



International Tax for Exempt Organizations

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Learning Objectives

Identify

Identify how your nonprofit organization's international activities may result in additional U.S. tax compliance and withholding requirements.

Recognize

Recognize U.S. federal tax compliance requirements for your organization's foreign investments.

Identify

Identify how to work with your tax advisor to help avoid penalties for noncompliance.



Common Withholding and Compliance Issues



PAYMENTS TO FOREIGN
PERSON/ENTITY



FOREIGN BANK
ACCOUNTS



INVESTMENTS IN
OFFSHORE ACTIVITIES



Payments to Foreign Person/Entity

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Payments to Foreign Person/Entity

What

- [Form 1042](#), Annual Withholding Tax Return for U.S. Source Income of Foreign Persons
- [Form 1042-S](#), Foreign Person's U.S. Source Income Subject to Withholding
- [Form\(s\) W-8](#) (not filed with IRS but required for reduced withholding)

When

- Ongoing **withholding** as payments are made via [EFTPS](#).
- Filings due March 15th of the year after payment.

Why

- Report the tax withheld on certain income of foreign persons, including nonresident aliens, foreign partnerships, foreign corporations, foreign estates, and foreign trusts.
- Avoid **penalties** for missed filings, as well as **penalties and interest** on missed tax due.



Payments to Foreign Person/Entity - Basics

Any payments of US source Fixed, Determinable, Annual, or Periodical income to non-resident persons or entities are **withholdable** payments

Examples of Fixed, Determinable, Annual, or Periodical income (“FDAP”):

Compensation for personal services rendered inside the US (such as gross proceeds from performances)

Scholarships, fellowship grants, prizes, and award (which are US sourced based on residence of payor)

Other payments that would necessitate a Form 1099 were they paid to US resident

Payments are required to be **withheld on at 30%** (unless a treaty rate applies)



Payments to Foreign Person/Entity - Example

US Not for profit (“NFP”) makes grants or awards to non-US residents for activities taking place inside the US

NFP must request **Form W-8BEN** from the individual to document appropriate withholding amount

NFP must **withhold and remit payment to IRS at 30%** (or lower rate **if** properly documented on Form W-8BEN)

NFP must issue **Form 1042-S** to grant recipient, and copy to IRS, by March 15th of the following year

NFP must file **Form 1042** with the IRS by March 15th of the following year

Payments to Foreign Person/Entity – Best Practices



Track all payments of US source FDAP to non-US recipients.



Require a Form W-8 or W-9 from all vendors and payees.



Withhold at 30% (or lower rate with valid Form W-8) on all foreign payees.



Make withholding payments to IRS **within three business days** of making withholdable payments to avoid penalties and interest.





Foreign Bank Accounts

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Foreign Bank Accounts

What

- [FinCEN Form 114](#), Report of Foreign Bank and Financial Accounts (FBAR)

When

- October 15th of each calendar year, regardless of tax year.

Why

- Report certain foreign financial accounts, such as bank accounts, brokerage accounts and mutual funds.
- Avoid potential penalties of **\$10,000 per non-willful violation** (greater of \$100,000 or 50% of the account balance for willful).



Foreign Bank Accounts - Basics

A US NFP must file FinCEN Form 114 (“FBAR”) when:

- NFP has a financial interest in, signatory authority over, or other authority over
 - a financial account located outside of the United States, when
 - the aggregate value of all foreign financial accounts exceeds \$10,000
 - at any time during the calendar year
- Additionally, if the NFP’s US employees have signature authority over foreign financial accounts, they may also have an FBAR filing obligation.



Foreign Bank Accounts - Example

US Not for profit (“NFP”) has a 100% owned subsidiary in South Africa with non-US accounts

- Subsidiary has a local bank account in South Africa that holds over \$10,000 (NFP therefore has a 100% interest in that bank account)
- NFP must report the highest balance of the bank account during the calendar year
- NFP must file FinCEN Form 114 with the IRS by October 15th of the following year



Foreign Bank Accounts – Best Practices



Track all accounts of entities the NFP owns greater than 50% of.



Request monthly statements for all foreign accounts.



Maintain records of US individuals with signature authority over those accounts.





Investments in Offshore Activities



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Investments in Offshore Activities

What

- [Form 926](#), Return by a U.S. Transferor of Property to a Foreign Corporation
- [Form 5471](#), Information Return of U.S. Persons With Respect To Certain Foreign Corporations
- [Form 8621](#), Information Return by a Shareholder of a Passive Foreign Investment Company
- [Form 8865](#), Return of U.S. Persons With Respect to Certain Foreign Partnerships

When

- Filed with Form 990 when due

Why

- Report certain ownership and contributions to offshore entities
- Avoid serious potential penalties



Investments in Offshore Activities - Basics



Investments in or ownership of foreign entities or mutual funds can trigger several required filing types depending on ownership percentage and dollar amounts involved.



Investments **do not need to be direct investments** to trigger these filings; the entire chain of ownership must be considered.



Key thresholds to consider are 10% ownership, and \$100,000 contributions over a 12 month period.



Investments in Offshore Activities - Example



A college endowment invests in a domestic mutual fund that in turn wholly owns a foreign corporation (which it contributes all received cash to each year); this is reported to the NFP in their K-1 footnotes.



NFP owns a 10% share of the mutual fund and contributes \$60,000 cash to the domestic fund every May and September in capital calls.



NFP must file Form 5471 for their ownership in the foreign corporation (10%) and Form 926 for their share of contributions to the foreign corporation during the year (exceeded \$100,000). Penalty for failure to file Form 5471 when required is **\$10,000 per year, per form.**



Investments in Offshore Activities – Best Practices

1

Request expected Schedule K-1s from all investments early in the year; request Schedule K-3 if not also provided.

2

Maintain a current list of all investments and entities owned that includes country of organization and percentage of vote and value owned.

3

Track the amount and date of each cash or property contribution for reporting purposes.



Final Thoughts



Foreign Filing determinations are nuanced and required specialized knowledge to comply with all filing requirements.



NFPs must keep good records of payments, investments and ownership in order to assist tax advisors in meeting these requirements and avoiding serious penalties.



Some requirements are standalone filings (Form 1042, FBARs) while others are part of the Form 990 filing.



Contact tax advisors before payments, investments, or purchases of a foreign nature take place in order to stay ahead of requirements.





Questions

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Thank you!

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