



# Tax Treatment of Thrift Savings Plan Payments to Nonresident Aliens and Their Beneficiaries

Except as noted below for uniformed services accounts, this notice summarizes tax rules that apply to Thrift Savings Plan (TSP) payments made to nonresident aliens and beneficiaries of nonresident aliens.

A **nonresident alien** is an individual who is neither a U.S. citizen nor a resident of the United States.<sup>1</sup> A **resident alien** is an individual who is or was a lawful permanent resident of the United States during any part of a calendar year. An alien may also be considered a U.S. resident if the individual meets the Internal Revenue Service (IRS) “substantial presence” test for a calendar year.<sup>2</sup> For information on residency status and the tests for residency, you may obtain IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, or IRS Publication 519, *U.S. Tax Guide for Aliens*.

We are required by law to provide you with this notice; however, because tax rules are complex, you may wish to consult a tax advisor before you make any decision that might be affected by them.

For purposes of this notice, the following additional definitions may be helpful:

- A **participant** is a Federal employee or a member of the uniformed services (or a former Federal employee or member of the uniformed services) who has an account in the TSP.
- A **beneficiary** is a person entitled to the TSP account of a deceased participant.
- A **current or former spouse** is an individual who is (or was) a spouse of a participant and who receives a payment under a qualifying order.
- **Taxable income** means an amount of money received from the TSP by a participant or beneficiary which is subject to U.S. income tax.
- **Tax withholding** is money that is withheld from a TSP distribution and paid to the IRS as a credit towards U.S. income tax.

<sup>1</sup> The “United States” includes the 50 states and the District of Columbia.

<sup>2</sup> This is commonly referred to as the “green card” test.

- An **eligible rollover distribution**<sup>3</sup> is a distribution from the TSP to a participant, or to a participant’s spouse or former spouse, which is **not** (1) a monthly payment that is calculated based on life expectancy, (2) a monthly payment made over a period of at least 10 years, (3) an IRS required minimum distribution, or (4) a financial hardship withdrawal.
- A **traditional IRA** is an individual retirement account described in § 408(a) of the Internal Revenue Code (I.R.C.) or an individual retirement annuity described in I.R.C. § 408(b). (It does not include a Roth IRA, a SIMPLE IRA, or a Coverdell Education Savings Account (formerly known as an education IRA).)
- An **eligible employer plan** includes a plan qualified under I.R.C. § 401(a), including a § 401(k) plan, profit-sharing plan, defined benefit plan, stock bonus plan, and money purchase plan; an I.R.C. § 403(a) annuity plan; an I.R.C. § 403(b) tax-sheltered annuity; and an eligible I.R.C. § 457(b) plan maintained by a governmental employer.
- A **transfer** occurs when you instruct the TSP to send all or part of a payment directly to a traditional IRA or an eligible employer plan, instead of issuing it directly to you.
- A **rollover** occurs when the TSP makes a distribution to you (which includes the amount of the check you receive plus the amount withheld) and you deposit any part of that distribution into a traditional IRA or eligible employer plan within 60 days of the date you receive it.

## ***Special Note for the Rollover or Transfer of Uniformed Services Accounts***

Tax-exempt balances (i.e., contributions from combat zone pay) may be transferred or rolled over into

<sup>3</sup> Any payments that are not eligible rollover distributions are either “periodic” or “non-periodic” payments for tax withholding purposes. If you make a financial hardship in-service withdrawal, take minimum distribution payments, or take monthly payments that will last 10 years or more or that will be computed according to the IRS life expectancy table, see the TSP tax notice “Important Tax Information About Payments From Your TSP Account” for detailed information.

a traditional IRA or transferred into certain eligible employer plans, but only if the IRA or plan accepts tax-exempt balances. Although an eligible rollover distribution will be distributed to you based on the proportion of taxable and tax-exempt balances in your account, if you choose to transfer a portion of the distribution the taxable balance will be transferred to your IRA or plan first. Tax-exempt money will be transferred only if the taxable portion of your distribution does not satisfy the percentage that you elect to transfer to your IRA or plan. Any tax-exempt money in your withdrawal that cannot be transferred will be paid directly to you (or to your checking or savings account, if you so elect).

