business income or (loss). Attach Schedule C or C-EZ (Form 1040)

14 Capital gain or (loss). Attach Schedule D (Form 1040) if required. If not required, check here ☐

15 Other gains or (losses). Attach Form 4797

16a IRA distributions

16a

16b Taxable amount (see page 12)

17a Pensions and annuities

17a

17b Taxable amount (see page 13)

18 Rental real estate, royalties, partnerships, trusts, etc. Attach Schedule E (Form 1040)

19 Farm income or (loss). Attach Schedule F (Form 1040)

20 Unemployment compensation

21 Other income. List type and amount (see page 15)

22 Total income exempt by a treaty from page 5, Item M

22

23 Add lines 8, 9a, 10a, 11–15, 16b, and 17b–21. This is your **total effectively connected income**

8

9a

9b

10a

10b

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16a

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17b

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24 Archer MSA deduction. Attach Form 8853

25 Health savings account deduction. Attach Form 8889

26 Moving expenses. Attach Form 3903

27 Self-employed SEP, SIMPLE, and qualified plans.

28 Self-employed health insurance deduction (see page 15)

29 Penalty on early withdrawal of savings

30 Scholarship and fellowship grants excluded

31 IRA deduction (see page 16).

32 Student loan interest deduction (see page 16).

33 Domestic production activities deduction. Attach Form 8903

34 Add lines 24 through 33

35 Subtract line 34 from line 23. Enter here and on line 36. This is your **adjusted gross income**

<b>Tax and Credits</b>	36	Amount from line 35 (adjusted gross income)	36	
	37	Itemized deductions from page 3, Schedule A, line 17	37	
	38	Subtract line 37 from line 36	38	
	39	Exemptions (see page 17)	39	
	40	<b>Taxable income.</b> Subtract line 39 from line 38. If line 39 is more than line 38, enter -0-	40	
	41	<b>Tax</b> (see page 18). Check if any tax is from: <b>a</b> <input type="checkbox"/> Form(s) 8814 <b>b</b> <input type="checkbox"/> Form 4972	41	
	42	<b>Alternative minimum tax</b> (see page 19). Attach Form 6251	42	
	43	Add lines 41 and 42	43	
	44	Foreign tax credit. Attach Form 1116 if required	44	
	45	Credit for child and dependent care expenses. Attach Form 2441	45	
	46	Retirement savings contributions credit. Attach Form 8880	46	
	<b>Other Taxes</b>	47	Residential energy credits. Attach Form 5695	47
48		Child tax credit (see page 20). Attach Form 8901 if required	48	
49		Credits from: <b>a</b> <input type="checkbox"/> Form 8396 <b>b</b> <input type="checkbox"/> Form 8839 <b>c</b> <input type="checkbox"/> Form 8859	49	
50		Other credits. Check applicable box(es): <b>a</b> <input type="checkbox"/> Form 3800 <b>b</b> <input type="checkbox"/> Form 8801 <b>c</b> <input type="checkbox"/> Form	50	
51		Add lines 44 through 50. These are your <b>total credits</b>	51	
52		Subtract line 51 from line 43. If line 51 is more than line 43, enter -0-	52	
53		Tax on income not effectively connected with a U.S. trade or business from page 4, line 89	53	
54		Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	54	
55		Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	55	
56		Transportation tax (see page 22)	56	
57		Household employment taxes. Attach Schedule H (Form 1040).	57	
58		Add lines 52 through 57. This is your <b>total tax</b>	58	
<b>Payments</b>	59	Federal income tax withheld from Forms W-2, 1099, 1042-S, etc.	59	
	60	2006 estimated tax payments and amount applied from 2005 return	60	
	61	Excess social security and tier 1 RRTA tax withheld (see page 23)	61	
	62	Additional child tax credit. Attach Form 8812	62	
	63	Amount paid with Form 4868 (request for extension)	63	
	64	Other payments from: <b>a</b> <input type="checkbox"/> Form 2439 <b>b</b> <input type="checkbox"/> Form 4136 <b>c</b> <input type="checkbox"/> Form 8885	64	
	65	Credit for amount paid with Form 1040-C.	65	
	66	U.S. tax withheld at source from page 4, line 86	66	
	67	U.S. tax withheld at source by partnerships under section 1446: <b>a</b> From Form(s) 8805 <b>b</b> From Form(s) 1042-S	67a 67b	
	68	U.S. tax withheld on dispositions of U.S. real property interests: <b>a</b> From Form(s) 8288-A <b>b</b> From Form(s) 1042-S	68a 68b	
	69	Credit for federal telephone excise tax paid. Attach Form 8913 if required	69	
	70	Add lines 59 through 69. These are your <b>total payments</b>	70	
<b>Refund</b> Direct deposit? See page 23.	71	If line 70 is more than line 58, subtract line 58 from line 70. This is the amount you <b>overpaid</b>	71	
	72a	Amount of line 71 you want <b>refunded to you</b> . If Form 8888 is attached, check here <input type="checkbox"/> <b>b</b> Routing number <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <b>c</b> Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings <b>d</b> Account number <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	72a	
<b>Amount You Owe</b>	73	Amount of line 71 you want <b>applied to your 2007 estimated tax</b>	73	
	74	Amount you owe. Subtract line 70 from line 58. For details on how to pay, see page 24	74	
<b>Third Party Designee</b>	75	Estimated tax penalty. Also include on line 74	75	
	Do you want to allow another person to discuss this return with the IRS (see page 25)? <input type="checkbox"/> <b>Yes.</b> Complete the following. <input type="checkbox"/> <b>No</b>			
<b>Sign Here</b> Keep a copy of this return for your records.	Designee's name <input type="text"/>		Phone no. <input type="text"/> ( <input type="text"/> )	
	Your signature <input type="text"/>		Personal identification number (PIN) <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
<b>Paid Preparer's Use Only</b>	Date <input type="text"/>		Your occupation in the United States <input type="text"/>	
	Preparer's signature <input type="text"/>		Check if self-employed <input type="checkbox"/>	
Firm's name (or yours if self-employed), address, and ZIP code <input type="text"/>		Preparer's SSN or PTIN <input type="text"/>		
		EIN <input type="text"/>		
		Phone no. ( <input type="text"/> ) <input type="text"/>		



**Schedule A—Itemized Deductions** (See pages 25, 26, 27, and 28.)

07

<b>State and Local Income Taxes</b>	<b>1</b>	State income taxes . . . . .	<b>1</b>			
	<b>2</b>	Local income taxes . . . . .	<b>2</b>			
	<b>3</b>	Add lines 1 and 2 . . . . .				<b>3</b>
<b>Total Gifts to U.S. Charities</b>		<b>Caution:</b> If you made a gift and received a benefit in return, see page 26.				
	<b>4</b>	Gifts by cash or check. If you made any gift of \$250 or more, see page 26 . . . . .	<b>4</b>			
	<b>5</b>	Other than by cash or check. If you made any gift of \$250 or more, see page 26. You <b>must</b> attach Form 8283 if "the amount of your deduction" (see definition on page 27) is more than \$500 . . . . .	<b>5</b>			
	<b>6</b>	Carryover from prior year . . . . .	<b>6</b>			
	<b>7</b>	Add lines 4 through 6 . . . . .				<b>7</b>
<b>Casualty and Theft Losses</b>	<b>8</b>	Casualty or theft loss(es). Attach Form 4684. See page 27 . . . . .				<b>8</b>
<b>Job Expenses and Certain Miscellaneous Deductions</b>	<b>9</b>	Unreimbursed employee expenses—job travel, union dues, job education, etc. You <b>must</b> attach Form 2106 or Form 2106-EZ if required. See page 27 ► . . . . .	<b>9</b>			
	<b>10</b>	Tax preparation fees. . . . .	<b>10</b>			
	<b>11</b>	Other expenses. See page 28 for expenses to deduct here. List type and amount ► .	<b>11</b>			
	<b>12</b>	Add lines 9 through 11 . . . . .	<b>12</b>			
	<b>13</b>	Enter the amount from Form 1040NR, line 36 . . . . . <b>13</b>				
	<b>14</b>	Multiply line 13 by 2% (.02) . . . . .	<b>14</b>			
	<b>15</b>	Subtract line 14 from line 12. If line 14 is more than line 12, enter -0- . . . . .				<b>15</b>
<b>Other Miscellaneous Deductions</b>	<b>16</b>	Other—see page 28 for expenses to deduct here. List type and amount ► .				<b>16</b>
<b>Total Itemized Deductions</b>	<b>17</b>	Is Form 1040NR, line 36, over \$150,500 (over \$75,250 if you checked filing status box 3, 4, or 5 on page 1 of Form 1040NR)? <input type="checkbox"/> <b>No.</b> Your deduction is not limited. Add the amounts in the far right column for lines 3 through 16. Also enter this amount on Form 1040NR, line 37. <input type="checkbox"/> <b>Yes.</b> Your deduction may be limited. See page 28 for the amount to enter here and on Form 1040NR, line 37.				<b>17</b>

Attach Forms 1042-S, SSA-1042S, RRB-1042S, or similar form.

[illegible]

### Capital Gains and Losses From Sales or Exchanges of Property

	(a) Kind of property and description (if necessary, attach statement of descriptive details not shown below)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis	(f) LOSS If (e) is more than (d), subtract (d) from (e)	(g) GAIN If (d) is more than (e), subtract (e) from (d)
90	Enter only the capital gains and losses from property sales and exchanges that are from sources within the United States and not effectively connected with a U.S. business. Do not include a gain or loss on disposing of a U.S. real property interest; report these gains and losses on Schedule D (Form 1040).						
91	Add columns (f) and (g) of line 90 . . . . .					91 ( )	
92	Capital gain. Combine columns (f) and (g) of line 91. Enter the net gain here and on line 84 above (if a loss, enter -0-) ►						92

**Other Information** (If an item does not apply to you, enter "N/A.")**A** What country issued your passport? .....**B** Were you ever a U.S. citizen? . . . . ☐ Yes ☐ No**C** Give the purpose of your visit to the United States ► ....**D** Type of entry visa ► ..... and current nonimmigrant status and date of change (see page 29) ► .....**E** Date you entered the United States (see page 29)

► .....

**F** Did you give up your permanent residence as an immigrant in the United States this year? . . . . ☐ Yes ☐ No**G** Dates you entered and left the United States during the year. Residents of Canada or Mexico entering and leaving the United States at frequent intervals, give name of country only. ► .....**H** Give number of days (including vacation and nonworkdays) you were present in the United States during:

2004 ....., 2005 ....., and 2006 .....

If you are a resident of Canada, Mexico, or the Republic of Korea (South Korea), or a U.S. national, did your spouse contribute to the support of any child claimed on Form 1040NR, line 7c? . . . . ☐ Yes ☐ No

If "Yes," enter amount ► \$ .....

If you were a resident of the Republic of Korea (South Korea) for any part of the tax year, enter in the space below your total foreign source income not effectively connected with a U.S. trade or business. This information is needed so that the exemption for your spouse and dependents residing in the United States (if applicable) may be allowed in accordance with Article 4 of the income tax treaty between the United States and the Republic of Korea (South Korea).

Total foreign source income not effectively connected with a U.S. trade or business ► \$ .....

**J** Did you file a U.S. income tax return for any year before 2006? . . . . ☐ Yes ☐ No

If "Yes," give the latest year and form number ► .....

**K** To which Internal Revenue office did you pay any amounts claimed on Form 1040NR, lines 60, 63, and 65? .....**L** Have you excluded any gross income other than foreign source income not effectively connected with a U.S. trade or business? . ☐ Yes ☐ No

If "Yes," show the amount, nature, and source of the excluded income. Also, give the reason it was excluded. (Do not include amounts shown in item M.) ► .....

**M** If you are claiming the benefits of a U.S. income tax treaty with a foreign country, give the following information. See page 29 for additional information.

• Country ► .....

• Type and amount of effectively connected income exempt from tax. Also, identify the applicable tax treaty article. Do not enter exempt income on lines 8, 9a, 10a, 11-15, 16b, or 17b-21 of Form 1040NR.

For 2006 (also, include this exempt income on line 22 of Form 1040NR) ► .....

For 2005 ► .....

• Type and amount of income not effectively connected that is exempt from or subject to a reduced rate of tax. Also, identify the applicable tax treaty article.

For 2006 ► .....

For 2005 ► .....

• Were you subject to tax in that country on any of the income you claim is entitled to the treaty benefits? . . . . ☐ Yes ☐ No

• Did you have a permanent establishment or fixed base (as defined by the tax treaty) in the United States at any time during 2006? ☐ Yes ☐ No

**N** If you file this return to report community income, give your spouse's name, address, and identifying number.**O** If you file this return for a trust, does the trust have a U.S. business? . . . . ☐ Yes ☐ No

If "Yes," give name and address ► .....

**P** Is this an "expatriation return" (see page 30)? . . . . ☐ Yes ☐ No

If "Yes," you must attach an annual information statement.

**Q** During 2006, did you apply for, or take other affirmative steps to apply for, lawful permanent resident status in the United States or have an application pending to adjust your status to that of a lawful permanent resident of the United States? ☐ Yes ☐ No

If "Yes," explain ► .....

**R** Check this box if you have received compensation income of \$250,000 or more and you are using an alternative basis to determine the source of this compensation income (see page 30) ► ☐

**Foreign Tax Credit**

(Individual, Estate, or Trust)

▶ Attach to Form 1040, 1040NR, 1041, or 990-T.

▶ See separate instructions.

**2006**Attachment  
Sequence No. **19**

Name

Identifying number as shown on page 1 of your tax return

Use a separate Form 1116 for each category of income listed below. See **Categories of Income** on page 3 of the instructions. Check only one box on each Form 1116. Report all amounts in U.S. dollars except where specified in Part II below.

- ☐ a Passive income      ☐ d Shipping income      ☐ g Lump-sum distributions  
☐ b High withholding tax interest      ☐ e Dividends from a DISC or former DISC      ☐ h Section 901(j) income  
☐ c Financial services income      ☐ f Certain distributions from a foreign sales corporation (FSC) or former FSC      ☐ i Certain income re-sourced by treaty  
☐ j General limitation income

☐ k Resident of (name of country) ▶

**Note:** If you paid taxes to only one foreign country or U.S. possession, use column A in Part I and line A in Part II. If you paid taxes to more than one foreign country or U.S. possession, use a separate column and line for each country or possession.

**Part I Taxable Income or Loss From Sources Outside the United States (for Category Checked Above)**

	Foreign Country or U.S. Possession			Total (Add cols. A, B, and C.)
	A	B	C	
<b>I Enter the name of the foreign country or U.S. possession</b> ▶				
<b>1a</b> Gross income from sources within country shown above and of the type checked above (see page 13 of the instructions):				<b>1a</b>
<b>b</b> Check if line 1a is compensation for personal services as an employee, your total compensation from all sources is \$250,000 or more, and you used an alternative basis to determine its source (see instructions) ▶ <input type="checkbox"/>				
<b>Deductions and losses (Caution: See pages 13 and 14 of the instructions):</b>				
<b>2</b> Expenses definitely related to the income on line 1a (attach statement).				
<b>3</b> Pro rata share of other deductions not definitely related:				
<b>a</b> Certain itemized deductions or standard deduction (see instructions)				
<b>b</b> Other deductions (attach statement)				
<b>c</b> Add lines 3a and 3b				
<b>d</b> Gross foreign source income (see instructions)				
<b>e</b> Gross income from all sources (see instructions)				
<b>f</b> Divide line 3d by line 3e (see instructions)				
<b>g</b> Multiply line 3c by line 3f				
<b>4</b> Pro rata share of interest expense (see instructions):				
<b>a</b> Home mortgage interest (use worksheet on page 13 of the instructions)				
<b>b</b> Other interest expense				
<b>5</b> Losses from foreign sources				
<b>6</b> Add lines 2, 3g, 4a, 4b, and 5				<b>6</b>
<b>7</b> Subtract line 6 from line 1a. Enter the result here and on line 14, page 2 ▶				<b>7</b>

**Part II Foreign Taxes Paid or Accrued (see page 14 of the instructions)**

Country	Credit is claimed for taxes (you must check one) (m) <input type="checkbox"/> Paid (n) <input type="checkbox"/> Accrued	Foreign taxes paid or accrued								
		In foreign currency				In U.S. dollars				
		Taxes withheld at source on:			(s) Other foreign taxes paid or accrued	Taxes withheld at source on:			(w) Other foreign taxes paid or accrued	(x) Total foreign taxes paid or accrued (add cols. (t) through (w))
		(o) Date paid or accrued	(p) Dividends	(q) Rents and royalties		(r) Interest	(t) Dividends	(u) Rents and royalties		
A										
B										
C										
<b>8</b>		Add lines A through C, column (x). Enter the total here and on line 9, page 2 ▶								<b>8</b>



**Part III Figuring the Credit**

<b>9</b>	Enter the amount from line 8. These are your total foreign taxes paid or accrued for the category of income checked above Part I . . . . .	<b>9</b>		
<b>10</b>	Carryback or carryover (attach detailed computation) . . . . .	<b>10</b>		
<b>11</b>	Add lines 9 and 10. . . . .	<b>11</b>		
<b>12</b>	Reduction in foreign taxes (see page 15 of the instructions). . . . .	<b>12</b>		
<b>13</b>	Subtract line 12 from line 11. This is the total amount of foreign taxes available for credit . . . . .	<b>13</b>		
<b>14</b>	Enter the amount from line 7. This is your taxable income or (loss) from sources outside the United States (before adjustments) for the category of income checked above Part I (see page 15 of the instructions) . . . . .	<b>14</b>		
<b>15</b>	Adjustments to line 14 (see pages 15 and 16 of the instructions) . . . . .	<b>15</b>		
<b>16</b>	Combine the amounts on lines 14 and 15. This is your net foreign source taxable income. (If the result is zero or less, you have no foreign tax credit for the category of income you checked above Part I. Skip lines 17 through 21. However, if you are filing more than one Form 1116, you must complete line 19.) . . . . .	<b>16</b>		
<b>17</b>	<b>Individuals:</b> Enter the amount from Form 1040, line 41 (minus any amount on Form 8914, line 6). If you are a nonresident alien, enter the amount from Form 1040NR, line 38 (minus any amount on Form 8914, line 6). <b>Estates and trusts:</b> Enter your taxable income without the deduction for your exemption . . . . .	<b>17</b>		
	<b>Caution:</b> If you figured your tax using the lower rates on qualified dividends or capital gains, see page 16 of the instructions.			
<b>18</b>	Divide line 16 by line 17. If line 16 is more than line 17, enter "1" . . . . .	<b>18</b>		
<b>19</b>	<b>Individuals:</b> Enter the amount from Form 1040, line 44. If you are a nonresident alien, enter the amount from Form 1040NR, line 41. . . . .			
	<b>Estates and trusts:</b> Enter the amount from Form 1041, Schedule G, line 1a, or the total of Form 990-T, lines 36 and 37 . . . . .	<b>19</b>		
	<b>Caution:</b> If you are completing line 19 for separate category g (lump-sum distributions), see page 18 of the instructions.			
<b>20</b>	Multiply line 19 by line 18 (maximum amount of credit) . . . . .	<b>20</b>		
<b>21</b>	Enter the <b>smaller</b> of line 13 or line 20. If this is the only Form 1116 you are filing, skip lines 22 through 30 and enter this amount on line 31. Otherwise, complete the appropriate line in Part IV (see page 18 of the instructions) . . . . .	<b>21</b>		

**Part IV Summary of Credits From Separate Parts III (see page 18 of the instructions)**

<b>22</b>	Credit for taxes on passive income . . . . .	<b>22</b>		
<b>23</b>	Credit for taxes on high withholding tax interest . . . . .	<b>23</b>		
<b>24</b>	Credit for taxes on financial services income . . . . .	<b>24</b>		
<b>25</b>	Credit for taxes on shipping income . . . . .	<b>25</b>		
<b>26</b>	Credit for taxes on dividends from a DISC or former DISC and certain distributions from a FSC or former FSC . . . . .	<b>26</b>		
<b>27</b>	Credit for taxes on lump-sum distributions . . . . .	<b>27</b>		
<b>28</b>	Credit for taxes on certain income re-sourced by treaty . . . . .	<b>28</b>		
<b>29</b>	Credit for taxes on general limitation income . . . . .	<b>29</b>		
<b>30</b>	Add lines 22 through 29 . . . . .	<b>30</b>		
<b>31</b>	Enter the <b>smaller</b> of line 19 or line 30 . . . . .	<b>31</b>		
<b>32</b>	Reduction of credit for international boycott operations. See instructions for line 12 on page 15 . . . . .	<b>32</b>		
<b>33</b>	Subtract line 32 from line 31. This is your <b>foreign tax credit</b> . Enter here and on Form 1040, line 47; Form 1040NR, line 44; Form 1041, Schedule G, line 2a; or Form 990-T, line 40a . . . . .	<b>33</b>		

**Foreign Earned Income**

▶ See separate instructions. ▶ Attach to Form 1040.

**2006**Attachment  
Sequence No. **34****For Use by U.S. Citizens and Resident Aliens Only**

Name shown on Form 1040

Your social security number

**Part I General Information**

- 1** Your foreign address (including country) \_\_\_\_\_
- 2** Your occupation \_\_\_\_\_
- 3** Employer's name ▶ \_\_\_\_\_
- 4a** Employer's U.S. address ▶ \_\_\_\_\_
- b** Employer's foreign address ▶ \_\_\_\_\_
- 5** Employer is (check ▶ any that apply):
- a** ☐ A foreign entity
- b** ☐ A U.S. company
- c** ☐ Self
- d** ☐ A foreign affiliate of a U.S. company
- e** ☐ Other (specify) ▶ \_\_\_\_\_
- 6a** If, after 1981, you filed Form 2555 or Form 2555-EZ, enter the last year you filed the form. ▶ \_\_\_\_\_
- b** If you did not file Form 2555 or 2555-EZ after 1981 to claim either of the exclusions, check here ☐ and go to line 7.
- c** Have you ever revoked either of the exclusions? ☐ Yes ☐ No
- d** If you answered "Yes," enter the type of exclusion and the tax year for which the revocation was effective. ▶ \_\_\_\_\_
- 7** Of what country are you a citizen/national? ▶ \_\_\_\_\_
- 8a** Did you maintain a separate foreign residence for your family because of adverse living conditions at your tax home? See **Second foreign household** on page 3 of the instructions. ☐ Yes ☐ No
- b** If "Yes," enter city and country of the separate foreign residence. Also, enter the number of days during your tax year that you maintained a second household at that address. ▶ \_\_\_\_\_
- 9** List your tax home(s) during your tax year and date(s) established. ▶ \_\_\_\_\_

**Next, complete either Part II or Part III. If an item does not apply, enter "NA." If you do not give the information asked for, any exclusion or deduction you claim may be disallowed.**

**Part II Taxpayers Qualifying Under Bona Fide Residence Test** (see page 2 of the instructions)

- 10** Date bona fide residence began ▶ \_\_\_\_\_, and ended ▶ \_\_\_\_\_
- 11** Kind of living quarters in foreign country ▶ **a** ☐ Purchased house **b** ☐ Rented house or apartment **c** ☐ Rented room
- d** ☐ Quarters furnished by employer
- 12a** Did any of your family live with you abroad during any part of the tax year? ☐ Yes ☐ No
- b** If "Yes," who and for what period? ▶ \_\_\_\_\_
- 13a** Have you submitted a statement to the authorities of the foreign country where you claim bona fide residence that you are not a resident of that country? See instructions ☐ Yes ☐ No
- b** Are you required to pay income tax to the country where you claim bona fide residence? See instructions ☐ Yes ☐ No
- If you answered "Yes" to 13a and "No" to 13b, you do not qualify as a bona fide resident. Do not complete the rest of this part.**
- 14** If you were present in the United States or its possessions during the tax year, complete columns (a)-(d) below. **Do not include the income from column (d) in Part IV, but report it on Form 1040.**

(a) Date arrived in U.S.	(b) Date left U.S.	(c) Number of days in U.S. on business	(d) Income earned in U.S. on business (attach computation)	(a) Date arrived in U.S.	(b) Date left U.S.	(c) Number of days in U.S. on business	(d) Income earned in U.S. on business (attach computation)

- 15a** List any contractual terms or other conditions relating to the length of your employment abroad. ▶ \_\_\_\_\_
- b** Enter the type of visa under which you entered the foreign country. ▶ \_\_\_\_\_
- c** Did your visa limit the length of your stay or employment in a foreign country? If "Yes," attach explanation ☐ Yes ☐ No
- d** Did you maintain a home in the United States while living abroad? ☐ Yes ☐ No
- e** If "Yes," enter address of your home, whether it was rented, the names of the occupants, and their relationship to you. ▶ \_\_\_\_\_

**Part III Taxpayers Qualifying Under Physical Presence Test** (see page 2 of the instructions)

- 16** The physical presence test is based on the 12-month period from ► ..... through ► .....
- 17** Enter your principal country of employment during your tax year. ► .....
- 18** If you traveled abroad during the 12-month period entered on line 16, complete columns (a)–(f) below. Exclude travel between foreign countries that did not involve travel on or over international waters, or in or over the United States, for 24 hours or more. If you have no travel to report during the period, enter "Physically present in a foreign country or countries for the entire 12-month period." **Do not** include the income from column (f) below in Part IV, but report it on Form 1040.

(a) Name of country (including U.S.)	(b) Date arrived	(c) Date left	(d) Full days present in country	(e) Number of days in U.S. on business	(f) Income earned in U.S. on business (attach computation)

**Part IV All Taxpayers**

**Note:** Enter on lines 19 through 23 all income, including noncash income, you earned and actually or constructively received during your 2006 tax year for services you performed in a foreign country. If any of the foreign earned income received this tax year was earned in a prior tax year, or will be earned in a later tax year (such as a bonus), see the instructions. **Do not** include income from line 14, column (d), or line 18, column (f). Report amounts in U.S. dollars, using the exchange rates in effect when you actually or constructively received the income.

If you are a cash basis taxpayer, report on Form 1040 all income you received in 2006, no matter when you performed the service.

2006 Foreign Earned Income		Amount (in U.S. dollars)	
<b>19</b> Total wages, salaries, bonuses, commissions, etc. . . . .		<b>19</b>	
<b>20</b> Allowable share of income for personal services performed (see instructions):			
<b>a</b> In a business (including farming) or profession . . . . .		<b>20a</b>	
<b>b</b> In a partnership. List partnership's name and address and type of income. ► .....		<b>20b</b>	
<b>21</b> Noncash income (market value of property or facilities furnished by employer—attach statement showing how it was determined):			
<b>a</b> Home (lodging). . . . .		<b>21a</b>	
<b>b</b> Meals . . . . .		<b>21b</b>	
<b>c</b> Car . . . . .		<b>21c</b>	
<b>d</b> Other property or facilities. List type and amount. ► .....		<b>21d</b>	
<b>22</b> Allowances, reimbursements, or expenses paid on your behalf for services you performed:			
<b>a</b> Cost of living and overseas differential . . . . .	<b>22a</b>		
<b>b</b> Family . . . . .	<b>22b</b>		
<b>c</b> Education . . . . .	<b>22c</b>		
<b>d</b> Home leave . . . . .	<b>22d</b>		
<b>e</b> Quarters . . . . .	<b>22e</b>		
<b>f</b> For any other purpose. List type and amount. ► .....	<b>22f</b>		
<b>g</b> Add lines 22a through 22f . . . . .		<b>22g</b>	
<b>23</b> Other foreign earned income. List type and amount. ► .....		<b>23</b>	
<b>24</b> Add lines 19 through 21d, line 22g, and line 23 . . . . .		<b>24</b>	
<b>25</b> Total amount of meals and lodging included on line 24 that is excludable (see instructions) . . . . .		<b>25</b>	
<b>26</b> Subtract line 25 from line 24. Enter the result here and on line 27 on page 3. This is your 2006 foreign earned income. . . . .		<b>26</b>	

**Part V All Taxpayers**

- 27 Enter the amount from line 26 . . . . . **27**
- Are you claiming the housing exclusion or housing deduction?
- ☐ **Yes.** Complete Part VI.
- ☐ **No.** Go to Part VII.

**Part VI Taxpayers Claiming the Housing Exclusion and/or Deduction**

- 28 Qualified housing expenses for the tax year (see instructions) . . . . . **28**
- 29a Enter location where housing expenses incurred (see instructions) ▶ . . . . . **29a**
- b Enter limit on housing expenses (see instructions) . . . . . **29b**
- 30 Enter the **smaller** of line 28 or line 29b . . . . . **30**
- 31 Number of days in your qualifying period that fall within your 2006 tax year (see instructions) . . . . . **31** days
- 32 Multiply \$36.12 by the number of days on line 31. If 365 is entered on line 31, enter \$13,184.00 here **32**
- 33 Subtract line 32 from line 30. If the result is zero or less, do not complete the rest of this part or any of Part IX . . . . . **33**
- 34 Enter employer-provided amounts (see instructions) . . . . . **34**
- 35 Divide line 34 by line 27. Enter the result as a decimal (rounded to at least three places), but do not enter more than "1.000" . . . . . **35** × .
- 36 **Housing exclusion.** Multiply line 33 by line 35. Enter the result but do not enter more than the amount on line 34. Also, complete Part VIII . . . . . ▶ **36**
- Note:** The housing deduction is figured in Part IX. If you choose to claim the foreign earned income exclusion, complete Parts VII and VIII before Part IX.

**Part VII Taxpayers Claiming the Foreign Earned Income Exclusion**

- 37 Maximum foreign earned income exclusion . . . . . **37** \$82,400 00
- 38 • If you completed Part VI, enter the number from line 31.  
• All others, enter the number of days in your qualifying period that fall within your 2006 tax year (see the instructions for line 31). } **38** days
- 39 • If line 38 and the number of days in your 2006 tax year (usually 365) are the same, enter "1.000."  
• Otherwise, divide line 38 by the number of days in your 2006 tax year and enter the result as a decimal (rounded to at least three places). } **39** × .
- 40 Multiply line 37 by line 39 . . . . . **40**
- 41 Subtract line 36 from line 27 . . . . . **41**
- 42 **Foreign earned income exclusion.** Enter the **smaller** of line 40 or line 41. Also, complete Part VIII ▶ **42**

**Part VIII Taxpayers Claiming the Housing Exclusion, Foreign Earned Income Exclusion, or Both**

- 43 Add lines 36 and 42 . . . . . **43**
- 44 Deductions allowed in figuring your adjusted gross income (Form 1040, line 37) that are allocable to the excluded income. See instructions and attach computation . . . . . **44**
- 45 Subtract line 44 from line 43. Enter the result here and in parentheses on **Form 1040, line 21.** Next to the amount enter "Form 2555." On Form 1040, subtract this amount from your income to arrive at total income on Form 1040, line 22 . . . . . ▶ **45**

**Part IX Taxpayers Claiming the Housing Deduction—Complete this part only if (a) line 33 is more than line 36 and (b) line 27 is more than line 43.**

- 46 Subtract line 36 from line 33 . . . . . **46**
- 47 Subtract line 43 from line 27 . . . . . **47**
- 48 Enter the **smaller** of line 46 or line 47 . . . . . **48**
- Note:** If line 47 is **more than** line 48 and you could not deduct all of your 2005 housing deduction because of the 2005 limit, use the worksheet on page 4 of the instructions to figure the amount to enter on line 49. Otherwise, go to line 50.
- 49 Housing deduction carryover from 2005 (from worksheet on page 4 of the instructions) . . . . . **49**
- 50 **Housing deduction.** Add lines 48 and 49. Enter the total here and on Form 1040 to the left of line 36. Next to the amount on Form 1040, enter "Form 2555." Add it to the total adjustments reported on that line . . . . . ▶ **50**

# Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts

OMB No. 1545-0159

**2006**

► See separate instructions.

**Note:** All information must be in English. Show all amounts in U.S. dollars. File a *separate* Form 3520 for each foreign trust.

For calendar year 2006, or tax year beginning \_\_\_\_\_, 2006, ending \_\_\_\_\_, 20

**A** Check appropriate boxes: ☐ Initial return ☐ Final return ☐ Amended return

**B** Check box that applies to person filing return: ☐ Individual ☐ Partnership ☐ Corporation ☐ Trust ☐ Executor

**Check all applicable boxes:**

- ☐ (a) You are a U.S. transferor who, directly or indirectly, transferred money or other property during the current tax year to a foreign trust, (b) You held an outstanding obligation of a related foreign trust (or a person related to the trust) issued during the current tax year, that you reported as a "qualified obligation" (defined in the instructions) during the current tax year, or (c) You are the executor of the estate of a U.S. decedent and (1) the decedent made a transfer to a foreign trust by reason of death, (2) the decedent was treated as the owner of any portion of a foreign trust immediately prior to death, or (3) the decedent's estate included any portion of the assets of a foreign trust. See the instructions for Part I.
- ☐ You are a U.S. owner of all or any portion of a foreign trust at any time during the tax year. See the instructions for Part II.
- ☐ (a) You are a U.S. person who, during the current tax year, received a distribution from a foreign trust, or (b) You are a U.S. person and you are also a grantor or beneficiary of a foreign trust that has made a loan of cash or marketable securities directly or indirectly to you during the current tax year that you reported as a "qualified obligation" (defined in the instructions) during the current tax year. See the instructions for Part III.
- ☐ You are a U.S. person who, during the current tax year, received certain gifts or bequests from a foreign person. See the instructions for Part IV.

**Service Center where U.S. person's income tax return is filed ►**

<b>1a</b> Name of person(s) filing return (see instructions)			<b>b</b> Identification number
<b>c</b> Number, street, and room or suite no. (if a P.O. box, see instructions)			<b>d</b> Spouse's identification number
<b>e</b> City or town	<b>f</b> State or province	<b>g</b> ZIP or postal code	<b>h</b> Country

<b>2a</b> Name of foreign trust (if applicable)			<b>b</b> Employer identification number (if any)
<b>c</b> Number, street, and room or suite no. (if a P.O. box, see instructions)			
<b>d</b> City or town	<b>e</b> State or province	<b>f</b> ZIP or postal code	<b>g</b> Country

**3** Did the foreign trust appoint a U.S. agent (defined in the instructions) who can provide the IRS with all relevant trust information? ☐ Yes ☐ No  
If "Yes," complete lines 3a through 3g.

<b>3a</b> Name of U.S. agent			<b>b</b> Identification number (if any)
<b>c</b> Number, street, and room or suite no. (if a P.O. box, see instructions)			
<b>d</b> City or town	<b>e</b> State or province	<b>f</b> ZIP or postal code	<b>g</b> Country
<b>4a</b> Name of U.S. decedent (see instr.)	<b>b</b> Address		<b>c</b> TIN of decedent
<b>d</b> Date of death			<b>e</b> EIN of estate

**f** Check applicable box:

- ☐ U.S. decedent made transfer to a foreign trust by reason of death.
- ☐ U.S. decedent treated as owner of foreign trust immediately prior to death.
- ☐ Assets of foreign trust were included in estate of U.S. decedent.

Under penalties of perjury, I declare that I have examined this return, including any accompanying reports, schedules, or statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature	Title	Date
Preparer's signature	Preparer's SSN or PTIN	Date

**Part I Transfers by U.S. Persons to a Foreign Trust During the Current Tax Year** (see instructions)

<b>5a</b> Name of trust creator (if different from line 1a)	<b>b</b> Address	<b>c</b> Identification number (if any)
<b>6a</b> Country code of country where trust was created	<b>b</b> Country code of country whose law governs the trust	<b>c</b> Date trust was created
<b>7a</b> Will any person (other than the U.S. transferor or the foreign trust) be treated as the owner of the transferred assets after the transfer? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>b</b> Name of other foreign trust owners, if any	(ii) Address	(iii) Country of residence
(iv) Identification number, if any	(v) Relevant code section	
<b>8</b> Was the transfer a completed gift or bequest? If "Yes," see instructions <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>9a</b> Now or in the future, can any part of the income or corpus of the trust benefit any U.S. beneficiary? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>b</b> If "No," could the trust be revised or amended to benefit a U.S. beneficiary? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>10</b> Will you continue to be treated as the owner of the transferred asset(s) after the transfer? <input type="checkbox"/> Yes <input type="checkbox"/> No		

**Schedule A—Obligations of a Related Trust** (see instructions)

- 11a** During the current tax year, did you transfer property (including cash) to a related foreign trust in exchange for an obligation of the trust or an obligation of a person related to the trust? See instructions ☐ Yes ☐ No  
If "Yes," complete the rest of Schedule A, as applicable. If "No," go to Schedule B.
- b** Were any of the obligations you received (with respect to a transfer described in 11a above) qualified obligations? ☐ Yes ☐ No  
If "Yes," complete the rest of Schedule A with respect to each qualified obligation.  
If "No," go to Schedule B and, when completing columns (a) through (i) of line 13 with respect to each nonqualified obligation, enter "-0-" in column (h).

(i) Date of transfer giving rise to obligation	(ii) Maximum term	(iii) Yield to maturity	(iv) FMV of obligation

- 12** With respect to each qualified obligation you reported on line 11b: Do you agree to extend the period of assessment of any income or transfer tax attributable to the transfer, and any consequential income tax changes for each year that the obligation is outstanding, to a date 3 years after the maturity date of the obligation? ☐ Yes ☐ No
- Note:** Generally, you must answer "Yes," if you checked "Yes" to the question on line 11b.

**Schedule B—Gratuitous Transfers** (see instructions)

- 13** During the current tax year, did you make any transfers (directly or indirectly) to the trust and receive less than FMV, or no consideration at all, for the property transferred? ☐ Yes ☐ No  
If "Yes," complete columns (a) through (i) below and the rest of Schedule B, as applicable.  
If "No," go to Schedule C.

(a) Date of transfer	(b) Description of property transferred	(c) FMV of property transferred	(d) U.S. adjusted basis of property transferred	(e) Gain recognized at time of transfer	(f) Excess, if any, of column (c) over the sum of columns (d) and (e)	(g) Description of property received, if any	(h) FMV of property received	(i) Excess of column (c) over column (h)
<b>Totals</b>					\$			\$

- 14** You are required to attach a copy of each sale or loan document entered into in connection with a transfer reported on line 13. If these documents have been attached to a Form 3520 filed within the previous 3 years, attach only relevant updates.

Are you attaching a copy of:	Yes	No	Attached Previously	Year Attached
<b>a</b> Sale document?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>b</b> Loan document?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>c</b> Subsequent variances to original sale or loan documents?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**Part I**      **Schedule B—Gratuitous Transfers (Continued)**

**Note:** Complete lines 15 through 18 only if you answered "No" to line 3.

<b>15</b>	<b>(a)</b> Name of beneficiary	<b>(b)</b> Address of beneficiary	<b>(c)</b> U.S. beneficiary?		<b>(d)</b> Identification number, if any
			<b>Yes</b>	<b>No</b>	
<b>16</b>	<b>(a)</b> Name of trustee	<b>(b)</b> Address of trustee		<b>(c)</b> Identification number, if any	
<b>17</b>	<b>(a)</b> Name of other persons with trust powers	<b>(b)</b> Address of other persons with trust powers	<b>(c)</b> Description of powers		<b>(d)</b> Identification number, if any

**18** If you checked "No" on line 3 (or did not complete lines 3a through 3g) you are required to attach a copy of all trust documents as indicated below. If these documents have been attached to a Form 3520-A filed within the previous 3 years, attach only relevant updates.

Are you attaching a copy of:		Yes	No	Attached Previously	Year Attached
<b>a</b>	Summary of all written and oral agreements and understandings relating to the trust? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<b>b</b>	The trust instrument? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<b>c</b>	Memoranda or letters of wishes? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<b>d</b>	Subsequent variances to original trust documents? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<b>e</b>	Trust financial statements? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
<b>f</b>	Other trust documents? . . . . .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

**Schedule C—Qualified Obligations Outstanding in the Current Tax Year (see instructions)**

**19** Did you, at any time during the tax year, hold an outstanding obligation of a related foreign trust (or a person related to the trust) that you reported as a "qualified obligation" in the current tax year? . . . . . ☐ Yes ☐ No  
If "Yes," complete columns (a) through (e) below.

(a) Date of original obligation	(b) Tax year qualified obligation first reported	(c) Amount of principal payments made during the tax year	(d) Amount of interest payments made during the tax year	(e) Does the obligation still meet the criteria for a qualified obligation?	
				Yes	No



**Part II U.S. Owner of a Foreign Trust (see instructions)**

20	(a) Name of other foreign trust owners, if any	(b) Address	(c) Country of residence	(d) Identification number, if any	(e) Relevant code section

21	(a) Country code of country where foreign trust was created	(b) Country code of country whose law governs the foreign trust	(c) Date foreign trust was created

**22** Did the foreign trust file Form 3520-A for the current year? . . . . . ☐ Yes ☐ No

If "Yes," attach the Foreign Grantor Trust Owner Statement you received from the foreign trust.

If "No," to the best of your ability, complete and attach a substitute Form 3520-A for the foreign trust.

**See instructions for information on penalties.**

**23** Enter the gross value of the portion of the foreign trust that you are treated as owning . . . . . ▶ \$

**Part III** **Distributions to a U.S. Person From a Foreign Trust During the Current Tax Year (see instructions)**

24 Cash amounts or FMV of property received, directly or indirectly, during the current tax year, from the foreign trust (exclude loans included on line 25).

[illegible]

<b>Totals.</b>										▶	\$
----------------	--	--	--	--	--	--	--	--	--	---	----

**25** During the current tax year, did you (or a person related to you) receive a loan from a related foreign trust (including an extension of credit upon the purchase of property from the trust)? ☐ Yes ☐ No

If "Yes," complete columns (a) through (g) below for each such loan.

**Note:** The FMV of an obligation (column (f)) is -0- unless it is a "qualified obligation."

(a) FMV of loan proceeds	(b) Date of original loan transaction	(c) Maximum term of repayment of obligation	(d) Interest rate of obligation	(e) Is the obligation a "qualified obligation?"		(f) FMV of obligation	(g) Amount treated as distribution from the trust (subtract column (f) from column (a))
				Yes	No		

[illegible]

**26** With respect to each obligation you reported as a "qualified obligation" on line 25: Do you agree to extend the period of assessment of any income or transfer tax attributable to the transaction, and any consequential income tax changes for each year that the obligation is outstanding, to a date 3 years after the maturity date of the obligation? ☐ Yes ☐ No

**Note:** Generally, you must answer "Yes" if you checked "Yes" in column (e) of line 25.

**27** Total distributions received during the current tax year. Add line 24, column (f), and line 25, column (g). \$ \_\_\_\_\_

**28** Did the trust, at any time during the tax year, hold an outstanding obligation of yours (or a person related to you) that you reported as a "qualified obligation" in the current tax year? ☐ Yes ☐ No

If "Yes," complete columns (a) through (e) below for each obligation.

