



The University of Vermont

Policy V.4.10.2

Responsible Official: Vice President
for Finance and Treasurer

Effective Date: March 16, 2018

Payments to Foreign Nationals and Entities

Policy Statement

This policy establishes the responsibilities, controls, and procedures for payments to foreign national individuals and foreign entities related to ensuring compliance with federal tax and immigration laws. Foreign nationals doing business with the University are required to provide evidence of U.S. non-immigrant visa status, and those who are not resident aliens for U.S. income tax purposes must certify their nonresident alien status. Foreign entities doing business with the University are required to certify their non-U.S. status. Documentary requirements under this policy must be met before payment will be issued to such individuals or entities.

Reason for the Policy

This policy provides guidance with respect to payments to individuals who are neither citizens nor permanent residents of the United States and entities not organized in the U.S.; ensures compliance with the United States Citizenship and Immigration Services (USCIS) rules as to whether payment can be made to an individual based on their immigration status; and ensures compliance with the Internal Revenue Service (IRS) income reporting and tax withholding rules.

Applicability of the Policy

This policy applies to all University of Vermont faculty, staff, and students seeking to engage, pay, or reimburse a foreign national individual or foreign entity.

This policy does not refer to payment made to individuals performing services in the capacity of an employee. Further, in order to ensure compliance with federal tax and immigration laws, the University will not reimburse an employee for payment made to a foreign national individual or foreign entity for U.S. source income.

Policy Elaboration

The University is required by federal tax law to withhold federal income tax from, and report via IRS Form 1042-S (Foreign Person's Statement of Income), certain U.S. source income payments made to or on behalf of either a foreign national with nonresident alien U.S. tax residency status, or a foreign entity. Each payment requires the review of certain key factors, including (i)

immigration status, (ii) U.S. tax residency status, (iii) type of payment to be made, and (iv) whether payment is U.S. source or foreign source income.

Depending on the type of income, payments made to or on behalf of a nonresident alien or foreign entity are generally subject to income tax withholding unless specifically exempted, either by U.S. tax law or an income tax treaty. To claim an exemption from tax withholding under an income tax treaty, the payee must submit the appropriate tax treaty claim form.

Definitions

Foreign Entity: A foreign business trust, corporation, limited liability company, limited partnership, partnership or other entity.

Foreign National: An individual who is neither a citizen nor a legal permanent resident of the United States.

Foreign National Information System (FNIS): A web-based, data-entry software application for foreign national tax compliance and income tax treaty analysis used by the University to collect information in lieu of the International Information Form (IIF).

Foreign Source Income: Income received for services performed outside of the U.S., or a scholarship/fellowship/grant paid by a non-U.S. payer (usually a foreign government or corporation). See IRS Publication 519 for sourcing rules. Foreign source income is non-taxable income for a nonresident alien. Foreign source income is taxable income to a resident alien.

Green Card Test: A means of determining a foreign national's tax residency status. If the individual has a Legal Permanent Residence Card (USCIS I-551), also known as a Green Card, the foreign national is a resident alien for U.S. income tax purposes.

International Information Form (IIF): University of Vermont data collection form to conduct the **Substantial Presence Test**. A foreign national payee shall be presumed to be a nonresident alien for U.S. income tax purposes, subject to income reporting via IRS Form 1042-S and income tax withholding at the source, in the absence of an IIF or a submission of the same information in the Foreign National Information System (FNIS). The IIF shall be collected to support a request for determination of eligibility for exemption from tax withholding under an income tax treaty.

Nonresident Alien for U.S. income tax purposes: A foreign national who is not a *resident alien* for U.S. income tax purposes. A nonresident alien is subject to specific income reporting and income tax withholding obligations under Internal Revenue Code section 1441.

Resident Alien for U.S. income tax purposes: A foreign national who passes either the Green Card test, or the Substantial Presence test. A resident alien is taxed as a U.S. resident.

Substantial Presence Test: A means by which the IRS determines a foreign national's tax residency status, based on days of physical presence in the U.S. This test, conducted via UVM's *International Information Form*, consists of two parts, applied in order:

31-Day Test: If the foreign national is physically present in the United States for 30 days or fewer this entire calendar year, then the foreign national is automatically a nonresident alien for U.S. tax purposes for this calendar year.

and

183-Day Test: adding the following:

1. The number of days physically present in the U.S. this current calendar year.
2. The number of days physically present in the U.S. the first prior calendar year, multiplied by 1/3
3. The number of days physically present in the U.S. the second prior calendar year, multiplied by 1/6

If the sum is 183 days or greater, then the foreign national is a resident alien for U.S. income tax purposes. Otherwise, the foreign national is a nonresident alien for income tax purposes.

