Tax Workshop for Foreign Nationals
Preparing 2018 Forms

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Before we begin…

- “Filing taxes” means submitting tax forms (or a tax “return”) to the appropriate government agencies
- YOU may be responsible for “filing taxes” every year
- We are going to discuss “this year” as 2018
  - That is the period for which your taxes are being filed currently
  - Each calendar year is generally a separate period
- UCSD offers Glacier Tax software to assist you in preparing your tax returns
- There are other services available
  - Beware of what you find via Google
  - Do not use TurboTax if you are a non-resident as there is no way to do this (will file you as a resident)
  - Sprintax.com appears to be a reliable source
US Tax System

- Considered a “pay as you go” system
- Income taxes are “withheld” from your pay as it is earned
- The tax return filing process is a “true-up” at year end
  - Your ACTUAL liability is calculated and compared to the amount withheld
    - If Actual > Withheld = Pay taxes with return
    - If Actual < Withheld = Refund to taxpayer
  - The system is “set up” to provide for refunds BUT it does not always work that way
US Tax System

- Comparing refunds can be folly
  - Refund amount depends on
    - Income
    - Withholding
    - Deductions
  - All of which can vary from person to person
US Tax System

- Employment taxes (or “social” taxes)
  - Social security and Medicare
  - Intl students are NOT generally subject to these however, work outside of treaty-permitted work will be subject to employment tax
  - Income tax treaty benefits do not typically extend to employment taxes
  - Those come through a “totalization” agreement with are considerably more rare
The U.S. applies both a source based and a resident based approach to income taxation:

- Source based – income earned in the U.S. is largely taxed by the U.S.
- Resident based – income of U.S. residents, regardless of source, is taxed by the U.S.

Since income is source based, a NON-resident can still be taxed in the U.S. on U.S. sourced income.
Resident Aliens

- The issue of status as a resident alien or a nonresident alien is key in determining an individual's U.S. income tax liability.
- A resident alien individual generally is subject to U.S. income tax on the individual's worldwide income (without regard to its source) in much the same manner as a U.S. citizen, with only a few limited exceptions.
Non-Resident Aliens

By contrast, a nonresident alien individual is subject to U.S. income tax only on the following types of income:

- U.S.-source, non-U.S. business fixed or determinable annual or periodic income
- Taxable income effectively connected with a trade or business conducted by the nonresident alien within the United States
  - This includes wages earned as an employee and independent contractor
- Net gain from the sale or exchange of U.S. real property
- Net U.S.-source capital gains for the taxable year
Why this is important?

U.S. Citizens
Permanent Residents
Resident Aliens (RA)

U.S. Tax System

Nonresident Aliens (NRA)

Nonresident Alien Tax System
Who is a resident?

- Any U.S. citizen –
  - The Code does not define the term “citizen of the United States.” However, the regulations provide that “every person born or naturalized in the United States and subject to its jurisdiction is a citizen.”

- Green card holder – any lawful permanent resident of the U.S. under immigration law
  - Resident status begins in the first year in which the alien is a lawful resident and physically present in the U.S. for at least 1 day
  - Resident status continues until green card is abandoned

- Anyone that meets the substantial presence test
  - Test based on the number of days present determines tax residency
  - However – students and researchers MAY be EXEMPT from even having to take the test and will be declared non-resident aliens
Definitions

- **Student** – someone enrolled in classes as part of a degree seeking program

- **Scholar, researcher, teacher:**
  - Professor, research scholar, or person with similar education and background who comes to the U.S. for a short-term visit to lecture, observe, consult, train, and/or demonstrate special skills.
  - Primarily teaches, lectures, observes, consults, and might conduct research if permitted by the program sponsor.
  - Primarily conducts research, observes, consults, and may also teach or lecture if permitted by the program sponsor.
  - Expert in a field of specialized knowledge who comes to the U.S. for observing, consulting, and demonstrating special skills.
1. Determine your federal tax residency status

How do I know if I am an NRA?

