

holding tax on personal services income under the provisions of specific U.S. income tax treaties. Many of those treaties have been updated or replaced and, as a consequence, these revenue procedures are no longer correct. The current procedures for claiming tax treaty exemptions for students, teachers, and researchers, and the appropriate representations, may be found in Publication 519, *U.S. Tax Guide for Aliens*.

SECTION 2. BACKGROUND

.01 In general. Code sections 1441 and 3402 require the payor of compensation for personal services to withhold federal taxes on that income. Withholding is not required if the income is exempt under a U.S. income tax treaty.

.02 Many U.S. income tax treaties provide that a nonresident alien student, teacher, or researcher at a university or other educational institution in the United States who receives income for personal services is exempt from income tax if certain requirements are met. These requirements typically limit the number of years in which the nonresident alien can claim the exemption, and provide a maximum dollar amount for the exemption in a taxable year.

.03 To claim the exemption, a nonresident alien individual must submit Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*, to his withholding agent certifying that the income is exempt from tax under a U.S. treaty provision. Form 8233 must also set forth the conditions necessary for the exemption and representations that they have been met. A separate Form 8233 must be filed for each taxable year.

.04 Upon receipt of Form 8233, the withholding agent will not be liable for a failure to withhold unless it knows or has reason to know that the nonresident alien is not eligible for the treaty exemption. In general, a withholding agent may rely on a

Form 8233 that is completed in accordance with the procedures set forth in Publication 519. Such reliance is not reasonable, however, if the agent actually knows that the nonresident alien is not eligible for the treaty exemption, or actually knows or has reason to know that a nonresident alien's statement on Form 8233 is false for any part of the period for which an exemption is claimed. For example, if a nonresident alien claims an exemption for compensation paid by the withholding agent for a period of time in excess of that provided by the applicable treaty, reliance on this revenue procedure would be unreasonable.

.05 *Rev. Proc. 93-22, 1993-1 C.B. 535, Rev. Proc. 87-8, 1987-1 C.B. 366, and Rev. Proc. 87-9, 1987-1 C.B. 368*, provided representations that a nonresident alien student, teacher, or researcher would include on Form 8233 to claim an exemption from withholding tax on personal services income under the provisions of specific U.S. income tax treaties. The representations included in the revenue procedures are not in all cases current.

.06 Information on current procedures for claiming a tax treaty exemption from withholding tax on personal services income under the provisions of specific U.S. income tax treaties may be found in Publication 519, *U.S. Tax Guide for Aliens*.

SECTION 3. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 93-22, 1993-1 C.B. 535, Rev. Proc. 87-8, 1987-1 C.B. 366, and Rev. Proc. 87-9, 1987-1 C.B. 368, are obsolete.

SECTION 4. DRAFTING INFORMATION

The principal author of this revenue procedure is Nina Chowdhry of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Nina Chowdhry at (202) 622-3880 (not a toll-free call).

*26 CFR 1.894-1: Income affected by treaty.
(Also Part I: §§ 894, 1441, 3402; 1.894-1.)*

Rev. Proc. 2005-44

SECTION 1. PURPOSE

This revenue procedure obsoletes *Rev. Proc. 93-22, 1993-1 C.B. 535, Rev. Proc. 87-8, 1987-1 C.B. 366, and Rev. Proc. 87-9, 1987-1 C.B. 368*, which describe the representations that a nonresident alien student, teacher, or researcher at a university or other educational institution must make to claim an exemption from with-