Some important exceptions:

1. Students in the United States with an immigration status of F, J, M, or Q may be exempt from counting days of physical presence for the Substantial Presence Test for up to five calendar years, or parts thereof.
2. Exchange visitors (non-students) in the United States with an immigration status of J or Q may be exempt from counting days of physical presence for the Substantial Presence Test for up to two calendar years, or parts thereof, depending on their U.S. visa history for the current and six prior calendar years.
3. If a foreign national is merely commuting between the United States and Canada, or the United States and Mexico, each day of commute is not subject to the Substantial Presence Test.

Tax residency status: For U.S. income tax purposes, a foreign national is either a nonresident alien or a resident alien.

U.S. source income: Compensation paid for services rendered in the United States - scholarship or fellowship income paid by a U.S. payer to an individual studying or engaging in research activities in the U.S.

Procedures

Immigration Status

When paying a foreign national individual, USCIS provides specific regulations that govern payments the individual may receive under the terms of the non-immigrant status that the individual holds in the United States. The University maintains a chart of the most common visa categories (https://www.uvm.edu/sites/default/files/Division-of-Finance/UserGuides/common_visa_categories.pdf) that demonstrate whether an honorarium

payment may be made (for usual academic activities: guest lectures, public lectures, grand rounds, workshop presentation, symposium lecture, etc.), and whether payment may be made for broader services rendered in the independent contractor capacity.

Before planning an activity that involves payment to a foreign national under this policy, the department must know the non-immigrant (visa) status the individual already holds or is planning to hold in the U.S., and consult the chart to confirm that the individual shall be eligible to receive payment. If the individual is not or will not be eligible, a commitment to make a payment may not be made.

The University must obtain evidence of this immigration status in support of payment for services rendered in the U.S. Departments must obtain the following from the individual, as this will be required before payment is issued:

- Copy of Identification page (picture page) of the passport*
- Copy of U.S. visa page (if applicable) of the passport*
- Copy of I-94 record of admission (if applicable)*/**
- Copy of U.S. customs entry stamp (in lieu of I-94 card, for WB/WT visitors)*
- Business or Tourist Visitor Attestation Form (for B-1/B-2/WB/WT, Canadian visitors)
- J-1 permission letter (and copy of Form DS-2019) for exchange visitors sponsored by another organization

*except for visa-exempt Canadian visitors

**both sides for TN-holder, must reflect University of Vermont as petitioner for payment

Taxation

In general, 30% federal (and 8.1% Vermont state) income tax will be withheld from U.S. source payments to a nonresident alien individual or foreign entity, unless it is exempted by a tax treaty. [Note: the rates of withholding are subject to change in accordance with federal and state tax law.]

Expense Reimbursement

The University will not treat as income any reimbursement for travel expenses incurred in connection *with services rendered* to the University, provided such expenses are substantiated with receipt(s). Further, the University will not treat as income any reimbursement for a job candidate's or prospective student-athlete's official visit travel expenses in connection with a recruitment. Reimbursement for expenses will be made pursuant to the University's Travel Policy (<https://www.uvm.edu/sites/default/files/UVM-Policies/policies/travel.pdf>), hence, the University shall treat such reimbursement as excludable from gross income under the IRS' accountable plan rules. With the exception of travel expenses incurred in connection with a recruitment, and travel expenses incurred in relation to the rendering of services, reimbursement of travel and/or living expenses is includable in the payee's gross income, subject to income reporting and tax withholding.

Individuals

Foreign nationals have a tax residency status of either *Nonresident Alien* or *Resident Alien*, for U.S. income tax purposes. The two means of determining a foreign national's tax residency status are the *Green Card Test* and the *Substantial Presence Test*. (Refer to *Definitions* herein.)

For tax purposes, a nonresident alien is only subject to tax withholding on income considered to be U.S. source income. The University is required to withhold tax on this income (or obtain proper documentation of claim of an income tax treaty) and to report this income via IRS Form 1042-S.

A properly completed IRS Form W-8BEN will be required for payment to a nonresident alien.

Entities

For tax purposes, foreign entities are only subject to tax on U.S. source income that is not considered effectively connected with a U.S. trade or business. The University is required to withhold tax from such income (or obtain proper documentation of claim of an income tax treaty) and to report this income via IRS Form 1042-S.

A properly completed Form W-8BEN-E (or other W-8 series form) will be required before a vendor is set up in the University's vendor system and payment is issued. In general, non-U.S. vendors complete Form W-8BEN-E by completing Part I: Identification of Beneficial Owner, skipping Line 5: Chapter 4 Status as non-applicable to the University's payment, and checking the box below the Signature/Date line of Part XXX: Certification.

If the entity is to claim an exemption from withholding under an income tax treaty, Form W-8BEN-E must reflect an original signature and U.S. employer identification number in Part I, with a valid tax treaty claim in Part III.

Sourcing of Income Rules

U.S. Source Income

Payment of U.S. source income to a foreign entity or nonresident alien is generally reportable to the IRS and subject to income tax withholding at the source. Payment for services rendered is sourced based on where the services are rendered; payment for services rendered in the U.S. is U.S. source income.

