



*Forms, Instructions, Publications,
and Procedures Need to Be Improved
for Some Nonresident Aliens Eligible for
Treaty-Based Income Exemptions*

September 20, 2018

Reference Number: 2018-30-074

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

2 = Law Enforcement Techniques/Procedures and Guidelines for Law Enforcement Investigations or Prosecutions

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HIGHLIGHTS

FORMS, INSTRUCTIONS, PUBLICATIONS, AND PROCEDURES NEED TO BE IMPROVED FOR SOME NONRESIDENT ALIENS ELIGIBLE FOR TREATY-BASED INCOME EXEMPTIONS

Highlights

Final Report issued on
September 20, 2018

Highlights of Reference Number: 2018-30-074
to the Commissioner of Internal Revenue.

IMPACT ON TAXPAYERS

Nonresident aliens who are temporarily present in the United States to study, obtain training, teach, conduct research, and/or perform services as an employee are generally subject to United States (U.S.) income tax. However, some nonresident aliens who perform services as an employee may be eligible to exempt some or all of their income from U.S. tax under a tax treaty. According to IRS records from Processing Years 2016 and 2017, 119,544 nonresident aliens claimed \$2 billion in treaty-based income exemptions for Tax Year 2015.

WHY TIGTA DID THE AUDIT

This audit was initiated to evaluate the IRS's efforts to ensure the accuracy of treaty-based income tax exemptions claimed by these nonresident alien individuals.

WHAT TIGTA FOUND

IRS forms, instructions, and publications are inadequate and assume that nonresident aliens have both a Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, reflecting income exempt by treaty, and a Form W-2, *Wage and Tax Statement*, reflecting taxable wages. Nonresident aliens will only have both forms if they file a Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*, with their withholding agent (generally their employer) in order to receive a full or partial

exemption from withholding. TIGTA reviewed a randomly selected sample of 125 Forms 1040NR, *U.S. Nonresident Alien Income Tax Return*, and Forms 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*, with treaty-based income exemptions. The majority, 113 (90 percent) of the 125 cases, appeared entitled to treaty-based income exemption claims. TIGTA observed that 69 of the 125 cases received only a Form W-2 and not a Form 1042-S for exempt income. In 54 of the 69 cases, the taxpayers deviated from IRS instructions and reduced Form W-2 taxable wages in order to claim treaty-based income exemptions for \$344,640. In eight of the 69 cases, the nonresident alien followed IRS instructions reporting Form W-2 taxable wages, but as a result did not receive \$35,278 in treaty exemptions.

In 40 of the 125 cases, taxpayers received both a Form W-2 and a Form 1042-S. However, in 10 of 40 cases, the Form 1042-S was for scholarship income and the taxpayer did not receive a second Form 1042-S for wages. In these instances, the taxpayers deviated from IRS instructions and reduced Form W-2 taxable wages totaling \$38,772 to account for the treaty exemption. In four of the 40 cases, the nonresident aliens incorrectly received the treaty-based income exemption twice because they reduced Form W-2 taxable wages even though the wages were already reported on Form 1042-S and accounted for by the employer totaling \$9,122.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Large Business and International Division should: 1) consider updating the appropriate forms, instructions, and publications to clarify how nonresident aliens who do not file a Form 8233 with their employer are still able to claim the treaty exemption; and 2) increase outreach and education to withholding agents and nonresident aliens to improve their knowledge of the information reporting rules, improve the accuracy of information reporting, and reduce the number of erroneous tax returns.

In its response, the IRS agreed with both recommendations.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 20, 2018

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Forms, Instructions, Publications, and Procedures
Need to Be Improved for Some Nonresident Aliens Eligible for Treaty-
Based Income Exemptions (Audit # 201730024)

This report presents the results of our review to evaluate the Internal Revenue Service's efforts to ensure the accuracy of treaty-based income tax exemptions claimed by nonresident alien individuals. This audit is included in our Fiscal Year 2018 Annual Audit Plan and addresses the major management challenge of the Impact of Global Economy on Tax Administration.

Management's complete response to the draft report is included as Appendix XII.

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).



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Abbreviations

IRM	Internal Revenue Manual
IRS	Internal Revenue Service
PY	Processing Year
TIGTA	Treasury Inspector General for Tax Administration
TY	Tax Year
U.S.	United States



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Background

Each calendar year, thousands of nonresident aliens¹ are gainfully employed in the United States. Nonresident aliens are generally required to file a tax return and report their United States (U.S.) source services income and pay any tax due using Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, or Form 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*. Personal services income earned in the United States by a nonresident alien is generally subject to income tax withholding at a rate of 30 percent unless a lower rate of withholding or an exemption applies either under the Internal Revenue Code or an applicable tax treaty.² According to the Internal Revenue Service (IRS), the United States has entered into 60 tax treaties on income (and/or capital), 58 of which are in force. These 60 treaties apply to 68 jurisdictions.³ Under most tax treaties, nonresident aliens who are temporarily present in the United States to study, obtain training, teach, conduct research, and/or perform services as an employee may be eligible to exempt some or all of their income from U.S. tax if they meet the requirements of the applicable treaty.

Nonresident aliens who earn solely U.S. source investment income from the United States are not required to file a tax return if their tax liability is fully paid at source through withholding.

For example, most tax treaties include an “income from employment” article, sometimes called the “dependent personal services” article, which exempts nonresident aliens who are earning wages in the United States from U.S. tax if, generally, the nonresident alien is present in the United States for a period not exceeding 183 calendar days in a 12-month period, and the remuneration is paid by a foreign employer and not borne by a U.S. permanent establishment of the foreign employer. In addition, under some income tax treaties, individuals who are:

- Students, apprentices, and trainees are exempt from tax on remittances received from abroad for study and maintenance. In addition, under some treaties, scholarships and fellowship grants, and a limited amount of compensation received by students, apprentices, and trainees may also be exempt from tax.⁴
- Teachers, professors, or researchers who temporarily visit the United States for the primary purpose of teaching or conducting research are exempt from U.S. income tax on

¹ See Appendix XI for a glossary of terms.

² Internal Revenue Code § 1441(a).

³ See Appendix V for a list of countries the United States has a treaty in force with.

⁴ See Appendix VI for a list of countries with treaty benefits for scholarship or fellowship grants (Income Code 16). See Appendix VII for a list of countries with treaty benefits for studying and training (Income Code 20).



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compensation received for teaching or research for the first two or three years after their arrival in the United States.⁵

Whether a nonresident alien is entitled to a tax treaty exemption is based on the requirements set forth under the particular tax treaty the United States has with the foreign country of which the nonresident alien is a resident or was a resident prior to coming to the United States. Under Treasury Regulation 1.1441-4(b), a withholding agent is not required to withhold on personal services income that is exempt from tax under a treaty if the nonresident alien properly claims an exemption by filing Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*, with its withholding agent (generally the individual's employer). Withholding agents who are provided Form 8233 are instructed to report the portion of the payment that is exempt under a tax treaty on a Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, (the form is filed with the IRS and a copy is furnished to the nonresident alien). On the Form 1042-S, the withholding agent reports the amount of gross income that is exempt from tax under the treaty and uses Chapter 3 Exemption Code 4 (exempt under tax treaty) to identify the applicable withholding exemption. Any additional wages paid to a taxpayer in excess of the exempt amount are reported on Form W-2, *Wage and Tax Statement*, in the usual manner.

As described in more detail later in this report, not all applicable IRS forms, instructions, and publications address the circumstance of nonresident aliens who for one reason or another do not provide Form 8233 to their employer. Form 1040NR instructs nonresident aliens to insert taxable wages on line 8 of the tax return and amounts claimed by way of a treaty exemption on line 22, and nonresident aliens are instructed not to enter the line 22 amount on line 8. The instructions state that for most nonresident aliens who received Form W-2, the amount shown on box 1 of the Form W-2 is the amount entered on line 8 of the Form 1040NR. However, the instructions also state as a caution that amounts exempt under a tax treaty should not be placed on line 8.⁶

Figure 1 shows the number of nonresident aliens claiming treaty-based income exemptions for Tax Years (TY) 2014 through 2016. The number of nonresident aliens claiming treaty-based income exemptions decreased by 45 nonresident aliens in TY 2015, followed by a decrease of 3,070 nonresident aliens in TY 2016.

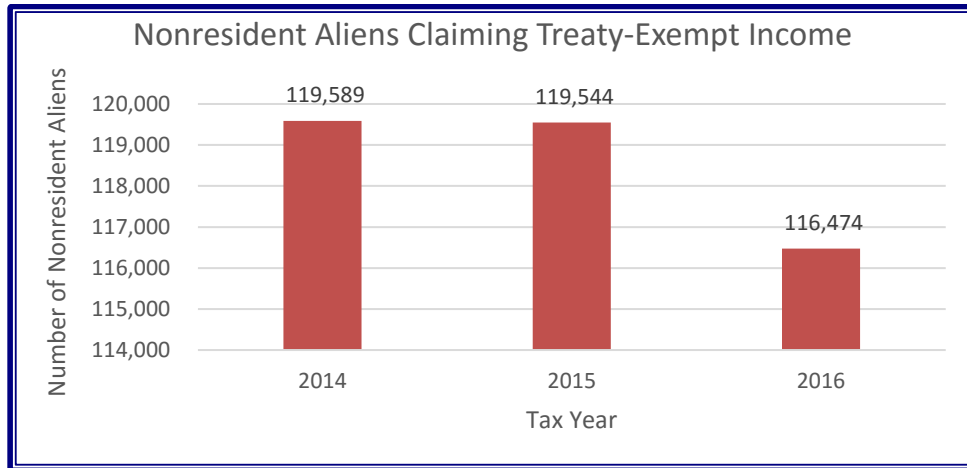
⁵ See Appendix VIII for a list of countries with treaty benefits for teaching or research (Income Code 19).

⁶ Form 1040NR instructions, p. 14, 2015.



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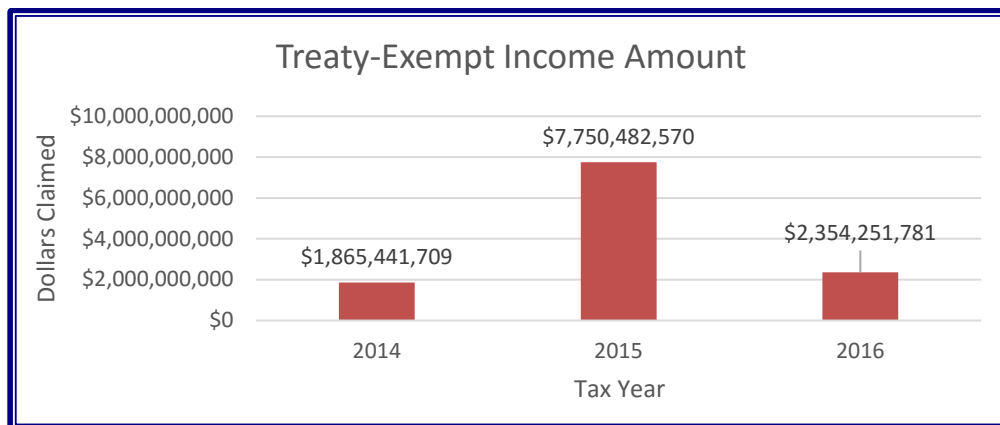
Figure 1: Number of Nonresident Aliens Claiming Treaty-Exempt Income for TYs 2014 Through 2016, According to IRS Records⁷



Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of Individual Return Transaction File and Individual Master File data.

