

52.229-11 Tax on Certain Foreign Procurements—Notice and Representation.

As prescribed in [29.402-3\(a\)](#), insert the following provision:

Tax on Certain Foreign *Procurements*—Notice and Representation (Jun 2020)

(a) *Definitions*. As used in this provision—

Foreign person means any person other than a *United States person*.

Specified Federal procurement payment means any payment made pursuant to a contract with a foreign *contracting* party that is for goods, manufactured or produced, or services provided in a foreign country that is not a party to an international *procurement* agreement with the *United States*. For purposes of the prior sentence, a foreign country does not include an outlying area.

United States person as defined in [26 U.S.C. 7701\(a\)\(30\)](#) means

- (1) A citizen or resident of the *United States*;
 - (2) A domestic partnership;
 - (3) A domestic corporation;
 - (4) Any estate (other than a foreign estate, within the meaning of [26 U.S.C. 701\(a\)\(31\)](#)); and
 - (5) Any trust if-
 - (i) A court within the *United States* is able to exercise primary supervision over the administration of the trust; and
 - (ii) One or more *United States persons* have the authority to control all substantial decisions of the trust.
- (b) Unless exempted, there is a 2 percent tax of the amount of a *specified Federal procurement payment* on any *foreign person* receiving such payment. See [26 U.S.C. 5000C](#) and its implementing regulations at 26 CFR 1.5000C-1 through 1.5000C-7.
- (c) Exemptions from withholding under this provision are described at 26 CFR 1.5000C-1(d)(5) through (7). The *Offeror* would *claim* an exemption from the withholding by using the Department of the Treasury Internal Revenue Service Form W-14, Certificate of Foreign *Contracting* Party Receiving Federal *Procurement* Payments, available via the internet at www.irs.gov/w14. Any exemption claimed and self-certified on the IRS Form W-14 is subject to audit by the IRS. Any disputes regarding the imposition and collection of the 26 U.S.C. 5000C tax are adjudicated by the IRS as the [26 U.S.C. 5000C](#) tax is a tax matter, not a contract issue. The IRS Form W-14 is provided to the acquiring agency rather than to the IRS.
- (d) For purposes of withholding under [26 U.S.C. 5000C](#), the *Offeror* represents that
- (1) It ☐ is ☐ is not a *foreign person*; and

(2) If the *Offeror* indicates "is" in paragraph (d)(1) of this provision, then the *Offeror* represents that—I am claiming on the IRS Form W-14 ☐ a full exemption, or ☐ partial or no exemption [*Offeror shall select one*] from the excise tax.

(e) If the *Offeror* represents it is a *foreign person* in paragraph (d)(1) of this provision, then—

(1) The clause at FAR 52.229-12, Tax on Certain Foreign *Procurements*, will be included in any resulting contract; and

(2) The *Offeror shall* submit with its *offer* the IRS Form W-14. If the IRS Form W-14 is not submitted with the *offer*, exemptions will not be applied to any resulting contract and the Government will withhold a full 2 percent of each payment.

(f) If the *Offeror* selects "is" in paragraph (d)(1) and "partial or no exemption" in paragraph (d)(2) of this provision, the *Offeror* will be subject to withholding in accordance with the clause at FAR 52.229-12, Tax on Certain Foreign *Procurements*, in any resulting contract.

(g) A taxpayer *may*, for a fee, seek advice from the Internal Revenue Service (IRS) as to the proper tax treatment of a transaction. This is called a private letter ruling. Also, the IRS *may* publish a revenue ruling, which is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties, and regulations. A revenue ruling is the conclusion of the IRS on how the law is applied to a specific set of facts. For questions relating to the interpretation of the IRS regulations go to <https://www.irs.gov/help/tax-law-questions>.

(End of provision)

Parent topic: 52.229 [Reserved]