

1042 Reporting:

Part 2 – General Reporting Rules & Information





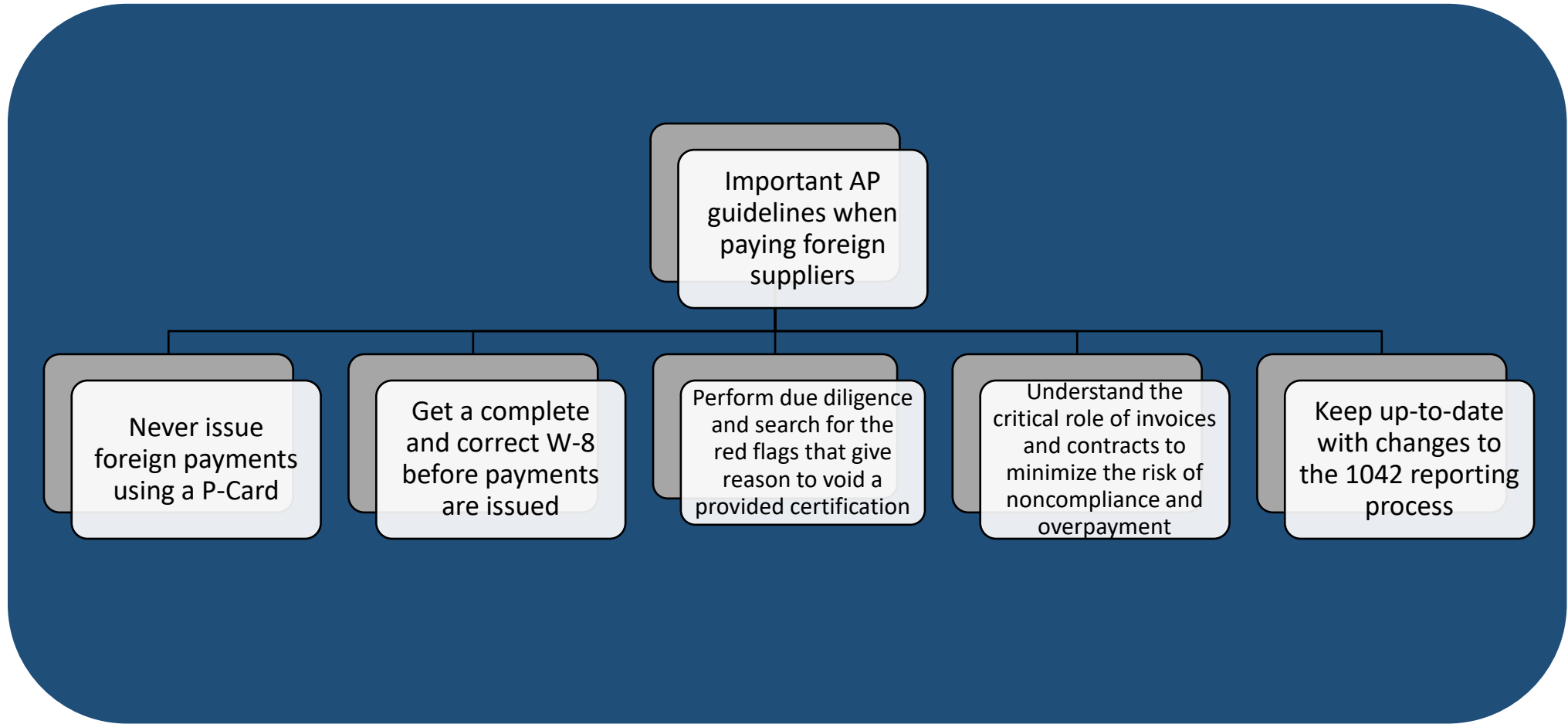
1042 Reporting Rules

Payments to non-U.S. suppliers reported on 1042-S - withholding and reporting rules

- You must source the income for payments to these suppliers
- Non-U.S. source income is not subject to U.S. tax withholding or reporting
- IRS presumption is that all income is from U.S. sources, so to avoid having to withhold 30% from payments of non-U.S. source income paid to non-U.S. suppliers, you will need to document the income's source as non-U.S.
 - Use documentation underlying the transaction (invoice, contracts, etc.)
 - Invoice should state "not from U.S. sources"
 - U.S. source income paid to non-U.S. persons is subject to 30% withholding unless the beneficial owner makes a valid ECI claim and/or makes a valid treaty claim on a Chapter 3 payment (some treaties still require some withholding on certain kinds of payments)



