

# *Tax Information for International Postdocs*

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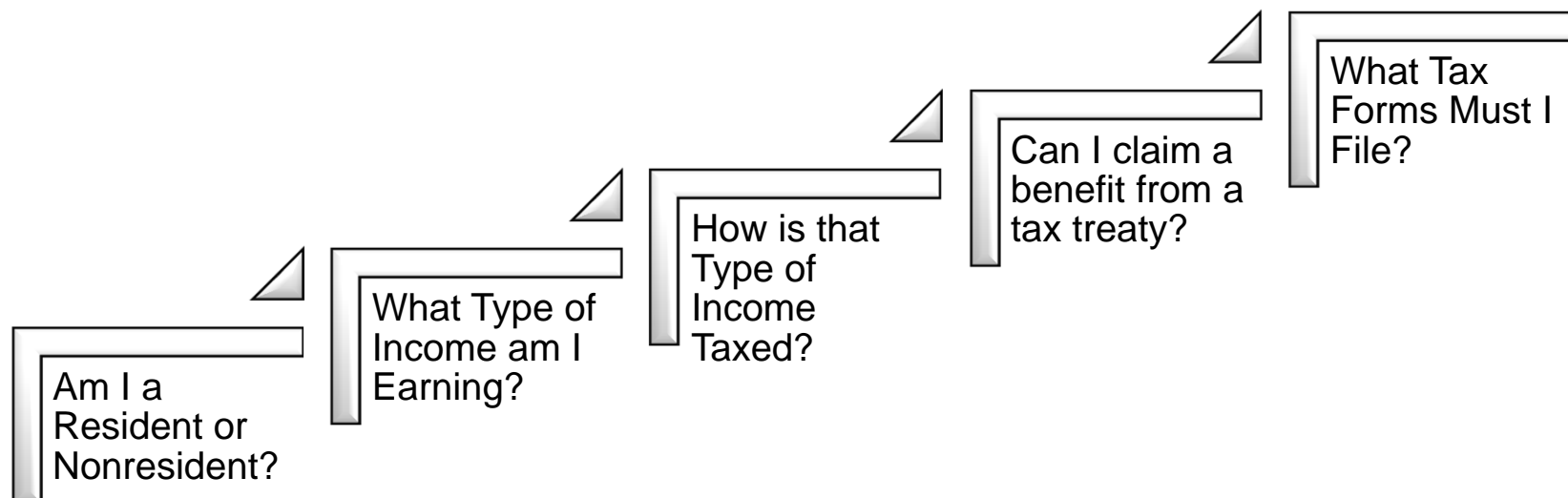
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# ***How to Tackle Postdoc Tax Issues?***

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# ***Resident vs. Nonresident Tax Status***

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- Why is it important to determine whether you are deemed to be a Resident or Nonresident of the US?



**US Resident-  
Worldwide Income**



**US Nonresident Alien-  
US Source Income**

- Is it a choice?
- Does it correspond to your visa status?

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# ***Statutory Tests for Determining Residency Status***

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- **Greencard Test**
- **Substantial Presence Test**
  - ❖ **At least 31 days in the US in the current year AND**
  - ❖ **At least 183 days in the US over the last 3 years (weighted-average)**
- **But....**
  - ❖ **Closer connection exception could apply if in the US fewer than 183 days in the current year and have a closer connection to a tax home in a foreign country, or...**
  - ❖ **Tax treaty tie-breaker residency provisions, or...**
  - ❖ **Use of the “Exempt Individual” Rules**



## ***Exempt Individual***

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- **Exemption from counting days NOT from being exempt from US tax**
- **May be able to protect nonresident status and avoid worldwide taxation in the US**
- **Exempt status provisions for teachers/trainees. To qualify, individual must be:**
  - ❖ **Temporarily in the US under a J or Q visa other than as a student**
  - ❖ **Can demonstrate compliance with standards of visa**
  - ❖ **Do not need to actually be teaching or being trained to qualify**
- **Immediate family**
- **Not an indefinite exemption- teacher/trainee cannot be an exempt individual for more than any part of two or more of the six calendar years preceding the testing year**



