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# Instructions for Form W-8ECI Department of the Treasury Internal Revenue Service

## (Rev. July 2017)

### Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States

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

**Future Developments.** For the latest information about developments related to Form W-8ECI and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW8ECI](http://www.irs.gov/FormW8ECI).

#### What's New

These instructions have been updated to reflect temporary and final regulations under chapters 3 and 4 published in January 2017. These instructions include additional guidance for when a foreign TIN or date of birth is required to be included on Form W-8ECI. In addition, these instructions include guidance about the use of electronic signatures.

## General Instructions

**Note.** For definitions of terms used throughout these instructions, see *Definitions*, later.

### Purpose of Form

Foreign persons are generally subject to U.S. tax at a 30% rate on income they receive from U.S. sources. However, no withholding under section 1441 or 1442 is required on income that is, or is deemed to be, effectively connected with the conduct of a trade or business in the United States and is includible in the beneficial owner's gross income for the tax year.

This withholding exemption does not apply to personal services income and income subject to withholding under section 1445 (dispositions of U.S. real property interests) or section 1446 (foreign partner's share of effectively connected income).

Income effectively connected with the conduct of a trade or business in the United States is not a withholdable payment under chapter 4 and thus is not subject to withholding under sections 1471 or 1472.

If you receive effectively connected income from sources in the United States, you must provide Form W-8ECI to:

- Establish that you are not a U.S. person,
- Claim that you are the beneficial owner of the income for which Form W-8ECI is being provided or are an entity engaged in a U.S. trade or business submitting Form W-8ECI on behalf of your owners, partners, or beneficiaries, and
- Claim that the income is effectively connected with the conduct of a trade or business in the United States.

If you expect to receive both income that is effectively connected and income that is not effectively connected from a withholding agent, you must provide Form W-8ECI for the effectively connected income and Form W-8BEN,

Form W-8BEN-E, Form W-8EXP, or Form W-8IMY (as appropriate) for income that is not effectively connected.

If you submit Form W-8ECI to a partnership, the income claimed to be effectively connected with the conduct of a U.S. trade or business is subject to withholding under section 1446. If a nominee holds an interest in a partnership on your behalf, you, not the nominee, must submit the form to the partnership or nominee that is the withholding agent.

If you are a foreign partnership, a foreign simple trust, or a foreign grantor trust with effectively connected income, you can submit Form W-8ECI without attaching Forms W-8BEN, W-8BEN-E, or other documentation for your foreign partners, beneficiaries, or owners.

A withholding agent or payer of the income can rely on a properly completed Form W-8ECI to treat the payment associated with the Form W-8ECI as a payment to a foreign person who beneficially owns the amounts paid and is either entitled to an exemption from withholding under sections 1441, 1442, 1471, or 1472 because the income is effectively connected with the conduct of a trade or business in the United States or subject to withholding under section 1446.

Provide Form W-8ECI to the withholding agent or payer before income is paid, credited, or allocated to you. Failure by a beneficial owner to provide a Form W-8ECI when requested may lead to withholding at the 30% rate or the backup withholding rate under section 3406.

**Additional information.** For additional information and instructions for the withholding agent, see the Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY.

### Who Must Provide Form W-8ECI

You must give Form W-8ECI to the withholding agent or payer if you are a foreign person and you are the beneficial owner of U.S. source income that is (or is deemed to be) effectively connected with the conduct of a trade or business within the United States or are an entity (including a foreign partnership or foreign trust) engaged in a U.S. trade or business submitting this form on behalf of your owners, partners, or beneficiaries.

Do not use Form W-8ECI if:

- You are a nonresident alien individual who claims exemption from withholding on compensation for independent or certain dependent personal services performed in the United States. Instead, provide Form 8233 or Form W-4.
- You are the beneficial owner of a payment subject to withholding and are claiming an exemption from withholding for a reason other than a claim that the income is effectively connected with the conduct of a trade or business in the United States. For example, if you

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are a foreign person who is the beneficial owner of U.S. source income that is not effectively connected with a U.S. trade or business and you are claiming a reduced rate of withholding under an applicable income tax treaty in effect, do not use Form W-8ECI. Instead, provide Form W-8BEN or Form W-8BEN-E.

