

Rev: February 24, 2014

Subj: **Non-Resident Taxation**

General:

1. Need to collect from each recipient who will be paid either a Form W-9 as a certificate of U.S. status or a Form W-BEN as a certificate of foreign status. This withholding certificate also serves as proof of solicitation of a U.S. TIN– a U.S. SSN or individual ITIN.
2. If no information by time of payment - An individual recipient is presumed to be a U.S. person (i.e., a U.S. citizen or resident alien). Therefore, must impose 28% backup withholding on the payment and report the payment and taxes on Form 1099-MISC.
3. Residency documentation:
 - a. IRS Form 8233 Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual - documents that the foreign national is exempt from Federal income tax due to a tax treaty or is taxed at a reduced rate for independent personal services.
 - i. This form requires that the individual has a US taxpayer number (ITIN); which can be obtained via a IRS form W-7 Application for IRS Individual Taxpayer Identification Number.

<u>Scenario</u>	<u>Tax implications</u>	<u>Action(s)</u>
Resident aliens	Subject to same rules for withholding and reporting as are such payments to U.S. citizens. Payments not subject to withholding generally.	<ul style="list-style-type: none"> • If recipient failed to provide a U.S. TIN, or the IRS notified BU that recipient is subject to backup withholding, BU must backup withhold, currently at 28%. • If total payment =>\$600 in tax year, or amount was subject to backup withholding, or both, BU must report the amount and taxes withheld, if any, on Form 1099-MISC, box 7
Non-Resident aliens		<ul style="list-style-type: none"> • Withhold 30% (called “NRA withholding”) unless an exception applies. • In order to exempt a payment from withholding, the payment must meet the specific conditions for the exception and the recipient must provide any paperwork required for the exception prior to the payment. • Payment and taxes withheld, if any, must be reported on Form 1042-S under Income Code 16 unless the compensation is for a performing artist or athlete. <ul style="list-style-type: none"> ○ The Income Code for compensation paid to a performer is either 42 (compensation not covered by a Central Withholding Agreement) or 43 (compensation covered by a CWA). Payers who submit one or more Forms 1042-S must also submit a Form 1042 tax return even if none of the payments were subject to withholding.
Services performed abroad	Compensation for services performed abroad is foreign-source income	<ul style="list-style-type: none"> • The place where the services are performed should be indicated in the agreement with the individual.

		<ul style="list-style-type: none">○ It is not sufficient that the location where the services performed is indicated on the invoice since this is considered by the IRS to be a self-serving statement.• If we have a Form W-8BEN as a certificate of foreign status (no TIN required) from the service provider, and the location of the services is documented, do not have to withhold U.S. tax on the compensation payments.• Not required to report on the income.<ul style="list-style-type: none">○ May, however, report the income on a Form 1042-S under Exemption Code 03 (foreign source income).• Even without the Form W-8BEN, not required to withhold or report on compensation for services performed abroad if have no actual knowledge or no reason to know that the recipient of the service provider is a either a U.S. citizen or resident alien or that the income was effectively connected to the conduct of a U.S. trade or business.
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