International Students & Compliance with US Federal Tax Law

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A. International Student Defined

1. A student is an individual who is temporarily present in the United States under an “F,” “J,” “M,” or “Q” visa and who substantially complies with the requirements of the visa.

2. You are considered to have substantially complied with the visa requirements if you haven’t engaged in activities that are prohibited by U.S. immigration laws and could result in the loss of your visa status.

B. International Student and Scholars Visa’s

1. The F-1 Visa (Academic Student) allows you to enter the United States as a full-time student at an accredited college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program. You must be enrolled in a program or course of study that culminates in a degree, diploma, or certificate and your school must be authorized by the U.S. government to accept international students.

   a. Code Section
   i. I.R.C § 101(a)(15)(F)(i)

   b. Visa Criteria:
   i. You must be enrolled in an "academic" educational program, a language-training program, or a vocational program
   ii. Your school must be approved by the Student and Exchange Visitors Program, Immigration & Customs Enforcement
   iii. You must be enrolled as a full-time student at the institution
   iv. You must be proficient in English or be enrolled in courses leading to English proficiency
   v. You must have sufficient funds available for self-support during the entire proposed course of study
   vi. You must maintain a residence abroad which you have no intention of giving up.

c. Employment
   i. F-1 students may not work off-campus during the first academic year, but may accept on-campus employment subject to certain conditions and restrictions.
   ii. Any off-campus employment must be related to their area of study and must be authorized prior to starting any work by the Designated School Official (the person authorized to
iii. maintain the Student and Exchange Visitor Information System (SEVIS)) and USCIS.

2. The J-1 classification (exchange visitors) is authorized for those who intend to participate in an approved program for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or to receive graduate medical education or training. In carrying out the responsibilities of the Exchange Visitor Program, the Department of State designates public and private entities to act as exchange sponsors. J-1 non-immigrants are therefore sponsored by an exchange program that is designated as such by the U.S. Department of State. These programs are designed to promote the interchange or persons, knowledge, and skills, in the fields of education, arts, and science.
   a. Examples of exchange visitors include, but are not limited to:
      i. Professors or scholars
      ii. Research assistants
      iii. Students
      iv. Trainees
      v. Teachers
      vi. Specialists
      vii. Au Pairs
      viii. Camp counselors
   b. Code Section
      i. I.R.C § 101(a)(15)(J)(i)
   c. Employment
      i. Some J-1 non-immigrants enter the United States specifically to work while others do not. Employment is authorized for J-1 non-immigrants only under the terms of the exchange program. Please check with your sponsoring agency for more information on any restrictions that may apply to you working in the United States.

3. The M-1 visa (Vocational Student) category includes students in vocational or other nonacademic programs, other than language training.
   a. Code Section
      i. 101(a)(15)(M)(i)
   b. Employment
      i. M-1 students may engage in practical training only after they have completed their studies.
      ii. Any off-campus employment must be related to their area of study and must be authorized prior to starting any work by the Designated School Official (the person authorized to maintain the Student and Exchange Visitor Information System (SEVIS)) and USCIS.
4. The Q nonimmigrant visa is for international cultural exchange programs designated by USCIS. You may be eligible for a Q-1 nonimmigrant visa if you are seeking to participate in an international cultural exchange program. The Q nonimmigrant exchange program is for the purpose of providing practical training and employment, and to share the history, culture, and traditions of your home country with the United States.
   a. Code Section:
      i. I.R.C. § 101(a)(15)(Q)(i)
   b. Eligible Criteria
      i. You may be eligible for a Q-1 nonimmigrant visa if you are seeking to participate in an international cultural exchange program.
      ii. The Q nonimmigrant exchange program is for the purpose of providing practical training and employment, and to share the history, culture, and traditions of your home country with the United States.
   c. Employment
      i. Only employers who administer cultural exchange programs are allowed to petition for Q non-immigrants.
      ii. The purpose of the Q nonimmigrant visa is to facilitate the sharing of international cultures. It is an employment oriented program, but an integral part of your duties must have a cultural element.
      iii. You must be at least 18 years old and be able to communicate effectively about the cultural attributes of your country.
   d. Length of Stay
      i. Initial Period of Stay
         a. Up to 15 Months
         b. After you complete your Q cultural exchange program, you are afforded 30 days to depart the United States. You are required to spend 1 year outside the United States before you can apply for participation in the Q cultural exchange program again.

C. Who Must File
1. Aliens temporarily present in the United States as students, trainees, scholars, teachers, researchers, exchange visitors, and cultural exchange visitors are subject to special rules with respect to the taxation of their income.
2. There is no minimum dollar amount of income that triggers a filing requirement for a nonresident alien, including a foreign student or a foreign scholar.
3. Filing IS required by nonresident alien students and scholars who have:
a. A taxable scholarship or fellowship grant
b. Income partially or totally exempt from tax under the terms of a tax treaty; and/or
c. Any other income that is taxable under the Internal Revenue Code.

4. Filing IS NOT required by nonresident alien students and scholars who have income ONLY from:
   a. Foreign sources
   b. Interest Income from a:
      i. U.S. bank
      ii. U.S. savings & loan institution
      iii. U.S. credit union
      iv. U.S. insurance company
   c. An investment that generates Portfolio Interest;
   d. A scholarship or fellowship grant that is entirely a Tax Free Scholarship or Fellowship Grant; and/or
   e. Any other income that is nontaxable under the Internal Revenue Code. However, income that is not taxable because of an income tax treaty must be reported on a U.S. income tax return even though no income tax is due on the U.S. income tax return.

D. Report Income based on Federal Tax Status
   1. Are you a Resident Alien?
      a. Resident Alien: You are a resident alien of the United States for tax purposes if you meet either the green card test or the substantial presence test for calendar year (January 1–December 31). Even if you do not meet either of these tests, you may be able to choose to be treated as a U.S resident for part of the year.
         i. **Green Card Test**
            a. You are a resident for tax purposes if you are a lawful permanent resident of the United States at any time during calendar year (January 1–December 31). This is known as the “green card” test.
            b. You are a lawful permanent resident of the United States at any time if you have been given the privilege, according to the immigration laws, of residing permanently in the United States as an immigrant.
            c. You generally have this status if the U.S. citizenship and Immigration Services (USCIS) (or its predecessor organization) has issued you an alien registration card, also known as a “green card.”
            d. You continue to have resident status under this test unless the status is taken away from you or is

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1 See Chapter 1 of Publication 970, Tax Benefits for Education
2 See Publication 519, U.S. Tax Guide for Aliens Chapter 3 "Exclusions From Gross Income" - "Interest Income"
administratively or judicially determined to have been abandoned.

i. **Resident status taken away.** Resident status is considered to have been taken away from you if the U.S. government issues you a final administrative or judicial order of exclusion or deportation. A final judicial order is an order that you may no longer appeal to a higher court of competent jurisdiction.

ii. **Resident status abandoned.** An administrative or judicial determination of abandonment of resident status may be initiated by you, the USCIS, or a U.S. consular officer.

iii. If you initiate the determination, your resident status is considered to be abandoned when you file either of the following documents with your USCIS Alien Registration Receipt Card (green card) attached with the USCIS or a U.S. consular officer.

   a. USCIS Form I-407 (Record of Abandonment of Lawful Permanent Resident Status), or
   b. A letter stating your intent to abandon your resident status. When filing by mail, you must send by certified mail, return receipt requested (or the foreign equivalent) and keep a copy and proof that it was mailed and received.

iv. If the USCIS or U.S. consular officer initiates this determination, your resident status will be considered to be abandoned when the final administrative order of abandonment is issued. If you are granted an appeal to a federal court of competent jurisdiction, a final judicial order is required.

v. Under U.S. immigration law, a lawful permanent resident who is required to file a tax return as a resident and fails to do so may be regarded as having abandoned status and may lose permanent resident status.

ii. **Substantial Presence Test**
You will be considered a U.S. resident for tax purposes if you meet the substantial presence test for calendar year 2018. To meet this test, you must be physically present in the United States on at least:

i. 31 days during 2018, and

ii. 183 days during the 3-year period that includes 2018, 2017, and 2016, counting:
   a. All the days you were present in 2018, and
   b. 1/3 of the days you were present in 2017, and
   c. 1/6 of the days you were present in 2016.