# ***Typical Nonresident Alien Postdoc Income Sources***

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Compensation for Services

Fellowship Grant

US Source Investment Income



## ***Nonresident Fellowship Grant vs. Compensation***

	<b>Grant</b>	<b>Compensation</b>
<b>Category</b>	Generally post-doctoral fellows	Generally post-doctoral associates
<b>Statutory Exclusions</b>	IRC §117 (but generally postdocs won't received exempt payments)	Limited exclusions
<b>Sourcing</b>	Residence of payor	Where services are performed
<b>Withholding</b>	Reduced 14% withholding rate on payments for nonqualified expenses; no Massachusetts withholding	Income tax withheld at source or through paycheck
<b>FICA</b>	Not subject to FICA withholding	Subject to FICA withholding (with some exceptions)
<b>Tax Treaties</b>	Student Article	Teacher/Researcher Article

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# ***FICA/Self-employment Taxes***

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- **Nonresident alien FICA exemption**
  - ❖ **Nonresident under substantial presence test**
  - ❖ **Is an F, J, M or Q visa holder**
  - ❖ **Is performing services to carry out the purposes of his visa**
  - ❖ **Should be automatic**



# ***Treaty Benefits for Compensation***

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- **Teacher/Researcher Article**
- **Variations in treaty language include:**
  - ❖ **What is the time limit of the available exclusion?**
  - ❖ **Must your visit be “expected to last” within that time frame?**
  - ❖ **Is the exemption lost retroactively if time period is exceeded?**
  - ❖ **Can you re-use the exemption?**
  - ❖ **Can you claim it immediately after a student exemption?**



## ***Sample Treaty Provisions***

<b>Treaty Country</b>	<b>Teacher/ Researcher Article</b>	<b>Time Limit</b>	<b>Other Restrictions</b>
China	19	3 Years	Allows exemption for services at research institutions in addition to educational institutions
India	22	2 Years	Exemption lost retroactively if stay exceeds 2 years
Poland	17	2 Years	<ul style="list-style-type: none"><li>• Cannot claim teacher/researcher benefits immediately following student benefits</li><li>• Combination of teacher/researcher and student exemptions cannot exceed 5 years</li><li>• Visit cannot be “expected” to last more than 2 years</li></ul>

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## ***Tax Treaty Countries Without Teacher/Researcher Provision***

Australia	Mexico
Austria	Morocco
Barbados	New Zealand
Bermuda	Russia
Canada	South Africa
Cyprus	Spain
Denmark	Sri Lanka
Finland	Sweden
Ireland	Switzerland
Kazakhstan	Tunisia
Malta	

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## ***Nonresident Investment Income***

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- ❖ **Sourcing Rules**
- ❖ **30% FDAP Withholding**
- ❖ **Some statutory exclusions (i.e. portfolio interest exception)**
- ❖ **Some treaty exclusions and/or reduced treaty rates**
- ❖ **Still reportable on US tax return (assuming you have other types of income to report)**



# Withholding Forms

<b>Form 8233</b> Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual OMB No. 1545-0056	
<b>Who Should Use This Form?</b> Note: For definitions of terms used in this section and detailed instructions on required withholding forms for each type of income, see Definitions on pages 1 and 2 of the instructions.	<b>IF you are a nonresident alien individual who is receiving . . .</b>  Compensation for independent personal services performed in the United States  Compensation for dependent personal services performed in the United States  Noncompensatory scholarship or fellowship income and personal services income from the same withholding agent  <b>THEN, if you are the beneficial owner of that income, use this form to claim . . .</b>  A tax treaty withholding exemption (independent personal services, business profits) for part or all of that compensation and/or to claim the daily personal exemption amount.  A tax treaty withholding exemption for part or all of that compensation. <b>Note: Do not use Form 8233 to claim the daily personal exemption amount.</b>  A tax treaty withholding exemption for part or all of both types of income.  <b>DO NOT USE This Form . . .</b>  Receiving compensation for dependent personal services performed in the United States and you are not claiming a tax treaty withholding exemption for that compensation.  Receiving noncompensatory scholarship or fellowship income and you are not receiving any personal services income from the same withholding agent.  Claiming only foreign status or treaty benefits with respect to income that is not compensation for personal services.  <b>Form 8233</b>

This exemption is applicable for compensation for calendar year . . . , or other tax year beginning . . . and ending . . .