(a) Date of original loan transaction	(b) Tax year qualified obligation first reported	(c) Amount of principal payments made during the tax year	(d) Amount of interest payments made during the tax year	(e) Does the loan still meet the criteria of a qualified obligation?	
				Yes	No



**Part III Distributions to a U.S. Person From a Foreign Trust During the Current Tax Year**(Continued)

- 29 Did you receive a Foreign Grantor Trust Beneficiary Statement from the foreign trust with respect to a distribution? ☐ Yes ☐ No  
If "Yes," attach the statement and do not complete the remainder of Part III with respect to that distribution.  
If "No," complete Schedule A with respect to that distribution. Also complete Schedule C if you enter an amount greater than zero on line 37.
- 30 Did you receive a Foreign Nongrantor Trust Beneficiary Statement from the foreign trust with respect to a distribution? ☐ Yes ☐ No  
If "Yes," attach the statement and complete either Schedule A or Schedule B below (see instructions). Also complete Schedule C if you enter an amount greater than zero on line 37 or line 41.  
If "No," complete Schedule A with respect to that distribution. Also complete Schedule C if you enter an amount greater than zero on line 37.

**Schedule A—Default Calculation of Trust Distributions** (see instructions)

- 31 Enter amount from line 27 . . . . .
- 32 Number of years the trust has been a foreign trust (see instructions). ►
- 33 Enter total distributions received from the foreign trust during the 3 preceding tax years (or during the number of years the trust has been a foreign trust, if fewer than 3) . . . . .
- 34 Multiply line 33 by 1.25. . . . .
- 35 Average distribution. Divide line 34 by 3 (or the number of years the trust has been a foreign trust, if fewer than 3) and enter the result . . . . .
- 36 Amount treated as ordinary income earned in the current year. Enter the smaller of line 31 or line 35 . . . . .
- 37 Amount treated as accumulation distribution. Subtract line 36 from line 31. If -0-, do not complete the rest of Part III
- 38 Applicable number of years of trust. Divide line 32 by 2 and enter the result here ►

**Schedule B—Actual Calculation of Trust Distributions** (see instructions)

- 39 Enter amount from line 27 . . . . .
- 40 Amount treated as ordinary income in the current tax year . . . . .
- 41 Amount treated as accumulation distribution. If -0-, do not complete Schedule C, Part III . . . . .
- 42 Amount treated as capital gains in the current tax year . . . . .
- 43 Amount treated as distribution from trust corpus . . . . .
- 44 Enter any other distributed amount received from the foreign trust not included on lines 40, 41, 42, and 43 (attach explanation)
- 45 Amount of foreign trust's aggregate undistributed net income . . . . .
- 46 Amount of foreign trust's weighted undistributed net income . . . . .
- 47 Applicable number of years of trust. Divide line 46 by line 45 and enter the result here ►

**Schedule C—Calculation of Interest Charge** (see instructions)

- 48 Enter accumulation distribution from line 37 or 41, as applicable . . . . .
- 49 Enter tax on total accumulation distribution from line 28 of Form 4970 . . . . .
- 50 Enter applicable number of years of foreign trust from line 38 or 47, as applicable (round to nearest half-year). ►
- 51 Combined interest rate imposed on the total accumulation distribution (see instructions) . . . . .
- 52 Interest charge. Multiply the amount on line 49 by the combined interest rate on line 51 . . . . .
- 53 Tax attributable to accumulation distributions. Add lines 49 and 52. Enter here and as "additional tax" on your income tax return . . . . .

**Part IV U.S. Recipients of Gifts or Bequests Received During the Current Tax Year From Foreign Persons**  
 (see instructions)

- 54** During the current tax year, did you receive more than \$100,000 during the tax year that you treated as gifts or bequests from a nonresident alien or a foreign estate? See instructions regarding related donors ☐ Yes ☐ No
- If "Yes," complete columns (a) through (c) with respect to each such gift or bequest in excess of \$5,000. If more space is needed, attach schedule.

(a) Date of gift or bequest	(b) Description of property received	(c) FMV of property received
<b>Total</b> . . . . . ▶		\$

- 55** During the current tax year, did you receive more than \$12,760 that you treated as gifts from a foreign corporation or a foreign partnership? See instructions regarding related donors ☐ Yes ☐ No
- If "Yes," complete columns (a) through (g) with respect to each such gift. If more space is needed, attach schedule.

(a) Date of gift	(b) Name of donor	(c) Address of donor	(d) Identification number, if any

(e) Check the box that applies to the foreign donor		(f) Description of property received	(g) FMV of property received
Corporation	Partnership		

- 56** Do you have any reason to believe that the foreign donor, in making any gift or bequest described in lines 54 and 55, was acting as a nominee or intermediary for any other person? If "Yes," see instructions. ☐ Yes ☐ No



Printed on recycled paper

**Annual Information Return of Foreign  
Trust With a U.S. Owner**  
(Under section 6048(b))

OMB No. 1545-0160

**2006**Department of the Treasury  
Internal Revenue Service

▶ See separate instructions.

**Note:** All information must be in English. Show all amounts in U.S. dollars.

For calendar year 2006, or tax year beginning . 2006, ending . 20

Check appropriate boxes. ☐ Initial return ☐ Final return ☐ Amended return**Part I General Information** (see instructions)

1a Name of foreign trust

b Employer identification number

c Number, street, and room or suite no. (if a P.O. box, see instructions)

d City or town

e State or province

f ZIP or postal code

g Country

2 Did the foreign trust appoint a U.S. agent (defined in the instructions) who can provide the IRS with all relevant trust information? ☐ Yes ☐ No

If "Yes," skip lines 2a through 2e and go to line 3.

If "No," you are required to attach a copy of all trust documents as indicated below. If these documents have been attached to a Form 3520-A filed within the previous 3 years, attach only relevant updates.

Have you attached a copy of:

	Yes	No	Attached Previously	Year Attached
a Summary of all written and oral agreements and understandings relating to the trust?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
b The trust instrument?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
c Memoranda or letters of wishes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
d Subsequent variances to original trust documents?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
e Other trust documents?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

3a Name of U.S. agent

b Identification number

c Number, street, and room or suite no. (if a P.O. box, see instructions)

d City or town

e State or province

f ZIP or postal code

g Country

4a Name of trustee

b Identification number, if any

c Number, street, and room or suite no. (if a P.O. box, see instructions)

d City or town

e State or province

f ZIP or postal code

g Country

5 Did the trust transfer any property (including cash) to another person (see instructions for definition) during the tax year? If "Yes," attach statement (see instructions). ☐ Yes ☐ No

6 Enter the number of Foreign Grantor Trust Owner Statements (page 3) included with this Form 3520-A . . . ▶

Under penalties of perjury, I declare that I have examined this return, including any accompanying reports, schedules, or statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Trustee's  
Signature

Title

Date

Preparer's  
Signature

Preparer's SSN or PTIN

Date

**Part II Foreign Trust Income Statement**

Enter totals from books and records of foreign trust (see instructions).

Income	1	Interest . . . . .		
	2	Dividends . . . . .		
	3	Gross rents and royalties . . . . .		
	4	Income (loss) from partnerships and fiduciaries . . . . .		
	5	Capital gains:		
	a	Net short-term capital gain (loss) . . . . .		
	b	Net long-term capital gain (loss) . . . . .		
	6	Ordinary gains (losses) . . . . .		
7	Other income (attach schedule) . . . . .			
8	Total income (add lines 1 through 7) . . . . .			
Expenses	9	Interest expense . . . . .		
	10a	Foreign taxes (attach schedule) . . . . .		
	b	State and local taxes . . . . .		
	11	Amortization and depreciation (depletion) . . . . .		
	12	Trustee and advisor fees . . . . .		
	13	Charitable contributions . . . . .		
	14	Other expenses (attach schedule) . . . . .		
	15	Total expenses (add lines 9 through 14) . . . . .		
16	Net income (loss) (subtract line 15 from line 8) . . . . .			
17a	Enter the fair market value (FMV) of total distributions from the trust to all persons, whether U.S. or foreign . ▶			
b Distributions to U.S. owners:				
	(i) Name of owner	(ii) Identification number	(iii) Date of distribution	(iv) FMV
c Distributions to U.S. beneficiaries:				
	(i) Name of beneficiary	(ii) Identification number	(iii) Date of distribution	(iv) FMV

**Part III Foreign Trust Balance Sheet**

		Beginning of Tax Year		End of Tax Year	
		(a)	(b)	(c)	(d)
<b>Assets</b>					
1	Cash . . . . .				
2	Accounts receivable . . . . .				
3	Mortgages and notes receivable . . . . .				
4	Inventories . . . . .				
5	Government obligations . . . . .				
6	Other marketable securities . . . . .				
7	Other nonmarketable securities . . . . .				
8a	Depreciable (depletable) assets . . . . .				
b	Less: accumulated depreciation (depletion) . . . . .				
9	Real property . . . . .				
10	Other assets (attach schedule) . . . . .				
11	Total assets . . . . .				
<b>Liabilities</b>					
12	Accounts payable . . . . .				
13	Contributions, gifts, grants, etc., payable . . . . .				
14	Mortgages and notes payable . . . . .				
15	Other liabilities (attach schedule) . . . . .				
16	Total liabilities . . . . .				
<b>Net Worth</b>					
17	Contributions to trust corpus . . . . .				
18	Accumulated trust income . . . . .				
19	Other (attach schedule) . . . . .				
20	Total net worth (add lines 17 through 19) . . . . .				
21	Total liabilities and net worth (add lines 16 and 20) . . . . .				

**2006 Foreign Grantor Trust Owner Statement** (see instructions)

**Important:** Trustee must prepare a separate statement for each U.S. owner and include a copy of each statement with Form 3520-A. Trustee is also required to send to each U.S. owner a copy of the owner's statement. U.S. owner must attach a copy of its statement to Form 3520.

<b>1a</b> Name of foreign trust			<b>b</b> Employer identification number
<b>c</b> Number, street, and room or suite no. (if a P.O. box, see instructions)			
<b>d</b> City or town	<b>e</b> State or province	<b>f</b> ZIP or postal code	<b>g</b> Country
<b>2</b> Did the foreign trust appoint a U.S. agent (defined in the instructions) who can provide the IRS with all relevant trust information? If "Yes," complete lines 3a through 3g.			<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>3a</b> Name of U.S. agent			<b>b</b> Identification number
<b>c</b> Number, street, and room or suite no. (if a P.O. box, see instructions)			
<b>d</b> City or town	<b>e</b> State or province	<b>f</b> ZIP or postal code	<b>g</b> Country
<b>4a</b> Name of trustee			<b>b</b> Identification number (if any)
<b>c</b> Number, street, and room or suite no. (if a P.O. box, see instructions)			
<b>d</b> City or town	<b>e</b> State or province	<b>f</b> ZIP or postal code	<b>g</b> Country
<b>5</b> The tax year of the owner of the foreign trust to which this statement relates ►			
<b>6a</b> Name of U.S. owner			<b>b</b> Identification number
<b>c</b> Number, street, and room or suite no. (if a P.O. box, see instructions)			
<b>d</b> City or town	<b>e</b> State or province	<b>f</b> ZIP or postal code	<b>g</b> Country
<b>h</b> Service Center where U.S. owner files its income tax returns ►			

**7** Attach an explanation of the facts and law (including the section of the Internal Revenue Code) that establishes that the foreign trust (or portion of the foreign trust) is treated for U.S. tax principles as owned by the U.S. person.

**8** If the trust did not appoint a U.S. agent, list the trust documents attached to Form 3520-A (see instructions).

.....

**9** Gross value of the portion of the trust treated as owned by the U.S. owner . . . . . \$

**2006 Statement of Foreign Trust Income Attributable to U.S. Owner** (see instructions)

Report each item on the proper form or schedule of your tax return.

<b>Income</b>	<b>1</b> Interest . . . . .	
	<b>2</b> Dividends . . . . .	
	<b>3</b> Gross rents and royalties . . . . .	
	<b>4</b> Income from partnerships and fiduciaries . . . . .	
	<b>5</b> Capital gains (losses) . . . . .	
	<b>6</b> Ordinary gains (losses) . . . . .	
	<b>7</b> Other income (attach schedule) . . . . .	
<b>Expenses</b>	<b>8</b> Interest expense . . . . .	
	<b>9a</b> Foreign taxes (attach schedule) . . . . .	
	<b>b</b> State and local taxes . . . . .	
	<b>10</b> Amortization and depreciation (depletion) . . . . .	
	<b>11</b> Trustee and advisor fees . . . . .	
	<b>12</b> Charitable contributions . . . . .	
	<b>13</b> Other expenses (attach schedule) . . . . .	

Under penalties of perjury, I declare that I have examined this return, including any accompanying reports, schedules, or statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Trustee Signature ►

Title ►

Date ►

**2006 Foreign Grantor Trust Beneficiary Statement**

**Important:** Trustee must prepare a separate statement for each U.S. beneficiary that received a distribution from the trust during the tax year and include a copy of each statement with Form 3520-A. Trustee is also required to send to each such beneficiary a copy of the beneficiary's statement. U.S. beneficiary must attach a copy of its statement to Form 3520.

<b>1a</b> Name of foreign trust	<b>b</b> Employer identification number
---------------------------------	---

**c** Number, street, and room or suite no. (if a P.O. box, see instructions)

<b>d</b> City or town	<b>e</b> State or province	<b>f</b> ZIP or postal code	<b>g</b> Country
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**2** Did the foreign trust appoint a U.S. agent (defined in the instructions) who can provide the IRS with all relevant trust information? ☐ Yes ☐ No

If "Yes," complete lines 3a through 3g.

If "No," do you agree that either the IRS or the U.S. beneficiary can inspect and copy the trust's permanent books of account, records, and such other documents that are necessary to establish that the trust should be treated for U.S. tax purposes as owned by another person? ☐ Yes ☐ No

<b>3a</b> Name of U.S. agent	<b>b</b> Identification number
------------------------------	--------------------------------

**c** Number, street, and room or suite no. (if a P.O. box, see instructions)

<b>d</b> City or town	<b>e</b> State or province	<b>f</b> ZIP or postal code	<b>g</b> Country
-----------------------	----------------------------	-----------------------------	------------------

<b>4a</b> Name of trustee	<b>b</b> Identification number (if any)
---------------------------	---

**c** Number, street, and room or suite no. (if a P.O. box, see instructions)

<b>d</b> City or town	<b>e</b> State or province	<b>f</b> ZIP or postal code	<b>g</b> Country
-----------------------	----------------------------	-----------------------------	------------------

**5** The first and last day of the tax year of the foreign trust to which Form 3520-A applies ►

<b>6a</b> Name of U.S. beneficiary	<b>b</b> Identification number
------------------------------------	--------------------------------

**c** Number, street, and room or suite no. (if a P.O. box, see instructions)

<b>d</b> City or town	<b>e</b> State or province	<b>f</b> ZIP or postal code	<b>g</b> Country
-----------------------	----------------------------	-----------------------------	------------------

**7** Description of property (including cash) distributed, or treated as distributed, to the U.S. person during the tax year. (See the instructions for Part III of Form 3520 for U.S. tax treatment of these amounts.)

(a) Description of property	(b) FMV

**8** Attach an explanation of the facts and law (including the section of the Internal Revenue Code) that establishes that the foreign trust (or portion of the foreign trust) is treated for U.S. tax principles as owned by another person.

**9** Owner of the foreign trust is (check one):

☐ Individual ☐ Partnership ☐ Corporation

Under penalties of perjury, I declare that I have examined this return, including any accompanying reports, schedules, or statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Trustee Signature ►

Title ►

Date ►

Form **5471**

(Rev. December 2005)

Department of the Treasury  
Internal Revenue Service**Information Return of U.S. Persons With  
Respect To Certain Foreign Corporations**

▶ See separate instructions.

Information furnished for the foreign corporation's annual accounting period (tax year required by  
section 898) (see instructions) beginning , 20 , and ending , 20OMB No. 1545-0704  
Attachment  
Sequence No. 121**File In Duplicate**  
(see When and  
Where To File in  
the instructions)

Name of person filing this return	A Identifying number
Number, street, and room or suite no. (or P.O. box number if mail is not delivered to street address)	B Category of filer (See instructions. Check applicable box(es): 1 (repealed) 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/>
City or town, state, and ZIP code	C Enter the total percentage of the foreign corporation's voting stock you owned at the end of its annual accounting period ..... %
Filer's tax year beginning , 20 , and ending , 20	

**D** Person(s) on whose behalf this information return is filed:

(1) Name	(2) Address	(3) Identifying number	(4) Check applicable box(es)		
			Shareholder	Officer	Director

**Important:** Fill in all applicable lines and schedules. All information **must** be in English. All amounts **must** be stated in U.S. dollars unless otherwise indicated.

1a Name and address of foreign corporation				b Employer identification number, if any	
				c Country under whose laws incorporated	
d Date of incorporation	e Principal place of business	f Principal business activity code number	g Principal business activity	h Functional currency	

**2** Provide the following information for the foreign corporation's accounting period stated above.

a Name, address, and identifying number of branch office or agent (if any) in the United States	b If a U.S. income tax return was filed, enter:	
	(i) Taxable income or (loss)	(ii) U.S. income tax paid (after all credits)
c Name and address of foreign corporation's statutory or resident agent in country of incorporation	d Name and address (including corporate department, if applicable) of person (or persons) with custody of the books and records of the foreign corporation, and the location of such books and records, if different	

**Schedule A Stock of the Foreign Corporation**

(a) Description of each class of stock	(b) Number of shares issued and outstanding	
	(i) Beginning of annual accounting period	(ii) End of annual accounting period

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 49958V

Form **5471** (Rev. 12-2005)

**Schedule B** U.S. Shareholders of Foreign Corporation (see instructions)[illegible]**Schedule C**      **Income Statement** (see instructions)

**Important:** Report all information in functional currency in accordance with U.S. GAAP. Also, report each amount in U.S. dollars translated from functional currency (using GAAP translation rules). However, if the functional currency is the U.S. dollar, complete only the U.S. Dollars column. See instructions for special rules for DASTM corporations.

				Functional Currency	U.S. Dollars
Income	1a	Gross receipts or sales . . . . .		1a	
	b	Returns and allowances . . . . .		1b	
	c	Subtract line 1b from line 1a . . . . .		1c	
	2	Cost of goods sold . . . . .		2	
	3	Gross profit (subtract line 2 from line 1c) . . . . .		3	
	4	Dividends . . . . .		4	
	5	Interest. . . . .		5	
	6	Gross rents, royalties, and license fees . . . . .		6	
	7	Net gain or (loss) on sale of capital assets . . . . .		7	
Deductions	8	Other income (attach schedule) . . . . .		8	
	9	Total income (add lines 3 through 8) . . . . .		9	
	10	Compensation not deducted elsewhere . . . . .		10	
	11	Rents, royalties, and license fees . . . . .		11	
	12	Interest. . . . .		12	
	13	Depreciation not deducted elsewhere . . . . .		13	
	14	Depletion . . . . .		14	
	15	Taxes (exclude provision for income, war profits, and excess profits taxes) . . . . .		15	
	16	Other deductions (attach schedule—exclude provision for income, war profits, and excess profits taxes). . . . .		16	
Net Income	17	Total deductions (add lines 10 through 16) . . . . .		17	
	18	Net income or (loss) before extraordinary items, prior period adjustments, and the provision for income, war profits, and excess profits taxes (subtract line 17 from line 9) . . . . .		18	
	19	Extraordinary items and prior period adjustments (see instructions) . . . . .		19	
	20	Provision for income, war profits, and excess profits taxes (see instructions)		20	
	21	Current year net income or (loss) per books (combine lines 18 through 20) . . . . .		21	



**Schedule E** Income, War Profits, and Excess Profits Taxes Paid or Accrued (see instructions)

(a) Name of country or U.S. possession	Amount of tax		
	(b) In foreign currency	(c) Conversion rate	(d) In U.S. dollars
<b>1</b> U.S.			
<b>2</b>			
<b>3</b>			
<b>4</b>			
<b>5</b>			
<b>6</b>			
<b>7</b>			
<b>8</b> Total			

**Schedule F** Balance Sheet

**Important:** Report all amounts in U.S. dollars prepared and translated in accordance with U.S. GAAP. See instructions for an exception for DASTM corporations.

Assets		(a) Beginning of annual accounting period	(b) End of annual accounting period
<b>1</b> Cash	<b>1</b>		
<b>2a</b> Trade notes and accounts receivable	<b>2a</b>		
<b>b</b> Less allowance for bad debts	<b>2b</b>	( )	( )
<b>3</b> Inventories	<b>3</b>		
<b>4</b> Other current assets (attach schedule)	<b>4</b>		
<b>5</b> Loans to shareholders and other related persons	<b>5</b>		
<b>6</b> Investment in subsidiaries (attach schedule)	<b>6</b>		
<b>7</b> Other investments (attach schedule)	<b>7</b>		
<b>8a</b> Buildings and other depreciable assets	<b>8a</b>		
<b>b</b> Less accumulated depreciation	<b>8b</b>	( )	( )
<b>9a</b> Depletable assets	<b>9a</b>		
<b>b</b> Less accumulated depletion	<b>9b</b>	( )	( )
<b>10</b> Land (net of any amortization)	<b>10</b>		
<b>11</b> Intangible assets:			
<b>a</b> Goodwill	<b>11a</b>		
<b>b</b> Organization costs	<b>11b</b>		
<b>c</b> Patents, trademarks, and other intangible assets	<b>11c</b>		
<b>d</b> Less accumulated amortization for lines 11a, b, and c	<b>11d</b>	( )	( )
<b>12</b> Other assets (attach schedule)	<b>12</b>		
<b>13</b> Total assets	<b>13</b>		
Liabilities and Shareholders' Equity			
<b>14</b> Accounts payable	<b>14</b>		
<b>15</b> Other current liabilities (attach schedule)	<b>15</b>		
<b>16</b> Loans from shareholders and other related persons	<b>16</b>		
<b>17</b> Other liabilities (attach schedule)	<b>17</b>		
<b>18</b> Capital stock:			
<b>a</b> Preferred stock	<b>18a</b>		
<b>b</b> Common stock	<b>18b</b>		
<b>19</b> Paid-in or capital surplus (attach reconciliation)	<b>19</b>		
<b>20</b> Retained earnings	<b>20</b>		
<b>21</b> Less cost of treasury stock	<b>21</b>	( )	( )
<b>22</b> Total liabilities and shareholders' equity	<b>22</b>		

**Schedule G Other Information**

Yes No

- 1 During the tax year, did the foreign corporation own at least a 10% interest, directly or indirectly, in any foreign partnership? ☐ ☐  
If "Yes," see the instructions for required attachment.
- 2 During the tax year, did the foreign corporation own an interest in any trust? ☐ ☐
- 3 During the tax year, did the foreign corporation own any foreign entities that were disregarded as entities separate from their owners under Regulations sections 301.7701-2 and 301.7701-3 (see instructions)? ☐ ☐  
If "Yes," you are generally required to attach Form 8858 for each entity (see instructions).

**Schedule H Current Earnings and Profits** (see instructions)**Important:** Enter the amounts on lines 1 through 5c in **functional** currency.

1	Current year net income or (loss) per foreign books of account	1	
2	Net adjustments made to line 1 to determine current earnings and profits according to U.S. financial and tax accounting standards (see instructions):		
		<b>Net Additions</b>	<b>Net Subtractions</b>
a	Capital gains or losses		
b	Depreciation and amortization		
c	Depletion		
d	Investment or incentive allowance		
e	Charges to statutory reserves		
f	Inventory adjustments		
g	Taxes		
h	Other (attach schedule)		
3	Total net additions		
4	Total net subtractions		
5a	Current earnings and profits (line 1 plus line 3 minus line 4)	5a	
b	DASTM gain or (loss) for foreign corporations that use DASTM (see instructions)	5b	
c	Combine lines 5a and 5b	5c	
d	Current earnings and profits in U.S. dollars (line 5c translated at the appropriate exchange rate as defined in section 989(b) and the related regulations (see instructions))	5d	

Enter exchange rate used for line 5d ►

**Schedule I Summary of Shareholder's Income From Foreign Corporation** (see instructions)

1	Subpart F income (line 38b, Worksheet A in the instructions)	1	
2	Earnings invested in U.S. property (line 17, Worksheet B in the instructions)	2	
3	Previously excluded subpart F income withdrawn from qualified investments (line 6b, Worksheet C in the instructions)	3	
4	Previously excluded export trade income withdrawn from investment in export trade assets (line 7b, Worksheet D in the instructions)	4	
5	Factoring income	5	
6	Total of lines 1 through 5. Enter here and on your income tax return. See instructions.	6	
7	Dividends received (translated at spot rate on payment date under section 989(b)(1))	7	
8	Exchange gain or (loss) on a distribution of previously taxed income	8	

Yes No

- Was any income of the foreign corporation blocked? ☐ ☐
- Did any such income become unblocked during the tax year (see section 964(b))?. ☐ ☐
- If the answer to either question is "Yes," attach an explanation.

**SCHEDULE J**  
**(Form 5471)**(Rev. December 2005)  
Department of the Treasury  
Internal Revenue Service**Accumulated Earnings and Profits (E&P)**  
**of Controlled Foreign Corporation**

► Attach to Form 5471. See Instructions for Form 5471.

OMB No. 1545-0704

Name of person filing Form 5471

Identifying number

Name of foreign corporation

Important: Enter amounts in functional currency.	(a) Post-1986 Undistributed Earnings (post-86 section 959(c)(3) balance)	(b) Pre-1987 E&P Not Previously Taxed (pre-87 section 959(c)(3) balance)	(c) Previously Taxed E&P (see instructions) (sections 959(c)(1) and (2) balances)			(d) Total Section 964(a) E&P (combine columns (a), (b), and (c))
			(i) Earnings Invested in U.S. Property	(ii) Earnings Invested in Excess Passive Assets	(iii) Subpart F Income	
1 Balance at beginning of year						
2a Current year E&P						
b Current year deficit in E&P						
3 Total current and accumulated E&P not previously taxed (line 1 plus line 2a or line 1 minus line 2b)						
4 Amounts included under section 951(a) or reclassified under section 959(c) in current year						
5a Actual distributions or reclassifications of previously taxed E&P						
b Actual distributions of nonpreviously taxed E&P						
6a Balance of previously taxed E&P at end of year (line 1 plus line 4, minus line 5a)						
b Balance of E&P not previously taxed at end of year (line 3 minus line 4, minus line 5b)						
7 Balance at end of year. (Enter amount from line 6a or line 6b, whichever is applicable.)						

**SCHEDULE M  
(Form 5471)**(Rev. December 2005)  
Department of the Treasury  
Internal Revenue Service**Transactions Between Controlled Foreign Corporation  
and Shareholders or Other Related Persons**

OMB No. 1545-0704

▶ Attach to Form 5471. See Instructions for Form 5471.

Name of person filing Form 5471

Identifying number

Name of foreign corporation

**Important:** Complete a *separate* Schedule M for each controlled foreign corporation. Enter the totals for each type of transaction that occurred during the annual accounting period between the foreign corporation and the persons listed in columns (b) through (f). All amounts must be stated in U.S. dollars translated from functional currency at the average exchange rate for the foreign corporation's tax year. See instructions.

Enter the relevant functional currency and the exchange rate used throughout this schedule ▶

(a) Transactions of foreign corporation	(b) U.S. person filing this return	(c) Any domestic corporation or partnership controlled by U.S. person filing this return	(d) Any other foreign corporation or partnership controlled by U.S. person filing this return	(e) 10% or more U.S. shareholder of controlled foreign corporation (other than the U.S. person filing this return)	(f) 10% or more U.S. shareholder of any corporation controlling the foreign corporation
1 Sales of stock in trade (inventory) . . . . .					
2 Sales of property rights (patents, trademarks, etc.) .					
3 Compensation received for technical, managerial, engineering, construction, or like services .					
4 Commissions received . . .					
5 Rents, royalties, and license fees received . . . . .					
6 Dividends received (exclude deemed distributions under subpart F and distributions of previously taxed income) . .					
7 Interest received . . . . .					
8 Premiums received for insurance or reinsurance . . .					
9 Add lines 1 through 8 . . .					
10 Purchases of stock in trade (inventory) . . . . .					
11 Purchases of tangible property other than stock in trade . .					
12 Purchases of property rights (patents, trademarks, etc.) .					
13 Compensation paid for technical, managerial, engineering, construction, or like services.					
14 Commissions paid. . . . .					
15 Rents, royalties, and license fees paid . . . . .					
16 Dividends paid . . . . .					
17 Interest paid . . . . .					
18 Add lines 10 through 17 . .					
19 Amounts borrowed (enter the maximum loan balance during the year) — see instructions .					
20 Amounts loaned (enter the maximum loan balance during the year) — see instructions .					

**SCHEDULE N  
(Form 5471)**

(Rev. December 2004)

Department of the Treasury  
Internal Revenue Service**Return of Officers, Directors, and 10% or More  
Shareholders of a Foreign Personal Holding Company**

OMB No. 1545-0704

▶ Attach to Form 5471. See Instructions for Form 5471.

Name of person filing Form 5471

Identifying number

Name of foreign corporation

**Important:** All amounts must be stated in U.S. dollars translated from functional currency. See page 11 of the instructions for the relevant exchange rate.

Enter the relevant functional currency and the exchange rate(s) used throughout this schedule ▶

**Part I Shareholder Information****Section A—Outstanding Securities Convertible Into Stock of the Corporation or Options Granted by the Corporation**

Description of securities (attach a complete, detailed statement of conversion privileges)	Interest rate (%)	Face value	
		Beginning of year	End of year

**Section B—List of Holders of Convertible Securities or Options Granted by the Corporation**

Name and address of each holder of convertible securities or options (designate nonresident aliens)	Class of securities	Securities held				Explanation and date of any change in holdings of securities during the year
		Beginning of year		End of year		
		Number	Face value	Number	Face value	

**Part II Income Information****Section A—Undistributed Foreign Personal Holding Company Income**

1	Gross income as defined in section 555 (attach schedule) . . . . .	1	
2	Deductions allowable under section 161 (attach schedule) . . . . .	2	
3	Taxable income or (loss) (subtract line 2 from line 1) . . . . .	3	
4	Adjustments to taxable income or (loss) (see page 12 of instructions):		
a	Taxes (see instructions) . . . . .	4a	
b	Charitable contributions . . . . .	4b	
c	Special deductions disallowed . . . . .	4c	
d	Net operating loss . . . . .	4d	
e	Expenses and depreciation applicable to property of the taxpayer . . . . .	4e	
f	Taxes and contributions to pension trusts . . . . .	4f	
g	Total adjustments (combine lines 4a through 4f) . . . . .	4g	
5	Combine line 3 and line 4g . . . . .	5	
6	Deduction for dividends paid during tax year. Enter the amount from Section B, line 12, below	6	
7	Subtract line 6 from line 5 . . . . .	7	
8	Deduction allowed under section 563(c) for dividends paid after close of tax year (see instructions). Attach designation required by Rev. Proc. 90-26, 1990-1 C.B. 512 . . . . .	8	
9	Undistributed foreign personal holding company income (subtract line 8 from line 7) . . . . .	9	

**Section B—Deduction for Dividends Paid During Tax Year (see instructions)**

10	Taxable dividends paid during tax year:	Date paid		Amount
a	Cash . . . . .		10a	
b	Property other than cash or the corporation's own securities (indicate nature of property) . . . . .		10b	
c	Obligations of the corporation (bonds, notes, scrip, etc.) . . . . .		10c	
11	Consent dividends (attach schedule) . . . . .		11	
12	Deduction for dividends paid during tax year (add lines 10a through 11). Enter here and on line 6 above		12	

**SCHEDULE O  
(Form 5471)**

(Rev. December 2005)

Department of the Treasury  
Internal Revenue Service**Organization or Reorganization of Foreign  
Corporation, and Acquisitions and  
Dispositions of its Stock**

OMB No. 1545-0704

▶ Attach to Form 5471. See Instructions for Form 5471.

Name of person filing Form 5471

Identifying number

Name of foreign corporation

**Important:** Complete a separate Schedule O for each foreign corporation for which information must be reported.**Part I To Be Completed by U.S. Officers and Directors**

(a) Name of shareholder for whom acquisition information is reported	(b) Address of shareholder	(c) Identifying number of shareholder	(d) Date of original 10% acquisition	(e) Date of additional 10% acquisition

**Part II To Be Completed by U.S. Shareholders****Note:** If this return is required because one or more shareholders became U.S. persons, attach a list showing the names of such persons and the date each became a U.S. person.**Section A—General Shareholder Information**

(a) Name, address, and identifying number of shareholder(s) filing this schedule	(b) For shareholder's latest U.S. income tax return filed, indicate:			(c) Date (if any) shareholder last filed information return under section 6046 for the foreign corporation
	(1) Type of return (enter form number)	(2) Date return filed	(3) Internal Revenue Service Center where filed	

**Section B—U.S. Persons Who Are Officers or Directors of the Foreign Corporation**

(a) Name of U.S. officer or director	(b) Address	(c) Social security number	(d) Check appropriate box(es)	
			Officer	Director

**Section C—Acquisition of Stock**

(a) Name of shareholder(s) filing this schedule	(b) Class of stock acquired	(c) Date of acquisition	(d) Method of acquisition	(e) Number of shares acquired		
				(1) Directly	(2) Indirectly	(3) Constructively

(f) Amount paid or value given	(g) Name and address of person from whom shares were acquired

**Section D—Disposition of Stock**

(a) Name of shareholder disposing of stock	(b) Class of stock	(c) Date of disposition	(d) Method of disposition	(e) Number of shares disposed of		
				(1) Directly	(2) Indirectly	(3) Constructively

(f) Amount received	(g) Name and address of person to whom disposition of stock was made

**Section E—Organization or Reorganization of Foreign Corporation**

(a) Name and address of transferor			(b) Identifying number (if any)	(c) Date of transfer

(d) Assets transferred to foreign corporation			(e) Description of assets transferred by, or notes or securities issued by, foreign corporation
(1) Description of assets	(2) Fair market value	(3) Adjusted basis (if transferor was U.S. person)	

**Section F—Additional Information**

**(a)** If the foreign corporation or a predecessor U.S. corporation filed (or joined with a consolidated group in filing) a U.S. income tax return for any of the last 3 years, attach a statement indicating the year for which a return was filed (and, if applicable, the name of the corporation filing the consolidated return), the taxable income or loss, and the U.S. income tax paid (after all credits).

**(b)** List the date of any reorganization of the foreign corporation that occurred during the last 4 years while any U.S. person held 10% or more in value or vote (directly or indirectly) of the corporation's stock ►

**(c)** If the foreign corporation is a member of a group constituting a chain of ownership, attach a chart, for each unit of which a shareholder owns 10% or more in value or voting power of the outstanding stock. The chart must indicate the corporation's position in the chain of ownership and the percentages of stock ownership (see instructions for an example).



# Instructions for Form 5471



Department of the Treasury  
Internal Revenue Service

(Rev. December 2005)

## Information Return of U.S. Persons With Respect to Certain Foreign Corporations

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

### What's New

- The form, schedules, and instructions have been modified to reflect changes made by the American Jobs Creation Act of 2004 (AJCA) that are generally effective for tax years of foreign corporations beginning after December 31, 2004, and for tax years of U.S. shareholders with or within which such tax years of foreign corporations end.
- Use the December 2005 revision of the form, schedules, and instructions for tax years of foreign corporations beginning after December 31, 2004. For tax years of foreign corporations beginning before January 1, 2005, use the December 2004 revision of the form, schedules, and instructions.

### General Instructions

#### Purpose of Form

Form 5471 is used by certain U.S. citizens and residents who are officers, directors, or shareholders in certain foreign corporations. The form and schedules are used to satisfy the reporting requirements of sections 6038 and 6046, and the related regulations.

#### Who Must File

Generally, all U.S. persons described in *Categories of Filers* below must complete the schedules, statements, and/or other information requested in the chart, *Filing Requirements for Categories of Filers*, on page 2. Read the information for each category carefully to determine which schedules, statements, and/or information apply.

If the filer is described in more than one filing category, do not duplicate information. However, complete all items that apply. For example, if you are the sole owner of a controlled foreign corporation (CFC) (i.e., you are described in Categories 4 and 5), complete all four pages of Form 5471 and separate Schedules J and M.

**Note.** Complete a separate Form 5471 and all applicable schedules for each applicable foreign corporation.

#### When and Where To File

Form 5471 is due when your income tax return is due, including extensions. Attach the original copy of the Form 5471 and schedules to your income tax return. You are required to file a duplicate copy of the form and required schedules with the Internal Revenue Service Center, Philadelphia, PA 19255. However, see

*Electronic Filing of Form 5471* on page 3.

### Categories of Filers

#### Category 1 Filer

This filing requirement has been repealed by section 413(c)(26) of the AJCA, which repealed section 6035.

#### Category 2 Filer

This includes a U.S. citizen or resident who is an officer or director of a foreign corporation in which a U.S. person (defined below) has acquired (in one or more transactions):

1. Stock which meets the 10% stock ownership requirement (described below) with respect to the foreign corporation or
2. An additional 10% or more (in value or voting power) of the outstanding stock of the foreign corporation.

A U.S. person has **acquired** stock in a foreign corporation when that person has an unqualified right to receive the stock, even though the stock is not actually issued. See Regulations section 1.6046-1(f)(1) for more details.

**Stock ownership requirement.** For purposes of Category 2 and Category 3, the stock ownership threshold is met if a U.S. person owns:

1. 10% or more of the total value of the foreign corporation's stock or
2. 10% or more of the total combined voting power of all classes of stock with voting rights.

**U.S. person.** For purposes of Category 2 and Category 3, a U.S. person is:

1. A citizen or resident of the United States,
2. A domestic partnership,
3. A domestic corporation, and
4. An estate or trust that is not a foreign estate or trust defined in section 7701(a)(31).

See Temporary Regulations section 1.6046-1T(f)(3) for exceptions.

#### Category 3 Filer

This category includes:

- A U.S. person (defined above) who acquires stock in a foreign corporation which, when added to any stock owned on the date of acquisition, meets the 10% stock ownership requirement (described above) with respect to the foreign corporation;
- A U.S. person who acquires stock which, without regard to stock already owned on the date of acquisition, meets

the 10% stock ownership requirement with respect to the foreign corporation;

- A person who is treated as a U.S. shareholder under section 953(c) with respect to the foreign corporation;
- A person who becomes a U.S. person while meeting the 10% stock ownership requirement with respect to the foreign corporation; or
- A U.S. person who disposes of sufficient stock in the foreign corporation to reduce his or her interest to less than the stock ownership requirement.

For more information, see section 6046 and Regulations section 1.6046-1.

#### Category 4 Filer

This includes a U.S. person who had control (defined below) of a foreign corporation for an uninterrupted period of at least 30 days during the annual accounting period of the foreign corporation.

**U.S. person.** For purposes of Category 4, a U.S. person is:

1. A citizen or resident of the United States;
2. A nonresident alien for whom an election is in effect under section 6013(g) to be treated as a resident of the United States;
3. An individual for whom an election is in effect under section 6013(h), relating to nonresident aliens who become residents of the United States during the tax year and are married at the close of the tax year to a citizen or resident of the United States;
4. A domestic partnership;
5. A domestic corporation; and
6. An estate or trust that is not a foreign estate or trust defined in section 7701(a)(31).

See Temporary Regulations section 1.6038-2T(d) for exceptions.

**Control.** A U.S. person has control of a foreign corporation if, at any time during that person's tax year, it owns stock possessing:

1. More than 50% of the total combined voting power of all classes of stock of the foreign corporation entitled to vote or
2. More than 50% of the total value of shares of all classes of stock of the foreign corporation.

A person in control of a corporation that, in turn, owns more than 50% of the combined voting power, or the value, of all classes of stock of another corporation is also treated as being in control of such other corporation.



**Example.** Corporation A owns 51% of the voting stock in Corporation B. Corporation B owns 51% of the voting stock in Corporation C. Corporation C owns 51% of the voting stock in Corporation D. Therefore, Corporation D is controlled by Corporation A.

For more details on "control," see Regulations sections 1.6038-2(b) and (c).

### Category 5 Filer

This includes a U.S. shareholder who owns stock in a foreign corporation that is a CFC for an uninterrupted period of 30 days or more during any tax year of the foreign corporation, and who owned that stock on the last day of that year.

**U.S. shareholder.** For purposes of Category 5, a U.S. shareholder is a U.S. person who:

1. Owns (directly, indirectly, or constructively, within the meaning of sections 958(a) and (b)) 10% or more of the total combined voting power of all classes of voting stock of a CFC or

2. Owns (either directly or indirectly, within the meaning of section 958(a)) any stock of a CFC (as defined in sections 953(c)(1)(B) and 957(b)) that is also a captive insurance company.

**U.S. person.** For purposes of Category 5, a U.S. person is:

1. A citizen or resident of the United States,
2. A domestic partnership,
3. A domestic corporation, and

4. An estate or trust that is not a foreign estate or trust defined in section 7701(a)(31).

See section 957(c) for exceptions.

**CFC.** A CFC is a foreign corporation that has U.S. shareholders that own (directly, indirectly, or constructively, within the meaning of sections 958(a) and (b)) on any day of the tax year of the foreign corporation, more than 50% of:

1. The total combined voting power of all classes of its voting stock or
2. The total value of the stock of the corporation.

### Exceptions From Filing

#### Multiple filers of same information.

One person may file Form 5471 and the applicable schedules for other persons who have the same filing requirements. If you and one or more other persons are required to furnish information for the same foreign corporation for the same period, a joint information return that contains the required information may be filed with your income tax return or with the income tax return of any one of the other persons. For example, a U.S. person described in Category 5 may file a joint Form 5471 with a Category 4 or another Category 5 filer. However, for Category 3 filers, the required information may only be filed by another person having an equal or greater interest (measured in terms of value or voting

power of the stock of the foreign corporation).

The person that files Form 5471 must complete Item D on page 1 of the form. All persons identified in Item D must attach a statement to their income tax return that includes the information described in the instructions for Item D on page 4.

**Domestic corporations.** Shareholders are not required to file the information checked in the chart on this page for a foreign insurance company that has elected (under section 953(d)) to be treated as a domestic corporation and has filed a U.S. income tax return for its tax year under that provision. See Rev. Proc. 2003-47, 2003-28 I.R.B. 55, for procedural rules regarding the election under section 953(d).

**Members of consolidated groups.** A Category 4 filer is not required to file Form 5471 for a corporation defined in section 1504(d) that files a consolidated return for the tax year.