Days of Presence in the United States

a. You are treated as present in the United States on any day you are physically present in the country at any time during the day. However, there are exceptions to this rule. Do not count the following as days of presence in the United States for the substantial presence test.
   i. Days you commute to work in the United States from a residence in Canada or Mexico if you regularly commute from Canada or Mexico.
   ii. Days you are in the United States for less than 24 hours when you are in transit between two places outside the United States.
   iii. Days you are in the United States as a crew member of a foreign vessel. Days you are unable to leave the United States because of a medical condition that arose while you are in the United States.
   iv. Days you are in the United States under a NATO visa as a member of a force or civilian component to NATO. However, this exception does not apply to an immediate family member who is present in the United States.

3 The term United States includes the following areas.
   • All 50 states and the District of Columbia.
   • The territorial waters of the United States.
   • The seabed and subsoil of those submarine areas that are adjacent to U.S. territorial waters and over which the United States has exclusive rights under international law to explore and exploit natural resources.
   The term does not include U.S. possessions and territories or U.S. airspace.
4 See Publication 519 for examples of Days of Present in the United States.
States under a NATO visa. A dependent family member must count every day of presence for purposes of the substantial presence test.

v. Days you are an exempt individual.

b. **Exempt Individuals:** You're an exempt individual, which means your days of presence in the United States are not counted for purposes of the substantial presence test, if you fall into any of the following categories:

i. An individual temporarily present in the United States as a foreign government-related individual under an A or G visa. However, this category doesn't include household staff of a foreign government-related individual present in the United States under an A-3 or G-5 visa.

ii. A teacher or trainee temporarily present in the United States under a J or Q visa, who substantially complies with the requirements of the visa. Generally, you won't be an exempt individual as a teacher or trainee if you were exempt as a teacher, trainee, or student for any part of 2 of the 6 preceding calendar years; however, you still may be treated as an exempt individual if all of the following conditions are met:
   a. You were exempt as a teacher, trainee, or student for any part of 3 (or fewer) of the 6 preceding calendar years,
   b. A foreign employer paid all of your compensation during the current year,
   c. You were present in the United States as a teacher or trainee in any of the prior 6 years, and
   d. A foreign employer paid all of your compensation during each of the preceding 6 years you were present in the United States as a teacher or trainee.

iii. A student temporarily present in the United States under an F, J, M, or Q visa, who substantially complies with the requirements of the visa. You won't be an exempt
individual as a student in the current year if you've been exempt as a teacher, trainee, or student for any part of more than 5 calendar years unless you meet both of the following requirements:

a. You establish that you don't intend to reside permanently in the United States; and
b. You have substantially complied with the requirements of your visa.

iv. A professional athlete temporarily present in the United States to compete in a charitable sports event.

b. Resident Aliens report their entire worldwide income on Form 1040, 1040A, or 1040EZ like U.S. Citizens.

c. Resident Aliens may not claim exclusions of income based on Tax Treaties (with certain exceptions for foreign students and foreign scholars).

2. Are you a Nonresident Alien?

a. **Nonresident Alien:** If you are an alien (not a U.S. citizen), you are considered a nonresident alien unless you meet one of the two tests (Green Card or Substantial presence).

b. Nonresident Aliens use Form 1040NR or 1040NR-EZ to report only income that is sourced in the United States, or that is effectively connected with a United States trade or business.

c. Nonresident Aliens who receive interest income from deposits with a U.S. bank, savings & loan institution, credit union, or insurance company, or who receive Portfolio Interest (described in Publication 519, U.S. Tax Guide for Aliens) are exempt from taxation on such interest income as long as such interest income is not effectively connected with a United States trade or business.

3. Are you a Dual Status Alien?

a. **Dual Status Alien:** You can be both a nonresident alien and a resident alien during the same tax year. This usually occurs in the year you arrive in or depart from the United States.

b. Dual Status Aliens report their entire worldwide income for that portion of the year in which they are Resident Aliens, and report only income that is sourced in the United States or that is effectively connected with a U.S. trade or business for that portion of the year in which they are Nonresident Aliens.

c. Dual Status Aliens report their interest income from all sources for that portion of the year in which they are Resident Aliens, and do not report interest income from deposits with U.S. banks, savings & loan institutions, credit unions, on amounts held by an insurance companies, and investments which generate portfolio interest for that portion of the year in which they are Nonresident Aliens as
long as such interest income is not effectively connected with a 
U.S. trade or business.

d. First Year of Residency- If you are a U.S. resident for the calendar 
year, but you were not a U.S. resident at any time during the 
preceding calendar year, you are a U.S. resident only for the part of 
the calendar year that begins on the residency starting date. You 
are a nonresident alien for the part of the year before that date.

i. Residency starting date under substantial presence test. If 
you meet the substantial presence test for a calendar year, 
your residency starting date is generally the first day you 
are present in the United States during that calendar year. 
However, you do not have to count up to 10 days of actual 
presence in the United States if on those days you establish that:

a. You had a closer connection to a foreign country 
than to the United States, and
b. Your tax home was in that foreign country.
c. In determining whether you can exclude up to 10 
days, the following rules apply:
i. You can exclude days from more than one 
period of presence as long as the total days 
in all periods are not more than 10.
ii. You cannot exclude any days in a period of 
consecutive days of presence if all the days 
in that period cannot be excluded
iii. Although you can exclude up to 10 days of 
presence in determining your residency 
starting date, you must include those days 
when determining whether you meet the 
substantial presence test.

ii. Statement required to exclude up to 10 days of presence. 
You must file a statement with the IRS if you are excluding 
up to 10 days of presence in the United States for purposes 
of your residency starting date. You must sign and date this 
statement and include a declaration that it is made under 
penalties of perjury. The statement must contain the 
following information (as applicable).

a. Your name, address, U.S. taxpayer identification 
number (if any), and U.S. visa number (if any)
b. Your passport number and the name of the country 
that issued your passport.
c. The tax year for which the statement applies.
d. The first day that you were present in the United 
States during the year.
e. The dates of the days you are excluding in figuring your first day of residency.

f. Sufficient facts to establish that you have maintained your tax home in and a closer connection to a foreign country during the period you are excluding.

iii. How to file statement

a. Attach the required statement to your income tax return. If you are not required to file a return, send the statement to the Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301-0215, on or before the due date for filing Form 1040NR or Form 1040NR-EZ.

b. If you do not file the required statement: you cannot claim that you have a closer connection to a foreign country or countries. Therefore, your first day of residency will be the first day you are present in the United States.

c. This does not apply if you can show by clear and convincing evidence that you took reasonable actions to become aware of the requirements for filing the statement and significant steps to comply with those requirements.

iv. Residency starting date under green card test.

a. If you meet the green card test at any time during a calendar year, but do not meet the substantial presence test for that year, your residency starting date is the first day in the calendar year on which you are present in the United States as a lawful permanent resident.

b. If you meet both the substantial presence test and the green card test, your residency starting date is the earlier of the first day during the year you are present in the United States under the substantial presence test or as a lawful permanent resident.

