



# International Tax for Exempt Organizations

As exempt organizations are increasingly involved globally with operations, activities, people, endowments, and investments, it's important to understand the U.S. tax implications and obligations. This recording addresses annual international tax compliance matters (e.g., Forms 926, 8865, 5471, FBARs, etc.) and operational matters such as structuring, transfer pricing, subsidiaries, and assistance with inbound and outbound employees.

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**Here is a transcription of this session:**

Meghann Swanson:

Hi everyone. Good afternoon or good morning depending on where you are. Thank you all for joining this complimentary webinar today on International Tax for Exempt Organizations. My name is Meghann Swanson and I'm a senior associate on our international tax services team based in Charlotte, North Carolina. Today I'm joined by Liz D'Amore who is a director on our international tax services team in the Rhode Island office.

Now this is our disclaimer slide. What we're presenting today is general in nature. Please contact your CLA advisor or other professional prior to taking any action based upon the information in this presentation, materials provided to you or if you have any specific questions.

In this webinar, we will address international tax compliance matters for exempt organizations. We will be discussing forms 1042, 1042-S, 926, 8865, 5471s, and FBARs. At the end of this session, you'll be able to identify how your non-profit organization's international activities may result in additional US tax compliance and withholding requirements. You will be able to recognize US federal tax compliance requirements for your organization's foreign investments and you'll be able to identify how to work with your tax advisor to help avoid penalties for non-compliance.

Some common withholding and compliance issues that we see for exempt organizations that we are going to be discussing today in more detail are payments to foreign persons or entities. We'll talk through what payments require form 1042 and form 1042-S reporting, how much to withhold on these payments, where and when to remit withholding payments and we'll talk through a couple of examples. We'll go over foreign bank account reporting, what FinCEN form 114 is, when the form is required to be filed by, and why certain foreign financial accounts need to be reported on this form. And we'll discuss investments and offshore activities such as direct and indirect ownership in foreign corporations, foreign partnerships, passive foreign investment companies, and we'll go over transfers of property to foreign corporations. We'll discuss when the filing requirement for forms 5471, 8865, 8621 and 926 are triggered, when these forms are due by, and why it's important to timely file these forms.

Now let's go ahead and dive into payments to foreign persons or entities. So whenever we have certain cross-border US source income payments to non-US recipients, form 1042 and 1042-S need to be filed



even if no withholding is required. We'll look at the specifics of when these forms are required, but here are the basic compliance requirements for payments to foreign persons.

**Form 1042.** This form is used to report tax withheld on certain income payments to non-US recipients along with payments that are reported on form 1042-S under Chapter 3 or Chapter 4. Form 1042 is a calendar year summary of these payments subject to withholding. Information included here are gross payment amounts paid to all recipients, amounts withheld or amounts that should have been withheld from these payments, and the tax liability for each period that the income was paid or distributed regardless of whether the tax liability was withheld from the payment or paid by the withholding agent. Amounts subject to withholding are fixed or determinable, annual or periodical income, or sometimes this is referred to as FDAP income, and certain gains from the disposition of natural resources such as timber, coal and iron ore or gains from the sale or exchange of certain intangibles.

Now we'll go into a little bit more detail on these different types of payments on the next few slides.

**Form 1042-S.** This form is also used to report tax withheld under Chapter 3 and Chapter 4 for certain income payments to non-US recipients and to report amounts withheld under Chapter 3 and Chapter 4. Form 1042-S reports calendar year information and its recipient specific. Form 1042-S is similar to form 1099 miscellaneous except that form 1042-S is only for specific payments made to non-US recipients. The 1042-S needs to be completed for each recipient.

If we have multiple types of income payments, there will need to be a form 1042-S for each income type. So for example, let's say we pay Recipient 1 interest and then we also pay Recipient 1 a dividend payment, we'll need a 1042-S for the interest payment and then we'll also need a 1042-S for the dividend payment.

Form 1042-S consists of five copies. Copy A is the copy that gets sent to the IRS. If paper filing these, all copy As of form 1042-S that are withheld under Chapter 3 need to be mailed together with Form 1042-T. And all 1042-Ss withheld under Chapter 4 need to be mailed together with another form 1042-T. Form 1042-T is just the summary and transmittal of the forms 1042-S that are being paper filed. Copies B, C and D of the 1042-S are provided to the recipient and copy E should be retained by the payor for their records.

