A Guide to Making Payments to International Visitors and Employees at DePaul University
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At DePaul University

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Introduction

The purpose of this document is to provide faculty and staff with basic information regarding the steps required in making payments to international visitors and employees. This document provides guidance for the most common scenarios encountered by the university, but does not cover all tax situations. This material is to provide useful information that will assist you in making correct decisions concerning tax implications of payments made to international visitors. Specific questions regarding this information should be directed to either Geri Foskett or Cheryl Einsele. This material is provided for your information only. Under no circumstances should this be used as a substitute for legal or tax advice from a professionally qualified practitioner.

Important Note: No contractual arrangement to pay an international visitor should be made prior to contacting either the Payroll or Accounts Payable Office. This procedure helps ensure that the university does not violate tax laws.

I. Tax Compliance Requirements for International Visitors

A. University Responsibilities

DePaul University is responsible for complying with all federal laws as applicable to international visitors. These requirements include compliance with both Federal and state tax laws and Federal immigration laws.

1. The University must ensure any international visitor that comes to our campus as a student; employee or independent contractor is legally present in the United States under the requirements of the law and U.S Citizenship and Immigration Services.

2. The University must ensure that any international visitor receiving any type of payment (wages, honorariums, scholarships or fellowships, etc.) from the University is properly reported to the Internal Revenue Service, if required.

B. Sponsoring Departments Responsibilities

The University department that hosts, hires or engages the services of an international visitor has total responsibility for ensuring that the international visitor completes the proper paperwork so that payments made to the international visitor are in compliance with all requisite tax laws. Both the Payroll and Accounts Payable offices are available to assist and answer questions and will provide all necessary forms.

Important Note: No contractual arrangement to pay an international visitor should be made prior to contacting either the Payroll or Accounts Payable office. This procedure helps ensure that the University does not violate tax laws.
II. Definitions

A. Candidate for a Degree - A candidate for a degree includes any full time or part-time student enrolled in a course that may lead to a degree, whether or not the student's particular educational program leads to a degree.

B. FICA (Federal Insurance Contribution Act) - United State tax that provides old age, survivors, and disability insurance and Medicare insurance.

C. US Citizenship and Immigration Services (USCIS) - The United States government agency that is responsible for overseeing and issuing visas to foreign visitors.

D. Internal Revenue Services (IRS) - The United States government agency that enforces tax laws and collects federal taxes.

E. Nonresident Alien for Tax Purposes - A Nonresident Alien is an individual who is not a citizen of the United States, or a resident satisfying the "green card" test, or the substantial presence test and has not made an election to be treated as a resident under Code section 7701(b)(1)(A)(iii). A nonresident alien is normally subject to U.S. tax on U.S. source income.

F. Resident Alien for Tax Purposes - A Resident Alien is an alien who has been issued an alien registration card (otherwise known as a "green card") by the Immigration and Naturalization Service (INS), or meets the "substantial presence test", or qualifies for, and makes a qualified election to be treated as a resident under Code Sec. 7701(b)(1)(A)(iii). A resident alien is normally subject to tax on all income just like a U.S. citizen.

III. Residency Determination for Tax Purposes
An individual that passes any of the below listed tests will generally be considered a resident alien and is subject to Federal taxes the same as a United States citizens.
An alien will become a Resident Alien under one of the following two conditions:

   a. Green Card Test
   b. Substantial Presence Test

A. Green Cards Test
   1. Alien Registration Card
      An individual is a Resident Alien for tax purposes if the person is a lawful permanent resident of the United States at any time during the calendar year. An individual achieves this status if the INS has issued the individual an alien registration card, also known as a "green card"

   2. Procedures for Green Card Test
      The international visitor must show proof of the "green card" to either the payroll or accounts payable.
Substantial Presence Test

1. Calculation

An individual is a Resident Alien for tax purposes if the person meets the "Substantial Presence" test for the calendar year. To fulfill the requirements of this test, the individual must be physically present in the United States on at least:

A. 31 days during the current year, and
B. The sum of the days he/she was physically present in the U.S. during the current year, plus one-third the number of days he was physically present in the U.S. during the first preceding calendar year, plus one sixth the number of days he was physically present in the U.S. during the second preceding year must equal or exceed 183 days. The time an individual is a teacher in the U.S. is not counted in determining physical presence unless for any part of two of the preceding six calendar years (four out of the six years, if all of the individual's compensation is described in section 872(b)(3)) he was an exempt teacher. The student exception, however, applies only for a limited period of time. If a student is treated as an exempt individual for any part of more than five calendar years, he cannot be treated as an exempt student for the current year unless he proves to IRS’s satisfaction that he does not intend to reside permanently in the U.S., and that he still substantially complies with the immigration law requirements for student status.