Substantial Presence Test (“SPT”)

- Based on how many days you were physically present in the U.S.
- Two parts
  1. at least 31 days in current year, and
  2. 183 days during the 3-year period based on the formula

<table>
<thead>
<tr>
<th># of Days</th>
<th>Tax Year (2018) XX</th>
<th>Tax Year (2017) YY</th>
<th>Tax Year (2016) ZZ</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Total &lt; 183 days → NRA</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Total ≥ 183 days → RA</td>
</tr>
</tbody>
</table>

- EXCEPTION – “EXEMPT INDIVIDUALS”
Exceptions to days present

- Does not include regular commuters from Mexico (and Canada, but not many of those)
- Does not include
  - Days in transit
  - Days that medical condition prevented departure and
  - Certain teachers, trainees and students
Are you an exempt individual? – Decision Tree

If you are temporarily present in the United States on an F, J, M, or Q visa, use this chart to determine if you are an exempt individual for the Substantial Presence Test (SPT).

Student
F, J, M, or Q Visa

Are you a full-time student?

No
Yes

Are you in substantial compliance with your visa?

No
Yes

Have you been in the U.S. for any part of more than 5 calendar years?

Yes
No

Do you choose to claim a Closest Connection exception to the Substantial Presence Test?

No
Yes

In order to claim the exception, all the following must apply:
A. You do not intend to reside permanently in the US
B. You must have complied with your Visa
C. You must not have taken steps to become a Resident Alien
D. You must have a closer connection to a foreign country

* You must apply the Substantial Presence Test

Teacher or Trainee
J Visa

Are you a student?

Yes
No

Are you in substantial compliance with your visa?

Yes
No

Have you been in the U.S. for any part of 2 of the preceding 5 calendar years?

Yes
No

Were you exempt as a teacher, trainee, or student for any part of 3 or fewer of the 6 preceding years, AND Did a foreign employer pay all your compensation during the tax year in question, AND Were you present in the U.S. as a teacher or trainee in any of the preceding 6 years, AND Did a foreign employer pay all your compensation during each of the preceding 6 years you were present in the U.S. as a teacher or trainee?

No
Yes

Substantial Presence Test

\* Substantial Presence Test (SPT): You will be considered a U.S. resident for tax purposes if you meet the substantial presence test for calendar year 2018. To meet this test, you must be physically present in the United States on at least

1. 31 days during 2018 and
2. 183 days during the 3-year period that includes 2018, 2017, and 2016 counting:
   a. all the days you were present in 2018 and
   b. 1/3 of the days you were present in 2017, and
   c. 1/6 of the days you were present in 2016.
<table>
<thead>
<tr>
<th>Symbol</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>F-1</td>
<td>Students and exchange visitors: academic students</td>
</tr>
<tr>
<td>F-2</td>
<td>Students and exchange visitors: spouses and children of academic students</td>
</tr>
<tr>
<td>F-3</td>
<td>Students and exchange visitors: Canadian or Mexican national academic commuter students</td>
</tr>
<tr>
<td>H-1B</td>
<td>Temporary workers and trainees: specialty occupations</td>
</tr>
<tr>
<td>H-1B1</td>
<td>Temporary workers and trainees: Chile and Singapore Free Trade Agreement</td>
</tr>
<tr>
<td>H-1C</td>
<td>Temporary workers and trainees: registered nurses participating in the Nursing Relief for Disadvantaged Areas</td>
</tr>
<tr>
<td>H-2A</td>
<td>Temporary workers and trainees: seasonal agricultural workers</td>
</tr>
<tr>
<td>H-2B</td>
<td>Temporary workers and trainees: seasonal nonagricultural workers</td>
</tr>
<tr>
<td>H-3</td>
<td>Temporary workers and trainees: industrial trainees</td>
</tr>
<tr>
<td>H-4</td>
<td>Temporary workers and trainees: spouses and children of H-1, H-2, and H-3 workers</td>
</tr>
<tr>
<td>J-1</td>
<td>Students and exchange visitors: exchange visitors</td>
</tr>
<tr>
<td>J-2</td>
<td>Students and exchange visitors: spouses and children of exchange visitors</td>
</tr>
<tr>
<td>M-1</td>
<td>Students and exchange visitors: vocational students</td>
</tr>
<tr>
<td>M-2</td>
<td>Students and exchange visitors: spouses and children of vocational students</td>
</tr>
<tr>
<td>O-1</td>
<td>Temporary workers and trainees: extraordinary ability or achievement</td>
</tr>
<tr>
<td>O-2</td>
<td>Temporary workers and trainees: accompanying and assisting in performance of O-1 workers</td>
</tr>
<tr>
<td>O-3</td>
<td>Temporary workers and trainees: spouses and children of O-1 and O-2 workers</td>
</tr>
<tr>
<td>P-1</td>
<td>Temporary workers and trainees: internationally recognized athletes or entertainers</td>
</tr>
<tr>
<td>P-2</td>
<td>Temporary workers and trainees: artists or entertainers in reciprocal exchange programs</td>
</tr>
<tr>
<td>P-3</td>
<td>Temporary workers and trainees: artists or entertainers in culturally unique programs</td>
</tr>
<tr>
<td>P-4</td>
<td>Temporary workers and trainees: spouses and children of P-1, P-2, and P-3 workers</td>
</tr>
<tr>
<td>Q-1</td>
<td>Temporary workers and trainees: workers in international cultural exchange programs</td>
</tr>
<tr>
<td>R-1</td>
<td>Temporary workers and trainees: workers in religious occupations</td>
</tr>
<tr>
<td>R-2</td>
<td>Temporary workers and trainees: spouses and children of R-1 workers</td>
</tr>
</tbody>
</table>
Exception: “Exempt individuals”

