



# Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY (Rev. December 2000)

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

## Instructions for the Withholding Agent

### Before You Begin

These instructions supplement the instructions for:

- **Form W-8BEN**, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding.
- **Form W-8ECI**, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States.
- **Form W-8EXP**, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding.
- **Form W-8IMY**, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding.

For general information and the purpose of each of the forms described in these instructions, see those forms and their accompanying instructions.

Throughout these instructions, a reference to or mention of "Form W-8" includes Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY.

### Requirement to Withhold

A withholding agent must withhold 30% of any payment of an amount subject to withholding made to a payee that is a foreign person unless it can associate the payment with documentation (e.g., Form W-8 or Form W-9) upon which it can rely to treat the payment as made to **(a)** a payee that is a U.S. person or **(b)** a beneficial owner that is a foreign person entitled to a reduced rate of withholding. However, a withholding agent making a payment to a foreign person need not withhold if the foreign person assumes responsibility for withholding on the payment as a qualified intermediary, a withholding foreign partnership, or a withholding foreign trust and has provided a valid Form W-8IMY. Withholding is also not required if the payment is made to a U.S. branch of certain foreign insurance companies or foreign banks that agree to be treated as U.S. persons and provide a valid Form W-8IMY.

Generally, an amount is subject to withholding if it is an amount from sources within the United States that is fixed or determinable annual or periodical (FDAP) income.

FDAP income is all income included in gross income, including interest (and original issue discount), dividends, rents, royalties, and compensation. FDAP income does not include most gains from the sale of property (including market discount and option premiums). FDAP income also does not include items of U.S. source income that are excluded from gross income without regard to the U.S. or foreign status of the holder, such as interest under section 103(a).

### Who Is the Withholding Agent

Any person, U.S. or foreign, that has control, receipt, or custody of an amount subject to withholding or who can disburse or make payments of an amount subject to withholding is a withholding agent. The withholding agent may be an individual, corporation, partnership, trust, association, or any other entity, including (but not limited to) any foreign intermediary, foreign partnership, or U.S. branch of certain foreign banks and insurance companies. If several persons qualify as withholding agents for a single payment, the tax required to be withheld must only be withheld once. Generally, the person who pays (or causes to be paid) an amount subject to withholding to the foreign person (or to its agent) must withhold. See the instructions for **Form 1042**, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and **Form 1042-S**, Foreign Person's U.S. Source Income Subject to Withholding, for return filing and information reporting obligations.

### Responsibilities of the Withholding Agent

If you are a withholding agent making a payment of U.S. source interest, dividends, rents, royalties, commissions, nonemployee compensation, other fixed or determinable annual or periodical gains, profits, or income, and certain other amounts (including broker and barter exchange transactions, and certain payments made by fishing boat operators), you are generally required to obtain from the payee either a **Form W-9**, Request for Taxpayer Identification Number and Certification, or a Form W-8. These forms are also used to establish a person's status for purposes of domestic information reporting (e.g., on a Form 1099) and backup withholding. If you receive a Form W-9, you must generally make an information return on a Form 1099. If you receive a Form W-8, you are exempt from reporting on Form 1099, but you may have to file Form 1042-S and withhold under the rules applicable to

payments made to foreign persons. See the Instructions for Form 1042-S for more information.

Generally, you can rely on a Form W-8 or, if permitted, documentary evidence, only to the extent you can reliably associate a payment with it. You can reliably associate a payment with a Form W-8 if, for that payment, you hold a valid form, you can reliably determine how much of the payment relates to the form, and you have no actual knowledge or reason to know that any of the information or certifications on the form are incorrect.

**Do not** send Forms W-8 to the IRS. Instead, keep the forms in your records for as long as they may be relevant to the determination of your tax liability under section 1461. Use the information on Forms W-8 to prepare Forms 1042-S.

## Failure To Obtain Form W-8 or Form W-9 — Presumption Rules

If you do not receive a Form W-8 or Form W-9, or cannot otherwise determine whether a payment should be treated as made to a U.S. person or to a foreign person, use the presumption rules provided in the regulations under sections 1441, 6045, and 6049.

