

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.
- 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.