- “Exempt” from counting days for SPT
- Not “exempt” from taxes!
- F/J students
  - Exempt from counting days for first 5 calendar years under F/J student status
- J non-students (e.g. researcher, professor)
  - Exempt from counting days for 2 out of preceding 6 years (2012-2017) under F/J student OR non-student status

**Note: 2019 does not count; we are analyzing your status for 2018**
Example 1 – “Exempt Individual”

- Immigration Status: F-1 or J-1 (student)
- Arrival Date: 12/30/2014 (first visit to the U.S.)
- This student was physically present in the U.S. every semester since arriving but left the U.S. for 2 months during each summer

Exempt Years
2014- Yr 1
2015- Yr 2
2016- Yr 3
2017- Yr 4
2018- Yr 5

<table>
<thead>
<tr>
<th>Year</th>
<th># of Days</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018 (Tax Year)</td>
<td>0 x 1 = 0</td>
<td>TOTAL = 0</td>
</tr>
<tr>
<td>2017</td>
<td>0 x 1/3 = 0</td>
<td>TOTAL = 0</td>
</tr>
<tr>
<td>2016</td>
<td>0 x 1/6 = 0</td>
<td>TOTAL = 0</td>
</tr>
</tbody>
</table>

Total < 183 days → NRA
Example 2 – “Exempt Individual”

- Immigration Status: F-1 or J-1 (student)
- Arrival Date: 8/1/2017 (this student was also in the U.S. under F-1 from May 2002 – August 2005)
- This student was physically present in the U.S. since arriving but left the U.S. for 60 days during summer of 2018

Exempt Years
2002- Yr 1
2003- Yr 2
2004- Yr 3
2005- Yr 4
2017- Yr 5

<table>
<thead>
<tr>
<th>Year</th>
<th># of Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>305</td>
</tr>
<tr>
<td>2017</td>
<td>0</td>
</tr>
<tr>
<td>2016</td>
<td>0</td>
</tr>
</tbody>
</table>

At least 31 days in current year & Total ≥ 183 days → RA
Example 3 – “Exempt Individual”

- Immigration Status: J-1 (scholar)
- Arrival Date: 8/29/2016

Exempt Years
- 2016- Yr 1
- 2017- Yr 2

<table>
<thead>
<tr>
<th>Year</th>
<th># of Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>( \frac{365 \times 1}{1} = 365 )</td>
</tr>
<tr>
<td>2017</td>
<td>( 0 \times \frac{1}{3} = 0 )</td>
</tr>
<tr>
<td>2016</td>
<td>( 0 \times \frac{1}{6} = 0 )</td>
</tr>
</tbody>
</table>

TOTAL = \( 365 \)

At least 31 days in current year & Total ≥ 183 days → RA
Example 4 – “Exempt Individual”

- Immigration Status: J-1 (scholar)
- Arrival Date: 8/15/2012 – 6/30/2016 as a student
  - Returned to US on 7/15/2018 as J-1 scholar

6 year lookback
Exempt Years

<table>
<thead>
<tr>
<th>Year</th>
<th># of Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018 (Tax Year)</td>
<td>169 x 1 = 169</td>
</tr>
<tr>
<td>2017</td>
<td>0 x 1/3 = 0</td>
</tr>
<tr>
<td>2016</td>
<td>182 x 1/6 = 30</td>
</tr>
<tr>
<td>TOTAL</td>
<td>= 199</td>
</tr>
</tbody>
</table>

