

Tax Treaty Benefits for Workers, Trainees, Students, and Researchers

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ONESOURCE® NONRESIDENT ALIEN TAXATION



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As organizations, both large and small, become increasingly more global, tax and payroll practitioners must expand their base of knowledge to encompass the rules that apply to payments to foreign nationals working, studying, training or engaged in research in the United States and to cross-border payments related to those activities. An important consideration for cross-border services is the potential availability of benefits under the United States' network of income tax treaties. This purpose of this article is to provide an overview of how income tax treaties reduce U.S. income taxes and the administrative rules which employers, payers, and taxpayers must follow to claim treaty benefits.

INTRODUCTION TO TAX TREATIES

Income tax treaties are bilateral agreements negotiated between countries for the purpose of avoiding double taxation, providing information exchange, and reducing or eliminating source country tax for treaty country residents. The United States has treaties in effect with over 60 countries. The former USSR covers the nine Newly Independent States (NIS) that have not yet negotiated a treaty with the United States.² Tax treaties may be renegotiated to replace an existing treaty or they may be with a country with which the United States currently has no income tax treaty. Existing treaties may be changed by an amendment (called a "protocol").

Treaties become effective upon ratification by the legislative branch of each country. The U.S. Senate ratifies our treaties. The effective date of a treaty is the date that instruments of ratification are exchanged between the President of the United States and his counterpart in the treaty country. An overview of the existing treaties can be found in IRS Publication 901, U.S. Tax Treaties. As the IRS points out, this is a starting place for information about treaties since many treaty provisions, particularly those articles related to how treaties work, are not included in that publication. Tax treaties are available on the IRS website. However, any protocol(s) are not integrated into the treaty text but, rather are provided separately forcing the reader to determine if a treaty provision has been changed and, if so, how. Tax treaty services may be purchased from the major publishing companies. Abbreviated versions of the treaties with articles related to foreign nationals are available at www.windstar.com.

Treaties are interpreted in a number of ways. After a treaty is initially signed, the Treasury Department issues a Treasury Explanation of the treaty giving IRS's interpretation of the treaty provisions for negotiation purposes. IRS has issued revenue rulings, revenue procedures, private letter rulings and various internal memoranda giving interpretive guidance on the application of treaty provisions. However, most IRS rulings date to the 1980s and before because rulings about the application of treaty provisions to services are not on the IRS's "International No Rule List."³ Terms not defined in a treaty or rulings are defined by the tax law of the country from which an exemption from tax is sought. In the Case of the United States, that is the Internal Revenue Code ("the Code") and the

regulations. When there are no rulings or tax law or regulation interpretations as to a term, the common usage of the term applies.

TAX TREATY STRUCTURE.

Tax treaties are organized topically into "articles." The order of the articles varies by treaty as do the article names. (Some treaties, such as the treaty with China, include no article names.) Articles on some topics, such as Teachers and Researchers, are not included in all treaties.⁴

Most treaty articles describe the conditions that must be met to reduce or eliminate U.S. tax on income. However, a number of articles describe how treaties work, such as Entry into Force, Taxes Covered, and Residency. The "Saving Clause" which is not a separate article, is also important for determining when treaty benefits are lost or preserved.

Entry into Force. Entry Into Force Articles describe the application date of treaty articles with reference to the treaty effective date. The articles related to withholding at source (Dividends, interest, Royalties, etc.) typically enter into force on the first day of the second full month following the effective date. All other provisions typically enter into force as of January 1 of the calendar year following ratification.

The Entry Into Force Article for new treaties that replace older treaties usually includes a one-year election under which foreign nationals eligible for benefits under the prior treaty may elect to use the prior treaty provisions for 12 months from the application date if making such an election would result in a lower tax. Some new treaties also have a carryover benefit provision when the new treaty has no benefit for U.S. payments under the Student/Trainee or Teacher/Researcher Article, or both. Under the carryover benefit provision, foreign nationals who were eligible for treaty benefits under the prior treaty, on the effective date of the new treaty, may continue to claim benefits under the prior treaty to the end of the benefit period under that treaty.