#### Constructive owners.

• A U.S. person described in Category 3 or 4 does not have to file Form 5471 if all of the following conditions are met:

1. The U.S. person does not own a direct interest in the foreign corporation,

2. The U.S. person is required to furnish the information requested solely because of constructive ownership (as determined under Regulations section 1.6038-2(c) or 1.6046-1(ii)) from another U.S. person, and

3. The U.S. person through which the indirect shareholder constructively owns an interest in the foreign corporation files Form 5471 to report all of the required information.

• A Category 2 filer does not have to file Form 5471 if:

1. Immediately after a reportable stock acquisition, three or fewer U.S. persons own 95% or more in value of the outstanding stock of the foreign corporation and the U.S. person making the acquisition files a return for the acquisition as a Category 3 filer or

2. The U.S. person(s) for which the Category 2 filer is required to file Form 5471 does not directly own an interest in the foreign corporation but is required to furnish the information solely because of constructive stock ownership from a U.S. person and the person from whom the stock ownership is attributed furnishes all of the required information.

• A Category 4 or 5 filer does not have to file Form 5471 if the shareholder:

1. Does not own a direct or indirect interest in the foreign corporation and

2. Is required to file Form 5471 solely because of constructive ownership from a nonresident alien.

### Additional Filing Requirements

**Category 3 filers.** Category 3 filers must attach a statement that includes:

1. The amount and type of any indebtedness the foreign corporation has

### Filing Requirements for Categories of Filers

Required Information*	Category of Filer				
	1	2	3	4	5
The identifying information on page 1 (the information above Schedule A)—see <b>Specific Instructions</b>		✓	✓	✓	✓
Schedule A			✓	✓	
Schedule B			✓	✓	
Schedules C, E, and F			✓	✓	
Schedule G		✓	✓	✓	✓
Schedule H				✓	✓
Schedule I				✓	✓
Separate Schedule J				✓	✓
Separate Schedule M				✓	
Separate Schedule O, Part I		✓			
Separate Schedule O, Part II			✓		

\*See also *Additional Filing Requirements* on this page.

with the related persons described in Regulations section 1.6046-1(b)(11) and

2. The name, address, identifying number, and number of shares subscribed to by each subscriber to the foreign corporation's stock.

#### **Foreign sales corporations (FSCs).**

- Category 2 and Category 3 filers who are shareholders, officers, and directors of a FSC (as defined in section 922) must file Form 5471 and separate Schedule O to report changes in the ownership of the FSC.

- Category 4 and 5 filers are not subject to the subpart F rules for:

1. Exempt foreign trade income,
2. Deductions that are apportioned or allocated to exempt foreign trade income,
3. Nonexempt foreign trade income (other than section 923(a)(2) nonexempt income, within the meaning of section 927(d)(6)), and
4. Any deductions that are apportioned or allocated to the nonexempt foreign trade income described above.

- Category 4 and 5 filers are subject to the subpart F rules for:

1. All other types of FSC income (including section 923(a)(2) nonexempt income within the meaning of section 927(d)(6)),
2. Investment income and carrying charges (as defined in section 927(c) and (d)(1)), and
3. All other FSC income that is not foreign trade income or investment income or carrying charges.

- Category 4 and 5 filers are not required to file a Form 5471 (in order to satisfy the requirements of section 6038) if the FSC has filed a Form 1120-FSC. See Regulations section 1.921-1T(b)(3). However, these filers may be required to file Form 5471 if they are subject to the subpart F rules with respect to certain types of FSC income (see above).

**Section 338 election.** If a section 338 election is made with respect to a qualified stock purchase of a foreign target corporation for which a Form 5471 must be filed:

- A purchaser (or its U.S. shareholder) must attach a copy of Form 8883, Asset Allocation Statement Under Section 338, to the first Form 5471 for the new foreign target corporation. See the Instructions for Form 8883 for details.
- A seller (or its U.S. shareholder) must attach a copy of Form 8883 to the last Form 5471 for the old foreign target corporation.

## **Penalties**

**Failure to file information required by section 6038(a) (Form 5471 and Schedule M).**

- A \$10,000 penalty is imposed for each annual accounting period of each foreign corporation for failure to furnish the required information within the time prescribed. If the information is not filed within 90 days after the IRS has mailed a notice of the failure to the U.S. person, an additional \$10,000 penalty (per foreign corporation) is charged for each 30-day

period, or fraction thereof, during which the failure continues after the 90-day period has expired. The additional penalty is limited to a maximum of \$50,000 for each failure.

- Any person who fails to file or report all of the information required within the time prescribed will be subject to a reduction of 10% of the foreign taxes available for credit under sections 901, 902, and 960. If the failure continues 90 days or more after the date the IRS mails notice of the failure to the U.S. person, an additional 5% reduction is made for each 3-month period, or fraction thereof, during which the failure continues after the 90-day period has expired. See section 6038(c)(2) for limits on the amount of this penalty.

#### **Failure to file information required by section 6046 and the related regulations (Form 5471 and Schedule O).**

Any person who fails to file or report all of the information requested by section 6046 is subject to a \$10,000 penalty for each such failure for each reportable transaction. If the failure continues for more than 90 days after the date the IRS mails notice of the failure, an additional \$10,000 penalty will apply for each 30-day period or fraction thereof during which the failure continues after the 90-day period has expired. The additional penalty is limited to a maximum of \$50,000.

**Criminal penalties.** Criminal penalties under sections 7203, 7206, and 7207 may apply for failure to file the information required by sections 6038 and 6046.

**Note.** Any person required to file Form 5471 and Schedule J, M, or O who agrees to have another person file the form and schedules for him or her may be subject to the above penalties if the other person does not file a correct and proper form and schedule.

## **Other Reporting Requirements**

### **Reporting Exchange Rates on Form 5471**

When translating amounts from functional currency to U.S. dollars, you must use the method specified in these instructions. For example, when translating amounts to be reported on Schedule E, you generally must use the average exchange rate as defined in section 986(a). But, regardless of the specific method required, all exchange rates must be reported using a "divide-by convention" rounded to at least 4 places. That is, the exchange rate must be reported in terms of the amount by which the functional currency amount must be divided in order to reflect an equivalent amount of U.S. dollars. As such, the exchange rate must be reported as the units of foreign currency that equal one U.S. dollar, rounded to at least 4 places. Do not report the exchange rate as the number of U.S. dollars that equal one unit of foreign currency.

**Note.** You must round the result to more than 4 places if failure to do so would materially distort the exchange rate or the equivalent amount of U.S. dollars.

**Example.** During its annual accounting period, the foreign corporation paid income taxes of 30,255,400 Yen to Japan. The Schedule E instructions specify that the foreign corporation must translate these amounts into U.S. dollars at the average exchange rate for the tax year to which the tax relates in accordance with the rules of section 986(a). The average exchange rate is 118.5050 Japanese Yen to 1 U.S. dollar (0.00843846 U.S. dollars to 1 Japanese Yen). The foreign corporation divides 30,255,400 Yen by 118.5050 to determine the U.S. dollar amount to enter in column (d) of Schedule E. Line 2 of Schedule E is to be completed as follows: Enter "Japan" in column (a), "30,255,400" in column (b), "118.5050" in column (c), and "255,309" in column (d).

### **Electronic Filing of Form 5471**

If you file your income tax return electronically, see the instructions for your income tax return for general information about electronic filing. If you file your original Form 5471 electronically (as an attachment to your electronically filed income tax return), it is not necessary to file a duplicate Form 5471.

### **Computer-Generated Form 5471 and Schedules**

A computer-generated Form 5471 and its schedules may be filed if they conform to and do not deviate from the official form and schedules. Generally, all computer-generated forms must receive prior approval from the IRS and are subject to an annual review.

Submit all requests for approval to: Internal Revenue Service, Attention: Substitute Forms Program, SE:W:CAR:MP:T:T:SP, 1111 Constitution Avenue, NW, IR-6406, Washington, DC 20224.

**Important:** Be sure to attach the approval letter to Form 5471.

Every year, the IRS issues a revenue procedure to provide guidance for filers of computer-generated forms. In addition, every year the IRS issues Pub. 1167, General Rules and Specifications For Substitute Forms and Schedules, which reprints the most recent applicable revenue procedure. Pub. 1167 can be ordered by calling 1-800-TAX-FORM (1-800-829-3676). This publication is also available from the IRS website at [www.irs.gov](http://www.irs.gov).

### **Dormant Foreign Corporations**

Rev. Proc. 92-70, 1992-2 C.B. 435, provides a summary filing procedure for filing Form 5471 for a dormant foreign corporation (defined in sec. 3 of Rev. Proc. 92-70). This summary filing procedure will satisfy the reporting requirements of sections 6038 and 6046.

If you elect the summary procedure, complete only page 1 of Form 5471 for each dormant foreign corporation as follows:

- The top margin of the summary return must be labeled "Filed Pursuant to Rev. Proc. 92-70 for Dormant Foreign Corporation."

- Include filer information such as name and address, Items A through C, and tax year.
- Include corporate information such as the dormant corporation's annual accounting period (below the title of the form) and Items 1a, 1b, 1c, and 1d. For more information, see Rev. Proc. 92-70.

File this summary return in the manner described in *When and Where To File* on page 1.

## Treaty-Based Return Positions

You are generally required to file Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b), to disclose a return position that any treaty of the United States (such as an income tax treaty, an estate and gift tax treaty, or a friendship, commerce, and navigation treaty):

- Overrides or modifies any provision of the Internal Revenue Code and
- Causes, or potentially causes, a reduction of any tax incurred at any time.

See Form 8833 for exceptions.

Failure to make a required disclosure may result in a \$1,000 penalty (\$10,000 for a C corporation). See section 6712.

## Specific Instructions

**Important:** If the information required in a given section exceeds the space provided within that section, **do not** write "see attached" in the section and then attach all of the information on additional sheets. Instead, complete all entry spaces in the section and attach the remaining information on additional sheets. The additional sheets must conform with the IRS version of that section.

## Identifying Information

### Annual Accounting Period

Enter, in the space provided below the title of Form 5471, the annual accounting period of the foreign corporation for which you are furnishing information. Except for information contained on Schedule O, report information for the tax year of the foreign corporation that ends with or within your tax year. When filing Schedule O, report acquisitions, dispositions, and organizations or reorganizations that occurred during your tax year.

**Specified foreign corporation.** The annual accounting period of a specified foreign corporation is generally required to be the tax year of the corporation's majority U.S. shareholder. If there is more than one majority shareholder, the required tax year will be the tax year that results in the least aggregate deferral of income to all U.S. shareholders of the foreign corporation.

A specified foreign corporation is any foreign corporation:

1. That is treated as a CFC under subpart F and
2. In which more than 50% of the total voting power or value of all classes of

stock of the corporation is treated as owned by a U.S. shareholder.

For more information, see section 898 and Rev. Procs. 2002-37, 2002-22 I.R.B. 1030, and 2002-39, 2002-22 I.R.B. 1046, as modified by Notice 2002-72, 2002-46 I.R.B. 843.

### Name Change

If the name of either the person filing the return or the corporation whose activities are being reported changed within the past 3 years, show the prior name(s) in parentheses after the current name.

### Address

Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the U.S. person has a P.O. box, show the box number instead.

**Foreign address.** Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code, if any. Do not abbreviate the country name.

### Item A—Identifying Number

The identifying number of an individual is his or her social security number (SSN). The identifying number of all others is their employer identification number (EIN). If a U.S. corporation that owns stock in a foreign corporation is a member of a consolidated group, list the common parent as the person filing the return and enter its EIN in Item A. Identify the direct owner in Item D.

### Item B—Category of Filer

Complete Item B to indicate the category or categories that describe the person filing this return. If more than one category applies, check all boxes that apply.

### Item C—Percentage of Voting Stock Owned

Enter the total percentage of the foreign corporation's voting stock you owned directly, indirectly, or constructively at the end of the corporation's annual accounting period.

### Item D—Person(s) on Whose Behalf This Information Return Is Filed

The person that files the required information on behalf of other persons must complete Item D. See *Multiple filers of same information* on page 2. In addition, a separate Schedule I must be filed for each person described in Category 4 or 5.

Except for members of the filer's consolidated return group, all persons identified in Item D must attach a statement to their income tax returns that includes the following information:

- A statement that their filing requirements have been or will be satisfied;
- The name, address, and identifying number of the return with which the information was or will be filed; and
- The IRS Service Center where the return was or will be filed.

## Items 1f and 1g—Principal Business Activity

Enter the principal business activity code number and the description of the activity from the list beginning on page 13.

### Item 1h—Functional Currency

Enter the foreign corporation's functional currency. Regulations sections 1.6038-2(h) and 1.6046-1(g) require that certain amounts be reported in U.S. dollars and/or in the foreign corporation's functional currency. The specific instructions for the affected schedules state these requirements.

Special rules apply for foreign corporations that use the U.S. dollar approximate separate transactions method of accounting (DASTM) under Regulations section 1.985-3. See the instructions for Schedule C and Schedule H.

## Schedule B

Category 3 and 4 filers must complete Schedule B for U.S. persons that owned (at any time during the annual accounting period), directly or indirectly through foreign entities, 10% or more in value or voting power of any class of the corporation's outstanding stock.

**Column (e).** Enter each shareholder's allocable percentage of the foreign corporation's subpart F income.

## Schedule C

If the foreign corporation uses the U.S. dollar approximate separate transactions method of accounting (DASTM) under Regulations section 1.985-3, the functional currency column should reflect local hyperinflationary currency amounts computed in accordance with U.S. Generally Accepted Accounting Principles (GAAP). The U.S. dollar column should reflect such amounts translated into dollars under U.S. GAAP translation rules. Differences between this U.S. dollar GAAP column and the U.S. dollar income or loss figured for tax purposes under Regulations section 1.985-3(c) should be accounted for on Schedule H. See *Schedule H, Special rules for DASTM*, on page 5.

**Line 19.** The terms "extraordinary items" and "prior period adjustments" have the same meaning given to them by U.S. GAAP (see Opinion No. 30 of the Accounting Principles Board and Statement No. 16 of the Financial Accounting Standards Board).

**Line 20.** Enter the income, war profits, and excess profits taxes deducted in accordance with U.S. GAAP.

**Important:** Differences between this functional currency amount and the amount of taxes that reduce U.S. E&P should be accounted for on line 2g of Schedule H.

## Schedule E

List income, war profits, and excess profits taxes paid or accrued to the United States and to any foreign country or U.S. possession for the annual accounting period. Report these amounts in column

(b) in the local currency in which the taxes are payable. Translate these amounts into U.S. dollars at the average exchange rate for the tax year to which the tax relates unless one of the exceptions below applies. See section 986(a).

**Exceptions.** If one of the following exceptions applies, use the exchange rate in effect on the date you paid the tax.

1. The tax is paid before the beginning of the year to which the tax relates.
2. For tax years beginning after December 31, 2004, there is an election in effect under section 986(a)(1)(D) to translate foreign taxes attributable to the CFC using the exchange rate in effect on the date of payment.

Enter the exchange rate used in column (c). Report the exchange rate using the "divide-by convention" specified under *Reporting Exchange Rates on Form 5471* on page 3. Enter the translated dollar amount in column (d).

## Schedule F

If the foreign corporation uses DASTM, the tax balance sheet on Schedule F should be prepared and translated into U.S. dollars according to Regulations section 1.985-3(d), rather than U.S. GAAP.

## Schedule G

### Question 1

If the foreign corporation owned at least a 10% interest, directly or indirectly, in any foreign partnership, attach a statement listing the following information for each foreign partnership:

1. Name and EIN (if any) of the foreign partnership;
2. Identify which, if any, of the following forms the foreign partnership filed for its tax year ending with or within the corporation's tax year: Form 1042, 1065 or 1065-B, or 8804;
3. Name of the tax matters partner (if any); and
4. Beginning and ending dates of the foreign partnership's tax year.

### Question 3

Check the "Yes" box if the foreign corporation is the tax owner of a foreign disregarded entity (FDE). The "tax owner" of an FDE is the person that is treated as owning the assets and liabilities of the FDE for purposes of U.S. income tax law.

If the foreign corporation is the tax owner of an FDE and you are a category 4 or 5 filer of Form 5471, you are required to attach Form 8858 to Form 5471.

If the foreign corporation is the tax owner of an FDE and you are not a category 4 or 5 filer of Form 5471, you must attach the statement described below in lieu of Form 8858.

**Statement in lieu of Form 8858.** This statement must list the name of the FDE, country under whose laws the FDE was organized, and EIN (if any) of the FDE.

## Schedule H

Use Schedule H to report the foreign corporation's current earnings and profits (E&P) for U.S. tax purposes. Enter the amounts on lines 1 through 5c in functional currency.

**Special rules for DASTM.** If the foreign corporation uses DASTM, enter on line 1 the dollar GAAP income or (loss) from line 21 of Schedule C. Enter on lines 2a through 4 the adjustments made in figuring current E&P for U.S. tax purposes. Report these amounts in U.S. dollars. Enter on line 5b the DASTM gain or loss figured under Regulations section 1.985-3(d).

**Lines 2a through 2h.** Certain adjustments (required by Regulations sections 1.964-1(b) and (c)) must be made to the foreign corporation's line 1 net book income or (loss) to determine its current E&P. These adjustments may include both positive and negative adjustments to conform the foreign book income to U.S. GAAP and to U.S. tax accounting principles. If the foreign corporation's books are maintained in functional currency in accordance with U.S. GAAP, enter on line 1 the functional currency GAAP income or (loss) from line 21 of Schedule C, rather than starting with foreign book income, and show GAAP-to-tax adjustments on lines 2a through 2h.

**Lines 2b and 2c.** Generally, depreciation, depletion, and amortization allowances must be based on the historical cost of the underlying asset, and depreciation must be figured according to section 167 (or, if 20% or more of the foreign corporation's gross income is from U.S. sources, on a straight line basis according to Regulations section 1.312-15).

**Line 2f.** Inventories must be taken into account according to the rules of sections 471 (incorporating the provisions of section 263A) and 472 and the related regulations.

**Line 2g.** See the instructions for Schedule C, line 20.

**Line 2h.** Enter the net amount of any additional adjustments not included on lines 2a through 2g. List these additional adjustments on a separate schedule. Attach this schedule to Form 5471.

**Line 5b.** DASTM gain or (loss), reflecting unrealized exchange gain or loss, should be entered on line 5b only for foreign corporations that use DASTM.

**Line 5d.** Enter the line 5c functional currency amount translated into U.S. dollars at the average exchange rate for the foreign corporation's tax year. See section 989(b). Report the exchange rate using the "divide-by convention" specified under *Reporting Exchange Rates on Form 5471* on page 3. If the foreign corporation uses DASTM, enter on line 5d the same amount entered on line 5c.

**Blocked income.** The E&P of the foreign corporation, as reflected on Schedule H, must not be reduced by all or any part of such E&P that could not have been distributed by the foreign corporation due

to currency or other restrictions or limitations imposed under the laws of any foreign country.

## Schedule I

Use Schedule I to report in U.S. dollars the U.S. shareholder's pro rata share of income from the foreign corporation reportable under subpart F and other income realized from a corporate distribution.

### Line 1

**Subpart F income.** Generally, the income of a foreign corporation with U.S. shareholders is not taxed to those U.S. shareholders until the income is repatriated to the United States (e.g., through the payment of dividends to the U.S. shareholders or in the form of gain on the disposition of the U.S. shareholders' stock in the foreign corporation). However, this deferral of U.S. tax is not available to U.S. shareholders of CFCs with certain types of income, including subpart F income. For more information, see sections 951 and 952.

Use Worksheet A (which begins on page 7) to compute the U.S. shareholder's pro rata share of subpart F income of the CFC. Subpart F income includes the following:

- Adjusted net foreign base company income (lines 1 through 19);
- Adjusted net insurance income (line 20);
- Adjusted net related person insurance income (line 21);
- International boycott income (line 22);
- Illegal bribes, kickbacks, and other payments (line 23); and
- Income from a country described in section 952(a)(5) (line 24).

**Important:** If the subpart F income of any CFC for any tax year was reduced because of the current E&P limitation (see the instructions for line 29 of Worksheet A on page 9), any excess of the E&P of the CFC for any subsequent tax year over the subpart F income of the CFC for the tax year must be recharacterized as subpart F income.

### Lines 2 Through 4

Other amounts not eligible for deferral that are reported on Schedule I include:

- Earnings invested in U.S. property (Worksheet B);
- Amounts withdrawn from qualified investments in less developed countries and amounts withdrawn from qualified investments in foreign base company shipping operations (Worksheet C); and
- Amounts withdrawn from investment in export trade assets (Worksheet D).

### Line 5

Enter the factoring income (as defined in section 864(d)(1)) if no subpart F income is reported on line 1a, Worksheet A, because of the operation of the de minimis rule (see lines 1a, 9, and 11 of Worksheet A and the related instructions).

### Line 6

Add lines 1 through 5. Enter the result here and on your income tax return. For a



corporate U.S. shareholder, enter the result on line 14, Schedule C, Form 1120, or on the comparable line of other corporate income tax returns. For a noncorporate U.S. shareholder, enter the result on Form 1040, line 9a (and, if applicable, on Schedule B (Form 1040), line 5), or on the comparable line of other noncorporate income tax returns.

### Line 7

Enter the dividends you received from the foreign corporation that were not previously taxed under subpart F in the current year or in any prior year.

### Line 8

If previously taxed E&P described in section 959(a) or (b) was distributed, enter the amount of foreign currency gain or (loss) on the distribution, computed under section 986(c). See Notice 88-71, 1988-2 C.B. 374, for rules for computing section 986(c) gain or (loss).

For a corporate U.S. shareholder, include the gain or (loss) as "other income" on line 10 of Form 1120, or on the comparable line of other corporate income tax returns. For a noncorporate U.S. shareholder, include the result as "other income" on line 21 of Form 1040, or on the comparable line of other noncorporate income tax returns.

## Worksheet A

**Important:** For tax years beginning after December 31, 2004, foreign base company income does not include foreign base company shipping income as defined in former section 954(f).

For tax years beginning after December 31, 1998, and before January 1, 2007, the following exceptions apply:

- Foreign personal holding company income generally shall not include income derived in the active conduct of a CFC of a banking, finance, or similar business (section 954(h)).
- Foreign personal holding company and insurance income shall not include certain investment income derived by a qualifying insurance company and by certain qualifying insurance branches (sections 953(a)(2) and 954(i)).
- Foreign base company services income shall not include income that is exempt insurance income under section 953(e) or that is not treated as foreign personal holding company income under the active conduct of an insurance business exception (section 954(ii)); the active conduct of a banking, financing, or similar business exception (section 954(h)); or the securities dealer exception (section 954(c)(2)(C)(ii)).

**Line 1a. Do not include the following:**

- Interest from conducting a banking business that is "export financing interest" (section 904(d)(2)(G));
- Rents and royalties from actively conducting a trade or business received from a person other than a "related person" (as defined in section 954(d)(3)); and
- Dividends, interest, rent or royalty income from related corporate payors

described in section 954(c)(3). However, see section 964(e) for an exception.

Interest income includes factoring income arising when a person acquires a trade or service receivable (directly or indirectly) from a related person. The income is treated as interest on a loan to the obligor under section 864(d)(1) and is generally not eligible for the de minimis, export financing, and related party exceptions to the inclusion of subpart F income. Also, a trade or service receivable acquired or treated as acquired by a CFC from a related U.S. person is considered an investment in U.S. property for purposes of section 956 (Worksheet B) if the obligor is a U.S. person.

**Line 1b.** Enter the excess of gains over losses from the sale or exchange of:

- Property that produces the type of income reportable on line 1a. (For tax years beginning after December 31, 1998, and before January 1, 2007, see section 954(c)(1)(B)(i).)
- An interest in a trust, partnership, or REMIC. However, see the instructions for line 1i, below, for an exception that provides for look-through treatment for certain sales of partnership interests.
- Property that does not produce any income.

**Do not include:**

- Income, gain, deduction, or loss from any transaction (including a hedging transaction) and transactions involving physical settlement of a regular dealer in property, forward contracts, option contracts, and similar financial instruments (section 954(c)(2)(C)).
- Gains and losses from the sale or exchange of any property that, in the hands of the CFC, is property described in section 1221(a)(1).

**Line 1c.** Enter the excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. See section 954(c)(1)(C) for exceptions. See section 954(c)(5) for a definition and special rules relating to commodity transactions.

**Line 1d.** Enter the excess of foreign currency gains over foreign currency losses from section 988 transactions. An exception applies to transactions directly related to the business needs of a CFC.

**Line 1e.** Enter any income equivalent to interest, including income from commitment fees (or similar amounts) for loans actually made.

**Line 1f.** Include net income from notional principal contracts (except a contract entered into to hedge inventory property).

**Line 1g.** Include payments in lieu of dividends that are made as required under section 1058.

**Line 1h.** Enter amounts received:

- Under a contract under which the corporation is to furnish personal services if (a) some person other than the corporation has a right to designate (by name or by description) the individual who is to perform the services or (b) the individual who is to perform the services is designated (by name or by description) in the contract, and

- From the sale or other disposition of such a contract.

**Note.** The above rules apply with respect to amounts received for services under a particular contract only if at some time during the tax year 25% or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

**Line 1i.** For tax years beginning after December 31, 2004, in the case of any sale by a CFC of an interest in a partnership with respect to which the CFC is a 25% owner (defined below), such CFC is treated for purposes of computing its foreign personal holding company income as selling the proportionate share of the assets of the partnership attributable to such interest. Thus, the sale of a partnership interest by a CFC that meets the ownership threshold constitutes subpart F income only to the extent that a proportionate sale of the underlying partnership assets attributable to the partnership interest would constitute subpart F income. Do not report these amounts on line 1b. Instead, report them on new line 1i.

**25% owner.** For purposes of these rules, a 25% shareholder is a CFC that owns directly 25% or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a CFC is a shareholder or partner of a corporation or partnership, the CFC is treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership. If a CFC is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the CFC shall be treated as owning such interest directly or indirectly for purposes of this definition.

**Line 1i. De minimis rule.** If the sum of foreign base company income (determined without regard to section 954(b)(5)) and gross insurance income (as defined in section 954(b)(3)(C)) for the tax year is less than the smaller of 5% of gross income for income tax purposes, or \$1 million, then no portion of the gross income for the tax year is treated as foreign base company income or insurance income. In this case, enter zero on line 11 and skip lines 12 through 21. Otherwise, go to line 12.

**Line 12. Full inclusion rule.** If the sum of foreign base company income (determined without regard to section 954(b)(5)) and gross insurance income for the tax year exceeds 70% of gross income for income tax purposes, the entire gross income for the tax year must (subject to the high tax exception described on page 9, the section 952(b) exclusion, and the deductions to be taken into account under section 954(b)(5)) be treated as foreign base company income or insurance income (whichever is appropriate). In this case, enter total gross income (for income tax purposes) on line 12. Otherwise, enter zero.

**Worksheet A—Foreign Base Company Income and Insurance Income and Summary of U.S. Shareholder's Pro Rata Share of Subpart F Income of a CFC** (See instructions beginning on page 6.)

Enter the amounts on lines 1a through 38a in functional currency.

<b>1 Gross foreign personal holding company income:</b>			
a Dividends, interest, royalties, rents, and annuities (section 954(c)(1)(A) (excluding amounts described in sections 954(c)(2) and (3))) . . . . .	<b>1a</b>		
b Excess of gains over losses from certain property transactions (section 954(c)(1)(B)) . . . . .	<b>1b</b>		
c Excess of gains over losses from commodity transactions (section 954(c)(1)(C)) . . . . .	<b>1c</b>		
d Excess of foreign currency gains over foreign currency losses (section 954(c)(1)(D)) . . . . .	<b>1d</b>		
e Income equivalent to interest (section 954(c)(1)(E)) . . . . .	<b>1e</b>		
f Net income from a notional principal contract (section 954(c)(1)(F)) . . . . .	<b>1f</b>		
g Payments in lieu of dividends (section 954(c)(1)(G)) . . . . .	<b>1g</b>		
h Certain amounts received for services under personal service contracts (see section 954(c)(1)(I)) . . . . .	<b>1h</b>		
i Certain amounts from sales of partnership interests to which the look-through rule of section 954(c)(4) applies . . . . .	<b>1i</b>		
<b>2</b> Gross foreign personal holding company income. Add lines 1a through 1i. . . . .		<b>2</b>	
<b>3</b> Gross foreign base company sales income (see section 954(d)) . . . . .		<b>3</b>	
<b>4</b> Gross foreign base company services income (see section 954(e)) . . . . .		<b>4</b>	
<b>5</b> Gross foreign base company oil-related income (see section 954(g)) after application of section 954(b)(6) . . . . .		<b>5</b>	
<b>6</b> Gross foreign base company income. Add lines 2 through 5 . . . . .		<b>6</b>	
<b>7</b> Gross insurance income (see sections 953 and 954(b)(3)(C) and the instructions for lines 20 and 21). . . . .		<b>7</b>	
<b>8</b> Gross foreign base company income and gross insurance income. Add lines 6 and 7. . . . .		<b>8</b>	
<b>9</b> Enter 5% of total gross income (as computed for income tax purposes) . . . . .		<b>9</b>	
<b>10</b> Enter 70% of total gross income (as computed for income tax purposes) . . . . .		<b>10</b>	
<b>11</b> If line 8 is less than line 9 and less than \$1 million, enter -0- on this line and skip lines 12 through 21 . . . . .		<b>11</b>	
<b>12</b> If line 8 is more than line 10, enter total gross income (as computed for income tax purposes). . . . .		<b>12</b>	
<b>13 Total adjusted gross foreign base company income and insurance income</b> (enter the greater of line 8 or line 12) . . . . .		<b>13</b>	
<b>14 Adjusted net foreign personal holding company income:</b>			
a Enter amount from line 2 . . . . .	<b>14a</b>		
b Expenses directly related to amount on line 2 . . . . .	<b>14b</b>		
c Subtract line 14b from line 14a . . . . .	<b>14c</b>		
d Related person interest expense (see section 954(b)(5)) . . . . .	<b>14d</b>		
e Other expenses allocated and apportioned to the amount on line 2 under section 954(b)(5) . . . . .	<b>14e</b>		
f Net foreign personal holding company income. Subtract the sum of lines 14d and 14e from line 14c . . . . .	<b>14f</b>		
g Net foreign personal holding company income excluded under high-tax exception . . . . .	<b>14g</b>		
h Subtract line 14g from line 14f . . . . .		<b>14h</b>	
<b>15 Adjusted net foreign base company sales income:</b>			
a Enter amount from line 3 . . . . .	<b>15a</b>		
b Expenses allocated and apportioned to the amount on line 3 under section 954(b)(5) . . . . .	<b>15b</b>		
c Net foreign base company sales income. Subtract line 15b from line 15a . . . . .	<b>15c</b>		
d Net foreign base company sales income excluded under high-tax exception. . . . .	<b>15d</b>		
e Subtract line 15d from line 15c . . . . .		<b>15e</b>	
<b>16 Adjusted net foreign base company services income:</b>			
a Enter amount from line 4 . . . . .	<b>16a</b>		
b Expenses allocated and apportioned to line 4 under section 954(b)(5) . . . . .	<b>16b</b>		
c Net foreign base company services income. Subtract line 16b from line 16a. . . . .	<b>16c</b>		
d Net foreign base company services income excluded under high-tax exception . . . . .	<b>16d</b>		
e Subtract line 16d from line 16c . . . . .		<b>16e</b>	

**Worksheet A (continued) (See instructions.)**

<b>17 Adjusted net foreign base company oil-related income:</b>		
a Enter amount from line 5 . . . . .	17a	
b Expenses allocated and apportioned to line 5 under section 954(b)(5) . . . . .	17b	
c Subtract line 17b from line 17a . . . . .		17c
<b>18 Adjusted net full inclusion foreign base company income:</b>		
a Enter the excess, if any, of line 12 over line 8 . . . . .	18a	
b Expenses allocated and apportioned under section 954(b)(5) . . . . .	18b	
c Net full inclusion foreign base company income. Subtract line 18b from line 18a . . . . .	18c	
d Net full inclusion foreign base company income excluded under high-tax exception . . . . .	18d	
e Subtract line 18d from line 18c . . . . .		18e
<b>19 Adjusted net foreign base company income.</b> Add lines 14h, 15e, 16e, 17c, and 18e . . . . .		19
<b>20 Adjusted net insurance income</b> (other than related person insurance income):		
a Enter amount from line 7 (other than related person insurance income). . . . .	20a	
b Expenses allocated and apportioned to the amount from line 7 under section 953 . . . . .	20b	
c Net insurance income. Subtract line 20b from line 20a . . . . .	20c	
d Net insurance income excluded under high-tax exception . . . . .	20d	
e Subtract line 20d from line 20c . . . . .		20e
<b>21 Adjusted net related person insurance income:</b>		
a Enter amount from line 7 that is related person insurance income . . . . .	21a	
b Expenses allocated and apportioned to related person insurance income under section 953. . . . .	21b	
c Net related person insurance income. Subtract line 21b from line 21a . . . . .	21c	
d Net related person insurance income excluded under high-tax exception . . . . .	21d	
e Subtract line 21d from line 21c . . . . .		21e
<b>22 International boycott income</b> (section 952(a)(3)) . . . . .		22
<b>23 Illegal bribes, kickbacks, and other payments</b> (section 952(a)(4)) . . . . .		23
<b>24 Income described in section 952(a)(5)</b> (see instructions) . . . . .		24
<b>25 Subpart F income before application of sections 952(b) and (c) and section 959(b).</b> Add lines 19, 20e, 21e, and 22 through 24 . . . . .		25
<b>26 Enter portion of line 25 that is U.S. source income effectively connected with a U.S. trade or business</b> (section 952(b)) . . . . .	26	
<b>27 Exclusions under section 959(b)</b> . . . . .	27	
<b>28 Total subpart F income.</b> Subtract the sum of lines 26 and 27 from line 25 . . . . .		28
<b>29 Current E&amp;P</b> . . . . .		29
<b>30 Enter the smaller of line 28 or line 29</b> . . . . .		30
<b>31 Shareholder's pro rata share of line 30</b> . . . . .	31	
<b>32 Shareholder's pro rata share of export trade income.</b> . . . . .	32	
<b>33 Subtract line 32 from line 31.</b> . . . . .	33	
<b>34 Divide the number of days in the tax year that the corporation was a CFC by the number of days in the tax year and multiply the result by line 33</b> . . . . .	34	
<b>35 Dividends paid to any other person with respect to your stock during the tax year</b> . . . . .	35	
<b>36 Divide the number of days in the tax year you did not own such stock by the number of days in the tax year and multiply the result by line 33</b> . . . . .	36	
<b>37 Enter the smaller of line 35 or line 36</b> . . . . .	37	
<b>38a Shareholder's pro rata share of subpart F income.</b> Subtract line 37 from line 34 . . . . .		38a
b Translate the amount on line 38a from functional currency to U.S. dollars at the average exchange rate. See section 989(b). Enter the result here and on line 1, Schedule I . . . . .		38b

**Lines 14g, 15d, 16d, 18d, 20d, and 21d. Exception for certain income subject to high foreign taxes.** Foreign base company income and insurance income does not include any item of income received by a CFC if the taxpayer establishes that such income was subject to an effective rate of income tax imposed by a foreign country that is greater than 90% of the maximum rate of tax specified in section 11. This rule does not apply to foreign base company oil-related income. For more information, see section 954(a)(5) and Regulations section 1.954-1(d)(1).

**Line 20. Adjusted net insurance income.** In determining a shareholder's pro rata share of the subpart F income of a CFC, insurance income is any income:

- That is attributable to the issuing (or reinsuring) of any insurance or annuity contract:

1. For property in, liability from an activity in, or for the lives or health of residents of a country other than the country under the laws of which the CFC is created or organized or

2. For risks not described in 1 above, resulting from any arrangement in which another corporation receives a substantially equal amount of premiums or other consideration for issuing (or reinsuring) a contract described in 1 above.

- That would (subject to the modifications provided in sections 953(b)(1) and 953(b)(2)) be taxed under subchapter L (insurance company tax) if such income were income of a domestic insurance company.

**Line 21. Adjusted net related person insurance income.** In determining a shareholder's pro rata share of the subpart F income of a CFC, related person insurance income is any insurance income (within the meaning of section 953(a)) attributable to a policy of insurance or reinsurance for which the person insured (directly or indirectly) is a U.S. shareholder (as defined in section 953(c)(1)(A)) in a CFC, or a related person (as defined in section 953(c)(6)) to such a shareholder. In such case, the pro rata share referred to above is to be determined under the rules of section 953(c)(5).

**Exceptions.** The above definition does not apply to any foreign corporation if:

- At all times during the foreign corporation's tax year, less than 20% of the total combined voting power of all classes of stock of the corporation entitled to vote, and less than 20% of the total value of the corporation, is owned (directly or indirectly under the principles of section 883(c)(4)) by persons who are (directly or indirectly) insured under any policy of insurance or reinsurance issued by the corporation or who are related persons to any such person;

- The related person insurance income (determined on a gross basis) of the corporation for the tax year is less than 20% of its insurance income for the tax year determined without regard to the provisions of section 953(a)(1) that limit insurance income to income from

countries other than the country in which the corporation was created or organized; or

- The corporation:

1. Elects to treat its related person insurance income for the tax year as income effectively connected with the conduct of a trade or business in the United States;

2. Elects to waive all treaty benefits (other than from section 884) for related person insurance income; and

3. Meets any requirement the IRS may prescribe to ensure that any tax on such income is paid.

This election will not be effective if the corporation was a disqualified corporation (as defined in section 953(c)(3)(E)) for the tax year for which the election was made or for any prior tax year beginning after 1986. See section 953(c)(3)(D) for special rules for this election.

**Mutual life insurance companies.** The related person insurance income rules also apply to mutual life insurance companies under regulations prescribed by the Secretary. For these purposes, policyholders must be treated as shareholders.

**Line 22. International boycott income.**

If a CFC or a member of a controlled group (within the meaning of section 993(a)(3)) that includes the CFC has operations in, or related to, a country (or with the government, a company, or a national of a country) that requires participation in or cooperation with an international boycott as a condition of doing business within such country or with the government, company, or national of that country, a portion of the CFC's income is included in subpart F income. The amount included is determined by multiplying the CFC's income (other than income included under section 951 and U.S. source effectively connected business income described in section 952(b)) by the international boycott factor. This factor is a fraction determined on Schedule A (Form 5713).

**Special rule.** If the shareholder of a CFC can clearly demonstrate that the income earned for the tax year is from specific operations, then, instead of applying the international boycott factor, the addition to subpart F income is the amount specifically from the operations in which there was participation in or cooperation with an international boycott. See Schedule B (Form 5713).

**Line 23. Illegal bribes, kickbacks, and other payments.** Enter the total of any illegal bribes, kickbacks, or other payments (within the meaning of section 162(c)) paid by or on behalf of the corporation, directly or indirectly, to an official, employee, or agent of a government.

**Line 24. Income described in section 952(a)(5).** The income of a CFC derived from any foreign country during any period during which section 901(j) applies to such foreign country will be deemed to be income to the U.S. shareholders of such CFC. As of the date these

instructions were revised, section 901(j) applied to: Cuba, Iran, North Korea, Sudan, and Syria.

**Line 26. Exclusion of U.S. income.** Subpart F income does not include any U.S. source income (which, for these purposes, includes all carrying charges and all interest, dividends, royalties, and other investment income received or accrued by a FSC) that is effectively connected with a CFC's conduct of a trade or business in the United States unless that item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States or the Code.

**Line 29. Current E&P.** A CFC's subpart F income is limited to its current year E&P, computed under the special rule of section 952(c)(3). The amount included in the gross income of a U.S. shareholder of a CFC under section 951(a)(1)(A)(i) for any tax year and attributable to a qualified activity must be reduced by the shareholder's pro rata share of any qualified deficit (see section 952(c)(1)(B)).

Certain current year deficits of a member of the same chain of corporations may be considered in determining subpart F income. See section 952(c)(1)(C).

## Worksheet B

Use Worksheet B on page 10 to determine a U.S. shareholder's pro rata share of earnings of a CFC invested in U.S. property that is subject to tax. Only earnings of a CFC not distributed or otherwise previously taxed are subject to these rules. Thus, the amount of previously untaxed earnings limits the section 956 inclusion. A CFC's investment in U.S. property in excess of this limit will not be included in the taxable income of the CFC's U.S. shareholders.

Further, U.S. shareholders are only taxed on earnings invested in U.S. property to the extent the investments exceed the CFC's previously taxed earnings. The balances in the previously taxed accounts of prior section 956 inclusions (see section 959(c)(1)(A)) and current or prior subpart F inclusions (see section 959(c)(2)) reduce what would otherwise be the current section 956 inclusion.

**Note.** The previously taxed accounts should be adjusted to reflect any reclassification of subpart F inclusions that reduced prior section 956 or 956A inclusions (see section 959(a)(2) and Schedule J).

Distributions are also taken into account before the section 956 inclusion is determined. Distributions generally are treated as coming first from (and thus reducing the balances of) the previously taxed accounts. Thus, the U.S. shareholders must:

1. Compute the current subpart F inclusion (potentially increasing that previously taxed account);

2. Take into account current distributions (potentially reducing the previously taxed and untaxed accounts); and



**Worksheet B—U.S. Shareholder's Pro Rata Share of Earnings of a CFC Invested in U.S. Property**

Enter the amounts on lines 1 through 16 in functional currency.