Most of the information needed to prepare form 1042-S comes directly from the W-8s received from the payment recipient, which is why it's so important that we request form W-8 from these recipients. Whenever we're making cross-border payments of US source income, we need to be requesting form W-8 from the payee. Form W-8 is not filed with the IRS, but it is required for a reduced rate of withholding. Depending on the payee status, we will need to request different types of documentation. For example, for payments that are made to non-US individuals, we will need to request form W-8BEN. And for payments made to non-US entities, we'll need to request form W-8BEN-E. For payments made to foreign intermediary or Flow-Through entities, we should receive form W-8IMY from the intermediary or Flow-Through along with form W-8BEN or W-8BEN-E if the beneficial owner of the income is a non-US individual or entity.

So for example, if we make a payment to a foreign partnership and one of the partners is a non-US individual, we will need form W-8IMY from the partnership and form W-8BEN from the non US individual partner since the partner is the beneficial owner of that income. W-8s are valid starting on the date the form is signed and ending on the last day of the third succeeding calendar year. So for example,



if we receive a W-8 that was signed on February 2nd, 2019, this W-8 will be valid for the 2019 calendar year along with the three years following. So this W-8 will be valid until December 31st, 2022.

For any payments paid after December 31st, 2022, we will need to request an updated W-8 from the payment recipient before making that payment. If the W-8 is properly completed, you should be able to rely on the reduced rate of withholding listed in the treaty benefits section of that W-8 if a treaty rate applies. For payees claiming treaty benefits, we'll need to make sure that a US tax identification number or a foreign tax identification number is present, which is required when claiming reduced rates under the treaty. Treaty rates of withholding can be disregarded by the IRS if proper W-8s are not retained by the payor. In this case, the not-for-profit would be liable for the difference in the withholding tax.

So when are the withholding payments due by and when are forms 1042 and 1042-S due by? Withholding payments need to be made to the IRS within three business days of making the withholdable payments to avoid penalties and interest. Withholding payments are made via the Electronic Federal Tax Payment System or EFTPS. If you fail to use EFTPS, you may be subject to a 10% penalty. In order to enroll for an EFTPS account, you'll need a tax identification number, a banking account, and routing number, and an address and name as they appear on the IRS tax documents. With this information, you can go to [eftps.org](https://eftps.org), select enrollment, and then follow the onscreen prompts.

Form 1042 and 1042-S need to be filed by March 15th of the year after the payment is made to the payee if no extension is filed. These forms are filed on a calendar basis, so fiscal year filers will need to file information related to the calendar year. For example, if we have a 6/30/2022 year end entity that makes a US source for that payment to non-US entities or individuals on January 1st, 2022, June 15th, 2022, and then October 15th, 2022, we'll need to report all of these payments on the 2022 forms 1042 and 1042-S.

So why do these forms need to be filed and why is it so important to file these forms on time? These forms are filed to report the tax withheld on certain income of foreign persons including non-resident aliens, foreign partnerships, foreign corporations, foreign estates and foreign trusts. Forms 1042 and 1042-S should be filed by their due date and withholding payments should be made within three days via EFTPs in order to avoid missed filing penalties as well as penalties and interest on missed taxes due.

Taxes that are not paid by the due date, that being the three business days after the withholdable payment is made to the recipient, will start accruing interest. Even if an extension is granted, the penalty for not filing form 1042 by the due date is 5% of the unpaid tax for each month up to a maximum of 25% of the unpaid tax. The penalty for not paying the tax when it's due is one-half of 1% of the unpaid tax for each month up to a maximum of 25% of the unpaid tax. And for form 1042-S, the failure to file penalties or late filing penalties may be up to \$290 per late form 1042-S.

All right. Any payments of US source FDAP income to non-resident persons or entities are withholdable payments. There are many types of FDAP income payments that may require form 1042 and form 1042-S reporting, but some of the most common types of FDAP income payments that we see for exempt organizations are compensation for personal services rendered inside the United States. So for example, gross proceeds from performances performed within the United States. So if we hire an intern to perform services within the United States, that would be FDAP income payments subject to 1042 withholding and filing.

