



Non Resident Alien Withholding FAQs

By: Chris DeMay, Tax Manager

In most cases payments made from US sources to foreign persons are subject to withholding by the withholding agent. You are a withholding agent if you have the control, receipt, custody, disposal, or payment of an item of income. A withholding agent may be an individual, corporation, partnership, trust, or any other entity. Failure to withhold will subject the withholding agent to the amount of tax plus interest and penalties.

The withholding is reported on Form 1042-S and 1042, and must be filed by March 15th. Form 1042 is required even if you were not required to withhold any income tax.

Who is a foreign person?

A foreign person includes a nonresident alien individual, a foreign corporation, partnership, trust or estate, and any other person that is not a U.S person.

A foreign person is determined based upon one of the following documents:

- W-8BEN: establishes the foreign status and beneficial owner of the income. Can also be used to claim an exemption from withholding or a reduced rate of withholding provided by an International income tax treaty.
- W-8ECI: establishes the foreign status and beneficial owner of the income, and makes a claim that the income is effectively connected with the conduct of a trade or business in the U.S.
- W-8EXP: establishes the foreign status and beneficial owner of the income, and makes a claim for exemption from withholding or a reduced rate of withholding as a foreign government or other foreign organization.

The withholding agent will be liable for the tax, penalties and interest if they know or have reason to know the statements made in the related documentation is false or in error. You are considered to have reason to know if statements contained in the withholding certificate or other documentation or other relevant facts of which you have knowledge would cause a reasonably prudent person in your position to question the claims made.

What income is subject to Non Resident Alien (NRA) withholding?

Generally, a payment is subject to NRA withholding if it is from sources within the U.S. and it is ***Fixed or determinable annual or periodical (FDAP) income***. FDAP income is all income except gains from the sale of property, and items of income excluded from gross income, such as tax-exempt municipal bonds. FDAP income includes compensation for personal services, dividends, interest, pensions and annuities, alimony, taxable scholarships, prizes, commissions paid for a single

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transaction, the distributable net income of an estate or trust, and partnership distributions. FDAP income that is effectively connected with a U.S. trade or business is generally exempt from withholding provided that you receive a Form W-8 ECI from the beneficial owner of the income. This exemption does not apply to all items of income, including the pay for personal services performed by an individual, effectively connected taxable income of a partnership that is allocable to its foreign partners, or income from the disposition of a real property interest.

How much should I withhold?

You must withhold tax according to the table below unless a reduced rate or exemption from withholding is authorized under a tax treaty. The withholding agent may not apply a reduced rate of withholding on a payee's presumed status if documentation is required to establish a reduced rate of withholding.

If you paid the following type of income:	Then you must generally withhold at the following rate:
Pensions	Graduated rates in Circular A or Circular E
Wages paid to a NRA employee	Graduated rates in Circular A or Circular E
Foreign partners share of effectively connected income of the partnership	35%
Dispositions of US real property interests (discussed below)	10%
All other income not listed (please refer to Chart C of IRS publication 515 for a complete list of withholding tax rates)	30%

Real Property Interest

Purchasers of real property must withhold the following amounts:

- 10% of the purchase price.
- Domestic partnerships and trusts are required to withhold at 35% of the gain realized on the disposition of US real property that is attributable to foreign partners or foreign beneficiaries.

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