2. Procedures for Substantial Presence Test

The International visitor will complete an “International National Information Form” and provide copies of the passport, visa, and I-94 or I-94W, I-20, DS-2019 or I-797A. The offices/department responsible for distributing and receiving the proper paperwork are as follows:

- International Office: Student workers and Teacher/Researchers on F-1 and J-1 visas are handled through the International Student Office
- General Council Office: H-1B visas are handled through the General Counsel’s Office
- Sponsoring Department: The sponsoring department handles non-employee visitors (i.e., visiting lecturers)

Prior to making any arrangements with an international visitor, the department must contact either the Payroll Office or Accounts Payable to discuss tax residency and tax laws. The visitor must bring the International Information Form, passport and visa to either Payroll or Accounts Payable to perform calculations for the substantial presence test to determine whether the visitor is a Nonresident or Resident Alien.

IV. Federal Income Tax Withholding and Reporting for International Visitors and Employees:

A. Types of Payments

Payments made by the University to international visitors and generally fall into the following four categories:

1. Employee Wages
2. Fellowships and Scholarships
3. INDEPENDENT Contractors Payment and Honorariums
4. Travel/Lodging/Meal Expenses

Each payment made to an International visitor or employee will be reviewed by Payroll and Accounts Payable to insure that it is categorized correctly. **Any department hiring an International visitor full time must contact the Office of the General Counsel, Human Resources, and Payroll before making any offers.**

1. Employee Wages
   a. Payments for services by an individual for the University in which the services performed by an employee are subject to the direction and control of the University, its faculty or staff. Unless exempted by a treaty, the payments are subject to U.S. tax withholding; however, the payment may be exempt from FICA.
   b. The University shall comply with the following procedures with respect to the reporting and withholding of federal income taxes for all payments to International employees or Independent Contractors
      i. Identify all international employees on the payroll
      ii. Divide the International employees into two groups: Resident Aliens and Nonresident Aliens
      iii. For tax purposes (barring the application of a treaty), treat Resident Aliens in the same manner as United States citizens
      iv. Nonresident Aliens should be treated as follows:
          a. A W-4 should be completed unless the individual is exempt under a tax treaty
          b. Form 8233 shall be processed by either Payroll or Accounts Payable if the individual is claiming an exemption from federal income tax withholding because of a tax treaty
          c. The Payroll Office shall report wages paid to a Nonresident Alien exempt under a tax treaty on Forms 1042 and 1042-S. Any wages paid to a Nonresident Alien exceeding the exempt amount shall be reported on Form W-2
   c. Common Employee Visa Types
      F-1 Student in academic program
      May be employed at the university they are authorized to attend
      J-1 Exchange Visitor
      Student Employment
      May be employed at the university; subject to the requirements of the federal immigration laws.
      Other Employment
      May engage in employment as stated on their Form IAP-66
      H-1B Temporary Worker of distinguished merit and ability
      Restricted employment.
      Authorized to work only for the petitioner.
2. Fellowships and Scholarships
   a. Payments made to an individual for educational purposes. Qualified scholarships are not taxable if:
      • The scholarship or fellowship is awarded to a candidate for a degree
      • The scholarship or fellowship is used to pay for tuition, fees and books required for a particular course
      • The scholarship does not represent payment for teaching, research or other services by the student required as a condition for receiving the scholarship, except to the extent the qualified scholarship is a tuition waiver, and the student is a teaching assistant who is provided a tuition waiver in addition to taxable compensation for his services.

   b. All scholarships, fellowships, and grants paid to Resident Aliens are not required to be reported to the IRS, provided the scholarships do not represent compensation for services. Scholarships representing compensation for services are subject to tax as part of the student’s regular wages. Not all such amounts paid to Nonresident Aliens are reported to the IRS if such payments are a “qualified scholarship” as defined by the Internal Revenue Code section 117. Payments that are not qualified scholarships, fellowships, and grants must be reported to the IRS on Forms 1042 and 1042-S, unless the payments are made with respect to activities outside the U.S. The taxable portion of a scholarship or fellowship paid to a Nonresident Alien is subject to federal income tax withholding at the rate of 30%, unless the payments are exempt under a tax treaty. However, Nonresident Aliens who are present in the United States in F-1, J-1, M-1 or Q nonimmigrant status workers are subject to withholding at only the rate of 14%.

   c. The University is responsible for monitoring the tax treaty benefit eligibility period and must withhold federal income tax at 14% or 30% on the taxable portion of the scholarship or fellowship after the tax treaty period has expired. The Individual must have a valid Taxpayer Identification Number (TIN).

   d. Any stipends, tuition waivers or any other type of financial aid paid to a Nonresident Alien that requires services in exchange for the financial aid will be taxable as wages and reportable on Forms 941 and W-2. If the Nonresident Alien is receiving both taxable scholarship and wages and the Nonresident alien wants to claim a treaty exemption for both types of payments, he/she may choose to claim both treaty exemptions on Form 8233.