## FORM 8233- COMPENSATION/TREATY BENEFITS

<b>Form W-8BEN</b> Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding OMB No. 1545-1021	
<b>Section references are to the Internal Revenue Code. See separate instructions.</b> <b>Give this form to the withholding agent or payer. Do not send to the IRS.</b>  <b>Do not use this form for:</b> • A U.S. citizen or other U.S. person, including a resident alien individual . . . W-9 • A person claiming that income is effectively connected with the conduct of a trade or business in the United States . . . W-8ECI • A foreign partnership, a foreign simple trust, or a foreign grantor trust (see instructions for exceptions) . . . W-8ECI or W-8BEN • A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected income or that is claiming the applicability of sections 1152, 501(c), 892, 895, or 1443(b) (see instructions) . . . W-8ECI or W-8BEN <b>Note: These entities should use Form W-8BEN if they are claiming treaty benefits or are providing the form only to claim they are a foreign person exempt from backup withholding.</b> • A person acting as an intermediary . . . W-8IMY <b>Note: See instructions for additional exceptions.</b>	
<b>Part I Identification of Beneficial Owner (See instructions.)</b>	
1 Name of individual or organization that is the beneficial owner	2 Country of incorporation or organization
3 Type of beneficial owner: <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Disregarded entity <input type="checkbox"/> Partnership <input type="checkbox"/> Simple trust <input type="checkbox"/> Grantor trust <input type="checkbox"/> Complex trust <input type="checkbox"/> Estate <input type="checkbox"/> Government <input type="checkbox"/> International organization <input type="checkbox"/> Central bank of issue <input type="checkbox"/> Tax-exempt organization <input type="checkbox"/> Private foundation	
4 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address. City or town, state or province. Include postal code where appropriate. Country (do not abbreviate)	
5 Mailing address (if different from above) City or town, state or province. Include postal code where appropriate. Country (do not abbreviate)	
6 U.S. taxpayer identification number, if required (see instructions) <input type="checkbox"/> SSN or ITIN <input type="checkbox"/> EIN	
7 Foreign tax identifying number, if any (optional)	
8 Reference number(s) (see instructions)	

## W-8BEN- NONCOMPENSATORY GRANTS & FDAP

<b>Form W-4</b> Employee's Withholding Allowance Certificate OMB No. 1545-0074	
<b>2012</b> <b>Whether you are entitled to claim a certain number of allowances or exemption from withholding is subject to review by the IRS. Your employer may be required to send a copy of this form to the IRS.</b>	
1 Your first name and middle initial	2 Your social security number
Home address (number and street or rural route)	
City or town, state, and ZIP code	
3 <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but widowed at higher Single rate. <b>Note.</b> If married, but legally separated, or spouse is a nonresident alien, check the "Single" box.	
4 If your last name differs from that shown on your social security card, check here. You must call 1-800-772-1213 for a replacement card. <input type="checkbox"/>	
5 Total number of allowances you are claiming (from line H above or from the applicable worksheet on page 2)	6
7 I claim exemption from withholding for 2012, and I certify that I meet both of the following conditions for exemption: • Last year I had a right to a refund of all federal income tax withheld because I had no tax liability, and • This year I expect a refund of all federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here. <input type="checkbox"/> 7	
Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete.	
Employee's signature (This form is not valid unless you sign it.)	
8 Employer's name and address (Employer: Complete lines 8 and 10 only if sending to the IRS)	9 Office code (optional)
10 Employer identification number (EIN)	

For Privacy Act and Paperwork Reduction Act Notice, see page 2.