Taxes Covered. The Taxes Covered Article of treaties states generally that the treaty applies to federal income taxes. Most treaties specifically exclude Social Security taxes, and long-standing IRS rulings also state that tax treaties do not cover Social Security taxes.⁵ (The United States has Social Security agreements with over 20 countries that may provide exemption from Social Security and Medicare taxes.) However, one treaty, the Former USSR/NIS treaty, has a broader definition of taxes covered and is interpreted to include the employee's share of Social Security taxes. The employer's share of Social Security taxes is an excise tax, not an income tax. Foreign nationals who qualify for this treaty exemption must follow IRS procedures described in IRS Publication 519, U.S. Tax Guide for Aliens, to apply for a refund.

Treaties may apply indirectly to state income taxes when states define income with reference to federal income. Some states such as Connecticut have amended their tax code to add back in income exempt

under a tax treaty. States such as Pennsylvania that have their own definition of income do not provide for treaty exemptions.

Residency. Tax treaties apply to foreign nationals who are residents (not citizens) of one or both of the treaty countries. Treaty country residents are foreign nationals who are subject to income taxes as a tax resident under the internal law of the treaty country. For U.S. tax purposes, foreign nationals are residents subject to tax on worldwide income if they are U.S. lawful permanent residents, also called “green card holders,” or are substantially present in the United States based on the 183-day residency formula.⁶

Three treaties, those with Barbados, Hungary and Jamaica, allow students and business apprentices to elect to be taxed as residents. Most treaties include a residency tie-breaker rule for foreign nationals who are residents of both the United States and the treaty country (called “dual residents”). The country of tax residency is determined by a hierarchy of criteria: permanent home (which can include a regularly available apartment), center of vital economic interests, habitual abode and nationality. Foreign nationals who claim to be a U.S. nonresident under a tie-breaker rule must submit a Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b), describing the facts supporting the claim with their Form 1040NR or 1040NR-EZ (or separately if no tax return is required).

The Saving Clause. U.S. tax treaties generally include a “Saving Clause” giving the United States the right to tax its citizens and residents as if the treaty had not come into effect. All but two treaties (those with Greece and Pakistan⁷) include exceptions to the Saving Clause that allow foreign nationals who become residents to keep the benefits conferred under the Student/Trainee and Teacher/Researcher Articles. Generally, foreign nationals who become U.S. citizens or green card holder lose these benefits.⁸ The Savings Clause and its exceptions can be difficult to when they are included with miscellaneous provisions near the end of the treaty.⁹

ARTICLES CONFERRING BENEFITS

Treaties include two types of articles that confer benefits:

1. articles that are based on the primary purpose of a foreign national’s visit to the United States and
2. articles that are based on the character of the payment.

Foreign nationals’ period of tax residency in the treaty country, and U.S. tax residency status generally impact the availability of benefits conferred under these two types of articles differently.

Purpose of the Visit. The Student/Trainee Articles and the Teacher/Researcher Articles confer treaty benefits upon foreign nationals who are residents of the treaty country at the beginning of their visit, or when they are invited to come, to the United States for the primary purpose of studying, securing training, teaching or engaging in research for the public benefit.

The Treasury Explanations define primary purpose to mean full-time. The IRS looks to foreign nationals’ immigration status documents to determine their primary purpose for being in the United States. For example:

- Foreign students in F-1 or J-1 status who are engaged in practical training as a teacher may be eligible for the Student/Trainee Article benefit but not for the Teacher/Researcher Article benefit.
- Foreign nationals in H-1B status may qualify for treaty benefits when the immigration petition submitted by their sponsor supports that they are engaged in teaching, research or training (in the case of medical residents).

Foreign nationals who enter the United States as Dependents having F-2 or J-2 status and later change to F-1 or J-1 status are generally not eligible for treaty benefits because they did not enter the United States for the purpose of the treaty article. Such students might also no longer be tax residents in the treaty country at the time of their change in status, a requirement for treaty benefits.

Under these articles, a foreign national who stays in the United States long enough to lose tax residency status in the treaty country may still keep their treaty benefits. In addition, the exceptions to the Saving Clause in all but two treaties (those with Greece and Pakistan) allow a foreign national who becomes a resident of the United States under the substantial presence test to keep these tax treaty benefits.

Character of the Payment. The articles pertaining active income on the part of the recipient work differently based on the type of income:

- income from employment (typically called “Dependent Personal Services”)
- income from self-employment (typically called “Independent Personal Services” but in more recent treaties treated as Business Profits), and
- artists and athletes (also called “Entertainers and Sportsmen”) work differently.

If a treaty has a Directors’ Fees Article (most do), any director otherwise eligible for a treaty benefit on income from self-employment loses that benefit.

