

PAYMENTS TO INTERNATIONAL NON-EMPLOYEES

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I. INTRODUCTION

A. Types of Payments

This class will focus on those payments for **non employee** professional services, i.e. those in which The University does not control the time, place, or details of how the work should be done. Generally, all payments to nonresident aliens that are from U.S. sources and are not connected with a U.S. trade or business of the recipient are subject to withholding. Payments to nonresident **employees** of The University are treated under the graduated withholding tables for non-exempt payments.

B. What is Nonresident Withholding?

Nonresident withholding refers to the mandatory amount of federal income tax that must be withheld from payments to nonresidents. As a withholding agent, The University is required by law to withhold and remit 30% of the payment to the IRS.

C. Why Is It Being Enforced Now?

The Tax Reform Act of 1986 made significant changes to the Internal Revenue Code section governing the taxation of scholarships and fellowships. As a result, a spotlight was focused on these types of payments to nonresidents. This in turn caused both institutions and the IRS to start looking at the tax withholding and reporting obligations imposed on all types of payments made to nonresidents.

Both universities and the IRS have been slow getting up to speed in this area. But, this began to change in 1992 when the IRS initiated a major compliance effort directed at colleges and universities with one of the areas of focus being nonresident taxation. The IRS has already imposed stiff penalties on a number of universities for their failure to accurately withhold and report on these payments.

II. HOW CAN THE WITHHOLDING TAX BE AVOIDED?

A. U.S. Source Income

U.S. tax law classifies all types of income as either "U.S. source" or "foreign source", and different "sourcing" rules apply to each type of income. If the income received by a nonresident is classified as "foreign source," it will not be subject to U.S. tax. If the amount received is treated as "U.S. source," the income may be subject to U.S. tax.

If a nonresident earns income from the performance of personal services (such as work performed by independent contractors), the income is sourced in the country where the services were rendered. In determining the source of any compensation income, the residence or nationality of the payor of the compensation is irrelevant, as is the place and time of payment and the currency in which the payment was made. Therefore, payments made by The University to nonresidents performing services outside the U.S. are considered "foreign source" income and are not subject to U.S. tax.

B. Tax Treaties

Many countries have tax treaties with the U.S. developed specifically to encourage the exchange of information and business. These treaties allow nonresidents to be exempt from the required 30% withholding but only if the proper procedures are followed.

For each payment to a nonresident, the Office of Accounting will make the final determination as to whether or not a tax treaty is available. Contact Stephanie Hall to schedule a personal interview with your visitor.

III. VISA STATUS

A. Which Visa Status is Most Appropriate?

The immigration status of the nonresident is a critical element in the payment process. The status indicated on the nonresident's documents upon entry to the U.S. determines the activity of that visitor, whether he/she may be paid, and whether he/she is eligible for a tax treaty benefit. For example, depending on the visa, a nonresident may not be eligible to receive any payment or may only be eligible for reimbursements, even if a department would like to pay the visitor an honorarium. It is a violation of the Department of Homeland Security (DHS) regulations for the institution to knowingly pay an individual on an ineligible visa status.

B. Clarification of Terms and Documents

There are several terms and documents the department should be familiar with in order to be sure all the appropriate paperwork necessary to pay non-U.S. citizens is obtained and completed.

Passport	formal document issued by the country of citizenship; must be valid at all times
Visa	stamp in the passport issued by the U.S. Consulate for entry to the U.S.; must be valid for each entry, may expire during stay
Visa Waiver	allows citizens from certain countries to enter the U.S. without a visa stamp for business and tourism. They do, however, receive an I-94w at the port of entry.
I-94	small white card issued at the port of entry of the U.S. indicating the status of the person entering and the length of stay allowed
I-94w	small green version of the I-94 issued to citizens entering on the visa waiver program
D/S	"duration of status," term indicated on I-94 indicating that the non-resident may stay as long as he is continuing his objective and has a valid document (i.e. I-20 or DS-2019).