v. Residency during the preceding year

a. If you were a U.S. resident during any part of the preceding calendar year and you are a U.S. resident for any part of the current year, you will be considered a U.S. resident at the beginning of the current year. This applies whether you are a resident under the substantial presence test or green card test.

vi. First-Year Choice

a. If you do not meet either the green card test or the substantial presence test for 2017 or 2018 and you
did not choose to be treated as a resident for part of 2017, but you meet the substantial presence test for 2019, you can choose to be treated as a U.S. resident for part of 2018. To make this choice, you must:

i. Be present in the United States for at least 31 days in a row in 2018, and

ii. Be present in the United States for at least 75% of the number of days beginning with the first day of the 31-day period and ending with the last day of 2018. For purposes of this 75% requirement, you can treat up to 5 days of absence from the United States as days of presence in the United States.

iii. When counting the days of presence in (i) and (ii) above, do not count the days you were in the United States under any of the exceptions.

b. If you make the first-year choice, your residency starting date for 2018 is the first day of the earliest 31-day period (described in (i) above) that you use to qualify for the choice. You are treated as a U.S. resident for the rest of the year. If you are present for more than one 31-day period and you satisfy condition (ii) above for each of those periods, your residency starting date is the first day of the first 31-day period.

c. If you are present for more than one 31-day period but you satisfy condition (ii) above only for a later 31-day period, your residency starting date is the first day of the later 31-day period. Note: You do not have to be married to make this choice.

vii. Statement required to make the first-year choice for 2018

a. You must attach a statement to Form 1040 to make the first-year choice for 2018. The statement must contain your name and address and specify the following:

i. That you are making the first-year choice for 2018.

ii. That you were not a resident in 2017.

iii. That you are a resident under the substantial presence test in 2019.

iv. The number of days of presence in the United States during 2019.
v. The date or dates of your 31-day period of presence and the period of continuous presence in the United States during 2018.

vi. The date or dates of absence from the United States during 2018 that you are treating as days of presence.

vii. You cannot file Form 1040 or the statement until you meet the substantial presence test for 2019. If you have not met the test for 2019 as of April 15, 2019, you can request an extension of time for filing your 2018 Form 1040 until a reasonable period after you have met that test. To request an extension to file until October 15, 2019, use Form 4868.

b. Once you make the first-year choice, you may not revoke it without the approval of the IRS.

c. If you do not follow the procedures discussed here for making the first-year choice, you will be treated as a nonresident alien for all of 2018. However, this does not apply if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing procedures and significant steps to comply with the procedures.

e. Choosing Resident Alien Status

i. If you are a dual-status alien, you can choose to be treated as a U.S. resident for the entire year if all of the following apply.

a. You were a nonresident alien at the beginning of the year.

b. You are a resident alien or U.S. citizen at the end of the year.

c. You are married to a U.S. citizen or resident alien at the end of the year.

d. Your spouse joins you in making the choice.

ii. This includes situations in which both you and your spouse were nonresident aliens at the beginning of the tax year and both of you are resident aliens at the end of the tax year. Note. If you are single at the end of the year, you cannot make this choice.

iii. If you make this choice, the following rules apply:

a. You and your spouse are treated as U.S. residents for the entire year for income tax purposes.

b. You and your spouse are taxed on worldwide income.
c. You and your spouse must file a joint return for the year of the choice.

d. Neither you nor your spouse can make this choice for any later tax year, even if you are separated, divorced, or remarried.

e. The special instructions and restrictions for dual-status taxpayers in chapter 6 do not apply to you.

iv. Making the choice

a. You should attach a statement signed by both spouses to your joint return for the year of the choice. The statement must contain the following information.

   i. A declaration that you both qualify to make the choice and that you choose to be treated as U.S. residents for the entire tax year.

   ii. The name, address, and taxpayer identification number (SSN or ITIN) of each spouse. (If one spouse died, include the name and address of the person who makes the choice for the deceased spouse.)

b. You generally make this choice when you file your joint return. However, you also can make the choice by filing Form 1040X, Amended U.S. Individual Income Tax Return. Attach Form 1040 and print “Amended” across the top of the corrected return.

c. If you make the choice with an amended return, you and your spouse also must amend any returns that you may have filed after the year for which you made the choice.

d. You generally must file the amended joint return within 3 years from the date you filed your original U.S. income tax return or 2 years from the date you paid your income tax for that year, whichever is later.

v. Last Year of Residency

a. If you were a U.S. resident in 2018 but are not a U.S. resident during any part of 2019, you cease to be a U.S. resident on your residency termination date. Your residency termination date is December 31, 2018, unless you qualify for an earlier date.

b. Earlier residency termination date. You may qualify for a residency termination date that is earlier than December 31. This date is:

   i. The last day in 2018 that you are physically present in the United States, if you met the substantial presence test,
ii. The first day in 2018 that you are no longer a lawful permanent resident of the United States, if you met the green card test, or
iii. The later of (i) or (ii), if you met both tests.
c. You can use this date only if, for the remainder of 2018, your tax home was in a foreign country and you had a closer connection to that foreign country.

vi. **Termination of residency**
a. If you expatriated after June 16, 2008, the expatriation rules under section 877A apply to you if you meet any of the following conditions:
i. Your average annual net income tax for the 5 years ending before the date of expatriation or termination of residency is more than:
   a. $139,000 if you expatriated or terminated residency in 2008.
   b. $145,000 if you expatriated or terminated residency in 2009 or 2010.
   c. $147,000 if you expatriated or terminated residency in 2011.
   d. $151,000 if you expatriated or terminated residency in 2012.
   e. $155,000 if you expatriated or terminated residency in 2013.
   f. $157,000 if you expatriated or terminated residency in 2014.
   g. $160,000 if you expatriated or terminated residency in 2015.
   h. $161,000 if you expatriated or terminated residency in 2016.
   i. $162,000 if you expatriated or terminated residency in 2017.
   j. $165,000 if you expatriated or terminated residency in 2018
   
   ii. Your net worth is $2 million or more on the date of your expatriation or termination of residency.
   
   iii. You fail to certify on Form 8854 that you have complied with all U.S. federal tax obligations for the 5 years preceding the date of your expatriation or termination of residency.
   
   iv. You expatriated before 2018 and you:
   a. Deferred the payment of tax,
b. Have an item of eligible deferred compensation, or
c. Have an interest in a non-grantor trust.

v. Certain dual-citizens. You may qualify for the exception described above if both of the following apply:
   a. You became at birth a U.S. citizen and a citizen of another country and, as of the expatriation date, you continue to be a citizen of, and are taxed as a resident of, that other country.
   b. You have been a resident of the United States for not more than 10 years during the 15-year tax period ending with the tax year during which the expatriation occurs. For the purpose of determining U.S. residency, use the substantial presence test.

vi. Expatriation date. Your expatriation date is the date you relinquish U.S. citizenship (in the case of a former citizen) or terminate your long-term residency (in the case of a former U.S. resident).

vii. Former U.S. citizen. You are considered to have relinquished your U.S. citizenship on the earliest of the following dates.
   a. The date you renounced U.S. citizenship before a diplomatic or consular officer of the United States (provided that the voluntary renouncement was later confirmed by the issuance of a certificate of loss of nationality).
   b. The date you furnished to the State Department a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an expatriating act (provided that the voluntary relinquishment was later confirmed by the issuance of a certificate of loss of nationality).
c. The date the State Department issued a certificate of loss of nationality.
d. The date that a U.S. court canceled your certificate of naturalization.