Figure 2 shows, according to IRS records, the total dollar amount of treaty-based income exemptions claimed by nonresident aliens on their Forms 1040NR for TYs 2014 through 2016. Based on these IRS records, the dollar amount claimed by nonresident aliens in TY 2015 spiked by 315 percent from TY 2014. However, after our review, TY 2015 was adjusted to \$2 billion.

Figure 2: Treaty-Exempt Income Amounts Claimed by Nonresident Aliens on Forms 1040NR for TYs 2014 Through 2016⁸



Source: TIGTA analysis of Individual Return Transaction File and Individual Master File data.

⁷ Data based on returns recorded by the IRS as of December 31, 2017.

⁸ Data based on returns recorded by the IRS as of December 31, 2017.



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This review was performed at the Wage and Investment Division's Submission Processing function in Austin, Texas, with additional information obtained from the Large Business and International Division's Withholding and International Individual Compliance Practice function in Washington, D.C., during the period February 2017 through May 2018. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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Results of Review

Data Recorded for Nonresident Aliens Who Claimed Treaty-Based Income Exemptions Contain Transcription Errors for Tax Year 2015

We identified 119,544 nonresident aliens who claimed treaty-based exemptions of \$7.7 billion on line 22 of Form 1040NR or line 6 of Form 1040NR-EZ for TY 2015 as reflected in Figures 1 and 2. During the course of this audit, we determined that the IRS erroneously transcribed seven of the treaty exemption amounts. As a result, the initial TY 2015 treaty exemption total for our population was overstated by potentially \$5.7 billion. The IRS acknowledged these transcription errors, and we manually adjusted the treaty exemption total for our population by removing the \$5.7 billion to more accurately reflect the exemption amounts that were reported by the respective nonresident aliens. This reduced the amount claimed by the 119,544 nonresident aliens to \$2 billion for TY 2015. In addition to these seven, other transcription errors (overstatements and understatements) may have existed throughout the population, which may have resulted in inaccurate exemption totals, but we were unable to review and verify the accuracy of all cases due to the size of the population and resource limitations. It is important to note that the nonresident aliens who had these errors on their accounts did not receive excessive treaty exemptions because the treaty exemption field on the Return Transaction File is not used in any calculations. However, the erroneous data could have an adverse impact should the IRS use the data in any official publications or to identify any patterns or trends related to nonresident aliens who claimed treaty-based exemptions.

Forms, Instructions, and Publications for Nonresident Aliens Claiming Treaty-Based Income Exemptions Are Inadequate

Pursuant to Treasury Regulations and IRS forms and instructions, nonresident aliens must file a Form 8233 with their withholding agent (usually their employer) in order to receive a full or partial exemption from withholding.⁹ Employers then report the wages as follows:

- Exempt wages are reported on Form 1042-S.
- Taxable wages (paid over and above the exempt amount) are reported on Form W-2 in the usual manner. The wages on Form W-2 do not include exempt wages.

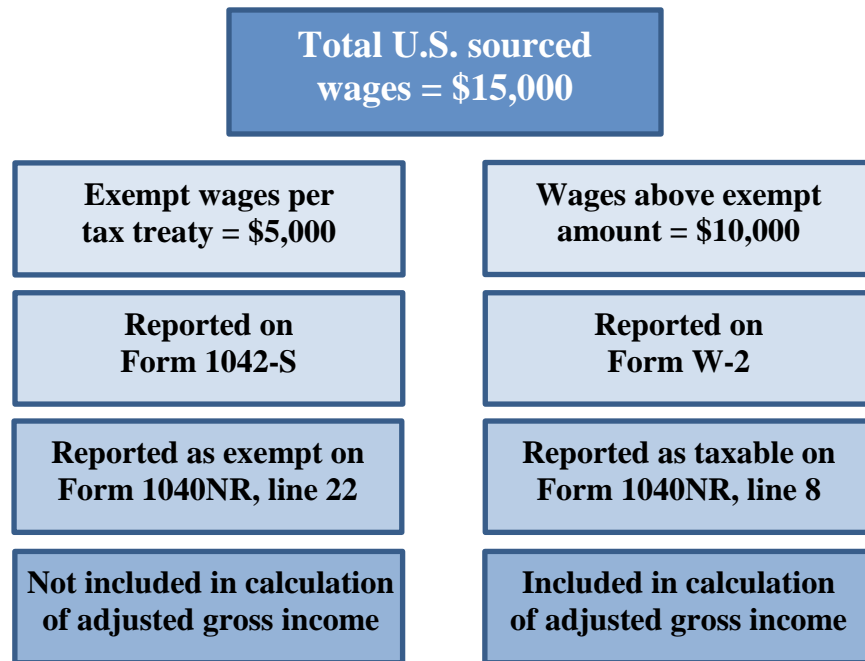
⁹ 26 CFR 1.1441-4; Form 8233 instructions, page 1; and 2015 Publication 519, *U.S. Tax Guide for Aliens*, page 39.



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Figure 3 illustrates this by using the example of a hypothetical college student taxpayer from the People's Republic of China working as a clerk in the campus bookstore with total U.S. source wages of \$15,000. In this illustration, the country's tax treaty limit is \$5,000.

Figure 3: Reporting Process and Tax Treatment of Treaty-Based Exempt Income Where Taxpayer Provides Form 8233 to The Employer



Source: TIGTA analysis of IRS instructions for paying foreign students.

Form 1040NR and instructions are based on nonresident aliens receiving, if each is applicable, a Form W-2 for taxable wages and a Form 1042-S for exempt income to claim treaty-based exemptions. To complete Form 1040NR, nonresident aliens are instructed to report:

- The total amount exempt from income (reported on Form 1042-S) on Schedule OI, *Other Information*, item L, and on Form 1040NR, line 22.
- Taxable wages (reported on Form W-2) on Form 1040NR, line 8.



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Figure 4 is an excerpt from Form 1040NR showing the lines for wages and treaty-exempt income.¹⁰

Figure 4: Excerpt of Form 1040NR, Page 1

Income Effectively Connected With U.S. Trade/Business <small>Attach Form(s) W-2, 1042-S, SSA-1042S, RRB-1042S, and 8288-A here. Also attach Form(s) 1099-R if tax was withheld.</small>	8	Wages, salaries, tips, etc. Attach Form(s) W-2	8	
	9a	Taxable interest	9a	
		b	Tax-exempt interest. Do not include on line 9a	9b
	10a	Ordinary dividends	10a	
		b	Qualified dividends (see instructions)	10b
	11	Taxable refunds, credits, or offsets of state and local income taxes (see instructions)	11	
	12	Scholarship and fellowship grants. Attach Form(s) 1042-S or required statement (see instructions)	12	
	13	Business income or (loss). Attach Schedule C or C-EZ (Form 1040)	13	
	14	Capital gain or (loss). Attach Schedule D (Form 1040) if required. If not required, check here <input type="checkbox"/>	14	
	15	Other gains or (losses). Attach Form 4797	15	
	16a	IRA distributions	16a	
	16b	Taxable amount (see instructions)	16b	
	17a	Pensions and annuities	17a	
	17b	Taxable amount (see instructions)	17b	
	18	Rental real estate, royalties, partnerships, trusts, etc. Attach Schedule E (Form 1040)	18	
	19	Farm income or (loss). Attach Schedule F (Form 1040)	19	
	20	Unemployment compensation	20	
	21	Other income. List type and amount (see instructions)	21	
	22	Total income exempt by a treaty from page 5, Schedule OI, Item L (1)(e)	22	

Source: IRS Forms and Publications at IRS.gov.

Schedule OI instructions state that nonresident aliens claiming an exemption from income tax under a U.S. income tax treaty with a foreign country on Form 1040NR must provide all the information requested for item L. Schedule OI, item L, instructs nonresident aliens:

- To enter the total income exempt by treaty on Form 1040NR, line 22 (*Total income exempt by a treaty*).
- Not to enter the exempt income (Schedule OI, item L(1)(e), total amount) on 1040NR, line 8 (*Wages, salaries, tips, etc.*).¹¹

¹⁰ See Appendix IX for Form 1040NR in its entirety.

¹¹ Shown in Figure 4.



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Figure 5 is an excerpt from Schedule OI, item L, used to report tax treaty information.¹²

Figure 5: Excerpt of Form 1040NR, Schedule OI, Item L

- L** Income Exempt from Tax—If you are claiming exemption from income tax under a U.S. income tax treaty with a foreign country, complete (1) through (3) below. See Pub. 901 for more information on tax treaties.
1. Enter the name of the country, the applicable tax treaty article, the number of months in prior years you claimed the treaty benefit, and the amount of exempt income in the columns below. Attach Form 8833 if required (see instructions).

(a) Country	(b) Tax treaty article	(c) Number of months claimed in prior tax years	(d) Amount of exempt income in current tax year
(e) Total. Enter this amount on Form 1040NR, line 22. Do not enter it on line 8 or line 12			

Source: IRS Forms and Publications at IRS.gov.

IRS forms, instructions, and publications assume that nonresident aliens have both a Form 1042-S reflecting income exempt by treaty and a Form W-2 reflecting nonexempt wages. However, our review of the TY 2015 population of nonresident aliens who claimed treaty-based exemptions on Form 1040NR reflected that only 32 percent of the population received both a Form W-2 and a Form 1042-S information return that claimed a treaty-based exemption as shown in Figure 6. Figure 6 shows the type of information returns received by the nonresident aliens who claimed a treaty-based exemption for TY 2015.

Figure 6: Information Returns Received by Nonresident Aliens Who Claimed Treaty Exemptions for TY 2015¹³

Information Returns	Number of Cases	Amount of Treaty-Exempt Income Claimed	Percentage of Cases	Percentage of Dollars
Form W-2 and Form 1042-S	37,928	\$446,250,811	32%	22%
Form W-2 Only	57,985	\$721,122,545	48%	36%
Form 1042-S Only	12,044	\$322,881,844	10%	16%
No Information Returns	11,587	\$510,192,526	10%	26%
Totals	119,544	\$2,000,447,726	100%	100%

Source: TIGTA analysis of Individual Return Transaction File and Individual Master File data.

¹² See Appendix IX for Form 1040NR in its entirety.

¹³ Data based on returns received as of December 31, 2017.



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For the 68 percent of nonresident aliens who did not receive both a Form 1042-S and a Form W-2, it is not clear whether the nonresident aliens were not aware of the requirement to provide their withholding agents a Form 8233 to claim the exemption from withholding; the withholding agents received Form 8233 but did not process it correctly; or some other circumstance occurred that resulted in nonresident aliens being unable to follow the guidance in applicable IRS forms, instructions and publications.¹⁴

The lack of Form 8233 submission does not affect nonresident aliens' entitlement to treaty exemption. Nonresident alien can still claim income exempt by treaty on the tax return. However, the applicable forms, instructions, and publications do not clearly delineate these taxpayer rights. As we subsequently demonstrate in this report, some nonresident aliens are forced to deviate from the instructions and publications in order to claim their treaty-based exemption, while other nonresident aliens follow the instructions, thus failing to receive the benefit of exemptions to which they are entitled.

