
Overview of Payments to Foreign Persons

This overview of payments pertains to services performed by a foreign person, considered an independent contractor, and not an employee. For payments to employees, contact the Payroll Office.

Foreign Persons (IRS Publication 515 <http://www.irs.gov/pub/irs-pdf/p515.pdf>):

A foreign person includes a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, foreign estate, and any other person that is not a U.S. person. It also includes a foreign branch of a U.S. financial institution if the foreign branch is a qualified intermediary. In most cases, the U.S. branch of a foreign corporation or partnership is treated as a foreign person.

Independent Contractor Payments:

Independent contractors are not employees of the University. Please complete the Independent Contractor vs. Employee Worksheet Analysis found under the Accounting section of the Forms http://www.ndsu.edu/vpfa_apps/acct/contractor/contractorform.shtml to determine the status of the individual.

If the person is to be paid as an independent contractor, complete the 'Contract Services Agreement – Non-Resident Alien' form, found under the Purchasing Section of the Forms page <http://www.ndsu.edu/fileadmin/vpfa/forms/PUR-ContractorAgreement-NRAlien.pdf> . ***Follow all Purchasing guidelines in regards to contract service agreements.***

Attach all of the required documents and forms necessary to process the payment to the individual, as listed on the Contract Service Agreement – Non-Resident Alien form. These documents include:

- Copy of both sides of the I-94 Card 'Arrival and Departure Record' (a small white card inside their passport).
 - The I-94 is not required for Canadians in B-visitor status.
 - Starting 4/30/2013 U.S. Customs and Border Protection will be making changes to the I-94 process. Please be sure to contact the Office of International Programs to stay current with these upcoming changes.
- Copy of Passport
- Copy of Visa
- Foreign National Information form (FNIF) <http://www.ndsu.edu/fileadmin/vpfa/forms/ACCT-ForeignInfo.pdf>
- W-8BEN – Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding <http://www.irs.gov/pub/irs-pdf/fw8ben.pdf>
- IRS Form 8233 – Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual <http://www.irs.gov/pub/irs-pdf/f8233.pdf> ; to be completed by the nonresident alien individual only if seeking a tax treaty benefit (a social security number or ITIN is required on this form).

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VISA status:

Independent contractor payments can only be received by foreign persons whose visa status allows the receipt of such payments.

Foreign individuals performing services within the United States, for the University, are required to follow complex immigration regulations pertaining to the service. U.S. law significantly restricts what employment non-resident aliens may accept. Before committing to an honorarium for a foreign individual, departments must ensure the person has the appropriate visa that allows such a payment. For short-term visits made for the purpose of delivering a lecture or speech, only certain visa classifications are authorized to accept an honorarium. An individual already in the U.S. may not necessarily be here in the correct visa classification and may not be permitted to earn additional income through activities, such as speaking engagements; the department must make certain they hold the correct visa classification. Additional sources may need to be reviewed to determine the visa classification.

- **Honorarium (Speaker Fees):** An honorarium is a payment to an individual for a *presentation-oriented, invitational event* such as:
 - a lecture or talk
 - a colloquium
 - an address
 - Grand Round

For contract service agreements for an honorarium, the '9/5/6' rule applies. Foreign nationals in B-1, B-2, VWB, and VWT status may accept an honorarium and/or travel expense reimbursement under the following conditions:

- the activity lasts no longer than nine (9) days at any single institution; and
- the individual has not accepted such payment or expenses from more than 5 educational or research institutions (including NDSU)
- in the previous 6-month period

Contact the *Office of International Programs* as soon as possible, to ensure you have the most current information regarding the following:

- The correct visa classification necessary to authorize payment specific to the services rendered
- Visitor status and I-94 requirements for visitors from Canada or other Visa Waiver Program countries and visitors from non-Visa Waiver Program countries.

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IRS - U.S. or Non U.S. Source Income (IRS Publ. 519 <http://www.irs.gov/publications/p519/ch01.html>):

After you have determined the nonresident alien visa status, the source of income must be determined. For tax purposes, a foreign person is usually subject to U.S. income tax only on U.S. source income. Under limited circumstances, certain foreign source income is subject to U.S. tax. Income is generally considered 'U.S. source' if the location of the activity for which the payment is being made is in the United States.

- IRS Publication 519 – table 2-1 Summary:

Type of Income - Source Determined by:

2. Pay for Personal Services - where services are performed
3. Business Income:
 - Personal Services – Where services performed
 - Sale of inventory purchased – Where sold
 - Sale of inventory produced – Allocation between sources
4. Rents – Location of property
5. Royalties:
 - Natural resources – Location of property
 - Patents, copyrights, etc. – Where property is used
6. Sale of real property – Location of property
7. Sale of personal property – Seller's tax home (see exceptions in IRS publication 519)
8. Scholarships, Fellowships/Grants - generally, residence of payer, with exception of activities to be performed outside the U.S., then deemed 'foreign source'.
9. Prizes & Awards – generally, residence of payer.