Cat. No. 10220Q

Form W-4 (2012)

## W-4- WAGES/NO TREATY

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# ***Nonresident Alien Federal and State Income Tax Returns***

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## ➤ **Form 1040NR**

- ❖ Required for nonresident aliens deemed engaged in a US trade or business
- ❖ Place to claim refunds for excess withholdings
- ❖ Place to claim deductions for research expenses
- ❖ Allows preservation of ability to claim deductions
- ❖ Form 8843 for Exempt Status
- ❖ Initial deadline of April 15<sup>th</sup> for the previous calendar year
- ❖ Nonresidents can generally only claim a single personal exemption and not claim deductions for exemptions for a spouse or dependents (exceptions for residents of Canada, Mexico or South Korea)

## ➤ **Massachusetts Form 1 or Form 1 NR/PY**

- ❖ MA residency?
- ❖ Estimated tax payments
- ❖ Generally follows tax treaties (still must file)





# ***Information Reporting***

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- **Resident aliens are subject to substantial informational reporting requirements including:**

**FBAR**

**Form 8938**

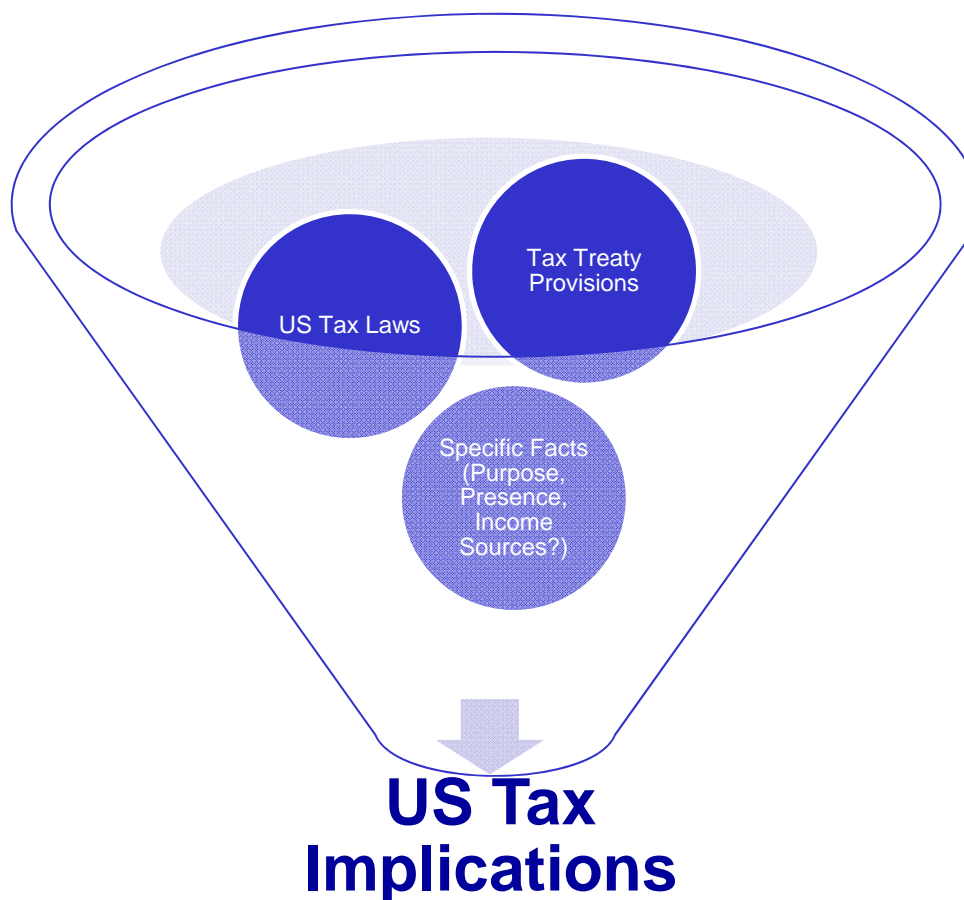
- **Need to be careful of this requirement in the year that status switches from nonresident to resident**
- **Penalties for noncompliance start at \$10,000**





## Conclusion

Every Case =  
Fresh Analysis



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## **Conclusion**

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Identify opportunities within statute  
and tax treaties



Proactive compliance with income  
tax and withholding form obligations



Plan in advance if you anticipate a  
switch to US Resident status



**Questions?**

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