Another type of payment that we commonly see are payments for scholarships, fellowship grants, prizes and awards. These types of payments are sourced to the residents of the payor. So if we have a US



exempt organization making these payments to foreign recipients, they are US sourced FDAP payments. And for this income type, there may be special visa rates that could apply to individuals who are temporarily in the United States on an F, J, M or Q visa. The special visa rates may apply to individuals who are not residents of treaty countries. This is not a general rate exception, this is just for this specific type of income.

Other payments that would necessitate a form 1099 if such payment was made to a US resident. For example, we often see compensation for teaching or earnings as an artist or athlete. Payments are required to be withheld on at a 30% rate of withholding. If a reduced rate is available under the income tax treaty and a valid form W-8 is received from the recipient reflecting this reduced treaty rate and any additional information that may be required to claim these benefits, the payor may rely on the W-8 and withhold based on the reduced rate listed on the W-8.

All right, so now that we've gone over the basics and general rules, let's walk through an example of something that we may see for exempt organizations. So in this case we have a US not-for-profit, or you may hear us refer to this entity as the withholding agent or the payor. So if you hear either of these terms being used, we're referring to the not-for-profit. This entity frequently makes payments to individuals who are non US residents. These payments made to the individuals are grants or award type payments for activities that take place within the United States. Before making any payments to the payees, the US not-for-profit should request from W-8BEN from the individuals to document the appropriate withholding amount. For individuals who are residents of non-treaty countries, 30% should be withheld from the gross payment and then the remaining amount should be paid to the recipient.

So let's say that the gross payment to the recipient is \$5,000 and the required withholding rate is 30%. The withholding agent would need to withhold \$1,500 and remit the payment to the IRS via EFTPS within three business days. The net payment that the recipient would then receive is \$3,500. Now, if the gross payment was supposed to be \$5,000 but the withholding agent forgot to withhold on that payment or they didn't realize that the payment required withholding, they would have to gross up the payment. So a gross up needs to occur when we didn't withhold what we were supposed to withhold. And the IRS' position is that the payor, so the not-for-profit, is paying the tax for the recipient and they want to treat that as additional income to the recipient. Now, we would not only have to tax the original payment, but the withholding paid by the payor as well.

If a lower treaty rate is properly documented on form W-8BEN, in this case since we have an individual recipient, then in our example we would substitute the 30% rate for the lower treaty rate. The withholding agent must issue form 1042-S to the grant recipient and a copy to the IRS by March 15th of the following year, unless an extension is filed.

To extend Form 1042-S, form 8809 needs to be filed by the original due date. By filing this, they will receive an automatic 30 day extension to file form 1042-S. The not-for-profit would also need to file form 1042 with the IRS by March 15th of the following year, unless an extension is filed. And to extend form 1042, form 7004 must be filed. This will allow for a six month extension. But this does not extend the amount of time for payment of tax due.

Another example in this situation would be if instead of a grant recipient, we have a US not-for-profit that pays wages to foreign persons or US performed activities. So for example, they hire summer interns, we'll need to follow this same general plan that we have set up here for this case also.



Now to recap, here are some best practices when it comes to making payments to foreign persons or entities. You'll want to track all payments of US source FDAP to non-US recipients. Good documentation will help make the reporting process just a bit easier. Information that we would need for reporting purposes includes who's receiving these payments, the amount of each payment and the amount withheld on each payment, payment clear date, country of recipient, and any additional information that may be helpful for reporting purposes. We'll want to require form W-8 or W-9 from all vendors and payees. When the calendar year comes to an end instead of having to scramble and try to collect proper documentation from these vendors and payees, all forms would've already been collected. This is also important because the payor will need to know how much to withhold on each of these payments before making the payments.

All payments made to foreign payees should have 30% withheld unless there is a valid form W-8 with a lower treaty rate available, and making all withholding payments to the IRS within three business days of making the withholdable payments in order to avoid or minimize penalties and interest on those payments.

Now, that's all I have for 1042 and 1042-S reporting. So if anyone has any questions, please feel free to leave it in the chat and we will do our best to answer these. Now I want to thank you all for your and I'm going to go ahead and pass this on over to Liz.

Liz D'Amore:

Thank you Meghann. Hello, I am Elizabeth D'Amore. I'm going to be talking today first about foreign bank accounts and then we're going to be talking about investments.

