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 Internal Revenue Service (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. BEFORE YOU START

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 Social Security Number (SSN) in order to receive payment. If so, facilitate the process by following the procedures outlined in the Procedures for Payment section of this handout.

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!!!!

III. 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 (employee payroll payments), 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 independent contractor 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
Independent Contractor Desk by e-mail at Oa.ic@austin.utexas.edu to schedule a personal interview with your visitor.

IV. 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 or 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 immigration laws and 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 a formal document issued by an authorized official of a country to one of its citizens that is usually necessary for exit from and reentry into the country, that allows the citizen to travel in a foreign country in accordance with visa requirements, and that requests protection for the citizen while abroad; must be valid at all times

Visa an endorsement made on a passport by the proper authorities denoting that it has been examined and that the bearer may proceed; page 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 for business and tourism. They do, however, receive a green I-94W card at the port of entry.

I-94 The Arrival-Departure Record (Form I-94) or the Crewman Landing Permit (Form I-95) shows the date of arrival in the United States and the admitted until date, the date when the authorized period of stay expires. Visitor will receive a blank I-94 or I-95 Form from a U.S. Customs and Border Protection Officer (CBP Officer) upon arrival in the United States. This will be at a U.S. port-of-entry at a land border, airport or seaport. Also known as a white card.
I-94W  Green version of the I-94 issued to citizens entering on the visa waiver program

**U.S. Visa Waiver Program**

D/S  **Duration of status**, term indicated on I-94 indicating that the non-resident may stay as long as he or she is continuing the stated 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.

**Student F-1 Visa Information**

DS-2019  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.

**Exchange Visitor J-1 Visa Information**

Honorarium  fee provided for professional services

**C. Appropriate Visa Status for Independent Contractors**
The appropriate visa status for a nonresident alien performing professional service as an independent contractor depends on the type of payment to be made. 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**
– Facilitated by the International Office

Visitation timeframe:  Use for visits of 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**

– Facilitated by the International Office

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)**

– Facilitated by the International Office

Visitation timeframe: 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.

- If the visitor has a Social Security Number (SSN) or an Individual Taxpayer Identification Number (ITIN) and is eligible for treaty benefits, that application must be prepared by Office of Accounting Contractor Services personnel during a personal interview with the visitor.
- A visitor in this status that does not have a taxpayer number will not be eligible for a social security number. If the visitor is eligible for treaty
benefits but has no taxpayer identification number, an appointment in the Office of Accounting is required to apply for both an ITIN and treaty benefits simultaneously.

- A visitor with no treaty benefits may receive a temporary vendor ID number from the Office of Accounting.
- 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, and a “B Qualification Statement” must be prepared and signed by the visitor before the honorarium payment can be made.

B Visitors Checklist

B1/B2 - WB/WT Qualification Statement

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 Mr. Foley an invitation that includes the purpose of the visit and instructs the immigration officials at the U.S. port of entry to issue an I-94 entry card with a B entry status, so that we can make an honorarium payment and apply for treaty benefits. The department schedules an appointment with the Office of Accounting during the visit so that we can apply for treaty benefits on the visitor's behalf, and avoid the mandatory 30% tax deduction from the honorarium payment.

Because Canadians may visit the U.S. close to the border without receiving an I-94, Mr. Foley should be sure he insists on obtaining a form I-94 from the Department of Homeland Security officials at the border or other U. S. entry location to be able to verify his status and length of stay.
2. **W/B**
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 (SSN) or Individual Taxpayer Identification Number (ITIN), so he may come into the U.S. as a W/B 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 MIT. 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 Department of Homeland Security 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 the International Office for an explanation of 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 International Student and Scholar Services at the International Office.

V. **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 must 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.

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 the classification checklist are appropriate for those individuals
that are deemed independent contractors.

Policy Memorandum 7.205

Payment for Professional Services

Independent Contractor Checklist

2. Taxpayer Identification Number

For withholding and reporting purposes, the Internal Revenue Service (IRS) requires that all nonresidents receiving U.S. source income be paid using a taxpayer identification number, if available. The IRS established a program to issue an Individual Taxpayer Identification Number (ITIN) to any nonresident NOT eligible to receive a social security number, but these applications are dependent on the visitor’s eligibility for tax treaty benefits. Most nonresidents receiving a fee for services at the University should be eligible to obtain a Social Security Number (SSN), provided they entered the U.S. on a J visa document.

Therefore, if the department wishes to pay an honorarium or fee for services to a nonresident entering the U.S. on a J visa sponsored by UT, the nonresident must obtain an SSN.

Nonresidents who enter the U.S. on B-1/B-2 or visa waivers are not eligible for social security numbers. If the nonresident does not already have an SSN, he or she will not be eligible for an SSN, and therefore should obtain an ITIN, if treaty benefits are available. Anyone interested in obtaining an ITIN for a visitor should verify the availability of treaty benefits by contacting the Independent Contractor Desk by e-mail at Oa.ic@austin.utexas.edu. She will schedule an appointment for your visitor to apply for an ITIN and treaty benefits 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 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) SSN, and signature. If the visitor does not have a SSN or an ITIN, follow the procedures for obtaining a temporary number.
4. Establishing Temporary VIDs

To establish a temporary VID, send a copy of the social security card or passport as well as the PIF to Ramona Williams in Purchasing. 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. The VID Section of Purchasing will approve Temporary VIDs for:

- Foreign companies providing services outside the United States or for foreign individuals or companies shipping merchandise from outside the United States to a location inside the United States.
- Refunds paid to U.S. Citizens (individuals) that refuse to provide their SSN or do not have one.
- Refunds paid to companies that refuse to provide their federal employer identification number.