1	Amount of U.S. property (as defined in sections 956(c) and (d)) held (directly or indirectly) by the CFC as of the close of:		
a	The first quarter of the tax year . . . . .	1a	
b	The second quarter of the tax year . . . . .	1b	
c	The third quarter of the tax year . . . . .	1c	
d	The fourth quarter of the tax year . . . . .	1d	
2	Number of quarter-ends the foreign corporation was a CFC during the tax year. . . . . ▶		2
3	Average amount of U.S. property held (directly or indirectly) by the CFC as of the close of each quarter of the tax year. (Add lines 1a through 1d. Divide this amount by the number on line 2.)		3
4	U.S. shareholder's pro rata share of the amount on line 3 . . . . .		4
5	U.S. shareholder's earnings and profits described in section 959(c)(1)(A) after reductions (if any) for current year distributions . . . . .		5
6	Subtract line 5 from line 4. . . . .		6
7	Applicable earnings:		
a	Current earnings and profits . . . . .	7a	
b	Line 7a plus accumulated earnings and profits. . . . .	7b	
8	Enter the greater of line 7a or line 7b . . . . .		8
9	Distributions made by the CFC during the tax year . . . . .		9
10	Subtract line 9 from line 8. . . . .		10
11	Earnings and profits described in section 959(c)(1) . . . . .		11
12	Subtract line 11 from line 10. . . . .		12
13	U.S. shareholder's pro rata share of the amount on line 12. . . . .		13
14	U.S. shareholder's earnings invested in U.S. property. (Enter the smaller of line 6 or line 13) . . . . .		14
15	Amount on line 14 that is excluded from the U.S. shareholder's gross income under section 959(a)(2) . . . . .		15
16	Subtract line 15 from line 14. . . . .		16
17	Translate the amount on line 16 from functional currency to U.S. dollars at the year-end spot rate (as provided in section 989(b)). Enter the result here and on line 2 of Schedule I. . . . .		17

3. Compute the current section 956 inclusion (potentially increasing or reclassifying the previously taxed accounts).

**U.S. property** is measured on a quarterly average basis. For purposes of Worksheet B, the amount taken into account with respect to U.S. property is its adjusted basis for earnings and profits purposes, reduced by any liability the property is subject to. See sections 956(c) and (d) for the definition of U.S. property. The amount of U.S. property held (directly or indirectly) by the CFC does not include any item that was acquired by the foreign corporation before it became a CFC, except for the property acquired before the foreign corporation became a CFC that exceeds the applicable earnings (as defined in section 956(b)) accumulated during periods before it became a CFC.

If the foreign corporation **ceases to be a CFC** during the tax year:

- The determination of the U.S. shareholder's pro rata share will be made based upon the stock owned (within the meaning of section 958(a)) by the U.S. shareholder on the last day during the tax year in which the foreign corporation was a CFC;
- The CFC's U.S. property for the taxable year will be determined only by taking into account quarters ending on or before such last day (and investments in U.S. property as of the close of subsequent

quarters should be recorded as zero on line 1); and

- In determining applicable earnings, current earnings and profits will include only earnings and profits that are allocable (on a pro rata basis) to the part of the year during which the foreign corporation was a CFC.

**Schedule J**

Use Schedule J to report accumulated E&P, in functional currency, computed under sections 964(a) and 986(b).

**Column (a)**

Use column (a) to report the opening balance, current year additions and subtractions, and the closing balance in the foreign corporation's post-1986 undistributed earnings pool.

**Note.** Line 3 (E&P as of the close of the tax year, before actual or deemed distributions during the year) is the denominator of the deemed-paid credit fraction under section 902(c)(1) used for foreign tax credit purposes.

**Column (b)**

Use column (b) to report the aggregate amount of the foreign corporation's pre-1987 section 964(a) E&P accumulated since 1962 and not previously distributed or deemed distributed. These amounts are figured in U.S. dollars using the rules of Regulations sections 1.964-1(a) through (e), translated into the foreign corporation's

functional currency according to Notice 88-70, 1988-2 C.B. 369.

**Column (c)**

Use column (c) to report the running balance of the foreign corporation's previously taxed earnings and profits (PTI), or section 964(a) E&P accumulated since 1962 that have resulted in deemed inclusions under subpart F. Pre-1987 U.S. dollar PTI should be translated into the foreign corporation's functional currency using the rules of Notice 88-70 and added to post-1986 amounts in the appropriate PTI category.

- Include in column (c)(i) PTI attributable to, or reclassified as, investments in U.S. property (section 959(c)(1)(A) amounts).
- Include in column (c)(ii) PTI attributable to, or reclassified as, earnings invested in excess passive assets (section 959(c)(1)(B) amounts) accumulated in tax years of foreign corporations beginning after September 30, 1993, and before January 1, 1997.
- Include in column (c)(iii) PTI attributable to subpart F income net of any reclassifications (section 959(c)(2) amounts).

**Column (d)**

Use column (d) to report the opening and closing balance of the foreign corporation's accumulated E&P. This amount is the sum of post-1986 undistributed earnings, pre-1987 section

**Worksheet C—U.S. Shareholder's Pro Rata Share of Previously Excluded Subpart F Income of a CFC Withdrawn From Qualified Investments in Less Developed Countries and From Qualified Investments in Foreign Base Company Shipping Operations**

Enter the amounts on lines 1 through 6a in functional currency.

1	Decrease in qualified investments in less developed countries (see Regulations section 1.955-1(b)(1)) and foreign base company shipping operations (see Regulations section 1.955A-1(b)(1)).		1
2	Limitation (see Regulations section 1.955-1(b)(2)):		
a	Enter the sum of E&P for the tax year and E&P accumulated for prior tax years beginning after 1962	2a	
b	Enter the sum of amounts invested in less developed countries or foreign base company shipping operations and excluded from foreign base company income for all prior tax years, minus the sum of such amounts withdrawn for such years (see Regulations section 1.955-1(b)(2)(i)).	2b	
3	Enter the smaller of line 2a or line 2b		3
4	Previously excluded subpart F income withdrawn for the tax year (enter the smaller of line 1 or line 3).		4
5	U.S. shareholder's pro rata share of line 4 (see Regulations section 1.955-1(c))		5
6a	Divide the number of days in the tax year that the foreign corporation was a CFC by the number of days in the tax year and multiply the result by line 5		6a
b	Translate the amount on line 6a from functional currency to U.S. dollars at the average exchange rate. See section 989(b). Enter the result here and on line 3, Schedule I		6b

**Worksheet D—U.S. Shareholder's Pro Rata Share of Previously Excluded Export Trade Income of a CFC Withdrawn From Investment in Export Trade Assets**

Enter the amounts on lines 1 through 7a in functional currency.

1	Decrease in investments of the CFC in export trade assets (see Regulations section 1.970-1(d)(3))		1
2	U.S. shareholder's pro rata share of line 1		2
3	U.S. shareholder's pro rata share of the sum of E&P of the CFC for the tax year and E&P accumulated for prior tax years beginning after 1962 (see Regulations section 1.970-1(c)(2)(ii)).		3
4	Limitation under section 970(b) (see Regulations section 1.970-1(c)(2)(i)):		
a	U.S. shareholder's pro rata share of the sum of the amounts by which the CFC's subpart F income for prior tax years was reduced under section 970(a)	4a	
b	U.S. shareholder's pro rata share of the sum of the amounts that were not included in subpart F income of the CFC for prior tax years because of Regulations section 1.972-1	4b	
c	Add lines 4a and 4b.	4c	
d	U.S. shareholder's pro rata share of the sum of the amounts that were previously included in his or her gross income for prior tax years under section 951(a)(1)(A)(ii) because of section 970(b)	4d	
5	Subtract line 4d from line 4c		5
6	Enter the smallest of line 2, 3, or 5.		6
7a	Divide the number of days in the tax year that the foreign corporation was a CFC by the number of days in the tax year and multiply the result by line 6		7a
b	Translate the amount on line 7a from functional currency to U.S. dollars at the average exchange rate. See section 989(b). Enter the result here and on line 4, Schedule I		7b

964(a) E&P not previously taxed, and PTI.

**Schedule M**

**Important:** In translating the amounts from functional currency to U.S. dollars, use the average exchange rate for the foreign corporation's tax year. See section 989(b). Report the exchange rate in the entry space provided at the top of

Schedule M using the "divide-by-convention" specified under *Reporting Exchange Rates on Form 5471* on page 3.

Every U.S. person described in Category 4 must file Schedule M to report the transactions that occurred during the foreign corporation's annual accounting period ending with or within the U.S. person's tax year.

If a U.S. corporation that owns stock in a foreign corporation is a member of a consolidated group, list the common parent as the U.S. person filing Schedule M.

**Lines 6 and 16.** Report on these lines dividends received and paid by the foreign corporation not previously taxed under subpart F in the current year or in any prior year.

**Lines 19 and 20.** Report on lines 19 and 20 the largest outstanding balances during the year of gross amounts borrowed from, and gross amounts loaned to, the related parties described in columns (b) through (f). Do not enter aggregate cash flows, year-end loan balances, average balances, or net balances. Do not include open account balances resulting from sales and purchases reported under other items listed on Schedule M that arise and are collected in full in the ordinary course of business.

## Schedule O

Schedule O is used to report the organization or reorganization of a foreign corporation and the acquisition or disposition of its stock.

Every U.S. citizen or resident described in Category 2 must complete Part I. Every U.S. person described in Category 3 must complete Part II.

See Regulations section 1.6046-1(i) for rules on determining when U.S. persons constructively own stock of a foreign corporation and therefore are subject to the section 6046 filing requirements.

### Part I

**Column (d).** Enter the date the shareholder first acquired 10% or more (in value or voting power) of the outstanding stock of the foreign corporation.

**Column (e).** Enter the date the shareholder acquired (whether in one or more transactions) an additional 10% or more (in value or voting power) of the outstanding stock of the foreign corporation.

### Part II

#### Section C—Acquisition of Stock

Section C is completed by shareholders who are completing Schedule O because

they have acquired sufficient stock in a foreign corporation. If the shareholder acquired the stock in more than one transaction, use a separate line to report each transaction.

**Column (d).** Enter the method of acquisition (e.g., purchase, gift, bequest, trade).

**Column (e)(2).** Enter the number of shares acquired indirectly (within the meaning of section 958(a)(2)) by the shareholder listed in column (a).

**Column (e)(3).** Enter the number of shares constructively owned (within the meaning of section 958(b)) by the shareholder listed in column (a).

#### Section D—Disposition of Stock

Section D must be completed by shareholders who dispose of their interest (in whole or in part) in a foreign corporation.

**Column (d).** Enter the method of disposition (e.g., sale, bequest, gift, trade).

**Example.** In 1993, Mr. Jackson, a U.S. citizen, purchased 10,000 shares of common stock of foreign corporation X. The purchase represented 10% ownership of the foreign corporation.

On July 1, 2004, Mr. Jackson made a gift of 5,000 shares of foreign corporation X to his son, John. Because Mr. Jackson has reduced his holding in the foreign corporation, he is required to complete Form 5471 and Schedule O. To show the required information about the disposition, Mr. Jackson completes Section D as follows:

- Enters his name in column (a).
- Enters "common" in column (b).
- Enters "July 1, 2004," in column (c).
- Enters "gift" in column (d).
- Enters "5,000" in column (e)(1).
- Enters "-0-" in column (f) because the disposition was by gift.

- Enters the name and address of his son, John, in column (g).

#### Section F—Additional Information

**Item (b).** List the date of any reorganization of the foreign corporation that occurred during the last 4 years while any U.S. person held 10% or more in value or vote (directly or indirectly) of the corporation's stock. If there is more than one such date, use the most recent date. However, do not enter a date for which information was reported in Schedule E. Instead, enter the date (if any) of any reorganization prior to that date (if it is within the last 4 years).

**Example for Item (c).** Mr. Lyons, a U.S. person, acquires a 10% ownership in foreign corporation F. F is the 100% owner of two foreign corporations, FI and FJ. F is also a 50% owner of foreign corporation FK. In addition, F is 90% owned by foreign corporation W. Mr. Lyons does not own any of the stock of corporation W.

Mr. Lyons completes and files Form 5471 and Schedule O for the corporations in which he is a 10% or more shareholder. Mr. Lyons is also required to submit a chart if the foreign corporation is a member of a chain of corporations, and to indicate if he is a 10% or more shareholder in any of those corporations.

Mr. Lyons would prepare a list showing the corporations as follows:

- Corporation W
- Corporation F
- Corporation FI
- Corporation FJ
- Corporation FK

Then Mr. Lyons is required to indicate that he is a 10% or more shareholder in corporations F, FI, and FJ.

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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 and related schedules will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
5471	82 hr., 45 min.	16 hr., 14 min.	24 hr., 17 min.
Sch. J (5471)	3 hr., 49 min.	1 hr., 29 min.	1 hr., 37 min.
Sch. M (5471)	26 hr., 33 min.	6 min.	32 min.
Sch. O (5471)	10 hr., 45 min.	24 min.	35 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form and related schedules simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

## Codes for Principal Business Activity

This list of principal business activities and their associated codes is designed to classify an enterprise by the type of activity in which it is engaged to facilitate the administration of the Internal Revenue Code. These principal business activity codes are based on the North American Industry Classification System.

Using the list of activities and codes below, determine from which activity the company derives the largest percentage of its "total receipts." If the company purchases raw materials and supplies them to a subcontractor to produce the finished product, but retains title to the product, the company is considered a manufacturer and must use one of the manufacturing codes (311110-339900).

Enter on page 1, item 1f, the six digit code selected from the list below. In item 1g, enter a brief description of the company's business activity.

### Agriculture, Forestry, Fishing and Hunting

#### Code

#### Crop Production

- 111100 Oilseed & Grain Farming
- 111210 Vegetable & Melon Farming (including potatoes & yams)
- 111300 Fruit & Tree Nut Farming
- 111400 Greenhouse, Nursery, & Floriculture Production
- 111900 Other Crop Farming (including tobacco, cotton, sugarcane, hay, peanut, sugar beet & all other crop farming)

#### Animal Production

- 112111 Beef Cattle Ranching & Farming
- 112112 Cattle Feedlots
- 112120 Dairy Cattle & Milk Production
- 112210 Hog & Pig Farming
- 112300 Poultry & Egg Production
- 112400 Sheep & Goat Farming
- 112510 Animal Aquaculture (including shellfish & finfish farms & hatcheries)
- 112900 Other Animal Production

#### Forestry and Logging

- 113110 Timber Tract Operations
- 113210 Forest Nurseries & Gathering of Forest Products
- 113310 Logging

#### Fishing, Hunting and Trapping

- 114110 Fishing
- 114210 Hunting & Trapping

#### Support Activities for Agriculture and Forestry

- 115110 Support Activities for Crop Production (including cotton ginning, soil preparation, planting, & cultivating)
- 115210 Support Activities for Animal Production
- 115310 Support Activities For Forestry

### Mining

- 211110 Oil & Gas Extraction
- 212110 Coal Mining
- 212200 Metal Ore Mining
- 212310 Stone Mining & Quarrying
- 212320 Sand, Gravel, Clay, & Ceramic & Refractory Minerals Mining & Quarrying
- 212390 Other Nonmetallic Mineral Mining & Quarrying
- 213110 Support Activities for Mining

### Utilities

#### Code

- 221100 Electric Power Generation, Transmission & Distribution
- 221210 Natural Gas Distribution
- 221300 Water, Sewage & Other Systems

### Construction

#### Construction of Buildings

- 236110 Residential Building Construction
- 236200 Nonresidential Building Construction

#### Heavy and Civil Engineering Construction

- 237100 Utility System Construction
- 237210 Land Subdivision
- 237310 Highway, Street, & Bridge Construction
- 237990 Other Heavy & Civil Engineering Construction

#### Specialty Trade Contractors

- 238100 Foundation, Structure, & Building Exterior Contractors (including framing carpentry, masonry, glass, roofing, & siding)
- 238210 Electrical Contractors
- 238220 Plumbing, Heating, & Air-Conditioning Contractors
- 238290 Other Building Equipment Contractors
- 238300 Building Finishing Contractors (including drywall, insulation, painting, wallcovering, flooring, tile, & finish carpentry)
- 238900 Other Specialty Trade Contractors (including site preparation)

### Manufacturing

#### Food Manufacturing

- 311110 Animal Food Mfg
- 311200 Grain & Oilseed Milling
- 311300 Sugar & Confectionery Product Mfg
- 311400 Fruit & Vegetable Preserving & Specialty Food Mfg
- 311500 Dairy Product Mfg
- 311610 Animal Slaughtering and Processing
- 311710 Seafood Product Preparation & Packaging
- 311800 Bakeries & Tortilla Mfg
- 311900 Other Food Mfg (including coffee, tea, flavorings & seasonings)

### Code

#### Beverage and Tobacco Product Manufacturing

- 312110 Soft Drink & Ice Mfg
- 312120 Breweries
- 312130 Wineries
- 312140 Distilleries
- 312200 Tobacco Manufacturing

#### Textile Mills and Textile Product Mills

- 313000 Textile Mills
- 314000 Textile Product Mills

#### Apparel Manufacturing

- 315100 Apparel Knitting Mills
- 315210 Cut & Sew Apparel Contractors
- 315220 Men's & Boys' Cut & Sew Apparel Mfg
- 315230 Women's & Girls' Cut & Sew Apparel Mfg
- 315290 Other Cut & Sew Apparel Mfg
- 315990 Apparel Accessories & Other Apparel Mfg

#### Leather and Allied Product Manufacturing

- 316110 Leather & Hide Tanning & Finishing
- 316210 Footwear Mfg (including rubber & plastics)
- 316990 Other Leather & Allied Product Mfg

#### Wood Product Manufacturing

- 321110 Sawmills & Wood Preservation
- 321210 Veneer, Plywood, & Engineered Wood Product Mfg
- 321900 Other Wood Product Mfg

#### Paper Manufacturing

- 322100 Pulp, Paper, & Paperboard Mills
- 322200 Converted Paper Product Mfg

#### Printing and Related Support Activities

- 323100 Printing & Related Support Activities

#### Petroleum and Coal Products Manufacturing

- 324110 Petroleum Refineries (including integrated)
- 324120 Asphalt Paving, Roofing, & Saturated Materials Mfg
- 324190 Other Petroleum & Coal Products Mfg

#### Chemical Manufacturing

- 325100 Basic Chemical Mfg
- 325200 Resin, Synthetic Rubber, & Artificial & Synthetic Fibers & Filaments Mfg
- 325300 Pesticide, Fertilizer, & Other Agricultural Chemical Mfg
- 325410 Pharmaceutical & Medicine Mfg
- 325500 Paint, Coating, & Adhesive Mfg
- 325600 Soap, Cleaning Compound, & Toilet Preparation Mfg
- 325900 Other Chemical Product & Preparation Mfg

#### Plastics and Rubber Products Manufacturing

- 326100 Plastics Product Mfg
- 326200 Rubber Product Mfg

#### Nonmetallic Mineral Product Manufacturing

- 327100 Clay Product & Refractory Mfg
- 327210 Glass & Glass Product Mfg
- 327300 Cement & Concrete Product Mfg
- 327400 Lime & Gypsum Product Mfg
- 327900 Other Nonmetallic Mineral Product Mfg

### Code

#### Primary Metal Manufacturing

- 331110 Iron & Steel Mills & Ferroalloy Mfg
- 331200 Steel Product Mfg from Purchased Steel
- 331310 Alumina & Aluminum Production & Processing
- 331400 Nonferrous Metal (except Aluminum) Production & Processing
- 331500 Foundries

#### Fabricated Metal Product Manufacturing

- 332110 Forging & Stamping
- 332210 Cutlery & Handtool Mfg
- 332300 Architectural & Structural Metals Mfg
- 332400 Boiler, Tank, & Shipping Container Mfg
- 332510 Hardware Mfg
- 332610 Spring & Wire Product Mfg
- 332700 Machine Shops; Turned Product; & Screw, Nut, & Bolt Mfg
- 332810 Coating, Engraving, Heat Treating, & Allied Activities
- 332900 Other Fabricated Metal Product Mfg

#### Machinery Manufacturing

- 333100 Agriculture, Construction, & Mining Machinery Mfg
- 333200 Industrial Machinery Mfg
- 333310 Commercial & Service Industry Machinery Mfg
- 333410 Ventilation, Heating, Air-Conditioning, & Commercial Refrigeration Equipment Mfg
- 333510 Metalworking Machinery Mfg
- 333610 Engine, Turbine & Power Transmission Equipment Mfg
- 333900 Other General Purpose Machinery Mfg

#### Computer and Electronic Product Manufacturing

- 334110 Computer & Peripheral Equipment Mfg
- 334200 Communications Equipment Mfg
- 334310 Audio & Video Equipment Mfg
- 334410 Semiconductor & Other Electronic Component Mfg
- 334500 Navigational, Measuring, Electromedical, & Control Instruments Mfg
- 334610 Manufacturing & Reproducing Magnetic & Optical Media

#### Electrical Equipment, Appliance, and Component Manufacturing

- 335100 Electric Lighting Equipment Mfg
- 335200 Household Appliance Mfg
- 335310 Electrical Equipment Mfg
- 335900 Other Electrical Equipment & Component Mfg

#### Transportation Equipment Manufacturing

- 336100 Motor Vehicle Mfg
- 336210 Motor Vehicle Body & Trailer Mfg
- 336300 Motor Vehicle Parts Mfg
- 336410 Aerospace Product & Parts Mfg
- 336510 Railroad Rolling Stock Mfg
- 336610 Ship & Boat Building
- 336990 Other Transportation Equipment Mfg

#### Furniture and Related Product Manufacturing

- 337000 Furniture & Related Product Manufacturing

<b>Code</b> <b>Miscellaneous Manufacturing</b> 339110 Medical Equipment & Supplies Mfg 339900 Other Miscellaneous Manufacturing	<b>Code</b> <b>Electronics and Appliance Stores</b> 443111 Household Appliance Stores 443112 Radio, Television, & Other Electronics Stores 443120 Computer & Software Stores 443130 Camera & Photographic Supplies Stores  <b>Building Material and Garden Equipment and Supplies Dealers</b> 444110 Home Centers 444120 Paint & Wallpaper Stores 444130 Hardware Stores 444190 Other Building Material Dealers 444200 Lawn & Garden Equipment & Supplies Stores  <b>Food and Beverage Stores</b> 445110 Supermarkets and Other Grocery (except Convenience) Stores 445120 Convenience Stores 445210 Meat Markets 445220 Fish & Seafood Markets 445230 Fruit & Vegetable Markets 445291 Baked Goods Stores 445292 Confectionery & Nut Stores 445299 All Other Specialty Food Stores 445310 Beer, Wine, & Liquor Stores  <b>Health and Personal Care Stores</b> 446110 Pharmacies & Drug Stores 446120 Cosmetics, Beauty Supplies, & Perfume Stores 446130 Optical Goods Stores 446190 Other Health & Personal Care Stores  <b>Gasoline Stations</b> 447100 Gasoline Stations (including convenience stores with gas)  <b>Clothing and Clothing Accessories Stores</b> 448110 Men's Clothing Stores 448120 Women's Clothing Stores 448130 Children's & Infants' Clothing Stores 448140 Family Clothing Stores 448150 Clothing Accessories Stores 448190 Other Clothing Stores 448210 Shoe Stores 448310 Jewelry Stores 448320 Luggage & Leather Goods Stores  <b>Sporting Goods, Hobby, Book, and Music Stores</b> 451110 Sporting Goods Stores 451120 Hobby, Toy, & Game Stores 451130 Sewing, Needlework, & Piece Goods Stores 451140 Musical Instrument & Supplies Stores 451211 Book Stores 451212 News Dealers & Newsstands 451220 Prerecorded Tape, Compact Disc, & Record Stores  <b>General Merchandise Stores</b> 452110 Department Stores 452900 Other General Merchandise Stores  <b>Miscellaneous Store Retailers</b> 453110 Florists 453210 Office Supplies & Stationery Stores 453220 Gift, Novelty, & Souvenir Stores 453310 Used Merchandise Stores 453910 Pet & Pet Supplies Stores 453920 Art Dealers 453930 Manufactured (Mobile) Home Dealers 453990 All Other Miscellaneous Store Retailers (including tobacco, candle, & trophy shops)	<b>Code</b> <b>Nonstore Retailers</b> 454110 Electronic Shopping & Mail-Order Houses 454210 Vending Machine Operators 454311 Heating Oil Dealers 454312 Liquefied Petroleum Gas (Bottled Gas) Dealers 454319 Other Fuel Dealers 454390 Other Direct Selling Establishments (including door-to-door retailing, frozen food plan providers, party plan merchandisers, & coffee-break service providers)  <b>Transportation and Warehousing</b> <b>Air, Rail, and Water Transportation</b> 481000 Air Transportation 482110 Rail Transportation 483000 Water Transportation  <b>Truck Transportation</b> 484110 General Freight Trucking, Local 484120 General Freight Trucking, Long-distance 484200 Specialized Freight Trucking  <b>Transit and Ground Passenger Transportation</b> 485110 Urban Transit Systems 485210 Interurban & Rural Bus Transportation 485310 Taxi Service 485320 Limousine Service 485410 School & Employee Bus Transportation 485510 Charter Bus Industry 485990 Other Transit & Ground Passenger Transportation  <b>Pipeline Transportation</b> 486000 Pipeline Transportation  <b>Scenic &amp; Sightseeing Transportation</b> 487000 Scenic & Sightseeing Transportation  <b>Support Activities for Transportation</b> 488100 Support Activities for Air Transportation 488210 Support Activities for Rail Transportation 488300 Support Activities for Water Transportation 488410 Motor Vehicle Towing 488490 Other Support Activities for Road Transportation 488510 Freight Transportation Arrangement 488990 Other Support Activities for Transportation  <b>Couriers and Messengers</b> 492110 Couriers 492210 Local Messengers & Local Delivery  <b>Warehousing and Storage</b> 493100 Warehousing & Storage (except lessors of miniwarehouses & self-storage units)  <b>Information</b> <b>Publishing Industries (except Internet)</b> 511110 Newspaper Publishers 511120 Periodical Publishers 511130 Book Publishers 511140 Directory & Mailing List Publishers 511190 Other Publishers 511210 Software Publishers  <b>Motion Picture and Sound Recording Industries</b> 512100 Motion Picture & Video Industries (except video rental) 512200 Sound Recording Industries	<b>Code</b> <b>Broadcasting (except Internet)</b> 515100 Radio & Television Broadcasting 515210 Cable & Other Subscription Programming  <b>Internet Publishing and Broadcasting</b> 516110 Internet Publishing & Broadcasting  <b>Telecommunications</b> 517000 Telecommunications (including paging, cellular, satellite, cable & other program distribution, resellers, & other telecommunications)  <b>Internet Service Providers, Web Search Portals, and Data Processing Services</b> 518111 Internet Service Providers 518112 Web Search Portals 518210 Data Processing, Hosting, & Related Services  <b>Other Information Services</b> 519100 Other Information Services (including news syndicates & libraries)  <b>Finance and Insurance</b> <b>Depository Credit Intermediation</b> 522110 Commercial Banking 522120 Savings Institutions 522130 Credit Unions 522190 Other Depository Credit Intermediation  <b>Nondepository Credit Intermediation</b> 522210 Credit Card Issuing 522220 Sales Financing 522291 Consumer Lending 522292 Real Estate Credit (including mortgage bankers & originators) 522293 International Trade Financing 522294 Secondary Market Financing 522298 All Other Nondepository Credit Intermediation  <b>Activities Related to Credit Intermediation</b> 522300 Activities Related to Credit Intermediation (including loan brokers, check clearing, & money transmitting)  <b>Securities, Commodity Contracts, and Other Financial Investments and Related Activities</b> 523110 Investment Banking & Securities Dealing 523120 Securities Brokerage 523130 Commodity Contracts Dealing 523140 Commodity Contracts Brokerage 523210 Securities & Commodity Exchanges 523900 Other Financial Investment Activities (including portfolio management & investment advice)  <b>Insurance Carriers and Related Activities</b> 524140 Direct Life, Health, & Medical Insurance & Reinsurance Carriers 524150 Direct Insurance & Reinsurance (except Life, Health & Medical) Carriers 524210 Insurance Agencies & Brokerages 524290 Other Insurance Related Activities (including third-party administration of insurance and pension funds)
<b>Wholesale Trade</b> <b>Merchant Wholesalers, Durable Goods</b> 423100 Motor Vehicle & Motor Vehicle Parts & Supplies 423200 Furniture & Home Furnishings 423300 Lumber & Other Construction Materials 423400 Professional & Commercial Equipment & Supplies 423500 Metal & Mineral (except Petroleum) 423600 Electrical & Electronic Goods 423700 Hardware, & Plumbing & Heating Equipment & Supplies 423800 Machinery, Equipment, & Supplies 423910 Sporting & Recreational Goods & Supplies 423920 Toy & Hobby Goods & Supplies 423930 Recyclable Materials 423940 Jewelry, Watch, Precious Stone, & Precious Metals 423990 Other Miscellaneous Durable Goods  <b>Merchant Wholesalers, Nondurable Goods</b> 424100 Paper & Paper Products 424210 Drugs & Druggists' Sundries 424300 Apparel, Piece Goods, & Notions 424400 Grocery & Related Products 424500 Farm Product Raw Materials 424600 Chemical & Allied Products 424700 Petroleum & Petroleum Products 424800 Beer, Wine, & Distilled Alcoholic Beverages 424910 Farm Supplies 424920 Book, Periodical, & Newspapers 424930 Flower, Nursery Stock, & Florists' Supplies 424940 Tobacco & Tobacco Products 424950 Paint, Varnish, & Supplies 424990 Other Miscellaneous Nondurable Goods  <b>Wholesale Electronic Markets and Agents and Brokers</b> 425110 Business to Business Electronic Markets 425120 Wholesale Trade Agents & Brokers			
<b>Retail Trade</b> <b>Motor Vehicle and Parts Dealers</b> 441110 New Car Dealers 441120 Used Car Dealers 441210 Recreational Vehicle Dealers 441221 Motorcycle Dealers 441222 Boat Dealers 441229 All Other Motor Vehicle Dealers 441300 Automotive Parts, Accessories, & Tire Stores  <b>Furniture and Home Furnishings Stores</b> 442110 Furniture Stores 442210 Floor Covering Stores 442291 Window Treatment Stores 442299 All Other Home Furnishings Stores			



<b>Code</b> <b>Funds, Trusts, and Other Financial Vehicles</b> 525100 Insurance & Employee Benefit Funds 525910 Open-End Investment Funds (Form 1120-RIC) 525920 Trusts, Estates, & Agency Accounts 525930 Real Estate Investment Trusts (Form 1120-REIT) 525990 Other Financial Vehicles (including closed-end investment funds) "Offices of Bank Holding Companies" and "Offices of Other Holding Companies" are located under Management of Companies (Holding Companies) below.	<b>Code</b> <b>Specialized Design Services</b> 541400 Specialized Design Services (including interior, industrial, graphic, & fashion design) <b>Computer Systems Design and Related Services</b> 541511 Custom Computer Programming Services 541512 Computer Systems Design Services 541513 Computer Facilities Management Services 541519 Other Computer Related Services <b>Other Professional, Scientific, and Technical Services</b> 541600 Management, Scientific, & Technical Consulting Services 541700 Scientific Research & Development Services 541800 Advertising & Related Services 541910 Marketing Research & Public Opinion Polling 541920 Photographic Services 541930 Translation & Interpretation Services 541940 Veterinary Services 541990 All Other Professional, Scientific, & Technical Services	<b>Code</b> <b>Health Care and Social Assistance</b> <b>Offices of Physicians and Dentists</b> 621111 Offices of Physicians (except mental health specialists) 621112 Offices of Physicians, Mental Health Specialists 621210 Offices of Dentists <b>Offices of Other Health Practitioners</b> 621310 Offices of Chiropractors 621320 Offices of Optometrists 621330 Offices of Mental Health Practitioners (except Physicians) 621340 Offices of Physical, Occupational & Speech Therapists, & Audiologists 621391 Offices of Podiatrists 621399 Offices of All Other Miscellaneous Health Practitioners <b>Outpatient Care Centers</b> 621410 Family Planning Centers 621420 Outpatient Mental Health & Substance Abuse Centers 621491 HMO Medical Centers 621492 Kidney Dialysis Centers 621493 Freestanding Ambulatory Surgical & Emergency Centers 621498 All Other Outpatient Care Centers <b>Medical and Diagnostic Laboratories</b> 621510 Medical & Diagnostic Laboratories <b>Home Health Care Services</b> 621610 Home Health Care Services <b>Other Ambulatory Health Care Services</b> 621900 Other Ambulatory Health Care Services (including ambulance services & blood & organ banks) <b>Hospitals</b> 622000 Hospitals <b>Nursing and Residential Care Facilities</b> 623000 Nursing & Residential Care Facilities <b>Social Assistance</b> 624100 Individual & Family Services 624200 Community Food & Housing, & Emergency & Other Relief Services 624310 Vocational Rehabilitation Services 624410 Child Day Care Services	<b>Code</b> 713900 Other Amusement & Recreation Industries (including golf courses, skiing facilities, marinas, fitness centers, & bowling centers)
<b>Real Estate and Rental and Leasing</b> <b>Real Estate</b> 531110 Lessors of Residential Buildings & Dwellings 531114 Cooperative Housing 531120 Lessors of Nonresidential Buildings (except Miniwarehouses) 531130 Lessors of Miniwarehouses & Self-Storage Units 531190 Lessors of Other Real Estate Property 531210 Offices of Real Estate Agents & Brokers 531310 Real Estate Property Managers 531320 Offices of Real Estate Appraisers 531390 Other Activities Related to Real Estate <b>Rental and Leasing Services</b> 532100 Automotive Equipment Rental & Leasing 532210 Consumer Electronics & Appliances Rental 532220 Formal Wear & Costume Rental 532230 Video Tape & Disc Rental 532290 Other Consumer Goods Rental 532310 General Rental Centers 532400 Commercial & Industrial Machinery & Equipment Rental & Leasing <b>Lessors of Nonfinancial Intangible Assets (except copyrighted works)</b> 533110 Lessors of Nonfinancial Intangible Assets (except copyrighted works)	<b>Management of Companies (Holding Companies)</b> 551111 Offices of Bank Holding Companies 551112 Offices of Other Holding Companies	<b>Arts, Entertainment, and Recreation</b> <b>Performing Arts, Spectator Sports, and Related Industries</b> 711100 Performing Arts Companies 711210 Spectator Sports (including sports clubs & racetracks) 711300 Promoters of Performing Arts, Sports, & Similar Events 711410 Agents & Managers for Artists, Athletes, Entertainers, & Other Public Figures 711510 Independent Artists, Writers, & Performers <b>Museums, Historical Sites, and Similar Institutions</b> 712100 Museums, Historical Sites, & Similar Institutions <b>Amusement, Gambling, and Recreation Industries</b> 713100 Amusement Parks & Arcades 713200 Gambling Industries	<b>Accommodation and Food Services</b> <b>Accommodation</b> 721110 Hotels (except Casino Hotels) & Motels 721120 Casino Hotels 721191 Bed & Breakfast Inns 721199 All Other Traveler Accommodation 721210 RV (Recreational Vehicle) Parks & Recreational Camps 721310 Rooming & Boarding Houses <b>Food Services and Drinking Places</b> 722110 Full-Service Restaurants 722210 Limited-Service Eating Places 722300 Special Food Services (including food service contractors & caterers) 722410 Drinking Places (Alcoholic Beverages) <b>Other Services</b> <b>Repair and Maintenance</b> 811110 Automotive Mechanical & Electrical Repair & Maintenance 811120 Automotive Body, Paint, Interior, & Glass Repair 811190 Other Automotive Repair & Maintenance (including oil change & lubrication shops & car washes) 811210 Electronic & Precision Equipment Repair & Maintenance 811310 Commercial & Industrial Machinery & Equipment (except Automotive & Electronic) Repair & Maintenance 811410 Home & Garden Equipment & Appliance Repair & Maintenance 811420 Reupholstery & Furniture Repair 811430 Footwear & Leather Goods Repair 811490 Other Personal & Household Goods Repair & Maintenance <b>Personal and Laundry Services</b> 812111 Barber Shops 812112 Beauty Salons 812113 Nail Salons 812190 Other Personal Care Services (including diet & weight reducing centers) 812210 Funeral Homes & Funeral Services 812220 Cemeteries & Crematories 812310 Coin-Operated Laundries & Drycleaners 812320 Drycleaning & Laundry Services (except Coin-Operated) 812330 Linen & Uniform Supply 812910 Pet Care (except Veterinary) Services 812920 Photofinishing 812930 Parking Lots & Garages 812990 All Other Personal Services <b>Religious, Grantmaking, Civic, Professional, and Similar Organizations</b> 813000 Religious, Grantmaking, Civic, Professional, & Similar Organizations (including condominium and homeowners associations)
<b>Professional, Scientific, and Technical Services</b> <b>Legal Services</b> 541110 Offices of Lawyers 541190 Other Legal Services <b>Accounting, Tax Preparation, Bookkeeping, and Payroll Services</b> 541211 Offices of Certified Public Accountants 541213 Tax Preparation Services 541214 Payroll Services 541219 Other Accounting Services <b>Architectural, Engineering, and Related Services</b> 541310 Architectural Services 541320 Landscape Architecture Services 541330 Engineering Services 541340 Drafting Services 541350 Building Inspection Services 541360 Geophysical Surveying & Mapping Services 541370 Surveying & Mapping (except Geophysical) Services 541380 Testing Laboratories	<b>Administrative and Support and Waste Management and Remediation Services</b> <b>Administrative and Support Services</b> 561110 Office Administrative Services 561210 Facilities Support Services 561300 Employment Services 561410 Document Preparation Services 561420 Telephone Call Centers 561430 Business Service Centers (including private mail centers & copy shops) 561440 Collection Agencies 561450 Credit Bureaus 561490 Other Business Support Services (including repossession services, court reporting, & stenotype services) 561500 Travel Arrangement & Reservation Services 561600 Investigation & Security Services 561710 Exterminating & Pest Control Services 561720 Janitorial Services 561730 Landscaping Services 561740 Carpet & Upholstery Cleaning Services 561790 Other Services to Buildings & Dwellings 561900 Other Support Services (including packaging & labeling services, & convention & trade show organizers) <b>Waste Management and Remediation Services</b> 562000 Waste Management & Remediation Services		

**Information Return of a 25% Foreign-Owned U.S. Corporation  
or a Foreign Corporation Engaged in a U.S. Trade or Business**  
(Under Sections 6038A and 6038C of the Internal Revenue Code)

For tax year of the reporting corporation beginning ....., and ending .....

**Note.** Enter all information in English and money items in U.S. dollars.

OMB No. 1545-0805

**Part I Reporting Corporation** (see instructions). All reporting corporations must complete Part I.

<b>1a</b> Name of reporting corporation		<b>1b</b> Employer identification number	
Number, street, and room or suite no. (if a P.O. box, see instructions)		1c Total assets	
City or town, state, and ZIP code (If a foreign address, see instructions.)		\$	
<b>1d</b> Principal business activity ▶		<b>1e</b> Principal business activity code ▶	
<b>1f</b> Total value of gross payments made or received (see instructions) reported on this Form 5472	<b>1g</b> Total number of Forms 5472 filed for the tax year	<b>1h</b> Total value of gross payments made or received (see instructions) reported on all Forms 5472	
\$		\$	
<b>1i</b> Check here if this is a consolidated filing of Form 5472 . . . ▶ <input type="checkbox"/>	<b>1j</b> Country of incorporation	<b>1k</b> Country(ies) under whose laws the reporting corporation files an income tax return as a resident	<b>1l</b> Principal country(ies) where business is conducted
<b>2</b> Check here if, at any time during the tax year, any foreign person owned, directly or indirectly, at least 50% of (a) the total voting power of all classes of the stock of the reporting corporation entitled to vote, or (b) the total value of all classes of stock of the reporting corporation . . . ▶ <input type="checkbox"/>			

**Part II 25% Foreign Shareholder** (see instructions)

<b>1a</b> Name and address of direct 25% foreign shareholder		<b>1b</b> U.S. identifying number, if any	
<b>1c</b> Principal country(ies) where business is conducted	<b>1d</b> Country of citizenship, organization, or incorporation	<b>1e</b> Country(ies) under whose laws the direct 25% foreign shareholder files an income tax return as a resident	
<b>2a</b> Name and address of direct 25% foreign shareholder		<b>2b</b> U.S. identifying number, if any	
<b>2c</b> Principal country(ies) where business is conducted	<b>2d</b> Country of citizenship, organization, or incorporation	<b>2e</b> Country(ies) under whose laws the direct 25% foreign shareholder files an income tax return as a resident	
<b>3a</b> Name and address of ultimate indirect 25% foreign shareholder		<b>3b</b> U.S. identifying number, if any	
<b>3c</b> Principal country(ies) where business is conducted	<b>3d</b> Country of citizenship, organization, or incorporation	<b>3e</b> Country(ies) under whose laws the ultimate indirect 25% foreign shareholder files an income tax return as a resident	
<b>4a</b> Name and address of ultimate indirect 25% foreign shareholder		<b>4b</b> U.S. identifying number, if any	
<b>4c</b> Principal country(ies) where business is conducted	<b>4d</b> Country of citizenship, organization, or incorporation	<b>4e</b> Country(ies) under whose laws the ultimate indirect 25% foreign shareholder files an income tax return as a resident	

**Part III Related Party** (see instructions)Check applicable box: Is the related party a ☐ foreign person or ☐ U.S. person?

All reporting corporations must complete this question and the rest of Part III.

<b>1a</b> Name and address of related party		<b>1b</b> U.S. identifying number, if any	
<b>1c</b> Principal business activity ▶		<b>1d</b> Principal business activity code ▶	
<b>1e</b> Relationship—Check boxes that apply: <input type="checkbox"/> Related to reporting corporation <input type="checkbox"/> Related to 25% foreign shareholder <input type="checkbox"/> 25% foreign shareholder			
<b>1f</b> Principal country(ies) where business is conducted		<b>1g</b> Country(ies) under whose laws the related party files an income tax return as a resident	

**Part IV Monetary Transactions Between Reporting Corporations and Foreign Related Party** (see instructions)**Caution:** Part IV must be completed if the "foreign person" box is checked in the heading for Part III.If estimates are used, check here ☐

1	Sales of stock in trade (inventory)	1	
2	Sales of tangible property other than stock in trade	2	
3	Rents and royalties received (for other than intangible property rights)	3	
4	Sales, leases, licenses, etc., of intangible property rights (e.g., patents, trademarks, secret formulas)	4	
5	Consideration received for technical, managerial, engineering, construction, scientific, or like services	5	
6	Commissions received	6	
7	Amounts borrowed (see instructions) a Beginning balance _____ b Ending balance or monthly average ▶	7b	
8	Interest received	8	
9	Premiums received for insurance or reinsurance	9	
10	Other amounts received (see instructions)	10	
11	<b>Total.</b> Combine amounts on lines 1 through 10	11	
12	Purchases of stock in trade (inventory)	12	
13	Purchases of tangible property other than stock in trade	13	
14	Rents and royalties paid (for other than intangible property rights)	14	
15	Purchases, leases, licenses, etc., of intangible property rights (e.g., patents, trademarks, secret formulas)	15	
16	Consideration paid for technical, managerial, engineering, construction, scientific, or like services	16	
17	Commissions paid	17	
18	Amounts loaned (see instructions) a Beginning balance _____ b Ending balance or monthly average ▶	18b	
19	Interest paid	19	
20	Premiums paid for insurance or reinsurance	20	
21	Other amounts paid (see instructions)	21	
22	<b>Total.</b> Combine amounts on lines 12 through 21	22	

**Part V Nonmonetary and Less-Than-Full Consideration Transactions Between the Reporting Corporation and the Foreign Related Party** (see instructions)Describe these transactions on an attached separate sheet and check here. ☐**Part VI Additional Information**

All reporting corporations must complete Part VI.