You may only transfer (not roll over) a tax-exempt balance to an eligible employer plan. The only types of eligible employer plans that can accept a transfer of tax-exempt balances from the TSP are plans qualified under I.R.C. § 401(a) and I.R.C. § 403(a) annuity plans; however, a plan is not legally required to accept such a transfer.

You cannot first transfer or roll over a tax-exempt balance into a traditional IRA and later transfer or roll over that amount into an employer plan. If you transfer or roll over a tax-exempt balance into a traditional IRA, it is your responsibility to keep track of the amount of these contributions and report that amount to the IRS on the appropriate form so that the nontaxable amount of any future distribution(s) can be determined.

Tax-exempt balances in a uniformed services TSP account may not be transferred into a civilian TSP account.

## Tax Treatment of TSP Payments

The tax treatment of TSP payments is explained in the following questions and answers.

### 1. Do I owe U.S. taxes on a payment from the TSP?

A payment made by the TSP is taxable income for U.S. Federal income tax purposes in the year in which the payment is made. The Federal income tax treatment of payments from the TSP depends on two factors: the residency status of the participant when he or she was employed as a Federal employee and the residency status of the participant or beneficiary when he or she receives the payment(s) from the TSP. The Internal Revenue Code governs your tax liability and withholding responsibilities.

In general, the following rules apply:

- A **resident alien participant** will be liable for U.S. income tax.
- A **nonresident alien participant** who worked for the U.S. Government in the United States may be liable for U.S. income tax. See IRS Publication 721, *U.S. Guide to Civil Service Benefits*.
- A **nonresident alien participant** who never worked for the U.S. Government in the United States will not be liable for U.S. income tax.
- A **U.S. citizen beneficiary** of a resident or nonresident alien participant will be liable for U.S. income tax.
- A **resident alien beneficiary** of a U.S. citizen participant or resident or nonresident alien participant will be liable for U.S. income tax.
- A **nonresident alien beneficiary** of a U.S. citizen participant or a resident alien participant will be liable for U.S. income tax.
- A **nonresident alien beneficiary** of a nonresident alien participant will not be liable for U.S. income tax if the participant never worked for the U.S. Government in the United States.
- An **Individual Taxpayer Identification Number (ITIN)** is required when a payee is not eligible to obtain a Social Security number (SSN). To obtain an ITIN, the payee must complete IRS Form W-7, Application For IRS Individual Taxpayer Identification Number, and submit the form with certain documentation to the IRS.

### 2. Will the TSP withhold U.S. taxes from my payments?

This depends on whether the payment you receive is subject to U.S. income tax. If the money you receive is subject to U.S. income tax, then it is subject to withholding. In general, the only persons who do not owe U.S. taxes are nonresident alien participants and nonresident alien beneficiaries of nonresident alien participants. The TSP will not withhold any U.S. taxes if you fit into either category and you submit the certification described below. However, if you do not submit the certification to the TSP, the TSP must withhold 30% of your payment for Federal income taxes.

**Certification.** To verify that no tax withholding is required on a payment you are receiving as a participant, the TSP asks that you certify under penalty of perjury that you are a nonresident alien whose contributions to the TSP were based on income earned outside the United States. If you are receiving a payment as a beneficiary, you must certify that you are a nonresident alien and that the deceased participant was also a nonresident alien whose contributions to the TSP were based on income earned outside the United States. (Certification forms are attached to this tax notice.)

### 3. How much tax will be withheld on payments from the TSP?

The amount withheld depends upon your status, as described below.

