

# 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

## Substantial Presence Test (SPT)

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Physically present in U.S.:


- 31 days current year, **AND**
- 183 days during 3



## 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
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## 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

Form 8843, Statement for Exempt  
Individuals...

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## 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
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## Different Categories of Aliens

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

- Resident Aliens
- Nonresident Aliens

## 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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## Nonresident Alien

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### U.S. Source Income

- Effectively Connected with a Trade/Business within
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## Nonresident Alien: Source of Income Examples


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## Nonresident Alien: Withholding at Source

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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### 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

## 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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## What about Social Security?

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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

## 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

## 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