viii. Former LTR. You are considered to have terminated your long-term residency on the earliest of the following dates.
a. The date you voluntarily relinquished your lawful permanent resident status by filing Department of Homeland Security Form I-407 with a U.S. consular or immigration officer
b. The date you became subject to a final administrative order that you abandoned your lawful permanent resident status (or, if such order has been appealed, the date of a final judicial order issued in connection with such administrative order).
c. The date you became subject to a final administrative order for your removal from the United States under the Immigration and Nationality Act.
d. If you were a dual resident of the United States and a country with which the United States has an income tax treaty, the date you began to be treated as a resident of that country under the provisions of the treaty and notify the IRS of that treatment on Forms 8833 and 8854.

vii. De minimis presence. If you are a U.S. resident because of the substantial presence test and you qualify to use the earlier residency termination date, you can exclude up to 10 days of actual presence in the United States in determining your residency termination date. In determining whether you can exclude up to 10 days, the following rules apply.
a. You can exclude days from more than one period of presence as long as the total days in all periods are not more than 10.
b. You cannot exclude any days in a period of consecutive days of presence if all the days in that period cannot be excluded.
c. Although you can exclude up to 10 days of presence in determining your residency termination date, you must include those days when determining whether you meet the substantial presence test.

viii. Residency during the next year. If you are a U.S. resident during any part of 2019 and you are a resident during any part of 2018, you will be treated as a resident through the end of 2018. This applies whether you have a closer connection to a foreign country than the United States during 2018, and whether you are a resident under the substantial presence test or green card test.

ix. Statement required to establish your residency termination date. You must file a statement with the IRS to establish your residency termination date. You must sign and date this statement and include a declaration that it is made under penalties of perjury. The statement must contain the following information (as applicable).
   a. Your name, address, U.S. taxpayer identification number (if any), and U.S. visa number (if any).
   b. Your passport number and the name of the country that issued your passport.
   c. The tax year for which the statement applies.
   d. The last day that you were present in the United States during the year.
   e. Sufficient facts to establish that you have maintained your tax home in, and that you have a closer connection to, a foreign country following your last day of presence in the United States during the year or following the abandonment or rescission of your status as a lawful permanent resident during the year.
   f. The date that your status as a lawful permanent resident was abandoned or rescinded.
   g. Sufficient facts (including copies of relevant documents) to establish that your status as a lawful permanent resident has been abandoned or rescinded.
   h. If you can exclude days as discussed earlier under De-minimis presence, include the dates of the days you are excluding and sufficient facts to establish that you have maintained your tax home in, and that you have a closer connection to, a foreign country during the period you are excluding.

x. How to file Statements
   a. Attach the required statement to your income tax return. If you are not required to file a return, send
the statement to the Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301-0215, on or before the due date for filing Form 1040NR or Form 1040NR-EZ.

b. If you do not file the required statement as explained above, you cannot claim that you have a closer connection to a foreign country or countries. This does not apply if you can show by clear and convincing evidence that you took reasonable actions to become aware of the requirements for filing the statement and significant steps to comply with those requirements.

E. From W-7 Application for IRS Individual Taxpayer Identification Number (ITIN)
   a. An ITIN is a nine-digit number issued by the IRS to individuals who are required for federal tax purposes to have a U.S. taxpayer identification number but who don’t have and aren’t eligible to get a social security number (SSN).
   b. An ITIN doesn’t entitle you to social security benefits and doesn’t change your immigration status or your right to work in the United States.
   c. The ITIN can’t be used to claim certain federal tax credits:
      i. Individuals filing tax returns using an ITIN aren’t eligible for the earned income credit (EIC). Also, a child who has an ITIN can’t be claimed as a qualifying child for purposes of the EIC.
      ii. For tax years 2018 through 2025, a child who has an ITIN can’t be claimed as a qualifying child for purposes of the child tax credit and the additional child tax credit.
   d. New Credit for Other Dependents
      i. You may be able to claim the new credit for other dependents (ODC) for your child and other qualifying relatives (excluding your spouse) who live in the United States if they obtain an ITIN by the due date of your U.S. federal tax return (including extensions).
   e. Who Is Eligible To Complete This Form
      i. Any individual who isn’t eligible to get an SSN but who must furnish a taxpayer identification number for U.S. tax purposes or to file a U.S. federal tax return must apply for an ITIN on Form W-7. Examples include the following:
         a. A nonresident alien individual claiming reduced withholding under an applicable income tax treaty for which an ITIN is required (see Regulations section 1.1441-1(e)(4)(vii)(A)).
         b. A nonresident alien individual not eligible for an SSN who is required to file a U.S. federal tax return
or who is filing a U.S. federal tax return only to claim a refund.

c. A nonresident alien individual not eligible for an SSN who elects to file a joint U.S. federal tax return with a spouse who is a U.S. citizen or resident alien.

d. A U.S. resident alien (based on the number of days present in the United States, known as the “substantial presence” test) who files a U.S. federal tax return but who isn’t eligible for an SSN.

e. A nonresident alien student, professor, or researcher who is required to file a U.S. federal tax return but who isn’t eligible for an SSN, or who is claiming an exception to the tax return filing requirement.

f. An alien spouse claimed as an exemption on a U.S. federal tax return who isn’t eligible to get an SSN.

g. An alien individual eligible to be claimed as a dependent on a U.S. federal tax return but who isn’t eligible to get an SSN. Your spouse is never considered your dependent.

f. Supporting Documentation Requirements

i. The documentation you provide must meet the following requirements:
   a. You must submit documentation to establish your identity and your connection to a foreign country (“foreign status”). Applicants claimed as dependents must also prove U.S. residency unless the applicant is from Canada or Mexico or the applicant is a dependent of U.S. military personnel stationed overseas.

   b. You must submit original documents, or certified copies of these documents from the issuing agency, that support the information provided on Form W-7. A certified document is one that the original issuing agency provides and certifies as an exact copy of the original document and contains an official stamped seal from the agency.

   c. The documentation you provide must be current (that is, not expired).

   d. There are 13 acceptable documents, as shown in the table below. At least one document must contain your photograph, unless you’re a dependent under age 14 (under age 18 if a student). You may later be required by the IRS to provide a certified translation of foreign-language documents.
e. If you submit an original valid passport or a certified copy from the issuing agency, you don’t need to submit any other documents from the table, unless the passport is for a dependent and it doesn’t include a date of entry.

<table>
<thead>
<tr>
<th>Supporting Documentation</th>
<th>Can be used to establish:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passport (the only stand-alone document*)</td>
<td>✗  ✗</td>
</tr>
<tr>
<td>U.S. Citizenship and Immigration Services (USCIS) photo identification</td>
<td>✗</td>
</tr>
<tr>
<td>Visa issued by the U.S. Department of State</td>
<td>✗</td>
</tr>
<tr>
<td>U.S. driver’s license</td>
<td></td>
</tr>
<tr>
<td>U.S. military identification card</td>
<td></td>
</tr>
<tr>
<td>Foreign driver’s license</td>
<td></td>
</tr>
<tr>
<td>Foreign military identification card</td>
<td></td>
</tr>
<tr>
<td>National identification card (must contain name, photograph, address, date of birth, and expiration date)</td>
<td>✗</td>
</tr>
<tr>
<td>U.S. state identification card</td>
<td></td>
</tr>
<tr>
<td>Foreign voter’s registration card</td>
<td>✗  ✗</td>
</tr>
<tr>
<td>Civil birth certificate</td>
<td>✗**</td>
</tr>
<tr>
<td>Medical records (valid only for dependents under age 6)</td>
<td>✗**</td>
</tr>
<tr>
<td>School records (valid only for a dependent under age 18, if a student)</td>
<td>✗**</td>
</tr>
</tbody>
</table>

* Applicants claimed as dependents who need to prove U.S. residency must provide additional original documentation if the passport doesn’t have a date of entry into the United States. See Proof of U.S. residency for applicants who are dependents below.