## Requesting Form W-8

Request a Form W-8 from any person to whom you are making a payment that you presume or otherwise believe to be a foreign person. You should request the form before making a payment so that you hold it when making the payment. If a withholding agent or payer fails to obtain a Form W-8 or Form W-9 and fails to withhold as required under the presumption rules, it may be assessed tax at a 30% or 31% rate, as well as interest and penalties for lack of compliance. When you receive a completed Form W-8, you must review it for completeness and accuracy. This responsibility extends to the information attached to Form W-8IMY, including beneficial owner withholding certificates or other documentation and information. The following special rules apply when requesting a specific type of Form W-8:

### Form W-8BEN

Request Form W-8BEN from any foreign person or organization to which you are making a payment if it is the beneficial owner of the income, whether or not it is claiming a reduced rate of, or exemption from, withholding.

A beneficial owner is required to enter its U.S. taxpayer identification number (TIN) on line 6 of Form W-8BEN if it is a beneficial owner that is claiming benefits under an income tax treaty.

However, a U.S. TIN is not required to be shown in order to claim treaty benefits on the following items of income:

- Dividends and interest from stocks and debt obligations that are actively traded;
- Dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (mutual fund);
- Dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon

issuance) publicly offered and are registered with the SEC under the Securities Act of 1933; and

- Income related to loans of any of the above securities.

Also request Form W-8BEN when a payee may claim an exception from domestic information reporting as a foreign person or to establish that certain income is not effectively connected with the conduct of a U.S. trade or business.

### Form W-8ECI

Request Form W-8ECI from any foreign person or organization to which you are making a payment if it is the beneficial owner of the income and it claims that the income is effectively connected with the conduct of a trade or business within the United States.

**Note:** *If you receive a Form W-8ECI without a U.S. TIN entered in line 6, you generally may not treat the income as effectively connected with a U.S. trade or business and you must apply the appropriate presumption rules.*

Your receipt of Form W-8ECI serves as a representation by the payee or beneficial owner that all the income with which that form is associated is effectively connected with the conduct of a trade or business within the United States. Therefore, if a beneficial owner provides you with a Form W-8ECI, you may treat all of the U.S. source income identified on line 9 paid to that beneficial owner as effectively connected with the conduct of a trade or business within the United States.

If you pay items of income that are not identified on line 9 by the beneficial owner as effectively connected with the conduct of a trade or business within the United States, you are generally required to obtain from the payee another type of Form W-8.

You may not treat an amount as income effectively connected with the conduct of a trade or business within the United States unless the beneficial owner gives you a valid Form W-8ECI. However, there are exceptions for income paid on notional principal contracts and payments made to certain U.S. branches.

**Notional principal contracts.** Withholding at a 30% rate is not required on amounts paid under the terms of a notional principal contract whether or not a Form W-8ECI is provided. However, if the income is effectively connected, it is reportable by the withholding agent on Form 1042-S. A withholding agent must treat income as effectively connected with the conduct of a U.S. trade or business, even if a Form W-8ECI has not been received, if the income is paid to a qualified business unit of a foreign person located in the United States or, if the payment is paid to a qualified business unit of a foreign person located outside the United States and the withholding agent knows, or has reason to know, the payment is effectively connected with the conduct of a U.S. trade or business. However, a payment is not treated as effectively connected with the conduct of a trade or business within the United States if the payee provides a Form W-8BEN representing that the income is not effectively connected with a U.S. trade or business or makes a representation in a master agreement that governs the transactions in notional principal contracts between the parties (for example, an International Swaps and Derivatives Association Agreement), or in the confirmation on the particular notional principal contract

transaction, that the payee is a U.S. person or a non-U.S. branch of a foreign person.

**Payments to certain U.S. branches.** A payment to a U.S. branch of certain foreign persons is presumed to be effectively connected with the conduct of a trade or business within the United States even if the foreign person (or its U.S. branch) does not give you a Form W-8ECI. U.S. branches to which this presumption applies are:

- A U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board.
- A U.S. branch of a foreign insurance company required to file a National Association of Insurance Commissioners (NAIC) annual statement with the insurance department of a state, a territory, or the District of Columbia.

However, a payment to a U.S. branch described above is not treated as effectively connected income if the branch provides a Form W-8IMY on which it indicates that the income it receives is not effectively connected with the conduct of a trade or business within the United States and that it is using Form W-8IMY either to transmit appropriate documentation for persons for whom the branch receives the payment or as evidence of its agreement with the withholding agent to be treated as a U.S. person. If Form W-8IMY is not provided and the income received by the branch is not effectively connected income, then the branch must withhold, whether the payment is collected on behalf of other persons or on behalf of another branch of the same entity.

### Form W-8EXP

Request Form W-8EXP from any foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession to which you are making a payment if such person is claiming an exemption from withholding under section 115(2), 501(c), 892, or 895, or claiming a reduced rate of withholding under section 1443(b). For all other purposes, request Form W-8BEN or W-8ECI.