Nonresident Aliens Were Generally Entitled to Treaty-Based Income Exemptions

To determine whether claims for treaty-based income exemptions were properly reported, we reviewed a random sample of 125 TY 2015 Forms 1040NR/1040NR-EZ from a population of 127,426 Forms 1040NR/1040NR-EZ that were processed during Processing Year (PY) 2016.¹⁵ Exemptions claimed in our sample totaled \$1 million from a population of \$2 billion.

IRS filing requirements provide that nonresident aliens can only file Form 1040NR via paper and must submit them to the Austin Campus for processing.¹⁶ Tax examiners in the Code and Edit function review and perfect data from these paper tax returns.¹⁷ This process is designed to ensure that the information on the paper tax return and Schedule OI is complete. In regards to treaty exemption claims, the Internal Revenue Manual (IRM) instructs Code and Edit function employees to check whether the following information is available on Schedule OI:¹⁸

- *****2*****
- *****2*****
- *****2*****

¹⁴ We calculated the 68 percent by adding the applicable percentages in the fourth column of Figure 6.
¹⁵ Based on a 95 percent confidence level, a 26 percent anticipated error rate, and a ± 8 percent precision rate. See Appendix I, Steps II.A. and II.B., for more details.
¹⁶ This is specific for TY 2015. Current procedures allow taxpayers to electronically file their return.
¹⁷ The Code and Edit function ensures that tax forms are complete and include the proper codes to allow computation of tax liabilities.
¹⁸ IRM 3.21.3.73.8.17 (Jan. 1, 2017).



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Based on the validity of the exempt income claimed on Schedule OI, Forms 1042-S and W-2 (when available), and information specific to the treaty article cited, we determined that the majority, 113 (90 percent), of the 125 cases appeared to be entitled to the treaty-based income exemption claims totaling \$888,570.¹⁹ The remaining 12 (10 percent) of the 125 cases were not entitled to their treaty exemption claims totaling \$118,194. We found that the treaty required the nonresident alien's employer to be from their respective country in seven cases, and the treaty article cited by the nonresident alien was not applicable based on the type of income earned in five cases. If the correct treaty article was used, then the type of income earned was taxable or the nonresident alien was present in the United States more than the maximum time limit. *2*
*****2*****
*****2*****
*****2*****
*****2*****

We found 96 of the 113 nonresident aliens were entitled to the treaty-based income exemptions because the foreign country that the taxpayer is a citizen or resident of has a treaty article that provides income exemptions for student/trainee or teacher/researcher. Specifically, we determined:

- In 86 (69 percent of sample) instances, the taxpayer was a student, apprentice, or trainee.
- In 10 (8 percent of sample) instances, the taxpayer was a teacher, professor, or researcher.

[Many Nonresident Aliens Deviated From IRS Instructions and Reduced Their Taxable Wages to Claim Treaty-Based Income Exemptions When Only a Form W-2, Wage and Tax Statement, Was Received](#)

We previously identified that the majority, 113 (90 percent), of the 125 taxpayers appeared entitled to the treaty-based income exemption. We also observed that many nonresident aliens did not receive both a Form W-2 and a Form 1042-S information return when claiming treaty-based exemptions. Figure 7 provides information return documents received by nonresident aliens in our sample cases, which is similar to the population data shown in Figure 6.

¹⁹ Based on Forms 1042-S and W-2 information such as the income type, exemption code, employer, and amount of wages.



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Figure 7: Information Documents Received by Our Sampled Nonresident Aliens

Information Returns	Number of Cases	Amount of Treaty-Exempt Income Claimed	Percentage of Cases	Percentage of Dollars
Form W-2 and Form 1042-S	40	\$312,837	32%	31%
Form W-2 Only	69	\$419,318	55%	42%
Form 1042-S Only	12	\$200,439	10%	20%
No Information Returns	4	\$74,170	3%	7%
Totals	125	\$1,006,764	100%	100%

Source: TIGTA case review results.

Figure 7 shows that the majority of the sample cases (55 percent) received only a Form W-2. Because IRS forms, instructions, and publications assume nonresident aliens will receive both a Form 1042-S for exempt wages and a Form W-2 for taxable wages for reporting and filing purposes if they have both types of income, we reviewed the 69 cases that received a Form W-2 only and found that:

- Many nonresident aliens who received only a Form W-2 reduced their taxable wages to claim the treaty-based income exemption, *i.e.*, they had to deviate from the instructions in order to claim the exemption to which they were entitled.
- Some nonresident aliens followed the forms, instructions, and publications and did not receive treaty-based income exemptions to which they were entitled.
- The IRS incorrectly changed the wages reported by nonresident aliens during processing.

Many nonresident aliens who received only a Form W-2 reduced their taxable wages to claim the treaty-based income exemption

Of the 69 nonresident aliens who received a Form W-2 only, 54 reduced the taxable Form W-2 wages reported on Form 1040NR, line 8, or Form 1040NR-EZ, line 3, which was necessary to claim the treaty-based exemption to which they were entitled per the treaty article. For these 54 nonresident aliens, we also observed that 48 nonresident aliens attached a disclosure statement to support the reduced taxable Form W-2 wages reported on Form 1040NR, line 8, or Form 1040NR-EZ, line 3. The remaining six nonresident aliens were not required to attach a disclosure statement to support reducing taxable wages. For the 48 cases, we found that:

- In 38 cases, the taxpayer attached a Form 8843, *Statement for Exempt Individuals and Individuals With a Medical Condition*, to disclose the treaty-based position claimed.



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- In seven cases, the taxpayer attached a Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, to disclose the treaty-based position claimed.
- In three cases, the taxpayer attached both a Form 8843 and a Form 8833.

In order to claim the treaty exemptions to which they were entitled, these nonresident aliens had to deviate from Form 1040NR or Schedule OI instructions. Form 8843 must be used by alien individuals to explain the basis of their claim that they can exclude days of presence in the United States for purposes of the substantial presence test. Some of these nonresident aliens used Form 8843 or Form 8833 to disclose that they were reducing Form W-2 wages reported on Form 1040NR, line 8, because no other disclosure form was available to them.²⁰ Because the majority of the nonresident aliens received only a Form W-2, their only option was to reduce the taxable Form W-2 wages reported on Form 1040NR, line 8, to claim the treaty-based exemption.

In our sample, 54 nonresident aliens reduced their taxable wages to claim treaty-based income exemptions for \$344,640. The Form W-2 taxable wages for these nonresident aliens totaled approximately \$1.3 million; however, the nonresident aliens reported approximately \$1 million on Form 1040NR, line 8, reducing the Form W-2 taxable wages by \$334,077. Nonresident aliens reduced the taxable wages on Form 1040NR, line 8, to zero in 14 (26 percent) of 54 cases.²¹ Based on the population data, we determined that 40,959 of the 57,985 nonresident aliens who only received a Form W-2 also reduced Form W-2 taxable wages reported on Form 1040NR, line 8, by nearly \$268 million and claimed treaty-based exemptions totaling nearly \$268 million.²² When forecast over five years, 204,795 nonresident aliens reduced Form W-2 taxable wages reported on Form 1040NR, line 8, by \$1.3 billion and claimed treaty-based exemptions totaling \$1.3 billion.²³

²⁰ Form 8843 is to be used if a nonresident alien claims a reduction in the number of days of presence in the United States for purposes of the substantial presence test; they must file Form 8843. Form 8843 is used to explain the basis of the claim to exclude days of presence because they: were an exempt individual (a teacher or trainee, a student, or a professional athlete temporarily present in the United States to compete in a charitable sports event) or were unable to leave the United States because of a medical condition or medical problem. Form 8833 is used if a nonresident alien claims a treaty benefit that overrides or modifies any provision of the Internal Revenue Code. If by claiming these benefits, the tax is or might be reduced, the nonresident alien must attach and fully complete a Form 8833.

²¹ The \$344,640 treaty-based exemption amount is \$10,563 more than the reduced taxable wages amount due to taxpayers claiming exempt wages from a Form 1042-S in addition to wages from their Form W-2.

²² For the 40,959 taxpayers who reduced Form W-2 taxable wages reported on Form 1040NR, line 8, to claim the treaty-based exemption, 12,799 (31 percent) reduced the taxable wages on Form 1040NR, line 8, to zero.

²³ See Appendix IV. The five-year forecast is based on multiplying the base year by five and assumes, among other considerations, that economic conditions and tax laws do not change.



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Some Nonresident Aliens Who Received Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Also Reduced Their Taxable Wages to Claim Treaty-Based Income Exemptions

Figure 7 shows that only 40 (32 percent) of the 125 sample cases received both a Form W-2 and a Form 1042-S. As previously described, IRS Form 1040NR and Schedule OI forms and instructions are based on the assumption that nonresident aliens are receiving a Form 1042-S for exempt wages and a Form W-2 for taxable wages for reporting and filing purposes. We further reviewed the accounts of the 40 nonresident aliens who received a Form W-2 and a Form 1042-S and found that the nonresident alien properly reported Form W-2 gross taxable wages on Form 1040NR, line 8, and exempt income on Form 1040NR, line 22, in 25 (63 percent) of the 40 sample cases. In 14 of the remaining 15 sample cases, we found that:²⁶

- Some nonresident aliens who received Form 1042-S also reduced taxable wages to claim treaty-based income exemptions for wages earned.
- Some nonresident aliens who received Form 1042-S received the treaty-based income exemption twice.

Some nonresident aliens who received Form 1042-S also reduced taxable wages to claim treaty-based income exemption for wages earned

For 10 of the 40 sample cases, the taxpayer nonresident alien reduced Form W-2 taxable wages reported on Form 1040NR, line 8. For eight cases, the Schedule OI, item L, for these nonresident aliens cited two separate sections of a treaty article based on the type of income earned. The first treaty section of an article cited was for scholarship income, and the second section of a treaty article cited was for compensation during training or while gaining experience (wages). These nonresident aliens received a Form 1042-S for scholarship income but did not receive a second Form 1042-S for wages earned. We also observed that the taxpayer attached a Form 8843 in an attempt to explain the treaty-based position claimed in these eight cases. *1*

*****1*****
The treaty article cited was for compensation during training or while gaining experience (wages). *****1*****
*****1*****
*****1*****.

