

Certain payments to foreign visitors – taxable implications

UNM has researched the complexities of both the Internal Revenue Code and the United States Citizenship and Immigration Services. Our research has resulted in a change of treatment for payments made to foreign visitors sponsored with certain visa types.

This change will primarily affect foreign visitors who are entering the U.S. with a J-1 or F-1 visa status.

This generally does not apply to foreign visitors who enter with a B-series visa (B1, B2, VWB, VWT).

Currently, UNM treats certain payments as excludable under the IRS accountable plan, specifically as meal per diem and/or lodging/short-term housing.

IRS Accountable Plan requirements:

To be an accountable plan, your employer's reimbursement or allowance arrangement must include all of the following rules:

1. Your expenses must have a business connection — that is, you must have paid or incurred deductible expenses **while performing services as an employee of your employer.** (or as independent contractor)
2. You must adequately account to your employer for these expenses within a reasonable period of time.
3. You must return any excess reimbursement or allowance within a reasonable period of time.

As these payments have been made with no employment or performance of services (no business connection), and as this topic has been researched we believe that the application of the accountable plan in these circumstances is incorrect and a change in reporting of these payments is necessary.

When will this change take place?

Effective January 1, 2015, payments to foreign visitors for meal per diem, mileage, lodging and/or short-term housing must be in connection with services performed under an employment contract or evidence of compensatory services as independent contractor. Any such payments which do not have a clear connection with services performed (compensatory) will subject to 14% or 30% federal tax withholding, which will be reported to the IRS. The percentage is based upon the visa type of the foreign visitor. Please note that in the specific situation of foreign visitors coming to interview for a job, these changes do not typically apply. Travel expenses for interviews are generally seen to benefit UNM more than the traveler, and therefore the reimbursements are not generally taxable.

Every foreign national who pays U.S. Income tax is encouraged to apply for a U.S. Social Security Number (SSN) or Taxpayer Identification Number (ITIN). The foreign national may request a potential refund of withholding by completing Form 1040-NR and filing with the IRS at the end of the calendar year.

Please be advised that these determinations regarding taxation are all based on the specific set of facts in each situation, and there are many variables that could ultimately effect the taxation. This document is intended to communicate the potential change in tax treatment of certain transactions, and is merely a guideline. For specific questions on your situation, please email tax@unm.edu.

What is a J-1 scholar/researcher/student?

The J-1 Exchange Visitor Program has long been used by institutions of higher education, teaching hospitals and research institutes to bring to the United States students, teachers, professors, research scholars, specialists, foreign physicians, and other short-term international visitors.

How are non-resident aliens taxed in the United States?

Nonresident aliens are subject to U.S. income tax only on U.S.-source income and on income that is effectively connected to a U.S. trade or business. Effectively-connected income (ECI) includes compensation for services (employment and self-employment) performed in the United States and **taxable scholarships** paid to foreign visitors in J status.

U.S.-source income payments made to nonresident aliens are subject to 30 percent withholding unless an exception applies. The 30-percent tax applies to compensation payments made to independent contractors even though such income is taxed at graduated rates on the recipient's U.S. tax return. The withholding tax is to ensure that taxes are paid by these U.S. income recipients who would be unlikely to voluntarily submit a U.S. tax return and pay their tax.

There is also an exception for **non-compensatory scholarship and fellowship grants paid to or on behalf of nonresident alien recipients studying or engaged in training or research in the United States who are in F, J, M, or Q immigration status**. Taxable grants to these recipients **are subject to a lower 14 percent tax rate**.

U.S.-source income payments made to or on behalf of nonresident alien recipients must be reported to recipients and the IRS on a Form 1042-S information return.

This information contained in this memo is not intended to provide tax advice to individuals or other entity and is not intended to constitute, and cannot be used or relied upon as, such advice. Moreover, such a discussion may not be relied upon for the purpose of promoting, marketing or recommending to another party any tax-related matter or for the purpose of avoiding U.S. tax-related penalties or pursuant to IRS Circular 230.