



Department
of the
Treasury

Internal
Revenue
Service

Publication 686

(Rev. December 2001)

Cat. No. 46684K

Certification for Reduced Tax Rates in Tax Treaty Countries



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Introduction

Many foreign countries withhold tax on certain types of income paid from sources within those countries to residents of other countries. The rate at which any country withholds tax on each type of income is generally set by that country's statutes. The United States has tax treaties with many countries. Generally, these treaties reduce the statutory tax rate (sometimes to zero) for income paid to U.S. citizens, U.S. corporations, U.S. partnerships, and some resident aliens living in the United States. This reduced rate is referred to as the treaty-reduced rate.

Generally, you must prove that you are a U.S. resident to get the reduced rates. This proof of residency often must be certified by the U.S. Government. This publication explains the general procedures for requesting certification for the following entities.

- Individuals.
- Partnerships and S corporations.
- Corporations and subsidiaries.
- Limited liability companies.
- Employee plans.
- Exempt organizations.
- Trusts and estates.
- Common trust funds.

It explains the additional procedures needed for certification with Spain and the United Kingdom. It also covers where to get the foreign government applications for tax treaty benefits.

Comments and suggestions. The IRS Office of Tax Treaty is responsible for the content in this publication. Comments about this publication and your suggestions for future editions should be sent to:

Internal Revenue Service
Office of Tax Treaty
950 L'Enfant Plaza
Washington, DC 20224

U.S. Residency

Upon receiving proof of U.S. residency, some countries will allow withholding of the tax at the treaty-reduced rate. Other countries always withhold tax at their statutory tax rate and will refund the amount that is more than the treaty-reduced rate upon receiving proof of U.S. residency.

Proof of U.S. residency. As proof of residency in the United States and of entitlement to the benefits of the tax treaty, U.S. treaty partner countries require a U.S. Government certification that you are a U.S. citizen, U.S. corporation or partnership, or resident of the United States for purposes of taxation. Most treaty partner countries will accept this certification in the form of a computer-generated certification letter from the Internal Revenue Service (IRS). This letter is also known as **Form 6166**.

Some treaty partner countries require additional information that is not provided on Form

6166. You can provide that information on that country's form and attach Form 6166.

Procedures for Certification

Most treaty countries that require certification provide special forms for that purpose. These forms contain questions that you must answer followed by a statement for certification from the U.S. taxing authority (the IRS). However, the IRS generally does not certify U.S. residency by using forms from other countries. Instead, when the IRS receives a written request for certification from you, **and** you meet the necessary requirements, it will send you Form 6166, a computer-generated letter. This letter is your certification. It is on stationery bearing the U.S. Treasury Department letterhead, the U.S. Government watermark, and the copied signature of the Director, Customer Account Services (the Director), Philadelphia Service Center (PSC).

After you receive the Form 6166 from the PSC, then you may send it to the foreign country to claim treaty benefits. Along with that Form 6166, you should enclose the completed foreign country's certification form, if any. Spain and the United Kingdom have certain additional requirements, as explained later.

Sending certification to a third party. If you request that the certification be mailed to a third party, you must provide written authorization for the IRS to release your certification to a third party. If the certification is for a partnership, each partner must provide such written authorization. You can use Form 8821, *Tax Information Authorization*, or Form 2848, *Power of Attorney*, for this authorization.

Where to send request.



You should send a letter requesting certification to:

IRS
Philadelphia Service Center
Foreign Certification Request
P.O. Box 16347
Philadelphia, PA 19114-0447

Note. You can also fax your request to the Philadelphia Service Center at 215-516-1035 or 215-516-3412. These are not toll-free numbers.

Certification requests are generally processed within 30 days from the date received. When this is not possible, you should receive notification of delay. If you do not receive the certification you requested or a notification of delay within 30 days from the time the request was mailed to the IRS, contact the certification unit at 215-516-7135. This is not a toll free number.

General Certification Request Requirements

You must submit the following information with all certification requests.

- 1) The entity (name and address) for whom you are requesting the certification.

- 2) The tax identification number for whom you are requesting certification.
- 3) The tax year or period for which you are requesting certification.
- 4) The country for which certification is needed.