So the foreign bank account is filed on FinCEN form 114, better known as the FBAR, so the report of Foreign Bank and Financial Accounts. Now, this FBAR is filed separately. It is not filed with your usual 990. You can actually start it, but it will always be filed on October 15th of the calendar year. It does not matter whether you are a fiscal year taxpayer or a calendar year taxpayer, you have to file it on October 15th. So what does that mean? Whatever happens the year before, so even if you're a fiscal filer, you have to look at the foreign bank accounts from January through December of the prior year. So for example, October 15th of this year, we're filing an FBAR for 2021. That would be January through December of 2021.

You have to report certain foreign financial accounts. Now these are bank accounts, brokerage accounts, mutual funds. They could also be sometimes trust accounts that are considered something like insurance accounts and things like that, but those are more rare. You would want to talk to your tax advisor on this.

Now, what they are is to be reported every year or you could get a \$10,000 non willful violation for not filing your FBAR. Or it could be the greater of a \$100,000 or 50% of the account balance if they think you're willful. Non willful would be something like you just forgot. And when they popped up a notice you didn't realize that you hadn't filed or you should have filed. Willful violation is you were very much aware of your accounts, you're very, very active in your foreign accounts and you should have known that you were supposed to file. And so the IRS and FinCEN will look at the matters and see whether or not they would be a non willful or a willful.

Also note that if you forget to file, because I've had some of these recently, if you forget to file by accident, you filed your tax return, you filed everything that was required, you've paid all of your taxes



and you just forgot to file the FBAR this year, you can file late. You do have to explain why you forgot to file. You also have to show that you were not contacted by the IRS or FinCEN, you were not under any sport sort of civil investigation and that it was purely non willful. It was just a failure to file. You forgot that this year, okay? So if everything is there, then you can try to avoid penalties. Note, that doesn't mean that you won't go under audit, but they usually, as long as there's a valid reason and you filed as soon as you could, they usually try not to apply those penalties.

So who has to file and when? So basically a not-for-profit must file form 114 when the not-for-profit has the financial interest in signatory authority over or other authority over a financial account located that outside of the US when the aggregate value of the foreign financial accounts exceed 10,000. So that means you could have several accounts that are only a couple of thousand, but if in the aggregate you total this up and it becomes \$10,000, you have to file all of them. You have to report all of them. And this is at any time during the calendar year. So it doesn't mean that at the end of the year if you have the 10,000 in the aggregate you can file, but you have to actually look at month by month what the highest balance is during any of the year.

Now this is the highest balance in each account. So that means that if the highest balance in one of your accounts is in January and in another account the highest balance is in October, those are the balances that you put on your FBAR, okay? So it's the highest balance on any day for each account. And then in the aggregate, if you look at all of it over the year, if it's \$10,000, you have a filing requirement.

Now, it's not just only if the not-for-profit has the interest, but also if the not-for-profit allows one of the US employees to actually have signatory authority over the financial accounts. Some countries require the banks to have a [inaudible 00:29:22] person, identify a person that will be the one that can sign and have authority to control those accounts. So it's not just the not-for-profit, it's an actual person in the not-for-profit that has this authority. If that is the case, you need to identify that and let your tax person know this because they too will have to file for those accounts that they have signature authority over. So that's really important that you keep an understanding of if you do have a required single individual in your company that has to file, you need to let them know that they may have to personally file an FBAR with their tax returns. And again, it's October 15th of each year. It doesn't matter that they are not not-for-profit, all right? So October 15th is the deadline no matter what income tax form that you file.

So let's take an example. The US not-for-profit has 100% owned subsidiary in its South Africa with non-US accounts. The subsidiary has a local bank account in South Africa that holds over \$10,000, and this is US dollars. So sometimes you will get a bank statement that's in the local currency so you do have to convert to make sure that it's over \$10,000. And therefore, it has the 100% interest in this bank account. The not-for-profit must report the highest balance of the bank account during the calendar year. And the not-for-profit will file the FinCEN form 114 with the IRS again by October 15th the following year, okay?