Foreign nationals must maintain their tax residency status in the treaty country to be eligible for these treaty benefits. Foreign nationals who become tax resident in the United States lose the benefits of these articles because the Saving Clause includes no exception for these articles. (The withholding at source articles work this way as well.)

BENEFIT LIMITATIONS

Articles conferring treaty benefits include a variety of limiting criteria such as the following:

- the amount of the benefit,
- the period of time for which the benefit is available
- the existence of a fixed base in the case of independent contractors
- the residence of the payer

Amount of the Benefit. Many treaty articles include an “amount” limitation. For example, many Student/Trainee Articles provide an exemption from tax for specific amount, typically \$2,000 to \$9,000. These benefits are generally available to:

- students studying at a college or university,
- trainees, regardless of the location of the training,
- researchers who are recipients of a scholarship or fellowship grant. However, newer treaties do not include a benefit for researchers.

Except for the Former USSR/NIS treaty, there is no maximum amount for scholarship and fellowship payments available for exemption. These payments typically are referred to as a “grant, allowance, or award.” Treasury Explanations make it clear that these terms refer to scholarship and fellowship grants. Without a treaty exemption, these nonservice scholarship and fellowship grants are subject to NRA withholding at either a 14-percent or 30-percent rate depending on the immigration status of the recipient.¹⁰ “Payments for “prizes and awards,” as defined by the Code, are covered by the Other Income Article. No all Other Income Articles cover U.S.-source payments, however.

Most foreign students and trainees are nonresidents and, as such, are not eligible to claim the standard deduction on their nonresident tax return. The foreign students and trainees may not claim person exemptions for their dependents, with a few exceptions. This benefit helps to make up for that difference in taxation between U.S. and foreign students, trainees, and researchers. Under all treaties, foreign nationals can keep the benefit even if the amount is exceeded in the calendar year.

A number of treaties include an exemption from tax on a higher amount for foreign nationals who are participating in U.S. government programs. Visiting the United States under an Exchange Visitor Program (J-1 immigration status) is not sufficient to qualify for this benefit.¹¹ The program must be funded directly by the government.

Some Income from Employment and Income from Self-employment Articles include a maximum benefit amount, as well as a maximum number of days spent in the United States. Most treaties do not allow a benefit for directors’ fees which, by definition, are self-employment income.¹²

The taxpayer loses the benefit of excluding income from employment or self-employment if the taxpayer earns income in excess of the exclusion amount or exceeds the maximum number of days spent in the United States, as specified in the treaty. The treaty with Canada provides a unique benefit: \$10,000 is exempt from tax regardless of the recipient’s number of days in the United States as long as the amount is not exceeded in the tax year. If the amount is exceeded, the benefit is lost completely.

The Artist and Athlete Articles deny treaty benefits otherwise available under the Employment and Self-employment Income Articles if the taxpayer exceeds

the gross receipts amount in the Artists and Athletes Article. The gross receipts maximum amounts in these articles (which typically includes reimbursed travel expenses whether they are excluded from income under an accountable plan or not) range from \$1,500 to \$20,000. Since the total gross receipts cannot be known until the end of the year, the IRS advises payers not to allow exemptions from withholding on these payments. Instead, the IRS offers foreign entertainers the opportunity to enter into a Central Withholding Agreement (CWA) with the IRS to allow withholding of tax on projected net income.

Time Period Limitations. The articles include many types of time period limitations – fiscal (calendar) year, 12-month period beginning or ending in the calendar year, taxable year (through December 31), and year. Whenever, the term “year” is not defined it means 365 consecutive days.

Most Student/Trainee Articles limit the benefit for 5 tax years from the foreign national’s date of arrival. Newer treaties include a shorter period for trainees. Most Teacher/Researcher Articles limit the benefit to two years. Although not mentioned in the treaty articles, the IRS has ruled that the two-year benefit period is from the foreign national’s date of arrival in the United States for the purpose of the visit.¹³

The treaties with several countries provide that the benefit will be lost retroactively if the individual overstays the two-year period in the United States: India, Luxembourg, Netherlands, Thailand and the United Kingdom. A protocol that became effective January 1, 2008 eliminated the retroactive clause from the treaty with Germany for teachers and researchers, but not for students and trainees. A number of treaties allow the two-year benefit only if the foreign national’s visit is for “a period not expected to exceed two years.” Many newer treaties provide that a foreign national may use the Teacher/Researcher Article benefit only one time.