At least 31 days in current year & Total ≥ 183 days → RA
Example 4 – “Exempt Individual”

- Immigration Status: J-1 (scholar)
- Arrival Date: 8/15/2013 – 5/31/2014 as a scholar
  - Returned to US on 8/15/2018 as J-1 scholar

6 year lookback
Exempt Years
2017
2016
2015
2014
2013
2012

At least 31 days in current year & Total < 183 days → NRA

<table>
<thead>
<tr>
<th>2018 (Tax Year)</th>
<th># of Days</th>
<th># of Days</th>
<th># of Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>138</td>
<td>x 1</td>
<td>= 138</td>
</tr>
<tr>
<td>2017</td>
<td>0</td>
<td>x 1/3</td>
<td>= 0</td>
</tr>
<tr>
<td>2016</td>
<td>0</td>
<td>x 1/6</td>
<td>= 0</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td>= 138</td>
</tr>
</tbody>
</table>
Exempt individuals

- Benefit to exemption – exclude days present in substantial presence test
  - Much less likely to trigger tax resident (RA) status
- Must complete Form 8843 by June 15, 2018
- Still liable for income taxes
2. I am an NRA with no taxable income. What do I need to file?

Form 8843

- You must file if you were an “exempt individual” for SPT purposes even if you had NO income
  - F/J students - First 5 yrs as F/J students
  - J non-students - 2 out of preceding 6 yrs as F/J students OR J non-students
- Family members also must file this form if they were present in the U.S. under an F or J status and exempt in 2018, regardless of whether any U.S. income was received.
- Information return to let the IRS know that you were an “exempt individual”
3. How to fill out Form 8843

**Part I**
Everyone fills out this part.

**Part II**
Only J-1 non-students fill out this part.

**Part III**
Only F-1/J-1 students fill out this part.

**Taxpayer ID**
If no SSN or an ITIN, leave this blank. Instruct the student to see Asami Guenther to process a W-7.
3. How to fill out Form 8843

PAGE 2 of 2

Sign and date IF you are filing Form 8843 by itself.
4. I am an NRA with taxable income. What do I need to file?

Form 1040NR-EZ

- You are **NOT** need to file this form if you did not have any wages

  **AND**

- You have no other reasons to file, such as
  - you had wages or scholarship income exempt by a tax treaty,
    or
  - you had taxable scholarship, or
  - tax was withheld from wages/scholarships (i.e. eligible for refund)
Filing requirements

- Liam is a junior at the state university. He is in F-1 visa status. In 2018, he had wages of $321 from his on-campus job. His wage statement shows that $44 of federal income tax was withheld. Does Liam need to file a tax return?

- Ian is a sophomore at the local college. He is in the U.S. on an F-1 visa. In 2018, Ian had wages of $3,024 from his job on campus. His wage statement shows that $12 was withheld for federal income tax. Does Ian need to file a tax return?

- Fritz, who is from Germany, worked on campus last year. He earned $5,241 and had no withholding. Does Fritz need to file a tax return?
Overview of US Taxable Income for NRAs

<table>
<thead>
<tr>
<th>Wages received in 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Amount exempted by tax treaty, if any</td>
</tr>
<tr>
<td>+ Other taxable income in US</td>
</tr>
<tr>
<td>- Certain deductions</td>
</tr>
<tr>
<td>= Adjusted gross income</td>
</tr>
<tr>
<td>- Itemized/standard deductions</td>
</tr>
<tr>
<td>= Taxable income</td>
</tr>
<tr>
<td>X Tax Rate</td>
</tr>
<tr>
<td>= Tax before credits and payments</td>
</tr>
<tr>
<td>- Tax credits</td>
</tr>
<tr>
<td>- Tax payments</td>
</tr>
<tr>
<td>= Tax due or refund</td>
</tr>
</tbody>
</table>

Dividends, taxable scholarships, US gains
Student loan interest
State income tax or standard for India
Very, very rare
Withholding on W-2 and 1042-S
Treaties

- Different treatment for students and teachers/researchers and different types of income
  - Most permit a certain amount of income to be treated as “exempt” from income tax
  - Each treaty is different
    - You need to understand the treaty that applies to you!
    - Treaties are available online
      - Focus on Articles (typically numbered 19 to 21 or so) related to
        - Teachers, Professors, Researchers (scholars)
        - Students
Treaties

- IRS Publication 901

**China, People's Republic of**

An individual who is a resident of the People's Republic of China and who is temporarily in the United States primarily to teach, lecture, or conduct research at a university or other accredited educational institution or scientific research institution is exempt from U.S. income tax on income for the teaching, lecturing, or research for a total of not more than 3 years.