- You are a foreign person receiving proceeds from the disposition of a U.S. real property interest. Instead, see Form 8288-B.
- You are filing for 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 115(2), 501(c), 892, 895, or 1443(b). Instead, provide Form W-8EXP. However, you should use Form W-8BEN-E if you are claiming treaty benefits or are providing the form only to claim exempt recipient status for backup withholding purposes. You should use Form W-8ECI, however, if you received effectively connected income (for example, income from commercial activities).
- You are acting as an intermediary (acting not for your own account or for that of your partners, but for the account of others as an agent, nominee, or custodian) or qualified intermediary with respect to a payment subject to withholding. Instead, provide Form W-8IMY.
- You are a foreign partnership or foreign trust acting in your capacity as a withholding foreign partnership or a withholding foreign trust for purposes of sections 1441, 1442, and 1471 through 1474. A withholding foreign partnership is, generally, a foreign partnership that has entered into a withholding agreement with the IRS under which it agrees to assume primary withholding responsibility for each partner's distributive share of income subject to withholding that is paid to the partnership. A withholding foreign trust is, generally, a foreign simple trust or a foreign grantor trust that has entered into a withholding agreement with the IRS under which it agrees to assume primary withholding responsibility for each beneficiary's or owner's distributive share of income subject to withholding that is paid to the trust. Instead, provide Form W-8IMY.
- You are a foreign corporation that is a personal holding company receiving compensation described in section 543(a)(7). Such compensation is not exempt from withholding as effectively connected income but can be exempt from withholding on another basis.
- You are a foreign partner in a partnership and the income allocated to you from the partnership is effectively connected with the conduct of the partnership's trade or business in the United States. Instead, provide Form W-8BEN or Form W-8BEN-E (as applicable). However, if you made or will make an election under section 871(d) or 882(d), provide Form W-8ECI. In addition, if you are otherwise engaged in a trade or business in the United States and you want your allocable share of income from the partnership to be subject to withholding under section 1446, provide Form W-8ECI.

**Giving Form W-8ECI to the withholding agent.** Do not send Form W-8ECI to the IRS. Instead, give it to the person who is requesting it from you. Generally, this will be the person from whom you receive the payment, who credits your account, or a partnership that allocates

income to you. Give Form W-8ECI to the person requesting it before the payment is made, credited, or allocated. If you do not provide Form W-8ECI, the withholding agent can have to withhold at the 30% rate or the backup withholding rate. A separate Form W-8ECI generally must be given to each withholding agent.

**U.S. branch of foreign bank or insurance company.**

A payment to a U.S. branch of a foreign bank or a foreign insurance company that is subject to U.S. regulation by the Federal Reserve Board or state insurance authorities is presumed to be effectively connected with the conduct of a trade or business in the United States if the withholding agent has an EIN provided by the branch. The presumption does not apply if the branch provides a withholding agent with a Form W-8BEN-E for the income.

**Expiration of Form W-8ECI.** Generally, a Form W-8ECI will remain valid for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, unless a change in circumstances makes any information on the form incorrect. For example, a Form W-8ECI signed on September 30, 2017, generally remains valid through December 31, 2020.

**Change in circumstances.** If a change in circumstances makes any information on the Form W-8ECI you have submitted incorrect, you must notify the withholding agent or payer within 30 days of the change in circumstances and you must file a new Form W-8ECI or other appropriate form. For example, if during the tax year any part or all of the income is no longer effectively connected with the conduct of a trade or business in the United States, your Form W-8ECI is no longer valid. You must notify the withholding agent and provide Form W-8BEN, W-8BEN-E, W-8EXP, or W-8IMY. See Regulations section 1.1441-1(e)(4)(ii)(D) for the definition of a change in circumstances for purposes of chapter 3, and Regulations section 1.1471-(c)(6)(ii)(E) for purposes of chapter 4.

## Definitions

**Beneficial owner.** For payments other than those for which a reduced rate of withholding is claimed under an income tax treaty, the beneficial owner of income is generally the person who is required under U.S. tax principles to include the income in gross income on a tax return. A person is not a beneficial owner of income, however, to the extent that person is receiving the income as a nominee, agent, or custodian, or to the extent the person is a conduit whose participation in a transaction is disregarded. In the case of amounts paid that do not constitute income, beneficial ownership is determined as if the payment were income.

Foreign partnerships, foreign simple trusts, and foreign grantor trusts are not the beneficial owners of income paid to the partnership or trust. The beneficial owners of income paid to a foreign partnership are generally the partners in the partnership, provided that the partner is not itself a partnership, foreign simple or grantor trust, nominee or other agent. The beneficial owners of income paid to a foreign simple trust (a foreign trust that is described in section 651(a)) are generally the

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beneficiaries of the trust, if the beneficiary is not a foreign partnership, foreign simple or grantor trust, nominee or other agent. The beneficial owners of a foreign grantor trust (a foreign trust to the extent that all or a portion of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679) are the persons treated as the owners of the trust. The beneficial owners of income paid to a foreign complex trust (a foreign trust that is not a foreign simple trust or foreign grantor trust) is the trust itself.