To create temporary VID numbers in *DEFINE:

1. Go to the GGV command. Start a new document by typing **NEW** in the **Action** field. Enter the temporary VID number in the **Vendor ID** field. Start with a 3, followed by two zeros; a two digit year, a two digit month, a two digit day, and a number from 1 to 9 (make the date the day you create the GGV document). Example: Your GGV is created April 26, 2005 so your VID will be 3000504261. The last digit, known as the check digit will be automatically generated. If the number has previously been used, change the last digit to 2, 3, 4, etc. until you have a unique number.

2. Enter the following information in the notes of the GGV document. Once the temporary VID number has been entered and the document status is changed to **CREATED**, access the notes by typing **NOT** in the **Action** field.
   a. Describe the type of refund to be paid or the type of payment made to the foreign company
   b. Indicate if you are using state or local funds.
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Figure 1: GGV screen

Contractor Services in the Office of Accounting approves Temporary VIDs for:

- Service payments paid to individuals (non-U.S. citizens) for services performed outside the United States.
- Expense reimbursements paid to individuals (non-U.S. citizens) when there will not be any fee or honorarium payment.

1. Go to the GGV command. Start a new document by typing NEW in the Action field. Enter the temporary VID number in the Vendor ID field. Start with a 3, followed by two zeros; a two digit year, a two digit month, a two digit day, and a number from 1 to 9 (make the date the day you create the GGV document). Example: Your GGV is created April 26, 2005 so your VID will be 3000504261. The last digit, known as the check digit will be automatically generated. If the number has previously been used, change the last digit to 2, 3, 4, etc. until you have a unique number.

2. Enter the following information in the notes of the GGV document. Once the temporary VID number has been entered and the document status is changed to CREATED, access the notes by typing NOT in the Action field.
- Indicate the country of citizenship of the individual and the location of the services.
- Indicate the nature of the payment
- State there will be no fee or honorarium payment to this individual for any services performed inside the U.S.
- Indicate if you are using state or local funds.

3. Email the GGV document ID number to the Independent Contractor Desk at Oa.ic@austin.utexas.edu for approval.

**Processing a GGV for a foreign address**

**Foreign address format**

- Enter the street address (c/o information) in the Non-Post Office Info field
- Enter the province and zip in the Postal Address field
- Enter the city in the City field
- Type **- -** (two hyphens) in the State field
- Leave Zip Code field blank
- For the Country Code place a ? in the field to find abbreviations for the country, then select the abbreviation to enter into the country code field.

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*DEQUAL* VENDOR ID REQUEST FOR SCHOLARSHIPS - GGS Year 05 06
Command: GGS Account: __________ Misc: _______________ Month: APR
============================================================================= Status: CREATED Document ID: S0GGS999951
Action: ___ Summary: 060418 DEPT VENDOR ID REQUEST
Created: 04/18/06 by ACMHC - HIGHTOWER-COYLE, MARY R
VENDOR INFORMATION
Vendor ID: 21234567894 Vendor Primary Name: SCHOLAR STEPHEN
Other Name: ____________________________
Non-Post Office Info: 4 VINCENT REGENCY
Postal Address: SW19 4 BX
City: LONDON State: -- Zip: 
Phone: Fax: Country Code: UK
ENTITY INFORMATION
Ownership Type: I Texas Charter Nbr: 
Owner Names: __________________________
- UT Austin ----- PF1=Options ------- PF8=Exit ------ 4/18/06 02:18 PM --

**Figure 2: Foreign address no province**
4. Honorarium Payments to B1 and WB Visa Status

In order to qualify for honorarium payments the nonresident must meet all the requirements of the 9/5/6 rule: the visitor must declare that he or she has not received honorariums from more than 5 institutions in the preceding 6 months and has not been at any one institution for more than 9 days. The signed B1/B2 Qualification Statement must be submitted to the Office of Accounting prior to the honorarium payment.

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 citizenship/tax residency. Contact the Office of Accounting Contractor Services to verify those countries with current tax treaties with the U.S.

The tax treaty benefit application is 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 Contract Services 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 Contractor Services to

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Figure 3: Canadian Address with province
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, PIF, Passport and I-94 card should be sent to the Office of Accounting prior to the 8233 application appointment. The visitor must bring his original Passport to the appointment including the I-94 arrival card.

**Contractor Services**

6. Payment Voucher

The department should prepare a payment voucher (*DEFINE VP2 document) to pay the visitor’s honorarium or independent contractor payment and/or reimbursement. The voucher along with any supporting documentation, including the APS form, checklist, and the PIF should be forwarded to the Office of Accounting Contractor Services. The department should indicate on the payment voucher or in the notes of the VP2 document 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 business 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 business days have passed from the date of the visitor’s appointment with the Office of Accounting and the 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 the withholdings will be deducted from the payment. Refunds for late submission of Forms 8233 will **NOT** be processed. The individual may claim the treaty benefit when they file their tax return at year-end.

**Contractor Services**

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. Authorization for Professional Services (APS)

The APS form should be completed as described in Procedures for Payment APS section of this handout 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. Payee Information Form (PIF)
   The PIF should also be completed as described in the Procedures for Payment PIF section of this handout. 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 temporary VID number will be provided by the Office of Accounting 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 taxes 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.
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.
VI. CONTACTS

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