

IRS Form 8833: Taxpayers must disclose treaty positions

15. February 2023

Many taxpayers with US income tax filing requirements rely on bilateral income tax treaties between the US and other countries to reduce their US tax exposure.

Taxpayers that are taking treaty positions to reduce or exempt income from US income tax are generally required to disclose such positions on Form 8833 – Treaty-based Return Position Disclosure Under Section 6114 or 7701(b).

The information on Form 8833

The US Internal Revenue Service (IRS) requires a separate Form 8833 for each eligible treaty-based tax return position taken. Taxpayers with no US income tax return filing requirement must still file Form 8833 separately to report a treaty tax position taken.

Form 8833 requires taxpayers to disclose the applicable treaty country and specific articles of the treaty that are being relied on, as well as the Internal Revenue Code provisions that are overridden by the treaty-based return position taken. The form also requires a brief paragraph explaining the treaty position, as well as the nature and amount of the relevant items of income.



We will assist you in completing and submitting the extremely important Form 8833.

Yelena Podkolzin, tax partner, Marcum LLP*, New York City, USA

What are the exceptions

Certain exceptions to filing Form 8833 may apply. Special rules exist with respect to the reporting of income from personal services, pensions, social security and annuity income, as well as income that is deemed to attract a flat US withholding tax. Exceptions also exist for income earned by certain professions, and for income earned through partnerships.

The penalties for failing to file Form 8833 are USD 1,000 for individual taxpayers and USD 10,000 for corporations for each reporting failure.

The **experts at Marcum LLP*** recommend that taxpayers seek professional advice prior to taking beneficial treaty-based tax positions and understand their Form 8833 reporting requirements and possible exceptions. In addition, taxpayers should be aware that filing a treaty-based position claiming non-US tax residency will be considered an expatriation from the US for income tax purposes, for which there are a myriad of tax consequences. Certain states may not follow federal treaties. As a result, a filing position taken on Form 8833 for federal income tax purposes may not apply to such states.

For further information please contact:

Yelena Podkolzin, tax partner, Marcum LLP*, New York City, USA
Email: Yelena.podkolzin@marcumllp.com.

**Marcum LLP is the exclusive associated partner of ECOVIS International for accounting, tax and audit in the United States of America.*

Contact us:

Marcum LLP

730 3rd Avenue, 11th Floor
10017 New York
Phone: +1 212 485 55 00