1	Does the reporting corporation import goods from a foreign related party?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2a	If "Yes," is the basis or inventory cost of the goods valued at greater than the customs value of the imported goods?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "No," do not complete b and c below.		
b	If "Yes," attach a statement explaining the reason or reasons for such difference.	
c	If the answers to questions 1 and 2a are "Yes," were the documents used to support this treatment of the imported goods in existence and available in the United States at the time of filing Form 5472?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**General Instructions**

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

**What's New****New filing address.** The IRS has changed the filing address for duplicate Forms 5472. See *When and Where To File* on page 3.**Purpose of Form**

Use Form 5472 to provide information required under sections 6038A and 6038C when reportable transactions occur during the tax year of a reporting corporation with a foreign or domestic related party.

**Definitions****Reporting corporation.** A reporting corporation is either:

- A 25% foreign-owned U.S. corporation or
- A foreign corporation engaged in a trade or business within the United States.

**25% foreign owned.** A corporation is 25% foreign owned if it has at least one direct or indirect 25% foreign shareholder at any time during the tax year.**25% foreign shareholder.** Generally, a foreign person (defined on page 3) is a 25% foreign shareholder if the person owns, directly or indirectly, at least 25% of either:

- The total voting power of all classes of stock entitled to vote or
- The total value of all classes of stock of the corporation.

The constructive ownership rules of section 318 apply with the following modifications to determine if a corporation is 25% foreign owned. Substitute "10%" for "50%" in section 318(a)(2)(C). Do not apply sections 318(a)(3)(A), (B), and (C) so as to consider a U.S. person as owning stock that is owned by a foreign person.

**Related party.** A related party is:

- Any direct or indirect 25% foreign shareholder of the reporting corporation,
- Any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the reporting corporation,
- Any person who is related (within the meaning of section 267(b) or 707(b)(1)) to a 25% foreign shareholder of the reporting corporation or

- Any other person who is related to the reporting corporation within the meaning of section 482 and the related regulations.

**"Related party"** does not include any corporation filing a consolidated Federal income tax return with the reporting corporation.The rules in section 318 apply to the definition of related party with the modifications listed under the definition of **25% foreign shareholder** above.**Reportable transaction.** A reportable transaction is:

- Any type of transaction listed in Part IV (e.g., sales, rents, etc.) for which monetary consideration (including U.S. and foreign currency) was the sole consideration paid or received during the reporting corporation's tax year or
- Any transaction or group of transactions listed in Part IV, if:

1. Any part of the consideration paid or received was not monetary consideration or
2. If less than full consideration was paid or received.



Transactions with a U.S. related party, however, are not required to be specifically identified in Parts IV and V.

**Direct 25% foreign shareholder.** A foreign person is a direct 25% foreign shareholder if it owns directly at least 25% of the stock of the reporting corporation by vote or value.

**Ultimate indirect 25% foreign shareholder.** An ultimate indirect 25% foreign shareholder is a 25% foreign shareholder whose ownership of stock of the reporting corporation is not attributed (under the principles of section 958(a)(1) and (2)) to any other 25% foreign shareholder. See Rev. Proc. 91-55, 1991-2 C.B. 784.

**Foreign person.** A foreign person is:

- An individual who is not a citizen or resident of the United States,
- An individual who is a citizen or resident of a U.S. possession who is not otherwise a citizen or resident of the United States,
- Any partnership, association, company, or corporation that is not created or organized in the United States,
- Any foreign estate or foreign trust described in section 7701(a)(31) or
- Any foreign government (or agency or instrumentality thereof) to the extent that the foreign government is engaged in the conduct of a commercial activity as defined in section 892.

However, the term "foreign person" does not include any foreign person who consents to the filing of a joint income tax return.

## Who Must File

Generally, a reporting corporation must file Form 5472 if it had a reportable transaction with a foreign or domestic related party.

**Exceptions from filing.** A reporting corporation is not required to file Form 5472 if any of the following apply:

1. It had no reportable transactions of the types listed in Parts IV and V of the form.
2. A U.S. person that controls the foreign related corporation files Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, for the tax year to report information under section 6038. To qualify for this exception, the U.S. person must complete Schedule M (Form 5471) showing all reportable transactions between the reporting corporation and the related party for the tax year.
3. The related corporation qualifies as a foreign sales corporation for the tax year and files Form 1120-FSC, U.S. Income Tax Return of a Foreign Sales Corporation.
4. It is a foreign corporation that does not have a permanent establishment in the United States under an applicable income tax treaty and timely files Form 8833.
5. It is a foreign corporation all of whose gross income is exempt from taxation under section 883 and it timely and fully complies with the reporting requirements of sections 883 and 887.
6. Both the reporting corporation and the related party are not U.S. persons as defined in section 7701(a)(30) and the transactions will not generate in any tax year:

- Gross income from sources within the United States or income effectively connected, or treated as effectively connected, with the conduct of a trade or business within the United States or
- Any expense, loss, or other deduction that is allocable or apportionable to such income.

**Consolidated returns.** If a reporting corporation is a member of an affiliated group filing a consolidated income tax return, Regulations section 1.6038A-2 may be satisfied by filing a U.S. consolidated Form 5472. The common parent must attach to Form 5472 a schedule stating which members of the U.S. affiliated group are reporting corporations under section 6038A, and which of those members are joining in the consolidated filing of Form 5472. The schedule must show the name, address, and employer identification number of each member who is including transactions on the consolidated Form 5472.

**Note.** A member is not required to join in filing a consolidated Form 5472 just because the other members of the group choose to file one or more Forms 5472 on a consolidated basis.

## When and Where To File

File Form 5472 by the due date of the reporting corporation's income tax return (including extensions). A separate Form 5472 must be filed for each foreign or domestic related party with which the reporting corporation had a reportable transaction during the tax year. Attach Form 5472 to the income tax return. You are required to file a duplicate copy of Form 5472 with the Internal Revenue Service Center, P. O. Box 409101, Ogden, UT 84409. However, if you file your income tax return electronically, see *Electronic Filing of Form 5472* below for additional information. If the reporting corporation's income tax return is not filed when due, file a timely Form 5472 (with a copy to Ogden) separately with the service center where the tax return is due. When the tax return is filed, attach a copy of the previously filed Form 5472.

## Electronic Filing of Form 5472

If you file your income tax return electronically, see the instructions for your income tax return for general information about electronic filing. If you file your original Form 5472 electronically (as an attachment to a timely filed, electronically filed income tax return), such filing satisfies the duplicate filing requirement referred to above. See the first sentence under *When and Where To File* above for the definition of "timely."

## Penalties

**Penalties for failure to file Form 5472.** A penalty of \$10,000 will be assessed on any reporting corporation that fails to file Form 5472 when due and in the manner prescribed. The penalty also applies for failure to maintain records as required by Regulations section 1.6038A-3.

**Note.** Filing a substantially incomplete Form 5472 constitutes a failure to file Form 5472.

Each member of a group of corporations filing a consolidated information return is a separate reporting corporation subject to a separate \$10,000 penalty and each member is jointly and severally liable.

If the failure continues for more than 90 days after notification by the IRS, an additional penalty of \$10,000 will apply. This penalty applies with respect to each related party for which a failure occurs for each 30-day period (or part of a 30-day period) during which the failure continues after the 90-day period ends.

Criminal penalties under sections 7203, 7206, and 7207 may also apply for failure to submit information or for filing false or fraudulent information.

## Record Maintenance Requirements

A reporting corporation must keep the permanent books of account or records as required by section 6001. These books must be sufficient to establish the correctness of the reporting corporation's Federal income tax return, including information or records that might be relevant to determine the correct treatment of transactions with related parties. See Regulations section 1.6038A-3 for more detailed information. Also, see Regulations sections 1.6038A-1(h) and 1.6038A-1(i) for special rules that apply to small corporations and reporting corporations with related party transactions of de minimis value.

## Specific Instructions

### Part I

**Line 1a. Address.** Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the corporation has a P.O. box, show the box number instead.

**Foreign address.** Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code, if any. Do not abbreviate the country name.

**Line 1c. Total assets.** Domestic reporting corporations enter the total assets from item D, page 1, Form 1120. Foreign reporting corporations enter the amount from line 15, column (d), Schedule L, Form 1120-F.

**Lines 1d and 1e.** Enter a description of the principal business activity and enter the principal business activity code. See the instructions for Form 1120 or Form 1120-F for a list of principal business activities and their associated codes.

**Line 1f.** Enter the total value in U.S. dollars of all foreign related party transactions reported in Parts IV and V of this Form 5472. This is the total of the amounts entered on lines 11 and 22 of Part IV plus the fair market value of the nonmonetary and less-than-full consideration transactions reported in Part V. Do not complete line 1f if the reportable transaction is with a U.S. related party.

**Line 1g.** File a separate Form 5472 for each foreign or each U.S. person who is a related party with which the reporting corporation had a reportable transaction. Enter the total number of Forms 5472 (including this one) being filed for the tax year.

**Line 1h.** Enter the total value in U.S. dollars of all foreign related party transactions reported in Parts IV and V of all Forms 5472 filed for the tax year. This is the total of the amounts entered on line 1f of all Forms 5472 filed for the tax year (including this one).

**Line 11.** Provide the principal country(ies) where business is conducted. **Do not** include a country(ies) in which business is conducted solely through a subsidiary. **Do not** enter "worldwide" instead of listing the country(ies). These rules also apply to lines 2c, 3c, 4c, Part II, and line 1f, Part III.

**Line 2.** For purposes of this line:

- "Foreign person" has the same meaning as provided on page 3.
- 50% direct or indirect ownership is determined by applying the constructive ownership rules of section 318 with the modifications listed under *25% foreign shareholder* on page 2.

## Part II

Only 25% foreign-owned U.S. corporations complete Part II.

The form provides sufficient space to report information for two direct 25% foreign shareholders and two ultimate indirect 25% foreign shareholders. If more space is needed, show the information requested in Part II on an attached sheet.

Report on lines 1a through 1e information about the direct 25% foreign shareholder who owns (by vote or value) the largest percentage of the stock of the U.S. reporting corporation.

Report on lines 2a through 2e information about the direct 25% foreign shareholder who owns (by vote or value) the second-largest percentage of the stock of the U.S. reporting corporation.

Report on lines 3a through 3e information about the ultimate indirect 25% foreign shareholder who owns (by vote or value) the largest percentage of the stock of the U.S. reporting corporation.

Report on lines 4a through 4e information about the ultimate indirect 25% foreign shareholder who owns (by vote or value) the second-largest percentage of the stock of the U.S. reporting corporation.

**Lines 3a through 3e and lines 4a through 4e.** Attach an explanation of the attribution of ownership. See Rev. Proc. 91-55 and Regulations section 1.6038A-1(e).

## Part III

All filers must complete Part III even if the related party has been identified in Part II as a 25% foreign shareholder. Report in Part III information about the related party (domestic or foreign) with which the reporting corporation had reportable transactions during the tax year.

## Part IV

**Do not** complete Part IV for transactions with a domestic related party.

When completing Part IV or Part V, the terms "paid" and "received" include accrued payments and accrued receipts. State all amounts in U.S. dollars and attach a schedule showing the exchange rates used.

If the related party transactions occur between a related party and a partnership that is, in whole or in part, owned by a reporting corporation, the reporting corporation reports only the percentage of the value of the transaction(s) equal to the percentage of its partnership interest. This rule does not apply if the reporting corporation owns a less-than-25% interest in the partnership. The rules of attribution apply when determining the reporting corporation's percentage of partnership interest.

Generally, all reportable transactions between the reporting corporation and a related foreign party must be entered in Part IV.

**Reasonable estimates.** When actual amounts are not determinable, enter reasonable estimates (see below) of the total dollar amount of each of the categories of transactions conducted between the reporting corporation and the related person in which monetary consideration (U.S. currency or foreign currency) was the sole consideration paid or received during the tax year of the reporting corporation.

A reasonable estimate is any amount reported on Form 5472 that is at least 75% but not more than 125% of the actual amount required to be reported.

**Small amounts.** If any actual amount in a transaction or a series of transactions between a foreign related party and the reporting corporation does not exceed a total of \$50,000, the amount may be reported as "\$50,000 or less."

**Line 7. Amounts borrowed.** Report amounts borrowed using either the outstanding balance method or the monthly average method. If the outstanding balance method is used, enter the beginning and ending outstanding balance for the tax year on lines 7a and 7b. If the monthly average method is used, skip line 7a and enter the monthly average for the tax year on line 7b.

**Line 10. Other amounts received.** Enter amounts received that are not specifically reported on lines 1 through 9. Include amounts on line 10 to the extent that these amounts are taken into account in determining the taxable income of the reporting corporation.

**Line 18. Amounts loaned.** Report amounts loaned using either the outstanding balance method or the monthly average method. If the outstanding balance method is used, enter the beginning and ending outstanding balance for the tax year on lines 18a and 18b. If the monthly average method is used, skip line 18a and enter the monthly average for the tax year on line 18b.

**Line 21. Other amounts paid.** Enter amounts paid that are not specifically reported on lines 12 through 20. Include amounts on line 21 to the extent that these amounts are taken into account in determining the taxable income of the reporting corporation.

## Part V

**Note.** Do not complete Part V for transactions with a domestic related party.

If the related party is a foreign person, the reporting corporation must attach a schedule describing each reportable transaction, or group of reportable transactions. The description must include sufficient information so that the nature and approximate monetary value of the transaction or group of transactions can be determined. The schedule should include:

1. A description of all property (including monetary consideration), rights, or obligations transferred from the reporting corporation to the foreign related party and from the foreign related party to the reporting corporation;
2. A description of all services performed by the reporting corporation for the foreign related party and by the foreign related party for the reporting corporation; and
3. A reasonable estimate of the fair market value of all properties and services exchanged, if possible, or some other reasonable indicator of value.

If the entire consideration received for any transaction includes both tangible and intangible property and the consideration paid is solely monetary consideration, report the transaction in Part IV instead of Part V if the intangible property was related and incidental to the transfer of the tangible property (e.g., a right to warranty services).

See the instructions for Part IV for information on reasonable estimates and small amounts.

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping . . . . .	17 hr., 42 min.
Learning about the law or the form . . . . .	3 hr., 4 min.
Preparing and sending the form to the IRS . . . . .	3 hr., 30 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.



# U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests

OMB No. 1545-0902

Complete Part I or Part II. Also complete and attach Copies A and B of Form(s) 8288-A.  
(Attach additional sheets if you need more space.)

## Part I To Be Completed by the Buyer or Other Transferee Required To Withhold Under Section 1445(a)

1 Name of buyer or other transferee responsible for withholding (see page 6)		Identifying number
Street address, apt. or suite no., or rural route. Do not use a P.O. box.		
City or town, state, and ZIP code		Phone number (optional) ( )
2 Description and location of property acquired		
3 Date of transfer		
4 Number of Forms 8288-A attached		5 Amount realized on the transfer
6 Check applicable box. a Withholding is at 10% <input type="checkbox"/> b Withholding is of a reduced amount <input type="checkbox"/>		7 Amount withheld

## Part II To Be Completed by an Entity Subject to the Provisions of Section 1445(e)

1 Name of entity or fiduciary responsible for withholding (see instructions)		Identifying number
Street address, apt. or suite no., or rural route. Do not use a P.O. box.		
City or town, state, and ZIP code		Phone number (optional) ( )
2 Description of U.S. real property interest transferred or distributed		
3 Date of transfer		4 Number of Forms 8288-A attached
5 Complete all items that apply. a Amount subject to withholding at 35% b Amount subject to withholding at 10% c Amount subject to withholding at reduced rate d Large trust election to withhold at distribution <input type="checkbox"/>		6 Total amount withheld

**Sign  
Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of withholding agent, partner, fiduciary, or corporate officer Title (if applicable) Date

**Paid  
Preparer's  
Use Only**

Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
Firm's name (or yours if self-employed) and address	EIN	ZIP code	

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

## General Instructions

### Purpose of Form

A withholding obligation under section 1445 is generally imposed on the buyer or other transferee (withholding agent) when a U.S. real property interest is acquired from a foreign person. The withholding obligation also applies to foreign and domestic corporations, qualified investment entities, and the fiduciary of certain trusts and estates. This withholding serves to collect U.S. tax that may be owed by the foreign person. Use this form to report and transmit the amount withheld.



*You are not required to withhold if any of the Exceptions (which begin on page 3) apply.*

### Who Must File

A buyer or other transferee of a U.S. real property interest, and a corporation, qualified investment entity, or fiduciary that is required to withhold tax, must file Form 8288 to report and transmit the amount withheld. If two or more persons are joint transferees, each is obligated to withhold. However, the obligation of each will be met if one of the joint transferees withholds and transmits the required amount to the IRS.

**Do not use Forms 8288 and 8288-A for the following distributions.**

1. A distribution of effectively connected income by a publicly traded partnership is subject to the withholding requirements of section 1446.
2. A distribution from a trust that is regularly traded on an established securities market is subject to section 1445, but is not reported on Forms 8288 and 8288-A.
3. A distribution by a qualified investment entity to a nonresident alien or a foreign corporation is treated as a dividend and is not subject to withholding under section 1445 as a gain from the sale or exchange of a U.S. real property interest if:
  - a. The distribution is on stock regularly traded on a securities market in the United States, and
  - b. The alien or corporation did not own more than 5% of that stock at any time during the 1-year period ending on the date of the distribution.

Use Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, to report and pay over the withheld amounts.

### Amount To Withhold

Generally, you must withhold 10% of the amount realized on the disposition by the transferor (see *Definitions* on page 3).

See *Entities Subject to Section 1445(e)* on page 5 for information about when withholding at 35% is required. Also see *Withholding certificate issued by the IRS* on page 4 for information about applying for reduction or elimination of withholding.

**Joint transferors.** If one or more foreign persons and one or more U.S. persons jointly transfer a U.S. real property interest, you must determine the amount subject to withholding in the following manner.

1. Allocate the amount realized from the transfer among the transferors based on their capital contribution to the property. For this purpose, a husband and wife are treated as having contributed 50% each.
2. Withhold on the total amount allocated to foreign transferors.
3. Credit the amount withheld among the foreign transferors as they mutually agree. The transferors must request that the withholding be credited as agreed upon by the 10th day after the date of transfer. If no agreement is reached, credit the withholding by evenly dividing it among the foreign transferors.

### When To File

A transferee must file Form 8288 and transmit the tax withheld to the IRS by the 20th day after the date of transfer.

You must withhold even if an application for a withholding certificate is or has been submitted to the IRS on the date of transfer. However, you do not have to file Form 8288 and transmit the withholding until the 20th day after the day the IRS mails you a copy of the withholding certificate or notice of denial. But if the principal purpose for filing the application for a withholding certificate was to delay paying the IRS the amount withheld, interest and penalties will apply to the period after the 20th day after the date of transfer.

**Installment payments.** You must withhold the full amount at the time of the first installment payment. If you cannot because the payment does not involve sufficient cash or other liquid assets, you may obtain a withholding certificate from the IRS. See the instructions for Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests, for more information.

### Where To File

If you are filing in 2006, send Form 8288 with the amount withheld, and Copies A and B of Form(s) 8288-A to Internal Revenue Service, Philadelphia, PA 19255. If you are filing after 2006, send Form 8288 with the amount withheld, and copies A and B of Form(s) 8288-A to the Ogden Service Center, P.O. Box 409101, Ogden, UT 84409.

### Forms 8288-A Must Be Attached

Anyone who completes Form 8288 must also complete a Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests, for each person subject to withholding. Copies A and B of Form 8288-A must be attached to Form 8288. Copy C is for your records.

After receipt of Form 8288 and Form(s) 8288-A, the IRS will stamp Copy B of Form 8288-A to show receipt of the withholding and will forward the stamped copy to the foreign person subject to withholding at the address shown on Form 8288-A.

You are not required to furnish a copy of Form 8288 or 8288-A directly to the transferor. To receive credit for the withheld amount, the transferor generally must attach the stamped Copy B of Form 8288-A to a U.S. income tax return (for example, Form 1040NR or 1120-F) or application for early refund filed with the IRS.



*You are required to include the taxpayer identification numbers (TIN) of the transferor and transferee on Forms 8288 and 8288-A. A stamped copy of Form 8288-A will not be provided to the transferor if the transferor's TIN is not included on that form. In this case, to get credit for the withheld amount, the transferor must attach to its U.S. income tax return substantial evidence of withholding (for example, closing documents) and a statement that contains all the required information on Forms 8288 and 8288-A including the transferor's TIN.*

### Penalties

Under section 6651, penalties apply for failure to file Form 8288 when due and for failure to pay the withholding when due. In addition, if you are required to but do not withhold tax under section 1445, the tax, including interest, may be collected from you. Under section 7202, you may be subject to a penalty of up to \$10,000 for willful failure to collect and pay over the tax. Corporate officers or other responsible persons may be subject to a penalty under section 6672 equal to the amount that should have been withheld and paid over to the IRS.

## Definitions

**Transferee.** Any person, foreign or domestic, that acquires a U.S. real property interest by purchase, exchange, gift, or any other transfer.

**Transferor.** For purposes of this withholding, this means any foreign person that disposes of a U.S. real property interest by sale, exchange, gift, or any other disposition. A **disregarded entity** cannot be the transferor for purposes of section 1445. Instead, the person considered as owning the assets of the disregarded entity for federal tax purposes is regarded as the transferor. A disregarded entity for these purposes means an entity that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, a qualified real estate investment trust subsidiary as defined in section 856(i), or a qualified subchapter S subsidiary under section 1361(b)(3)(B).

**Withholding agent.** For purposes of this return, this means the buyer or other transferee who acquires a U.S. real property interest from a foreign person.

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

**U.S. real property interest.** Any interest, other than an interest solely as a creditor, in:

1. Real property located in the United States or the U.S. Virgin Islands.
2. Certain personal property associated with the use of real property.
3. A domestic corporation, unless it is shown that the corporation was not a U.S. real property holding corporation during the previous 5 years (or during the period in which the transferor held the interest, if shorter).

A U.S. real property interest does not include:

1. An interest in a domestically controlled qualified investment entity.
2. An interest in a corporation that has disposed of all its U.S. real property interests in transactions in which the full amount of any gain was recognized as provided in section 897(c)(1)(B).
3. An interest in certain publicly traded corporations, partnerships, and trusts.

See Regulations sections 1.897-1 and -2 for more information. Also see *Transferred property that is not a U.S. real property interest* on page 4.

**Qualified investment entity.** A qualified investment entity is:

- A real estate investment trust (REIT), and

- A regulated investment company (RIC) that is a U.S. real property holding corporation.

For more information, see Pub. 515.

**Domestically controlled qualified investment entity.** A qualified investment entity is domestically controlled if at all times during the testing period less than 50% in value of its stock was held, directly or indirectly, by foreign persons. The testing period is the shorter of (a) the 5-year period ending on the date of the disposition (or distribution), or (b) the period during which the entity was in existence.

**Amount realized.** The sum of the cash paid or to be paid (not including interest or original issue discount), the fair market value of other property transferred or to be transferred, and the amount of any liability assumed by the transferee or to which the U.S. real property interest is subject immediately before and after the transfer. Generally, the amount realized for purposes of this withholding is the sales or contract price.

**Date of transfer.** The first date on which consideration is paid or a liability is assumed by the transferee. However, for purposes of sections 1445(e)(2), (3), and (4), and Regulations sections 1.1445-5(c)(1)(iii) and 1.1445-5(c)(3), the date of transfer is the date of distribution that creates the obligation to withhold. Payment of consideration does not include the payment before passage of legal or equitable title of earnest money (other than pursuant to an initial purchase contract), a good-faith deposit, or any similar amount primarily intended to bind the parties to the contract and subject to forfeiture. A payment that is not forfeitable may also be considered earnest money, a good-faith deposit, or a similar sum.

## Exceptions

You are not required to withhold if any of the following applies.

1. **Purchase of residence for \$300,000 or less.** One or more individuals acquire U.S. real property for use as a residence and the amount realized (sales price) is not more than \$300,000. A U.S. real property interest is acquired for use as a residence if you or a member of your family has definite plans to reside in the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. Do not take into account the number of days the property will be vacant in making this determination. No form or other document is required to be filed with the IRS for this exception; however, if you do not in fact use the property as a residence, the withholding tax may be collected from you.

This exception applies whether or not the transferor (seller) is an individual, partnership, trust, corporation, or other transferor. However, this exception does not apply if the actual transferee (buyer) is not an individual, even if the property is acquired for an individual.

### 2. Transferor not a foreign person.

You receive a certification of nonforeign status from the transferor, signed under penalties of perjury, stating that the transferor is not a foreign person and containing the transferor's name, address, and identification number (social security number (SSN) or employer identification number (EIN)). If you receive a certification, the withholding tax cannot be collected from you unless you knew that the certification was false or you received a notice from your agent or the transferor's agent that it was false. The certification must be signed by the individual, a responsible officer of a corporation, a general partner of a partnership, or the trustee, executor, or fiduciary of a trust or estate.

A disregarded entity may not certify that it is the transferor for U.S. tax purposes, including sections 897 and 1445. Rather, the owner of the disregarded entity is treated as the transferor of the property and must provide the certificate of nonforeign status to avoid withholding under section 1445.

A foreign corporation electing to be treated as a domestic corporation under section 897(i) must attach to the certification a copy of the acknowledgment of the election received from the IRS. The acknowledgment must state that the information required by Regulations section 1.897-3 has been determined to be complete. If the acknowledgment is not attached, you may not rely on the certification. Keep any certification of nonforeign status you receive in your records for 5 years after the year of transfer.

You may also use other means to determine that the transferor is not a foreign person. But if you do, and it is later determined that the transferor is a foreign person, the withholding tax may be collected from you.

**Late notice of false certification.** If, after the date of transfer, you receive a notice from your agent or the transferor's agent that the certification of nonforeign status is false, you do not have to withhold on consideration paid before you received the notice. However, you must withhold the full 10% of the amount realized from any consideration that remains to be paid, if possible. You must do this by withholding and paying over the entire amount of each successive payment of consideration until the full 10% has been withheld and

paid to the IRS. These amounts must be reported and transmitted to the IRS by the 20th day following the date of each payment.

**3. Transferred property that is not a U.S. real property interest.** You acquire an interest in property that is not a U.S. real property interest (defined on page 3). A U.S. real property interest includes certain interests in U.S. corporations, as well as direct interests in real property and certain associated personal property.

No withholding is required on the acquisition of an interest in a domestic corporation if (a) any class of stock of the corporation is regularly traded on an established securities market, or (b) the transferee receives a statement by the corporation that the interest is not a U.S. real property interest, unless you know that the statement is false or you receive a notice from your agent or the transferor's agent that the statement is false. A corporation's statement may be relied on only if it is dated not more than 30 days before the date of transfer.

**Late notice of false statement.** If, after the date of transfer, you receive a notice that an interest in a corporation is not a U.S. real property interest is false, see *Late notice of false certification* on page 3.

Generally, no withholding is required on the acquisition of an interest in a foreign corporation. However, withholding may be required if the foreign corporation has made the election under section 897(j) to be treated as a domestic corporation.

**4. Transferor's nonrecognition of gain or loss.** You may receive a notice from the transferor signed under penalties of perjury stating that the transferor is not required to recognize gain or loss on the transfer because of a nonrecognition provision of the Internal Revenue Code (see Temporary Regulations section 1.897-6T(a)(2)) or a provision in a U.S. tax treaty. You may rely on the transferor's notice unless (a) only part of the gain qualifies for nonrecognition or (b) you know or have reason to know that the transferor is not entitled to the claimed nonrecognition treatment.

No particular form is required for this notice. By the 20th day after the date of transfer, you must send a copy of the notice of nonrecognition (with a cover letter giving your name, address, and identification number) to the Director, Philadelphia Service Center, P.O. Box 21086, FIRPTA Unit, Philadelphia, PA 19114-0586. If you are filing after 2006, you must send a copy of the notice of nonrecognition to the Ogden Service Center, P.O. Box 409101, Ogden, UT 84409. See Regulations section 1.1445-2(d)(2) for more information on the transferor's notice of nonrecognition.

**Note.** A notice of nonrecognition cannot be used for the exclusion from income under section 121, like-kind exchanges that do not qualify for nonrecognition treatment in their entirety, and deferred like-kind exchanges that have not been completed when it is time to file Form 8288. In these cases, a withholding certificate issued by the IRS, as described next, must be obtained.

**5. Withholding certificate issued by the IRS.** A withholding certificate may be issued by the IRS to reduce or eliminate withholding on dispositions of U.S. real property interests by foreign persons. Either a transferee or transferor may apply for the certificate. The certificate may be issued if:

a. Reduced withholding is appropriate because the 10% or 35% amount exceeds the transferor's maximum tax liability,

b. The transferor is exempt from U.S. tax or nonrecognition provisions apply, or

c. The transferee or transferor enters into an agreement with the IRS for the payment of the tax.

An application for a withholding certificate must comply with the provisions of Regulations sections 1.1445-3 and 1.1445-6 and Rev. Proc. 2000-35, 2000-35 I.R.B. 211. You can find Rev. Proc. 2000-35 on page 211 of Internal Revenue Bulletin 2000-35 at [www.irs.gov/pub/irs-irbs/irb00-35.pdf](http://www.irs.gov/pub/irs-irbs/irb00-35.pdf). In certain cases, you may use Form 8288-B to apply for a withholding certificate. The IRS will normally act on an application by the 90th day after a complete application is received.

If you receive a withholding certificate from the IRS that excuses withholding, you are not required to file Form 8288. However, if you receive a withholding certificate that reduces (rather than eliminates) withholding, there is no exception to withholding, and you are required to file Form 8288. Attach a copy of the withholding certificate to Form 8288. See *When To File* on page 2 for more information.

**6. No consideration paid.** The amount realized by the transferor is zero (for example, the property is transferred as a gift and the recipient does not assume any liabilities or furnish any other consideration to the transferor).

**7. Options to acquire U.S. real property interests.** An amount is realized by the grantor on the grant or lapse of an option to acquire a U.S. real property interest. However, withholding is required on the sale, exchange, or exercise of an option.

**8. Property acquired by a governmental unit.** The property is acquired by the United States, a U.S. state or possession or political subdivision, or the District of Columbia.

For rules that apply to foreclosures, see Regulations section 1.1445-2(d)(3).

**9. Applicable wash sale transaction.** A distribution from a domestically controlled qualified investment entity is treated as a distribution of a U.S. real property interest only because an interest in the entity was disposed of in an applicable wash sale transaction. See section 897(h)(5).

## Liability of Agents

If the transferee or other withholding agent has received (a) a transferor's certification of nonforeign status or (b) a corporation's statement that an interest is not a U.S. real property interest, and the transferee's or transferor's agent knows that the document is false, the agent must provide notice to the transferee or other withholding agent. If the notice is not provided, the agent will be liable for the tax that should have been withheld, but only to the extent of the agent's compensation from the transaction.

If you are the transferee or withholding agent and you receive a notice of false certification or statement from your agent or the transferor's agent, you must withhold tax as if you had not received a certification or statement. But see *Late notice of false certification* on page 3.

The terms "transferor's agent" and "transferee's agent" mean any person who represents the transferor or transferee in any negotiation with another person (or another person's agent) relating to the transaction or in settling the transaction. For purposes of section 1445(e), a transferor's or transferee's agent is any person who represents or advises an entity, a holder of an interest in an entity, or a fiduciary with respect to the planning, arrangement, or completion of a transaction described in sections 1445(e)(1) through (4).

A person is not treated as an agent if the person only performs one or more of the following acts in connection with the transaction:

1. Receiving and disbursing any part of the consideration.
2. Recording any document.
3. Typing, copying, and other clerical tasks.
4. Obtaining title insurance reports and reports concerning the condition of the property.
5. Transmitting documents between the parties.
6. Functioning exclusively in his or her capacity as a representative of a condominium association or cooperative housing corporation. This exemption includes the board of directors, the committee, or other governing body.



## Entities Subject to Section 1445(e)

Withholding is required on certain distributions and other transactions by domestic or foreign corporations, qualified investment entities, trusts, and estates. A domestic trust or estate must withhold 35% of the amount distributed to a foreign beneficiary from a "U.S. real property interest account" that it is required to establish under Regulations section 1.1445-5(c)(1)(iii). A foreign corporation that has not made the election under section 897(i) must withhold 35% of the gain it recognizes on the distribution of a U.S. real property interest to its shareholders. Certain domestic corporations are required to withhold tax on distributions to foreign shareholders.

No withholding is required on the transfer of an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. Also, no withholding is required on the transfer of an interest in a publicly traded partnership or trust.

No withholding will be required with respect to an interest holder if the entity or fiduciary receives a certification of nonforeign status from the interest holder. An entity or fiduciary may also use other means to determine that an interest holder is not a foreign person, but if it does so and it is later determined that the interest holder is a foreign person, the withholding may be collected from the entity or fiduciary.

### Section 1445(e)(1) Transactions

**Partnerships.** A domestic partnership that is not publicly traded must withhold tax under section 1446 on effectively connected income allocated to its foreign partners and must file Form 8804, Annual Return for Partnership Withholding Tax (Section 1446), and Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax. A publicly traded partnership or nominee generally must withhold tax under section 1446 on distributions to its foreign partners and must file Forms 1042 and 1042-S. Because a domestic partnership that disposes of a U.S. real property interest is required to withhold under section 1446, it is not required to withhold under section 1445(e)(1).

**Trusts and estates.** If a domestic trust or estate disposes of a U.S. real property interest, the amount of gain realized must be paid into a separate "U.S. real property interest account." For these purposes, a domestic trust is one that does not make the "large trust election" (explained later), is not a qualified investment entity, and is not publicly traded. The fiduciary must

withhold 35% of the amount distributed to a foreign person from the account during the tax year of the trust or estate in which the disposition occurred. The withholding must be paid over to the IRS within 20 days of the date of distribution. Special rules apply to grantor trusts. See Regulations section 1.1445-5 for more information and how to compute the amount subject to withholding.

**Large trust election.** Trusts with more than 100 beneficiaries may make an election to withhold upon distribution rather than at the time of transfer. The amount to be withheld from each distribution is 35% of the amount attributable to the foreign beneficiary's proportionate share of the current balance of the trust's section 1445(e)(1) account. This election does not apply to any qualified investment entity or to any publicly traded trust. Special rules apply to large trusts that make recurring sales of growing crops and timber.

A trust's section 1445(e)(1) account is the total net gain realized by the trust on all section 1445(e)(1) transactions after the date of the election, minus the total of all distributions made by the trust after the date of the election from such total net gain. See Regulations section 1.1445-5(c)(3) for more information.

### Section 1445(e)(2) Transactions

A foreign corporation that distributes a U.S. real property interest must generally withhold 35% of the gain recognized by the corporation. No withholding or reduced withholding is required if the corporation receives a withholding certificate from the IRS.

### Section 1445(e)(3) Transactions

Generally, a domestic corporation that distributes any property to a foreign person that holds an interest in the corporation must withhold 10% of the fair market value of the property distributed if:

1. The foreign person's interest in the corporation is a U.S. real property interest under section 897, and
2. The property is distributed in redemption of stock under section 302, in liquidation of the corporation under sections 331 through 341, or with respect to stock under section 301 that is not made out of the earnings and profits of the corporation.

No withholding or reduced withholding is required if the corporation receives a withholding certificate from the IRS.

### Section 1445(e)(4) Transactions

No withholding is required under section 1445(e)(4), relating to certain taxable distributions by domestic or foreign partnerships, trusts, and estates, until the effective date of a Treasury Decision under section 897(e)(2)(B)(ii) and (g).

## Section 1445(e)(5) Transactions

The transferee of a partnership interest must withhold 10% of the amount realized on the disposition by a foreign partner of an interest in a domestic or foreign partnership in which at least 50% of the value of the gross assets consists of U.S. real property interests and at least 90% of the value of the gross assets consists of U.S. real property interests plus any cash or cash equivalents. However, no withholding is required under section 1445(e)(5) for dispositions of interests in other partnerships, trusts, or estates until the effective date of a Treasury Decision under section 897(g). No withholding is required if, no earlier than 30 days before the transfer, the transferee receives a statement signed by a general partner under penalties of perjury that at least 50% of the value of the gross assets of the partnership does not consist of U.S. real property interests or that at least 90% of the value of the gross assets does not consist of U.S. real property interests plus cash or cash equivalents. The transferee may rely on the statement unless the transferee knows it is false or the transferee receives a false statement notice pursuant to Regulations section 1.1445-4.

## Section 1445(e)(6) Transactions

A qualified investment entity must withhold 35% of a distribution to a nonresident alien or a foreign corporation that is treated as gain realized from the sale or exchange of a U.S. real property interest. No withholding under section 1445 is required on a distribution to a nonresident alien or foreign corporation if the distribution is on stock regularly traded on a securities market in the United States and the alien or corporation did not own more than 5% of that stock at any time during the 1-year period ending on the date of distribution.

## Specific Instructions



Complete only Part I or Part II.

**Example 1.** B, a corporation, purchases a U.S. real property interest from F, a foreign person. On settlement day, the settlement agent pays off existing loans, withholds 10% of the amount realized on the sale, and disburses the remaining amount to F. B, not the agent, must complete Part I of Form 8288 and Form 8288-A.

**Example 2.** C, a domestic corporation, distributes property to F, a foreign shareholder whose interest in C

is a U.S. real property interest. The distribution is in redemption of C's stock (section 1445(e)(3) transaction). C must withhold 10% of the fair market value of the property distributed to F. C must complete Part II of Form 8288, and Form 8288-A.

**Lines 1.** In Part I, enter the name, address, and identifying number of the buyer or other transferee responsible for withholding under section 1445(a). Do not enter the name, address, and identifying number of a title company, mortgage company, etc. unless it happens to be the actual buyer or transferee.

In Part II, enter the name, address, and identifying number of the entity or fiduciary responsible for withholding under section 1445(e). Do not enter the name, address, and identifying number of a title company, mortgage company, etc. unless it happens to be the actual entity responsible for withholding under section 1445(e).



*The IRS will contact the person or entity listed on line 1 to resolve any problems that may arise concerning underwithholding and/or penalties.*

**Name and address.** If you are a fiduciary, list your name and the name of the trust or estate. Enter the home address of an individual or the office address of an entity.

**Identifying number.** For a U.S. individual, this is a social security number (SSN). For any entity other than an individual (for example, corporation, qualified investment entity, estate, or trust), this is an employer identification number (EIN). If you do not have an EIN, you can apply for one online at [www.irs.gov/smallbiz](http://www.irs.gov/smallbiz) or by telephone at 1-800-829-4933. Also, you can file Form SS-4, Application for Employer Identification Number, by fax or mail.

For a nonresident alien individual who is not eligible for a social security number, this is an IRS individual taxpayer identification number (ITIN). If the individual does not already have an ITIN, he or she must apply for one by attaching the completed Form 8288 to a completed Form W-7, Application for IRS Individual Taxpayer Identification Number, and forwarding the package to the IRS at the address given in the Form W-7 instructions.

**Lines 2.** Enter the location and a description of the property, including any substantial improvements (for example, "12-unit apartment building"). In the case of interests in a corporation that constitute a U.S. real property interest, enter the class or type and amount of the interest (for example, "10,000 shares Class A Preferred Stock XYZ Corporation").

**Lines 4.** Copies A and B of each Form 8288-A should be counted as one form.

**Part II, line 3.** If you are a qualified investment entity, domestic trust or estate, or you make the large trust election, enter the date of distribution.

**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. Section 1445 generally imposes a withholding obligation on the buyer or other transferee (withholding agent) when a U.S. real property interest is acquired from a foreign person. Section 1445 also imposes a withholding obligation on certain foreign and domestic corporations, qualified investment entities, and the fiduciary of certain trusts and estates. This form is used to report and transmit the amount withheld.

You are required to provide this information. Section 6109 requires you to provide your taxpayer identification number. We need this information to ensure that you are complying with the Internal Revenue laws and to allow us to figure and collect the right amount of

tax. Failure to provide this information in a timely manner, or providing false information, may subject you to penalties. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia for use in the administration of 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.

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 these forms will vary depending on individual circumstances. The estimated average times are:

	Form 8288	Form 8288-A
Recordkeeping	5 hr., 15 min.	2 hr., 52 min.
Learning about the law or the form	5 hr., 8 min.	30 min.
Preparing and sending the form to the IRS	6 hr., 38 min.	34 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms 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-6406, Washington, DC 20224. Do not send the forms to this address. Instead, see *Where To File* on page 2.



**Return by a Shareholder of a Passive Foreign  
Investment Company or Qualified Electing Fund**

OMB No. 1545-1002

Attachment  
Sequence No. **69**

► See separate instructions.

Name of shareholder	Identifying number (see page 2 of instructions)
Number, street, and room or suite no. (If a P.O. box, see page 2 of instructions.)	Shareholder tax year: calendar year 20.... or other tax year beginning ....., 20.... and ending ....., 20....
City or town, state, and ZIP code or country	
Check type of shareholder filing the return: <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> S Corporation <input type="checkbox"/> Nongrantor Trust <input type="checkbox"/> Estate	
Name of passive foreign investment company (PFIC) or qualified electing fund (QEF)	Employer identification number (if any)
Address (Enter number, street, city or town, and country.)	Tax year of company or fund: calendar year 20.... or other tax year beginning ....., 20.... and ending ....., 20....

**Part I Elections** (See instructions.)

- A** ☐ **Election To Treat the PFIC as a QEF.** I, a shareholder of a PFIC, elect to treat the PFIC as a QEF. *Complete lines 1a through 2c of Part II.*
- B** ☐ **Deemed Sale Election.** I, a shareholder on the first day of a PFIC's first tax year as a QEF, elect to recognize gain on the deemed sale of my interest in the PFIC. *Enter gain or loss on line 10f of Part IV.*
- C** ☐ **Deemed Dividend Election.** I, a shareholder on the first day of a PFIC's first tax year as a QEF that is a controlled foreign corporation (CFC), elect to treat an amount equal to my share of the post-1986 earnings and profits of the CFC as an excess distribution. *Enter this amount on line 10e of Part IV.*
- D** ☐ **Election To Extend Time For Payment of Tax.** I, a shareholder of a QEF, elect to extend the time for payment of tax on the undistributed earnings and profits of the QEF until this election is terminated. *Complete lines 3a through 4c of Part II to calculate the tax that may be deferred.*  
**Note:** If any portion of line 1a or line 2a of Part II is includible under section 551 or 951, you may **not** make this election. Also, see sections 1294(c) and 1294(f) and the related regulations for events that terminate this election.
- E** ☐ **Election To Recognize Gain on Deemed Sale of PFIC.** I, a shareholder of a former PFIC or a PFIC to which section 1297(e) applies, elect to treat as an excess distribution the gain recognized on the deemed sale of my interest in the PFIC, or, if I qualify, my share of the PFIC's post-1986 earnings and profits deemed distributed, on the last day of its last tax year as a PFIC under section 1297(a). *Enter gain on line 10f of Part IV.*
- F** ☐ **Election To Mark-to-Market PFIC Stock.** I, a shareholder of a PFIC, elect to mark-to-market the PFIC stock that is marketable within the meaning of section 1296(e). *Complete Part III.*

**Part II Income From a Qualified Electing Fund (QEF).** All QEF shareholders complete lines 1a through 2c. If you are making Election D, also complete lines 3a through 4c. (See page 5 of instructions.)