In order to claim the treaty exemptions to which they were entitled, these nonresident aliens had to deviate from Form 1040NR or Schedule OI instructions. Because the nonresident aliens did not receive a second Form 1042-S for dependent personal services (wages), their only option was to reduce the taxable Form W-2 wages reported on Form 1040NR, line 8, to claim the

²⁶ *****1*****
*****1*****



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Form W-2 and Form 1042-S information returns, and the income on these information returns did not match what was reported on Form 1040NR. These nonresident aliens reported wages of \$300 million on Form 1040NR, line 8 (when Form W-2 gross wages totaled \$367 million, a reduction of \$67 million in taxable wages), and reported \$290 million exempt income on Form 1040NR, line 22. When forecast over five years, 97,190 nonresident aliens reduced taxable wages by \$335 million, claiming \$1.4 billion in treaty-based exemptions.²⁸

Recommendations

The Commissioner, Large Business and International Division, should:

Recommendation 1: Consider updating the appropriate forms, instructions, and publications to clarify how nonresident aliens who do not file a Form 8233 with their employer are still able to claim the treaty exemption.

Management's Response: Management agreed with this recommendation. The Withholding and International Individual Compliance Practice Area, in collaboration with the Assistant Deputy Commissioner for Compliance Integration, will recommend the expansion of existing language or additional language in relevant tax products (Form 1040NR, Form 8233 instructions, and other appropriate publications) to clarify how taxpayers who did not properly file a Form 8233 with their employer may claim a treaty exemption, if allowable. Updates to the tax products will occur as soon as resources permit.

Recommendation 2: Increase outreach and education to withholding agents and nonresident aliens to improve their knowledge of the information reporting rules, improve the accuracy of information reporting, and reduce the number of erroneous tax returns.

Management's Response: Management agreed with this recommendation. The “Forms 1042/1042-S Compliance” and “Nonresident Alien Tax Treaty Exemption” campaigns include outreach to external stakeholders as treatment streams intended to improve the knowledge of withholding agents and taxpayers.²⁹ Outreach will include efforts to improve digital resources (IRS.gov) and outreach to the withholding agents.

Office of Audit Comment: While the IRS agreed with both recommendations, the IRS disagreed with one of the four outcome measures on reliability of information. The IRS acknowledged the transcription errors but stated that the nonresident aliens who had

²⁸ See Appendix IV. The five-year forecast is based on multiplying the base year by five and assumes, among other considerations, that economic conditions and tax laws do not change.

²⁹ Campaigns involve a more thorough analysis of data to support the identification and evaluation of a compliance issue; a more deliberate consideration of potential treatment streams; decisions about the resources to be deployed; identification of training, mentoring, networking, and tools needed, as well as a robust feedback mechanism to ensure that all elements of a campaign are continuously improved.



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these errors on their accounts did not receive excessive treaty exemptions and the IRS is not using the erroneous data in any official publications or to identify any patterns or trends related to nonresident aliens who claimed treaty-based exemptions. Notwithstanding these mitigating factors, the account information with respect to these taxpayers is incorrect. If these taxpayers made an inquiry to the IRS about their information, the IRS would provide them incorrect information.



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Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective of this review was to evaluate the IRS's efforts to ensure the accuracy of treaty-based income tax exemptions claimed by nonresident alien¹ individuals. To achieve our objective, we:

- I. Determined the effectiveness of controls that ensure the accuracy and validity of treaty-based income tax exemptions claimed by nonresident alien individuals.
 - A. Reviewed IRS policies and procedures in place for the processing of treaty-based tax exemptions.
 - B. Interviewed Large Business and International Division and Wage and Investment Division management to identify any policies, procedures, and training provided to IRS personnel so they can ensure that nonresident alien individuals are properly claiming treaty-exempt income.
 - C. Conducted a walk-through at the IRS campus in Austin, Texas, to understand Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, and Schedule OI, *Other Information*, processing, specifically as it relates to the type of information that is reviewed, edited, transcribed, and recorded.
- II. Determined whether the IRS ensures the accuracy and validity of treaty-based income tax exemptions.
 - A. Identified the population of 127,426 Forms 1040NR/1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*, that were processed during PY 2016.
 - B. Selected a statistically valid random sample of 125 TY 2015 tax returns, from the population of 127,426, based on a 95 percent confidence level, a 26 percent anticipated error rate, and a ± 8 percent precision rate.² We worked with a contracted statistician to develop the sampling methodology. We used random sampling to allow an equal chance of selection for all the returns in our population.
 - C. Originally selected the sample from a population of 127,426 Forms 1040NR/1040NR-EZ from the PY 2016 Individual Return Transaction File. We later determined that the 127,426 returns included duplicates and non-TY 2015 returns. Consequently, we revised the population to include only TY 2015 Forms 1040NR/1040NR-EZ that the IRS

¹ See Appendix XI for a glossary of terms.

² The 26 percent anticipated error rate was based on the error rate realized after review of the first 31 cases.



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received during PYs 2016 and 2017, and for which the IRS coded the Social Security Number as valid and the return matched the Individual Master File. All 125 sampled returns are in the revised population of 119,544. We made no projections based on the 125 sampled returns. All population statistics discussed in the report are based on the 119,544 Forms 1040NR/1040NR-EZ.

- D. Requested copies of Forms 1040NR/1040NR-EZ for the 125 tax returns selected and reviewed each attached schedules and forms pertaining to treaty exemptions, income, and wages.
- E. Used the IRS Information Return Master File to determine whether the taxpayer had a Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, associated with their Taxpayer Identification Number/Individual Taxpayer Identification Number, supporting the exempt income.
- F. For each sampled case, determined if the treaty-based exemption was reported correctly by the taxpayer and processed correctly by the IRS. We determined if exempt and nonexempt wages were supported by Form 1042-S or Form W-2, *Wage and Tax Statement*, respectively.
- G. Identified a population of 119,544 unique TY 2015 Forms 1040NR and 1040NR-EZ that the IRS received and processed during Calendar Years 2016 and 2017.³ These 119,544 returns contained amounts recorded by the IRS as income exempt by a treaty.
 - 1. Verified that the 125 nonresident aliens selected in Step II.B. were in the updated population.
 - 2. For the 119,544 nonresident aliens identified in Step II.G., determined if the taxpayer had a Form 1042-S and Form W-2 for TY 2015.
 - 3. Performed a computer match of the results of Step II.G. against the Form W-2 file for TY 2015 to determine if the 119,544 nonresident aliens had any Forms W-2 filed on their behalf.
 - 4. Performed a computer match of the results of Step II.G. against an extract of Form 1042-S data to determine if the 119,544 nonresident aliens had any Forms 1042-S filed on their behalf claiming the treaty-exempt income amount.

³ Results based on analysis of data from the IRS's Individual Return Transaction File and matched to the IRS's Individual Master File.



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Data validation methodology

During this review, we relied on data located on TIGTA's Data Center Warehouse, including Form 1040NR and 1040NR-EZ data extracts from the Individual Return Transaction File and the Individual Master File, and Form W-2 information from the W-2 File. Additionally, we reviewed Form 1042-S data from the IRS's Information Return Master File, provided by TIGTA's Office of Investigations' Strategic Data Services. We relied on data validation tests conducted by TIGTA's Office of Investigations' Strategic Data Services for the completeness of the data and compared their runs of requested data to data we pulled and used. Before relying on these data, we ensured that each file contained the specific data elements we requested. In addition, during the course of reviewing returns, we verified that the nonresident aliens matched the criteria we sought. We also tested a judgmentally selected sample⁴ for each of the databases and verified the amounts recorded via the Integrated Data Retrieval System as follows:

- We matched data of 35 TYs 2014, 2015, and 2016 Form 1040NR records from the Individual Return Transaction File and verified the wages and treaty-exempt income amounts.⁵
- We matched data of 10 TYs 2014, 2015, and 2016 Form 1040NR records from the Individual Master file and verified the wage amounts.
- We matched data of 10 TY 2015 Form W-2 records from the W-2 File and verified the wage amounts.
- We matched data of 27 TY 2015 Form 1042-S records from the Information Return Master File and verified the gross income amounts.

We determined that the data were sufficiently reliable for purposes of this report.

Reliability of information

During the course of this audit, we determined that some of the treaty exemption amounts that were downloaded and reviewed from TIGTA's Data Center Warehouse contained treaty exemption amounts that the IRS erroneously transcribed. As a result, the initial treaty exemption total for our population was overstated by at least \$5.75 billion. Specifically, we found seven instances of transcription errors that accounted for the \$5.75 billion overstatement. In addition to these seven, other transcription errors (overstatements and understatements) may have existed throughout the population, which may have resulted in inaccurate exemption totals. However, we were unable to review and verify the accuracy of all cases due to the size of the population and resource limitations.

The IRS acknowledged these transcription errors, and we manually adjusted the treaty exemption total for our population to reflect the accurate exemption amounts that were reported by these

⁴ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

⁵ The 35 records consisted of five records from PY 2015, 25 records from PY 2016, and five records from PY 2017.



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seven nonresident aliens. It is important to note that the nonresident aliens who had these errors on their accounts did not receive excessive treaty exemption because the treaty exemption field on the Return Transaction File is not used in any calculations.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: IRS policies, procedures, and practices for processing treaty-based exemption claims in the Submission Processing function. We evaluated these controls by interviewing IRS management and campus employees, and reviewing relevant policies and procedures as well as evaluating tax return data and information tax returns.



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Appendix II

Major Contributors to This Report

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Shalin Basnayake, Senior Auditor
Kevin Nielsen, Senior Auditor



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Appendix III

Report Distribution List

Deputy Commissioner for Services and Enforcement
Deputy Commissioner, Large Business and International Division
Deputy Commissioner, Small Business/Self-Employed Division
Deputy Commissioner, Wage and Investment Division
Director, International Business Compliance, Large Business and International Division
Director, Office of Audit Coordination



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Appendix IV

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective action will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Reliability of Information – Actual; \$5.7 billion on seven nonresident aliens who filed a Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, and claimed treaty-based exemptions for TY¹ 2015 (see page 5).

Methodology Used to Measure the Reported Benefit:

We identified 119,544 nonresident aliens who claimed TY 2015 treaty-based exemptions of \$7.7 billion on Form 1040NR, line 22. During the course of this audit, we determined that the IRS erroneously transcribed seven of the treaty exemption amounts. As a result, the initial TY 2015 treaty exemption total for our population was potentially overstated by \$5.7 billion. The IRS acknowledged these transcription errors, and we manually adjusted the treaty exemption total for our population to reflect the accurate exemption amounts that were reported by the respective nonresident aliens, which reduced the amount claimed by the 119,544 nonresident aliens to \$2 billion. It is important to note that the nonresident aliens who had these errors on their accounts did not receive excessive treaty exemptions because the treaty exemption field on the Return Transaction File is not used in any calculations. However, the erroneous data could have an adverse impact should the IRS use the data in any official publications or to identify any patterns or trends related to nonresident aliens who claimed treaty-based exemptions.

Type and Value of Outcome Measure:

- Taxpayer Burden – Potential; 40,959 nonresident aliens who filed a Form 1040NR and only received a Form W-2, *Wage and Tax Statement*, reduced their taxable wages by \$268 million to claim treaty-based exemptions totaling \$268 million (204,795 nonresident aliens reduced Form W-2 taxable wages reported on Form 1040NR, line 8, by \$1.3 billion to claim treaty-based exemptions totaling \$1.3 billion when forecast over five years) (see page 10).²

¹ See Appendix XI for a glossary of terms.

² The five-year forecast is based on multiplying the base year by five and assumes, among other considerations, that economic conditions and tax laws do not change.