Generally, these beneficial owner rules apply for purposes of sections 1441, 1442, and 1446, except that section 1446 requires a foreign simple trust to provide a Form W-8 on its own behalf rather than on behalf of the beneficiary of such trust.

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

A payment to a U.S. partnership, U.S. trust, or U.S. estate is treated as a payment to a U.S. payee. A U.S. partnership, trust, or estate should provide the withholding agent with a Form W-9. However, for purposes of section 1446, a U.S. grantor trust shall not provide the withholding agent a Form W-9. Instead, the grantor or other owner must provide Form W-8 or Form W-9 as appropriate.

**Chapter 3.** Chapter 3 means chapter 3 of the Internal Revenue Code (Withholding of Tax on Nonresident Aliens and Foreign Corporations). Chapter 3 contains sections 1441 through 1464.

**Chapter 4.** Chapter 4 means chapter 4 of the Internal Revenue Code (Taxes to Enforce Reporting on Certain Foreign Accounts). Chapter 4 contains sections 1471 through 1474.

**Disregarded entity.** A business entity that has a single owner and is not a corporation under Regulations section 301.7701-2(b) is disregarded as an entity separate from its owner. A disregarded entity does not submit Form W-8ECI to a partnership for purposes of section 1446. Instead, the owner of such entity provides the appropriate documentation. See Regulations section 1.1446-1.

**Effectively connected income.** Generally, when a foreign person engages in a trade or business in the United States, all income from sources in the United States other than fixed or determinable annual or periodical (FDAP) income (for example, interest, dividends, rents, and certain similar amounts) is considered income effectively connected with a U.S. trade or business. FDAP income may or may not be effectively connected with a U.S. trade or business. Factors to be considered to determine whether FDAP income and similar amounts from U.S. sources are effectively connected with a U.S. trade or business include whether:

- The income is from assets used in, or held for use in, the conduct of that trade or business, or
- The activities of that trade or business were a material factor in the realization of the income.

There are special rules for determining whether income from securities is effectively connected with the active conduct of a U.S. banking, financing, or similar business. See section 864(c)(4)(B)(ii) and Regulations section 1.864-4(c)(5)(ii) for more information.

Effectively connected income, after allowable deductions, is taxed at graduated rates applicable to U.S. persons and resident aliens, rather than at the 30% rate. You must report this income on your annual U.S. income tax or information return.

A partnership that has effectively connected income allocable to foreign partners is generally required to withhold tax under section 1446. The withholding tax rate on a partner's share of effectively connected income is 35% for corporate partners and 39.6% for all other taxable partners. In certain circumstances the partnership can withhold tax at the highest applicable rate to a particular type of income (for example, long-term capital gain allocated to a noncorporate partner). Any amount withheld under section 1446 on your behalf, and reflected on Form 8805 issued by the partnership to you, can be credited on your U.S. income tax return.

**Foreign person.** A foreign person includes a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, and any other person that's not a U.S. person.

**Nonresident alien individual.** Any individual who is not a citizen or resident alien of the United States is a nonresident alien individual. An alien individual meeting either the "green card test" or the "substantial presence test" for the calendar year is a resident alien. Any person not meeting either test is a nonresident alien individual. Additionally, an alien individual who is treated as a nonresident alien pursuant to Regulations section 301.7701(b)-7 for purposes of computing the individual's U.S. tax liability, or an alien individual who is a bona fide resident of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa is a nonresident alien individual.

See Pub. 519 for more information on resident and nonresident alien status including information about the "green card test" and "substantial presence test."



*Even though a nonresident alien individual married to a U.S. citizen or resident alien can choose to be treated as a resident alien for certain purposes (for example, filing a joint income tax return), such individual is still treated as a nonresident alien for withholding tax purposes on all income except wages.*

**Withholding agent.** Any person, U.S. or foreign, that has control, receipt, custody, disposal, or payment of U.S. source FDAP income subject to chapter 3 withholding is a withholding agent. For purposes of chapter 4, any person, U.S. or foreign, that has control, receipt, custody, disposal, or payment of a withholdable payment is a withholding agent. The withholding agent can be an individual, corporation, partnership, trust, association, or any other entity including (but not limited to) any foreign intermediary, foreign partnership, and U.S. branches treated as U.S. person. Generally, the person who pays (or causes to be paid) an amount subject to withholding to the foreign person (or to its agent) must withhold.

