

# TRINITY INTERNATIONAL UNIVERSITY

**TIU POLICY:** Taxation of Payments to Nonresident Aliens Policy

**TIU POLICY #:** P-203

**STATUS:** Approved, May 2015

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## **I. PURPOSE:**

Trinity International University (University) requires compliance with all Internal Revenue Service (IRS) laws and regulations regarding the taxation of payments made to nonresident aliens. Questions frequently arise regarding withholding on payments to non-employee foreign persons. For further reference, see IRS Publication 519 on the IRS website at [www.irs.gov](http://www.irs.gov).

The University cannot provide formal tax advice to individuals. No information in this policy should be considered formal tax advice.

## **II. SCOPE:**

This policy applies to any payments made to a nonresident alien. Such payments may include:

- Wages/Employee compensation
- Scholarships/Fellowship Grants
- Other payments or non-employee compensation

A nonresident alien is an individual who is not a U.S. citizen nor a resident alien; that is, the individual is temporarily in the U.S. through the issuance of a visa. For U.S. income tax purposes, any non-U.S. citizen is an "alien". The tax laws differentiate between "resident aliens", who are taxed in the same manner as citizens, and "nonresident aliens", who are taxed on a more limited basis.

All U.S. permanent residents ("green card holders") are considered resident aliens for tax purposes. Additionally, a nonimmigrant individual who spends a certain number of days a year in the U.S. will generally be classified as a resident alien for tax purposes if they meet the "substantial presence test"; special exemptions apply to individuals with certain visa status (including those on F, J, M, or Q visas).

## **III. POLICY:**

### **A. General Guidelines**

1. The University requires that any individual receiving payment within the scope of this policy (defined above) of U.S. sourced income (defined in section B below) must have a Social Security Number (SSN) or an Individual Taxpayer Identification Number (ITIN).

The IRS could fine the University for making a payment to an individual without an SSN or ITIN. Note: A non-resident alien may request an ITIN by filing IRS Form W-7 (Application for IRS Individual Taxpayer Identification Number).

2. No department or individual may enter into a contract that in any way conflicts the University's withholding obligations for nonresident aliens. Failure to comply with this policy could result in the IRS holding the University responsible for the payee's full tax liability, interest and penalties.
3. Department heads who enter into contracts with nonresident aliens should provide a copy of this policy to the foreign person or their U.S. agent before finalizing the contract. This will serve the dual purpose of providing notice to the payee and providing ample time for the payee to assemble any documentation that may be required.

## B. Payment Types and Tax Implications

Generally, nonresident aliens are taxed only on income from U.S. sources. Income "source" is defined differently depending on the nature of the payment.

1. Wages/Employee compensation – Nonresident aliens receiving wage income are taxed at the same graduated rates as U.S. citizens. However, when wages are paid out, nonresident aliens are subject to restrictions in terms of how many personal exemptions can be claimed. Additionally, in most cases, nonresident aliens are subject to withholding on a higher amount of their income.

During the hiring process, Human Resources will obtain the needed information to ascertain the individual's tax status, and will complete all necessary forms to support the tax status.

2. Scholarships/Fellowship Grants – A scholarship or fellowship grant is an amount given to an individual for study, training, or research, and which does not constitute compensation for personal services. The income source of scholarships and fellowship grants is based on a combination of: 1) the location of the payer, and 2) the location of the academic activity. Income of this type is sourced to the U.S. only if the payer is based in the U.S. and the academic activity takes place in the U.S.

A qualified scholarship is an amount used for tuition, required fees, and required course materials while in attendance at the University. Disbursements for non-qualified amounts may include payments applied to room and board, travel expenses, optional fees, or other reimbursements. The table below summarizes the withholding and reporting requirements.

<u>Degree Candidate</u>	<u>Visa Type (F, J, M or Q)</u>	<u>Scholarship Amount Is</u>	
		<u>Qualified</u>	<u>Unqualified</u>
Yes	Yes	No Withholding	Withhold 14%
	No	Withhold 30%	Withhold 30%
No	Yes	Withhold 14%	Withhold 14%
	No	Withhold 30%	Withhold 30%

Scholarships or fellowship grants given to students, trainees, or researchers which require the performance of personal services (e.g. teaching, doing research, other work) as a necessary condition for receiving the grant do not qualify as scholarships or fellowship grants. Instead, such amounts are defined as compensation (wages) for personal services and must be reported on Forms 941 and W-2 with income tax withheld accordingly, regardless of the term used to describe the grant (e.g. stipend, scholarship, award, fellowship, etc.).

3. Other payments or non-employee compensation - Payment for services performed is sourced to the country where the work takes place. Nonresident aliens receiving payments from the University for honorarium, guest speaker/lecture fees, stipends, prizes, awards, gifts, living allowances, or for other services (such as proof reading or course development) are subject to 30% Federal withholding if such activities are performed in the U.S.

Example: Your department invites a lecturer to campus to speak during a class or in chapel. You agree to pay the speaker a \$500 honorarium and to reimburse any travel expenses. For IRS purposes the lecturer is classified as a nonresident alien. The Business Office will withhold federal income tax of \$150 (30% x \$500) when it issues the honorarium check. No tax will be withheld on the travel expense reimbursement amount.

### **C. Payments made to U.S. agents or foreign organizations**

1. IRS regulations also require the University to withhold 30% in cases where a payment is made to a U.S. person who is acting as an agent of a foreign person. This is required despite the fact that the payment is being made to a U.S. corporation or other U.S. entity. This 30% withholding requirement can be waived only if the U.S. agent or foreign person provides certain documentation to the Business Office.
2. If the payee is a foreign government, international organization, foreign tax-exempt organization, or foreign private foundation, the University can rely on Form W-8EXP to exempt or reduce the rate of withholding on the payment. Certain additional documentation may be required, such as a letter from a U.S. attorney attesting that an organization would likely obtain tax-exempt status from the IRS if it applied for it.

### **D. Reporting**

1. Nonresident aliens receiving wage income will receive a W-2 from the University.
2. The IRS requires the University to report income paid to, or on behalf of, non-resident aliens on form 1042-S on or before March 15. Nonresident aliens receiving payments for non-qualified scholarships or fellowships, or other non-employee compensation, will receive a 1042-S from the University.