

26 CFR 1.871-1 - CLASSIFICATION AND MANNER OF TAXING ALIEN INDIVIDUALS.

§ 1.871-1

[See <http://www.law.cornell.edu/cfr/text/26/1.871-1>]

Classification and manner of taxing alien individuals.

(a) Classes of aliens. For purposes of the income tax, alien individuals are divided generally into two classes, namely, resident aliens and nonresident aliens. Resident alien individuals are, in general, taxable the same as citizens of the United States; that is, a resident alien is taxable on income derived from all sources, including sources without the United States. See § [1.1-1\(b\)](#).

Nonresident alien individuals are taxable only on certain income from sources within the United States and on the income described in section 864(c)(4) from sources without the United States which is effectively connected for the taxable year with the conduct of a trade or business in the United States.

However, nonresident alien individuals may elect, under section 6013 (g) or (h), to be treated as U.S. residents for purposes of determining their income tax liability under Chapters 1, 5, and 24 of the code.

Accordingly, any reference in §§ [1.1-1](#) through 1.1388-1 and §§ [1.1491-1](#) through 1.1494-1 of this part to non-resident alien individuals does not include those with respect to whom an election under section 6013 (g) or (h) is in effect, unless otherwise specifically provided. Similarly, any reference to resident aliens or U.S. residents includes those with respect to whom an election is in effect, unless otherwise specifically provided.

(b) Classes of nonresident aliens—(1) In general. For purposes of the income tax, nonresident alien individuals are divided into the following three classes:

(i) Nonresident alien individuals who at no time during the taxable year are engaged in a trade or business in the United States,

(ii) Nonresident alien individuals who at any time during the taxable year are, or are deemed under § [1.871-9](#) to be, engaged in a trade or business in the United States, and

(iii) Nonresident alien individuals who are bona fide residents of a section 931 possession (as defined in § [1.931-1\(c\)\(1\)](#) of this chapter) or Puerto Rico during the entire taxable year. An individual described in paragraph (b)(1)(i) or (ii) of this section is subject to tax pursuant to the provisions of subpart A (section 871 and following), part II, subchapter N, chapter 1 of the Code, and the regulations under those provisions. The provisions of subpart A do not apply to individuals described in this paragraph (b)(1)(iii), but such individuals, except as provided in section 931 or 933, are subject to the tax imposed by section 1 or 55. See § [1.876-1](#).

(2) Treaty income. If the gross income of a nonresident alien individual described in subparagraph (1) (i) or (ii) of this paragraph includes income on which the tax is limited by tax convention, see § [1.871-12](#).

(3) Exclusions from gross income. For rules relating to the exclusion of certain items from the gross income of a nonresident alien individual, including annuities excluded under section 871(f), see §§ [1.872-2](#) and [1.894-1](#).

(4) Expatriation to avoid tax. For special rules applicable in determining the tax of a nonresident alien individual who has lost U.S. citizenship with a principal purpose of avoiding certain taxes, see section 877.

(5) Adjustment of tax of certain nonresident aliens. For the application of pre-1967 income tax provisions to residents of a foreign country which imposes a more burdensome income tax than the United States, and for the adjustment of the income tax of a national or resident of a foreign country which imposes a discriminatory income tax on the income of citizens of the United States or domestic corporations, see section 896.

(6) Conduit financing arrangements. For rules regarding conduit financing arrangements, see §§ [1.881-3](#) and [1.881-4](#).

(c) Effective/applicability date. This section shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR [1.871-1](#) and [1.871-7\(a\)](#) (Revised as of January 1, 1971). Paragraph (b)(1)(iii) of this section applies to taxable years ending after April 9, 2008.