** May be used to establish foreign status only if documents are foreign.

When To Apply

i. First-time ITIN applications. If you’re applying for a new ITIN, complete and attach Form W-7 to your tax return when you file the tax return for which the ITIN is needed. If you’re unable to file your tax return by the due date, you must file an application for an extension of time to file.

ii. Failure to timely file the tax return with a complete Form W-7 and required documentation may result in the denial of refundable credits, such as the additional child tax credit.
and the American opportunity tax credit, if you otherwise qualify. **Don’t file your tax return without Form W-7.**

h. **Where To Apply**  
   i. **By mail.** Mail Form W-7, your tax return (if applicable) or other documents required by an exception, and the documentation described under Supporting Documentation Requirements, earlier, to:

   Internal Revenue Service  
   ITIN Operation  
   P.O. Box 149342  
   Austin, TX 78714-9342

   ii. **By private delivery services.** Mail Form W-7, If you use a private delivery service, submit your Form W-7, your tax return (if applicable) or other documents required by an exception, and the documentation described under Supporting Documentation Requirements, earlier, to:

   Internal Revenue Service  
   ITIN Operation  
   Mail Stop 6090-AUSC  
   3651 S. Interregional, Hwy 35  
   Austin, TX 78741-0000

   iii. **In Person.** You can apply for your ITIN by visiting designated IRS Taxpayer Assistance Centers (TACs). They can verify original documentation and certified copies of the documentation from the issuing agency for primary and secondary applicants and their dependents.

   iv. For dependents, TACs can verify passports, national identification cards, and birth certificates. These documents will be returned to you immediately. Service at TACs is by appointment only. Appointments can be scheduled by calling 844-545-5640. See IRS.gov/W7DocumentVerification for a list of designated TACs that offer ITIN document authentication service. TACs that don’t offer ITIN document authentication service will mail the original documents, Form W-7, and the tax return to the IRS Austin Service Center for processing.

   v. **Through an acceptance agent.** You can also apply through one of the two types of acceptance agents authorized by the IRS.
a. **Acceptance Agent (AA).** An Acceptance Agent (AA) can help you complete and file Form W-7. To get a list of agents, visit IRS.gov and enter “acceptance agent program” in the search box. An AA will need to submit original documentation or certified copies of the documentation from the issuing agency to the IRS for all applicants.

b. **Certifying Acceptance Agent (CAA).** A Certifying Acceptance Agent (CAA) can verify original documentation and certified copies of the documentation from the issuing agency for primary and secondary applicants and their dependents. For dependents, CAAs can only verify passports and birth certificates. The CAA will return the documentation immediately after reviewing its authenticity. Taxpayers residing outside of the United States can apply for an ITIN through a CAA.

F. **Form W-8BEN - Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals).** Foreign persons are subject to U.S. tax at a 30% rate on income they receive from U.S. sources that consists of:

a. Interest (including certain original issue discount (OID));
b. Dividends;
c. Rents;
d. Royalties;
e. Premiums;
f. Annuities;
g. Compensation for, or in expectation of, services performed;
h. Substitute payments in a securities lending transaction; or
i. Other fixed or determinable annual or periodical gains, profits, or income.

This tax is imposed on the gross amount paid and is generally collected by withholding under section 1441. A payment is considered to have been made whether it is made directly to the beneficial owner or to another person, such as an intermediary, agent, or partnership, for the benefit of the beneficial owner.

k. **Who Must Provide Form W-8BEN**

**Do not send Form W-8BEN to the IRS.** You must give Form W-8BEN to the withholding agent or payer if you are a nonresident alien who is the beneficial owner of an amount subject to withholding, or if you are an account holder of an FFI documenting yourself as a nonresident alien. If you are the single owner of a disregarded entity, you are considered the
beneficial owner of income received by the disregarded entity. Submit Form W-8BEN when requested by the withholding agent, payer, or FFI whether or not you are claiming a reduced rate of, or exemption from, withholding.

You should also provide Form W-8BEN to a payment settlement entity (PSE) requesting this form if you are a foreign individual receiving payments subject to reporting under section 6050W (payment card transactions and third-party network transactions) as a participating payee. However, if the payments are income which is effectively connected to the conduct of a U.S. trade or business, you should instead provide the PSE with a Form W-8ECI.

G. Form 843- Claim for Refund and Request for Abatement
   a. If you are a nonresident alien temporarily admitted to the United States as a student, you generally are not permitted to work for a wage or salary or to engage in business while you are in the United States. In some cases, a student admitted to the United States in “F-1,” “M-1,” or “J-1” status is granted permission to work.
   b. Social security and Medicare taxes are not withheld from pay for the work unless the student is considered a resident alien.
   c. Refund of Taxes Withheld in Error - If social security or Medicare taxes were withheld in error from pay that is not subject to these taxes, contact the employer who withheld the taxes for a refund. If you are unable to get a full refund of the amount from your employer, file a claim for refund with the IRS on Form 843.
   d. Attach the following items to Form 843:
      i. A copy of your Form W-2 to prove the amount of social security and Medicare taxes withheld.
      ii. A copy of your visa.
      iii. Form I-94 (or other documentation showing your dates of arrival or departure).
      iv. If you have an F-1 or J-1 visa, documentation showing permission to work in the United States.
      v. If you are engaged in optional practical training or employment due to severe economic necessity, documentation showing permission to work in the United States.
      vi. A statement from your employer indicating the amount of the reimbursement your employer provided and the amount of the credit or refund your employer claimed or you authorized your employer to claim. If you cannot obtain this statement from your employer, you must provide this information on your own statement and explain why you are not attaching a statement from your employer or on
Form 8316 claiming your employer will not issue the refund.

vii. If you were exempt from social security and Medicare tax for only part of the year, pay statements showing the tax paid during the period you were exempt.

e. Where to file Form 843:
   i. File Form 843 (with attachments) with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201-0038.

H. Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents if all of the following apply:
   a. Taxpayer cannot be claimed as a dependent on another person’s return.
   b. The only U.S. sources of income were from wages, salaries, tips, taxable state and local income tax refunds, and scholarships and grants.
   c. Taxable income (line 14) is less than $100,000.
   d. The only exclusion is for scholarship and fellowship grants and the only adjustment to income is for the student loan interest deduction.
   e. No tax credits claimed.
   f. The only itemized deduction claimed is for state and local income taxes (Note: Residents of India who were students or business apprentices may be able to take the standard deduction in lieu of itemized deductions.
   g. The only taxes owed are income tax.
   h. No claim for excess social security and tier 1 RRTA tax withheld.
   i. Not filing an “expatriation tax” return
   j. (Applies to U.S. citizens who have lost their citizenship or long-term residents who have ended their residency status).
   k. If all of the above conditions are not met, Form 1040NR must be filed.
   n. Where to file Form 1040NR-EZ
      i. 1040NR-EZ is not approved for e-filing
      ii. If you are not enclosing a payment, mail Form 1040NR-EZ to:

         Department of the Treasury
         Internal Revenue Service
         Austin, TX 73301-0215
         U.S.A.
      iii. If enclosing a payment, mail Form 1040NR-EZ to:
I. Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, if *any* of the following applies.
   a. If the taxpayer wishes to electronically file the return.
   b. Nonresident alien engaged in a trade or business in the United States.
   c. Nonresident alien not engaged in a trade or business in the U.S., and you received income from U.S. Sources that is reportable on Sch. NEC, lines 1 through 12, and not all of the U.S. tax that you owe was withheld from that income.
   d. You owe any special taxes (see Form 1040NR instructions for details).
   e. HSA, Archer MSA, or Medicare Advantage MSA distributions were made.
   f. Nonresident alien engaged in self-employment with net earnings of at least $400, and is a resident of a country with an international social security agreement with the U.S.
   g. Form 1095-A indicates advanced premium tax credits were received.
   h. Where to file Form 1040NR (for individuals)
      i. **E-file.** If you e-file your return, there is no need to mail it.
      ii. If you are not enclosing a payment, mail Form 1040NR to:
          
          Department of the Treasury  
          Internal Revenue Service  
          Austin, TX 73301-0215  
          U.S.A.
      iii. If enclosing a payment, mail Form 1040NR to:
          
          Internal Revenue Service  
          P.O. Box 1303 Charlotte, NC  
          28201-1303  
          U.S.A.

J. Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual* file this form if:
   a. If you are a nonresident alien individual who is receiving:
      i. Compensation for independent personal services performed in the United States.
Independent personal services are services performed as an independent contractor in the United States by a nonresident alien who is self-employed rather than an employee.

Compensation for such services includes payments for contract labor; payments for professional services, such as fees to an attorney, physician, or accountant, if the payments are made directly to the person performing the services; consulting fees; and honoraria paid to visiting professors, teachers, researchers, scientists, and prominent speakers.

Compensation for dependent personal services performed in the United States

Dependent personal services are services performed as an employee in the United States by a nonresident alien. Dependent personal services include compensatory scholarship or fellowship income.\(^5\)

Compensation for such services includes wages, salaries, fees, bonuses, commissions, and similar designations for amounts paid to an employee.

Non-compensatory scholarship or fellowship income and personal services income from the same withholding agent.

Non-compensatory scholarship or fellowship income is scholarship or fellowship income that is not compensatory scholarship or fellowship income.

In most cases, the taxable portion of non-compensatory scholarship or fellowship income paid to a nonresident alien is subject to withholding at:

- 30% or
- 14% if the nonresident alien is temporarily present in the United States under an "F," "J," "M," or "Q" visa.

THEN, if you are the beneficial owner of that income, use this form to claim:

- A tax treaty withholding exemption (Independent personal services, Business profits) for part or all of that compensation.
- A tax treaty withholding exemption for part or all of that compensation.

\(^5\) In general, scholarship or fellowship income is compensatory to the extent it represents payment for past, present, or future services (for example, teaching or research) performed by a nonresident alien as an employee and the performance of those services is a condition for receiving the scholarship or fellowship (or tuition reduction).
iii. A tax treaty withholding exemption for part or all of both types of income.

c. Where to send Form 8233
   i. Individuals – do not send Form 8233 to the IRS.
   ii. Giving Form 8233 to the Withholding Agent
      a. You must complete a separate Form 8233:
         i. For each tax year (be sure to specify the tax year in the space provided above Part I of the form),
         ii. For each withholding agent, and
         iii. For each type of income
         iv. However, you can use one Form 8233 to claim a tax treaty withholding exemption
         v. for both compensation for personal services (including compensatory scholarship or fellowship income) and non-compensatory scholarship or fellowship income received from the same withholding agent.

K. Form 8316- Information Regarding Request for Refund of Social Security Tax Erroneously Withheld on Wages Received by a Nonresident Alien on an F, J, or M Type Visa
   a. If Social Security taxes were withheld from income directly related to an nonresident aliens course of studies as identified by the provisions of their entry visa. If YES, then
      i. They must first try to get a refund of the Social Security taxes from the employer before filing a claim with the Internal Revenue Service.
      ii. If unable to obtain a refund from the employer, Form 8316 must be completed and attached to Form 843 Claim for Refund and Request for Abatement.
      iii. Note: File Form 843 (with attachments) with the IRS office where your employer's Forms 941 returns were filed.

L. Form 8840, Closer Connection Exception Statement for Aliens
   a. Use Form 8840 to claim the closer connection to a foreign country(ies) exception to the substantial presence test set forth in Treas. Reg. §301.7701(b)-2.
   b. Who Must File - If you are an alien individual and you meet the closer connection exception to the substantial presence test, you must file Form 8840 with the IRS to establish your claim that you are a nonresident of the United States by reason of that exception. Each alien individual must file a separate Form 8840 to claim the closer connection exception.
   c. Closer Connection Exception- Even though you would otherwise meet the substantial presence test, you will not be treated as a U.S. resident for 2018 if:
i. You were present in the United States for fewer than 183 days during 2018;
ii. You establish that during 2018, you had a tax home in a foreign country; and
iii. You establish that during 2018, you had a closer connection to one foreign country in which you had a tax home than to the United States, unless you had a closer connection to two foreign countries.

d. Closer Connection to Two Foreign Countries - You can demonstrate that you have a closer connection to two foreign countries (but not more than two) if all five of the following apply.
   i. You maintained a tax home as of January 1, 2018, in one foreign country.
   ii. You changed your tax home during 2018 to a second foreign country.
   iii. You continued to maintain your tax home in the second foreign country for the rest of 2018.
   iv. You had a closer connection to each foreign country than to the United States for the period during which you maintained a tax home in that foreign country.
   v. You are subject to tax as a resident under the tax laws of either foreign country for all of 2018 or subject to tax as a resident in both foreign countries for the period during which you maintained a tax home in each foreign country.

e. Tax Home- Your tax home is the general area of your main place of business, employment, or post of duty, regardless of where you maintain your family home. Your tax home is the place where you permanently or indefinitely work as an employee or a self-employed individual. If you do not have a regular or main place of business because of the nature of your work, then your tax home is the place where you regularly live. If you have neither a regular or main place of business nor a place where you regularly live, you are considered an itinerant and your tax home is wherever you work. For determining whether you have a closer connection to a foreign country, your tax home must also be in existence for the entire year, and must be located in the foreign country (or countries) in which you are claiming to have a closer connection.

f. Establishing a Closer Connection - You will be considered to have a closer connection to a foreign country than to the United States if you or the IRS establishes that you have maintained more significant contacts with the foreign country than with the United States.
   i. The facts and circumstances to be considered include, but are not limited to, the following.
      a. The country of residence you designate on forms and documents.
b. The types of official forms and documents you file, such as Form W-9, Form W-8BEN, or Form W-8ECI.

c. The location of:
   i. Your permanent home,
   ii. Your family,
   iii. Your personal belongings, such as cars, furniture, clothing, and jewelry,
   iv. Your current social, political, cultural, professional, or religious affiliations,
   v. Your business activities (other than those that constitute your tax home),
   vi. The jurisdiction in which you hold a driver's license,
   vii. The jurisdiction in which you vote, and
   viii. Charitable organizations to which you contribute.