The United States can only certify the name and tax identification number that has been verified on the income tax return that was filed with the U.S. tax authorities for the year for which you are requesting certification.

There are exceptions to this rule. The exceptions are:

- Minor children,
- Qualified Subchapter S Subsidiaries (QSSS),
- Subsidiaries, and
- Single member limited liability companies (LLC).

The information that must be submitted for certification of these entities is discussed later.

Additional Information Required for Certification

The type of information that you must include in your request for certification depends on the type of entity requesting the certification.

Individuals. Requests for certification must include your name, mailing address, social security number, tax return form number (for example, 1040), and the tax period for which certification is requested.

The Director will certify that you are a resident of the United States for purposes of U.S. taxation. Before the certification can be issued, the Director must be able to verify that you either:

- 1) Filed a U.S. income tax return as a U.S. resident,
- 2) Filed a valid extension to file a U.S. income tax return,
- 3) Are not liable to file a U.S. tax return,
- 4) Are exempt from U.S. tax, or
- 5) Have an immigrant identification card that is required of all aliens admitted for permanent residence in the United States.



TIP If you are eligible to receive certification from the IRS, you should file a tax return even if not required to do so. The IRS can then make the certification under normal procedures without the delay caused by corresponding when no tax returns have been filed.

However, a delay could occur if you request certification shortly after you file a return, but before it is properly recorded. Under these circumstances, the IRS will request a copy of your latest return, along with a written statement from you, made under penalties of perjury, that you were a resident of the United States for the period during which the treaty benefit is claimed.

Resident aliens who have recently arrived in the United States and who have not yet filed an income tax return will normally be asked to get a statement from the Immigration and Naturaliza-

tion Service giving their alien registration number, date and port of entry, date of birth, and classification.

Individual retirement accounts (IRAs). IRAs that are recipients of income and need U.S. resident certification must include all of the following.

- 1) Taxpayers name.
- 2) Taxpayer identification number.
- 3) Tax period for which certification is requested.

Minor children. Certification requests for children under the age of 14, whose parent or parents have elected to use Form 8814, *Parents' Election to Report Child's Interest and Dividends*, to report the child's income on their individual tax return, must include the parents' name and social security number and a copy of Form 8814. For additional guidance on paying tax for children under the age of 14, please see the instructions for Form 8814 or Form 8615, *Tax for Children Under Age 14 Who Have Investment Income of More Than \$1,500*.

Bona fide residents of a foreign country or possession. You are not entitled to U.S. residency certification if you:

- Have claimed a tax home in a foreign country or possession,
- Are considered bona fide residents of a foreign country or possession, or
- Were physically present in a foreign country or countries 330 full days for 12 consecutive months.

Thus, if you file Form 2555, *Foreign Earned Income*, (section 911 exclusion), Form 1040-NR, and any of the possession tax forms, you are not entitled to U.S. resident certification.

Partnerships. Certification requests for partnerships can only be granted for tax years in which a partnership tax return was filed. A request for certification of a partnership must include the partnership's name, address, employer identification number, and the tax year for which certification is requested. It must also include a written authorization from each individual partner to release the certification information. A partner may use either Form 2848 or Form 8821 to permit this disclosure.

The Director will certify that:

- 1) The partnership has filed Form 1065, *U.S. Partnership Return of Income*, and
- 2) Either:
 - a) Each partner listed on the partnership return is a resident of the United States for purposes of U.S. taxation, or
 - b) Those partners named on an attached list are residents of the United States for purposes of U.S. taxation.

Tiered partnership. Certification requests for tiered partnerships must include a listing of **all** partners within the partnership. This means the request must identify the partners within a partnership, listed as a partner in the partnership certification request. This request must also in-

clude authorization from all of the individual partners for the request to be valid.

S corporations. The certification procedures for S corporations are identical to those described above for partnerships.

Qualified subchapter S subsidiaries (QSSS). Certification requests for a QSSS must include all of the following.

- Name and address of the QSSS.
- Tax year for which certification is requested.
- Proof of an approved 8869 election.
- Name and employer identification number of the parent subchapter S corporation.
- Written authorization (Forms 2848 or 8821) from each shareholder within the parent S corporation allowing the release of certification information.

