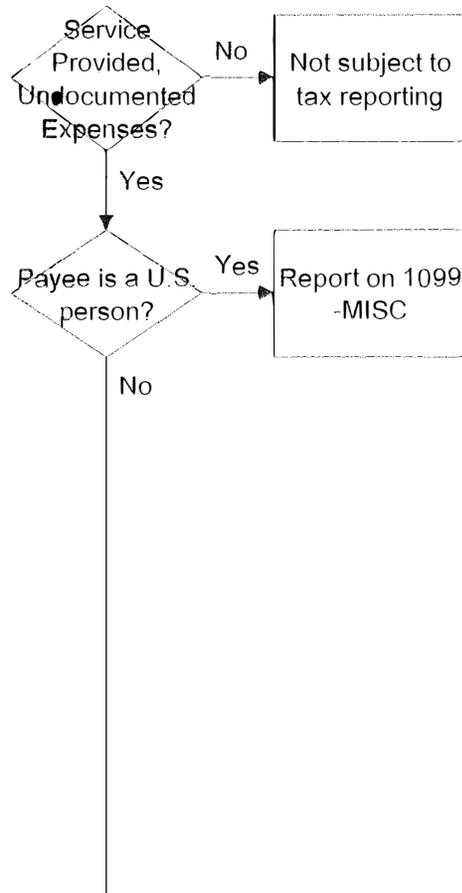


## Taxability of Payments to Non-U.S. Persons (Non-Resident Aliens and Foreign Businesses)

How to Determine the Reportability of Services	Services Performed in the U.S.	Services Performed Outside the U.S.
Performed by a U.S. Person	Reportable	Reportable
Performed by a non-U.S. Person	Reportable	Not Reportable



Services and undocumented expenses (those for which we normally require a receipt) must be reported. Documented expenses do not require reporting. Meal per diems for foreign visitors are considered documented expenses in this context. Although less common, we also would need to report research subject payments and qualified internships.

The term 'United States person' means:

1. A citizen or resident alien (meets the "green card" or "substantial presence" tests) of the United States,
  2. A partnership created or organized in the United States or under the law of the United States or of any State,
  3. A corporation created or organized in the United States or under the law of the United States or of any State,
  4. Any estate or trust other than a foreign estate or foreign trust.
- See Internal Revenue Code section 7701(a)(31) for the definition of a foreign estate and a foreign trust, or
5. Any other person that is not a foreign person.

A vendor with an FEIN beginning with "98-" is automatically considered a non-U.S. person. Any W-9 received with an FEIN beginning with "98-" needs to be disregarded, as a W-8\*\*\* is required.

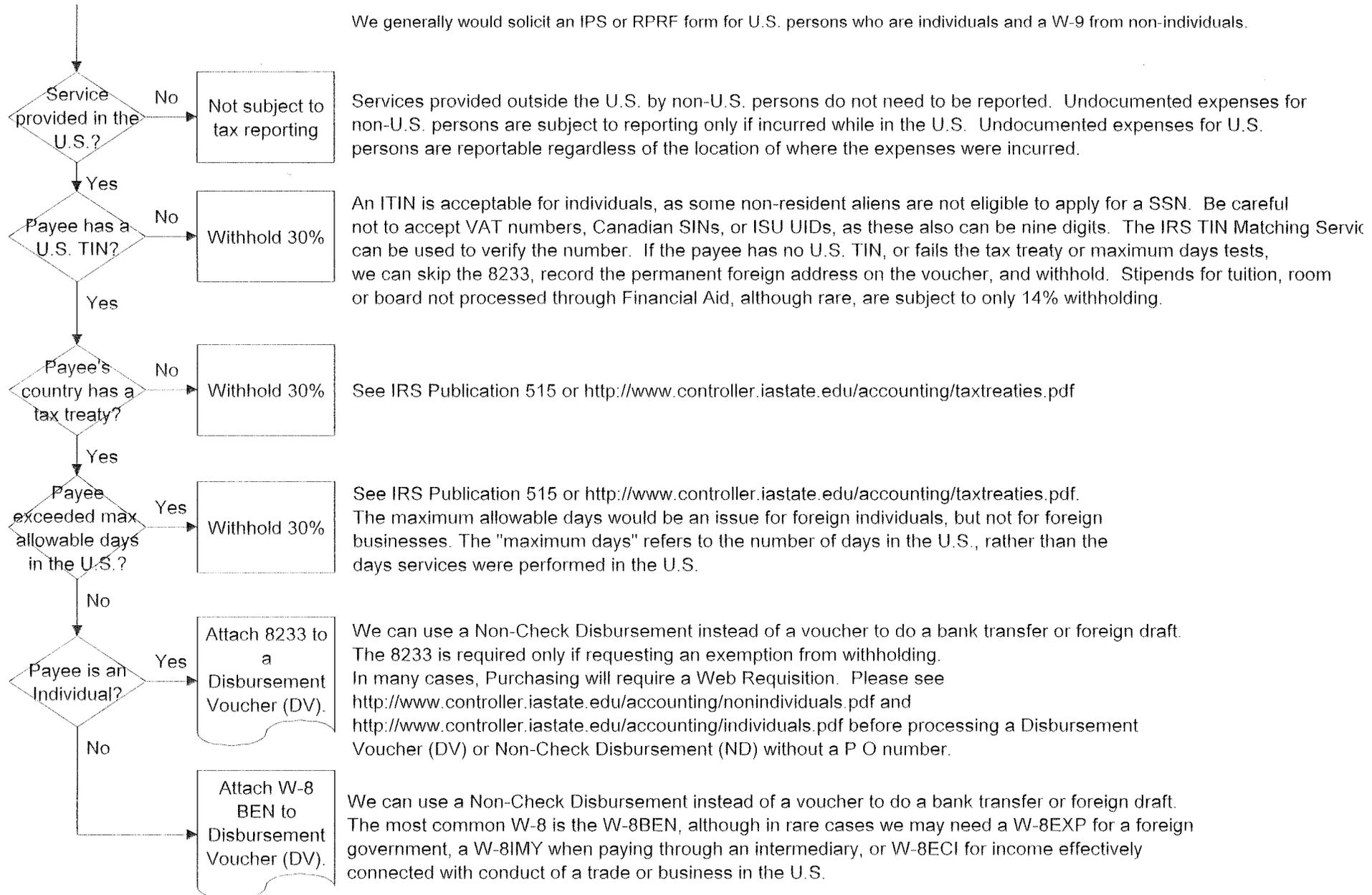
Also, company names including PLC, GMBH, AG, or SA at the end probably are non-U.S. persons.