   Note: It does not matter whether your permanent home is a house, an apartment, or a furnished room. It also does not matter whether you rent or own it. It is important, however, that your home be available at all times, continuously, and not solely for short stays.

g. Foreign Country- In determining whether you have a closer connection to a foreign country, the term “foreign country” means:
   i. Any territory under the sovereignty of the United Nations or a government other than that of the United States,
   ii. The territorial waters of the foreign country (determined under U.S. law),
   iii. The seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country and over which the foreign country has exclusive rights under international law to explore and exploit natural resources, and
   iv. Possessions and territories of the United States.

h. When and Where To File
   i. If you are filing a 2018 Form 1040NR or Form 1040NR-EZ, attach Form 8840 to it. Mail your tax return by the due date (including extensions) to the address shown in your tax return instructions.
   ii. If you do not have to file a 2018 tax return, mail Form 8840 to: Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301-0215 by the due date (including extensions) for filing Form 1040NR or Form 1040NR-EZ.
   iii. Penalty for Not Filing Form 8840
a. If you do not timely file Form 8840, you will not be eligible to claim the closer connection exception and may be treated as a U.S. resident.

b. You will not be penalized if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

M. Form 8843, Statement for Exempt Individuals and Individuals With a Medical Condition if any of the following applies:

a. If you are an alien individual, excluding days of presence in the United States for purposes of the substantial presence test because you:
   i. were an exempt individual (temporarily in the United States as a teacher or trainee on a “J” or “Q” visa; temporarily in the United States as a student in an “F”, “J”, “M”, or “Q” visa status; or you were a professional athlete competing in a charitable event, or
   ii. were unable to leave the United States as planned because of a medical condition or problem.
   iii. Note: Even if the student or scholar had no income, they still must file Form 8843 and file one for each family member who is in the United States excluding days of presence.

b. Penalty for Not Filing Form 8843
   i. If you don’t file Form 8843 on time, you may not exclude the days you were present in the United States as a professional athlete or because of a medical condition or medical problem that arose while you were in the United States.
   ii. Failure to exclude days of presence in the United States could result in your being considered a U.S. resident under the substantial presence test.
   iii. You won’t be penalized if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

c. When and where to file
   i. If you are filing a 2018 Form 1040NR or Form 1040NR-EZ, attach Form 8843 to it. Mail your tax return by the due date (including extensions) to the address shown in your tax return instructions.
   ii. If you don’t have to file a 2018 tax return, mail Form 8843 to the Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301-0215 by the due date
How Income is taxed
Resident Aliens
Resident and nonresident aliens are taxed in different ways.

1. **Resident aliens** are generally taxed in the same way as U.S. citizens. This means that their worldwide income is subject to U.S. tax and must be reported on their U.S. tax return. Income of resident aliens is subject to the graduated tax rates that apply to U.S. citizens.

2. **Nonresident aliens** are taxed based on the source of their income and whether or not their income is:
   a. Is effectively connected with a U.S. trade or business and
   b. Income that is not effectively connected with a trade or business in the United States.

3. **Trade of Business in the United States**
   a. Generally, you must be engaged in a trade or business during the tax year to be able to treat income received in that year as effectively connected with that trade or business.
   b. Whether you are engaged in a trade or business in the United States depends on the nature of your activities.
   c. **Personal Services** - If you perform personal services in the United States at any time during the tax year, you usually are considered engaged in a trade or business in the United States.

4. **Other Trade or Business activities**
   a. **Students and trainees.** If you are temporarily present in the United States as a nonimmigrant under an “F,” “J,” “M,” or “Q” visa, and not otherwise engaged in a trade or business, you are considered to be engaged in a trade or business in the United States if you have taxable income from participation in a scholarship or fellowship described in section 1441(b). The taxable part of any scholarship or fellowship grant that is U.S. source income is treated as effectively connected with a trade or business in the United States.
   b. **Business operations.** If you own and operate a business in the United States selling services, products, or merchandise, you are, with certain exceptions, engaged in a trade or business in the United States.
   c. **Partnerships.** If you are a member of a partnership that at any time during the tax year is engaged in a trade or business in the United States, you are considered to be engaged in a trade or business in the United States.
   d. **Beneficiary of an estate or trust.** If you are the beneficiary of an estate or trust that is engaged in a trade or business in the United States, you are treated as being engaged in the same trade or business.
   e. **Trading in stocks, securities, and commodities.** If your only U.S. business activity is trading in stocks, securities, or commodities
(including hedging transactions) through a U.S. resident broker or other agent, you are not engaged in a trade or business in the United States.

i. For transactions in stocks or securities, this applies to any nonresident alien, including a dealer or broker in stocks and securities.

ii. For transactions in commodities, this applies to commodities that are usually traded on an organized commodity exchange and to transactions that are usually carried out at such an exchange.

f. Trading for a nonresident alien’s own account. You are not engaged in a trade or business in the United States if trading for your own account in stocks, securities, or commodities is your only U.S. business activity.

i. This applies even if the trading takes place while you are present in the United States or is done by your employee or your broker or other agent.

ii. This does not apply to trading for your own account if you are a dealer in stocks, securities, or commodities. This does not necessarily mean, however, that as a dealer you are considered to be engaged in a trade or business in the United States.

iii. Determine that based on the facts and circumstances in each case or under the rules given above in Trading in stocks, securities, and commodities.

g. Effectively Connected Income

i. If you are engaged in a U.S. trade or business, all income, gain, or loss for the tax year that you get from sources within the United States (other than certain investment income) is treated as effectively connected income.

ii. This applies whether or not there is any connection between the income and the trade or business being carried on in the United States during the tax year.

h. Investment Income

i. Investment income from U.S. sources that may or may not be treated as effectively connected with a U.S. trade or business generally falls into the following three categories.

a. FDAP - Fixed or determinable income (interest, dividends, rents, royalties, premiums, annuities, etc.).

b. Gains (some of which are considered capital gains) from the sale or exchange of the following types of property.

i. Timber, coal, or domestic iron ore with a retained economic interest.
ii. Patents, copyrights, and similar property on which you receive contingent payments after October 4, 1966.

iii. Patents transferred before October 5, 1966.

iv. Original issue discount obligations.

c. Capital gains (and losses).

d. Use the two tests to determine whether an item of U.S. source income falling in one of the three categories and received during the tax year is effectively connected with your U.S. trade or business.

e. If the tests indicate that the item of income is effectively connected, you must include it with your other effectively connected income. If the item of income is not effectively connected, include it with all other income.

i. **Asset-use test.** This test usually applies to income that is not directly produced by trade or business activities. Under this test, if an item of income is from assets (property) used in, or held for use in, the trade or business in the United States, it is considered effectively connected.

ii. An asset is used in, or held for use in, the trade or business in the United States if the asset is:

   a. Held for the principal purpose of promoting the conduct of a trade or business in the United States.

   b. The trade or business conducted in the United States (for example, an account receivable or note receivable arising from that trade or business), or

   c. Otherwise held to meet the present needs of the trade or business in the United States and not its anticipated future needs.

iii. Generally, stock of a corporation is not treated as an asset used in, or held for use in, a trade or business in the United States.

iv. **Business-activities test.** This test usually applies when income, gain, or loss comes directly from the active conduct of the trade or business. The business-activities test is most important when:
a. Dividends or interest are received by a dealer in stocks or securities,
b. Royalties are received in the trade or business of licensing patents or similar property, or
c. Service fees are earned by a servicing business.
v. Under this test, if the conduct of the U.S. trade or business was a material factor in producing the income, the income is considered effectively connected.

i. Personal Service Income
   i. You usually are engaged in a U.S. trade or business when you perform personal services in the United States. Personal service income you receive in a tax year in which you are engaged in a U.S. trade or business is effectively connected with a U.S. trade or business.
   ii. Income received in a year other than the year you performed the services is also effectively connected if it would have been effectively connected if received in the year you performed the services.
   iii. Personal service income includes wages, salaries, commissions, fees, per diem allowances, and employee allowances and bonuses. The income may be paid to you in the form of cash, services, or property.
   iv. If you are engaged in a U.S. trade or business only because you perform personal services in the United States during the tax year, income and gains from assets, and gains and losses from the sale or exchange of capital assets are generally not effectively connected with your trade or business.
   vi. However, if there is a direct economic relationship between your holding of the asset and your trade or business of performing personal services, the income, gain, or loss is effectively connected.