Corporations. Certification requests must include the corporation's name, employer identification number, tax return form number (for example, Form 1120, 1120A, etc.), and tax period for which the certification is requested.

If a corporation or other similar entity is newly formed and has not yet filed an income tax return because the tax year has not ended, a copy of the corporate charter must be submitted.

The Director will certify that the corporation is a U.S. corporation and a resident of the United States for purposes of U.S. taxation.

Subsidiaries. If the corporation filed as a subsidiary on the return of a parent corporation, a copy of page one of the latest consolidated income tax return filed and a copy of the listing of the subsidiaries and their employer identification numbers must be included in the request.

Single member limited liability companies (LLCs). An officer of a single member entity such as the tax matters partner of a partnership, an officer of a corporation or an individual, must declare under penalties of perjury that the LLC is included as a transparent entity in the domestic return of the single member entity. The certification unit of the Philadelphia IRS service center has copies of the penalties of perjury form. Certification of the single member entity will have the same requirements as for similar kinds of entities discussed earlier. That is, individuals, corporations, and partnerships must follow the certification procedures outlined earlier for such entities. Requests for certification must include all of the following.

- 1) Name of the single-member LLC.
- 2) The tax identification number of the LLC (if applicable).
- 3) The single-member LLC owner's name.
- 4) The single-member LLC owner's entity type.
- 5) The tax form required to be filed by the single member owner.
- 6) The single-member LLC penalty of perjury statement.
- 7) All other certification request information required to be provided by the single-member LLC owner's type entity.

Employee plans. Certification requests for employee benefit plans subject to the Employee Retirement Income Security Act (ERISA) must include the name, employee benefit plan number, form number and year for which certification is being requested. The plan's name and identification number must appear exactly as it does on the Form 5500 that was filed. Employee Plans that are not subject to ERISA and therefore not required to file/report benefit plan information to the IRS must provide a copy of the benefits plan determination letter in order to receive certification.

Certification requests for trustees of a trust created as part of an employee benefit plan as described in Internal Revenue Code section 401(a), and custodians of a custodial account described in Code section 401(f), must submit a copy of the original signed Schedule P, *Annual Return of a Fiduciary of an Employee Benefit Trust*, that was filed with the Employee Plan's 5500.

Exempt organizations. In general, the same procedures that corporations follow to obtain certification should be used for any exempt organization wishing to show that it is a U.S. resident organization. This is true whether the organization filed a Form 1120 or an exempt organization return. Exempt organizations that are not required to file a tax return must send either a copy of their determination letter or a copy of the determination letter for a parent organization to the Philadelphia Service Center when requesting certification.

The Director will certify that the exempt organization is a U.S. exempt organization and a resident of the United States for purposes of U.S. taxation.

In addition to having a determination letter, exempt organizations must have a valid exemption status (codes that designate the type of entity and the code section under which exemption was granted) on their IRS account. Organizations that do not have a valid exemption status can not be certified. Examples of organizations that will have a valid exemption status are:

- A state operated university or college,
- A church filing a Form 990-T,
- A church that has been examined by the Exempt Organizations Division, or
- A church-controlled school or taxable farmer's cooperatives that file returns under Section 4947(a) or 4947(a)(1)

Trusts and estates. Certification requests must include the trust or estate name, tax identification number, tax return form number (Form 1041, *U.S. Income Tax Return for Estates and Trusts*, or Form 5227, *Split-Interest Trust Information Return*) and the tax period for which certification is being requested. The name and tax identification number on the request must match that which was filed on the tax return for the year in which you are requesting certification.

Common trust funds. Certification of residency for a common trust fund, as defined in Internal Revenue Code, section 584, will be determined at the participant's level. Common trust fund certification requests must include name,

address, tax identification number, and the tax year for which certification is requested. It must also include a written authorization, Forms 8821 or 2848, from each participant within the common trust fund.

The Director will certify that the common trust fund files a Form 1065 or other return as a U.S. common trust fund and that either:

- 1) Each participant listed on Form 1065 is a resident of the United States for U.S. tax purposes, or
- 2) Those participants named on the attached list are residents of the United States for U.S. tax purposes.