And again, that's another question that come usually comes up that I just kind of glazed over, is a lot of things come back in functional currency. When you convert from the functional currency into the US dollar, for FinCEN requirements, you take financially the foreign FX rate, so the rate at December 31st of year end. So you look at all of the accounts. Again, it's going to be January through December of say 2021. You look at December 31st, 2021 for your FX rate for that currency, and you divide that amount for all of your functional currency, okay? So it doesn't matter whether it's in January, October, what have you, you're using the December 31st year end FX rate. And it's usually a divide by number. That's also another thing that's required by both the IRS and FinCEN, is to use their divide by numbers. Usually



you can get this with the Treasury. The Treasury does publish a December 31st year end each year, and that's probably your best bet to be using that one to find out if you have a \$10,000 US dollar amount for the year.

So the best practices to keep kind of account of all of this, you should be tracking all your accounts of the entities that you own a greater than 50% value in, okay? Request monthly statements for the foreign accounts. Don't try to best guesstimate what you have at the year end. You should be looking at all of your monthly statements because again, it's any day of the year. So your highest balance could be in a prior month. Maintain records of any on all US individuals with signature authority of those accounts, okay? So those are the best practices.

All right, so next we're going to be talking about investment offshore activities. And I'm going to be taking my time with this. And again, we'll have some odd time at the end of the hour for any questions. Guys, I know this might generate a lot of questions. So the investments in offshore activities, these will generate several different types of forms depending on the type of investment that you're doing and what the investment is in, what type of entity you might be investing in. So the first one is form 926, and this is a return by a US transfer of property to a foreign corporation. So this is any investment in a regarded foreign corporation. This could be cash investment, this could be property, this could be investing even of shares of something else into that foreign corporation. And I'll go through some examples of that shortly.

Another form is form 5471. This is the information return of US persons with respect to certain foreign corporations. If you have a 10% or more vote or value in a foreign corporation, this can trigger form 5471 filing. Again, I'll talk a little bit more about this and when it might happen in a later slide. But please note that when you're looking at investing in a foreign corporation, you have to look at the vote or value that you have in that foreign corporation. If you have 10% or more, that will trigger a foreign 5471. If more than 50% of voter value in a 5471, this triggers a continual filing of form 5471. Again, I'll talk a bit more in a moment about that.

There's also form 8621, which is information return by a shareholder of a passive foreign investment company. PFIC is what we usually call these. These happen a lot. Now, with the not-for-profits, form 8621 is usually not required unless it is for an unrelated business investment. So these are not something that you'll probably have to worry a lot about, but you should always, and this is a lot of times you'll be on your K-1s that you've invested indirectly and you could potentially have form 8621 filing. This is when you want to talk to your tax advisor whether or not you trigger any filing of an 8621. Nine times out of 10, you're probably not going to be, but it's important to talk to your tax advisor on that.

Then finally, the form 8865, and this is the return of US persons with respect to a certain foreign partnerships. This happens again a lot when you see a K-1, indirectly you are investing in certain foreign partnerships. Sometimes you actually do invest directly in certain foreign partnerships. And if you either have a 10% value in that foreign partnership or you have \$100,000 over the course of a 12-month rolling period that you've invested that amount of money in that foreign partnership, that triggers an 8865. Additionally, any property that you have put into a foreign partnership also can trigger an 8865. So it's important again to understand what you're investing in the foreign partnership, how much it is, and also what's the value that you're going to be receiving, what's the interest that you're going to be receiving that foreign partnership. So the triggers are again 10% and/or \$100,000 over a 12 month period. And this is a 12 month rolling period.



So sometimes in the first... Maybe in a tax year that kind of straddles over, so say two tax years, you've invested say 80,000 in one tax year and then say 20,000 immediately in the next tax year, don't invest anything else in that second tax year, but guess what? Because it's within a 12 month period between the two investments, the \$80,000 and the \$20,000, you should be reporting the tax year in which you made that final \$20,000 that gets you to the \$100,000 threshold. You should be reporting it on the 8865, okay? So it's a rolling 12 months. That doesn't actually have to happen within your tax year. It can happen over the course of two tax years, throughout the course of two tax years.

So basically, all of these forms can be filed when the 990 is due. So the FBAR, like I said earlier, you have to file it on October 15th. It doesn't matter, okay? When you have to file your 990, FBAR has to be filed on by October 15th. You can file it earlier. But by October 15th of every year, you're filing this. With any of these forms, you're filing it with the 990. So it's filed during your the tax year. Why? It is to report ownership and contributions to offshore entities. The IRS wants to track this, okay? And you have to avoid serious penalties. All of these forms have penalties associated with them. Some are fairly onerous, especially the 5471. It is a \$10,000 penalty per form, per year. So if you say you have five 5471s that you should have been filing, that's a \$50,000 penalty for failure to file because it's \$10,000 per form per year, and it's over the course of say, a couple of years. That's 50,000 for each year, okay? So this is really important.