I-20 immigration document issued to students admitted to study in the U.S. as F-1. The form indicates information concerning the school they will attend, the program and the expected date of completion.

DS-2019 an immigration document issued to a J-1 student, visiting scholar, or researcher. After processing at the port of entry, the non-immigrant should just have the pink copy. This form indicates the name of the school, the activity of the participant, and the dates of stay.

C. Appropriate Visa Status for Independent Contractors

The appropriate visa status for a nonresident performing professional services as an independent contractor depends on the type of payment to be made.

1. Honorarium or Fee

For an individual to receive an **honorarium or fee for services**, they must enter the country with one of the following visa statuses:

J-1 Visiting Researcher/Scholar (Use when visit is 9 days or more)

Documentation required: DS-2019 issued by UT and I-94
OR DS-2019 issued by another institution with letter of work authorization and I-94

Conditions: No payment minimums or limitations
 Stay limited to three years
 May not be used for a permanent position
 Employment activity limited to original objective
 May be subject to the 2 year home rule requirement
 May not use this category if they have been in J status in U.S. within the previous 12 months except for a stay limited to less than 6 months.

J-1 Students on Academic Training or F-1 Students on Practical Training

Documentation required: DS-2019 (J-1) issued by UT or other institution with a letter authorizing employment from sponsor for employment after graduation.
 I-20 w/CPT authorization or EAD (employment authorization document) for F-1 students.

Conditions: J-1 "Academic training" (after graduation or during enrollment) limited to 18 months (36 months if bona fide post doc). F-1 Optional Practical training limited to 12 months.
 No salary minimum or limitation
 Employment limited to area of study.

B-1/B-2 or W/B and W/T (visitors for business/tourist purposes)

(Use only for visits of 9 days or less)

Documentation required: I-94 or I-94w

Conditions: W/B and W/T visitors may only stay for 90 days with no extension or change of status. A visitor in this status either has not previously obtained a social security number or is not eligible for a social security number and will be required to obtain an Individual Taxpayer Identification Number (ITIN) issued by the Internal Revenue Service to receive honoraria. Other restrictions regarding their length of presence at UT and receipt of payments from other institutions apply. The visitor is limited to 9 days at any one institution and must not accept honorariums from more than 5 institutions in the past 6 months.

D. Examples

The following examples illustrate some common situations encountered by nonresidents visiting The University.

1. Canadian

The following situation often occurs with Canadian consultants because Canadians can enter the U.S. without applying for a visa or receiving an I-94:

The theater department decides to invite Dave Foley, member of the Canadian comedy troupe Kids in the Hall, to give a guest lecture. The department chair sends Dave an invitation that includes the purpose of the visit and states that reimbursements will be paid; the department also reminds Dave that he needs verification of his status once he has entered the country (I-94).

Because Canadians may visit the U.S. close to the border without receiving an I-94, he should be sure he insists on obtaining a form I-94 from DHS at the border or other U.S. entry location to be able to verify his status and length of stay.

2. W/B or W/T

Dr. Schwartz, of Germany, is invited to UT to give a lecture in molecular biology and visit for 2 days. The Biology department offers to reimburse him for all expenses and pay a small honorarium. Dr. Schwartz is from a visa waiver country and has a social security number (or ITIN), so he may come in the U.S. as a W/B or W/T with a letter of invitation from the department. He would be eligible to apply for treaty benefits in the Office of Accounting to avoid the mandatory 30% tax withholding requirement.

3. Already in the Country

Dr. Morgan has been in the U.S. conducting research at M.I.T. The Dean of Engineering at UT decides to invite Dr. Morgan to UT to conduct a seminar. He knows that Dr. Morgan has the proper visa (J-1) and he is prepared to offer both reimbursement of expenses and an honorarium.

But UT cannot automatically pay Dr. Morgan. According to DHS regulations, Dr. Morgan must have a letter of work authorization from MIT (his J-1 visa sponsor) in order to receive payment from UT.

