Form 8833 - Reg §301.6114-1 Disclosure of Treaty-Based Return Positions

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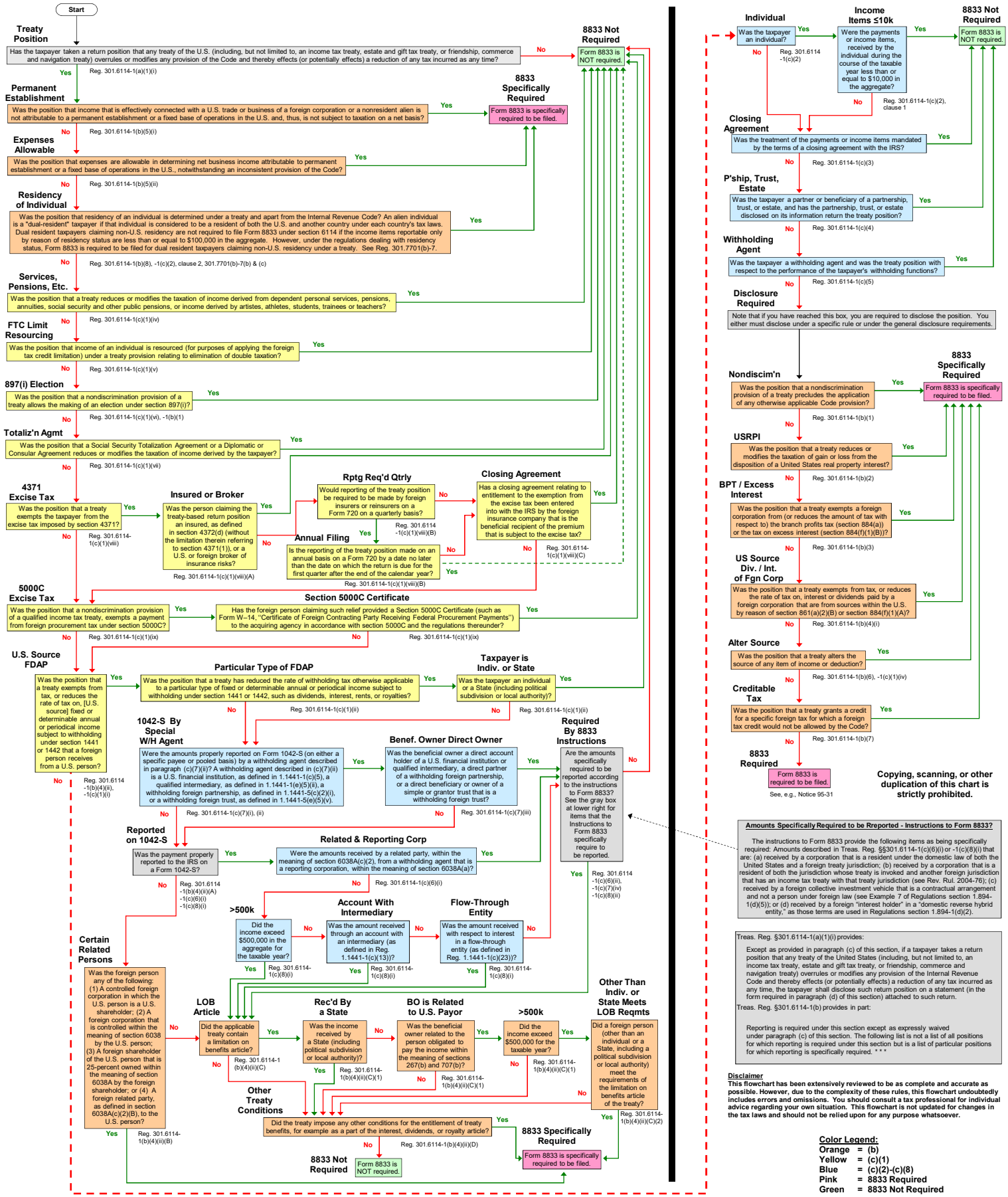

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Amounts Specifically Required to be Reported - Instructions to Form 8833?

The instructions to Form 8833 provide the following items as being specifically required: Amounts described in Treas. Reg. §§301.6114-1(c)(6)(i) or -1(c)(8)(i) that are: (a) received by a corporation that is a resident under the domestic law of both the United States and a foreign treaty jurisdiction; (b) received by a corporation that is a resident of both the jurisdiction whose treaty is invoked and another foreign jurisdiction that has an income tax treaty with that treaty jurisdiction (see Rev. Rul. 2004-76); (c) received by a foreign collective investment vehicle that is a contractual arrangement and not a person under foreign law (see Example 7 of Regulations section 1.894-1(d)(5)); or (d) received by a foreign "interest holder" in a "domestic reverse hybrid entity," as those terms are used in Regulations section 1.894-1(d)(2).

Treas. Reg. §301.6114-1(a)(1)(i) provides:

Except as provided in paragraph (c) of this section, if a taxpayer takes a return position that any treaty of the United States (including, but not limited to, an income tax treaty, estate and gift tax treaty, or friendship, commerce and navigation treaty) overrules or modifies any provision of the Internal Revenue Code and thereby effects (or potentially effects) a reduction of any tax incurred as any time, the taxpayer shall disclose such return position on a statement (in the form required in paragraph (d) of this section) attached to such return.

Treas. Reg. §301.6114-1(b) provides in part:

Reporting is required under this section except as expressly waived under paragraph (c) of this section. The following list is not a list of all positions for which reporting is required under this section but is a list of particular positions for which reporting is specifically required. * * *

Disclaimer
This flowchart has been extensively reviewed to be as complete and accurate as possible. However, due to the complexity of these rules, this flowchart undoubtedly includes errors and omissions. You should consult a tax professional for individual advice regarding your own situation. This flowchart is not updated for changes in the tax laws and should not be relied upon for any purpose whatsoever.

Color Legend:

Orange	=	**(b)**
Yellow	=	**(c)(1)**
Blue	=	**(c)(2)-(c)(8)**
Pink	=	**8833 Required**
Green	=	**8833 Not Required**