3. Independent Contractor Payments and Honorariums
   a. Payments made for services that are not considered employee wages. Unless exempted by a treaty, payment is subject to 30% tax. Nonresident Aliens may claim the lesser tax treaty rate by filing Form 8233. They will have to make an appointment with either Accounts Payable or the Payroll Office and fill out the
International Information form. The payments will be reported on forms 1042 and 1042-S, even if the entire amount of compensation is exempt under a tax treaty.

b. Unless the visitor is from a treaty country, has completed 8233, and has a United States Social Security Number, the payment must be taxed at a rate of 30%. This issue must be addressed at the time an agreement is made with the International visitor.

c. Non-Employee Visa Types

B-1 Visitor for Business
No employment is permitted. May be reimbursed for expenses only.
Except from taxes for honoraria from colleges or universities if the visitor meets the 9/5/6 rule.
(No more than 9 days at the University and has not been paid by more than 5 other universities within the last 6 months)

B-2 Visitor for Tourism
No employment permitted
Except from taxes for honoraria from colleges or universities if the visitor meets the 9/5/6 rule.
(No more than 9 days at the University and has not been paid by more than 5 other universities within the last 6 months)

WB Visa Waiver – Business
Same as B-1

WT Visa Waiver – Tourist
Same as B-2

TN-1 Treaty NAFTA (Canada)
Restricted employment
Authorized to work only for the petitioner

TN-2 Treaty NAFTA (Mexico)
Restricted employment
Authorized to work only for the petitioner

4. Travel/Lodging/Meals Expenses
Payments made for travel and travel-related expenses; substantial expenses (i.e., expenses statement and receipts) considered part of an accountable plan is not taxable if the amount claimed for reimbursement is substantiated as business-related. All payments are subject to the restrictions of the University Travel Policy and Procedures. Non-substantiated expenses are taxable at 30%.

B Foreign Source Income Exclusion
Payments made by the University to a Nonresident Alien for services performed in a country outside the United States, are not subject to taxes, nor is there any U.S. reporting obligation. This exclusion only applies to individuals who are not U.S. residents or citizens. The services are considered to be 'sourced' in the foreign country and therefore not subject to U.S. tax laws

V. Tax Treaties
The United States has tax treaties with over 50 countries. The treaty may exempt all or part of the payment made to the International Employee or Independent Contractor. These treaties are complex and dependent on the individual treaty, international visitor status, and type of income. For the treaty, exemption to be granted the visitor must provide his or her passport, visa status, I-94, or I94W, I-20, DS-2019 or I-797A and type of income. The international visitor must make an appointment with either Payroll or Accounts Payable to determine if he/she is eligible for the exemption.

VI. Quick Reference

- **Employment Taxes**
  - Resident Aliens Subject to FICA
  - Non-Resident Alien
    - J-1 Exempt from FICA
    - F-1 Exempt from FICA
    - H-1B Subject to FICA

- **Federal Withholding Taxes**
  - Resident Aliens Subject to withholding taxes as US citizen
  - Non-Resident Aliens Subject to Withholding taxes as US citizen on U.S. source income only unless exempt by TAX TREATY

- **Other Taxes**
  - Resident Aliens Taxed as US citizens
  - Non-Resident Aliens
    - Non-Employee/Independent Contractor
      - Subject to 30% tax unless exempt by TAX TREATY
    - Non-Qualified Scholarships/Fellowships
      - Subject to 30% tax or 14% tax for F.J, M, Q, visas unless exempt by TAX TREATY

- **TAX Forms**
  - W-4 Employee's Withholding Allowance Certificate
  - Exemption for Withholding on Compensation
  - W-2 Annual Information Form for Employee Compensation
  - 1042's Annual Information Form for Treaty Exempt Employee
  - Compensation & other Taxable NRA Income
    - 1040NR NRA Income Tax Return

- **Visas**
  - B-1 Visitor for Business
  - B-2 Visitor for Pleasure
  - F-1 Student
  - F-2 F-1 Dependent
  - H-1B Aliens in Specialty Occupations
  - H-4 H-1 Dependent
  - J-1 Student/Teacher or Researcher
  - J-2 J-1 Dependent
  - M-1 Vocational Student
- M-2  M-1 Dependent
- Q-1  Participant in an International Cultural Exchange Program
- Q-2  Q-1 Dependent
- TN   Canadian Professionals
- WB   Business Visa Waiver
- WT   Tourist Visa Waiver