For purposes of section 1446, the withholding agent is the partnership conducting the trade or business in the United States. For a publicly traded partnership, the withholding agent can be the partnership, a nominee



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holding an interest on behalf of a foreign person, or both. See Regulations sections 1.1446-1 through 1.1446-6.

**Withholdable payment.** A withholdable payment means any payment of U.S. source FDAP income, subject to certain exemptions described in Regulations sections 1.1471-2(b) and 1.1473-1(a). However, no exceptions to withholding on U.S. source FDAP income for purposes other than chapter 4 apply when determining whether a payment is a withholdable payment. For example, an exclusion from an amount subject to withholding under Regulations section 1.1441-2(a) does not apply for purposes of determining whether a payment constitutes a withholdable payment. Under chapter 4, a payment of effectively connected income is not a withholdable payment.

**U.S. person.** A U.S. person is defined in section 7701(a)(30) and includes an individual who is a citizen or resident of the United States, as well as domestic partnerships, corporations, trusts, and estates.

## Specific Instructions

### Part I

**Line 1.** Enter your name. If you are providing this form for a disregarded entity with a single owner who is a foreign person, this form should be completed and signed by the foreign single owner. If the account to which a payment is made or credited is in the name of the disregarded entity, the foreign single owner can inform the withholding agent of this fact by including the name of the disregarded entity on line 3 of Part I of the form.

**TIP** *If you own the income or account jointly with one or more other persons, the income or account will be treated by the withholding agent as owned by a foreign person if Forms W-8ECI are provided by all of the owners. If the withholding agent receives a Form W-9 from any of the joint owners the payment must be treated as made to a U.S. person.*

**Line 2.** If you are providing this form for a corporation, enter the country of incorporation. If you are filing for another type of entity, enter the country under whose laws the entity is created, organized, or governed. If you are an individual, provide your country of residence for tax purposes.

**Line 3.** If you are providing this form for a disregarded entity, enter the name of the disregarded entity receiving the payment. This line is not required but can assist the withholding agent that is making a payment to you. The withholding agent can request additional referencing information (such as your account number) which should be entered on line 9. When completing this form, do not provide information concerning the disregarded entity on any line other than this line 3 or line 9. Instead, you should complete the form using the information of the owner of the disregarded entity.

**Line 4.** Check the box that applies. By checking a box, you are representing that you qualify for this classification. You must check the one box that represents your classification (for example, corporation, partnership, etc.)

under U.S. tax principles. If more than one classification applies to you, select the most specific status available. For example, if you are a private foundation, you are also considered a tax-exempt organization, and you should check the box for private foundation rather than the box for tax-exempt organization.

**Line 5.** Your permanent residence address is the address in the country where you claim to be a resident for that country's income tax. Do not show the address of a financial institution, a post office box, or an address used solely for mailing purposes unless such address is the registered address of an entity identified on line 1 which does not have another address in the jurisdiction. If you are an individual who does not have a tax residence in any country, your permanent residence is where you normally reside. If you are not an individual and you do not have a tax residence in any country, the permanent residence address is where you maintain your principal office.

**Line 6.** Enter your business address in the United States. Do not show a post office box.

**Line 7.** Enter your U.S. taxpayer identification number (TIN). A U.S. TIN is a social security number (SSN), employer identification number (EIN), or IRS individual taxpayer identification number (ITIN). Check the appropriate box for the type of U.S. TIN you are providing. You are required to provide a TIN for this form to be valid.

If you are an individual, you are generally required to enter your SSN. To apply for an SSN, get Form SS-5 from a Social Security Administration (SSA) office or online at [www.ssa.gov/forms/ss-5.pdf](http://www.ssa.gov/forms/ss-5.pdf). If in the United States, you can call the SSA at 1-800-772-1213. Fill in Form SS-5 and return it to the SSA.

If you do not have an SSN and are not eligible to get one, you must get an ITIN. To apply for an ITIN, file Form W-7 with the IRS. It usually takes 4-6 weeks to get an ITIN.

If you are not an individual (for example, if you are a foreign estate or trust), or you are an individual who is an employer or who is engaged in a U.S. trade or business as a sole proprietor, use Form SS-4 to obtain an EIN. If you are a disregarded entity, enter the U.S. TIN of your foreign single owner.