A withholding agent may treat a payee as an international organization without requiring a Form W-8EXP if the name of the payee is one designated as an international organization by Executive Order (pursuant to 22 U.S.C. 288 through 288(f)) and other facts surrounding the payment reasonably indicate that the beneficial owner of the payment is an international organization. With regard to amounts derived from bankers' acceptances, a withholding agent may treat a payee as a foreign central bank of issue without requiring a Form W-8EXP if the name of the payee and other facts surrounding the payment reasonably indicate that the beneficial owner of the payment is a foreign central bank of issue.

A U.S. TIN is required if the beneficial owner is claiming an exemption based solely on a claim of tax-exempt status as a foreign private foundation (or other foreign organization described under section 501(c)). However, a U.S. TIN is **not** required from a foreign private foundation that is subject to the 4% excise tax on gross investment income (under section 4948(a)) on income that would be exempt from withholding except for section 4948(a) (for example, portfolio income).

### Form W-8IMY

Request Form W-8IMY from any person that is an intermediary (whether a qualified intermediary or a nonqualified intermediary), a withholding foreign partnership, a withholding foreign trust, or a flow-through entity. A flow-through entity includes a foreign partnership (other than a withholding foreign partnership), a foreign simple or grantor trust (other than a withholding foreign trust), and, for any payments for which a treaty benefit is claimed, any entity to the extent it is treated as fiscally transparent under section 894. Appropriate withholding certificates, documentary evidence, and withholding statements must be associated with Form W-8IMY or you must apply the presumption rules.

**Note:** *A qualified intermediary, withholding foreign partnership, or a withholding foreign trust must provide the EIN that was issued to the entity in such capacity (its "QI-EIN"). Otherwise, any Form W-8IMY it submits is not valid.*

### Due Diligence Requirements

You are responsible for ensuring that all information relating to the type of income for which Form W-8 is submitted is complete and appears to be accurate. You may rely on the information and certifications provided on the form (including the status of the beneficial owner as an individual, corporation, etc.) unless you have actual knowledge or reason to know that the information is untrue or incorrect. You have reason to know that the information is untrue or incorrect if you have knowledge of relevant facts or statements contained in the withholding certificate or other documentation that would cause a reasonably prudent person in the position of the withholding agent to question the claims made. For example, if you have information in your records that contradicts information provided on the form, you may not rely on the form. If you know or have reason to know that any information is untrue or incorrect, you must obtain a new Form W-8 or other appropriate documentation.

#### **Financial institutions and actively traded instruments.**

If you are a financial institution (including a regulated investment company) paying dividends and interest from stocks and debt obligations that are actively traded, dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940, dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon issuance) publicly offered and registered with the SEC under the Securities Act of 1933, and amounts paid with respect to loans of such securities, you have reason to know that the Form W-8 is not reliable only if any one or more of the following circumstances exist. In that case, you must either request a new form or additional documentation to substantiate the claims on the form.

A withholding agent that is a financial institution (including a regulated investment company) that has a direct account relationship with a beneficial owner has a reason to know that a Form W-8 provided by the beneficial owner is unreliable or incorrect only if:

1. The Form W-8 is incomplete with respect to any item that is relevant to the claims made, it contains any

information that is inconsistent with the claims made, the withholding agent has other account information that is inconsistent with the claims made, or the Form W-8 lacks information necessary to establish that the beneficial owner is entitled to a reduced rate of withholding.

**2.** The Form W-8 is used to establish foreign status and has a permanent residence address in the United States, a mailing address in the United States, the withholding agent has a residence or mailing address in the United States as part of its account information or is notified of a new residence or mailing address in the United States. However, an individual who has provided a Form W-8 may be treated as a foreign person if:

- The withholding agent has in its possession or obtains documentary evidence (which does not contain a U.S. address) that has been provided within the past 3 years, the documentary evidence supports the claim of foreign status, **and** the individual provides the withholding agent with a reasonable explanation, in writing, supporting his or her claim of foreign status.
- The account is maintained at an office of the withholding agent outside the United States and the withholding agent is required to report payments to the individual annually to the tax authority of the country in which the office is located and that country has an income tax treaty in effect with the United States.

An entity that has provided a Form W-8 may be treated as a foreign person if the withholding agent does not know or have reason to know that it is a flow-through entity and:

- The withholding agent has in its possession or obtains documentation that substantiates that the entity is actually organized or created under the laws of a foreign country.
- The account is maintained at an office of the withholding agent outside the United States and the withholding agent is required to report payments to the individual annually to the tax authority of the country in which the office is located and that country has an income tax treaty in effect with the United States.

