

# Helping Employers Serve Their Multicultural Workforce

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## *Must First Determine:*

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- U.S. Citizen / U.S. Resident Alien  
or
- Nonresident Alien

Once this is determined,  
can proceed with international tax matters/questions

## U.S. Citizen

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- Born in the United States or Territories (regardless of status of parents)
- Born in a foreign country and at least one parent is a U.S. citizen
  - Additional requirements for parent(s), e.g., presence in the U.S./Territories during lifetime
- Other Situations (with special rules):
  - Naturalization
  - Adoption by U.S. citizen

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## U.S. Resident Alien

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You are a U.S. **Resident Alien** if you meet:

- **Green Card test**
- or
- **Substantial Presence Test (SPT)**

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## Substantial Presence Test (SPT)

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Physically present in U.S.:

- 31 days current year, **AND**
- 183 days during 3-year period:
  - Current Yr: Count All the days,
  - Prior Yr: Count 1/3 of the days, and
  - 2nd Prior Yr: Count 1/6 of the days

**TIP:** If alien arrives in the U.S. prior to July 2 and stays in the U.S. all calendar year, alien will meet SPT for that year.

## Substantial Presence Test (SPT)

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**Do NOT count the following days:**

- Commuter to U.S. from Canada or Mexico
- Person in U.S. less than 24 hours
- Remains in U.S. due to medical condition
- Days in U.S. as crew member of foreign vessel
- **“Exempt individual”**

## Substantial Presence Test (SPT)

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**Exempt Individual** (exempt from SPT; not exempt from tax)

- Foreign government-related individual
- Teacher/trainee under J or Q visa
- Student under F, J, M, or Q visa
- Professional athlete in U.S. to compete in a charitable event

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## Form 8843, Statement for Exempt Individuals...

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- All aliens must file to explain basis for excluding days of presence
  - If earned income, file with F1040NR
  - If no earned income, file with IRS-Austin per Instructions
- Penalty for not filing: not able to exclude days

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## Form 8840, Closer Connection Exception Statement

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- Only file if beyond general exempt status and closer connection to another country
- Not eligible if:
  - Permanent resident
  - Taken steps to become permanent resident
  - Present in U.S. more than 183 days
- If not eligible, Tax Treaty may qualify for nonresident status

## Different Categories of Aliens

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### **Under Immigration Law:**

- Immigrants (Green Card)
- Nonimmigrants (Visa)
- Undocumented (Illegal) aliens

## Visa Types

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See Immigration papers to determine Visa:

- F-1 Student
- B-1 Visitor for Business
- J-1 Student
- J-1 Teacher/Researcher/Trainee
- M-1 Vocational Student
- Q Cultural Exchange
- H-1 Specialty Visa
- TN NAFTA-Canada and Mexico

## Different Categories of Aliens

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### **Under U.S. Tax Law:**

- Resident Aliens
- Nonresident Aliens

## Aliens: Tax vs. Immigration Law

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- Immigrant (Green card) for immigration law is Resident for tax law
- Nonimmigrant for immigration law may also be Resident for tax law
- So, Resident for tax purpose may be immigrant or nonimmigrant

## U.S. Tax: Steps for Aliens in U.S.

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- Determine Visa type and status
- Determine residency: whether U.S. “Resident” or “Nonresident” Alien per IRS definition
- Determine if a Tax Treaty applies
- File proper tax forms

## U.S. Citizen / U.S. Resident Alien

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- Worldwide Income
  - Does not matter where they live or work
  - Does not matter source of income
- Graduated tax rates on “taxable income”
- Check for tax treaty provisions

## Nonresident Alien

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### U.S. Source Income

- Effectively Connected with a Trade/Business within U.S. [aka Effectively Connected Income (ECI)]
- Fixed, Determinable, Annual, or Periodic (FDAP) Income [from sources within the U.S., but not ECI]

## Nonresident Alien: Source of Income Examples

<b>Item of income</b>	<b>Factor determining source</b>
Salaries, wages, other comp	Where services performed
Personal services (business)	Where services performed
Interest income	Residence of payer
Dividends income	Whether a U.S. or foreign corp
Rents income	Location of property
Sale of real property	Location of property

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## Nonresident Alien: Withholding at Source

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### Separate withholding at source rules

- ECI subject to graduated rates (after expenses/credits)
- FDAP subject to withholding % (on gross)
- Check for tax treaty and special IRC provisions

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## Withholding Agent Duties (payor)

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### **Under Chapter 3**

- FDAP Income – sourced within the U.S.
- Subject to U.S. withholding statutory rate (unless a tax treaty exists or rate otherwise reduced under the Code)

## Withholding Agent Duties (payor)

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### **Under Chapter 4**

- FATCA Withholding
- Withholding Agent withholds 30% on:
  - Payments to FFI's that are nonparticipating
  - Payments to certain Non-Financial Foreign Entities that do not provide information regarding their substantial U.S. owners

## Withholding Agent Duties (payor)

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- Withholding Agent personally liable for any tax required to be withheld
- If the source of income or amount not known at the time of payment, must withhold an amount sufficient to ensure at least 30% of the amount subsequently determined to be subject to withholding is withheld
- Ensure the use of the right form for the current year and follow all instructions

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## Withholding Agent Duties (payor)

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### Reporting Obligations

- Forms 1042-S are required for each recipient of income subject to Chapter 3 and 4 withholding
- A separate Form 1042-S is required for each type of income paid to the recipient
- A separate Form 1042-S is required for each Chapter 3 and Chapter 4 Withholding Rate Pool

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## Form 1042

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### Withholding of Tax on Nonresident Aliens and Foreign Entities

- Withholding agent is personally liable for withholding on payments and remitting to the IRS

## Form 1042-S

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### Foreign Person's U.S. Source Income subject to Withholding

- Withholding agent issues to NRA payee
- Required for each recipient of income subject to Chapter 3 and 4 withholding

Separate Form 1042-S is required for each type of income paid to the recipient

## What about Social Security?

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- Work Performed in the U.S.:
  - In general, YES, regardless of citizenship or residency of employee or employer
  - Exceptions: F, J, M & Q Visas
- Work Performed Outside the U.S.:
  - U.S. Citizen/Res. Alien: YES, if connected to a U.S. business; NO, if not connected to U.S.
  - NO for Nonresident Alien

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## What about Social Security?

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### Self-Employment Tax

- Not applicable to Nonresident Aliens

### Totalization Agreements:

- Eliminate dual Social Security taxation
- Protect benefits for workers who have divided career between U.S. and another country
- One with Canada, but None with Mexico

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## What about FUTA Tax?

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- Employer pays this tax
- In certain cases, wages paid to students and railroad and agricultural workers are exempt from FUTA tax

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## Need Help?

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- ❖ Call International Customer Service:  
(267) 941-1000 (not toll free)  
Mon.–Fri. 6 a.m. to 11 p.m. Eastern
- ❖ Check [www.irs.gov](http://www.irs.gov):  
Keyword: International
- ❖ Helpful IRS Publications:  
Circular A, Circular E  
Pub 54, Pub 514, Pub 519, Pub 901

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