

PAYMENTS TO FOREIGN NATIONALS AND ENTITIES

Effective Date: September 24, 2008

Rev. March 2, 2009

POLICY SUMMARY

Nonresident aliens doing business with the University are required to provide a completed and signed Form W-8 or Form 8233 along with evidence of immigration status. Foreign entities doing business with the University are required to provide a completed and signed Form W-8. These forms must be received before payment will be issued to such individuals or entities.

Depending on the type of payment, all 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. Generally, payments not exempt from withholding, are subject to 30% federal income tax withholding, in accordance with Internal Revenue Service (IRS) regulations. To claim an exemption from tax withholding under an income tax treaty, the payee must submit the appropriate exemption request form.

POLICY STATEMENT

This policy establishes the responsibilities, controls, and procedures for payments to foreign individuals and entities related to ensuring compliance with IRS and immigration regulations. Under federal regulations in IRS Code Section 1441-1446, Columbia University, as Withholding Agent, is responsible for ensuring compliance with immigration regulations, proper tax withholding, and preparing, reviewing and distributing appropriate Form 1042 Information Returns for foreign individuals and/or entities.

This policy ensures these payees' immigration information is properly obtained and reviewed to confirm that payments can be made. In addition, this policy ensures proper tax information is obtained for all foreign nationals who are not U.S. residents and/or domestic entities to certify their status to assess tax treatment and ensure proper tax withholding.

REASON FOR 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 United States;
- Ensures compliance with United States Citizenship and Immigration Services (USCIS) rules regarding the types of payments that can be made to an individual based on his or her immigration status; and
- Ensures compliance with the Internal Revenue Service (IRS) tax withholding and reporting rules.

PRIMARY POLICY TO WHICH THIS POLICY RESPONDS:

This policy primarily responds to the regulations of the IRS, which govern the taxation of payments to foreign nationals and foreign entities. It also responds to the regulations set by the USCIS governing which foreign visitors, scholars and students may receive payments. Lastly, the policy responds to the rules established by the agencies and entities that sponsor research at Columbia and the federal and state laws that govern not-for-profit organizations.

RESPONSIBLE UNIVERSITY OFFICE & OFFICER

Procurement Services, Accounts Payable Division; Vice President of Procurement

REVISION HISTORY

None

WHO IS GOVERNED BY THIS POLICY

All Columbia University employees and departments that seek to engage, pay or reimburse a foreign national or foreign corporation.

WHO SHOULD KNOW THIS POLICY

- Senior Financial or Business Officers
- Chairs of Departments, Directors of Institutes and Centers
- Department Administrators
- Divisional Administrators with financial responsibility and oversight
- Program Directors
- Faculty
- Junior Officers and Non-Officers with financial responsibility and oversight
- Administrative staff with Accounts Payable responsibility

EXCLUSIONS & SPECIAL SITUATIONS

The University cannot provide tax advice to individuals; payees should contact their personal tax advisor with any questions or concerns.

This policy does not refer to payment made to individuals or entities performing services for the University in the capacity of an employee. Additionally, in order to ensure compliance with IRS regulations, the University will not reimburse an employee for a payment made to an individual or entity (including students) who provided services to the University. Please reference the Business Expense Policy in the Administrative Policy Library for additional information http://www.columbia.edu/cu/administration/policylibrary/policies/acpy/00bb9c6512b5730b0112c4883fc30007.html?base=responsible_office.

This policy does not include guidance for lawful Permanent Residents of the United States. A resident alien for tax purposes is defined by the IRS as:

- A person who possesses a “green card”, evidence of lawful permanent residency in the United States. that allows an alien to work legally, travel abroad and return, bring in a spouse and/or children, and become eligible for citizenship, or

- Someone who has satisfied the substantial presence test

A resident alien is subject to the same tax withholding and reporting requirements as a U.S. citizen, including taxation on worldwide income.

This policy also does not include guidance for U.S. citizens and lawful Permanent Residents or any other individual working outside the United States on behalf of the University.

POLICY TEXT

The University is required by law to withhold federal income tax from and report to the IRS on Form 1042-S certain payments made to or on the behalf of a nonresident alien or a foreign entity; as such, the University will comply with all federal tax laws with respect to tax withholding and reporting.

Each payment requires the review of certain key factors, including the (i) U.S. tax residency status, (ii) immigration status, and (iii) type of payment made.

Depending on the type of payment, all payments made to or on behalf of a nonresident alien or a 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 exemption request form.