<b>1a</b> Enter your pro rata share of the ordinary earnings of the QEF . . . . .	<b>1a</b>	
<b>b</b> Enter the portion of line 1a that is included in income under section 551 or 951 or that may be excluded under section 1293(g) . . . . .	<b>1b</b>	
<b>c</b> Subtract line 1b from line 1a. Enter this amount on your tax return as dividend income . . . . .		<b>1c</b>
<b>2a</b> Enter your pro rata share of the total net capital gain of the QEF . . . . .	<b>2a</b>	
<b>b</b> Enter the portion of line 2a that is included in income under section 551 or 951 or that may be excluded under section 1293(g) . . . . .	<b>2b</b>	
<b>c</b> Subtract line 2b from line 2a. This amount is a net long-term capital gain. Enter this amount in Part II of the Schedule D used for your income tax return. (See instructions.) . . . . .		<b>2c</b>
<b>3a</b> Add lines 1c and 2c . . . . .		<b>3a</b>
<b>b</b> Enter the total amount of cash and the fair market value of other property distributed or deemed distributed to you during the tax year of the QEF. (See instructions.) . . . . .	<b>3b</b>	
<b>c</b> Enter the portion of line 3a not already included in line 3b that is attributable to shares in the QEF that you disposed of, pledged, or otherwise transferred during the tax year . . . . .	<b>3c</b>	
<b>d</b> Add lines 3b and 3c . . . . .		<b>3d</b>
<b>e</b> Subtract line 3d from line 3a, and enter the difference (if zero or less, enter amount in brackets) <b>Important:</b> If line 3e is greater than zero, and no portion of line 1a or 2a is includible in income under section 551 or 951, you may make Election D with respect to the amount on line 3e.		<b>3e</b>
<b>4a</b> Enter the total tax for the tax year (See instructions.) . . . . .	<b>4a</b>	
<b>b</b> Enter the total tax for the tax year determined without regard to the amount entered on line 3e. . . . .	<b>4b</b>	
<b>c</b> Subtract line 4b from line 4a. This is the deferred tax, the time for payment of which is extended by making Election D. See instructions . . . . .		<b>4c</b>

**Part III Gain or (Loss) From Mark-to-Market Election** (See page 5 of instructions.)

<b>5</b>	Enter the fair market value of your PFIC stock at the end of the tax year . . . . .	<b>5</b>	
<b>6</b>	Enter your adjusted basis in the stock at the end of the tax year . . . . .	<b>6</b>	
<b>7</b>	<b>Excess.</b> Subtract line 6 from line 5. If a gain, <b>stop here.</b> Include this amount as ordinary income on your tax return. If a loss, go to line 8 . . . . .	<b>7</b>	
<b>8</b>	Enter any unreversed inclusions (as defined in section 1296(d)). See instructions. . . . .	<b>8</b>	
<b>9</b>	Enter the smaller of line 7 or line 8. Include this amount as an ordinary loss on your tax return . . . . .	<b>9</b>	

**Part IV Distributions From and Dispositions of Stock of a Section 1291 Fund** (See page 6 of instructions.)Complete a **separate** Part IV for each excess distribution (see instructions).

<b>10a</b>	Enter your total distributions from the section 1291 fund during the current tax year with respect to the applicable stock. If the holding period of the stock began in the current tax year, see instructions . . . . .	<b>10a</b>	
<b>b</b>	Enter the total distributions (reduced by the portions of such distributions that were excess distributions but not included in income under section 1291(a)(1)(B)) made by the fund with respect to the applicable stock for each of the 3 years preceding the current tax year (or if shorter, the portion of the shareholder's holding period before the current tax year). . . . .	<b>10b</b>	
<b>c</b>	Divide line 10b by 3. (See instructions if the number of preceding tax years is less than 3.) . . . . .	<b>10c</b>	
<b>d</b>	Multiply line 10c by 125% (1.25) . . . . .	<b>10d</b>	
<b>e</b>	Subtract line 10d from line 10a. This amount, if more than zero, is the excess distribution with respect to the applicable stock. If zero or less and you did not dispose of stock during the tax year, <b>do not</b> complete the rest of Part IV. See instructions if you received more than one distribution during the current tax year. Also, see instructions for rules for reporting a nonexcess distribution on your income tax return . . . . .	<b>10e</b>	
<b>f</b>	Enter gain or loss from the disposition of stock of a section 1291 fund or former section 1291 fund. If a gain, complete line 11. If a loss, show it in brackets and <b>do not</b> complete line 11 . . . . .	<b>10f</b>	
<b>11a</b>	Attach a statement for each distribution and disposition. Show your holding period for each share of stock or block of shares held. Allocate the excess distribution to each day in your holding period. Add all amounts that are allocated to days in each tax year. . . . .		
<b>b</b>	Enter the total of the amounts determined in line 11a that are allocable to the current tax year and tax years before the foreign corporation became a PFIC (pre-PFIC tax years). Enter these amounts on your income tax return as other income . . . . .	<b>11b</b>	
<b>c</b>	Enter the aggregate increases in tax (before credits) for each tax year in your holding period (other than the current tax year and pre-PFIC years). (See instructions.) . . . . .	<b>11c</b>	
<b>d</b>	Foreign tax credit. (See instructions.) . . . . .	<b>11d</b>	
<b>e</b>	Subtract line 11d from line 11c. Enter this amount on your income tax return as "additional tax." (See instructions.) . . . . .	<b>11e</b>	
<b>f</b>	Determine interest on each net increase in tax determined on line 11e using the rates and methods of section 6621. Enter the aggregate amount of interest here. (See instructions.) . . . . .	<b>11f</b>	

**Part V Status of Prior Year Section 1294 Elections and Termination of Section 1294 Elections**Complete a **separate** column for each outstanding election. Complete lines 9 and 10 only if there is a partial termination of the section 1294 election.

	(i)	(ii)	(iii)	(iv)	(v)	(vi)
<b>1</b> Tax year of outstanding election . . . . .	-----	-----	-----	-----	-----	-----
<b>2</b> Undistributed earnings to which the election relates . . . . .						
<b>3</b> Deferred tax . . . . .						
<b>4</b> Interest accrued on deferred tax (line 3) as of the filing date . . . . .						
<b>5</b> Event terminating election . . . . .						
<b>6</b> Earnings distributed or deemed distributed during the tax year . . . . .						
<b>7</b> Deferred tax due with this return . . . . .						
<b>8</b> Accrued interest due with this return . . . . .						
<b>9</b> Deferred tax outstanding after partial termination of election . . . . .						
<b>10</b> Interest accrued after partial termination of election . . . . .						

## Entity Classification Election

OMB No. 1545-1516

<b>Type or Print</b>	Name of eligible entity making election	Employer identification number
	Number, street, and room or suite no. If a P.O. box, see instructions.	
	City or town, state, and ZIP code. If a foreign address, enter city, province or state, postal code and country. Follow the country's practice for entering the postal code.	
▶ Check if: <input type="checkbox"/> Address change		

**1 Type of election** (see instructions):

- a ☐ Initial classification by a newly-formed entity. Skip lines 2a and 2b and go to line 3.  
b ☐ Change in current classification. Go to line 2a

**2a** Has the eligible entity previously filed an entity election that had an effective date within the last 60 months?

- ☐ **Yes.** Go to line 2b.  
☐ **No.** Skip line 2b and go to line 3.

**2b** Was the eligible entity's prior election for initial classification by a newly formed entity effective on the date of formation?

- ☐ **Yes.** Go to line 3.  
☐ **No.** Stop here. You generally are not currently eligible to make the election (see instructions).

**3** Does the eligible entity have more than one owner?

- ☐ **Yes.** You can elect to be classified as a partnership or an association taxable as a corporation. Skip line 4 and go to line 5.  
☐ **No.** You can elect to be classified as an association taxable as a corporation or disregarded as a separate entity. Go to line 4.

**4** If the eligible entity has only one owner, provide the following information:

- a Name of owner ▶ .....  
b Identifying number of owner ▶ .....

**5** If the eligible entity is owned by one or more affiliated corporations that file a consolidated return, provide the name and employer identification number of the parent corporation:

- a Name of parent corporation ▶ .....  
b Employer identification number ▶ .....

**6 Type of entity (see instructions):**

- a ☐ A domestic eligible entity electing to be classified as an association taxable as a corporation.
- b ☐ A domestic eligible entity electing to be classified as a partnership.
- c ☐ A domestic eligible entity with a single owner electing to be disregarded as a separate entity.
- d ☐ A foreign eligible entity electing to be classified as an association taxable as a corporation.
- e ☐ A foreign eligible entity electing to be classified as a partnership.
- f ☐ A foreign eligible entity with a single owner electing to be disregarded as a separate entity.

7 If the eligible entity is created or organized in a foreign jurisdiction, provide the foreign country of organization ► .....

8 Election is to be effective beginning (month, day, year) (see instructions) . . . . . ►     /    /    

9 Name and title of contact person whom the IRS may call for more information	10 Contact person's telephone number
	( )

**Consent Statement and Signature(s) (see instructions)**

Under penalties of perjury, I (we) declare that I (we) consent to the election of the above-named entity to be classified as indicated above, and that I (we) have examined this consent statement, and to the best of my (our) knowledge and belief, it is true, correct, and complete. If I am an officer, manager, or member signing for all members of the entity, I further declare that I am authorized to execute this consent statement on their behalf.

[illegible]

## General Instructions

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

### What's New

- You are not required to sign the copy of Form 8832 filed with your tax return. See *Consent statement and signature(s)* on page 5.
- New questions on lines 2a and 2b highlight the general rule which limits an eligible entity's ability to change its classification by election again during the 60 months after the effective date of making an earlier entity classification election.
- All single-owner eligible entities electing either corporate or disregarded entity status must provide the name and identifying number of their owner on lines 4a and 4b. Previously this requirement applied only to single-owner eligible entities electing disregarded entity status.
- All eligible entities owned by one or more affiliated corporations that file a consolidated return must provide the name and employer identification number (EIN) of their parent corporation on lines 5a and 5b. Previously this requirement applied only to single-owner eligible entities electing disregarded entity status.
- All foreign eligible entities making an entity classification election, including those also organized under domestic law, must provide the name of the foreign country in which they are organized on line 7. Previously this requirement applied only to single-owner foreign eligible entities electing disregarded entity status.

### Purpose of Form

An eligible entity uses Form 8832 to elect how it will be classified for federal tax purposes, as a corporation, a partnership, or an entity disregarded as separate from its owner. An eligible entity is classified for federal tax purposes under the default rules described below unless it files Form 8832 or Form 2553, *Election by a Small Business Corporation*, to elect a classification or change its current classification. See *Who Must File* on page 4.



*A new eligible entity should not file Form 8832 if it will be using its default classification (see Default Rules below).*

**Eligible entity.** An eligible entity is a business entity that is not included in items 1, or 3 through 9, under the definition of **corporation** provided under **Definitions**.

Eligible entities include limited liability companies (LLCs), partnerships, and any foreign entity that is not identified as a corporation under Regulations section 301.7701-2(b)(8) (see item 3 below).

Generally, corporations are not eligible entities. However, the following types of corporations are treated as eligible entities:

1. An eligible entity that previously elected to be an association taxable as a corporation by filing Form 8832. An entity that elects to be classified as a corporation by filing Form 8832 can make another election to change its classification (see the *60-month limitation rule* discussed below in the instructions for lines 2a and 2b).
2. A foreign eligible entity that became an association taxable as a corporation under the foreign default rule described below.
3. A foreign corporation that is not identified as a corporation under Regulations section 301.7701-2(b)(8). If a foreign corporation is not identified on the list included in these regulations, it qualifies as an eligible entity. See the list of *Foreign Entities Classified as Corporations for Federal Tax Purposes* under this regulation on page 6. Refer to the regulations for any changes to the list made after these instructions were printed.

The IRS will use the information entered on this form to establish the entity's filing and reporting requirements for federal tax purposes.

### Default Rules

**Existing entity default rule.** Certain domestic and foreign entities that were in existence before January 1, 1997, and have an established federal tax classification generally do not need to make an election to continue that classification. If an existing entity decides to change its classification, it may do so subject to the 60-month limitation rule. See the instructions for lines 2a and 2b. See Regulations sections 301.7701-3(b)(3) and 301.7701-3(h)(2) for more details.

**Domestic default rule.** Unless an election is made on Form 8832, a domestic eligible entity is:

1. A partnership if it has two or more members.
2. Disregarded as an entity separate from its owner if it has a single owner.

A change in the number of members of an eligible entity classified as an **association** (defined below) does not affect the entity's classification. However, an eligible entity classified as a partnership will become a disregarded entity when the entity's membership is reduced to one member and a disregarded entity will be classified as a partnership when the entity has more than one member.

**Foreign default rule.** Unless an election is made on Form 8832, a foreign eligible entity is:

1. A partnership if it has two or more members and at least one member does not have limited liability.

2. An association taxable as a corporation if all members have limited liability.

3. Disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

### Definitions

**Association.** For purposes of this form, an association is an eligible entity taxable as a corporation by election or, for foreign eligible entities, under the default rules (see Regulations section 301.7701-3).

**Business entity.** A business entity is any entity recognized for federal tax purposes that is not properly classified as a trust under Regulations section 301.7701-4 or otherwise subject to special treatment under the Code regarding the entity's classification. See Regulations section 301.7701-2(a).

**Corporation.** For federal tax purposes, a corporation is any of the following:

1. A business entity organized under a federal or state statute, or under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic.
2. An association (as determined under Regulations section 301.7701-3).
3. A business entity organized under a state statute, if the statute describes or refers to the entity as a joint-stock company or joint-stock association.
4. An insurance company.
5. A state-chartered business entity conducting banking activities, if any of its deposits are insured under the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 et seq., or a similar federal statute.
6. A business entity wholly owned by a state or any political subdivision thereof, or a business entity wholly owned by a foreign government or any other entity described in Regulations section 1.892-2T.
7. A business entity that is taxable as a corporation under a provision of the Code other than section 7701(a)(3).
8. A foreign business entity listed on page 6. See Regulations section 301.7701-2(b)(8) for any exceptions and inclusions to items on this list and for any revisions made to this list since these instructions were printed.

9. An entity created or organized under the laws of more than one jurisdiction (business entities with multiple charters) if the entity is treated as a corporation with respect to any one of the jurisdictions. See Regulations section 301.7701-2(b)(9) for examples.

**Disregarded entity.** A disregarded entity is an eligible entity that is treated as an entity not separate from its single owner. Its separate existence will be ignored for federal tax purposes unless it elects corporate tax treatment.

**Limited liability.** A member of a foreign eligible entity has limited liability if the member has no personal liability for any debts of or claims against the entity by reason of being a member. This determination is based solely on the statute or law under which the entity is organized (and, if relevant, the entity's organizational documents). A member has personal liability if the creditors of the entity may seek satisfaction of all or any part of the debts or claims against the entity from the member as such. A member has personal liability even if the member makes an agreement under which another person (whether or not a member of the entity) assumes that liability or agrees to indemnify that member for that liability.

**Partnership.** A partnership is a business entity that has at least two members and is not a corporation as defined on page 3 under *Corporation*.

## Who Must File

File this form for an eligible entity that is one of the following:

- A domestic entity electing to be classified as an association taxable as a corporation.
- A domestic entity electing to change its current classification (even if it is currently classified under the default rule).
- A foreign entity that has more than one owner, all owners having limited liability, electing to be classified as a partnership.
- A foreign entity that has at least one owner that does not have limited liability, electing to be classified as an association taxable as a corporation.
- A foreign entity with a single owner having limited liability, electing to be an entity disregarded as an entity separate from its owner.
- A foreign entity electing to change its current classification (even if it is currently classified under the default rule).

Do not file this form for an eligible entity that is:

- tax-exempt under section 501(a);
- a real estate investment trust (REIT), as defined in section 856; or
- electing to be classified as an S corporation. An eligible entity that timely files Form 2553 to elect classification as an S corporation and meets all other requirements to qualify as an S corporation is deemed to have made an election under Regulations section 301.7701-3(c)(v) to be classified as an association taxable as a corporation.

All three of these entities are deemed to have made an election to be classified as an association.

## Effect of Election

The federal tax treatment of elective changes in classification as described in Regulations section 301.7701-3(g)(1) is summarized as follows:

- If an eligible entity classified as a partnership elects to be classified as an association, it is deemed that the partnership contributes all of its assets and liabilities to the association in exchange for stock in the association, and immediately thereafter, the partnership liquidates by distributing the stock of the association to its partners.
- If an eligible entity classified as an association elects to be classified as a partnership, it is deemed that the association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership.
- If an eligible entity classified as an association elects to be disregarded as an entity separate from its owner, it is deemed that the association distributes all of its assets and liabilities to its single owner in liquidation of the association.
- If an eligible entity that is disregarded as an entity separate from its owner elects to be classified as an association, the owner of the eligible entity is deemed to have contributed all of the assets and liabilities of the entity to the association in exchange for the stock of the association.

**Note.** For information on the federal tax consequences of elective changes in classification, see Regulations section 301.7701-3(g).

## When To File

An election specifying an eligible entity's classification cannot take effect more than 75 days prior to the date the election is filed, nor can it take effect later than 12 months after the date the election is filed.

**Late election relief.** A newly formed entity may be eligible for late election relief under Rev. Proc. 2002-59, 2002-39 I.R.B. 615 if:

- The entity failed to obtain its desired classification solely because Form 8832 was not timely filed,
- The due date for the entity's desired classification tax return (excluding extensions) for the tax year beginning with the entity's formation date has not passed, and
- The entity has reasonable cause for its failure to make a timely election.

To obtain relief, a newly formed entity must file Form 8832 on or before the due date of the first federal tax return

(excluding extensions) of the entity's desired classification. The entity must also write "FILED PURSUANT TO REV. PROC. 2002-59" at the top of the form. The entity must attach a statement to the form explaining why it failed to file a timely election. If Rev. Proc. 2002-59 does not apply, an entity may seek relief for a late entity election by requesting a private letter ruling and paying a user fee in accordance with Rev. Proc. 2006-1, 2006-1 I.R.B. 1 (or its successor).

## Where To File

File Form 8832 with the Internal Revenue Service Center, Ogden, UT 84201.

Attach a copy of Form 8832 to the entity's federal tax return for the tax year of the election. If the entity is not required to file a return for that year, a copy of its Form 8832 must be attached to the federal tax returns of all direct or indirect owners of the entity for the tax year of the owner that includes the date on which the election took effect. Failure to attach a copy of Form 8832 will not invalidate an otherwise valid election, but penalties may be assessed against persons who are required to, but do not, attach Form 8832.

Each member of the entity is required to file their return consistent with the entity election. Penalties apply to returns filed inconsistent with the entity's election.

## Acceptance or Nonacceptance of Election

The service center will notify the eligible entity at the address listed on Form 8832 if its election is accepted or not accepted. The entity should generally receive a determination on its election within 60 days after it has filed Form 8832.

Care should be exercised to ensure that the IRS receives the election. If the entity is not notified of acceptance or nonacceptance of its election within 60 days of the date of filing, take follow-up action by calling 1-800-829-0115, or by sending a letter to the Ogden Service Center to inquire about its status. Send any such letter by certified or registered mail via the U.S. Postal Service, or equivalent type of delivery by a designated private delivery service (see Notice 2004-83, 2004-52 I.R.B. 1030 (or its successor)).

If the IRS questions whether Form 8832 was filed, an acceptable proof of filing is:

- A certified or registered mail receipt (timely postmarked) from the U.S. Postal Service, or its equivalent from a designated private delivery service;
- Form 8832 with an accepted stamp;
- Form 8832 with a stamped IRS received date; or
- An IRS letter stating that Form 8832 has been accepted.



## Specific Instructions

**Name.** Enter the name of the eligible entity electing to be classified.

**Employer identification number (EIN).** Show the EIN of the eligible entity electing to be classified.

**Caution.** Do not put "Applied For" on this line.

**Note.** Any entity that has an EIN will retain that EIN even if its federal tax classification changes under Regulations section 301.7701-3.

If a disregarded entity's classification changes so that it becomes recognized as a partnership or association for federal tax purposes, and that entity had an EIN, then the entity must continue to use that EIN. If the entity did not already have its own EIN, then the entity must apply for an EIN and not use the identifying number of the single owner.

A foreign person that makes an election under Regulations section 301.7701-3(c) and (d) must also use its own taxpayer identifying number. See sections 6721 through 6724 for penalties that may apply for failure to supply taxpayer identifying numbers.

If the entity electing to be classified using Form 8832 does not have an EIN, it must apply for one on Form SS-4, Application for Employer Identification Number. If the filing of Form 8832 is the only reason the entity is applying for an EIN, check the "Other" box on line 9 of Form SS-4 and enter "Form 8832" to the right of that box. The entity must have received an EIN by the time Form 8832 is filed in order for the form to be processed. An election will not be accepted if the eligible entity does not provide an EIN. **Caution.** Do not apply for a new EIN for an existing entity that is changing its classification if the entity already has an EIN.

**Address.** Enter the address of the entity electing a classification. All correspondence regarding the acceptance or nonacceptance of the election will be sent to this address. Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the entity has a P.O. box, show the box number instead of the street address. If the electing entity receives its mail in care of a third party (such as an accountant or an attorney), enter on the street address line "C/O" followed by the third party's name and street address or P.O. box.

**Address change.** If the eligible entity has changed its address since filing Form SS-4 or the entity's most recently-filed return (including a change to an "in care of" address), check the box for an address change.

**Note.** If a change of address occurs after the later of the filing of Form SS-4 or the most recently-filed return, use Form 8822, Change of Address, to notify the IRS of the new address. A new address shown on Form 8832 will not update the entity's address of record with the IRS.

**Line 1.** Check box 1a if the entity is choosing a classification for the first time (i.e., the entity does not want to be classified under the applicable default classification). Do not file this form if the entity wants to be classified under the default rules.

Check box 1b if the entity is changing its current classification.

**Lines 2a and 2b. 60-month limitation rule.** Once an eligible entity makes an election to *change* its classification, the entity generally cannot change its classification by election again during the 60 months after the effective date of the election. However, the IRS may (by private letter ruling) permit the entity to change its classification by election within the 60-month period if more than 50% of the ownership interests in the entity, as of the effective date of the election, are owned by persons that did not own any interests in the entity on the effective date or the filing date of the entity's prior election.

**Note.** The 60-month limitation does not apply if the previous election was made by a *newly formed* eligible entity and was effective on the date of formation.

**Line 4.** If an eligible entity has only one owner, provide the name of its owner on line 4a and the owner's identifying number (social security number, or individual taxpayer identification number, or EIN) on line 4b. Enter "DE" if the owner is a disregarded entity that does not have an identifying number. If the owner is a foreign person or entity and does not have a U.S. identifying number, enter "none" on line 4b.

**Line 5.** If the eligible entity is owned by one or more members of an affiliated group of corporations that file a consolidated return, provide the name and EIN of the parent corporation.

**Line 6.** Check the appropriate box if you are changing a current classification (no matter how achieved), or are electing out of a default classification. Do not file this form if you fall within a default classification that is the desired classification for the new entity.

**Line 7.** If the entity making the election is created or organized in a foreign jurisdiction, enter the name of the foreign country in which it is organized. This information must be provided even if the entity is also organized under domestic law.

**Line 8.** Generally, the election will take effect on the date you enter on line 8 of this form, or on the date filed if no date is entered on line 8. An election specifying

an entity's classification for federal tax purposes can take effect no more than 75 days prior to the date the election is filed, nor can it take effect later than 12 months after the date on which the election is filed. If line 8 shows a date more than 75 days prior to the date on which the election is filed, the election will default to 75 days before the date it is filed. If line 8 shows an effective date more than 12 months from the filing date, the election will take effect 12 months after the date the election is filed.

**Consent statement and signature(s).** Form 8832 must be signed by:

1. Each member of the electing entity who is an owner at the time the election is filed; or

2. Any officer, manager, or member of the electing entity who is authorized (under local law or the organizational documents) to make the election. The elector represents to having such authorization under penalties of perjury.

If an election is to be effective for any period prior to the time it is filed, each person who was an owner between the date the election is to be effective and the date the election is filed, must sign.

If you need a continuation sheet or use a separate consent statement, attach it to Form 8832. The separate consent statement must contain the same information as shown on Form 8832.

**Note.** Do not sign the copy that is attached to your tax return.

## Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

**Recordkeeping** . . . . 1 hr., 49 min.

**Learning about the law or the form** . . . . 2 hr., 7 min.

**Preparing and sending the form to the IRS** . . . . 23 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224. Do not send the form to this address. Instead, see *Where To File* on page 4.

**Foreign Entities Classified as Corporations for Federal Tax Purposes:**

<b>American Samoa</b> —Corporation	<b>France</b> —Societe Anonyme	<b>Puerto Rico</b> —Corporation
<b>Argentina</b> —Sociedad Anonima	<b>Germany</b> —Aktiengesellschaft	<b>Romania</b> —Societe pe Actiuni
<b>Australia</b> —Public Limited Company	<b>Greece</b> —Anonymos Etairia	<b>Russia</b> —Otkrytoye Aktsionernoy Obshchestvo
<b>Austria</b> —Aktiengesellschaft	<b>Guam</b> —Corporation	<b>Saudi Arabia</b> —Sharikat Al-Mossahamah
<b>Barbados</b> —Limited Company	<b>Guatemala</b> —Sociedad Anonima	<b>Singapore</b> —Public Limited Company
<b>Belgium</b> —Societe Anonyme	<b>Guyana</b> —Public Limited Company	<b>Slovak Republic</b> —Akciova Spolocnost
<b>Belize</b> —Public Limited Company	<b>Honduras</b> —Sociedad Anonima	<b>Slovenia</b> —Delniska Druzba
<b>Bolivia</b> —Sociedad Anonima	<b>Hong Kong</b> —Public Limited Company	<b>South Africa</b> —Public Limited Company
<b>Brazil</b> —Sociedade Anonima	<b>Hungary</b> —Reszvenytarsasag	<b>Spain</b> —Sociedad Anonima
<b>Canada</b> —Corporation and Company	<b>Iceland</b> —Hlutafelag	<b>Surinam</b> —Naamloze Vennootschap
<b>Chile</b> —Sociedad Anonima	<b>India</b> —Public Limited Company	<b>Sweden</b> —Publika Aktiebolag
<b>People's Republic of China</b> —Gufen Youxian Gongsi	<b>Indonesia</b> —Perseroan Terbuka	<b>Switzerland</b> —Aktiengesellschaft
<b>Republic of China (Taiwan)</b> —Ku-fen Yu-hsien Kung-szu	<b>Ireland</b> —Public Limited Company	<b>Thailand</b> —Borisat Chamkad (Mahachon)
<b>Colombia</b> —Sociedad Anonima	<b>Israel</b> —Public Limited Company	<b>Trinidad and Tobago</b> —Limited Company
<b>Costa Rica</b> —Sociedad Anonima	<b>Italy</b> —Societa per Azioni	<b>Tunisia</b> —Societe Anonyme
<b>Cyprus</b> —Public Limited Company	<b>Jamaica</b> —Public Limited Company	<b>Turkey</b> —Anonim Sirket
<b>Czech Republic</b> —Akciova Spolocnost	<b>Japan</b> —Kabushiki Kaisha	<b>Ukraine</b> —Aktsionerne Tovaristvo Vidkritogo Tipu
<b>Denmark</b> —Aktieselskab	<b>Kazakstan</b> —Ashyk Aktsionerlik Kogham	<b>United Kingdom</b> —Public Limited Company
<b>Ecuador</b> —Sociedad Anonima or Compania Anonima	<b>Republic of Korea</b> —Chusik Hoesa	<b>United States Virgin Islands</b> —Corporation
<b>Egypt</b> —Sharikat Al-Mossahamah	<b>Latvia</b> —Akciju Sabiedriba	<b>Uruguay</b> —Sociedad Anonima
<b>El Salvador</b> —Sociedad Anonima	<b>Liberia</b> —Corporation	<b>Venezuela</b> —Sociedad Anonima or Compania Anonima
<b>Estonia</b> —Aktsiaselts	<b>Liechtenstein</b> —Aktiengesellschaft	
<b>European Economic Area/European Union</b> —Societas Europaea	<b>Lithuania</b> —Akcine Bendroves	
<b>Finland</b> —Julkinen Osakeyhtio/ Publikt Aktiebolag	<b>Luxembourg</b> —Societe Anonyme	
	<b>Malaysia</b> —Berhad	
	<b>Malta</b> —Public Limited Company	
	<b>Mexico</b> —Sociedad Anonima	
	<b>Morocco</b> —Societe Anonyme	
	<b>Netherlands</b> —Naamloze Vennootschap	
	<b>New Zealand</b> —Limited Company	
	<b>Nicaragua</b> —Compania Anonima	
	<b>Nigeria</b> —Public Limited Company	
	<b>Northern Mariana Islands</b> —Corporation	
	<b>Norway</b> —Allment Aksjeselskap	
	<b>Pakistan</b> —Public Limited Company	
	<b>Panama</b> —Sociedad Anonima	
	<b>Paraguay</b> —Sociedad Anonima	
	<b>Peru</b> —Sociedad Anonima	
	<b>Philippines</b> —Stock Corporation	
	<b>Poland</b> —Spolka Akcyjna	
	<b>Portugal</b> —Sociedade Anonima	



See Regulations section 301.7701-2(b)(8) for any exceptions and inclusions to items on this list and for any revisions made to this list since these instructions were printed.



## Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)

OMB No. 1545-1354

► **Attach to your tax return.**

Attach a separate Form 8833 for each treaty-based return position taken. Failure to disclose a treaty-based return position may result in a penalty of \$1,000 (\$10,000 in the case of a C corporation) (see section 6712).

Name

U.S. taxpayer identifying number

**Address in country of residence**

Address in the United States

Check one or both of the following boxes as applicable:

- The taxpayer is disclosing a treaty-based return position as required by section 6114 . . . . . ► ☐
- The taxpayer is a dual-resident taxpayer and is disclosing a treaty-based return position as required by Regulations section 301.7701(b)-7 . . . . . ► ☐

Check this box if the taxpayer is a U.S. citizen or resident or is incorporated in the United States ☐

- |  |  |
|--|--|
| <b>1</b> Enter the specific treaty position relied on:<br><b>a</b> Treaty country .....<br><b>b</b> Article(s) .....   | <b>3</b> Name, identifying number (if available to the taxpayer), and address in the United States of the payor of the income (if fixed or determinable annual or periodical). See instructions. |
| <b>2</b> List the Internal Revenue Code provision(s) overruled or modified by the treaty-based return position   |  |
| <b>4</b> List the provision(s) of the limitation on benefits article (if any) in the treaty that the taxpayer relies on to prevent application of that article ► |  |

- 5 Explain the treaty-based return position taken. Include a brief summary of the facts on which it is based. Also, list the nature and amount (or a reasonable estimate) of gross receipts, each separate gross payment, each separate gross income item, or other item (as applicable) for which the treaty benefit is claimed .....

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

## General Instructions

### What's New

Regulations section 301.6114-1 was recently amended to waive reporting under section 6114 in certain circumstances where payment is properly reported on Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. However, this waiver does not apply to the extent reporting is specifically required in these instructions. For more information, see *Exceptions from reporting* below.

### Purpose of Form

Form 8833 must be used by taxpayers to make the treaty-based return position disclosure required by section 6114. The form must also be used by dual-resident taxpayers (defined on this page) to make the treaty-based return position disclosure required by Regulations section 301.7701(b)-7. A separate form is required for each treaty-based return position taken by the taxpayer.

### Who Must File

Generally, a taxpayer who takes a treaty-based return position must disclose that position. See *Exceptions from reporting* below.

A taxpayer takes a **treaty-based return position** by maintaining that a treaty of the United States overrules or modifies a provision of the Internal Revenue Code and thereby causes (or potentially causes) a reduction of tax on the taxpayer's tax return. For these purposes, a treaty includes, but is not limited to, an income tax treaty; estate and gift tax treaty; or friendship, commerce, and navigation treaty. See Regulations sections 301.6114-1(a) and (b) for more details and for examples of treaty-based return positions taken by taxpayers for which they must make disclosure.

**Exceptions from reporting.** See Regulations section 301.6114-1(c) for examples of treaty-based return positions taken by taxpayers for which they are not required to make disclosure.

**Tax years ending after December 31, 2004.** In general, for tax years ending after December 31, 2004, disclosure of a treaty-based return position is not required for amounts that are:

1. Reported on Form 1042-S, and
2. Received:
  - a. By a related party from a reporting corporation within the meaning of section 6038A (relating to information returns on Form 5472 filed by U.S. corporations that are 25-percent owned by a foreign person),

b. By a beneficial owner that is a direct account holder of a U.S. financial institution or qualified intermediary, or a direct partner, beneficiary or owner of a withholding foreign partnership or trust, from that U.S. financial institution, qualified intermediary, or withholding foreign partnership or trust, or

c. By a taxpayer that is not an individual or a State, if the amounts are not received through an account with an intermediary or with respect to an interest in a partnership or a simple or grantor trust, and if the amounts do not total more than \$500,000 for the tax year.

**Tax years beginning after December 31, 2005.** Regulations sections 301.6114-1(c)(6)(ii), (7)(iv), and (8)(ii) provide that the exceptions described earlier do not apply to any amounts for which a treaty-based return disclosure is specifically required under these instructions.

The following are amounts for which a treaty-based return disclosure on Form 8833 is specifically required for tax years beginning after December 31, 2005.

- Amounts described in paragraph 2a or 2c earlier that are received by a corporation that is a resident under the domestic law of both the United States and a foreign treaty jurisdiction.
- Amounts described in paragraph 2a or 2c earlier that are received by a corporation that is a resident of both the jurisdiction whose treaty is invoked and another foreign jurisdiction that has an income tax treaty with that treaty jurisdiction. See Revenue Ruling 2004-76, 2004-31 I.R.B. 111, available at [www.irs.gov/pub/irs-irbs/irb04-31.pdf](http://www.irs.gov/pub/irs-irbs/irb04-31.pdf).
- Amounts described in paragraph 2a or 2c earlier that are received by a foreign collective investment vehicle that is a contractual arrangement and not a person under foreign law. See Example 7 of Regulations section 1.894-1(d)(5).
- Amounts described in paragraph 2a or 2c earlier that are received by a foreign "interest holder" in a "domestic reverse hybrid entity," as those terms are used in Regulations section 1.894-1(d)(2).

**Dual-resident taxpayer.** An alien individual is a **dual-resident taxpayer** if that individual is considered to be a resident of both the United States and another country under each country's tax laws. If the income tax treaty between the United States and the other country contains a provision for resolution of conflicting claims of residence by the United States and its treaty partner, and the individual determines that he or she is a resident of the foreign country for treaty purposes, the individual may claim treaty benefits as a resident of that country.

If you are a dual-resident taxpayer and you choose to claim treaty benefits, you are treated as a nonresident alien in figuring your U.S. income tax liability for the part of the tax year you are considered a dual-resident taxpayer. If this is the case, attach Form 8833 to Form 1040NR, U.S. Nonresident Alien Income Tax Return, or Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents. Form 1040NR or Form 1040NR-EZ must be timely filed (including extensions). For purposes other than figuring your U.S. income tax liability, you are treated as a U.S. resident (see Regulations section 301.7701(b)-7(a)(3)).

### When and Where To File

Attach Form 8833 to your tax return (i.e., Form 1040NR, Form 1040NR-EZ, Form 1120-F, etc.). If you would not otherwise be required to file a tax return, you must file one at the IRS Service Center where you would normally file a return to make the treaty-based return position disclosure under section 6114 (see Regulations section 301.6114-1(a)(1)(ii)) or under Regulations section 301.7701(b)-7.

## Specific Instructions

### U.S. Taxpayer Identifying Number

The identifying number of an individual is his or her social security number or individual taxpayer identification number. The identifying number of all others is their employer identification number.

For more information about identifying numbers, see the instructions for the tax return with which this form is filed.

### Address in Country of Residence

Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code. Please **do not** abbreviate the country name.

### Line 3

Income that is fixed or determinable annual or periodical includes interest (other than original issue discount), dividends, rents, premiums, annuities, salaries, wages, and other compensation. For more information (including other items of income that are fixed or determinable annual or periodical), nonresident aliens and dual-resident taxpayers filing as nonresident aliens should see section 871(a) and Regulations section 1.871-7(b) and (c). Foreign corporations should see section 881(a) and Regulations section 1.881-2(b) and (c).

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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 burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

**Recordkeeping** . . . . 3 hr., 7 min.

**Learning about the law or the form** . . . . 1 hr., 35 min.

**Preparing and sending the form to the IRS** . . . 1 hr., 43 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

**Closer Connection Exception Statement for Aliens**

OMB No. 1545-0074

Department of the Treasury  
Internal Revenue Service

▶ Attach to Form 1040NR or Form 1040NR-EZ.

For the year January 1—December 31, 2006, or other tax year  
, 2006, and ending**2006**Attachment  
Sequence No. **101**

Your first name and initial

Last name

Your U.S. taxpayer identification number, if any

**Fill in your  
addresses only if  
you are filing this  
form by itself and  
not with your U.S.  
tax return**

Address in country of residence

Address in the United States

**Part I General Information**

- 1 Type of U.S. visa (for example, F, J, M, etc.) and date you entered the United States ▶ .....
- 2 Of what country or countries were you a citizen during the tax year? .....
- 3 What country or countries issued you a passport? .....
- 4 Enter your passport number(s) ▶ .....
- 5 Enter the number of days you were present in the United States during:  
2006 \_\_\_\_\_ 2005 \_\_\_\_\_ 2004 \_\_\_\_\_
- 6 During 2006, did you apply for, or take other affirmative steps to apply for, lawful permanent resident status in the United States or have an application pending to change your status to that of a lawful permanent resident of the United States (see instructions)? ☐ Yes ☐ No

**Part II Closer Connection to One Foreign Country**

- 7 Where was your tax home during 2006? .....
- 8 Enter the name of the foreign country to which you had a closer connection than to the United States during 2006  
▶ .....
- Next, complete Part IV on the back.

**Part III Closer Connection to Two Foreign Countries**

- 9 Where was your tax home on January 1, 2006? .....
- 10 After changing your tax home from its location on January 1, 2006, where was your tax home for the remainder of 2006?  
.....
- 11 Did you have a closer connection to each foreign country listed on lines 9 and 10 than to the United States for the period during which you maintained a tax home in that foreign country? ☐ Yes ☐ No  
If "No," attach an explanation.
- 12 Were you subject to tax as a resident under the internal laws of (a) either of the countries listed on lines 9 and 10 during all of 2006 or (b) both of the countries listed on lines 9 and 10 for the period during which you maintained a tax home in each country? ☐ Yes ☐ No
- 13 Have you filed or will you file tax returns for 2006 in the countries listed on lines 9 and 10? ☐ Yes ☐ No  
If "Yes" to either line 12 or line 13, attach verification.  
If "No" to either line 12 or line 13, please explain ▶ .....

Next, complete Part IV on the back.

**Part IV Significant Contacts With Foreign Country or Countries in 2006**

- 14 Where was your regular or principal permanent home located during 2006 (see instructions)? .....
- 15 If you had more than one permanent home available to you at all times during 2006, list the location of each and explain ► .....
- 16 Where was your family located? .....
- 17 Where was your automobile(s) located? .....
- 18 Where was your automobile(s) registered? .....
- 19 Where were your personal belongings, furniture, etc., located? .....
- 20 Where was the bank(s) with which you conducted your routine personal banking activities located?  
     a ..... c .....  
     b ..... d .....
- 21 Did you conduct business activities in a location other than your tax home? . . . . . ☐ Yes ☐ No  
     If "Yes," where? .....
- 22a Where was your driver's license issued? .....
- b If you hold a second driver's license, where was it issued? .....
- 23 Where were you registered to vote? .....
- 24 When completing official documents, forms, etc., what country do you list as your residence? .....
- 25 Have you ever completed:  
     a Form W-8 or Form W-8BEN (relating to foreign status)? . . . . . ☐ Yes ☐ No  
     b Form W-9, Request for Taxpayer Identification Number and Certification? . . . . . ☐ Yes ☐ No  
     c Form 1078, Certificate of Alien Claiming Residence in the United States? . . . . . ☐ Yes ☐ No  
     d Any other U.S. official forms? If "Yes," indicate the form(s) ► . . . . . ☐ Yes ☐ No
- 26 In what country/countries did you keep your personal, financial, and legal documents? .....
- 27 From what country/countries did you derive the majority of your 2006 income? .....
- 28 Did you have any income from U.S. sources? . . . . . ☐ Yes ☐ No  
     If "Yes," what type? .....
- 29 In what country/countries were your investments located (see instructions)? .....
- 30 Did you qualify for any type of government-sponsored "national" health plan? . . . . . ☐ Yes ☐ No  
     If "Yes," in what country? .....
- If "No," please explain ► .....
- If you have any other information to substantiate your closer connection to a country other than the United States or you wish to explain in more detail any of your responses to lines 14 through 30, attach a statement to this form.

**Sign here  
only if you  
are filing  
this form by  
itself and  
not with  
your U.S.  
tax return**

Under penalties of perjury, I declare that I have examined this form and the accompanying attachments, and to the best of my knowledge and belief, they are true, correct, and complete.

► \_\_\_\_\_  
Your signature

► \_\_\_\_\_  
Date

## General Instructions

Section references are to the U.S. Internal Revenue Code, unless otherwise specified.

### What's New

We deleted two questions that were on Form 8840 in previous years. These were the questions relating to social, cultural, religious, professional, and political organizations in which you participated and charitable organizations to which you contributed. However, the information elicited by these questions is still material in determining whether you are a resident of the United States. Therefore, you are required to keep this information in your books and records along with any other relevant information so that it will be readily available for inspection if the IRS examines your Form 8840.