**TIP** *You can also apply for an EIN online. For more information, visit [IRS.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online](http://IRS.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online).*

**Line 8.** If you are providing this Form W-8ECI to document yourself as an account holder (as defined in Regulations section 1.1471-5(a)(3)) with respect to a financial account (as defined in Regulations section 1.1471-5(b)) that you hold at a U.S. office of a financial institution (including a U.S. branch of an FFI) and you receive U.S. source income reportable on a Form 1042-S associated with this form, you must provide the tax identifying number (TIN) issued to you by your jurisdiction of tax residence identified on line 5 unless:

- You have not been issued a TIN (including if the jurisdiction does not issue TINs), or

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- You properly identified yourself as a government, central bank of issue, or international organization on line 4.

If you are providing this form to document a financial account described above but you do not enter a TIN on line 8 and you are not a government, central bank of issue, or international organization, you must provide the withholding agent with an explanation of why you have not been issued a TIN. For this purpose, an explanation is a statement that you are not legally required to obtain a TIN in your jurisdiction of tax residence. The explanation may be written on line 8, in the margins of the form, or on a separate attached statement associated with the form. If you are writing the explanation on line 8, you can shorten it to "not legally required." Do not write "not applicable."

**Line 9.** You or the withholding agent requesting this form can use this line to include any referencing information that is useful to the withholding agent in carrying out its obligations. For example, you can use line 9 to include the name and number of the account for which you are providing the form.

**Line 10.** If you are providing this Form W-8ECI to document yourself as an account holder with respect to a financial account (as described in line 8 above) that you hold at a U.S. office of a financial institution (including a U.S. branch of an FFI), provide your date of birth if you are an individual. Use the following format to input your information: MM-DD-YYYY. For example, if you were born on April 15, 1975, you would enter 04-15-1975.

**Line 11.** You must specify the items of income that are effectively connected with the conduct of a trade or business in the United States. You will generally have to provide Form W-8BEN, Form W-8BEN-E, Form W-8EXP, or Form W-8IMY for those items from U.S. sources that are not effectively connected with the conduct of a trade or business in the United States.

If you are providing this form to a partnership because you are a partner and have made an election under section 871(d) or section 882(d), attach a copy of the election to the form. If you have not made the election, but intend to do so effective for the current tax year, attach a statement to the form indicating your intent. See Regulations section 1.871-10(d)(3).

## Part II

**Signature.** Form W-8ECI must be signed and dated by the beneficial owner of the income, or, if the beneficial owner is not an individual, by an authorized representative or officer of the beneficial owner. If an authorized representative or agent is completing Form W-8ECI on behalf of the beneficial owner of the income, the representative or agent must check the box to certify that he or she has the legal capacity to sign for the person identified on line 1. If Form W-8ECI is completed by an agent acting under a duly authorized power of attorney for the beneficial owner, the form must be accompanied by the power of attorney in proper form or a copy thereof specifically authorizing the agent to represent the principal in making, executing, and presenting the form. This

requirement does not apply to a partnership or other flow-through entity submitting this form with respect to a payment of effectively connected income that is beneficially owned by the entity's partners or owners. Form 2848 can be used for this purpose. The agent, as well as the beneficial owner, can incur liability for the penalties provided for an erroneous, false, or fraudulent form.

A withholding agent can allow you to provide this form with an electronic signature. The electronic signature must indicate that the form was electronically signed by a person authorized to do so (for example, with a time and date stamp and statement that the form has been electronically signed). Simply typing your name into the signature line is not an electronic signature.



*If any information on Form W-8ECI becomes incorrect, you must submit a correct new form within 30 days to the requester of this form unless you will not receive a future payment from the withholding agent that would require an updated Form W-8.*

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. If you want to receive exemption from withholding on income effectively connected with the conduct of a trade or business in the United States, you are required to provide 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 can 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 business taxpayers filing this form is approved under OMB control number 1545-0123. The estimated burden for all other taxpayers who file this form is shown below.

The estimated average time is: **Recordkeeping**, 4 hr., 4 min.; **Learning about the law or the form**, 1 hr., 51 min.; **Preparing and providing the form**, 3 hr., 12 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 send us comments from [IRS.gov/Forms-Pubs](https://www.irs.gov/forms-pubs). Click on "More Information" and then on "Give us feedback." You can write to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send Form W-8ECI to this office. Instead, give it to your withholding agent.