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Methodology Used to Measure the Reported Benefit:

We reviewed a random sample of 125 Forms 1040NR/1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*, from the population of 127,426 TY 2015 Forms 1040NR/1040NR-EZ. Exemptions claimed in our sample totaled \$1.01 million from a population total of \$2 billion. Based on the validity of the exempt income claimed on Schedule OI, *Other Income*; Forms 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*; and/or Form W-2 (when available) and information specific to the treaty article cited, we identified that the majority of the nonresident aliens (113 nonresident aliens or 90 percent) appeared entitled to the treaty-based income exemption. For 69 of the 125 sample cases, we determined that the taxpayer received a Form W-2 only.

Of the 69 nonresident aliens in our sample who received only a Form W-2, 54 reduced the taxable Form W-2 wages reported on Form 1040NR, line 8, to claim the treaty-based income exemption per the treaty article. In order to claim the treaty income exemptions to which they were entitled, these nonresident aliens had to disregard Form 1040NR or Schedule OI instructions. Because the majority of the nonresident aliens received only a Form W-2, their only option was to reduce the taxable Form W-2 wages reported on Form 1040NR, line 8, to claim the treaty-based exemption. Nonresident aliens are burdened when tax forms and instructions make faulty assumptions or do not provide clear directions about their circumstances.

In our sample, 54 nonresident aliens were potentially burdened as they attempted to comply with the law and claim treaty-based income exemptions of \$344,640. Form W-2 taxable wages for these nonresident aliens totaled approximately \$1.3 million; however, the nonresident aliens reported approximately \$1 million on Form 1040NR, line 8, reducing the Form W-2 taxable wages by approximately \$334,077 (14 (26 percent) of 54 nonresident aliens reduced wages on Form 1040NR, line 8, to zero).³ Based on the population data, we determined that 40,959⁴ of the 57,985 nonresident aliens who only received a Form W-2 also reduced Form W-2 wages reported on Form 1040NR, line 8, by \$268 million to claim treaty-based exemptions totaling \$268 million (204,795 nonresident aliens reduced Form W-2 wages reported on Form 1040NR, line 8, by \$1.3 billion to claim treaty-based exemptions totaling \$1.3 billion when forecast over five years).⁵

³ The \$344,640 treaty-based exemption amount is \$10,563 more than the reduced taxable wages amount due to taxpayers claiming legitimate exempt wages from a Form 1042-S in addition to wages from their Form W-2.

⁴ Of the 40,959 taxpayers who reduced Form W-2 taxable wages reported on Form 1040NR, line 8, to claim treaty-based exemptions, 12,799 (31 percent) taxpayers reduced the taxable wages on Form 1040NR, line 8, to zero.

⁵ The five-year forecast is based on multiplying the base year by five and assumes, among other considerations, that economic conditions and tax laws do not change.



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Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 8,543 nonresident aliens who filed a Form 1040NR and received only a Form W-2 did not receive the \$163 million treaty-based income exemptions claimed when filing their taxes in accordance with IRS instructions (42,715 nonresident aliens did not receive \$815 million in treaty-based exemptions when forecast over five years) (see page 10).⁶

Methodology Used to Measure the Reported Benefit:

From the random sample of 125 Forms 1040NR/1040NR-EZ from the population of 127,426 TY 2015 Forms 1040NR/1040NR-EZ, we observed that eight nonresident aliens reported the taxable Form W-2 wages on Form 1040NR, line 8. Because these nonresident aliens followed Form 1040NR or Schedule OI instructions, they did not receive the treaty-based income exemptions to which they were entitled. As a result, these eight nonresident aliens did not receive the benefit of \$35,278 in treaty-based exemptions. Form 1040NR or Schedule OI instructions do not address how nonresident aliens are to claim treaty-based exemptions to which they are entitled when only a Form W-2 is received. Based on the population data, we determined that 8,543 of the 57,985 nonresident aliens who only received a Form W-2 also reported the Form W-2 wages on Form 1040NR, line 8. Because these 8,543 nonresident aliens followed Form 1040NR or Schedule OI instructions, the nonresident aliens did not receive the \$163 million treaty-based exemptions claimed (42,715 nonresident aliens did not receive the \$815 million treaty-based exemptions when forecast over five years).⁶

Type and Value of Outcome Measure:

- Taxpayer Burden – Potential; 19,438 nonresident aliens receiving a Form W-2 and a Form 1042-S reduced their wages by \$67 million Form 1040NR (97,190 nonresident aliens reduced taxable wages by \$335 million when forecast over five years)⁶ (see page 14).

Methodology Used to Measure the Reported Benefit:

From the random sample of 125 Forms 1040NR/1040NR-EZ from the population of 127,426 TY 2015 Forms 1040NR/1040NR-EZ, 40 nonresident aliens received a Form W-2 and a Form 1042-S. We found that in 25 (63 percent) of the 40 sample cases, the nonresident alien properly reported Form W-2 gross taxable wages on Form 1040NR, line 8, and exempt income on Form 1040NR, line 22. For 14 of 15 remaining sample cases,⁷ we found that:

⁶ The five-year forecast is based on multiplying the base year by five and assumes, among other considerations, that economic conditions and tax laws do not change.

⁷ In the 15th case, the IRS correctly adjusted the case during processing. This enabled the taxpayer to receive the treaty exemption for which he or she was entitled.



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- Some nonresident aliens who received Form 1042-S were burdened to claim treaty-based income exemptions for wages earned.
- Some nonresident aliens who received Form 1042-S received the treaty-based income exemption twice.

For 10 of the 40 sample cases, the taxpayers reduced Form W-2 taxable wages reported on Form 1040NR, line 8. For eight cases, the Schedule OI, item L, for these nonresident aliens cited two sections of a treaty article based on the type of income earned. The first section of a treaty article cited was for scholarship income, and the second section of a treaty article cited was for compensation during training or while gaining experience (wages). These nonresident aliens received a Form 1042-S for scholarship income but did not receive a second Form 1042-S for wages earned. We also observed in these eight cases that the taxpayer attached a Form 8843, *Statement for Exempt Individuals and Individuals with a Medical Condition*, to disclose the treaty-based position claimed. For the two remaining cases, the nonresident alien cited only one treaty article based on the type of income earned. The treaty article cited was for compensation during training or while gaining experience (wages). These nonresident aliens also received a Form 1042-S for scholarship but did not receive a second Form 1042-S for wages earned. These two nonresident aliens also did not report the scholarship income on Form 1040NR or Schedule OI, item L.

In order to claim the treaty exemptions to which they were entitled, these nonresident aliens also had to deviate from Form 1040NR or Schedule OI instructions. Because the taxpayer did not receive a second Form 1042-S for dependent personal services (wages), their only option was to reduce the taxable Form W-2 wages reported on Form 1040NR, line 8, to claim the treaty-based exemption. Nonresident aliens are burdened when tax forms and instructions make incorrect assumptions about their circumstances. As a result, these eight nonresident aliens were burdened as they attempted to comply with the law and claim treaty-based exemptions for \$38,773.

In four sample cases, the nonresident alien reduced Form W-2 taxable wages on Form 1040NR, line 8, or Form 1040NR-EZ, line 3. For these four cases, the nonresident alien received a Form 1042-S, and because the tax exempt wages were already reported on Form 1042-S and accounted for by the employer, when the nonresident alien reduced Form 1040NR or 1040NR-EZ taxable wages by the treaty-exempt wages, these nonresident aliens received the treaty-based exemption benefit twice. For the four cases, these nonresident aliens did not properly follow the instructions when reporting their income or did not understand that Form 1042-S income was already tax-exempt income under the income tax treaty. As a result, these four cases incorrectly reduced Form 1040NR, line 8, taxable wages by \$9,122.

Figure 6 in the report body previously showed that 37,928 nonresident aliens received both a Form W-2 and a Form 1042-S claiming \$446 million in treaty-based income exemptions. We previously identified that in 25 of 40 sample cases, the nonresident alien properly reported Form W-2 gross taxable wages on Form 1040NR, line 8, and exempt income on Form 1040NR, line 22. Based on the population data, we determined that 18,490 (49 percent) nonresident aliens



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properly reported \$260 million in taxable Form W-2 wages on Form 1040NR, line 8, and \$156 million in exempt income on Form 1040NR, line 22. For the remaining *1* of 40 sample cases, we previously discussed that:

- In eight cases, the nonresident alien faced taxpayer burden and had to disregard IRS instructions and reduce taxable wages on Form 1040NR, line 8, to claim the treaty-based exemptions to which they were entitled.
- In four cases, the taxpayer incorrectly reduced taxable wages on Form 1040NR, line 8, claiming the treaty-based exemption twice.
- *****1*****.
- *****1*****
*****1*****.

Based on the population, we determined that 19,438 (51 percent) of the nonresident aliens received both Form W-2 and Form 1042-S information returns, and the income on these information returns did not match what was reported on Form 1040NR. These nonresident aliens reported wages of \$300 million on Form 1040NR, line 8, when Form W-2 gross wages totaled \$367 million, a reduction of \$67 million in taxable wages, and reported \$290 million exempt income on Form 1040NR, line 22. When we forecast over five years,⁸ 97,190 nonresident aliens reduced taxable gross wages by \$335 million, claiming \$1.4 billion in treaty-based exemptions.

⁸ The five-year forecast is based on multiplying the base year by five and assumes, among other considerations, that economic conditions and tax laws do not change.



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Appendix V

List of Tax Treaties in Force

This appendix, obtained from the IRS.gov website,¹ lists countries that have tax treaties with the United States that are currently in force. This appendix also shows the general effective date of each treaty and protocol. A protocol is an amendment to a treaty as of October 31, 2015.² Some treaties are published in the Cumulative Bulletins, which contain official matters of the IRS.

Country	Official Text Symbol	General Effective Date	Citation	Treasury Explanations/ Treasury Decisions
Australia	TIAS 10773	Dec. 1, 1983	1986-2 C.B. 220	1986-2 C.B. 246
Protocol	TIAS 13164	Jan. 1, 2004		
Austria	TIAS	Jan. 1, 1999		
Bangladesh	TIAS 06-807	Jan. 1, 2007		
Barbados	TIAS 11090	Jan. 1, 1984	1991-2 C.B. 436	1991-2 C.B. 466
Protocol	TIAS	Jan. 1, 1994		
Protocol	TIAS	Jan. 1, 2005		
Belgium	TIAS	Jan. 1, 2008		
Bulgaria	TIAS 08-1215.1	Jan. 1, 2009		
Canada	TIAS 11087	Jan. 1, 1985	1986-2 C.B. 258	1987-2 C.B. 298
3rd Protocol	TIAS	Jan. 1, 1996		
4th Protocol	TIAS	Dec. 16, 1997		
5th Protocol	TIAS	Jan. 1, 2009		
China	TIAS 12065	Jan. 1, 1987	1988-1 C.B. 414	1988-1 C.B. 447
Commonwealth of Independent States (*)	TIAS 8225	Jan. 1, 1987	1976-2 C.B. 463	1976-2 C.B. 475

¹ https://www.irs.gov/pub/irs-utl/Tax_Treaty_Table_3.pdf.

