



IRS Releases Draft Instructions for 2023 Form 1042-S

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On November 2, 2022, the IRS released draft [2023 Instructions for Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding](#). The draft instructions include new codes and several changes related to withholding and reporting under sections 1446(a) and (f) starting in 2023.

In particular, the draft updates the Form 1042-S instructions to reflect withholding and reporting requirements under section 1446(a) and (f) and the corresponding regulations starting in 2023, including the requirements for withholding on transfers of interests in publicly traded partnerships (PTPs). The regulations also provide for certain changes to the withholding requirements for PTP distributions, which include an allowance for Qualified Intermediaries (QIs) and U.S. branches to act as withholding agents for the distributions.

The draft instructions contain several changes, including the following:

- New income code 57: used by brokers to report amounts realized paid to a recipient for sales of PTP interests that are subject to reporting and when section 1446(f) withholding applies to a PTP distribution.
- New income code 58: added starting for 2023 for nominees to report on Form 1042-S when they are unable to determine the characterization of income associated with a PTP distribution and therefore apply section 1446(a) to withhold on the distribution in the absence of a qualified notice specifying the income attributable to the distribution.
- New Chapter 3 status code 39 (Disclosing QI): added starting for 2023 for when a broker, PTP, or nominee makes a payment of an amount realized or PTP distribution to a QI acting as a disclosing QI.
- The instructions add a requirement that a broker, PTP, or nominee making a payment of an amount realized or PTP distribution to a QI acting as a disclosing QI provide to the disclosing QI a recipient copy of the Form 1042-S issued to the QI's account holder.

- Likewise, a requirement is added for the issuance by a broker of a recipient copy of Form 1042-S to an NQI paid an amount realized subject to withholding under section 1446(f) when the broker issues Forms 1042-S to the account holders of the NQI receiving the amount realized.
- Instructions reflect that, starting in 2023, PTPs (and their nominees) are permitted to use the reimbursement and set-off procedures for purposes of sections 1446(a) and (f) withholding.
- The Chapter 3 status codes for withholding agents making payments subject to Chapter 3 withholding to territory financial institutions have been removed and the Chapter 3 status and exemption codes applicable to U.S. branches will now apply to territory financial institutions.

Finally, the draft instructions contain a reminder of other changes that had been included in the 2022 Form 1042-S, such as income code 56 added to address section 871(m) transactions resulting from combining transactions, the reliance on proposed regulations reducing burden under FATCA and Chapter 3 (withholding and reporting in a subsequent year and adjustments to overwithholding under the reimbursement and set-off procedures), the limitation on benefits (LOB) code 12, and Chapter 3 status code 38 (payment to or from a PTP making a distribution).

For questions, please consult with the listed contacts below.

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