Accounts Payable – Payment for services performed by foreign persons:

In order for the payment to be processed in a timely matter, the department will need to have all of the appropriate documentation and forms, completely filled out, signed and turned into the Accounting Office **12 business days** before payment is required; IRS requires 10 days for determining the tax treaty benefit. The required documents and forms are needed to:

1. Pay the foreign individual/entity for the services performed, and
2. If the individual is seeking a tax treaty benefit to determine whether a tax treaty exists with the country the individual resides in.

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A tax treaty is negotiated between the U.S. Department of Treasury and an individual country. The purpose is to reduce double taxation on residents of the particular country. The foreign individual must have either a SSN or a tax identification number (ITIN) to claim the benefit.

- Foreign persons are subject to U.S. tax at the current rate of 30% on income they receive from U.S. sources for services performed in the U.S. This tax is imposed on the gross amount paid and is generally collected by withholding under the Internal Revenue Service (IRS) sections 1441 or 1442 on that amount. It is the University's responsibility to withhold tax.
- In some cases, a reduced rate or exemption from withholding, due to a tax treaty, may be allowed for individuals only.
- Foreign entities will be subject to U.S. tax at the current IRS rate of 30% on all income they receive from U.S. sources for services performed in the U.S., regardless of a tax treaty. It will be the foreign entities responsibility to file with the IRS a tax return to receive any overpayment of taxes made due to a tax treaty benefit.

Claiming treaty benefits. A reduced rate of withholding may apply to a foreign individual that provides a Form W-8BEN claiming a reduced rate of withholding under an income tax treaty, only if the person provides a SSN or ITIN and certifies that:

- It is a resident of a treaty country;
- It is the beneficial owner of the income; and
- It meets any limitation on benefits provision contained in the treaty, if applicable.

Form W-8BEN is valid for only three calendar years and is not filed with the IRS, but is required to be kept by the payer, in this case, the NDSU Accounting Office.

In addition, to qualify for an exemption from withholding due to a tax treaty, an individual who performs independent personal services (non-employee) must submit Form 8233, Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual. Please refer the non-resident alien individual to the Instructions for the Form 8233 <http://www.irs.gov/instructions/i8233/index.html> , as well as IRS Publication 901 <http://www.irs.gov/publications/p901/index.html>.

The completion of the IRS Form 8233 does not guarantee the exemption from withholding. The exemption from withholding is effective for payments made at least ten days after a copy of the accepted Form 8233 is forwarded to the IRS, for review and final determination of the tax treaty benefit. Form 8233 is filed with the IRS and is valid for so long as the person's status remains unchanged.

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Foreign persons not eligible to claim a tax treaty benefit:

- 30% will automatically be deducted from the payment to ensure the proper amount of taxes are withheld and paid into the IRS.
- IRS Form 1042 (Annual Withholding Tax Return for U.S. Source Income of Foreign Persons) to report tax withheld will be provided to the foreign person by the NDSU Payroll Office.

Travel reimbursement. Travel reimbursements made to foreign persons, for expenses incurred while traveling on University business, are not considered taxable income.

Tax identification number requirements:

There are two different types of tax identification numbers that could be relevant for a foreign person. One or the other is required when applying for a tax treaty benefit.

1. Social Security Number (SSN) - Requirement to be paid wages in the NDSU payroll system.
2. Individual Tax Identification Number (ITIN) - Alternative to SSN when foreign person isn't eligible for a SSN.

If the foreign person is required to file a tax return with the IRS or wants to claim tax treaty benefits, but is not eligible for a SSN, the foreign person **must** have an individual tax identification number (ITIN) (IRS form W-7 <http://www.irs.gov/pub/irs-pdf/fw7.pdf> IRS form W-7 instructions <http://www.irs.gov/pub/irs-pdf/iw7.pdf>).

Liability for tax (IRS Publication 515 <http://www.irs.gov/pub/irs-pdf/p515.pdf>):

In cases where applicable taxes have not been withheld, the IRS may assess the University the full amount of tax, along with penalties and interest charges, even if the tax was ultimately paid by the foreign person on their U.S. tax return. In the event that such an assessment should occur, these amounts will be billed back to the department not adhering to the prescribed procedures relating to foreign person payments by the University.

Foreign students, faculty, and staff with tax questions or problems are advised to seek assistance from the IRS, a CPA or an attorney. In the U.S., the individual taxpayer is responsible for filing an appropriate and accurate tax return and negotiating all tax matters with the IRS. Taxpayer assistance is available from the local IRS office or by calling the IRS's toll free taxpayer assistance number, 1-800-829-1040.