² For this appendix, C.B. = Cumulative Bulletin, TD = Treasury Directive, and TIAS = Treaties and Other International Act Series.



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Country	Official Text Symbol	General Effective Date	Citation	Treasury Explanations/ Treasury Decisions
Cyprus	TIAS 10965	Jan. 1, 1986	1989-2 C.B. 280	1989-2 C.B. 314
Czech Republic	TIAS	Jan. 1, 1994		
Denmark	TIAS 13056	Jan. 1, 2001		
Protocol	TIAS	Jan. 1, 2008		
Egypt	TIAS 10149	Jan. 1, 1982	1982-1 C.B. 219	1982-1 C.B. 243
Estonia	TIAS 12919	Jan. 1, 2000		
Finland	TIAS 12101	Jan. 1, 1991		
Protocol	TIAS 07-1228.1	Jan. 1, 2008		
France	TIAS	Jan. 1, 1996		
Protocol	TIAS 06-1221.1	Jan. 1, 2007		
Protocol	TIAS 09-1223	Jan. 1, 2010		
Germany	TIAS	Jan 1, 1990		
Protocol	TIAS	Jan. 1, 2008		
Greece	TIAS 2902	Jan. 1, 1953	1958-2 C.B. 1054	T.D. 6109, 1954-2 C.B. 638
Hungary	TIAS 9560	Jan. 1, 1980	1980-1 C.B. 333	1980-1 C.B. 354
Iceland	TIAS 08-1215	Jan. 1, 2009		
India	TIAS	Jan. 1, 1991		
Indonesia	TIAS 11593	Jan. 1, 1990		
Protocol	TIAS	Feb. 1, 1997		
Ireland	TIAS	Jan. 1, 1998		
Amending Convention	TIAS	Sept. 1, 2000		
Israel	TIAS	Jan. 1, 1995		
Italy	TIAS	Jan. 1, 2010		
Jamaica	TIAS 10206	Jan. 1, 1982	1982-1 C.B. 257	1982-1 C.B. 291
Japan	TIAS 04-330	Jan. 1, 2005		



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Country	Official Text Symbol	General Effective Date	Citation	Treasury Explanations/ Treasury Decisions
Kazakhstan	TIAS	Jan. 1, 1996		
Korea, Republic of	TIAS 9506	Jan. 1, 1980	1979-2 C.B. 435	1979-2 C.B. 458
Latvia	TIAS 12920	Jan. 1, 2000		
Lithuania	TIAS 12921	Jan. 1, 2000		
Luxembourg	TIAS	Jan. 1, 2001		
Malta	TIAS 10-1123	Jan. 1, 2011		
Mexico	TIAS	Jan. 1, 1994	1994-2 C.B. 424	1994-2 C.B. 489
Protocol	TIAS	Oct. 26, 1995		
Protocol	TIAS	Jan. 1, 2004		
Morocco	TIAS 10194	Jan. 1, 1981	1982-2 C.B. 405	1982-2 C.B. 427
Netherlands	TIAS	Jan. 1, 1994		
Protocol	TIAS 04-1228	Jan. 1, 2005		
New Zealand	TIAS 10772	Jan. 1, 1984	1990-2 C.B. 274	1990-2 C.B. 303
Protocol	TIAS 10-1112	Jan. 1, 2011		
Norway	TIAS 7474	Jan. 1, 1971	1973-1 C.B. 669	1973-1 C.B. 693
Protocol	TIAS 10205	Jan. 1, 1982	1982-2 C.B. 440	1982-2 C.B. 454
Pakistan	TIAS 4232	Jan. 1, 1960	1960-2 C.B. 646	T.D. 6431, 1960-1 C.B. 755
Philippines	TIAS 10147	Jan. 1, 1983	1984-2 C.B. 384	1984-2 C.B. 412
Poland	TIAS 8486	Jan. 1, 1974	1977-1 C.B. 416	1977-1 C.B. 427
Portugal	TIAS	Jan. 1, 1996		
Romania	TIAS 8228	Jan. 1, 1974	1976-2 C.B. 492	1976-2 C.B. 504
Russia	TIAS	Jan. 1, 1994		
Slovak Republic	TIAS	Jan. 1, 1993		
Slovenia	TIAS	Jan. 1, 2002		
South Africa	TIAS	Jan. 1, 1998		



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Country	Official Text Symbol	General Effective Date	Citation	Treasury Explanations/ Treasury Decisions
Spain	TIAS	Jan. 1, 1991		
Sri Lanka	TIAS 04-712	Jan. 1, 2004		
Sweden	TIAS	Jan. 1, 1996		
Protocol	TIAS	Jan. 1, 2007		
Switzerland	TIAS	Jan. 1, 1998		
Thailand	TIAS	Jan. 1, 1998		
Trinidad and Tobago	TIAS 7047	Jan. 1, 1970	1971-2 C.B. 479	
Tunisia	TIAS	Jan. 1, 1990		
Turkey	TIAS	Jan. 1, 1998		
Ukraine	TIAS	Jan. 1, 2001		
United Kingdom	TIAS 13161	Jan. 1, 2004		
Venezuela	TIAS 13020	Jan. 1, 2000		

(*) *Commonwealth of Independent States includes Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.*



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Appendix VI

*Countries With Treaty Benefits for Scholarships
or Fellowship Grants (Income Code 16)*¹

If the taxpayer receives a scholarship, a fellowship grant, or other grant, all or part of the amounts received may be tax-free. Amounts used for incidental expenses, such as room and board, travel, and optional equipment are taxable. Also, taxable are amounts received as payments for teaching, research, or other services required as a condition for receiving the scholarship or fellowship grant.

Country	Maximum Years in the United States	Maximum Dollar Amounts	Treaty Article
Bangladesh	2	No Limit	21(2)
China, People's Republic of	No Limit	No Limit	20(b)
Commonwealth of Independent States (*)	5	Limited†	VI(1)
Cyprus	5	No Limit	21(1)
Czech Republic	5	No Limit	21(1)
Egypt	5	No Limit	23(1)
Estonia	5	No Limit	20(1)
France	5	No Limit	21(1)
Germany	No Limit	No Limit	20(3)
Iceland	5	No Limit	19(1)
Indonesia	5	No Limit	19(1)
Israel	5	No Limit	24(1)
Kazakhstan	5	No Limit	19
Korea, South	5	No Limit	21(1)

¹ Source: This table was obtained from the following IRS website:
https://apps.irs.gov/app/vita/content/globalmedia/treaty_benefits_incomecode16.pdf.



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Country	Maximum Years in the United States	Maximum Dollar Amounts	Treaty Article
Latvia	5	No Limit	20(1)
Lithuania	5	No Limit	20(1)
Morocco	5	No Limit	18
Netherlands	5	No Limit	22(2)
Norway	5	No Limit	16(1)
Pakistan	No Limit	No Limit	XIII(1)
Philippines	5	No Limit	22(1)
Poland	5	No Limit	18(1)
Portugal	5	No Limit	23(1)
Romania	5	No Limit	20(1)
Russia	5	No Limit	18
Slovak Republic	5	No Limit	21(1)
Slovenia	5	No Limit	20(1)
Spain	5	No Limit	22(1)
Thailand	5	No Limit	22(1)
Trinidad and Tobago	5	No Limit	19(1)
Tunisia	5	No Limit	20
Ukraine	5	No Limit	20
Venezuela	5	No Limit	21(1)

(*) *Commonwealth of Independent States includes Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.*

† *The annual income limit under the tax treaty with the Commonwealth of Independent States is less than \$10,000 if that amount is spent for the purposes for which the person is in the United States.*



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Appendix VII

*Countries With Treaty Benefits for
Studying and Training (Income Code 20)*¹

Country	Maximum Years in the United States	Maximum Dollar Amounts	Treaty Article
Bangladesh	2	\$8,000	21(2)
Belgium	No Limit	\$9,000	19(1)(b)
Bulgaria	No Limit	\$9,000	19(1)(b)
China, People's Republic of	No Limit	\$5,000	20(c)
Cyprus	5	\$2,000	21(1)
Czech Republic	5	\$5,000	21(1)
Egypt	5	\$3,000	23(1)
Estonia	5	\$5,000	20(1)
France	5	\$5,000	21(1)
Germany	4	\$9,000	20(4)
Iceland	5	\$9,000	19(1)
Indonesia	5	\$2,000	19(1)
Israel	5	\$3,000	24(1)
Korea, South	5	\$2,000	21(1)
Latvia	5	\$5,000	20(1)
Lithuania	5	\$5,000	20(1)
Malta	No Limit	\$9,000	20(2)
Morocco	5	\$2,000	18

¹ Source: This table was obtained from the following IRS website:
https://apps.irs.gov/app/vita/content/globalmedia/treaty_benefits_incomecode20.pdf.



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Country	Maximum Years in the United States	Maximum Dollar Amounts	Treaty Article
Netherlands	No Limit	\$2,000	22(1)
Norway	5	\$2,000	16(1)
Pakistan	No Limit	\$5,000	XIII(1)
Philippines	5	\$3,000	22(1)
Poland	5	\$2,000	18(1)
Portugal	5	\$5,000	23(1)
Romania	5	\$2,000	20(1)
Slovak Republic	5	\$5,000	21(1)
Slovenia	5	\$5,000	20(1)
Spain	5	\$5,000	22(1)
Thailand	5	\$3,000	22(1)
Trinidad and Tobago	5	\$2,000	19(1)
Tunisia	5	\$4,000	20
Venezuela	5	\$5,000	21(1)



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Appendix VIII

*Countries With Treaty Benefits for
Teaching or Research (Income Code 19)¹*

Country	Maximum Years in the United States	Maximum Dollar Amounts	Treaty Article
Bangladesh	2	No Limit	21(1)
Belgium	2	No Limit	19(2)
Bulgaria	2	No Limit	19(2)
China, People's Republic of	3	No Limit	19
Commonwealth of Independent States (*)	2	No Limit	VI(1)
Czech Republic	2	No Limit	21(5)
Egypt	2	No Limit	22
France	2	No Limit	20
Germany	2	No Limit	20(1)
Greece	3	No Limit	XII
Hungary	2	No Limit	17
India	2	No Limit	22
Indonesia	2	No Limit	20
Israel	2	No Limit	23
Italy	2	No Limit	20
Jamaica	2	No Limit	22
Japan	2	No Limit	20
Korea, South	2	No Limit	20

¹ Source: This table was obtained from the following IRS website:
https://apps.irs.gov/app/vita/content/globalmedia/treaty_benefits_incomecode19.pdf.