NOTE: Any visitor in the situation described above should be put in contact with Deane Willis at UT's International Office. Deane will explain the necessary procedures.

Please remember that no one expects you to be an immigration advisor. Anyone with questions or unusual circumstances is encouraged to contact the Faculty/Scholar Advisor at the International Office. The number is 471-1211.

IV. PROCEDURES FOR PAYMENT

A. Procedures for Payment of U.S. Source Income

1. Authorization for Professional Services Form (APS)

The Authorization for Professional Services (APS) form should be completed for all non-appointed individuals providing professional services, including those provided by U.S. citizens and nonresidents. The APS form should be completed by the department and receive the appropriate approvals **prior** to the rendering of services. Please see Policy Memorandum 7.205 and the handout "Payment for Professional Services," available from the Office of Accounting webpage, for procedures on completing the APS form.

Depending on the nature of services, an individual may be deemed an independent contractor or a casual employee. A classification checklist form is used to assist departments in making this determination. The procedures described in this handout are appropriate for those individuals that are deemed independent contractors.

2. Taxpayer Identification Number

For withholding and reporting purposes, the IRS requires that all nonresidents receiving U.S. source income be paid using a taxpayer identification number. The IRS established a program to issue an "Individual Taxpayer Identification Number" (ITIN) to any nonresident NOT eligible to receive a social security number. Most nonresidents receiving a fee for services at The University should be eligible to obtain a SSN, provided they entered the U.S. with the appropriate visa status.

Therefore, if the department wishes to pay a nonresident an honorarium or fee for services entering the U S on a J visa sponsored by UT, the nonresident must obtain a SSN. Procedures for obtaining a SSN are included in the **Section VII – Social Security Number Instructions and Map**.

Nonresidents who enter the U.S. on B-1/B-2 or visa waivers are not eligible for social security numbers. If the nonresident is does not already have an SSN, he/she will **not eligible** for a SSN and therefore should obtain an ITIN. Anyone interested in

obtaining an ITIN for a visitor should contact Stephanie Hall to schedule an appointment for your visitor to apply for an ITIN in the Office of Accounting.

3. Payee Information Form (PIF)

All individuals receiving payment from The University, except UT employees and students, must fill out a PIF. A social security card and/or photo ID are required to properly establish a vendor record and must be submitted with the PIF. PIFs are available through the VID section of Purchasing. The UT Office of Accounting website has a link to the PIF form on the following page: <http://www.utexas.edu/business/accounting/hbp/forms.html>.

The PIF should be sent to the VID section of Purchasing, where a vendor identification number (VID) will be established to process payments to the visitor. The PIF should be completed with the visitor's accurate name, permanent home address (with all related country postal code information) Social Security Number (SSN), and signature. If the visitor does not have a SSN, the VID section of Purchasing will establish a VID using an internally generated temporary number, unless a social security number is required as discussed above. **If the visitor is going to receive a fee from The University and must obtain a social security number as described above, the PIF should not be processed until a SSN is obtained.**

A copy of the social security card or passport should be sent with the PIF to Accounts Payable. A VID can be established prior to the visitor's arrival if the necessary information can be obtained via fax or mail (copy of SSN card or passport and signature of visitor on PIF). The PIF can be sent by fax to the VID section of Purchasing.

4. Honorarium Payments to B1/B2 and WB/WT Visa Status

In order to qualify for honorarium payments the nonresident must meet all the requirements of the "9/5/6 Rule" and sign "Penalty of Perjury Statement." (See example of statement in the Appendix.)

5. Form 8233: Exemption From Withholding On Compensation For Independent Personal Services Of A Nonresident Alien Individual

A nonresident may be exempt from the 30% withholding if a tax treaty exists between the U.S. and their country of origin. Contact the Office of Accounting or visit the IRS website to view a list of countries with current tax treaties with the U.S.