- Provides summary of treaty provisions specific to scholars and students
Treaties

- A student or scholar must have been a resident of the treaty country prior to entering the U.S. for the provisions of that treaty to apply
- The key factor is the residency and NOT citizenship of the individual
- In most cases, the person will be both a citizen and resident of the same treaty country. However, it is very important to determine the country of residency in order to apply the proper treaty benefits
Common treaty terms

- Different income exclusions amounts
  - Will vary by student vs. scholar
- Different length of time
  - Treaty exemptions to apply (e.g., 2 years, 5 years, unlimited)
Retro treaties

- A few countries have treaty clauses saying that if the maximum years of presence are exceeded, the entire treaty benefit is lost
  - German students after 4
  - India, UK, Netherlands, Luxembourg scholars after 2
  - May be others
- Requires a taxpayer to file amended returns and pay tax on previous years' income
- Find IRS Publication 901 and read the section/country that applies to you (www.irs.gov)
  - Non-students vs Students
Reporting Treaty Income

- Each type of income that an alien can earn is identified by a numeric code on Form 1042-S, box 1. International students and scholars should receive Form 1042-S in lieu of Form W-2 for any income that is covered by a treaty. The codes are helpful in determining the application of the treaty benefits.
  - The most common codes used by international students and scholars are:
    - Code 16: Scholarship or fellowship grants
    - Code 19: Compensation for teaching or researching
    - Code 20: Compensation during study and training
Treaties

- Different treatment for students and teachers/researchers
Reporting Treaty Exempt Income

- Wages or scholarship income exempt by a tax treaty
- Taxable scholarship income

Did you receive Form 1042-S?
The 1042-S prepared by UCSD is intended to report ONLY tax-exempt amounts! That is, UCSD should account for the treaty exemption.

Example: Katie is an intl student China and generated $5,400 of wages from her job on campus.

- 1042-S should be $5,000 and W-2 should be $400 for Federal.
- All $5,400 will be reported on W-2 for state.

This, on a rare occasion, gets erroneously prepared with all income.

- Contact Coordinator if this comes up – the student may need to get a new 1042-S.
Working on/off campus

- Income Code 20—Compensation During Study and Training
- Students and trainees from many countries are allowed to earn some money tax-free in the U.S.
- Many international students earn money from the university they attend. If a student earns more wages than their treaty benefit allows, the excess must be reported on their tax return.
  - International students and scholars who qualify can avoid withholding federal income tax on the students' and scholars' earnings until the applicable treaty benefit amount is exceeded. – not all do but the treaty exemption still applies – SS refund! (more later)
Types of Scholarships

- Tuition, fees, books, and/or supplies is not taxable if it was spent for the purpose intended and there was no requirement to perform services.
- Room and board is normally taxable, but some countries have treaty provisions making it nontaxable. Usually there are a maximum number of years during which the income is nontaxable (see 4011 for details).
- Performing services such as teaching or research is treated as wages.
Income in the form of a scholarship or fellowship is treated in one of three ways.

1. **Excludable under the Internal Revenue Code (this is called the Section 117 exclusion)**
   - A qualified scholarship is any amount received as a scholarship or fellowship grant, and used for tuition, fees, books, supplies, and equipment that the student is required to buy. Amounts used for other purposes, such as room and board or travel, are not excludable. Section 117 does not apply if the student must perform services to receive the money (i.e. teaching assistant).

2. **Exempt by treaty, or**
3. **Taxable**
Scholarships

- Daniela, an international student from Brazil, received a $6,000 scholarship from Mountain State University. The university applied $4,700 of it for tuition, fees, and books. The other $1,300 was used for living expenses. How much must Daniela report?

