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Pay for Independent Personal Services (Income Code 16)

Independent personal services (a term commonly used in tax treaties) are personal services performed by an independent nonresident alien contractor as contrasted with those performed by an employee. This category of pay includes payments for professional services, such as fees of an attorney, physician, or accountant made directly to the person performing the services. It also includes honoraria paid by colleges and universities to visiting teachers, lecturers, and researchers.

Pay for U.S. source independent personal services is subject to NRA withholding and reporting as follows.

30% Rate

You must withhold at the statutory rate of 30% on all payments unless the alien enters into a central withholding agreement or receives a final payment exemption.

The amount of pay subject to 30% withholding may be reduced by the personal exemption amount if the alien gives you a properly completed Form 8233 For the current rate of the personal exemption amount refer to "Pay for Personal Services Performed" in Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities. A nonresident alien is allowed only one personal exemption. However, individuals who are residents of Canada, Mexico, Japan, or South Korea, or are U.S. nationals (defined below) are generally entitled to the same exemptions as U.S. citizens.

Students and business apprentices covered by Article 21(2) of the United States-India Income Tax Treaty may claim an additional exemption for their spouse if a joint return is not filed, and if the spouse has no gross income for the year and is not the dependent of another taxpayer. They may also claim additional exemptions for children who reside with them in the United States at any time during the year, but only if the dependents are U.S. citizens or nationals or residents of the United States, Canada, or Mexico. They may not claim exemptions for dependents who are admitted to the United States on "F-2," "J-2," or "M-2" visas unless such dependents have become resident aliens.

Each allowable exemption must be prorated according to the number of days during the tax year during which the alien performs services in the United States. Multiply the number of these days by the daily personal exemption amount for the current year. To figure the daily personal exemption amount, divide the personal exemption amount for this calendar year by 365. Residents of Japan and South Korea must make a further proration of their additional exemptions based on their gross income effectively connected with a U.S. trade or business. The rules for this proration are discussed in detail in "Exemptions" subpart "Nonresident Aliens" in Publication 519, U.S. Tax Guide for Aliens.

U.S. National

A U.S. national is an individual who owes his sole allegiance to the United States, but who is not a U.S. citizen (a citizen of American Samoa, or the Commonwealth of the Northern Mariana Islands).

Example 1 Hans Schmidt, who is a resident of Germany, worked (not as an employee) for a U.S. company in the United States for 100 days during 2004 before returning to his country.

He earned $6,000 for the services performed (not considered wages) in the United States. Hans is married and has three dependent children. His wife did not work and had no income subject to U.S. tax. Hans is allowed $847 as a deduction against the payments for his personal services performed in the United States (100 days X $8.47). Tax must be withheld at 30% on the rest of his earnings, $ 5,153 ($6,000 - $847).

Example 2 If, in Example 1, Hans were a resident of Canada or Mexico or a national of the United States, working under contract with a domestic corporation, $4,235 (100 days X $8.47 per day for each of five exemptions) would be allowed against the payments for personal services performed in the United States. Tax must be withheld at 30% on the rest of his earnings, $1,765 ($ 6,000 - $4,235).

Refer to Central Withholding Agreement, Final Payment Exemption, and Travel Expenses if applicable.

Tax Treaties

Under most tax treaties, pay for independent personal services performed in the United States is exempt from U.S. income tax only if the independent nonresident alien contractor performs the services during a period of temporary presence in the United States (usually not more than 183 days) and is a resident of the treaty country.

Independent nonresident alien contractors use Form 8233 to claim an exemption from withholding under a tax treaty. For more information, refer to Documentation - Withholding Certificates - Withholding Exemption. When used to claim a tax treaty exemption Form 8233 must contain a valid Taxpayer Identification Number (TIN).

Often, you must withhold under the statutory rules on payments made to a treaty country resident contractor for services performed in the United States. This is because the factors on which the treaty exemption is based may not be determinable until after the close of the tax year. The treaty country resident contractor must then file a U.S. income tax return, Form 1040NR to recover any overwithheld tax and to provide the IRS with proof that he or she is entitled to a treaty exemption.

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