1042 Reporting Rules





1042 Reporting – U.S. vs NON-U.S

U.S.	Non - U.S.
<ul style="list-style-type: none">• Citizens• Resident Aliens<ul style="list-style-type: none">• Green Card• Substantial Presence Test (SPT)• Entities organized under U.S. law<ul style="list-style-type: none">• U.S. law = 50 states and D.C.• Taxed by U.S. on worldwide income<ul style="list-style-type: none">• Sourcing income for payments to U.S. persons is unnecessary, as all income is subject to U.S. taxation regardless of the income's source	<ul style="list-style-type: none">• Chapter 3<ul style="list-style-type: none">• Non-resident aliens• Individuals who are neither citizens nor residents of the U.S.• They may be within or out of the U.S.; can include short-term visitors, individuals who are never in the U.S., individuals who can be in the U.S. for quite some time but will remain non-residents per certain rules• Entities not organized under U.S. law• Taxed by U.S. on U.S. source income<ul style="list-style-type: none">• 30% withholding on U.S. source FDAP (fixed, determinable, annual, periodical) income unless supplier has claimed that income is effectively connected with the conduct of a U.S. trade or business (Form W-8ECI) or• 30% withholding on FATCA eligible payments unless beneficial owner provides required certifications on Form W-8BEN-E, or• 30% withholding on U.S. source income unless supplier has claimed treaty benefit (may still have a lesser withholding)• Non-U.S. source income paid to non-U.S. persons is not subject to withholding or reporting, but you need to:<ul style="list-style-type: none">• Collect W-8/8233• Establish income is non-U.S. source income; Invoices, contracts, correspondence, etc..



1042 Reporting – U.S. vs. Non-U.S.

U.S.	Non U.S.
<ul style="list-style-type: none">• U.S.<ul style="list-style-type: none">• W-9/1099<ul style="list-style-type: none">• 24% backup withholding• Some corporate exemptions• Tax-exempt and government exemptions• \$600 threshold for most reporting• No treaty benefits (with some exceptions)• Goods purchases exempt from reporting	<ul style="list-style-type: none">• Non-U.S.<ul style="list-style-type: none">• W-8s/8233/1042-S<ul style="list-style-type: none">• 30% withholding (14% on certain scholarships)• No corporate exemption• No general tax-exempt or government exemption• No minimum dollar threshold for reporting• Goods purchases exempt from reporting



1042 Reporting – Chapters 3 & 4

Chapter 3

U.S. source income:

- Real and personal property rentals
- Royalties
- Software licensing fees
- Gambling winnings
- Transportation income
- Non-financial services payments
- Compensatory scholarship payments
- Prizes and awards
- Interest on accounts payable if for the acquisition of goods (e.g., installment payments) or services (e.g., interest on late payments)
- Etc.

Chapter 4

U.S. source income

- Bank deposit interest
- Premiums for life insurance and annuity contracts
- Amounts distributed to clients under cash value life insurance products or annuity contracts
- Investment advisory, custodial, bank, brokerage, or other financial service fees
- Fees and other payments in connection with any lending transaction including loan guarantees
- Certain notional principal contracts and derivatives, like fuel contracts and energy hedges
- Substitute dividends, dividend equivalents, specified notional principal contracts, substitute interest
- In short: payments arising out of lending and investment activities, and certain insurance premium payments



1042 Reporting – Income Sourcing Rules

Summary of Sourcing Rules	
Personal Services	Where service was performed; if both in U.S. and outside, must prorate on time basis; fee x # of days in the U.S./ total # of days
Dividends	Where entity is incorporated
Interest	Tax residence of payer
Rentals	Where property is located
Royalties – patents, copyrights	Where property is used
Royalties – natural resources	Where property is located
Prizes & Awards (that are not compensation)	Residence of the payer
Transportation	Truck and rail: May need to be prorate if there are starts and stops in U.S. Based on mileage logs/or other means.



1042 Reporting – Income Sourcing Rules

Summary of Sourcing Rules	
Software and digital downloads	Generally treated as goods purchased or rental payment. If rental income should be sourced to location of download.
Cloud Transactions Reach out to DOS for help with income sourcing	Different from digital downloads, could be rental or service payments. Depending on circumstances. Reg.sec.186-19(c)(2)
Subscription fees to electronically maintained information, databases, etc.	No direct authority on point, most think U.S. source if data are accessed through a U.S. server, whether applying the royalty sourcing rule where the property is used or rental sourcing rule where the property is located
Sponsorships	Reach out to DOS to seek counsel advice
Scholarships and Fellowships	Income is sourced using on the payer's residence.



THANK YOU!

Thank you for watching!

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or call 406-444-3092