1. If a nonresident alien receives a grant that is not from U.S. sources, it is not subject to U.S. tax.
2. Scholarship or fellowship grants that cover tuition and fees (and books and supplies if required of all students) are not subject to U.S. tax. (Financial aid that is dependent on the performance of services, such as a teaching assistant, is treated as wages and subject to the code income 17, 18, or 19 provisions.)
3. Scholarship or fellowship grants that cover room, board and other personal expenses are subject to U.S. tax unless a treaty benefit (as summarized below) exists.

<table>
<thead>
<tr>
<th>Country</th>
<th>Maximum Years in U.S.</th>
<th>Maximum Dollar Amounts</th>
<th>Treaty Article</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladesh</td>
<td>2</td>
<td>No Limit</td>
<td>21(2)</td>
</tr>
<tr>
<td>China, People’s Republic of</td>
<td>No Limit</td>
<td>No Limit</td>
<td>20(b)</td>
</tr>
<tr>
<td>Commonwealth of Independent States*</td>
<td>5</td>
<td>Limited</td>
<td>20(1)</td>
</tr>
<tr>
<td>Cyprus</td>
<td>5</td>
<td>No Limit</td>
<td>21(1)</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>5</td>
<td>No Limit</td>
<td>31(1)</td>
</tr>
</tbody>
</table>
Working Off Campus

- Sometimes students and scholars try to make use of the treaty benefits for dependent and independent personal service income (Income Codes 17 and 18).
  - Many treaties do not permit students and scholars to earn those types of income; they are only allowed to engage in employment that is related to the reason they were admitted to the country.
  - This will be ineligible for treaty exemption and taxed
Other income

- Some outside employers will not handle your taxes correctly
  - Common mistakes
    - No 1042-S (you will need to apply the treaty)
    - They might apply employment taxes
      - Students and scholars – as long as permitted work and you are here on your F, J, M or Q visa exempt from employment taxes
      - As long as you remain a NRA
      - Spouses on F-2 or J-2 not exempt
    - They may also issue you a Form 1099-MISC
Other Income

● Dealing with a 1099-MISC
  ● If Resident, self-employment income should be reported on Schedule C (you are a business!)
    ● Also need to file for self-employment taxes
  ● If NRA, also a business but you remain exempt from self-employment taxes
    ● Can file Sch C and deduct business expenses but may get questions about self-employment taxes so may want to attach a statement
    ● Can report as “Other Income”
Other Income

- If your employer mistakenly withholds employment taxes
  - Social Security and Medicare
    - Step 1: Ask for refund from employer
    - Step 2: File Form 8316 and 843
    - Follow instructions for these two forms and mail separate from your income tax returns
Unique Treaties

- India - students on an F, J, or M visa are allowed to use the standard deduction instead of itemizing deductions
  - An Indian student may take a standard deduction equal to the amount allowable on Form 1040 ($12,000 for single)
Unique Treaties

- A student from China is entitled to the $5,000 exemption each year for the amount of time reasonably necessary to complete education or training.
  - Students will become resident aliens for tax purposes after five years, but would still be entitled to the treaty benefit as long as they remain students.

- A scholar from China is exempt from tax on earned income for three years. After two years, a scholar will become a resident alien for tax purposes, but is still entitled to one more year of tax benefits under the treaty.
Applying the treaty

- Suzan is a student from Poland. She has been in the U.S. for four years. Her earned income last year was $6,700, all of it earned in the U.S. from her on-campus job. Based on this information, what is the amount of the treaty benefit available to her?

- Instead assume that Suzan was a research scholar. What is the treaty benefit?
Reporting Withholding

- Tax withheld from wages

W-2, Box 2
1042-S, Box 7
Income

- Renard is an international student from Belgium, temporarily present in the U.S. in F-1 status. He is entitled to a $9,000 treaty exemption for wages. He didn't know about Form 8233 and never filed it. He earned $11,800 during 2017, all of which was reported on Form W-2. How much taxable income will Renard report for 2017?