Based on IRS rulings, in order to claim Teacher/Researcher Article benefits a second time, or to claim Teacher/Researcher Article benefits following Student/Trainee Article benefits (or vice versa), foreign nationals must first reestablish residency and physical presence in the treaty country and be physically absent from the United States for a one-year (365 days) period following the treaty claim.¹⁴ A short presence for an unrelated purpose, such as vacation, does not cause the one-year period to restart.

Provisions of some treaties can override this requirement. For example, many treaties include a combined benefit period of five tax years for benefits under the Student/Trainee and Teacher/Researcher Articles when claimed by foreign nationals who change immigration status to teacher or researcher and remain in the United States. However, a number of treaties also include a “back-to-back” limitation that requires foreign nationals to reestablish residency in the treaty country before claiming a subsequent treaty benefit.

Residence of the Payer. Many treaty articles limit treaty benefits based on the payer of the income.

Most Income from Employment Articles limit benefits to payments made by a non-U.S. employer or by an employer resident in the treaty country. In addition, the payments may not be borne by a U.S. permanent establishment or fixed base. Treasury Explanations indicate that these criteria are not met when reimbursement for these costs is made by a U.S. organization.

Most Student/Trainee Articles limit maintenance payments for education and training to “payments that arise outside the United States.” Many Student/Trainee Articles allow benefits for income of employees of residents of treaty countries. One treaty (with Turkey) limits Teacher/Researcher Article benefits to payments that arise outside the United States. IRS Publication 901, Table 2, column (5) “Required Employer or Payer” provides a quick reference for this limitation.

Limits on Research. All Teacher/Researcher Articles provide benefits for research carried out at educational institutions. A number of treaties include benefits for research carried out at research institutions as well. Most Teacher/Researcher Articles do not allow treaty benefits when the research is being carried out “not in the public interest.” Therefore, researchers at research institutes working on projects with for-profit organizations may not claim treaty benefits.

In order to qualify for a Student/Trainee Article benefit for a taxable grant, the grant must be made by the grantor to the researchers directly. It is not enough that salaries paid to researchers be funded by grants to the employer.¹⁵ Most Student/Trainee Articles limiting benefits to payments arising outside the United States do not mention research grants.¹⁶

Fixed Base. Most, but not all, Income from Self-employment Articles deny exemption from tax if the independent contractor has a fixed base (i.e., an office or other fixed place of business in the United States), provided that the income is attributable to that fixed base.¹⁷ The Income from Self-employment Article is not included in newer treaties. Instead, income of independent contractors is included in the definition of business profits and is exempt from tax if the foreign national does not have a permanent establishment in the United States, as that term is defined by the treaty, or the income is not attributable to their permanent establishment.

FORMS AND PROCEDURES

In order to apply the appropriate withholding and reporting rules, a payer must first determine whether foreign national income recipients are residents or nonresidents for U.S. income tax purposes. Unless an exception applies, most payments to nonresident are subject to withholding at a rate of 30 percent on gross income. Taxable non-compensatory scholarship and fellowship grants paid to nonresidents in the United States in F, J M, or Q status who are candidates for a degree at an educational institution are subject to a 14-percent withholding rate.¹⁸ Employment compensation of nonresident employees is subject to special wage withholding rules described in IRS Publication 15, Circular E, Employer’s Tax Guide.

In order for payers and employers to exempt income from tax under a tax treaty, the income recipient must 1) meet the conditions of the applicable treaty and 2) submit the applicable signed withholding certificate prior to payment.

Form 8233. Foreign nationals claiming an exemption from U.S. income tax on compensation for services must submit to their employer or payer a completed Form 8233, Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual. Foreign nationals with limited benefits need to submit a Form W-4, Employee’s Withholding Allowance Certificate, as well as Form 8233 to cover subsequent wage withholding required after the treaty maximum amount has been met.

For exemption from tax on employment income, foreign nationals must include a statement certifying that they meet the specific conditions of the treaty article. Certifying statements for the Student/Trainee and Teacher/Researcher Articles of current treaties are available in Appendices A and B of IRS Publication 519. Payers may draft statements for the situations not included in these Appendices such as exemptions for trainees. To be valid, the employer or payer must submit Form 8233 to the IRS within five days of acceptance. Employers and payers must not accept Form 8233 if they know, or have reason to know, that the facts or statements on the form may be false, or that the foreign national’s eligibility for the claim cannot be readily ascertained. Foreign nationals claiming exemption on compensation for services must submit a new Form 8233 each calendar year in which the treaty exemption is being claimed.