**3.** The form is provided with respect to an offshore account and the account holder has standing instructions directing the withholding agent to pay amounts from its account to an address in, or an account maintained in, the United States, unless the account holder provides a reasonable explanation in writing that supports its foreign status.

**4.** The Form W-8 is used to establish residence in a treaty country and:

- The permanent residence address is not in the treaty country or the withholding agent is notified of a new permanent residence address that is not in the treaty country. However, the beneficial owner may be treated as a resident of the treaty country if it provides a reasonable explanation for the permanent residence address outside the treaty country or the withholding agent has in its possession, **or** obtains, documentary evidence that establishes residency in a treaty country.
- The mailing address is not in the treaty country or the withholding agent has a mailing address that is not in the treaty country as part of its account information. However,

the beneficial owner may be treated as a resident of the treaty country if:

**1.** The withholding agent has in its possession, or obtains, additional documentation supporting the claim of residence in the treaty country and the additional documentation does not contain an address outside the treaty country,

**2.** The withholding agent has in its possession, or obtains, documentation that establishes that the beneficial owner is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if required by the applicable treaty),

**3.** The withholding agent knows that the beneficial owner is a bank or insurance company that is a resident of the treaty country and the mailing address is the address of a branch of that bank or insurance company, or

**4.** The beneficial owner provides a written statement that reasonably establishes that it is a resident of the treaty country.

- The account holder has standing instructions for the withholding agent to pay amounts from its account to an address outside, or an account maintained outside, the treaty country unless the direct account holder provides a reasonable explanation in writing establishing the account holder's residency in a treaty country.

For additional information on the due diligence requirements applicable to withholding agents, see Regulations section 1.1441-7(b).

**Dual claims.** If you are making payments to a foreign entity that is simultaneously claiming a reduced rate of tax on its own behalf and on behalf of persons in their capacity as interest holders in that entity, you may, at your option, accept the dual claims even though you hold different withholding certificates that require you to treat the entity inconsistently for different payments or for different portions of the same payment. If, however, inconsistent claims are made for the same portion of a payment, you may either reject both claims and request consistent claims or you may choose which reduction to apply.

## Requesting a New Form W-8

Request a new Form W-8:

- Before the expiration of an existing Form W-8,
- If the existing form does not support a claim of reduced rate for a type of income that the submitter of the form has not previously received, or
- If you know or have reason to know of a change in the beneficial owner's circumstances that makes any information on the current form incorrect.

**Example.** A foreign investor opens an account with a broker to purchase U.S. Treasury bonds and provides Form W-8BEN to obtain the portfolio interest exemption. The investor does not complete Part II of Form W-8BEN (because he is not claiming treaty benefits). Later, the investor purchases U.S. stock and claims treaty benefits on dividend income. The investor at that time completes a new Form W-8BEN providing the information required in Part II.

## Period of Validity

### Form W-8BEN

Generally, a Form W-8BEN provided without a U.S. TIN will remain in effect for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, unless a change in circumstances makes any information on the form incorrect. For example, a Form W-8BEN signed on September 30, 2001, remains valid through December 31, 2004. A Form W-8BEN with a U.S. TIN will remain in effect until a change of circumstances makes any information on the form incorrect, provided that the withholding agent reports on Form 1042-S at least one payment annually to the beneficial owner.

### Form W-8ECI

Generally, a Form W-8ECI will remain in effect for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, unless a change in circumstances makes any information on the form incorrect.

### Form W-8EXP

Generally, a Form W-8EXP provided without a U.S. TIN will remain in effect for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year. However, in the case of an integral part of a foreign government (within the meaning of Temporary Regulations section 1.892-2T(a)(2)) or a foreign central bank of issue, a Form W-8EXP filed without a U.S. TIN will remain in effect until a change in circumstances makes any of the information on the form incorrect. A Form W-8EXP furnished with a U.S. TIN will remain in effect until a change in circumstances makes any information on the form incorrect provided that the withholding agent reports on Form 1042-S at least one payment annually to the beneficial owner.

### Form W-8IMY

Generally, a Form W-8IMY remains valid until the status of the person whose name is on the certificate is changed in a way relevant to the certificate or circumstances change that make the information on the certificate no longer correct. The indefinite validity period does not extend, however, to any withholding certificates, documentary evidence, or withholding statements associated with the certificate. Moreover, it does not extend to any statements attached to the certificate if a change of circumstances makes the information on the attached statements no longer correct.