The tax treaty is applied based on the individual's primary purpose for being present in the U.S. and the type of income received. The visitor's primary purpose is determined from the individual's visa status and related immigration documents. If the department has determined the visitor is from a tax treaty country and the visitor wishes to claim an exemption from withholding, an employee in the Office of Accounting must file an IRS Form 8233 to claim the tax treaty exemption. The visitor's immigration documents must be reviewed during a personal interview with the visitor by an employee in the Office of Accounting to determine whether the primary purpose of the visitor's presence in the U.S. meets the applicable tax treaty provisions. Copies of the APS form, Classification Checklist, and PIF should be sent to the Office of Accounting prior

to the 8233 application appointment. The visitor must bring his original Passport along with the I-94 form.

6. Payment Voucher

The department should prepare a payment voucher (*DEFINE VP2) to pay the visitor's honorarium or independent contractor payment and/or reimbursement. The voucher along with any supporting documentation, including the APS form and the checklist, and the PIF should be forwarded to the Office of Accounting. The department should indicate on the payment voucher (or in VP2 NOTes) that the visitor wishes to claim a tax treaty exemption and the name of the employee in the Office of Accounting that conducted the 8233 interview. We must wait 10 days after the 8233 interview to allow IRS to process the treaty application form before treaty benefits can be extended. If immediate payment is required, only 70% can be paid until 10 days have passed from the date of the visitor's appointment with the Office of Accounting and Form 8233 was submitted to the IRS, or the full payment can be made after IRS has verified the validity of the treaty benefit application.

If there is no indication of the tax treaty claim, the voucher will be processed and withholding will be deducted from the payment. Refunds for late submission of Form 8233 will **NOT** be processed. The individual may claim the treaty benefit when they file their tax return at year-end.

B. Special Handling for Non-U.S. Source Income

As noted previously, compensation income for services provided by a nonresident outside the U.S. is considered foreign source income and is not subject to U.S. tax. Payments for these types of services should be processed as follows:

1. APS

The APS form should be completed as described above and should indicate where the services are to be performed. An exception to the \$15,000 compensation limit will be made for these types of services.

2. PIF

The PIF should also be completed as described above. However, since these payments are not subject to reporting under U.S. tax law, a taxpayer identification number is not necessary to make these payments. Therefore, a UT vendor identification number may be established for these individuals without a SSN.

3. Payment Voucher

The voucher should be processed using object code 1326 for the payment transaction. You should also indicate in the voucher comments where the services were performed. Withholding will not be generated for these transactions.

C. How are Withholding Transactions Generated?

The transactions to properly withhold on payments to nonresidents are generated automatically in *DEFINE through the following mechanisms.

1. Vendor File

When a VID is created for a non-resident, the tax treaty status or lack thereof will be included. *DEFINE accesses this information at the time of final approval to determine how much, if any, withholding applies.

2. Object Code

*DEFINE also looks at the object code to determine if taxes should be withheld. Only those object codes that apply to services that require 1099 reporting will be subject to non-resident withholding.

3. Withheld Upon Final Approval

If both the VID and object code indicate that taxes must be withheld, *DEFINE will do so when the document is final approved by the processing department. **Withholding will not be apparent to the creator or departmental approvers until after final approval.**

```
>> All approvals are complete; the document is processed <<
*ACALPH          SERVICE PAYMENT REQUEST - VP2          Year: 94 95
Command: VP2     Account: _____ Misc: _____ Month: AUG
=====
Status: APPROVED          -- COVER SHEET --          Document ID: F0VP2999359
Action: _____ Summary: PENNEY, DOROTHY
Created: 08/23/95 by ACMCB -          Category:
Template: _____
Format: 01_____ Voucher Date: 082395          Voucher Nbr: L088701
Separate Check: _          Check Distribution: U
Default Service Dates Begin: 082395 End: 082395 DTN: _____
Vendor ID: 12358467095000 PENNEY, DOROTHY
Address: RT NONE

          BUGSCUFFLE , TX 77777

SECTIONS:  X  X 1. Voucher Description and
           X  X 2. Line Items: 3
           _  3. Define Codes (optional)

Total Reference Amt:          700.00  Total Payment Amt:          1,000.00

-- 0 UT Austin ----- PF1=Options ----- PF8=Exit ----- 8/23/95 07:56 AM --
```

4. Account Charged for Full Amount

The account the department uses to pay the non-resident will be charged the full amount of the payment. At final approval the withholding will be deducted for remittance to the IRS. A check will be cut for the remaining amount to pay the non-resident.