Common trust funds that are trust forming parts of qualified retirement plans and individual retirement accounts may qualify as a group trust fund under Revenue Ruling 81-100, 1981-1 C.B. 326. These type of common trust funds can be issued certification as a group trust arrangement as described in Revenue Ruling 81-100, and each participant can be certified as a resident of the United States. Certification requests should include:

- Name of the common trust fund,
- Address of the common trust fund,
- Tax identification number of the common trust fund,
- The tax year for which certification is requested, and
- A copy of the determination letter recognizing its exempt status under section 501(a) of the Internal Revenue Code.

Spain

Spain does not accept the usual wording in the certification of U.S. residency provided by the IRS as valid proof of U.S. residency. As a result, the IRS uses different wording in certifications for Spain.

Each certification request for Spain must include, in addition to the information described under *Procedures for Certification*, a signed statement declaring, under penalties of perjury, that the applicant was or will be a resident of the United States for the period for which the treaty benefit is claimed.

United Kingdom

The procedures for requesting certification for the United Kingdom (U.K.) have been revised because the U.K. revised its form. All U.K. certification requests **must** be accompanied by a U.K. form. All certified forms must be forwarded directly to the United Kingdom. If you want confirmation that your certification request was processed, you must submit three copies of your request form along with a self-addressed stamped envelope.

Where To Get the Foreign Government Applications for Tax Treaty Benefits

Applications for tax treaty benefits can be obtained from the foreign payer or the tax authority of the treaty country involved.

Foreign Taxes Paid

Certain tax treaties specify that its competent authorities may indicate what is appropriate to substantiate that U.S. taxes were paid for purposes of obtaining a foreign tax credit. Form 6166 may not be used for this purpose. Its only purpose is to prove U.S. residency for the purpose of obtaining treaty benefits such as reduced rates of withholding on dividends, interest and royalties.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. If you have attempted to deal with an IRS problem unsuccessfully, you should contact your Taxpayer Advocate.

The Taxpayer Advocate represents your interests and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels. While Taxpayer Advocates cannot change the tax law or make a technical tax decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review.

To contact your Taxpayer Advocate:

- Call the Taxpayer Advocate at **1-877-777-4778**.
- Call the IRS at **1-800-829-1040**.
- Call, write, or fax the Taxpayer Advocate office in your area.
- Call **1-800-829-4059** if you are a TTY/TDD user.

For more information, see Publication 1546, *The Taxpayer Advocate Service of the IRS*.

Free tax services. To find out what services are available, get Publication 910, *Guide to Free Tax Services*. It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.



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- Receive our electronic newsletters on hot tax issues and news.
- Get information on starting and operating a small business.

You can also reach us with your computer using File Transfer Protocol at **ftp.irs.gov**.



TaxFax Service. Using the phone attached to your fax machine, you can receive forms and instructions by calling **703-368-9694**. Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.

For help with transmission problems, call the FedWorld Help Desk at **703-487-4608**.



Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call **1-800-829-3676** to order current and prior year forms, instructions, and publications.
- *Asking tax questions.* Call the IRS with your tax questions at **1-800-829-1040**.
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call **1-800-829-4059** to ask tax questions or to order forms and publications.
- *TeleTax topics.* Call **1-800-829-4477** to listen to pre-recorded messages covering various tax topics.

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- A second IRS representative sometimes monitors live telephone calls. That person only evaluates the IRS assistor and does not keep a record of any taxpayer's name or tax identification number.
- We sometimes record telephone calls to evaluate IRS assistors objectively. We hold these recordings no longer than one week and use them only to measure the quality of assistance.
- We value our customers' opinions. Throughout this year, we will be surveying

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The CD-ROM can be purchased from National Technical Information Service (NTIS) by calling **1-877-233-6767** or on the Internet at **www.irs.gov**. The first release is available in mid-December and the final release is available in late January.

IRS Publication 3207, *Small Business Resource Guide*, is an interactive CD-ROM that contains information important to small businesses. It is available in mid-February. You can get one free copy by calling **1-800-829-3676** or visiting the IRS web site at **www.irs.gov**.