### Purpose of Form

Use Form 8840 to claim the closer connection to a foreign country(ies) exception to the substantial presence test. The exception is described later and in Regulations section 301.7701(b)-2.

**Note:** You are not eligible for the closer connection exception if any of the following apply.

- You were present in the United States 183 days or more in calendar year 2006.
- You are a lawful permanent resident of the United States (that is, you are a green card holder).
- You have applied for, or taken other affirmative steps to apply for, a green card; or have an application pending to change your status to that of a lawful permanent resident of the United States.

Even if you are not eligible for the closer connection exception, you may qualify for nonresident status by reason of a treaty. See the instructions for line 6 for more details.

### Who Must File

If you are an alien individual and you meet the closer connection exception to the substantial presence test, you must file Form 8840 with the IRS to establish your claim that you are a nonresident of the United States by reason of that exception.

For more details on the substantial presence test and the closer connection exception, see Pub. 519, U.S. Tax Guide for Aliens.

**Note:** You can download forms and publications from the IRS website at [www.irs.gov](http://www.irs.gov).

## Substantial Presence Test

You are considered a U.S. resident if you meet the substantial presence test for 2006. You meet this test if you were physically present in the United States for at least:

- 31 days during 2006 and
- 183 days during the period 2006, 2005, and 2004, counting all the days of physical presence in 2006 but only 1/3 the number of days of presence in 2005 and only 1/6 the number of days in 2004.

**Days of presence in the United States.** Generally, you are treated as being present in the United States on any day that you are physically present in the country at any time during the day. However, you do not count the following days of presence in the United States for purposes of the substantial presence test.

1. Days you regularly commuted to work in the United States from a residence in Canada or Mexico.
  2. Days you were in the United States for less than 24 hours when you were traveling between two places outside the United States.
  3. Days you were temporarily in the United States as a regular crew member of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States unless you otherwise engaged in trade or business on such a day.
  4. Days you were unable to leave the United States because of a medical condition or medical problem that arose while you were in the United States.
  5. Days you were an exempt individual.
- In general, an exempt individual is a (a) foreign government-related individual, (b) teacher or trainee, (c) student, or (d) professional athlete competing in a charitable sports event. For more details, see Pub. 519.

**Note:** If you qualify to exclude days of presence in the United States because you were an exempt individual (other than a foreign government-related individual) or because of a medical condition or medical problem (see item 4 above), you must file Form 8843, Statement for Exempt Individuals and Individuals With a Medical Condition.

### Closer Connection Exception

Even though you would otherwise meet the substantial presence test, you will not be treated as a U.S. resident for 2006 if:

- You were present in the United States for fewer than 183 days during 2006,
- You establish that during 2006, you had a tax home in a foreign country, and

- You establish that during 2006, you had a closer connection to one foreign country in which you had a tax home than to the United States, unless you had a closer connection to two foreign countries.

### Closer Connection to Two Foreign Countries

You may demonstrate that you have a closer connection to two foreign countries (but not more than two) if all five of the following apply.

1. You maintained a tax home as of January 1, 2006, in one foreign country.
2. You changed your tax home during 2006 to a second foreign country.
3. You continued to maintain your tax home in the second foreign country for the rest of 2006.
4. You had a closer connection to each foreign country than to the United States for the period during which you maintained a tax home in that foreign country.
5. You are subject to tax as a resident under the tax laws of either foreign country for all of 2006 or subject to tax as a resident in both foreign countries for the period during which you maintained a tax home in each foreign country.

### Tax Home

Your tax home is your main place of business, employment, or post of duty regardless of where you maintain your family home. If you do not have a regular or main place of business because of the nature of your work, then your tax home is the place where you regularly live. If you do not fit either of these categories, you are considered an itinerant and your tax home is wherever you work.

### Establishing a Closer Connection

You will be considered to have a closer connection to a foreign country than to the United States if you or the IRS establishes that you have maintained more significant contacts with the foreign country than with the United States.

### When and Where To File

If you are filing a 2006 Form 1040NR or Form 1040NR-EZ, attach Form 8840 to it. Mail your tax return by the due date (including extensions) to the address shown in your tax return instructions.

If you do not have to file a 2006 tax return, mail Form 8840 to the Internal Revenue Service Center, Austin, TX 73301-0215 by the due date (including extensions) for filing Form 1040NR or Form 1040NR-EZ.

## Penalty for Not Filing Form 8840

If you do not timely file Form 8840, you will not be eligible to claim the closer connection exception and may be treated as a U.S. resident.

You will not be penalized if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

## Specific Instructions

### Line 6

If you checked the "Yes" box on line 6, do not file Form 8840. You are not eligible for the closer connection exception. However, you may qualify for nonresident status by reason of a treaty. See Pub. 519 for details. If so, file Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b), with your Form 1040NR or Form 1040NR-EZ.

### Line 14

A "permanent home" is a dwelling unit (whether owned or rented, and whether a house, an apartment, or a furnished room) that is available at all times, continuously and not solely for short stays.

### Line 29

For stocks and bonds, indicate the country of origin of the stock company or debtor. For example, if you own shares of a U.S. publicly traded corporation, the investment is considered located in the United States, even though the shares of stock are stored in a safe deposit box in a foreign country.

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**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Section 7701(b) and its regulations require that you give us the information. We need it to determine if you meet the closer connection exception to the substantial presence test.

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 average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

**Consent To Extend the Time To Assess the Branch Profits  
Tax Under Regulations Sections 1.884-2(a) and (c)**

OMB No. 1545-1407

▶ **Attach to the corporation's income tax return.**

Name of consenting corporation

Employer identification number

Check the box in item A or B below to indicate the reason for filing Form 8848.

- A** If the foreign corporation is filing this form because it has completely terminated all of its U.S. trade or business during the tax year, check here ☐ **▶**
- Enter the year of complete termination **▶** \_\_\_\_\_
- B** If the domestic transferee corporation is filing this form because U.S. assets have been transferred to it from a foreign corporation in a section 381(a) transaction during the tax year, check here ☐ **▶**
- Enter the name, address, and employer identification number of the foreign transferor \_\_\_\_\_
  - Enter the date of transfer **▶** \_\_\_\_\_

The corporation named above and the IRS, pursuant to the regulations under section 884, consent and agree to the following:

- 1** Any branch profits tax due (relating to the complete termination described in **item A** above, or the section 381(a) transaction described in **item B** above) on any income tax return made by or for the above taxpayer for the tax year ended \_\_\_\_\_, \_\_\_\_\_, may be assessed at any time on or before \_\_\_\_\_, \_\_\_\_\_ (expiration date).

**Note:** You must consent to extend the time to assess the tax to a date not earlier than the close of the 6th tax year following the tax year during which the complete termination or section 381(a) transaction occurred.

- 2** This consent establishes an extended period for assessing the branch profits tax. The expiration of the extended period may be suspended or otherwise affected by the operation of law in the same manner as the original period. For example, if a notice of deficiency in tax covered by this consent is issued, the period for assessing tax will not end prior to the end of the suspension period provided for by section 6503(a), plus any time that remains in the assessment period, as extended, at the time the suspension takes effect. Under no circumstances will this consent reduce the period of time otherwise provided by law for making an assessment.
- 3** The consenting taxpayer may file a claim for credit or refund for the tax assessed because of this consent within 6 months after the period ends for assessing tax established by this consent.
- 4** Any deficiency assessment covered by this consent will be limited to any branch profits tax due relating to the complete termination described in **item A** above or the section 381(a) transaction described in **item B** above, including any consequential changes to other items based on that adjustment.
- 5** Complete only for domestic transferee corporations filing Form 8848 under **item B** above.

**Note:** Completing this item satisfies the requirement to attach Form 2045 outlined in Regulations section 1.884-2(c)(2)(iii).

In consideration of the Commissioner of Internal Revenue not issuing a notice of deficiency to and making an assessment against the above-named foreign transferor, the undersigned, as transferee of assets received from the above-named foreign transferor, assumes and agrees to pay the amounts of any and all Federal income or profits taxes finally determined or adjudged as due and payable by such transferor for the tax years ended \_\_\_\_\_, to the extent of the liability at law or in equity as transferee within the meaning of section 6901 of the Internal Revenue Code and corresponding provisions of Internal Revenue laws.

Further: The undersigned agrees, in the absence of prior written consent of the Commissioner of Internal Revenue, not to sell, transfer, or assign without adequate consideration, all or any substantial portion of its assets; and

Further: The undersigned has, by resolution of its board of directors, been authorized to enter into this agreement and there is attached a copy of the minutes of its board of directors evidencing the authorization and that the terms of this agreement have been included in its corporate minutes.

Under penalties of perjury, I declare that I have examined this consent, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

**Corporate  
Officer's  
Signature** **▶**

(Title)

(Date signed)



## Instructions

### Who Must File

- A foreign corporation must file Form 8848 if it has completely terminated all of its U.S. trade or business according to Temporary Regulations section 1.884-2T(a) during the tax year.
- A domestic transferee corporation must file Form 8848 if U.S. assets have been transferred to it from a foreign corporation in a transaction described in section 381(a), if the foreign corporation was engaged (or deemed engaged) in the conduct of a U.S. trade or business immediately prior to the section 381(a) transaction. See Regulations section 1.884-2(c) and Temporary Regulations section 1.884-2T(c).

### When To File

Form 8848 must be filed on or before the due date (including extensions) prescribed for filing the corporation's income tax return. Attach Form 8848 to the corporation's return for the tax year during which the complete termination or section 381(a) transaction occurred.

If the corporation timely filed its return for the tax year during which the complete termination or section 381(a) transaction occurred without executing a consent to extend the time to assess the branch profits tax under Regulations sections 1.884-2(a) and (c), the corporation may still execute the consent by filing an amended return within 6 months of the due date of the original return (excluding extensions). Attach Form 8848 to the amended return and write "Filed pursuant to section 301.9100-2" at the top of Form 8848. File the amended return at the same address the original return was filed.

### Signature

Form 8848 must be signed by the person authorized to sign the income tax returns for the corporation (including an agent authorized to do so under a general or specific power of attorney). If an agent signs for the corporation, include a copy of the power of attorney with Form 8848.

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

**Recordkeeping** . . . . . 3 hr., 35 min.  
**Learning about the law or the form** . . . . . 1 hr.  
**Preparing and sending the form to the IRS** . . . . . 1 hr., 6 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.



Form **8858**

(December 2004)

Department of the Treasury  
Internal Revenue Service**Information Return of U.S. Persons With  
Respect To Foreign Disregarded Entities**

▶ See separate instructions.

OMB No. 1545-1910

Attachment  
Sequence No. **140**

Information furnished for the foreign disregarded entity's annual accounting period (see instructions) beginning , 20 , and ending , 20

Name of person filing this return

Filer's identifying number

Number, street, and room or suite no. (or P.O. box number if mail is not delivered to street address)

City or town, state, and ZIP code

Filer's tax year beginning , 20 , and ending , 20

**Important:** Fill in all applicable lines and schedules. All information must be in English. All amounts must be stated in U.S. dollars unless otherwise indicated.

<b>1a</b> Name and address of foreign disregarded entity		<b>b</b> U.S. identifying number, if any	
<b>c</b> Country(ies) under whose laws organized and entity type under local tax law		<b>d</b> Date(s) of organization	<b>e</b> Effective date as foreign disregarded entity
<b>f</b> If benefits under a U.S. tax treaty were claimed with respect to income of the foreign disregarded entity, enter the treaty and article number	<b>g</b> Country in which principal business activity is conducted	<b>h</b> Principal business activity	<b>i</b> Functional currency

**2** Provide the following information for the foreign disregarded entity's accounting period stated above.

<b>a</b> Name, address, and identifying number of branch office or agent (if any) in the United States	<b>b</b> Name and address (including corporate department, if applicable) of person(s) with custody of the books and records of the foreign disregarded entity, and the location of such books and records, if different
--	--

**3** For the tax owner of the foreign disregarded entity (if different from the filer) provide the following:

<b>a</b> Name and address	<b>b</b> Annual accounting period covered by the return (see instructions)	<b>c</b> U.S. identifying number, if any
	<b>d</b> Country under whose laws organized	<b>e</b> Functional currency

**4** For the direct owner of the foreign disregarded entity (if different from the tax owner) provide the following:

<b>a</b> Name and address	<b>b</b> Country under whose laws organized	<b>c</b> U.S. identifying number, if any
		<b>d</b> Functional currency

**5** Attach an organizational chart that identifies the name, placement, percentage of ownership, tax classification, and country of organization of all entities in the chain of ownership between the tax owner and the foreign disregarded entity, and the chain of ownership between the foreign disregarded entity and each entity in which the foreign disregarded entity has a 10% or more direct or indirect interest. See instructions.

**Schedule C Income Statement** (see instructions)

**Important:** Report all information in functional currency in accordance with U.S. GAAP. Also, report each amount in U.S. dollars translated from functional currency (using GAAP translation rules or the average exchange rate determined under section 989(b)). If the functional currency is the U.S. dollar, complete only the U.S. Dollars column. See instructions for special rules for foreign disregarded entities that use DASTM.

If you are using the average exchange rate (determined under section 989(b)), check the following box . . . . ☐

	Functional Currency	U.S. Dollars
<b>1</b> Gross receipts or sales (net of returns and allowances) . . . . .	<b>1</b>	
<b>2</b> Cost of goods sold . . . . .	<b>2</b>	
<b>3</b> Gross profit (subtract line 2 from line 1) . . . . .	<b>3</b>	
<b>4</b> Other income . . . . .	<b>4</b>	
<b>5</b> Total income (add lines 3 and 4) . . . . .	<b>5</b>	
<b>6</b> Total deductions . . . . .	<b>6</b>	
<b>7</b> Other adjustments . . . . .	<b>7</b>	
<b>8</b> Net income (loss) per books . . . . .	<b>8</b>	

**Schedule C-1 Section 987 Gain or Loss Information**

	(a) Amount stated in functional currency of foreign disregarded entity	(b) Amount stated in functional currency of recipient
1 Remittances from the foreign disregarded entity . . . . .	1	
2 Section 987 gain (loss) of recipient . . . . .	2	
		Yes No
3 Were all remittances from the foreign disregarded entity treated as made to the direct owner? . . . . .		
4 Did the tax owner change its method of accounting for section 987 gain or loss with respect to remittances from the foreign disregarded entity during the tax year? . . . . .		

**Schedule F Balance Sheet**

**Important:** Report all amounts in U.S. dollars computed in functional currency and translated into U.S. dollars in accordance with U.S. GAAP. See instructions for an exception for foreign disregarded entities that use DASTM.

Assets		(a) Beginning of annual accounting period	(b) End of annual accounting period
1 Cash and other current assets . . . . .	1		
2 Other assets . . . . .	2		
3 Total assets . . . . .	3		
Liabilities and Owner's Equity			
4 Liabilities. . . . .	4		
5 Owner's equity . . . . .	5		
6 Total liabilities and owner's equity . . . . .	6		

**Schedule G Other Information**

	Yes	No
1 During the tax year, did the foreign disregarded entity own an interest in any trust? . . . . .		
2 During the tax year, did the foreign disregarded entity own at least a 10% interest, directly or indirectly, in any foreign partnership? . . . . .		
3 Answer the following question only if the foreign disregarded entity made its election to be treated as disregarded from its owner during the tax year: Did the tax owner claim a loss with respect to stock or debt of the foreign disregarded entity as a result of the election? . . . . .		
4 Answer the following question only if the foreign disregarded entity is owned directly or indirectly by a domestic corporation and the foreign disregarded entity incurred a net operating loss for the tax year: Is the foreign disregarded entity a separate unit as defined in Regulations sections 1.1503-2(c)(3) and (4)? (If yes, see the instructions) . . . . .		
5 Answer the following question only if the tax owner of the foreign disregarded entity is a controlled foreign corporation (CFC): Were there any intracompany transactions between the foreign disregarded entity and the CFC or any other branch of the CFC during the tax year, in which the foreign disregarded entity acted as a manufacturing, selling, or purchasing branch? . . . . .		

**Schedule H Current Earnings and Profits or Taxable Income** (see instructions)

**Important:** Enter the amounts on lines 1 through 6 in functional currency.

1 Current year net income or (loss) per foreign books of account . . . . .	1	
2 Total net additions . . . . .	2	
3 Total net subtractions . . . . .	3	
4 Current earnings and profits (or taxable income—see instructions) (line 1 plus line 2 minus line 3) . . . . .	4	
5 DASTM gain or loss (if applicable) . . . . .	5	
6 Combine lines 4 and 5 . . . . .	6	
7 Current earnings and profits (or taxable income) in U.S. dollars (line 6 translated at the average exchange rate determined under section 989(b) and the related regulations (see instructions)) . . . . .	7	
Enter exchange rate used for line 7 ►		



**Return of U.S. Persons With Respect to  
Certain Foreign Partnerships**

OMB No. 1545-1668

**2006**Department of the Treasury  
Internal Revenue Service▶ **Attach to your tax return. See separate instructions.**Information furnished for the foreign partnership's tax year  
beginning , 2006, and ending , 20Attachment  
Sequence No. **118**

Name of person filing this return

Filer's identifying number

Filer's address (if you are not filing this form with your tax return)

A Category of filer (see Categories of Filers in the instructions and check applicable box(es)):

1 ☐ 2 ☐ 3 ☐ 4 ☐

B Filer's tax year beginning , 20 , and ending , 20

C Filer's share of liabilities: Nonrecourse \$ Qualified nonrecourse financing \$ Other \$

D If filer is a member of a consolidated group but not the parent, enter the following information about the parent:

Name

EIN

Address

E Information about certain other partners (see instructions)

(1) Name	(2) Address	(3) Identifying number	(4) Check applicable box(es)		
			Category 1	Category 2	Constructive owner

F1 Name and address of foreign partnership

2 EIN (if any)

3 Country under whose laws organized

4 Date of organization	5 Principal place of business	6 Principal business activity code number	7 Principal business activity	8a Functional currency	8b Exchange rate (see instr.)

G Provide the following information for the foreign partnership's tax year:

1 Name, address, and identifying number of agent (if any) in the United States	2 Check if the foreign partnership must file: <input type="checkbox"/> Form 1042 <input type="checkbox"/> Form 8804 <input type="checkbox"/> Form 1065 or 1065-B Service Center where Form 1065 or 1065-B is filed:
3 Name and address of foreign partnership's agent in country of organization, if any	4 Name and address of person(s) with custody of the books and records of the foreign partnership, and the location of such books and records, if different

5 Were any special allocations made by the foreign partnership? ▶ ☐ Yes ☐ No

6 Enter the number of Forms 8858, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities, attached to this return (see instructions). ▶

7 How is this partnership classified under the law of the country in which it is organized? ▶

8 Did the partnership own any separate units within the meaning of Regulations section 1.1503-2(c)(3) or (4)? ▶ ☐ Yes ☐ No

9 Does this partnership meet both of the following requirements?

- The partnership's total receipts for the tax year were less than \$250,000 and
  - The value of the partnership's total assets at the end of the tax year was less than \$600,000.
- If "Yes," do not complete Schedules L, M-1, and M-2. } ▶ ☐ Yes ☐ No

Sign Here  
Only If You  
Are Filing  
This Form  
Separately  
and Not With  
Your Tax  
Return

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.

▶ Signature of general partner or limited liability company member

▶ Date

Paid Preparer  
Sign and  
Complete  
Only If Form  
is Filed  
Separately.Preparer's  
signature ▶

Date

Check if  
self-employed ▶ ☐

Preparer's SSN or PTIN

Firm's name (or  
yours if self-employed),  
address, and ZIP code ▶EIN ▶  
Phone no. ( )

**Schedule A**

**Constructive Ownership of Partnership Interest.** Check the boxes that apply to the filer. If you check box **b**, enter the name, address, and U.S. taxpayer identifying number (if any) of the person(s) whose interest you constructively own. See instructions.

a ☐ Owns a direct interestb ☐ Owns a constructive interest

Name	Address	Identifying number (if any)	Check if foreign person	Check if direct partner

**Schedule A-1 Certain Partners of Foreign Partnership** (see instructions)

Name	Address	Identifying number (if any)	Check if foreign person

Does the partnership have any other foreign person as a direct partner? ☐ Yes ☐ No

**Schedule A-2**

**Affiliation Schedule.** List all partnerships (foreign or domestic) in which the foreign partnership owns a direct interest or indirectly owns a 10% interest.

Name	Address	EIN (if any)	Total ordinary income or loss	Check if foreign partnership

**Schedule B Income Statement—Trade or Business Income**

**Caution.** Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income	1a Gross receipts or sales	1a			
	b Less returns and allowances	1b			1c
	2 Cost of goods sold				2
	3 Gross profit. Subtract line 2 from line 1c.				3
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)				4
	5 Net farm profit (loss) (attach Schedule F (Form 1040))				5
	6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)				6
	7 Other income (loss) (attach statement)				7
8 Total income (loss). Combine lines 3 through 7				8	
Deductions (see instructions for limitations)	9 Salaries and wages (other than to partners) (less employment credits)				9
	10 Guaranteed payments to partners				10
	11 Repairs and maintenance				11
	12 Bad debts				12
	13 Rent				13
	14 Taxes and licenses				14
	15 Interest				15
	16a Depreciation (if required, attach Form 4562)	16a			
	b Less depreciation reported elsewhere on return	16b			16c
	17 Depletion (Do not deduct oil and gas depletion.)				17
	18 Retirement plans, etc.				18
	19 Employee benefit programs				19
	20 Other deductions (attach statement)				20
	21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20.				21
22 Ordinary business income (loss) from trade or business activities. Subtract line 21 from line 8				22	

**Schedule D Capital Gains and Losses****Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less**

(a) Description of property (e.g., 100 shares of "Z" Co.)	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Sales price (see instructions)	(e) Cost or other basis (see instructions)	(f) Gain or (loss) Subtract (e) from (d)
<b>1</b>					
<b>2</b> Short-term capital gain from installment sales from Form 6252, line 26 or 37 . . . . .					<b>2</b>
<b>3</b> Short-term capital gain (loss) from like-kind exchanges from Form 8824 . . . . .					<b>3</b>
<b>4</b> Partnership's share of net short-term capital gain (loss), including specially allocated short-term capital gains (losses), from other partnerships, estates, and trusts . . . . .					<b>4</b>
<b>5</b> Net short-term capital gain or (loss). Combine lines 1 through 4 in column (f). Enter here and on Form 8865, Schedule K, line 8 or 11 . . . . .					<b>5</b>

**Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year**

(a) Description of property (e.g., 100 shares of "Z" Co.)	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Sales price (see instructions)	(e) Cost or other basis (see instructions)	(f) Gain or (loss) Subtract (e) from (d)
<b>6</b>					
<b>7</b> Long-term capital gain from installment sales from Form 6252, line 26 or 37 . . . . .					<b>7</b>
<b>8</b> Long-term capital gain (loss) from like-kind exchanges from Form 8824 . . . . .					<b>8</b>
<b>9</b> Partnership's share of net long-term capital gain (loss), including specially allocated long-term capital gains (losses), from other partnerships, estates, and trusts . . . . .					<b>9</b>
<b>10</b> Capital gain distributions . . . . .					<b>10</b>
<b>11</b> Net long-term capital gain or (loss). Combine lines 6 through 10 in column (f). Enter here and on Form 8865, Schedule K, line 9a or 11 . . . . .					<b>11</b>

**Schedule K Partners' Distributive Share Items**

		Total amount	
Income (Loss)	1 Ordinary business income (loss) (page 2, line 22)		1
	2 Net rental real estate income (loss) (attach Form 8825)		2
	3a Other gross rental income (loss)	3a	
	b Expenses from other rental activities (attach statement)	3b	
	c Other net rental income (loss). Subtract line 3b from line 3a		3c
	4 Guaranteed payments		4
	5 Interest income		5
	6 Dividends: a Ordinary dividends		6a
	b Qualified dividends	6b	
	7 Royalties		7
	8 Net short-term capital gain (loss)		8
Deductions	9a Net long-term capital gain (loss)		9a
	b Collectibles (28%) gain (loss)	9b	
	c Unrecaptured section 1250 gain (attach statement)	9c	
	10 Net section 1231 gain (loss) (attach Form 4797)		10
11 Other income (loss) (see instructions) Type ▶		11	
Self-Employment	12 Section 179 deduction (attach Form 4562)		12
	13a Contributions		13a
	b Investment interest expense		13b
	c Section 59(e)(2) expenditures: (1) Type ▶ (2) Amount ▶		13c(2)
Credits	d Other deductions (see instructions) Type ▶		13d
	14a Net earnings (loss) from self-employment		14a
	b Gross farming or fishing income		14b
	c Gross nonfarm income		14c
	15a Low-income housing credit (section 42(j)(5))		15a
	b Low-income housing credit (other)		15b
Foreign Transactions	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)		15c
	d Other rental real estate credits (see instructions) Type ▶		15d
	e Other rental credits (see instructions) Type ▶		15e
	f Other credits (see instructions) Type ▶		15f
	16a Name of country or U.S. possession ▶		16a
	b Gross income from all sources		16b
Alternative Minimum Tax (AMT) Items	c Gross income sourced at partner level		16c
	Foreign gross income sourced at partnership level		
	d Passive ▶ e Listed categories (attach statement) ▶ f General limitation ▶		16f
	Deductions allocated and apportioned at partner level		
	g Interest expense ▶ h Other ▶		16h
	Deductions allocated and apportioned at partnership level to foreign source income		
	i Passive ▶ j Listed categories (attach statement) ▶ k General limitation ▶		16k
	l Total foreign taxes (check one): ▶ <input type="checkbox"/> Paid <input type="checkbox"/> Accrued		16l
	m Reduction in taxes available for credit (attach statement)		16m
	n Other foreign tax information (attach statement)		
	Other Information	17a Post-1986 depreciation adjustment	
b Adjusted gain or loss			17b
c Depletion (other than oil and gas)			17c
d Oil, gas, and geothermal properties—gross income			17d
e Oil, gas, and geothermal properties—deductions			17e
f Other AMT items (attach statement)			17f
Other Information	18a Tax-exempt interest income		18a
	b Other tax-exempt income		18b
	c Nondeductible expenses		18c
	19a Distributions of cash and marketable securities		19a
	b Distributions of other property		19b
	20a Investment income		20a
Other Information	b Investment expenses		20b
	c Other items and amounts (attach statement)		

**Schedule L** **Balance Sheets per Books.** (Not required if Item G9, page 1, is answered "Yes.")

	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
<b>Assets</b>				
<b>1</b> Cash . . . . .				
<b>2a</b> Trade notes and accounts receivable . . . . .				
<b>b</b> Less allowance for bad debts . . . . .				
<b>3</b> Inventories . . . . .				
<b>4</b> U.S. government obligations . . . . .				
<b>5</b> Tax-exempt securities . . . . .				
<b>6</b> Other current assets ( <i>attach statement</i> ) . . . . .				
<b>7</b> Mortgage and real estate loans . . . . .				
<b>8</b> Other investments ( <i>attach statement</i> ) . . . . .				
<b>9a</b> Buildings and other depreciable assets. . . . .				
<b>b</b> Less accumulated depreciation . . . . .				
<b>10a</b> Depletable assets . . . . .				
<b>b</b> Less accumulated depletion . . . . .				
<b>11</b> Land (net of any amortization). . . . .				
<b>12a</b> Intangible assets (amortizable only) . . . . .				
<b>b</b> Less accumulated amortization . . . . .				
<b>13</b> Other assets ( <i>attach statement</i> ) . . . . .				
<b>14</b> <b>Total assets.</b> . . . .				
<b>Liabilities and Capital</b>				
<b>15</b> Accounts payable . . . . .				
<b>16</b> Mortgages, notes, bonds payable in less than 1 year . . . . .				
<b>17</b> Other current liabilities ( <i>attach statement</i> ) . . . . .				
<b>18</b> All nonrecourse loans . . . . .				
<b>19</b> Mortgages, notes, bonds payable in 1 year or more . . . . .				
<b>20</b> Other liabilities ( <i>attach statement</i> ) . . . . .				
<b>21</b> Partners' capital accounts . . . . .				
<b>22</b> <b>Total liabilities and capital</b> . . . . .				



**Schedule M** Balance Sheets for Interest Allocation

	(a) Beginning of tax year	(b) End of tax year
1 Total U.S. assets . . . . .		
2 Total foreign assets:		
a Passive income category . . . . .		
b Listed categories (attach statement) . . . . .		
c General limitation income category . . . . .		

**Schedule M-1** Reconciliation of Income (Loss) per Books With Income (Loss) per Return. (Not required if Item G9, page 1, is answered "Yes.")

1 Net income (loss) per books . . . . .			6 Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):		
2 Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11 not recorded on books this year (itemize): . . . . .			a Tax-exempt interest \$ . . . . .		
3 Guaranteed payments (other than health insurance) . . . . .			7 Deductions included on Schedule K, lines 1 through 13d, and 16l not charged against book income this year (itemize): . . . . .		
4 Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16l (itemize):			a Depreciation \$ . . . . .		
a Depreciation \$ . . . . .			8 Add lines 6 and 7 . . . . .		
b Travel and entertainment \$ . . . . .			9 Income (loss). Subtract line 8 from line 5 . . . . .		
5 Add lines 1 through 4 . . . . .					

**Schedule M-2** Analysis of Partners' Capital Accounts. (Not required if Item G9, page 1, is answered "Yes.")

1 Balance at beginning of year . . . . .			6 Distributions: a Cash . . . . .		
2 Capital contributed:			b Property . . . . .		
a Cash . . . . .			7 Other decreases (itemize): . . . . .		
b Property . . . . .					
3 Net income (loss) per books . . . . .			8 Add lines 6 and 7 . . . . .		
4 Other increases (itemize): . . . . .			9 Balance at end of year. Subtract line 8 from line 5 . . . . .		
5 Add lines 1 through 4 . . . . .					

**Schedule N Transactions Between Controlled Foreign Partnership and Partners or Other Related Entities**

**Important:** Complete a separate Form 8865 and Schedule N for each controlled foreign partnership. Enter the totals for each type of transaction that occurred between the foreign partnership and the persons listed in columns (a) through (d).

Transactions of foreign partnership	(a) U.S. person filing this return	(b) Any domestic corporation or partnership controlling or controlled by the U.S. person filing this return	(c) Any other foreign corporation or partnership controlling or controlled by the U.S. person filing this return	(d) Any U.S. person with a 10% or more direct interest in the controlled foreign partnership (other than the U.S. person filing this return)
<b>1</b> Sales of inventory . . . .				
<b>2</b> Sales of property rights (patents, trademarks, etc.)				
<b>3</b> Compensation received for technical, managerial, engineering, construction, or like services . . . .				
<b>4</b> Commissions received . . .				
<b>5</b> Rents, royalties, and license fees received . . .				
<b>6</b> Distributions received . . .				
<b>7</b> Interest received . . . .				
<b>8</b> Other . . . . .				
<b>9</b> Add lines 1 through 8 . . .				
<b>10</b> Purchases of inventory . . .				
<b>11</b> Purchases of tangible property other than inventory . . . . .				
<b>12</b> Purchases of property rights (patents, trademarks, etc.) . . . .				
<b>13</b> Compensation paid for technical, managerial, engineering, construction, or like services . . . .				
<b>14</b> Commissions paid . . . .				
<b>15</b> Rents, royalties, and license fees paid . . . .				
<b>16</b> Distributions paid . . . .				
<b>17</b> Interest paid . . . . .				
<b>18</b> Other . . . . .				
<b>19</b> Add lines 10 through 18 . .				
<b>20</b> Amounts borrowed (enter the maximum loan balance during the year)—see instructions . . . .				
<b>21</b> Amounts loaned (enter the maximum loan balance during the year)—see instructions . . . . .				

# REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS



1

Do **NOT** file with your Federal Tax Return

OMB No. 1506-0009

1 Filing for Calendar Year

Y Y Y Y

2 Type of Filer

a ☐ Individual b ☐ Partnership c ☐ Corporation d ☐ Fiduciary

3 Taxpayer Identification Number

## Part I Filer Information

4 Last Name or Organization Name

5 First Name

6 Middle Initial

7 Address (Number, Street, and Apt. or Suite No.)

8 Date of Birth

M M D D Y Y Y Y

9 City

10 State

11 Zip/Postal Code

12 Country

13 Title (Not necessary if reporting a personal account.)

14 Are these accounts jointly owned?

a ☐ Yes b ☐ No

15 Number of joint owners

16 Taxpayer Identification Number of joint owner (if known)

17 Last Name or Organization Name

18 First Name

19 Middle Initial

## Part II Information on Financial Accounts

20 Number of Foreign Financial Accounts in which a financial interest is held

21 Type of account

a ☐ Bank b ☐ Securities c ☐ Other

22 Maximum value of account

a ☐ Under \$10,000 c ☐ \$100,000 to \$1,000,000  
b ☐ \$10,000 to \$99,999 d ☐ Over \$1,000,000

23 Account Number or other designation

24 Name of Financial Institution with which account is held

25 Country in which account is held

26 Does the filer have a financial interest in this account?

a ☐ Yes b ☐ No If no, complete boxes 27-35.

27 Last Name or Organization Name of Account Holder

28 First Name

29 Middle Initial

30 Taxpayer Identification Number

31 Address (Number, Street, and Apt. or Suite No.)

32 City

33 State

34 Zip/Postal Code

35 Country

36 Signature

37 Date

M M D D Y Y Y Y

This form should be used to report a financial interest in, signature authority, or other authority over one or more financial accounts in foreign countries, as required by the Department of the Treasury Regulations (31 CFR 103). No report is required if the aggregate value of the accounts did not exceed \$10,000. SEE INSTRUCTIONS FOR DEFINITION. File this form with:

**U.S. Department of the Treasury, P.O. Box 32621, Detroit, MI 48232-0621.**

### PRIVACY ACT NOTIFICATION

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on TD F 90-22.1 in accordance with 5 USC 522a(e) is Public Law 91-508; 31 USC 5314; 5 USC 301; 31 CFR 103.

The principal purpose for collecting the information is to assure maintenance of reports where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States upon the request of the head of such department or agency for use in a criminal, tax, or regulatory investigation or proceeding. The information collected may also be provided to appropriate state, local, and foreign law enforcement and regulatory personnel in the performance of their official duties.

Disclosure of this information is mandatory. Civil and criminal penalties, including in certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report. Disclosure of the Social Security number is mandatory. The authority to collect is 31 CFR 103. The Social Security number will be used as a means to identify the individual who files the report.

## Continuation Page

Form TD F 90-22.1

This side can be copied as many times as necessary in order to provide information on all accounts.

1 Filing for Calendar Year Y Y Y Y				3 Taxpayer Identification Number				4 Filer Last Name or Business Name				Page Number OF	
2 Type of Filer a <input type="checkbox"/> Individual    c <input type="checkbox"/> Corporation b <input type="checkbox"/> Partnership    d <input type="checkbox"/> Fiduciary				21 Type of Account a <input type="checkbox"/> Bank    c <input type="checkbox"/> Other b <input type="checkbox"/> Securities				22 Maximum value of account a <input type="checkbox"/> Under \$10,000    c <input type="checkbox"/> \$100,000 to \$1,000,000 b <input type="checkbox"/> \$10,000 to \$99,999    d <input type="checkbox"/> Over \$1,000,000					
23 Account Number, or other designation								24 Name of Financial Institution with which account is held					
25 Country in which account is held				26 Does the filer have a financial interest in this account? a <input type="checkbox"/> Yes If no, complete boxes 27-35. b <input type="checkbox"/> No				27 Last Name or Organization Name of Account Owner					
28 First Name				29 Middle Initial		30 Taxpayer Identification Number				31 Address (Number, Street, and Apt. or Suite No.)			
32 City				33 State		34 Zip/Postal Code				35 Country			
2 Type of Filer a <input type="checkbox"/> Individual    c <input type="checkbox"/> Corporation b <input type="checkbox"/> Partnership    d <input type="checkbox"/> Fiduciary				21 Type of Account a <input type="checkbox"/> Bank    c <input type="checkbox"/> Other b <input type="checkbox"/> Securities				22 Maximum value of account a <input type="checkbox"/> Under \$10,000    c <input type="checkbox"/> \$100,000 to \$1,000,000 b <input type="checkbox"/> \$10,000 to \$99,999    d <input type="checkbox"/> Over \$1,000,000					
23 Account Number, or other designation								24 Name of Financial Institution with which account is held					
25 Country in which account is held				26 Does the filer have a financial interest in this account? a <input type="checkbox"/> Yes If no, complete boxes 27-35. b <input type="checkbox"/> No				27 Last Name or Organization Name of Account Owner					
28 First Name				29 Middle Initial		30 Taxpayer Identification Number				31 Address (Number, Street, and Apt. or Suite No.)			
32 City				33 State		34 Zip/Postal Code				35 Country			
2 Type of Filer a <input type="checkbox"/> Individual    c <input type="checkbox"/> Corporation b <input type="checkbox"/> Partnership    d <input type="checkbox"/> Fiduciary				21 Type of Account a <input type="checkbox"/> Bank    c <input type="checkbox"/> Other b <input type="checkbox"/> Securities				22 Maximum value of account a <input type="checkbox"/> Under \$10,000    c <input type="checkbox"/> \$100,000 to \$1,000,000 b <input type="checkbox"/> \$10,000 to \$99,999    d <input type="checkbox"/> Over \$1,000,000					
23 Account Number, or other designation								24 Name of Financial Institution with which account is held					
25 Country in which account is held				26 Does the filer have a financial interest in this account? a <input type="checkbox"/> Yes If no, complete boxes 27-35. b <input type="checkbox"/> No				27 Last Name or Organization Name of Account Owner					
28 First Name				29 Middle Initial		30 Taxpayer Identification Number				31 Address (Number, Street, and Apt. or Suite No.)			
32 City				33 State		34 Zip/Postal Code				35 Country			

This form should be used to report a financial interest in, signature authority, or other authority over one or more financial accounts in foreign countries, as required by the Department of the Treasury Regulations (31 CFR 103). No report is required if the aggregate value of the accounts did not exceed \$10,000. SEE INSTRUCTIONS FOR DEFINITION. File this form with:

**U.S. Department of the Treasury, P.O. Box 32621, Detroit, MI 48232-0621.**

**Paperwork Reduction Act.** The estimated average burden associated with this collection of information is 10 minutes per respondent or recordkeeper, depending on individual circumstances. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Department of the Treasury, Financial Crimes Enforcement Network, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182-2536. You are not required to provide the requested information unless a form displays a valid OMB control number.

## INSTRUCTIONS

### General Instructions

**Who Must File this Report** Each United States person, who has a financial interest in or signature authority, or other authority over any financial accounts, including bank, securities, or other types of financial accounts in a foreign country, if the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year, must report that relationship each calendar year by filing TD F 90-22.1 with the Department of the Treasury on or before June 30, of the succeeding year.

### Exceptions

An officer or employee of a bank which is subject to the supervision of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, or the Federal Deposit Insurance Corporation need not report that he has signature or other authority over a foreign bank, securities or other financial account maintained by the bank, if the officer or employee has NO personal financial interest in the account.

An officer or employee of a domestic corporation whose equity securities are listed upon national securities exchanges or which has assets exceeding \$10 million and 500 or more shareholders of record need not file such a report concerning the other signature authority over a foreign financial account of the corporation, if he has NO personal financial interest in the account and he has been advised in writing by the chief financial officer of the corporation that the corporation has filed a current report, which includes that account.

Report any financial account (except a military banking facility as defined in these instructions) that is located in a foreign country, even if it is held at an affiliate of a United States bank or other financial institution. Do not report any account maintained with a branch, agency, or other office of a foreign bank or other institution that is located in the United States, Guam, Puerto Rico, and the Virgin Islands.

### General Definitions

**United States Person** The term "United States person" means (1) a citizen or resident of the United States, (2) a domestic partnership, (3) a domestic corporation, or (4) a domestic estate or trust.

**Financial Account** Generally includes any bank, securities, securities derivatives or other financial instruments accounts. Such accounts generally also encompass any accounts in which the assets are held in a commingled fund, and the account owner holds an equity interest in the fund. The term also means any savings, demand, checking, deposit, time deposit, or any other account maintained with a financial institution or other person engaged in the business of a financial institution.

**Account in a Foreign Country** A "foreign country" includes all geographical areas located outside the United States, Guam, Puerto Rico, and the Virgin Islands.

**Financial Interest** A financial interest in a bank, securities, or other financial account in a foreign country means an interest described in either of the following two paragraphs:

(1) A United States person has a financial interest in each account for which such person is the owner of record or has legal title, whether the account is maintained for his or her own benefit or for the benefit of others including non-United States persons. If an account is maintained in the name of two persons jointly, or if several persons each own a partial interest in an account, each of those United States persons has a financial interest in that account.

(2) A United States person has a financial interest in each bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is: (a) a person acting as an agent, nominee, attorney, or in some other capacity on behalf of the U.S. person; (b) a corporation in which the United States person owns directly or indirectly more than 50 percent of the total value of shares of stock; (c) a partnership in which the United States person owns an interest in more than 50 percent of the profits (distributive share of income); or (d) a trust in which the United States person either has a present beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.

**Signature or Other Authority Over an Account** A person has signature authority over an account if such person can control the disposition of money or other property in it by delivery of a document containing his or her signature (or his or her signature and that of one or more other persons) to the bank or other person with whom the account is maintained.

Other authority exists in a person who can exercise comparable power over an account by direct communication to the bank or other person with whom the account is maintained, either orally or by some other means.

**Military Banking Facility** Do not consider as an account in a foreign country, an account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve U.S. Government installations abroad, even if the United States military banking facility is located in a foreign country.

### Filing Information

**When and Where to File** - This report must be filed on or before June 30 each calendar year with the Department of the Treasury, Post Office Box 32621, Detroit, MI 48232-0621, or it may be hand carried to any local office of the Internal Revenue Service for forwarding to the Department of the Treasury, Detroit, MI.

## EXPLANATIONS FOR SPECIFIC ITEMS

### Consolidated Reporting

A corporation which owns directly or indirectly more than 50 percent interest in one or more other entities will be permitted to file a consolidated report on TD F 90-22.1, on behalf of itself and such other entities provided that a listing of them is made part of the consolidated report. Such reports should be signed by an authorized official of the parent corporation.

If the group of entities covered by a consolidated report has a financial interest in 25 or more foreign financial accounts, the reporting corporation need only note that fact on the form in Item 20. It will, however, be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

### Item 14

If the filer owns the account jointly with any other party, then yes should be marked.

### Item 15

If the filer holds this account with only one (1) other party, and all accounts listed are held jointly with that party, then complete items 16, 17, 18, and 19. Otherwise leave these items blank.