5. Payee Reference Information

*DEFINE also changes the Payee Reference Information on the voucher when non-resident withholding is deducted. This information appears on the check stub as a reminder to the payee that taxes were withheld from the payment. Screen 4 of the GTM screens also shows IRS withholding information.

D. End Of Year Reporting – 1042S

Payments of this kind must be reported to the IRS. The Office of Accounting reports payments and amounts withheld for a calendar year on form 1042S. This form is sent to both the IRS and the individual payees by March 15 of the following year.

V. SUMMARY

Although not always possible, payments to nonresidents are made easier with advance planning. Processing these payments can be complicated and time consuming. In order to provide the most courteous service to University visitors from other countries, consider the following when preparing to make these payments:

1. Think in advance of the visitor's arrival. Determine the appropriate visa status with which the visitor should enter the U.S. depending on the services to be provided and the type of payment to be made.
2. Consider whether the visitor will need a SSN in order to receive payment. If so, facilitate the process by following the procedures outlined in the **Section VII – Social Security Number Instructions and Map**.
3. Know which documents will need to be completed for the visitor's visa status and payment. Complete the necessary paperwork via foreign mail or fax with the visitor or have the forms ready for completion when the visitor arrives.

Remember, the International Office and the Office of Accounting are always available to assist departments in bringing international visitors to campus and processing payments made to these individuals in the least disruptive manner given the complexity of these procedures. So, call us!!!!

VI. FORMS

Payee Information Form (PIF)

<http://www.utexas.edu/business/accounting/hbp/forms/pif.pdf>

Authorization for Professional Services Form (APS)

<http://www.utexas.edu/provost/policies/aps/APS.pdf>

Employee/Independent Contractor Classification Checklist

<http://www.utexas.edu/business/accounting/pubs/eiccc.pdf>

B1/B2-WB/WT Qualification Statement

Available only at the Office of Accounting, MAI 132. Contact Contractor Services at (512) 471-7823 for information.

VII. SOCIAL SECURITY NUMBER INSTRUCTIONS AND MAP

To Obtain a Social Security Number

To obtain a social security number, go to the local Social Security Office. Take your passport and Form I-94. If you are a J-1 visa holder, take the pink copy of your DS-2019. If you are an F-1 visa holder, take your I-20 AB, page 3/4. If you are a B-1 visa holder, you are not eligible for a Social Security Number. Apply for an ITIN (Individual Taxpayer Identification Number) by scheduling an appointment with the Independent Contractor Desk in the Office of Accounting.

Apply for a social security number and *ask for a receipt*. Your social security number should be issued within a week. You can call the Social Security Office approximately 48 hours after filing your application to obtain your number. Departments can also call the Social Security Office to obtain the SSN if they have a copy of the individual's social security number application (Form SS-5). Departments must have a copy of the application as the Social Security Office will ask for some identifying information contained on the application. The International Office has blank social security number applications which can be completed by the individual prior to going to the Social Security Office.

Directions to the Social Security Office

The Social Security Office is located at 903 San Jacinto, Suite 102 (on the corner of 9th Street and San Jacinto, 2 blocks south of the Capitol). Hours are from 9:00 am to 4:00 pm, Monday through Friday. The phone number is 1-800-772-1213. City buses and the 'Dillo shuttle will take you downtown from campus. For schedules, call Capitol Metro at 474-1200, or pick one up at the International Office Welcome Center.