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Country	Maximum Years in the United States	Maximum Dollar Amounts	Treaty Article
Luxembourg	2	No Limit	21(2)
Netherlands	2	No Limit	21(1)
Norway	2	No Limit	15
Pakistan	2	No Limit	XII
Philippines	2	No Limit	21
Poland	2	No Limit	17
Portugal	2	No Limit	22
Romania	2	No Limit	19
Slovak Republic	2	No Limit	21(5)
Slovenia	2	No Limit	20(3)
Thailand	2	No Limit	23
Trinidad and Tobago	2	No Limit	18
Turkey	2	No Limit	20(2)
United Kingdom	2	No Limit	20A
Venezuela	2	No Limit	21(3)

(*) *Commonwealth of Independent States include Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.*



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Appendix IX

*Form 1040NR, U.S. Nonresident Alien
Income Tax Return*

Form 1040NR	U.S. Nonresident Alien Income Tax Return	OMB No. 1545-0074
Department of the Treasury Internal Revenue Service	Information about Form 1040NR and its separate instructions is at www.irs.gov/form1040nr . For the year January 1–December 31, 2015, or other tax year beginning _____, 2015, and ending _____, 20_____	2015
Please print or type	Your first name and initial _____ Last name _____	Identifying number (see instructions) _____
	Present home address (number, street, and apt. no., or rural route). If you have a P.O. box, see instructions. Check it: <input type="checkbox"/> Individual <input type="checkbox"/> Estate or Trust	
	City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).	
	Foreign country name _____ Foreign province/state/country _____	Foreign postal code _____
Filing Status	1 <input type="checkbox"/> Single resident of Canada or Mexico or single U.S. national 4 <input type="checkbox"/> Married resident of South Korea 2 <input type="checkbox"/> Other single nonresident alien 5 <input type="checkbox"/> Other married nonresident alien 3 <input type="checkbox"/> Married resident of Canada or Mexico or married U.S. national 6 <input type="checkbox"/> Qualifying widow(er) with dependent child (see instructions)	
Check only one box.	If you checked box 3 or 4 above, enter the information below.	
	(i) Spouse's first name and initial _____	(ii) Spouse's last name _____ (iii) Spouse's identifying number _____
Exemptions	7a <input type="checkbox"/> Yourself. If someone can claim you as a dependent, do not check box 7a b <input type="checkbox"/> Spouse. Check box 7b only if you checked box 3 or 4 above and your spouse did not have any U.S. gross income	
If more than four dependents, see instructions.	c Dependents: (see instructions)	
	(1) First name _____ Last name _____	(2) Dependent's identifying number _____ (3) Dependent's relationship to you _____ (4) <input type="checkbox"/> if qualifying child for child tax credit (see instr.)
	_____	_____
	_____	_____
	d Total number of exemptions claimed Add numbers on lines above ▶ <input type="text"/>	
Income Effectively Connected With U.S. Trade/ Business	8 Wages, salaries, tips, etc. Attach Form(s) W-2 8 9a Taxable interest 9a b Tax-exempt interest. Do not include on line 9a 9b 10a Ordinary dividends 10a b Qualified dividends (see instructions) 10b 11 Taxable refunds, credits, or offsets of state and local income taxes (see instructions) 11 12 Scholarship and fellowship grants. Attach Form(s) 1042-S or required statement (see instructions) 12 13 Business income or (loss). Attach Schedule C or C-EZ (Form 1040) 13 14 Capital gain or (loss). Attach Schedule D (Form 1040) if required. If not required, check here <input type="checkbox"/> 14 15 Other gains or (losses). Attach Form 4797 15 16a IRA distributions 16a 16b Taxable amount (see instructions) 16b 17a Pensions and annuities 17a 17b Taxable amount (see instructions) 17b 18 Rental real estate, royalties, partnerships, trusts, etc. Attach Schedule E (Form 1040) 18 19 Farm income or (loss). Attach Schedule F (Form 1040) 19 20 Unemployment compensation 20 21 Other income. List type and amount (see instructions) 21 22 Total income exempt by a treaty from page 5, Schedule OI, Item L (1)(e) 22 23 Combine the amounts in the far right column for lines 8 through 21. This is your total effectively connected income 23	
Adjusted Gross Income	24 Educator expenses (see instructions) 24 25 Health savings account deduction. Attach Form 8889 25 26 Moving expenses. Attach Form 3903 26 27 Deductible part of self-employment tax. Attach Schedule SE (Form 1040) 27 28 Self-employed SEP, SIMPLE, and qualified plans 28 29 Self-employed health insurance deduction (see instructions) 29 30 Penalty on early withdrawal of savings 30 31 Scholarship and fellowship grants excluded 31 32 IRA deduction (see instructions) 32 33 Student loan interest deduction (see instructions) 33 34 Domestic production activities deduction. Attach Form 8903 34 35 Add lines 24 through 34 35 36 Subtract line 35 from line 23. This is your adjusted gross income 36	



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Form 1040NR (2015)

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Schedule NEC—Tax on Income Not Effectively Connected With a U.S. Trade or Business (see instructions)

Nature of income	Enter amount of income under the appropriate rate of tax (see instructions)					
	(a) 10%	(b) 15%	(c) 30%	(d) Other (specify)		
				%	%	
1 Dividends paid by:						
a U.S. corporations	1a					
b Foreign corporations	1b					
2 Interest:						
a Mortgage	2a					
b Paid by foreign corporations	2b					
c Other	2c					
3 Industrial royalties (patents, trademarks, etc.)	3					
4 Motion picture or T.V. copyright royalties	4					
5 Other royalties (copyrights, recording, publishing, etc.)	5					
6 Real property income and natural resources royalties	6					
7 Pensions and annuities	7					
8 Social security benefits	8					
9 Capital gain from line 18 below	9					
10 Gambling—Residents of Canada only. Enter net income in column (c). If zero or less, enter -0-.						
a Winnings						
b Losses						
11 Gambling winnings—Residents of countries other than Canada. Note: Losses not allowed	11					
12 Other (specify) ▶	12					
13 Add lines 1a through 12 in columns (a) through (d)	13					
14 Multiply line 13 by rate of tax at top of each column	14					
15 Tax on income not effectively connected with a U.S. trade or business. Add columns (a) through (d) of line 14. Enter the total here and on Form 1040NR, line 54 ▶	15					

Capital Gains and Losses From Sales or Exchanges of Property

	(a) Kind of property and description (if necessary, attach statement of descriptive details not shown below)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis	(f) LOSS If (e) is more than (d), subtract (d) from (e)	(g) GAIN If (d) is more than (e), subtract (e) from (d)
Enter only the capital gains and losses from property sales or exchanges that are from sources within the United States and not effectively connected with a U.S. business. Do not include a gain or loss on disposing of a U.S. real property interest; report these gains and losses on Schedule D (Form 1040). Report property sales or exchanges that are effectively connected with a U.S. business on Schedule D (Form 1040), Form 4797, or both.							
	17 Add columns (f) and (g) of line 16					17 ()	
	18 Capital gain. Combine columns (f) and (g) of line 17. Enter the net gain here and on line 9 above (if a loss, enter -0-) ▶						18

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Schedule OI—Other Information (see instructions)

Answer all questions

A Of what country or countries were you a citizen or national during the tax year? _____

B In what country did you claim residence for tax purposes during the tax year? _____

C Have you ever applied to be a green card holder (lawful permanent resident) of the United States? **Yes** **No**

D Were you ever:
 1. A U.S. citizen? **Yes** **No**
 2. A green card holder (lawful permanent resident) of the United States? **Yes** **No**
 If you answer "Yes" to (1) or (2), see Pub. 519, chapter 4, for expatriation rules that apply to you.

E If you had a visa on the last day of the tax year, enter your visa type. If you did not have a visa, enter your U.S. immigration status on the last day of the tax year. _____

F Have you ever changed your visa type (nonimmigrant status) or U.S. immigration status? **Yes** **No**
 If you answered "Yes," indicate the date and nature of the change. ▶ _____

G List all dates you entered and left the United States during 2015 (see instructions).
Note: If you are a resident of Canada or Mexico AND commute to work in the United States at frequent intervals, check the box for **Canada or Mexico** and skip to item H **Canada** **Mexico**

Date entered United States mm/dd/yy	Date departed United States mm/dd/yy	Date entered United States mm/dd/yy	Date departed United States mm/dd/yy

H Give number of days (including vacation, nonworkdays, and partial days) you were present in the United States during:
 2013 _____, 2014 _____, and 2015 _____.

I Did you file a U.S. income tax return for any prior year? **Yes** **No**
 If "Yes," give the latest year and form number you filed . . . ▶ _____

J Are you filing a return for a trust? **Yes** **No**
 If "Yes," did the trust have a U.S. or foreign owner under the grantor trust rules, make a distribution or loan to a U.S. person, or receive a contribution from a U.S. person? **Yes** **No**

K Did you receive total compensation of \$250,000 or more during the tax year? **Yes** **No**
 If "Yes," did you use an alternative method to determine the source of this compensation? **Yes** **No**

L Income Exempt from Tax—If you are claiming exemption from income tax under a U.S. income tax treaty with a foreign country, complete (1) through (3) below. See Pub. 901 for more information on tax treaties.

1. Enter the name of the country, the applicable tax treaty article, the number of months in prior years you claimed the treaty benefit, and the amount of exempt income in the columns below. Attach Form 8833 if required (see instructions).

(a) Country	(b) Tax treaty article	(c) Number of months claimed in prior tax years	(d) Amount of exempt income in current tax year

(e) Total. Enter this amount on Form 1040NR, line 22. Do not enter it on line 8 or line 12

2. Were you subject to tax in a foreign country on any of the income shown in 1(d) above? **Yes** **No**

3. Are you claiming treaty benefits pursuant to a Competent Authority determination? **Yes** **No**
 If "Yes," attach a copy of the Competent Authority determination letter to your return.

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Appendix X

Form 1040NR-EZ, U.S. Income Tax Return for
Certain Nonresident Aliens With No Dependents

Form **1040NR-EZ** U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents OMB No. 1545-0074
Department of the Treasury Internal Revenue Service Information about Form 1040NR-EZ and its instructions is at www.irs.gov/form1040nrez. **2015**

Please print or type. See separate instructions.

Your first name and initial Last name Identifying number (see instructions)

Present home address (number, street, and apt. no., or rural route). If you have a P.O. box, see instructions.

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).

Foreign country name Foreign province/state/county Foreign postal code

Filing Status
Check only one box. 1 Single nonresident alien 2 Married nonresident alien

Attach Form(s) W-2 or 1042-S here. Also attach Form(s) 1099-R if tax was withheld.