So the basics of investments in offshore activities. So investments or ownership of foreign entities or mutual funds can trigger several required filing types depending on the ownership percentage and the dollar amounts involved. Investments do not need to be direct investments, all right? They can be indirect through the investments in other partnerships usually, right? Because the K-1s is when we'll really find these for you. And you have to look at the entire chain of ownership to understand what your investment is, okay? So always think of key thresholds, 10% or more ownership, direct or indirect, okay? 10% or more. And \$100,000 contributions over a 12-month rolling period. It does not have to be within your tax year as long as it's within a 12 month period.

So let's take an example. We have a college endowment that invests in domestic mutual funds that in turn wholly owns a foreign corporation, which it contributes all received cash to each year. This is reported to the not-for-profit on their K-1 footnote. The not-for-profit ends up owning a 10% share of the mutual fund and contributes \$60,000 in cash to this domestic fund every May and September in capital calls. The not-for-profit must file form 5471 for their ownership in the foreign corporation because they own a 10% interest, right? They own a 10% interest in the mutual fund. The mutual fund owns 100% of this foreign corporation, therefore they own a 10% indirect interest in this foreign corporation.

So first thing that's triggered is form 962. This will report their share of contributions to the foreign corporation during the year, which is the \$100,000. If they've exceeded the \$100,000, so it's going to be the cash contributions. It will list the dates in which they made each contribution and how much of the contribution they made in each of those dates. And then they will also file the 5471 to show that they have the 10% interest in that foreign corporation. And usually it's as a category 3 filer. Penalty for failure to file the form 5471 when required, is like I said, the \$10,000 per year, per form, okay? So that's really important to be filing this.

So best practices. First, you request any expected schedule K-1s from all your investments early in the year. That's really important. Even if you just get a draft, even if they say that they don't have a final yet, at least get the drafts to your tax advisor. This helps us understand what we should be requesting.





Because of the new K-2, K-3s, you should be requesting a K-3 if it's not also provided with your K-1. The K-3 will actually break down the foreign investments even better. So it'll help us understand what your reporting requirements may entail, and then we can tell you you have certain reporting requirements this year and the forms in which we're going to have to provide for you.

Then maintain a current list of all investments and entities owned that also includes the country of organization and percentage of vote and value owned. Now, big question is what is vote and value? Right? So what we mean by vote and value is when you are invested in a foreign corporation, there's two types of ways that you can invest in it. You can invest in it by voting stock or you can invest in it sometimes through preferred shares. What we'd have to look at, especially with the value, vote's pretty easy because it's usually just common stock and we can easily see if you have 10% or more in that. Preferred shares is a little bit more different. We need to know what of the share is outstanding, how much shares that you own, the value in the company of those shares. So we need to have a little bit more information. This usually will come in with any of your investment packages. So these are things you might want to share with your tax advisor early on so we can understand your value in those foreign activities.

Also, track the amount and date of each cash or property contribution for reporting purposes, especially the 12-month ruling period issue, right? So you should be tracking every investment, the amount of cash that you've contributed on that date. And then this way we can look at did you meet the \$100,000 reporting requirement in a 12-month period, okay? We also like to look at if your investments have increased or decreased. A 5471 is also triggered if you relinquish 10% or more of your indirect or direct interest. So that's also important as well. And again, if you own more than 50% of vote or value in a foreign corporation, we are going to be having to file a 5471 each year for you. So we're going to need to have even more information each year.

So some final thoughts when you're thinking about and investing or have investments in foreign activities. So for foreign filing determinations, they are nuanced and they require specialized knowledge to comply with all filing requirements. So if you have any questions at all, if you're not quite sure, even if you think you may not have a filing requirement, maybe just best to send it on into your tax advisor and say, "Hey, I don't think I've met the threshold. I don't quite know, but I've maybe invested in this onshore mutual fund or this onshore partnership. I know they have some investments in foreign activities. I want to show these to you, all right? Because I've made X amount of contributions over the year, over 12 months, and I just want to make sure it hasn't triggered anything."

