

[This page left blank intentionally]

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

Future Developments

For the latest information about developments related to Form 8833 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form8833.

General Instructions

Purpose of Form

Form 8833 must be used by taxpayers to make the treaty-based return position disclosure required by section 6114. The form must also be used by dual-resident taxpayers (defined later) to make the treaty-based return position disclosure required by Regulations section 301.7701(b)-7. A separate form is required for each treaty-based return position taken by the taxpayer.

Who Must File

Generally, a taxpayer who takes a treaty-based return position must disclose that position. See *Exceptions from reporting* below.

A taxpayer takes a treaty-based return position by maintaining that a treaty of the United States overrules or modifies a provision of the Internal Revenue Code and thereby causes (or potentially causes) a reduction of tax on the taxpayer's tax return. For these purposes, a treaty includes, but is not limited to, an income tax treaty; estate and gift tax treaty; or friendship, commerce, and navigation treaty. See Regulations sections 301.6114-1(a) and (b) for more details and for examples of treaty-based return positions taken by taxpayers for which they must make disclosure.

Exceptions from reporting. See Regulations section 301.6114-1(c) for examples of treaty-based return positions taken by taxpayers for which they are not required to make disclosure.

In general, disclosure of a treaty-based return position is not required for amounts that are:

1. Reported on Form 1042-S, and
2. Received by a:
 - a. Related party from a reporting corporation within the meaning of section 6038A (relating to information returns on Form 5472 filed by U.S. corporations that are 25-percent owned by a foreign person),

b. Beneficial owner that is a direct account holder of a U.S. financial institution or qualified intermediary, or a direct partner, beneficiary or owner of a withholding foreign partnership or trust, from that U.S. financial institution, qualified intermediary, or withholding foreign partnership or trust, or

c. Taxpayer that is not an individual or a State, if the amounts are not received through an account with an intermediary or with respect to an interest in a partnership or a simple or grantor trust, and if the amounts do not total more than \$500,000 for the tax year.

However, Regulations sections 301.6114-1(c)(6)(ii), (7)(iv), and (8)(ii) provide that the exceptions described above do not apply to any amounts for which a treaty-based return disclosure is specifically required under these instructions.

The following are amounts for which a treaty-based return disclosure on Form 8833 is specifically required.

- Amounts described in paragraph 2a or 2c earlier that are received by a corporation that is a resident under the domestic law of both the United States and a foreign treaty jurisdiction.
- Amounts described in paragraph 2a or 2c earlier that are received by a corporation that is a resident of both the jurisdiction whose treaty is invoked and another foreign jurisdiction that has an income tax treaty with that treaty jurisdiction. See Revenue Ruling 2004-76, 2004-31 I.R.B. 111, available at www.irs.gov/pub/irs-irbs/irb04-31.pdf.
- Amounts described in paragraph 2a or 2c earlier that are received by a foreign collective investment vehicle that is a contractual arrangement and not a person under foreign law. See Example 7 of Regulations section 1.894-1(d)(5).
- Amounts described in paragraph 2a or 2c earlier that are received by a foreign "interest holder" in a "domestic reverse hybrid entity," as those terms are used in Regulations section 1.894-1(d)(2).

Dual-resident taxpayer. An alien individual is a dual-resident taxpayer if that individual is considered to be a resident of both the United States and another country under each country's tax laws. If the income tax treaty between the United States and the other country contains a provision for resolution of conflicting claims of residence by the United States and its treaty partner, and the individual determines that under those provisions he or she is a resident of the foreign country for treaty purposes, the individual may claim treaty benefits as a resident of that foreign country, provided that he or she complies with the instructions below.

If you are an individual who is a dual-resident taxpayer and you choose to claim treaty benefits as a resident of the foreign country, you are treated as a nonresident alien in figuring your U.S. income tax liability for the part of the tax year you are considered a dual-resident taxpayer. If you are eligible to be treated as a resident of the foreign country pursuant to the applicable income tax treaty and you choose to claim benefits as a resident of such foreign country, attach Form 8833 to Form 1040NR, U.S. Nonresident Alien Income Tax Return, or Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents. In order to be treated as a resident of the foreign country, you must timely file (including extensions) Form 1040NR or Form 1040NR-EZ with the Form 8833 attached. If you choose to be treated as a resident of a foreign country under an income tax treaty, you are still treated as a U.S. resident for purposes other than figuring your U.S. income tax liability (see Regulations section 301.7701(b)-7(a)(3)).

When and Where To File

Attach Form 8833 to your tax return (i.e., Form 1040NR, Form 1040NR-EZ, Form 1120-F, etc.). If you would not otherwise be required to file a tax return, you must file one at the IRS Service Center where you would normally file a return to make the treaty-based return position disclosure under section 6114 (see Regulations section 301.6114-1(a)(1)(ii)) or under Regulations section 301.7701(b)-7.

Specific Instructions

U.S. Taxpayer Identifying Number

The identifying number of an individual is his or her social security number or individual taxpayer identification number. The identifying number of all others is their employer identification number.

For more information about identifying numbers, see the instructions for the tax return with which this form is filed.

Reference ID Number

If the taxpayer is a foreign corporation, enter any reference ID number assigned to the foreign corporation by a U.S. person with respect to which information reporting is required (for example, on Form 5471 or Form 5472).

Address in Country of Residence

Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code. Please **do not** abbreviate the country name.

Termination of U.S. Residency

If you are a dual-resident taxpayer and a long-term resident (LTR) and you are filing this form to be treated as a resident of a foreign country for purposes of claiming benefits under an applicable U.S. income tax treaty, you will be deemed to have terminated your U.S. residency status for federal income tax purposes. Because you are terminating your U.S. residency status, you may be subject to tax under section 877A and you must file Form 8854, Initial and Annual Expatriation Statement. You are an LTR if you were a lawful permanent resident of the United States in at least 8 of the last 15 tax years ending with the year your status as an LTR ends. For additional information, see the Instructions for Form 8854, and Publication 519, U.S. Tax Guide for Aliens.

Line 3

Income that is fixed or determinable annual or periodical includes interest (other than original issue discount), dividends, rents, premiums, annuities, salaries, wages, and other compensation. For more information (including other items of income that are fixed or determinable annual or periodical), nonresident aliens and dual-resident taxpayers filing as nonresident aliens should see section 871(a) and Regulations section 1.871-7(b) and (c). Foreign corporations should see section 881(a) and Regulations section 1.881-2(b) and (c).

Line 5

If the taxpayer answers "Yes" to the question on line 5, the taxpayer must enter the subsection of Regulations section 301.6114-1(b) with respect to which the taxpayer is disclosing a treaty-based return position. The taxpayer must also provide the information requested on line 6.

Line 6

All taxpayers taking a treaty-based return position must provide the requested information on line 6, regardless of whether reporting is explicitly required under Regulations section 301.6114-1(b).

Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us 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 burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping 3 hr., 7 min.

Learning about the law or the form 1 hr., 35 min.

Preparing and sending the form to the IRS . . . 1 hr., 43 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. See the instructions for the tax return with which this form is filed.