**Participant.** If you are a **nonresident alien**, your payment will not be subject to withholding for U.S. income taxes. (See Question 2.) If you are a **U.S. citizen** or a **resident alien**, your payment will be subject to withholding for U.S. income taxes. If you are a U.S. citizen or resident alien when you separate, you will receive from your employing agency the tax notice "Important Tax Information About Payments From Your TSP Account," which explains the withholding rules that apply to your various withdrawal options.

**Spouse beneficiary, or current or former spouse under a qualifying order.** Special rules apply to taxable payments to beneficiaries who are the spouses of deceased participants and to payments made to current or former spouses under qualifying orders. If you are a spouse beneficiary or current or former spouse, the payment to you is considered an **eligible rollover distribution**. If you are a spouse beneficiary or a current or former spouse under a qualifying order who is a U.S. citizen or a resident alien, the payment is subject to 20% withholding; if you are a spouse beneficiary who is a nonresident alien, the withholding rate is 30%,<sup>4</sup> unless you provide the certification described above under Question 2.

**Note:** The amount withheld is not actual tax due. When you file your annual Federal income tax return, you may be entitled to a refund of a por-

tion of this amount, or you may be required to pay an additional amount.

- Before you receive an eligible rollover distribution, you can avoid withholding on all or any portion of your payment by asking the TSP to transfer that amount to a traditional IRA or an eligible employer plan. You can thus postpone paying tax on that amount until you receive the money from the IRA or plan. However, you cannot avoid the mandatory 20% (or 30%) withholding on any amount that you elect to receive directly, including payments made by direct deposit (electronic funds transfer (EFT) to your personal checking or savings account), even if you then roll it over to a traditional IRA or an eligible employer plan.
- You may elect to have an amount withheld in addition to the 20% (or 30%) withholding by completing Line 3 on IRS Form W-4P, Withholding Certificate for Pension or Annuity Payments.<sup>5</sup> You should submit this form to the TSP Service Office at the address provided at the end of this notice. Line 1 and Line 2 are not valid elections for this type of payment.
- There is no withholding on payments that are less than \$200. However, you can still elect withholding for any eligible rollover distribution of less than \$200 by completing Line 3 on Form W-4P.

In deciding whether to transfer or roll over your payment to a traditional IRA or an eligible employer plan, you should consider the following:

- You must pay Federal income tax on any part of the payment that you do not transfer or roll over.
- Because all eligible rollover distributions of \$200 or more made directly to you are subject to 20% (or 30%) withholding, you must pay Federal income tax on the amount withheld — even if you roll over the amount you receive — unless you deposit personal funds equal to the amount withheld into your IRA or eligible employer plan. (If you do this, you may receive a refund of taxes withheld, but you cannot wait until you receive a refund to complete a rollover.) If you do not want to use personal funds to make up the amount withheld, you should choose to have the TSP

<sup>4</sup> A nonresident alien spouse beneficiary or current or former spouse may be entitled to a lower rate of withholding under a treaty entered into between his or her country and the United States. In such a case, the beneficiary must establish that the treaty provisions allow for a lower withholding rate. In order to claim the benefit of a treaty, the beneficiary must file **with the TSP** IRS Form W-8 BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding.

<sup>5</sup> If you are receiving a withdrawal payment or a death benefit from both a civilian TSP account and a uniformed services TSP account, you must submit a separate IRS Form W-4P for each account.

transfer the payment to your IRA directly, instead of rolling it over to your IRA yourself.

**All other nonresident alien beneficiaries.** If you are a nonresident alien beneficiary who is not a surviving spouse or current or former spouse under a qualifying order and the payment is taxable, the TSP will withhold 30% of the payment unless you provide the certification described on page 3 under Question 2. Payments to you are not eligible for transfer or rollover to a traditional IRA or eligible employer plan.

If you submit Form W-4P, you may elect:

- to have no Federal income tax withheld, by completing Line 3 on Form W-4P and filing IRS Form W-8 BEN.
- to have an amount withheld in addition to the 30%, by completing Line 3 on Form W-4P.