IMMIGRATION

When paying an individual foreign national, USCIS provides specific regulations that govern what 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 that demonstrates the type of payment that is intended to be made and the non-immigrant status, indicating whether payment may be made. This chart can be found at: (<http://www.columbia.edu/cu/isso/faculty/paymentchart.html>)

The chart lists various non-immigrant statuses that an individual may hold in the U.S. The payment types include:

- Compensation for services or salary;
- All other taxable income (scholarships, fellowships, stipends, honoraria, gifts, prizes, awards, rents, royalties);
- Expense reimbursements; and
- Per diems.

Before planning an activity that will require any payments to a foreign national, the department must know the non-immigrant status the individual already holds or is planning to hold in the United States and, using the chart (<http://www.columbia.edu/cu/isso/faculty/paymentchart.html>), to confirm that the individual is eligible to receive payment. If the individual is not eligible, you may NOT agree to any payment.

The University must maintain evidence of this immigration status. Departments must obtain the following from the individual, as this will be required before the vendor is setup in the system and payment is issued:

- Copy of I-94 Departure Card (official documentation of immigration status)
- Copy of Identification page of the passport
- Form W-8BEN or Form 8233

TAXATION

Individuals

For tax purposes, nonresident aliens, unlike U.S. citizens and residents, are only subject to tax on income that is considered U.S. Source income by the IRS. The University is required to withhold taxes on this income (or obtain proper documentation of claim of an income tax treaty) and to report this income annually on Form 1042-S.

A nonresident alien for tax purposes is defined by the IRS as:

- Someone who does not have a “green card” (Permanent Resident); or
- An individual who does not satisfy the substantial presence test. The substantial presence test is a mathematical calculation used by the IRS to determine the tax residency of a foreign individual present in the United States.

Properly completed forms will be required for payment:

- Form W-8BEN, Certificate of Foreign Status of a Beneficial Owner for US Tax Withholding
- Form 8233, which is applicable if the individual has provided independent personal services and wants to take advantage of the tax treaty benefits

Generally, a Form W-8 provided without a U.S. TIN will remain in effect for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, unless a change in circumstances makes any information on the form incorrect. Please reference the latest Form W-8 instructions on the IRS website at <http://www.irs.gov/pub/irs-pdf/iw8.pdf> for additional information.

In addition, the University must maintain evidence of this immigration status. Departments must obtain the following from the individual, as this will be required before the vendor is setup in the system and payment is issued:

- Copy of I-94 Departure Card (official documentation of immigration status)
- Copy of Identification page of the passport

Entities

For tax purposes, foreign entities, unlike U.S. based corporations, are only subject to tax on income that is considered 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 annually on Form 1042-S.

An entity is considered foreign if it is created or organized outside the United States. This includes entities that may have operations in the United States, but the parent company is organized outside the United States.

A properly completed Form W-8 will be required before a vendor is setup in the system and a payment is issued:

- Form W-8BEN (if other W-8 forms are not applicable)
- Form W-8ECI, which is applicable if the foreign entity has a trade or business in the United States;
- Form W-8IMY, which is applicable if foreign entity acts in the capacity of a custodian, broker, nominee or any other person that acts as an agent for another person; or
- Form W-8EXP, which is applicable primarily when the foreign entity is a foreign government, foreign bank, foreign tax-exempt organization or foreign foundation.

Generally, a Form W-8 provided without a U.S. TIN will remain in effect for a period starting on the date the form is signed and ending on the last day of the third succeeding calendar year, unless a change in circumstances makes any information on the form incorrect. Please reference the latest Form W-8 instructions on the IRS website at <http://www.irs.gov/pub/irs-pdf/iw8.pdf> for additional information.

PROCEDURES

W-8 forms and detailed instructions for the requester of the W-8 forms can be found on the IRS website at <http://www.irs.gov/instructions/iw8/index.html>. Form 8233 and detailed instructions for the requester of the form can also be found on the IRS website at <http://www.irs.gov/instructions/i8233/ch02.html>.

Columbia University employees and department are expected to review the completed / signed forms to ensure the payee name and address match the vendor request and / or system and the form is otherwise complete prior to submitting to Vendor Maintenance. If the form is not signed or the payee name and address on the forms does not match the new vendor request and/or system the request will not be processed.

The completed signed forms and supporting documentation should be faxed to Vendor Maintenance at (212) 851-7904. In addition to this Policy Statement, procedures for processing foreign payments can be located on the Accounts Payable website at http://finance.columbia.edu/procurement/ap/foreign_payments/process.html.

CONTACTS:

Please contact our AP Service Center with inquiries at (212) 854-2122 or APService@columbia.edu