3	Wages, salaries, tips, etc. Attach Form(s) W-2	3	
4	Taxable refunds, credits, or offsets of state and local income taxes	4	
5	Scholarship and fellowship grants. Attach Form(s) 1042-S or required statement	5	
6	Total income exempt by a treaty from page 2, Item J(1)(e)	6	
7	Add lines 3, 4, and 5	7	
8	Scholarship and fellowship grants excluded	8	
9	Student loan interest deduction	9	
10	Subtract the sum of line 8 and line 9 from line 7. This is your adjusted gross income	10	
11	Itemized deductions (see instructions)	11	
12	Subtract line 11 from line 10	12	
13	Exemption (see instructions)	13	
14	Taxable income. Subtract line 13 from line 12. If line 13 is more than line 12, enter -0-	14	
15	Tax. Find your tax in the tax table in the instructions	15	
16	Unreported social security and Medicare tax from Form: a <input type="checkbox"/> 4137 b <input type="checkbox"/> 8919	16	
17	Add lines 15 and 16. This is your total tax	17	
18a	Federal income tax withheld from Form(s) W-2 and 1099-R	18a	
18b	Federal income tax withheld from Form(s) 1042-S	18b	
19	2015 estimated tax payments and amount applied from 2014 return	19	
20	Credit for amount paid with Form 1040-C	20	
21	Add lines 18a through 20. These are your total payments	21	
22	If line 21 is more than line 17, subtract line 17 from line 21. This is the amount you overpaid	22	
23a	Amount of line 22 you want refunded to you . If Form 8888 is attached, check here <input type="checkbox"/>	23a	
b	Routing number	c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings	
d	Account number		
e	If you want your refund check mailed to an address outside the United States not shown above, enter that address here:		
24	Amount of line 22 you want applied to your 2016 estimated tax	24	
25	Amount you owe. Subtract line 21 from line 17. For details on how to pay, see instructions	25	
26	Estimated tax penalty (see instructions)	26	

Refund
Direct deposit? See instructions.

Amount You Owe

Third Party Designee
Do you want to allow another person to discuss this return with the IRS (see instructions)? Yes. Complete the following. No
Designee's name Phone no. Personal identification number (PIN)

Sign Here
Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and accurately list all amounts and sources of U.S. source income I received during the tax year. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.
Your signature Date Your occupation in the United States If the IRS sent you an Identity Protection PIN, enter it here (see inst.)

Paid Preparer Use Only
Print/Type preparer's name Preparer's signature Date Check if self-employed PTIN
Firm's name Firm's EIN
Firm's address Phone no.

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see instructions. Cat. No. 21534N Form **1040NR-EZ** (2015)



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Schedule OI- Other Information (see instructions)
Answer all questions

- A** Of what country or countries were you a citizen or national during the tax year? _____
- B** In what country did you claim residence for tax purposes during the tax year? _____
- C** Have you ever applied to be a green card holder (lawful permanent resident) of the United States? **Yes** **No**
- D** Were you ever:
1. A U.S. citizen? **Yes** **No**
2. A green card holder (lawful permanent resident) of the United States? **Yes** **No**
- If you answer "Yes" to (1) or (2), see Pub. 519, chapter 4, for expatriation rules that may apply to you.
- E** If you had a visa on the last day of the tax year, enter your visa type. If you did not have a visa, enter your U.S. immigration status on the last day of the tax year. _____
- F** Have you ever changed your visa type (nonimmigrant status) or U.S. immigration status? **Yes** **No**
If you answered "Yes," indicate the date and nature of the change. ► _____
- G** List all dates you entered and left the United States during 2015 (see instructions).
Note. If you are a resident of Canada or Mexico AND commute to work in the United States at frequent intervals, **check the box for Canada or Mexico** and skip to item H **Canada** **Mexico**

Date entered United States mm/dd/yy	Date departed United States mm/dd/yy

Date entered United States mm/dd/yy	Date departed United States mm/dd/yy

- H** Give number of days (including vacation, nonworkdays, and partial days) you were present in the United States during:
2013 _____, 2014 _____, and 2015 _____.
- I** Did you file a U.S. income tax return for any prior year? **Yes** **No**
If "Yes," give the latest year and form number you filed ► _____

J Income Exempt from Tax—If you are claiming exemption from income tax under a U.S. income tax treaty with a foreign country, complete (1) through (3) below. See Pub. 901 for more information on tax treaties.

1. Enter the name of the country, the applicable tax treaty article, the number of months in prior years you claimed the treaty benefit, and the amount of exempt income in the columns below. Attach Form 8833 if required (see instructions).

(a) Country	(b) Tax treaty article	(c) Number of months claimed in prior tax years	(d) Amount of exempt income in current tax year

- (e) Total.** Enter this amount on Form 1040NR-EZ, line 6. Do not enter it on line 3 or line 5
2. Were you subject to tax in a foreign country on any of the income shown in 1(d) above? **Yes** **No**
3. Are you claiming treaty benefits pursuant to a Competent Authority determination? **Yes** **No**
If "Yes," attach a copy of the Competent Authority determination letter to your return.



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Appendix XI

Glossary of Terms

Term	Definition
Campus	The data processing arm of the IRS. The campuses process paper and electronic submissions, correct errors, and forward data to the Computing Centers for analysis and posting to taxpayer accounts.
Dependent Personal Services	Services performed as an employee in the United States by a nonresident alien. Dependent personal services include compensatory scholarship or fellowship income. Compensation for such services includes wages, salaries, fees, bonuses, commissions, and similar designations for amounts paid to an employee.
Green Card Test	You are a resident, for U.S. Federal tax purposes, if you are a Lawful Permanent Resident of the United States at any time during the calendar year. This is known as the “green card” test. 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.
Individual Master File	The IRS database that maintains transactions or records of individual tax accounts.
Individual Return Transaction File	Contains data transcribed from initial input of the original individual tax returns during return processing.
Information Return Master File	An IRS database that contains third-party information documents for nonresident aliens.
Integrated Data Retrieval System	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer’s account records.
Nonresident Alien	An alien is any individual who is not a U.S. citizen or U.S. national. A nonresident alien is an alien who has not passed the green card test or the substantial presence test.



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Term	Definition
Processing Year	The calendar year in which the tax return or document is processed by the IRS.
Return Transaction File	The Return Transaction File contains line items transcribed during return processing and other fields such as math calculations. Subsequent or amended return data are not contained in the file.
Substantial Presence Test	<p>To meet this test, you must be physically present in the United States for at least: 1) 31 calendar days during the current year and 2) 183 calendar days during the three-year period that includes the current year and the two years immediately before that, counting:</p> <ul style="list-style-type: none"> • All the days you were present in the current year. • 1/3 of the days you were present in the first year before the current year. <p>1/6 of the days you were present in the second year before the current year.</p>
Tax Examiner	Employees in field offices who conduct examinations through correspondence. Among other duties, a tax examiner processes tax returns, establishes and edits tax account records, and determines proper tax liabilities.
Tax Year	The 12-month accounting period for keeping records on income and expenses used as the basis for calculating the annual taxes due. For most individual nonresident aliens, the tax year is synonymous with the calendar year.
Treasury Inspector General for Tax Administration Data Center Warehouse	An online database maintained by TIGTA. The Data Center Warehouse pulls data from IRS system resources, such as IRS Collection function and Examination function files, for TIGTA access.



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Term	Definition
Withholding Agent	A U.S. or foreign person that has control, receipt, custody, disposal, or payment of any item of income of a foreign person that is subject to withholding. A withholding agent may be an individual, corporation, partnership, trust, association, or any other entity, including any foreign intermediary, foreign partnership, or U.S. branch of certain foreign banks and insurance companies.



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Appendix XII

Management's Response to the Draft Report




COMMISSIONER
LARGE BUSINESS AND
INTERNATIONAL DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

September 4, 2018

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Douglas W. O'Donnell 
Commissioner, Large Business and International Division

SUBJECT: Draft Audit Report # 2017-30-024, Forms, Instructions,
Publications, and Procedures Need to be Improved for Some
Nonresident Aliens Eligible for Treaty-Based Income Exemptions

Thank you for the opportunity to respond to your report entitled "*Forms, Instructions, Publications, and Procedures Need to be Improved for Some Nonresident Aliens Eligible for Treaty-Based Income Exemptions (TIGTA Audit 2017-30-024).*"

We appreciate the collaboration between the TIGTA audit team and IRS personnel in identifying opportunities to help taxpayers understand how to claim tax treaty exemptions. The process for claiming tax treaty exemptions normally starts with the taxpayer giving the withholding agent a certification of their tax status. The certification provides the withholding agent with the information needed to withhold (or forebear from withholding) tax at the rate that corresponds with the taxpayer's status. The taxpayer's status and withholding information is then reported on an information return that assists the taxpayer with return preparation.

There are instances where the withholding agent does not receive the information needed to determine the correct rate of tax withholding. In these cases, the taxpayer's information return is not consistent with their tax status. The report highlights the difficulty of anticipating the errors that might have occurred and writing tax return instructions that assist taxpayers with claiming the correct exemption despite having information returns that are not consistent with their circumstances.

The IRS' Large Business and International Division (LB&I) recently announced a compliance campaign, *Forms 1042/1042-S Compliance*, directed at withholding agents with the goal of helping them improve their withholding and reporting accuracy. As part of this effort, we will consider updates to the applicable forms, instructions, and publications to clarify how nonresident aliens may claim a treaty exemption, even if an earlier error caused them to receive information returns that are not consistent with their tax status.



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We disagree with the outcome measure on reliability of information. We acknowledge the transcription errors, but the seven nonresident aliens who had these errors on their accounts did not receive excessive treaty exemptions. As stated in Appendix IV of the report, the erroneous data could have an adverse impact only if the IRS were to use the data in any official publications or to identify any patterns or trends related to nonresident aliens who claimed treaty-based exemptions. Since we are not using the erroneous data in this manner, the outcome measure of \$5.7 billion is overstated.

Attached is a detailed response outlining our corrective actions to address your recommendations. If you have any questions, please contact me or members of your staff may contact John V. Cardone, Director, Withholding and International Individual Compliance Practice Area, at (202) 317-8830.

Attachment



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Attachment

RECOMMENDATION 1:

The Commissioner, Large Business and International Division, should consider updating the appropriate forms, instructions and publications to clarify how nonresident aliens who do not file a Form 8233 with their employer are still able to claim the treaty exemption.

CORRECTIVE ACTIONS:

We agree with this recommendation. The Withholding and International Individual Compliance Practice Area, in collaboration with the Assistant Deputy Commissioner for Compliance Integration, will recommend the expansion of existing language or additional language in relevant tax products (Form 1040NR, Form 8233 instructions and other appropriate Publications) to clarify how taxpayers that did not properly file a Form 8233 with their employer may claim a treaty exemption, if allowable. Updates to the tax product will occur as soon as resources permit.

IMPLEMENTATION DATE:

January 15, 2020

RESPONSIBLE OFFICIAL(S):

The Director, Withholding and International Individual Compliance Practice Area

CORRECTIVE ACTION(S) MONITORING PLAN:

We will monitor this corrective action as part of our internal management control system.

RECOMMENDATION 2:

The Commissioner, Large Business and International Division, should increase outreach and education to withholding agents and nonresident aliens to improve their knowledge of the information reporting rules, improve the accuracy of information reporting and reduce the number of erroneous tax returns.



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CORRECTIVE ACTIONS:

We agree with this recommendation. The “Forms 1042/1042-S Compliance” and “Nonresident Alien Tax Treaty Exemption” campaigns include outreach to external stakeholders as treatment streams intended to improve the knowledge of withholding agents and taxpayers. Outreach will include efforts to improve digital resources (irs.gov) and outreach to the withholding agents.

IMPLEMENTATION DATE:

January 15, 2020

RESPONSIBLE OFFICIAL(S):

The Director, Withholding and International Individual Compliance Practice Area

CORRECTIVE ACTION(S) MONITORING PLAN:

We will monitor this corrective action as part of our internal management control system.