**Item 20**

If the filer holds a financial interest in more than 25 foreign financial accounts, indicate the number in this box and do not complete any further items in Part II.

Any person who lists more than 25 foreign financial accounts in item 20 must when requested by the Department of the Treasury provide all the information called for in Part II.

**Item 22****Account Valuation**

For item 22, the maximum value of an account is the largest amount of currency and non-monetary assets that appear on any quarterly or more frequent account statement issued for the applicable year. If periodic account statements are not so issued, the maximum account asset value is the largest amount of currency and non-monetary assets in the account at any time during the year. Convert foreign currency by using the official exchange rate at the end of the year. In valuing currency of a country that uses multiple exchange rates, use the rate which would apply if the currency in the account were converted into United States dollars at the close of the calendar year.

The value of stock, other securities or other non-monetary assets in an account reported on TD F 90-22.1 is the fair market value at the end of the calendar year, or if withdrawn from the account, at the time of the withdrawal.

For purposes of item 22, if you had a financial interest in more than one account, each account is to be valued separately in accordance with the foregoing two paragraphs. If you had a financial interest in one or more but fewer than 25 accounts, and you are unable to determine whether the maximum value of these accounts exceeded \$10,000 at any time during the year, complete Part II or III for each of these accounts.

**Item 26**

United States Persons with Authority Over but No Financial Interest in an Account - Except as provided in the following paragraph, you must state the name, address, and identifying number of each owner of an account over which you had authority, but if you complete items 27-35 for more than one account of the same owner, you need identify the owner only once. If you complete items 27-35 for one or more accounts in which no United States person had a financial interest, you may state on the first line of this item, in lieu of supplying information about the owner, "No U.S. person had any financial interest in the foreign account." This statement must be based upon the actual belief of the person filing this form after he or she has taken reasonable measures to ensure its correctness.

If you complete Part II for accounts owned by a domestic corporation and its domestic and/or foreign subsidiaries, you may treat them as one owner and write in the space provided, the name of the parent corporation, followed by "and related entities," and the identifying number and address of the parent corporation.

**Item 36****Signature**

This report must be signed by the person named in Part I. If the report is being filed on behalf of a partnership, corporation, or fiduciary, it must be signed by an authorized individual.

**Penalties**

For criminal penalties for failure to file a report, supply information, and for filing a false or fraudulent report, see 31 USC 5322(a), 31 USC 5322(b), and 18 USC 1001.

# Application for IRS Individual Taxpayer Identification Number

OMB No. 1545-0074

► See instructions.

► For use by individuals who are not U.S. citizens or permanent residents.

**An IRS individual taxpayer identification number (ITIN) is for federal tax purposes only.**

## FOR IRS USE ONLY

### Before you begin:

- **Do not submit** this form if you have, or are eligible to obtain, a U.S. social security number (SSN).
- Getting an ITIN does not change your immigration status or your right to work in the United States and does not make you eligible for the earned income credit.

**Reason you are submitting Form W-7.** Read the instructions for the box you check. **Caution:** If you check box **b, c, d, e, f, or g, you must file a tax return with Form W-7 unless you meet one of the exceptions** (see instructions).

- a ☐ Nonresident alien required to obtain ITIN to claim tax treaty benefit
- b ☐ Nonresident alien filing a U.S. tax return
- c ☐ U.S. resident alien (based on days present in the United States) filing a U.S. tax return
- d ☐ Dependent of U.S. citizen/resident alien } Enter name and SSN/ITIN of U.S. citizen/resident alien (see instructions) ► .....
- e ☐ Spouse of U.S. citizen/resident alien } .....
- f ☐ Nonresident alien student, professor, or researcher filing a U.S. tax return or claiming an exception
- g ☐ Dependent/spouse of a nonresident alien holding a U.S. visa
- h ☐ Other (see instructions) ► .....

Additional information for a and f: Enter treaty country ► .....

and treaty article number ► .....

<b>Name</b> (see instructions) Name at birth if different ►	<b>1a</b> First name	Middle name	Last name
	<b>1b</b> First name	Middle name	Last name
<b>Applicant's mailing address</b>	<b>2</b> Street address, apartment number, or rural route number. If you have a P.O. box, see page 4.		
	City or town, state or province, and country. Include ZIP code or postal code where appropriate.		
<b>Foreign address</b> (if different from above) (see instructions)	<b>3</b> Street address, apartment number, or rural route number. Do not use a P.O. box number.		
	City or town, state or province, and country. Include ZIP code or postal code where appropriate.		
<b>Birth information</b>	<b>4</b> Date of birth (month / day / year)	Country of birth	City and state or province (optional)
			<b>5</b> <input type="checkbox"/> Male <input type="checkbox"/> Female
<b>Other information</b>	<b>6a</b> Country(ies) of citizenship	<b>6b</b> Foreign tax I.D. number (if any)	<b>6c</b> Type of U.S. visa (if any), number, and expiration date
	<b>6d</b> Identification document(s) submitted (see instructions) <input type="checkbox"/> Passport <input type="checkbox"/> Driver's license/State I.D. <input type="checkbox"/> USCIS documentation <input type="checkbox"/> Other .....		
	Issued by: No.: Exp. date: / / Entry date in U.S. / /		
	<b>6e</b> Have you previously received a U.S. temporary taxpayer identification number (TIN) or employer identification number (EIN)? <input type="checkbox"/> No/Do not know. Skip line 6f. <input type="checkbox"/> Yes. Complete line 6f. If more than one, list on a sheet and attach to this form (see instructions).		
	<b>6f</b> Enter: TIN or EIN ► ..... and Name under which it was issued ► .....		
	<b>6g</b> Name of college/university or company (see instructions) ..... City and state ..... Length of stay .....		
<b>Sign Here</b>	Under penalties of perjury, I (applicant/delegate/acceptance agent) declare that I have examined this application, including accompanying documentation and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I authorize the IRS to disclose to my acceptance agent returns or return information necessary to resolve matters regarding the assignment of my IRS individual taxpayer identification number (ITIN), including any previously assigned taxpayer identifying number.		
	Signature of applicant (if delegate, see instructions)	Date (month / day / year)	Phone number
Keep a copy for your records.	Name of delegate, if applicable (type or print)	Delegate's relationship to applicant	<input type="checkbox"/> Parent <input type="checkbox"/> Court-appointed guardian <input type="checkbox"/> Power of Attorney
	Signature	Date (month / day / year)	Phone ( )
<b>Acceptance Agent's Use ONLY</b>	Name and title (type or print)	Name of company	Fax ( )
			EIN
			EFIN/Office Code



## General Instructions

### Purpose of Form

Use Form W-7 to apply for an IRS individual taxpayer identification number (ITIN). An ITIN is a nine-digit number issued by the U.S. Internal Revenue Service (IRS) to individuals who are required for U.S. tax purposes to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain, a social security number (SSN).

**The ITIN is for federal tax purposes only.** It does not entitle you to social security benefits and does not change your immigration status or your right to work in the United States. Also, individuals filing tax returns using an ITIN are not eligible for the earned income credit (EIC). **SSNs.** Do not complete Form W-7 if you have an SSN or you are eligible to obtain an SSN. You are eligible for an SSN if you are a U.S. citizen or if you have been admitted by the United States for permanent residence or U.S. employment.

If you have an application for an SSN pending, do not file Form W-7. Complete Form W-7 only if the Social Security Administration (SSA) notifies you that an SSN cannot be issued.

To obtain an SSN, see Form SS-5, Application for a Social Security Card. To get Form SS-5 or to find out if you are eligible to obtain an SSN, go to [www.socialsecurity.gov](http://www.socialsecurity.gov) or contact an SSA office.

### Who Must Apply

Any individual who is not eligible to obtain an SSN but who must furnish a taxpayer identification number must apply for an ITIN on Form W-7. Examples include the following.

- A nonresident alien individual eligible to obtain the benefit of reduced withholding under an income tax treaty. See Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.
- A nonresident alien individual not eligible for an SSN who is required to file a U.S. tax return or who is filing a U.S. tax return only to claim a refund.
- A nonresident alien individual not eligible for an SSN who elects to file a joint U.S. tax return with a spouse who is a U.S. citizen or resident.
- A U.S. resident alien (based on the substantial presence test) who files a U.S. tax return but who is not eligible for an SSN. For information about the substantial presence test, see Pub. 519, U.S. Tax Guide for Aliens.
- An alien spouse eligible to be claimed as an exemption on a U.S. tax return who is not eligible to obtain an SSN.
- An alien individual eligible to be claimed as a dependent on a U.S. tax return but who is not eligible to obtain an SSN. To determine if an alien individual is eligible to be claimed as a dependent on a U.S. tax return, see Pub. 501, Exemptions, Standard Deduction, and Filing Information, and Pub. 519.
- A nonresident alien student, professor, or researcher who is required to file a U.S. tax return but who is not eligible for an SSN, or who is claiming an exception to the tax return filing requirement.
- A dependent/spouse of a nonresident alien holding a U.S. visa who is not eligible for an SSN.

#### ITIN Not Needed

An ITIN is not needed if you are filing the following forms.

**Forms 4868, 1040-ES, or 1040-ES(NR).** If you are filing an application for an extension of time to file using Form 4868, or making an estimated tax payment using Form 1040-ES or Form 1040-ES(NR), do not file Form W-7 with those forms. Enter "ITIN TO BE REQUESTED" wherever your SSN or ITIN is requested. An ITIN will be issued only after you file a tax return and meet all other requirements.

**Form 1040EZ-T.** If you are requesting a credit or refund of the federal telephone excise tax on Form 1040EZ-T, do not file Form W-7 with that form. For information on completing Form 1040EZ-T if you do not have an ITIN, see the instructions for Form 1040EZ-T.

### Additional Information

**Publications.** For details on resident and nonresident alien status, see Pub. 519.

For details on individuals who can be claimed as dependents and on obtaining an SSN for a dependent, see Pub. 501.

These publications are available free from the IRS. To order the publications, call 1-800-TAX-FORM (1-800-829-3676) if you are in the United States. If you have a foreign address, write to:

National Distribution Center  
P.O. Box 8903  
Bloomington, IL 61702-8903

You can also get these publications on the IRS website at [www.irs.gov](http://www.irs.gov).

**Telephone help.** If, after reading these instructions and our free publications, you are not sure how to complete your application or have additional questions, call 1-800-829-1040 if you are in the United States. If you are outside the United States, you can contact our overseas offices in Frankfurt, London, or Paris.

### How To Apply

Your application must include all of the following.

1. Your completed Form W-7.
2. Your original, completed tax return(s) for which the ITIN is needed. Attach Form W-7 to the front of your tax return. If you are applying for more than one ITIN for the same tax return (such as for a spouse or dependent(s)), attach all Forms W-7 to the same tax return. After your Form W-7 has been processed, the IRS will assign an ITIN to the return and process the return.



*There are exceptions to the requirement to include a U.S. tax return. If you claim one of these exceptions, you must submit the documentation required in lieu of a tax return. See the Exceptions Table beginning on page 5.*

3. The original documents, or certified or notarized copies of documents, that substantiate the information provided on the Form W-7. The supporting documentation must be consistent with the applicant's information provided on Form W-7. For example, the name, date of birth, and country(ies) of citizenship must be the same as on Form W-7, lines 1a, 4, and 6a.

**If you submit an original valid passport (or a notarized or certified copy of a valid passport), you do not need to submit any other documents.** Otherwise, you must submit at least two or more of the documents listed below. The documents must be current, verify your identity (that is, contain your name), and support your claim of foreign status. At least one document must contain your photograph, but a photograph is not required if documents are submitted for a dependent under age 14 (under age 18 if a student). Do not attach expired documents.

- a. National identification card (must show photo, name, current address, date of birth, and expiration date).
- b. U.S. driver's license.
- c. Civil birth certificate.
- d. Foreign driver's license.
- e. U.S. state identification card.
- f. Foreign voter's registration card.
- g. U.S. military identification card.
- h. Foreign military identification card.
- i. U.S. visa issued by the U.S. Department of State.
- j. U.S. Citizenship and Immigration Services (USCIS) photo identification.
- k. Medical records.\*
- l. School records.\*

\*These documents are only valid for dependents under age 14 (under age 18 if a student) and can be used to establish foreign status only if they are foreign documents.

You can submit copies of original documents if the copies are:

- Certified by the issuing agency or official custodian of the original record, or
- Notarized by a U.S. notary public legally authorized within his or her local jurisdiction to certify that the document is a true copy of the original. To do this, the notary must see the valid, unaltered original document and verify that the copy conforms to the original. U.S. notaries public are available at U.S. embassies and consulates worldwide. Foreign notaries are acceptable as outlined by the Hague Convention.



Original documents you submit will be returned to you. You do not need to provide a return envelope. If your original documents are not returned within 60 days, you can call the IRS (see *Telephone help* on page 2). Copies of documents will not be returned.



To avoid any loss of your documents, it is suggested you do not submit the original documentation.

Keep a copy of your application for your records.

## When To Apply

Complete and attach Form W-7 when you file the tax return for which the ITIN is needed. However, if you meet one of the exceptions described later under *h. Other.*, complete and submit Form W-7 as soon as possible after you determine you are covered by that exception.

Allow 4 to 6 weeks for the IRS to notify you in writing of your ITIN. If you have not received your ITIN or correspondence at the end of the 6-week period, you can call the IRS to find out the status of your application (see *Telephone help* on page 2).

## Where To Apply

**By mail.** Mail Form W-7, your tax return (or other documents required by an exception), and the documentation listed in item (3) under *How To Apply* on page 2 to:

Internal Revenue Service  
ITIN Operation  
P.O. Box 149342  
Austin, TX 78714-9342



Do not use the mailing address in the instructions for your tax return.

**In person.** You can apply for an ITIN by bringing your completed forms and documentation to any IRS Taxpayer Assistance Center in the United States and most IRS offices abroad. Before applying at an IRS office abroad, find out if that office accepts Form W-7 applications.

**Through acceptance agent.** You can also apply through an acceptance agent authorized by the IRS. An acceptance agent can help you complete and file Form W-7. To obtain a list of agents, visit the IRS website at [www.irs.gov](http://www.irs.gov).

## Specific Instructions

If you are completing this form for someone else, answer the questions as they apply to that person.

### Reason For Applying

You must check the box to indicate the reason you are completing Form W-7. If more than one box applies to you, check the box that best explains your reason for submitting Form W-7. However, if an exception applies be sure to check box h.

**a. Nonresident alien required to obtain an ITIN to claim tax treaty benefit.** Certain nonresident aliens must obtain an ITIN to claim a tax treaty benefit even if they do not have to file a U.S. tax return. If you check this box to claim the benefits of a U.S. income tax treaty with a foreign country, also check box h. On the dotted line next to box h, enter "Exception 1" or "Exception 2," whichever applies (see this page). Also, enter the name of the treaty country and treaty article number in the appropriate entry spaces below box h and attach the documents required under whichever exception applies. For more details on tax treaties, see Pub. 901, U.S. Tax Treaties.

**b. Nonresident alien filing a U.S. tax return.** This category includes:

- A nonresident alien who must file a U.S. tax return to report income effectively or not effectively connected with the conduct of a trade or business in the United States, and
- A nonresident alien who is filing a U.S. tax return only to obtain a refund.

**c. U.S. resident alien (based on days present in the United States) filing a U.S. tax return.** A foreign individual living in the United States who does not have permission to work from the

USCIS, and is thus ineligible for an SSN, may still be required to file a U.S. tax return. These individuals must check this box.

**d. Dependent of a U.S. citizen/resident alien.** This is an individual who can be claimed as a dependent on a U.S. tax return and is not eligible to obtain an SSN.

**e. Spouse of a U.S. citizen/resident alien.** This category includes:

- A nonresident alien husband or wife who is not filing a U.S. tax return (including a joint return) and who is not eligible to obtain an SSN but who, as a spouse, can be claimed as an exemption, and
- A nonresident alien electing to file a U.S. tax return jointly with a spouse who is a U.S. citizen or resident.

**f. Nonresident alien student, professor, or researcher filing a U.S. tax return or claiming an exception.** This is an individual who has not abandoned his or her residence in a foreign country and who is a bona fide student, professor, or researcher coming temporarily to the United States solely to attend classes at a recognized institution of education, to teach, or to perform research. If you check this box, you must complete lines 6c and 6g and provide your passport with a valid U.S. visa. If you are present in the United States on a work-related visa (F-1, J-1, or M-1), but will not be employed (that is, your presence in the United States is study related), you can choose to attach a letter from the Designated School Official or Responsible Officer instead of applying with the SSA for an SSN. The letter must clearly state that you will not be securing employment while in the United States, and your presence here is solely study related. If you check this box to claim the benefits of a U.S. income tax treaty with a foreign country, also check box h. On the dotted line next to box h, enter "Exception 2" (see below). Also, enter the name of the treaty country and the treaty article number in the appropriate entry spaces below box h and attach the documents required under Exception 2.

**g. Dependent/spouse of a nonresident alien holding a U.S. visa.**

This is an individual who can be claimed as a dependent or a spouse on a U.S. tax return, who is unable, or not eligible, to obtain an SSN and has entered the United States with a nonresident alien holding a U.S. visa. For example, the primary visa holder has a B-1 visa; the dependent or spouse has a B-2 visa.

**h. Other.** If the reason for your ITIN request is not described in boxes a through g, check this box. Describe in detail your reason for requesting an ITIN and attach supporting documents.

Frequently, third parties (such as banks and other financial institutions) which are subject to information reporting and withholding requirements, will request an ITIN from you to enable them to file information returns required by law. If you are requesting an ITIN for this reason, you may be able to claim one of the exceptions described below. Enter on the dotted line next to box h the exception that applies to you. You will not need to attach a tax return to your Form W-7. For more detailed information regarding the exception(s) that may apply to you, see the *Exceptions Table* beginning on page 5.

**Note.** If box h is checked, box a or f may also be checked.

**Exception 1. Passive income—third party withholding or tax treaty benefits.** This exception may apply if you are the recipient of partnership income, interest income, annuity income, etc. that is subject to third party withholding or covered by tax treaty benefits. See the *Exceptions Table* beginning on page 5 for information on the requirements for claiming Exception 1.

Information returns applicable to Exception 1 may include the following.

- Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding
- Form 1099-INT, Interest Income
- Form 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax

**Exception 2. Other income.**



Applicants with a U.S. visa that is valid for employment should first apply for an SSN with the SSA. You are not eligible for an ITIN if you are eligible to obtain an SSN.

This exception may apply if:

1. You are claiming the benefits of a U.S. income tax treaty with a foreign country and you receive any of the following:

- a. Wages, salary, compensation, and honoraria payments,

- b. Scholarships, fellowships, and grants,
- c. Gambling income, or

2. You are receiving taxable scholarship, fellowship, or grant income, but not claiming the benefits of an income tax treaty.

See the *Exceptions Table* for information on the requirements for claiming Exception 2. Information returns applicable to Exception 2 may include Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.

**Exception 3. Mortgage interest—third party reporting.** This exception may apply if you have a home mortgage loan on real property you own in the United States that is subject to third party reporting of mortgage interest. See the *Exceptions Table* for information on the requirements for claiming Exception 3. Information returns applicable to Exception 3 may include Form 1098, Mortgage Interest Statement.

**Exception 4. Dispositions by a foreign person of U.S. real property interest—third party withholding.** This exception may apply if you are a party to a disposition of a U.S. real property interest by a foreign person, which is generally subject to withholding by the transferee or buyer (withholding agent). See the *Exceptions Table* for information on the requirements for claiming Exception 4. Information returns applicable to Exception 4 may include the following.

- Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests
- Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests
- Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests

### Line Instructions

Enter N/A (not applicable) on all lines that do not apply to you. Do not leave any lines blank.

**Line 1a.** Enter your legal name on line 1a as it appears on your documents. This entry should reflect your name as it will appear on a U.S. tax return.



*Your ITIN will be established using this name. If you do not use this name on the U.S. tax return, the processing of the U.S. tax return may be delayed.*

**Line 1b.** Enter your name as it appears on your birth certificate if it is different from your entry on line 1a.

**Line 2.** Enter your complete mailing address on line 2. This is the address the IRS will use to return your original documents and send written notification of your ITIN.

**Note.** If the U.S. Postal Service will not deliver mail to your physical location, enter the U.S. Postal Service's post office box number for your mailing address. Contact your local U.S. Post Office for more information. Do not use a post office box owned and operated by a private firm or company.

**Line 3.** Enter your complete foreign address in the country where you permanently or normally reside if it is different from the address on line 2. If you no longer have a permanent residence, due to your relocation to the United States, enter only the foreign country where you last resided on line 3. If you are claiming a benefit under an income tax treaty with the United States, line 3 must show the treaty country.



*Do not use a post office box or an "in care of" (c/o) address instead of a street address on line 2 if you are entering just a "country" name on line 3. If you do, your application will be rejected.*

**Line 4.** To be eligible for an ITIN, your birth country must be recognized as a foreign country by the U.S. Department of State.

**Line 6a.** Enter the country or countries (in the case of dual citizenship) in which you are a citizen. Enter the complete country name; do not abbreviate.

**Line 6b.** If your country of residence for tax purposes has issued you a tax identification number, enter that number on line 6b. For example, if you are a resident of Canada, enter your Canadian Social Insurance Number.

**Line 6c.** Enter only U.S. nonimmigrant visa information. Include the USCIS classification, number of the U.S. visa, and the expiration date in month/day/year format. For example, if you have a B-1/B-2 visa

with the number 123456 that has an expiration date of December 31, 2007, enter "B-1/B-2," "123456," and "12/31/2007" in the entry space.

**Note.** If the visa has been issued under a "duration of stay" label by USCIS, enter "D/S" as the expiration date.

**Line 6d.** Check the box indicating the type of document(s) you are submitting for identification. You must submit documents as explained in item (3) under *How To Apply* on page 2. Enter the name of the state or country or other issuer, the identification number (if any) appearing on the document(s), the expiration date, and the date on which you entered the United States. Dates must be entered in the month/day/year format. Also, you may be required to provide a certified translation of foreign language documents.

**Note.** Any visa information shown on a passport must be entered on line 6c.

**Line 6e.** If you ever received a temporary taxpayer identification number (TIN) or an employer identification number (EIN), check the "Yes" box and complete line 6f. If you never had a temporary TIN or an EIN, or you do not know your temporary TIN, check the "No/Do not know" box.

A temporary TIN is a nine-digit number issued by the IRS to persons who file a return or make a payment without providing a TIN. You would have been issued this number if you filed a U.S. tax return and did not have a social security number. This temporary TIN will appear on any correspondence the IRS sent you concerning that return.

An EIN is a nine-digit number (for example, 12-3456789) assigned by the IRS to businesses, such as sole proprietorships.

**Line 6f.** If you have both a temporary TIN and an EIN, attach a separate sheet listing both. If you were issued more than one temporary TIN, attach a separate sheet listing all the temporary TINs you received.

**Line 6g.** If you checked reason f, you must enter the name of the educational institution and the city and state in which it is located. You must also enter your length of stay in the United States.

If you are temporarily in the United States for business purposes, you must enter the name of the company with whom you are conducting your business and the city and state in which it is located. You must also enter your length of stay in the United States.

**Signature.** You must sign Form W-7. However, if the applicant is a minor under 14 years of age, a delegate (parent or court-appointed guardian) can sign for him or her. Type or print the delegate's name in the space provided and check the appropriate box that indicates his or her relationship to the applicant. If the delegate is signing as a court-appointed guardian, attach a copy of the court-appointment papers showing the legal guardianship.

If the applicant is 14 years of age or over, the applicant can sign or appoint an authorized agent to sign. The authorized agent could be the applicant's parent or another person designated by the applicant. The authorized agent must print his or her name in the space provided for the name of the delegate and attach Form 2848, Power of Attorney and Declaration of Representative.

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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 Internal Revenue Code section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

## Exceptions Table

IF you are a person who...	AND you submit...	THEN you can claim...
is a partner in a foreign partnership that invests in the United States and who owns assets that generate income subject to IRS information reporting and federal tax withholding requirements	a copy of the portion of the partnership agreement showing: <ul style="list-style-type: none"> <li>the partnership's EIN,</li> <li>that you are a partner in the partnership, and</li> <li>that the partnership is conducting business in the United States</li> </ul>	Exception #1.
has an interest bearing bank account that generates income effectively connected with your U.S. trade or business and that is subject to IRS information reporting and/or federal tax withholding requirements	documentation from the bank showing: <ul style="list-style-type: none"> <li>that you opened an interest bearing business account subject to IRS information reporting and/or federal tax withholding requirements during the current tax year, and</li> <li>that you have an ownership interest in the account</li> </ul>	Exception #1.
is a resident alien for tax purposes and who opens an interest bearing bank account that generates income subject to IRS information reporting and/or federal tax withholding requirements (or would otherwise be subject to such requirements except for the fact that the applicable dollar threshold amount is not met)	<ul style="list-style-type: none"> <li>documentation from the bank stating that you are receiving distributions from a deposit account subject to IRS information reporting and/or federal tax withholding requirements (or would otherwise be subject to such requirements except for the fact that the applicable dollar threshold amount is not met) during the current tax year, and</li> <li>a copy of the Form W-9, Request for Taxpayer Identification Number and Certification, signed or stamped by the bank</li> </ul>	Exception #1.
receives distributions during the current tax year of income such as pensions, annuities, royalties, dividends, etc., and who is required to provide an ITIN to the withholding agent (that is, investment company, insurance company, financial institution, etc.) for purposes of tax withholding and information reporting requirements	a signed letter or other document on official letterhead paper from the withholding agent showing: <ul style="list-style-type: none"> <li>your name and account number, and</li> <li>verification that an ITIN is required to make distributions to you during the current tax year that are subject to federal income tax withholding and/or information reporting requirements</li> </ul>	Exception #1.
is claiming tax treaty benefits for an exemption from, or a reduced rate of, withholding on passive income	evidence on the Form W-7 application that you are entitled to claim tax treaty benefits	Exception #1.
is claiming tax treaty benefits for an exemption from, or a reduced rate of, withholding on your wages, salary, compensation, and honoraria payments, and will submit Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual, to the payer of your income	<ul style="list-style-type: none"> <li>evidence on the Form W-7 application that you are entitled to claim tax treaty benefits,</li> <li>a copy of the completed withholding agent's portion of Form 8233 attached to the Form W-7,</li> <li>a letter from the SSA, stating that you are ineligible to receive an SSN; or (if you are present in the U.S. receiving honoraria payments), a letter from the authorized school official, and</li> <li>a letter of employment from the payer of your income; or a copy of your employment contract; or a letter requesting your presence for a speaking engagement</li> </ul>	Exception #2.
is a foreign student, scholar, professor, or researcher claiming tax treaty benefits for an exemption from, or a reduced rate of, tax on your income from non-compensatory scholarships, fellowships, or grants, and will submit Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, to the withholding agent	<ul style="list-style-type: none"> <li>evidence on the Form W-7 application that you are entitled to claim tax treaty benefits,</li> <li>a copy of the Form W-8BEN that you submitted to the withholding agent, and</li> <li>a letter or official notification from the educational institution (that is, college or university) awarding the scholarship, grant, or honorarium; or a copy of a contract with a college, university, or educational institution</li> </ul> <p><b>Note.</b> If you are a student on an F-1, J-1, or M-1 visa and will not be employed while studying in the U.S., you do not need to apply for an SSN. However, you do need to submit a letter from your Designated School Official or Responsible Officer stating that you will not be securing employment in the U.S. or receiving any type of income from personal services.</p>	Exception #2.
is a foreign student, scholar, professor, or researcher who is not claiming tax treaty benefits for an exemption from, or a reduced rate of, tax on income from non-compensatory scholarships, fellowships, or grants	<ul style="list-style-type: none"> <li>a letter from the Designated School Official (DSO) or Responsible Officer (RO), on official letterhead, stating that you are receiving income from scholarships, fellowships, or grants that is subject to IRS federal tax withholding and information reporting requirements,</li> <li>a letter or official notification from the educational institution awarding the scholarship, fellowship, or grant, and</li> <li>evidence on the Form W-7 application displaying the name of the college, university, or educational institution</li> </ul> <p><b>Note.</b> If you are a student on an F-1, J-1, or M-1 visa and will not be employed while studying in the U.S., you do not need to apply for an SSN. However, you do need to submit a letter from your DSO or RO stating that you will not be securing employment in the U.S. or receiving any type of income from personal services.</p>	Exception #2.

## Exceptions Table - continued

IF you are a person who...	AND you submit...	THEN you can claim...
<ul style="list-style-type: none"> <li>• is a nonresident alien visiting the United States with gambling winnings,</li> <li>• is claiming tax treaty benefits for an exemption from, or a reduced rate of, withholding on your gambling income, and</li> <li>• will utilize the services of a gaming official acting as an IRS ITIN Acceptance Agent</li> </ul>	<p>your Form W-7 using the services of an appropriate gaming official serving as an IRS ITIN Acceptance Agent</p> <p><b>Note.</b> If you receive gambling income and do not secure the services of a gaming official, you can still file a Form 1040NR at the end of the tax year with a Form W-7. Attach a copy of the Form 1042-S displaying the amount of tax withheld. Your Form 1040NR should also display the tax treaty article number and country under which you are claiming treaty benefits.</p>	Exception #2.
has a home mortgage loan on real property located in the United States	documentation, such as a copy of the contract for the sale or similar documentation, showing evidence of a home mortgage loan on real property you own which is located in the United States	Exception #3.
is a party to a disposition of U.S. real property by a foreign person on which tax withholding is due	<ul style="list-style-type: none"> <li>• a completed application for a withholding certificate* or Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests,</li> <li>• a copy of the contract for the sale,</li> <li>• a completed Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests, submitted by the buyer (if you are the seller of the property), and</li> <li>• a completed Form 8288-A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests, submitted by the buyer (if you are the seller of the property)</li> </ul> <p>*The application for a withholding certificate must comply with the provisions of Regulations section 1.1445-3 and 1.1445-6, and Rev. Proc. 2000-35, which is on page 211 of Internal Revenue Bulletin 2005-35 at <a href="http://www.irs.gov/pub/irs-irbs/irb00-35.pdf">www.irs.gov/pub/irs-irbs/irb00-35.pdf</a>.</p>	Exception #4.



**Certificate of Foreign Status of Beneficial Owner  
for United States Tax Withholding**

OMB No. 1545-1621

▶ Section references are to the Internal Revenue Code. ▶ See separate instructions.  
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

**Do not use this form for:**

- A U.S. citizen or other U.S. person, including a resident alien individual . . . . . **W-9**
- A person claiming that income is effectively connected with the conduct of a trade or business in the United States . . . . . **W-8ECI**
- A foreign partnership, a foreign simple trust, or a foreign grantor trust (see instructions for exceptions) . . . . . **W-8ECI or W-8IMY**
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (see instructions) . . . . . **W-8ECI or W-8EXP**

**Note:** These entities should use Form W-8BEN if they are claiming treaty benefits or are providing the form only to claim they are a foreign person exempt from backup withholding.

- A person acting as an intermediary . . . . . **W-8IMY**
- Note:** See instructions for additional exceptions.

**Part I Identification of Beneficial Owner (See instructions.)**

<b>1</b> Name of individual or organization that is the beneficial owner		<b>2</b> Country of incorporation or organization	
<b>3</b> Type of beneficial owner:			
<div style="display: flex; flex-wrap: wrap;"><div style="width: 50%;"><input type="checkbox"/> Individual</div><div style="width: 50%;"><input type="checkbox"/> Corporation</div><div style="width: 50%;"><input type="checkbox"/> Disregarded entity</div><div style="width: 50%;"><input type="checkbox"/> Partnership</div><div style="width: 50%;"><input type="checkbox"/> Simple trust</div><div style="width: 50%;"><input type="checkbox"/> Grantor trust</div><div style="width: 50%;"><input type="checkbox"/> Complex trust</div><div style="width: 50%;"><input type="checkbox"/> Estate</div><div style="width: 50%;"><input type="checkbox"/> Government</div><div style="width: 50%;"><input type="checkbox"/> International organization</div><div style="width: 50%;"><input type="checkbox"/> Central bank of issue</div><div style="width: 50%;"><input type="checkbox"/> Tax-exempt organization</div><div style="width: 50%;"><input type="checkbox"/> Private foundation</div></div>			
<b>4</b> Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.			
City or town, state or province. Include postal code where appropriate.		Country (do not abbreviate)	
<b>5</b> Mailing address (if different from above)			
City or town, state or province. Include postal code where appropriate.		Country (do not abbreviate)	
<b>6</b> U.S. taxpayer identification number, if required (see instructions)		<b>7</b> Foreign tax identifying number, if any (optional)	
<div style="display: flex; justify-content: space-around;"><input type="checkbox"/> SSN or ITIN</div>		<div style="display: flex; justify-content: space-around;"><input type="checkbox"/> EIN</div>	
<b>8</b> Reference number(s) (see instructions)			

**Part II Claim of Tax Treaty Benefits (if applicable)**

- 9 I certify that (check all that apply):**
- a** ☐ The beneficial owner is a resident of ..... within the meaning of the income tax treaty between the United States and that country.
  - b** ☐ If required, the U.S. taxpayer identification number is stated on line 6 (see instructions).
  - c** ☐ The beneficial owner is not an individual, derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits (see instructions).
  - d** ☐ The beneficial owner is not an individual, is claiming treaty benefits for dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation, and meets qualified resident status (see instructions).
  - e** ☐ The beneficial owner is related to the person obligated to pay the income within the meaning of section 267(b) or 707(b), and will file Form 8833 if the amount subject to withholding received during a calendar year exceeds, in the aggregate, \$500,000.
- 10 Special rates and conditions** (if applicable—see instructions): The beneficial owner is claiming the provisions of Article ..... of the treaty identified on line 9a above to claim a ..... % rate of withholding on (specify type of income): .....  
Explain the reasons the beneficial owner meets the terms of the treaty article: .....

**Part III Notional Principal Contracts**

- 11** ☐ I have provided or will provide a statement that identifies those notional principal contracts from which the income is not effectively connected with the conduct of a trade or business in the United States. I agree to update this statement as required.

**Part IV Certification**

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- 1** I am the beneficial owner (or am authorized to sign for the beneficial owner) of all the income to which this form relates,
  - 2** The beneficial owner is not a U.S. person,
  - 3** The income to which this form relates is (a) not effectively connected with the conduct of a trade or business in the United States, (b) effectively connected but is not subject to tax under an income tax treaty, or (c) the partner's share of a partnership's effectively connected income, and
  - 4** For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.
- Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner.

**Sign Here**

Signature of beneficial owner (or individual authorized to sign for beneficial owner) Date (MM-DD-YYYY) Capacity in which acting

**Certificate of Foreign Person's Claim That Income Is  
Effectively Connected With the Conduct of a Trade or  
Business in the United States**

OMB No. 1545-1621

- ▶ Section references are to the Internal Revenue Code. ▶ See separate instructions.  
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

**Note:** Persons submitting this form must file an annual U.S. income tax return to report income claimed to be effectively connected with a U.S. trade or business (see instructions).

**Do not use this form for:**

- A beneficial owner solely claiming foreign status or treaty benefits . . . . . **W-8BEN**
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) . . . . . **W-8EXP**

**Note:** These entities should use Form W-8ECI if they received effectively connected income (e.g., income from commercial activities).

- A foreign partnership or a foreign trust (unless claiming an exemption from U.S. withholding on income effectively connected with the conduct of a trade or business in the United States) . . . . . **W-8BEN or W-8IMY**
- A person acting as an intermediary . . . . . **W-8IMY**

**Note:** See instructions for additional exceptions.

**Instead, use Form:****Part I Identification of Beneficial Owner (See instructions.)**

**1** Name of individual or organization that is the beneficial owner **2** Country of incorporation or organization

- 3** Type of entity (check the appropriate box): ☐ Individual ☐ Corporation ☐ Disregarded entity
- ☐ Partnership ☐ Simple trust ☐ Complex trust ☐ Estate
- ☐ Government ☐ Grantor trust ☐ Central bank of issue ☐ Tax-exempt organization
- ☐ Private foundation ☐ International organization

**4** Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box.

City or town, state or province. Include postal code where appropriate.

Country (do not abbreviate)

**5** Business address in the United States (street, apt. or suite no., or rural route). Do not use a P.O. box.

City or town, state, and ZIP code

**6** U.S. taxpayer identification number (required—see instructions)

☐ SSN or ITIN ☐ EIN

**7** Foreign tax identifying number, if any (optional)

**8** Reference number(s) (see instructions)

**9** Specify each item of income that is, or is expected to be, received from the payer that is effectively connected with the conduct of a trade or business in the United States (attach statement if necessary)

**Part II Certification****Sign  
Here**

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- I am the beneficial owner (or I am authorized to sign for the beneficial owner) of all the income to which this form relates,
- The amounts for which this certification is provided are effectively connected with the conduct of a trade or business in the United States and are includible in my gross income (or the beneficial owner's gross income) for the taxable year, and
- The beneficial owner is not a U.S. person.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disburse or make payments of the income of which I am the beneficial owner.

Signature of beneficial owner (or individual authorized to sign for the beneficial owner)

Date (MM-DD-YYYY)

Capacity in which acting

**Certificate of Foreign Intermediary,  
Foreign Flow-Through Entity, or Certain U.S.  
Branches for United States Tax Withholding**

OMB No. 1545-1621

Department of the Treasury  
Internal Revenue Service

▶ Section references are to the Internal Revenue Code. ▶ See separate instructions.  
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

**Do not use this form for:**

- A beneficial owner solely claiming foreign status or treaty benefits . . . . . **W-8BEN**
- A hybrid entity claiming treaty benefits on its own behalf . . . . . **W-8BEN**
- A person claiming that income is effectively connected with the conduct of a trade or business in the United States . . . . . **W-8ECI**
- A disregarded entity. Instead, the single foreign owner should use . . . . . **W-8BEN or W-8ECI**
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization,  
foreign private foundation, or government of a U.S. possession claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b). . . . . **W-8EXP**

**Instead, use Form:**

**Part I Identification of Entity**

**1** Name of individual or organization that is acting as intermediary

**2** Country of incorporation or organization

**3** Type of entity—check the appropriate box:

- ☐ Qualified intermediary. Complete Part II.
- ☐ Nonqualified intermediary. Complete Part III.
- ☐ U.S. branch. Complete Part IV.
- ☐ Withholding foreign partnership. Complete Part V.

- ☐ Withholding foreign trust. Complete Part V.
- ☐ Nonwithholding foreign partnership. Complete Part VI.
- ☐ Nonwithholding foreign simple trust. Complete Part VI.
- ☐ Nonwithholding foreign grantor trust. Complete Part VI.

**4** Permanent residence address (street, apt. or suite no., or rural route). Do not use P.O. box.

City or town, state or province. Include postal code where appropriate.

Country (do not abbreviate)

**5** Mailing address (if different from above)

City or town, state or province. Include postal code where appropriate.

Country (do not abbreviate)

**6** U.S. taxpayer identification number (if required, see instructions) ▶

- ☐ SSN or ITIN
- ☐ EIN
- ☐ QI-EIN

**7** Foreign tax identifying number, if any (optional)

**8** Reference number(s) (see instructions)

**Part II Qualified Intermediary**

**9a** ☐ (All qualified intermediaries check here) I certify that the entity identified in Part I:

- Is a qualified intermediary and is not acting for its own account with respect to the account(s) identified on line 8 or in a withholding statement associated with this form and
- Has provided or will provide a withholding statement, as required.

**b** ☐ (If applicable) I certify that the entity identified in Part I has assumed primary withholding responsibility under Chapter 3 of the Code with respect to the account(s) identified on this line 9b or in a withholding statement associated with this form ▶

**c** ☐ (If applicable) I certify that the entity identified in Part I has assumed primary Form 1099 reporting and backup withholding responsibility as authorized in its withholding agreement with the IRS with respect to the account(s) identified on this line 9c or in a withholding statement associated with this form ▶

**Part III Nonqualified Intermediary**

**10a** ☐ (All nonqualified intermediaries check here) I certify that the entity identified in Part I is not a qualified intermediary and is not acting for its own account.

**b** ☐ (If applicable) I certify that the entity identified in Part I is using this form to transmit withholding certificates and/or other documentary evidence and has provided or will provide a withholding statement, as required.

**Part IV Certain United States Branches**

**Note:** You may use this Part if the entity identified in Part I is a U.S. branch of a foreign bank or insurance company and is subject to certain regulatory requirements (see instructions).

- 11 ☐ I certify that the entity identified in Part I is a U.S. branch and that the payments are not effectively connected with the conduct of a trade or business in the United States.

**Check box 12 or box 13, whichever applies:**

- 12 ☐ I certify that the entity identified in Part I is using this form as evidence of its agreement with the withholding agent to be treated as a U.S. person with respect to any payments associated with this certificate.
- 13 ☐ I certify that the entity identified in Part I:
- Is using this form to transmit withholding certificates or other documentary evidence for the persons for whom the branch receives a payment and
  - Has provided or will provide a withholding statement, as required.

**Part V Withholding Foreign Partnership or Withholding Foreign Trust**

- 14 ☐ I certify that the entity identified in Part I:
- Is a withholding foreign partnership or a withholding foreign trust and
  - Has provided or will provide a withholding statement, as required.

**Part VI Nonwithholding Foreign Partnership, Simple Trust, or Grantor Trust**

- 15 ☐ I certify that the entity identified in Part I:
- Is a nonwithholding foreign partnership, a nonwithholding foreign simple trust, or a nonwithholding foreign grantor trust and that the payments to which this certificate relates are not effectively connected, or are not treated as effectively connected, with the conduct of a trade or business in the United States and
  - Is using this form to transmit withholding certificates and/or other documentary evidence and has provided or will provide a withholding statement, as required.

**Part VII Certification**

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income for which I am providing this form or any withholding agent that can disburse or make payments of the income for which I am providing this form.

**Sign Here** .....  
Signature of authorized official.....  
Date (MM-DD-YYYY)



# Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/  
Sole proprietor

☐ Corporation

☐ Partnership

☐ Other ▶

☐ Exempt from backup  
withholding

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign  
Here

Signature of  
U.S. person ▶

Date ▶

## Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.**

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules regarding partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

**Exempt payees.** Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker.
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000	Generally, exempt recipients 1 through 7

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see *Limited liability company* (LLC) on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

**Note:** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.socialsecurity.gov](http://www.socialsecurity.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer ID Numbers under Related Topics. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or single-owner LLC	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Sole proprietorship or single-owner LLC	The owner <sup>3</sup>
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one). If you are a sole proprietor, IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules regarding partnerships* on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out 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.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.