j. Foreign Income
   i. You must treat three kinds of foreign source income as effectively connected with a trade or business in the United States if:
      a. You have an office or other fixed place of business in the United States to which the income can be attributed,
      b. That office or place of business is a material factor in producing the income, and
c. The income is produced in the ordinary course of the trade or business carried on through that office or other fixed place of business.  

ii. The three kinds of foreign source income:
   a. Rents and royalties for the use of, or for the privilege of using, intangible personal property located outside the United States or from any interest in such property. Included are rents or royalties for the use, or for the privilege of using, outside the United States, patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and similar properties if the rents or royalties are from the active conduct of a trade or business in the United States.
   b. Dividends, interest, or amounts received for the provision of a guarantee of indebtedness issued after September 27, 2010, from the active conduct of a banking, financing, or similar business in the United States. A substitute dividend or interest payment received under a securities lending transaction or a sale-repurchase transaction is treated the same as the amounts received on the transferred security.
   c. Income, gain, or loss from the sale outside the United States, through the U.S. office or other fixed place of business, of:
      i. Stock in trade,
      ii. Property that would be included in inventory if on hand at the end of the tax year, or
      iii. Property held primarily for sale to customers in the ordinary course of business.

k. Tax on Effectively Connected Income
   i. Income you receive during the tax year that is effectively connected with your trade or business in the United States is, after allowable deductions, taxed at the rates that apply to U.S. citizens and residents.
   ii. Generally, you can receive effectively connected income only if you are a nonresident alien engaged in trade or business in the United States during the tax year.
   iii. Generally, you can receive effectively connected income only if you are a nonresident alien engaged in trade or business in the United States during the tax year.

l. The 30% Tax

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6 An office or other fixed place of business is a material factor if it significantly contributes to, and is an essential economic element in, the earning of the income.
i. Tax at a 30% (or lower treaty) rate applies to certain items of income or gains from U.S. sources but only if the items are not effectively connected with your U.S. trade or business.

m. Fixed or Determinable Income (FDAP)
i. The 30% (or lower treaty) rate applies to the gross amount of U.S. source fixed or determinable annual or periodic gains, profits, or income.

ii. Income is fixed when it is paid in amounts known ahead of time. Income is determinable whenever there is a basis for figuring the amount to be paid.

iii. Income can be periodic if it is paid from time to time. It does not have to be paid annually or at regular intervals.

iv. Income can be determinable or periodic even if the length of time during which the payments are made is increased or decreased.

v. Items specifically included as fixed or determinable income are interest (other than original issue discount), dividends, dividend equivalent payments, rents, premiums, annuities, salaries, wages, and other compensation.

vi. A substitute dividend or interest payment received under a securities lending transaction or a sale-repurchase transaction is treated the same as the amounts received on the transferred security. Other items of income, such as royalties, also may be subject to the 30% tax.

n. Taxation of Capital Gains

i. The taxation of nonresident alien students, scholars, and employees of foreign governments and international organizations may be taxed in a different way than the capital gains income of other nonresident aliens.

ii. Most foreign students, foreign scholars, and alien employees of foreign governments and of international organizations in the United States are considered to be "exempt individuals." That is, they are exempt for extended periods of time from counting days of presence in the United States for the purposes of determining whether they are resident aliens of the United States.

iii. Thus, most foreign students, foreign scholars, and the alien employees of foreign governments and of international organizations in the United States remain nonresident aliens in the United States for extended periods of time.

iv. A flat tax of 30 percent was imposed on U.S. source capital gains in the hands of nonresident alien individuals physically present in the United States for 183 days or more.

7 Assumes that the capital gains in question are not effectively connected with the conduct of a trade or business in the United States.
during the taxable year. This 183-day rule bears no relation to the 183-day rule under the substantial presence test of IRC section 7701(b)(3).

a. For example, a foreign diplomat, consular officer, or other nonresident alien employee of a foreign government, or nonresident alien employee of an international organization, who is visiting the United States in A or G nonimmigrant status for a period longer than 183 days in a calendar year would be subject to the 30 percent tax on his/her U.S. source capital gains - even if he/she continues to be a nonresident alien per the “exempt individual” rules under the substantial presence test.

b. The same rule applies to a foreign student or scholar visiting the United States in F, J, M, or Q nonimmigrant status whose presence in the United States equals or exceeds 183 days in any calendar year.

e. Gain or loss from the sale or exchange of personal property generally has its source in the United States if the alien has a tax home in the United States. The key factor in determining if an individual is a U.S. resident for purposes of the sourcing of capital gains is whether the alien's "tax home" has shifted to the United States. If an alien does not have a tax home in the United States, then the alien’s U.S. source capital gains would be treated as foreign-source and thus nontaxable.

a. In general, under the "tax home" rules, a person who is away (or who intends to be away) from his tax home for longer than 1 year has shifted tax homes to his new location upon his arrival in that new location.

b. Under this rule, most foreign students and scholars and most alien employees of foreign governments and of international organizations have shifted tax homes to the United States on the day of their arrival in the United States - unless the particular program or employment which brings them to the United States clearly terminates in less than one year and they have no intention to remain in the United States after the termination of such program or employment.

O. Tax Treaties
   1. Treaty Benefits
A nonresident alien's treaty income is the gross income on which the tax is limited by a tax treaty.

Treaty income includes, for example, dividends from sources in the United States that are subject to tax at a tax treaty rate not to exceed 15%. The conditions for claiming the exemptions vary under each tax treaty.

Non-treaty income is the gross income of a nonresident alien on which the tax is not limited by a tax treaty.

A nonresident alien (and certain resident aliens) from a country with which the United States has an income tax treaty may qualify for certain benefits. Most treaties require that the nonresident alien be a resident of the treaty country to qualify in the year the benefit is claimed.

However, in the case of certain students, trainees, teachers or researchers, some treaties only require the nonresident alien to be a resident of the treaty country immediately prior to coming to the United States.

Tax On Treaty Income
a. Figure the tax on treaty income on each separate item of income at the reduced rate that applies to that item under the treaty.

b. To determine tax on non-treaty income, figure the tax at either the flat 30% rate or the graduated rate, depending upon whether or not the income is effectively connected with your trade or business in the United States.

c. Your tax liability is the sum of the tax on treaty income plus the tax on non-treaty income, but cannot be more than the tax liability figured as if the tax treaty had not come into effect.

Treaty Tables
a. IRS.gov/Individuals/InternationalTaxpayers/Tax-Treaty-Tables

Students, Apprentices and Trainees
a. Under some income tax treaties, students, apprentices, and trainees are exempt from tax on remittances received from abroad for study and maintenance.

b. Also, under some treaties, scholarship and fellowship grants, and a limited amount of compensation received by students, apprentices, and trainees may be exempt from tax.

c. If you entered the United States as a nonresident alien, but are now a resident alien, the treaty exemption may still apply.

Professors, Teachers, and Researchers
a. Pay of professors and teachers who are residents of the following countries is generally exempt from U.S. income tax for 2 or 3 years if they temporarily visit the United States to teach or do research. The exemption applies to pay earned by the visiting professor or teacher during the applicable period.

b. The exemption generally applies to pay received during a second teaching assignment if both are completed within the specified
time, even if the second assignment was not arranged until after arrival in the United States on the first assignment.

c. If you do not meet the requirements for exemption as a teacher or if you are a resident of a treaty country that does not have a special provision for teachers, you may qualify under a personal services income provision.

6. Dividends and Capital Gains

a. Most treaties provide for the exemption of gains from the sale or exchange of personal property. Generally, gains from the sale or exchange of real property located in the United States are taxable.