Form W-8BEN. To claim a treaty exemption from withholding on income other than compensation for services, nonresident income recipients must submit a completed and signed Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, with Parts I and II completed. (This form is expected to be replaced for individuals with a new Form W-8IND, issued only in draft form as of the date of this publication.) Form W-8Ben is not submitted to the IRS for review. Form W-8BEN is used for treaty exempt scholarship and fellowship grants, as well as for payments such as dividends, interest and royalties. Recipients of grants who also have treaty exempt compensation may include the treaty claim for the treaty exempt grant on Form 8233.

Form W-9. A resident alien entitled to keep a treaty benefit under a Saving Clause exception must submit a Form W-9 with a special statement to the payer. Unlike Form 8233, the employer is not required to send Form W-9 to the IRS. Also, Form W-9 is not required to be collected annually. Nevertheless, it is a good practice to collect Form W-9 on an annual basis to assure that there has been no change in circumstances.

REQUIRED TAXPAYER IDENTIFICATION NUMBER

With the exception of income on publicly traded investments, payers may not give treaty benefits to foreign nationals who do not include a taxpayer

identification number (TIN) on a required withholding certificate. For individuals, the TIN must be either a Social Security number (SSN) or an individual taxpayer identification number (ITIN). (Foreign nationals with an Employer Identification Number (EIN) may not use this number on a withholding certificate.) However, there is an exception for foreign nationals submitting a signed Form 8233. Such foreign nationals may attaché evidence that they have applied for a TIN, such as a receipt from the Social Security Administration for an SSN application. There is no similar exception for Forms W-9 and W-8BEN.

Foreign nationals who do not already have an SSN and who are not authorized to work in the United States are not eligible to apply for an SSN. Those foreign nationals may submit their Form 8233 along with a Form W-7. Application for IRS Individual Taxpayer Identification Number with required certified documents to the IRS's Individual Taxpayer Identification Number (ITIN) Unit following instructions issued by the ITIN Unit for pre-tax return ITIN applications.

Foreign nationals might not provide SSNs or TIINS by the time employers and payers must submit their Form 1042-S information returns (explained below). The IRS will assess the taxes plus penalties and interest from these employers and payers for failure to include a TIN on the record indicating a treaty exemption from tax.

FORM 1042 AND 1042-S

Income payments to nonresidents must be reported on Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. A few exceptions apply such as wages subject to wage withholding. Form 1042-S reporting includes wages exempt from tax under a treaty. T reporting that income facilitates return preparation and administration of the recipient's tax return. The IRS exchanges Form 1042-S submissions with the tax authority in the treaty country. Treaty country tax authorities may subsequently follow-up with the foreign national claiming the treaty benefit. Foreign nationals may decline treaty benefits, choosing instead to pay the lower U.S. tax.

Forms 1042-S must be given to the income recipients by March 15 following the calendar year of payment. Providing the recipient copies earlier may help identify errors before the IRS submission. Recipients who receive their Form 1042-S early will also be less likely to submit an incomplete tax return that must be amended when the Form 1042-S is finally received. Payers who submit 250 or more forms are required to submit the forms electronically. IRS Publication 1187, Specifications for Filing Form 1042S, Foreign Person's U.S. Source Income subject to Withholding Electronically, provides specifications for these submissions.

Payers are required to follow the depository rules for Form 1042 described in IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities. Deposits must be made electronically. Payers may use the Electronic Federal Tax Payment System (EFTPS) for this purpose. All payers who issue Forms

1042-S must also submit a completed Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, even if all of the income being reported is tax exempt. Although multiple Form 1042-S files may be submitted, only one Form 1042 may be submitted per EIN.

COORDINATING WITHHOLDING AND REPORTING

Employers and payers face many challenges in withholding and reporting on treaty exempt payments correctly. These employers and payers must determine the residency status of foreign nationals claiming treaty benefits in order for the employer or payer to accept the correct withholding certificate (Form 8233 or W-9). These employers and payers must determine on a case-by-case basis, the amount and/or date of limitations that are applicable to treaty-exempt payments to each foreign national. This analysis requires setting limits within the paying systems, either manually or through automated interfaces from systems that perform the analyses. Withholding on income must be reactivated once the limits are met.

