

# Instructions for Form W-8ECI

(Rev. August 2001)

(Use with the December 2000 revision of Form W-8ECI.)

## Certificate of Foreign Person's Claim for Exemption From Withholding on Income 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.

### General Instructions

**Note:** For definitions of terms used throughout these instructions, see **Definitions** on pages 2 and 3.

**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 is required on income (other than 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)) that is, or is deemed to be, effectively connected with the conduct of a trade or business within the United States and is includible in the beneficial owner's gross income for the tax year.

If you receive effectively connected income from sources within 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, and
- Claim that the income is effectively connected with the conduct of a trade or business within 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 (or Form W-8EXP or Form W-8IMY) for income that is not effectively connected.

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

A withholding agent or payer of the income may 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 entitled to an exemption from withholding because the income is effectively connected with the conduct of a trade or business within the United States.

Provide Form W-8ECI to the withholding agent or payer before income is paid or credited to you. Failure by a beneficial owner to provide a Form W-8ECI when

requested may lead to withholding at a 30% rate (foreign-person withholding) or the backup withholding rate.

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

**Who must file.** 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.

**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**, Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien, or **Form W-4**, Employee's Withholding Allowance Certificate.
- You 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 within the United States. For example, if you are a foreign person and the beneficial owner of U.S. source income that is not effectively connected with a U.S. trade or business and are claiming a reduced rate of withholding as a resident of a foreign country with which the United States has an income tax treaty in effect, do not use this form. Instead, provide **Form W-8BEN**, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding.
- You are a foreign person receiving proceeds from the disposition of a U.S. real property interest. Instead, see **Form 8288-B**, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.
- 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**, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding. However, these entities

should use Form W-8BEN if they are claiming treaty benefits or are providing the form only to claim exempt recipient status for backup withholding purposes. They should use Form W-8ECI if they received effectively connected income (for example, income from commercial activities).

- You are acting as an intermediary (that is, acting not for your own account or for that of your partners, but for the account of others as an agent, nominee, or custodian). Instead, provide **Form W-8IMY**, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding.
- You are a withholding foreign partnership or a withholding foreign trust. 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 may be exempt from withholding on another basis.
- You are a foreign partner in a domestic partnership and the income you receive from the partnership is effectively connected with the conduct of a trade or business within the United States. See section 1446. A Form W-8BEN, Form W-8IMY, or Form W-8EXP is required, however, for income that is not effectively connected. See Rev. Proc. 89-31, 1989-1 C.B. 895.

**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 or who credits your account. Give Form W-8ECI to the person requesting it before the payment is made to you or credited to your account. If you do not provide this form, the withholding agent may have to withhold at a 30% rate (foreign-person withholding) or the backup withholding rate. A separate Form W-8ECI must be given to each withholding agent.

**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 within the United States, your Form W-8ECI is no longer valid. You must notify the withholding agent and provide Form W-8BEN, W-8EXP, or Form W-8IMY.

If you become a citizen or a resident of the United States after you submit Form W-8ECI, you are no longer subject to the 30% foreign-person withholding rules. You must notify the withholding agent or payer within 30 days of becoming a U.S. citizen or resident. For more information, see the **Instructions for the Requestor of Form W-9**.

**Expiration of Form W-8ECI.** Generally, a Form W-8ECI will remain in effect 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, 2001, remains valid through December 31, 2004. Upon the expiration of the 3-year period, you must provide a new Form W-8ECI.

## 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 (that is, a foreign trust that is described in section 651(a)) are generally the 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 (that is, 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 (that is, a foreign trust that is not a foreign simple trust or foreign grantor trust) is the trust itself.

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

**Note:** *A payment to a U.S. partnership, U.S. trust, or U.S. estate is treated as a payment to a U.S. payee that is not subject to 30% foreign-person withholding. A U.S. partnership, trust, or estate should provide the withholding agent with a Form W-9.*

**Effectively connected income.** Generally, when a foreign person engages in a trade or business within the United States, all income from sources within 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. citizens and residents, rather than at a 30% foreign-person withholding rate. You must report this income on an annual tax or information return as follows:

- **Individuals**—Use **Form 1040NR**, U.S. Nonresident Alien Income Tax Return.
- **Corporations**—Use **Form 1120-F**, U.S. Income Tax Return of a Foreign Corporation.
- **Partnerships**—Use **Form 1065**, U.S. Return of Partnership Income.
- **Trusts or estates**—Use **Form 1041**, U.S. Income Tax Return for Estates and Trusts.

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

**Nonresident alien individual.** Any individual who is not a citizen or resident of the United States is a nonresident alien individual. An alien individual meeting either the “green card test” or the “substantial presence test” for the calendar year is a resident alien. Any person not meeting either test is a nonresident alien individual. Additionally, an alien individual who is a resident of a foreign country under the residence article of an income tax treaty, or an alien individual who is a 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.

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

See **Pub. 519**, U.S. Tax Guide for Aliens, for more information on resident and nonresident alien status.

**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.

**Withholding agent.** Any person, U.S. or foreign, that has control, receipt, or custody of an amount subject to withholding or who can disburse or make payments of an amount subject to withholding is a withholding agent. The withholding agent may 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 of certain foreign banks and insurance companies. 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.

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## Specific Instructions

### Part I

**Line 1.** Enter your name. If you are filing 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 should inform the withholding agent of this fact. This may be done by including the name and account number of the disregarded entity on line 8 (reference number) of Part I of the form.

**Note:** *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, Request for Taxpayer Identification Number and Certification**, from any of the joint owners, the payment must be treated as made to a U.S. person.*

**Line 2.** If you are filing 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, write “N/A” (for “not applicable”).

**Line 3.** 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 you are filing for a disregarded entity, you must check the “Disregarded entity” box (not the box that describes the status of your single owner).

**Line 4.** 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. 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 5.** Enter your business address in the United States. Do not show a post office box.

**Line 6.** You must provide a U.S. taxpayer identification number (TIN) for this form to be valid. 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.

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. 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, 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**, Application for Employer Identification Number, to obtain an EIN. If you are a disregarded entity, enter the U.S. TIN of your foreign single owner.

**Line 7.** If your country of residence for tax purposes has issued you a tax identifying number, enter it here. For example, if you are a resident of Canada, enter your Social Insurance Number.

**Line 8.** This line may be used by the filer of Form W-8ECI or by the withholding agent to whom it is provided to include any referencing information that is useful to the withholding agent in carrying out its obligations. A beneficial owner may use line 8 to include the name and number of the account for which he or she is providing the form. A foreign single owner of a disregarded entity may use line 8 to inform the withholding agent that the account to which a payment is made or credited is in the name of the disregarded entity (see instructions for line 1 on page 3).

**Line 9.** You must specify the items of income that are effectively connected with the conduct of a trade or business within the United States. You will generally have to provide Form W-8BEN, Form W-8EXP, or Form W-8IMY for those items from sources within the United States that are not effectively connected with the conduct of a trade or business within the United States. See Form W-8BEN, W-8EXP, or W-8IMY, and its instructions, for more details.

## 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 Form W-8ECI is completed by an agent acting under a duly authorized power of attorney, 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. **Form 2848**, Power of Attorney and Declaration of Representative, may be used for this purpose. The agent, as well as the beneficial owner, may incur liability for the penalties provided for an erroneous, false, or fraudulent form.

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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. 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 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**, 3 hr., 22 min.; **Preparing and sending the form to IRS**, 3 hr., 35 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 Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send Form W-8ECI to this office. Instead, give it to your withholding agent.

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