So it's very nuanced. Even the PFIC reporting. Like I said, most of the times not-for-profits don't have an 8621 filing requirement, but sometimes they do. I have seen it every so often. So we want to know how you're investing in these companies. So it's very important to kind of talk to your tax advisor before the tax year is coming up so that we can kind of understand if you have any of these filing requirements.

Some requirements are standalone filings. So the form 1042 that Meghann had talked about and the FBARs, these are filed separately from your 990. So they are standalone and they are required at certain times of the year outside of your 990 so they're really important to keep track on. Others are part of the 990 filings, right? So those are the 5471s, the 926, the 8065, and the potential 8621. With FBARs and any other type of reporting, remember, always ask for any records that you think you might need from the local foreign accounting or from the companies that you're investing through for those foreign filings.



The not-for-profit should keep good records of any payments, investments, ownership in order to assist tax advisors in meeting requirements and avoid or experience penalties we've been saying a lot throughout this webinar. And contact your tax advisor before you make any payments or investments or purchases in a foreign nature to stay ahead of any requirements, okay? So that's really important as well.

Okay, so we've hit the time where we can have some questions. I know Meghann's been kind of looking at more of the questions than I have right now. So if there's anything that you see, Meghann, that we should kind of address that everybody might want to be interested in, let me know.

Meghann Swanson:

Okay. Yeah, let me find some. There were a few really good ones that came in.

Liz D'Amore:

Okay.

Meghann Swanson:

So we had a couple of questions come in asking if the payments are made to foreign persons not located in the US if a form 1042 would be required. So in that case only for professional services performed outside the United States, we would not require form 1042 because it would not be US sourced FDAP income. If payments were for dividends, interests, royalties and rents, then the 1042 would still be required.

And then, so, "Do grants paid to foreign entities require withholding?" For grants paid to foreign entities, it will depend on what the grant is for and where the activity it covers takes place. So generally speaking, grants for activities taking place within the US would require form 1042, withholding would be 30% unless the recipient qualifies for a lower rate under the treaty.

And then we also received a really good one, not as common but, so, "Do the requirements for Form 1042 apply to per diem payments to non-US residents for speaking engagements in the US?" So generally speaking, payments made to the non-US persons for engagements within the US would be considered independent personal services income, which is the type of FDAP income and they would be subject to withholding. However, there'd have to be a careful analysis done on the specific fact pattern in order to determine if the speaker is actually independent of the payor or whether they would qualify for an exception or a reduced rate under the treaty. So that's one where we would have to dig into the fact pattern and actually see what would apply in that case.

Liz D'Amore:

I also just saw one that was interesting with a foreign bank account where there is an employee on temporary assignment that has a personal foreign account, but it's not related to the organization. That's on them to report. So the foreign organization, as long as this isn't a foreign organization account that they are using, the not-for-profit does not have to file the FBAR but the individual may actually on their personal side have to report if it's over \$10,000 for their personal account. Let's see.

Meghann Swanson:



Another good question in here. "Is there a threshold amount to start the withholding for payments made to non-US persons?" And Liz, correct me if I'm wrong, there is no threshold. The IRS would expect a 1042 and 1042-S and withholding to start on the first payment made.

Liz D'Amore:

That's correct.

Meghann Swanson:

Okay.

Liz D'Amore:

Oh, let's see. Oh, and I'm sorry if I bobbled the numbers if I was talking quickly. It's form 926. Sorry about that. Because I saw there was a... "Is it 962 or 926?" It's a 926. Sometimes I talk fast and I'm getting a couple of form and code sections bottled up.

There's also a question about the 926 if it's required for transfers made to a foreign NGO that is not a stock corporation, but the nonprofit holds more than 50% voting rights in that foreign organization's board. It's an interesting question. I'd have to understand more about the rights, but I mean if it's a 50% vote or value and they're making transfers to the foreign corporation cash or property, a 926 would probably be triggered. So yes, that would probably be a trigger. I'd have to understand, like I said, more about the non stock portion, but if there's a 50% more voting right, yes.

Okay. So I think we've come to a conclusion. I know there's a lot more questions and we will get to them. We are getting them all tracked right now. Somebody will probably be reaching out to you to give you some specific answers to your questions. And it was great talking to you today.

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