The employer or payer must issue a Form 1042-S for each foreign national allowed a tax treaty exemption. Foreign nationals with nonexempt wages must also be issued a Form W-2 for the nonexempt wages and taxes withheld. Only a Form 1042-S is required for foreign nationals whose wages are fully exempt under a treaty. However, foreign nationals subject to Social Security and Medicare taxes must be issued a Form W-2 reporting Social Security and Medicare wages and taxes. State income and taxes must be reported on Form W-2 as well.

Some payroll systems now allow employers to process payments other than wages, such as taxable scholarship and fellowship grants made to nonresidents. Organizations making such payments may apply wage withholding at their election. However, these payments are not subject to Social Security and Medicare taxes and they are reportable on Form 1042-S, not Form W-2.

FORM 1040NR AND 1040NR-EZ TAX RETURNS

Foreign nationals exempt from withholding under a treaty must nevertheless submit a Form 1040NR or 1040NR-EZ tax return if the treaty-exempt income is effectively connected to the conduct of a U.S. trade or business. Such income includes compensation for employment or self-employment services and scholarship and fellowship grants of recipients in F, J, M, or Q immigration status. Form 1040NR-EZ was specifically designed for foreign student and scholars who typically have only these types of income.

Recipients of fixed or determinable annual or periodic (FDAP) U.S. source income, such as dividends, interest, royalties, etc., are not required to submit a Form 1040NR provided that the withheld taxes, if any, were correct, and they have no other U.S. income requiring a tax return.

Foreign nationals who are recipients of treaty exempt income on which taxes were withheld may submit a tax return and claim a refund of tax. Their tax returns

must be accompanied by the same information which is required to claim an exemption from withholding on a Form 8233, W-8BEN or W-9. If these foreign nationals do not already have a TIN, they must submit their return to the ITIN Unit along with a Form W-7 and required documentation as described in the instructions or otherwise instructed by the IRS.

SUMMARY

Treaties provide benefits for foreign nationals who meet all of the treaty requirements for a benefit and who submit required withholding certificates to their employer or payer and tax returns with the treaty claim to the IRS. In the past, many employers, payers, and taxpayers have assumed they were exempt from withholding requirements, doing so without regard to the treaty conditions and procedural requirements. Foreign nationals working, studying, training or engaging in research in the United States need to comply with the tax rules and procedures for claiming treaty benefits. As the IRS enforces compliance on payments to foreign nationals, employers and payers who provide treaty exemptions from withholding need to be more diligent in following the rules and procedures for allowing treaty benefits.

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² Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Uzbekistan.

³ Issued as the 7th revenue procedure each year, for example 2012-7.

⁴ The treaties with Greece and Pakistan include the article but only for teachers.

⁵ Rev. Rul. 56-609, 1956-2 CB 1066, Rev. Rul. 66-77, 1966-1 CB 242.

⁶ Code Sec. 7701(b) and the regulations under that section.

⁷ The unique Saving Clause of the treaty with Pakistan is in Article II, 1(h)&(i).

⁸ The treaties with China and the Former USSR allow green card holders to preserve treaty benefits as long as the article under which benefits are being claimed does not require temporary presence.

⁹ See for example, France Article 29(2)&(3).

¹⁰ Grants requiring services in return for the grant are taxed as wages or self-employment income depending on the relationship of the service provider to the organizations. (However, most foreign nationals are not authorized under the immigration law to engage in self-employment.)

¹¹ Rev. Rul. 72-301, 1972-1 CB 439.

¹² Rev. Rul. 68-587, 1968-2 CB 463, Rev. Rul. 74-163, 1974-1 CB 374.

¹³ Rev. Rul. 89-5, 1989-5 CB 353.

¹⁴ GCM 37047 (March 18, 1977), Rev. Rul. 77-242, 1977-2 CB 489, PLR 8422124 (Feb. 29, 1984), PLR 8429070 (Apr. 18, 1984)

¹⁵ Sarkisov v United States, No. 03-1870T (FedCl Jan. 4, 2005)

¹⁶ The Student/Trainee Article of the treaty with China does not include researchers. However, the IRS, in Memo. 200515018 (Apr. 15, 2005) treated a NIH Visiting Fellow as a trainee and allowed the treaty benefit.

¹⁷ Articles in the treaties with Egypt, Greece, Israel, Poland and the Former USSR do not include a fixed base limitation.

¹⁸ The lower rate also applies to scholarship and fellowship grants made by certain types of payers under Code Sec. 1441(b)(2).