Payment for the license of or "right-to-use" intellectual property (e.g., photograph, software, data set, library database) is sourced where the intellectual property is used or accessed. For instance, payment for use of or access to a foreign entity's database from campus is considered U.S. source income.

Foreign Source Income

Payment of foreign source income to a foreign entity or nonresident alien as long as the payment is related to services rendered by the foreign entity or nonresident alien to the University, is

neither reportable to the IRS nor subject to U.S. federal income tax withholding at the source. Payment for services rendered by a foreign entity or nonresident alien *outside the U.S.* is considered foreign source income and therefore will not be subject to U.S. tax reporting or withholding. Also, tangible goods purchased from a foreign vendor and shipped from abroad are not subject to reporting since ownership of the item passes to the University indefinitely with all rights and responsibility. However, in both instances, a Certificate of Foreign Status will be required to support the creation of the vendor record.

Forms

The following are links to forms most frequently submitted by vendors/payees doing business with the University:

IRS Forms

W-8BEN (Individuals): Foreign individuals performing services in the U.S. – Royalty payments, software purchases/downloads, maintenance & repairs, etc.

<https://www.irs.gov/pub/irs-pdf/fw8ben.pdf>

Instructions for W-8BEN

<https://www.irs.gov/pub/irs-prior/iw8ben--2014.pdf>

W-8BEN-E (Entities): Foreign entities performing services in the U.S. or over the internet – For companies selling software, intellectual property/royalties, maintenance & repairs, corporations or LLCs, etc. Form must include U.S. taxpayer identification number (EIN) for claim of tax exemption.

<https://www.irs.gov/pub/irs-pdf/fw8bene.pdf>

Instructions for W-8BEN-E

<https://www.irs.gov/pub/irs-pdf/iw8bene.pdf>

W-8ECI: Foreign vendors that are a beneficial owner claiming that income is effectively connected with the conduct of trade or business with the U.S. (other personal services). Form must include U.S. taxpayer identification number for claim of tax exemption.

<https://www.irs.gov/pub/irs-pdf/fw8eci.pdf>

Instructions for W-8ECI

<https://www.irs.gov/pub/irs-pdf/iw8eci.pdf>

W-8EXP: A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b). Form must include U.S. taxpayer identification number for claim of tax exemption. Note: These entities should use Form W8-ECI if they received effectively connected income and are not eligible to claim an exemption for chapter 3 or 4 purposes on Form W8-EXP.

<https://www.irs.gov/pub/irs-pdf/fw8exp.pdf>

Instructions for W-8EXP

<https://www.irs.gov/pub/irs-pdf/iw8exp.pdf>

UVM-Specific Forms

UVM Certificate of Foreign Status: Foreign vendors performing services outside the U.S., for purchases of tangible goods from foreign vendors, and for registrations for international conferences and competitions. Completed in lieu of Form W-8BEN or Form W-8BEN-E, for foreign source income only.

<https://www.uvm.edu/sites/default/files/Division-of-Finance/Forms/CertificateForeignStatus.pdf>

Business or Tourist Visitor Attestation: Attestation of eligibility for Honorarium payment and/or expense reimbursement under U.S. immigration law for Visitors in B-1/B-2 or Visa Waiver (WB/WT) status, including visa-exempt Canadians.

https://www.uvm.edu/sites/default/files/Division-of-Finance/Forms/Attestation_Form.pdf

Employee vs. Independent Contractor Determination Form

<https://www.uvm.edu/finance/forms/employee-vs-independent-contractor-determination-form>

International Information Form: To be completed by a foreign national payee/individual in order to prove U.S. tax residency status, or to formally support a request for determination of eligibility for exemption from tax withholding under a U.S. income tax treaty. Used in lieu of a FNIS submission if FNIS is not completed.

<https://www.uvm.edu/sites/default/files/Division-of-Finance/Forms/internationalinformationform.pdf>

Speaker & Services Template Procedure

<https://www.uvm.edu/sites/default/files/Division-of-Finance/Forms/speakerengagement.docx>

Contacts

Questions related to the daily operational interpretation of this policy should be directed to:

Assistant Controller for Tax and Treasury Services

(802) 656-0674

taxadmin@uvm.edu

The Vice President for Finance and Treasurer is the official responsible for the interpretation and administration of this policy.

Related Documents/Policies

Common Visa Categories and Payment Eligibility Guidelines

https://www.uvm.edu/sites/default/files/Division-of-Finance/UserGuides/common_visa_categories.pdf

Employee vs. Independent Contractor Policy

<https://www.uvm.edu/sites/default/files/UVM-Policies/policies/indcontract.pdf>

Travel Policy

<https://www.uvm.edu/sites/default/files/UVM-Policies/policies/travel.pdf>

Effective Date

Approved by the President March 20, 2018