**Note:** Line 2 on Form W-4P is not a valid election for this type of payment.

In order to claim the benefit of a treaty that establishes a lower withholding rate, you must file IRS Form W-8 BEN with the TSP.

If you attempt to avoid withholding in any manner other than that described in this section, the TSP is required to withhold 30% of your distribution for Federal income taxes.

#### 4. What other considerations apply to tax withholding?

The following information applies to all TSP payments that are subject to U.S. income tax:

If you do not have enough Federal income tax withheld from your payment, you may be responsible for paying estimated tax. You may also incur penalties under the IRS estimated tax rules if your withholding and estimated tax payments are insufficient.

You should be aware that the TSP does not withhold for a foreign country's income tax or for state, city, or other local income tax. You should consult your tax advisor or relevant foreign, state, or local taxing authorities regarding any potential tax obligations to them.

#### 5. Can I use the 10-year tax option?

If the payment you receive from the TSP qualifies as an **eligible lump sum distribution**, you may

be able to lower the income tax you pay by using the 10-year tax option.

An **eligible lump sum distribution** is one in which the total TSP account balance (if a participant has two accounts, his or her civilian and uniformed services accounts, including tax-exempt balances, if any) is distributed to the payee within one tax year (the calendar year for most taxpayers), regardless of whether this occurs in one or more payments to a single beneficiary or to multiple beneficiaries. This means that an eligible lump sum distribution can include amounts which the TSP distributes to you in a series of monthly payments, in a subsequent payment made after your initial withdrawal, or in a taxable loan distribution — as long as all amounts in your account are distributed to you in the same tax year. However, if you transfer or roll over all or any part of your distribution, you cannot use the 10-year tax option.

With the 10-year tax option, your eligible lump sum distribution is taxed as if it were paid to you over 10 tax years.

The following rules apply to the 10-year tax option:

- The 10-year tax option is available only if the participant was age 50 before January 1, 1986.
- The participant must have been an **active participant** in the TSP for at least 5 years before the year in which the distribution is made. The participant is considered an active participant during a year if either the participant or his or her agency or service made a contribution to his or her TSP account during that year.
- You must use the 10-year tax option for all eligible lump sum distributions that you receive in the same tax year. This includes a withdrawal of your entire TSP account after separation and any taxable loan distribution. It also includes an eligible lump sum distribution from any other plan described in I.R.C. § 401(a) or § 403(a) which is maintained by another employer.
- You can use the 10-year tax option only once in your lifetime.
- You must use the tax rate in effect in 1986.
- If you transfer or roll over all or any part of your distribution, you cannot use the 10-year tax option.

You can elect the 10-year tax option by filing IRS Form 4972, Tax on Lump Sum Distributions (From Qualified Plans of Participant Born Before 1936), with your annual income tax return.

## **6. How does the TSP report payments for U.S. income tax purposes?**

The TSP will report to the IRS all payments that are made directly to you as well as all transfers made to traditional IRAs or eligible employer plans. The TSP will also report such payments and transfers to the state in which your TSP record shows you resided (or, for active members of the uniformed services, your state of legal residence as reported by your payroll office) at the time the payments were made, if that state imposes an income tax.

Annuity purchases are not reported by the TSP to the IRS or to your state of residence. Payments made under an annuity that the TSP purchased for you will be reported for tax purposes by the annuity provider.

If you are a nonresident alien, by March 15 of the year that follows your TSP payment, the TSP will send you Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. This form shows the amount of the payment made to you and the amount withheld for Federal income taxes.