- Chao, a student from China, received Form 1042-S showing code 20 income of $5,000. Chao also received a W-2 with $3,900 in box 1. How much will Chao report on the wage line?
Deductions

- Itemized Deductions
  - Nonresident students and scholars (except students from India) are not permitted to take the standard deduction.
  - Itemize deductions are limited
    - State and local taxes
    - Charitable contributions (to US charities only)
    - Casualty or theft loss
    - Job expenses (2% AGI floor)
    - Student loan interest from US based companies
Dependents and Exemptions

- Previous US Income tax code provided a “blanket” deductions against taxable income
  - The “personal” exemption
    - Generally $4,150 for you plus $4,150 per “dependent” in your household
    - We will see that NR generally do NOT have “dependents”
  - Standard deduction
    - Generally $12,000 for a single taxpayer and $24,000 for a married
    - We will see that NR do not generally have “spouses”
Dependent issues

- All unmarried nonresidents must use the Single filing status.
- Married nonresidents must use the Married Filing Separately status, even if their spouse is not present in the U.S.
- A nonresident alien who is married to a U.S. citizen or resident can choose to be treated as a resident and file a joint return (Form 1040EZ, Form 1040A, or Form 1040).
Married to US resident

- Typically, child tax credits and earned income credits are NOT available to non-residents
  - However – non-resident married to a US resident may be permitted to under certain circumstances
  - Unlikely to see many of these
Affordable Care Act

- International students and teachers that are non-residents and complying with their visa are NOT subject to the mandatory health insurance requirements ("individual mandate")
- Resident status dictates compliance with ACA
- J-1s are generally required to have health insurance anyway
Other forms you may have received

- **Form 1099-INT (Interest Income)**
  - Probably disregard because interest received on deposits held in U.S. banks are **NOT taxable** if you’re an NRA, generally

- **Form 1098-T (Tuition Statement)**
  - Disregard because educational credits are **NOT allowed** for an NRA

- **Others?**
  - Form 1099-DIV dividends
  - Form 1099-B broker’s statement listing security sales
**Form 1040NR**

Wages + Taxable Scholarships
- Exempt income because of tax treaty
- Itemized deductions (or standard deduction, if students from India)

= Taxable Income

Figure out tax from Tax Tables
- Tax < Federal tax withheld → Overpayment/Refund
- Tax > Federal tax withheld → Tax Due
### Form 1040NR Schedule OI

**Schedule OI—Other Information (see instructions)**

**Answer all questions**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Of what country or countries were you a citizen or national during the tax year?</td>
</tr>
<tr>
<td>B</td>
<td>In what country did you claim residence for tax purposes during the tax year?</td>
</tr>
<tr>
<td>C</td>
<td>Have you ever applied to be a green card holder (lawful permanent resident) of the United States?</td>
</tr>
</tbody>
</table>
| D    | Were you ever:  
|      | 1. A U.S. citizen?  
|      | 2. A green card holder (lawful permanent resident) of the United States? |
| E    | If you had a visa on the last day of the tax year, enter your visa type. If you did not have a visa, enter your U.S. immigration status on the last day of the tax year. |
| F    | Have you ever changed your visa type (nonimmigrant status) or U.S. immigration status? |
| G    | List all dates you entered and left the United States during 2016 (see instructions). |
| H    | Give number of days (including vacation, non-workdays, and partial days) you were present in the United States during: |
| I    | Did you file a U.S. income tax return for any prior year? |
| J    | Income Exempt from Tax—If you are claiming exemption from income tax under a U.S. income tax treaty with a foreign country, complete (i) through (5) below. See Pub. 901 for more information on tax treaties. |

#### Notes:
- **Item A**: Usually the same but not always.
- **Item B**: Same as Form 8843, Part I, 4a.
- **Item H**: Fill out only if you are a resident of a treaty country and are claiming the treaty benefits.
California 540 NR

- 540 NR Schedule CA is for adjustment to Federal Income to reflect state income
- Expect two common adjustments:
  1. Treaty exempt wages Line 7 – Col C
- We are not prepared to handle any other CA adjustments
Where/When to File

- **CANNOT** e-file or fax forms
- Recommend **certified mail** so you will have the proof of receipt by the IRS
- **April 15th, 2019** – if you received income
- **June 17th, 2019** – if you didn’t receive income
- Mail to (if refund or 8843 only):
  
  Department of the Treasury
  
  Internal Revenue Service Center
  
  Austin, TX 73301-0215
Resources

- IRS Website  www.irs.gov
- IRS article on foreign students and scholars
  http://www.irs.gov/businesses/small/international/article/0,,id=96431,00.html
- IRS Forms and Instructions
- IRS Publications
  - Publication 4011, VITA/TCE Foreign Student & Scholar Resource Guide
- California Franchise Tax Board  www.ftb.ca.gov