### Forms Received That Are Not Dated

If a Form W-8 is valid except that the person providing the form has not dated the form, the withholding agent may date the form from the day it is received and measure the validity period from that date.

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## Substitute Forms W-8

You may develop and use your own Forms W-8BEN, W-8ECI, W-8EXP, or W-8IMY (a substitute form) if its content is substantially similar to the IRS's official Forms

W-8BEN, W-8ECI, W-8EXP, or W-8IMY (to the extent required by these instructions) and it satisfies certain certification requirements. You may develop and use a substitute form that is in a foreign language, provided that the substitute form also provides the English version of the statements and information otherwise required to be included on the substitute form. You may combine Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY into a single substitute form.

The substitute form must contain instructions that adequately inform the beneficial owner of what is meant by permanent residence address and beneficial ownership. You are, however, encouraged to provide all relevant instructions, especially if the payee requests them.

You may incorporate a substitute Form W-8 into other business forms you customarily use, such as account signature cards, provided the required certifications are clearly set forth. However, you may not:

1. Use a substitute form that requires the payee, by signing, to agree to provisions unrelated to the required certifications **or**

2. Imply that a person may be subject to 30% or 31% withholding unless that person agrees to provisions on the substitute form that are unrelated to the required certifications.

A substitute Form W-8 is valid only if it contains the same penalties of perjury statement as the official forms and the required signature. However, if the substitute form is contained in some other business form, the words "information on this form" may be modified to refer to that portion of the business form containing the substitute form information. The design of the substitute form must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained in the form.

## Content of Substitute Form

### Form W-8BEN

The substitute Form W-8BEN must contain all of the information required in Part I, lines 1 through 5, and line 6, if a U.S. TIN is required. The certifications in Part II must be included in a substitute form only if treaty benefits are claimed, and then only to the extent that the certifications are required. For example, if the substitute form is intended for the use of individuals only, the certifications contained in boxes **9c** and **9d** are not required.

**Penalties of perjury statement.** The design of the substitute Form W-8BEN must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained on the form. Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line: "*The Internal Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish your status as a non-U.S. person and, if applicable, obtain a reduced rate of withholding.*"

## Form W-8ECI

The substitute Form W-8ECI must contain all of the information required in Part I, other than lines 7 or 8. The certifications in Part II of Form W-8ECI must be included in a substitute form.

**Penalties of perjury statement.** The design of the substitute Form W-8ECI must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained on the form. Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line: *“The Internal Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish your status as a non-U.S. person and that the income for which this form is provided is effectively connected with the conduct of a trade or business within the United States.”*

## Form W-8EXP

The substitute Form W-8EXP must contain all of the information required in Part I, lines 1 through 5, and line 6, if a U.S. TIN is required. The substitute Form W-8EXP must also contain all of the statements and certifications contained in Parts II and III, but a specific part needs to be included (in its entirety) only if it is relevant. For example, if the only beneficial owners a U.S. withholding agent has as account holders are foreign governments, the withholding agent may use a substitute Form W-8EXP that contains only the required information in Part I, plus the required statements and certifications from Part II that are related to foreign governments.

**Penalties of perjury statement.** The design of the substitute Form W-8EXP must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained on the form. Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line: *“The Internal*

*Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish your status as a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession.”*

## Form W-8IMY

The substitute Form W-8IMY must contain all of the information required in Part I, lines 1 through 5, and line 6, if a U.S. TIN is required. The substitute Form W-8IMY must also contain all of the statements and certifications contained in Parts II, III, IV, V, or VI, but a specific part needs to be included (in its entirety) only if it is relevant. For example, if the only intermediaries a U.S. withholding agent has as account holders are qualified intermediaries, the withholding agent may use a substitute Form W-8IMY that contains only the required information from Part I, plus the statements and certifications from Part II. A substitute Form W-8IMY must also incorporate the same attachments as the official form. A withholding agent may also include any information in a substitute Form W-8IMY, or require any information to be associated with the form, that is reasonably related to his obligation to withhold and correctly report payments.

**Penalties of perjury statement.** The design of the substitute Form W-8IMY must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained on the form. Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line: *“The Internal Revenue Service does not require your consent to any provisions of this document other than the certifications required to establish your status as a qualified intermediary, a nonqualified intermediary, a specific type of U.S. branch, a withholding foreign partnership, a withholding foreign trust, a nonwithholding foreign partnership, a nonwithholding foreign simple trust, or a nonwithholding foreign grantor trust.”*