**Note:** The TSP must provide the correct Taxpayer Identification Number (TIN) to the IRS on Form 1042-S. In the case of a payment to a nonresident alien participant, the participant's Individual Taxpayer Identification Number (ITIN) will be used. In the case of a U.S. citizen or resident alien participant, the participant's Social Security number (SSN) will be used. In the case of the death of a participant, if the beneficiary is a nonresident alien, the beneficiary's ITIN will be used; if the beneficiary is a U.S. citizen or resident alien, the beneficiary's SSN will be used. If payment is made to a trust or estate, an executor, administrator, or trustee must furnish to the TSP a TIN for the trust or estate before payment will be made to that entity. An individual who applies to the TSP for payment under a state's small estate procedure must also furnish a TIN for the estate. Thus, a TIN must be furnished for a trust or estate, although there may be no need to file IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

A nonresident alien can obtain an ITIN by filing IRS Form W-7, Application for IRS Individual Taxpayer Identification Number. If you believe that you are entitled to a partial or complete refund of amounts withheld, file IRS Form 1040-NR, U.S. Nonresident Alien Income Tax Return, to claim such amounts.

If you are required to file a U.S. income tax return, you should include the amount reported on Form 1042-S as income on your individual income tax return for the year in which the payments are made. However, you should exclude from adjusted gross income on your return any amounts that were transferred or rolled over to your traditional IRA or eligible employer plan. Attach a copy of Form 1042-S to your Federal tax return.

## **7. How can I contact the TSP Service Office?**

All correspondence with the TSP Service Office that concerns a TSP payment described in this notice should be sent to the following address:

TSP Service Office  
National Finance Center  
P.O. Box 61500  
New Orleans, LA 70161-1500

Include both your name and SSN or ITIN and the name and SSN or ITIN of the deceased participant (if applicable).

If you have any questions regarding this notice, please contact the TSP Service Office at 1-877-968-3778 (TDD: 1-877-847-4385). Outside the U.S. and Canada, please call 1-504-255-8777.



# THRIFT SAVINGS PLAN

## Request for Waiver of Federal Income Tax Withholding for a Beneficiary of a TSP Payment

**Nonresident aliens** who are not Thrift Savings Plan (TSP) participants, but who are receiving death benefit or court-ordered payments from the TSP, can use this form to request a waiver of Federal income tax withholding. You are eligible for such a waiver if:

- (1) neither you nor the TSP participant who contributed to the TSP account from which you will be paid is or ever was a resident alien or a U.S. citizen

**and**

- (2) the income from which the participant's contributions were made was earned outside the United States.

To confirm that these conditions apply, you must complete and sign the Certification below. After completing the certification, submit it to:

Thrift Savings Plan Service Office  
National Finance Center  
P.O. Box 61500  
New Orleans, LA 70161-1500

### Certification

I certify that I have never been a U.S. citizen or resident alien. I further certify that the TSP participant was never a U.S. citizen or resident alien and that the income upon which his or her contributions to the TSP were based was earned outside the United States. (The United States is defined as the 50 states and the District of Columbia.)

Participant's Name \_\_\_\_\_

Participant's Taxpayer Identification Number \_\_\_\_\_

Your Name (Please print.) \_\_\_\_\_

Your Individual Taxpayer Identification Number \_\_\_\_\_

Your Signature \_\_\_\_\_

Date Signed (mm/dd/yyyy) \_\_\_\_\_

**Warning:** Any intentional false statement in this certification or willful misrepresentation concerning it is a violation of the law that is punishable by a fine of as much as \$10,000 or imprisonment for as long as 5 years, or both (18 U.S.C. 1001).

**PRIVACY ACT NOTICE:** We are authorized to request this information under Title 5, U.S.C. Chapter 84. Your Individual Taxpayer Identification Number is collected in accordance with 26 U.S.C. 6109. We will use the information you give us to determine whether you and the participant are foreign persons and whether Federal income tax should be withheld from the participant's TSP distribution. This information may be shared with other Federal agencies or the uniformed services for statistical, auditing, or archiving purposes. In addition, we may share the information with law enforcement agencies inves-

tigating a violation of civil, criminal, or military law, or agencies implementing a statute, rule, or order. It may be shared with congressional offices, private sector audit firms, spouses, former spouses, and beneficiaries, and their attorneys. We may also disclose relevant portions of the information to appropriate parties engaged in litigation. You are not required by law to provide this information, but if you do not provide it, you may be subject to Federal income tax withholding.