We would not withhold taxes on a 1099-MISC unless the payee already is subject to backup withholding (invalid / no TIN provided, etc.). Foreign corporations, governments, and not-for-profits are not exempt from reporting as U.S. equivalents currently are. Without a fully-completed 8233 or W-8\*\*\*, we cannot extend any tax treaty benefits.

A resident alien for tax purposes is treated like a U.S. citizen. A person can become a resident alien for tax purposes before that same person is a resident alien for immigration purposes. Payroll or International Students and Scholars can determine a person's true status.

We generally would solicit an IPS or RPRF form for U.S. persons who are individuals and a W-9 from non-individuals.

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In KFS, the vendor must be coded on the vendor file as a foreign vendor in order to generate a 1042-S instead of a 1099-MISC at the end of the calendar year. The amount withheld will be credited to 206-0026. Doug needs an Ad Hoc FYI of the Non-Check Disbursement or Disbursement Voucher, as well as the original 8233 or W-8\*\*\*. (Since an image will be attached, we probably will need to contact the department to obtain the original 8233 or W-8\*\*\*), as the IRS will not accept PDFs, faxes, or photocopies. For subsequent payments in the same calendar year, we do not

Voucher, as well as the original 8233 or W-8\*\*\*. (Since an image will be attached, we probably will need to contact the department to obtain the original 8233 or W-8\*\*\*), as the IRS will not accept PDFs, faxes, or photocopies. For subsequent payments in the same calendar year, we do not need the original. However, we need a new original each calendar year.

If the payee was promised a fixed amount (e.g., \$1,000.00) and the department is willing to pay the extra amount for withholding, we could "gross up" the payment. For example, if the promised net amount was \$1,000.00, we could divide this amount by  $(1 - .30)$  to arrive at the gross amount of \$1,429.00 (round to the nearest dollar) to be charged to your department. The withholding amount of \$429.00 will be credited to account 206-0026 to reduce the payment to the net amount. Although we are not obligated to "gross up" payments, departments can contact Bill Cahill (294-5124) or Carole Gill (294-5181) for assistance if they choose this method.

If we withheld in error, we can refund this to the payee on a separate DV or ND, as long as we do this before we have remitted the December federal taxes.

If we realize after payment that we neglected to withhold, we can either catch up on the withholding on the second DV or ND. Alternatively, we could use a Distribution of Income (DI) form to effectively gross up the payment by charging the department for the amount that should have been withheld. Usually, the error is caused by the department not properly identifying the payee as a nonresident alien.

#### **Form 8233 Clarifications by Line Number:**

These notes are not a substitute for the official instructions, but there are some cases where the official instructions are not clear.

Line 5: Per Payroll, even if the person is only in the U.S. a few days and staying in the hotel, we should put whatever temporary address possible, even if it is the hotel's address.

Line 6: Not all visitors are required to have a visa, so "None" can be a valid response. Do not leave this line blank. Holders of F-2, J-2, and H-4 visas probably are not eligible to work or to claim treaty benefits. Check with Payroll before processing the voucher.

Line 10: Checking this box probably is going to cause problems. Please check with Payroll before processing the voucher.

Line 12 b: This should be the same as Line 11 b.

Line 12 c: Due to the formatting of the form, it is common to see this skipped. Use the information from Line 4 to complete if it was left blank.

Line 13: These lines generally are left blank.

Lines 15, 17, and 18: These can be left blank, as we do not take exemptions into account when processing the form.

Line 16: Per Payroll, this actually means the days the person was in the U.S., which usually is a higher number than the days on which services were performed in the U.S..