

Financial Services Manual (FIN)

FIN 425–04: Nonresident Independent Contractors and Other Foreign Entities

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Purpose

To describe the policy for independent contractor payments made to nonresident individuals or foreign business entities

Sources

Internal Revenue Service

University policy

Applicability

All payments for services, rentals, royalty, and copyright fees made to foreign individuals and foreign business entities

Background

Internal Revenue Service

The Internal Revenue Service (IRS) requires that all independent contractor payments made to nonresident individuals or foreign business entities be made in accordance with IRS regulations. These regulations require that, when services are provided inside the U.S., taxes be withheld from payments made to nonresidents (NRs) or foreign business entities unless the income is exempt under a provision of a tax treaty between the foreign contractor's country and the U.S. Foreign individuals must be eligible to claim a tax treaty exemption by having a social security number (SSN) or individual taxpayer identification number (ITIN) and must have submitted for certification a completed IRS Form 8233. Foreign business entities must have a tax identification number and must have submitted for certification a completed IRS Form W-8ECI, W-8BEN-E, W-8EXP, or W-8IMY.

Unless the payments made to the NR are exempt due to tax treaty or are effectively connected with the conduct of a trade or business in the U.S. (payments to foreign business entities only) or are made to a foreign entity with U.S. tax-exempt status, and the appropriate IRS forms have been filed, all payments made to the NR or foreign business entity will be subject to U.S. federal income tax withholding of 30 percent.

Tax regulations also require that taxable payments made to NRAs or foreign business entities be reported annually on IRS Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. A copy of the form is sent to the foreign individual or entity at the time it is filed with the IRS. The IRS requires that Form 1042-S be filed by March 15 following the calendar year in which payments were made.

U.S. Citizenship and Immigration Services (USCIS)

The U.S. Citizenship and Immigration Services (USCIS) requires that individual NRs be admitted to the U.S. under work authorized visa types in order to be eligible to receive payments. See [FIN 425–02](#), "Immigration Status—Eligibility to Receive Payment," for a complete discussion.

Policy

All foreign individuals and foreign business entities receiving independent contractor payments (i.e., performing services in the capacity of an independent contractor including guest lecturers and consultants) or payments for rentals, royalties, or copyrights are required to complete an [IRS Form W-8](#) (W-8BEN, W-8ECI, W-8EXP, or W-8IMY) unless one is already on file with ASU. All W-8 forms and their instructions are available on the IRS Web site at <http://www.irs.gov>.

If the U.S. does not have a tax treaty with the foreign vendor's country of residence that exempts independent contractor, rent, royalty, or copyright payments from U.S. federal income tax withholding, or if a valid Form 8233 or W-8 form has not been correctly completed before payment is processed, 30 percent of the total payment to the NR individual or foreign business will be withheld by ASU and remitted to the IRS. A list of existing tax treaties between the U.S. and other countries is found in IRS Publication 901, *U.S. Tax Treaties*, available online at <http://www.irs.gov/pub/irs-pdf/p901.pdf>.

In order to be valid for tax treaty exemption, payments made to an individual using either Form W-8BEN or Form 8233 require a U.S. taxpayer identification number. Payments made to a foreign entity using Form W-8 require either a foreign or a U.S. taxpayer identification number to be provided.

IRS Tax Forms

Form 8233 is used by individual nonresident (NRs) who are eligible for tax treaty benefits to claim exemption from U.S. federal tax withholding.

Foreign business entities complete IRS W-8 form (W-8BEN-E, W-8ECI, W-8EXP, or W-8IMY). A brief summary of the purpose of each of these Forms W-8 is provided below, with more information and form instructions available on the IRS Web site at <http://www.irs.gov>.

Form W-8BEN-E is for Certification of Foreign Status of Beneficial Owner for United States Tax Withholding, and is for non-U.S. entities to provide their identifying information in Part I and certify in Part IV that they are not U.S. taxpayers. The Form W-8BEN-E is also used to exempt certain types of payments such as royalties from the 30% federal income tax withholding required under U.S. tax law. For a valid tax treaty exemption, the recipient must provide a tax identification number.

Form W-8ECI is for Certification of Foreign Person's Claim that Income is Effectively Connected with the Conduct of a Trade or Business in the U.S., and is for exemption from withholding on income effectively connected with a trade or business in the United States. It must be filled out and returned prior to the service being performed and is held on file for three years from the day the form is signed. The form stipulates that the foreign entity files yearly U.S. tax returns to report all income claimed to be effectively connected with a U.S. trade or business. In order for the form to be completed properly, a U.S. tax identification number must be provided.

Form W-8EXP is for Certification of Foreign Government or Other Foreign Organization for United States Tax Withholding, and is used by foreign tax-exempt organizations to claim and document their tax-exempt status under U.S. tax law. To claim exemption from U.S. tax withholding, foreign tax-exempt organizations must provide documentation of their U.S. tax-exempt status. Foreign entities that cannot establish their U.S. tax-exempt status will be subject to 30% U.S. federal income tax withholding from their payments.

Form W-8IMY is for Certification of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for U.S. Tax Withholding, and is used for reporting payments to "flow-through entities" such as foreign partnerships or trusts.

If you have questions regarding these forms, contact the ASU tax compliance area at 480/965-0108 or 480/965-8479. A valid U.S. taxpayer identification number may be required when requesting tax treaty benefits. Exemption claim forms must be submitted to the tax compliance unit for review, signature, and submission to the IRS.

Holding Period

After Form 8233 has been submitted to claim exemption from backup withholding under a provision of a tax treaty, the IRS has 10 working days to reject the claim. For this reason, independent contractor payments to NRs claiming tax treaty benefits must be held until the 10-day period elapses. IRS Form 8233 needs to be typed or printed and entirely complete and accurate. Financial Services will not submit 8233 forms to the IRS that are likely to be rejected, but instead will return the form to the hosting ASU department for correction and/or resolution.

NRs entitled to U.S. tax treaty benefits but who are unable to provide Form 8233 with a valid U.S. tax identification number can still claim tax treaty benefits (and a refund of taxes withheld) by applying for an Individual Taxpayer Identification Number (ITIN) when filing their required 104NR tax returns with the IRS.

Sometimes an ASU department desires to give the independent contractor a check before leaving ASU and before the 10-day holding period has ended. Departments may request that the payment is released during this period, however the department will be responsible to pay the associated taxes if the request is rejected by the IRS.

Additional Information

For additional guidelines on nonresident tax issues see the [ASU Foreign Visitor Tax Guide](#) issued by Financial Services.

Cross-References

For information on tax reporting for nonresidents, see:

1. [FIN 425-01](#), “*ASU Foreign Visitor Tax Guide*”
2. [FIN 425-02](#), “Immigration Status—Eligibility to Receive Payment”
3. [FIN 425-05](#), “Student Financial Support Payments to Nonresidents”

and

4. [FIN 425-06](#), “Payments to Postdoctoral Nonresidents.”