

UCF International Services Center Foreign Vendor Guidelines

Overview:

The International Services Center's (ISC) Employment & Taxation Unit oversees the university's U.S. immigration and IRS tax compliance for all foreign national service vendors who are sponsored by the university.

Purpose:

This publication may be utilized by any UCF department that is sponsoring foreign vendor activities. This publication provides compliance guidelines for common activities associated with foreign vendor sponsorships. These guidelines follow and operate under specific guidance within IRS regulations, U.S. immigration laws, Florida statutes, and UCF Finance & Accounting policies.

Scope:

This publication's focus is limited to a foreign vendor's proposed activities, income, and payments. A foreign vendor's U.S. immigration eligibility and IRS federal tax withholding are the primary determinations for which the guidelines are applicable.

Immigration Regulations:

In general, the Immigration & Nationality Act (INA) provides specific guidance for allowable activities associated with nonimmigrant visitors and their visa status.

The Department of State (DOS), Department of Homeland Security (DHS), and U.S. Citizenship & Immigration Services (USCIS) administer over 30 different types of visa statuses.

In most instances, university and academic institutions may consider sponsoring or hosting foreign vendors under the following visa statuses where applicable:

- B-1 Business Visa
- B-2 Tourist Visa
- J-1 Exchange Program Visa
- F-1 Student Visa
- H-1B Specialty/Temporary Worker Visa (very restrictive in most cases)
- Visa Waiver (where applicable)

WB and WT Visa Waivers are very similar to the B-1 & B-2 visa types, respectively.

If needed, any visa status, including the ones mentioned above, may be reviewed upon request for work and vendor eligibility.

Most foreign vendor activity associated with the university will normally fall under five main categories:

- Research Services
- Lecturing
- Teaching
- Speaking Engagements, including meetings or seminars
- Consulting Services

However, a foreign vendor's proposed activity has to be allowable under the proposed visa status in order for the university to meet regulatory requirements and avoid potential penalty and fines.

IRS Regulations:

In general, the Internal Revenue Code, Section 1441 provides specific guidance for applicable withholding and tax liability associated with a nonresident alien's (NRA) activity.

An NRA would be any foreign vendor who is a non-green card holder with an anticipated stay in the U.S. of less than 183 days in the current year. "NRA" is only an IRS term, and it has no relationship to immigration status. A foreign vendor could be a foreign national of another country but still be a resident alien (RA) of the U.S. for tax purpose only.

In general, a foreign vendor who is an NRA will be assessed a 30% withholding tax on payments for services, unless the vendor's home country has a tax treaty with the U.S.

Treaty Benefits:

Under IRS regulations, a tax treaty is the only claim for exemption or reduced withholding that may be applicable to U.S. source income received by NRA foreign vendors for performing independent personal services.

A foreign vendor must have either an SSN or Individual Tax Identification Number (ITIN) in order to claim a treaty benefit. A foreign vendor can always claim a treaty benefit when the vendor files a U.S. tax return, if applicable.

Honorarium:

In general, U.S. immigration law allows honorarium payments and associated incidental expenses for usual academic activity to foreign vendors in the B visa statuses. However, the activity does have to meet the law's 9/5/6 rule:

In October 1998, U.S. Congress passed the American Competitiveness Workforce Act, allowing educational institutions to pay visitors for honoraria and related expenses. Per 8 U.S.C. § 1182 (q), an academic activity may not exceed nine days at a single institution. In addition, such visitors cannot accept honoraria and (or) incidental expenses from more than five such institutions or organizations in the previous six-month period.

Under IRS regulations, the term honorarium is treated no differently than any other income term, and it is taxable at 30% unless a treaty benefit applies.

Travel & Expense Reimbursement:

B-1 Visa

As stated above, U.S. immigration law allows payment of honorarium and associated incidental expenses for usual academic activity to foreign vendors under the B-1 visa status when it meets the 9/5/6 rules. The honorarium activity may not last longer than 9 days, but expense reimbursements are eligible for payment beyond that requirement. The expenses should be reasonably close to the duration of the associated honorarium activity.

However, for normal non-service B-1 activity, the activity doesn't have to meet the law's 9/5/6 rules for travel reimbursements or incidental expenses that are associated with the activity; no honorarium payment or service is allowed in this case.

B-2 Visa (Very Restrictive)

In the B - 2 visa holder's case, the activity does have to meet the 9/5/6 rule for travel and associated expense reimbursements to be permissible.

J-1 Visa

U.S. immigration law allows for payment and travel reimbursement to J-1 visa holders if the associated activity is related to the designation on their DS2019 (work related). If the foreign vendor is sponsored by another institution, the vendor's Responsible Officer (RO) must give written approval to the university.

F-1 Visa

U.S. immigration law does allow for payment and travel reimbursement to F-1 visa holders if the associated activity is related to their allowable/authorized work such as OPT or CPT.

H-1B Visa (Very Restrictive)

For non-UCF sponsored H-1B visa holders, immigration law does not allow direct payments or reimbursements to these foreign vendors for services. Written permission/authorization must be obtained from the sponsoring institution (H-1B advisor), and payment must be made to that institution for providing services to UCF. No payment should be made to the H-1B visa holder from the university.

Exception: For non-UCF sponsored H-1B visa holders, immigration regulation does allow for expense reimbursements when the foreign vendor is performing lectures or similar activity at academic institutions with no benefit to the university. For example, a free lecture to a student body is allowable, but teaching a class would not be allowable.

For UCF sponsored H-1B visa holders/employees, immigration law allows for travel reimbursement for work related activity. Lectures may be performed for no pay or as part of the visa holder's job responsibilities, but if a grant or honorarium payment is considered, contact ISC for any restrictions.

Under IRS regulations, travel reimbursements are non-taxable and non-reportable when they meet both the IRS Accountable Plan Rule and the Away-From-Home Rule. When the reimbursement fails to meet either rule, a 30% withholding is applicable.

Proposed Activities: Immigration Eligibility, IRS Implication, and ISC Requirements

1 . Foreign National expert invited to speak, lecture, or consult at the university for an honorarium

- Generally, the foreign vendor should come under a B visa or short-term J -1 visa.
 - A. When the activity is for less than 9 days, a B-1 visa or B-2 visa is recommended.
 - B. When the activity is for more than 9 days and less than 6 months, the short-term J-1 visa is recommended.
 - C. Associated expenses are reimbursable for activity within the 9 days.

- The honorarium amount is taxable at 30% unless the foreign vendor is claiming a tax treaty from his home country; if so, then an SSN or ITIN will be needed along with a completed IRS Form 8233 and a treaty letter.
- ISC will need a completed IRS Form W8-BEN, ISC's Form C, ISC's Form B, passport, copy of voucher/invoice, ISC's Form A, visa, and I-94 card.

2 . Foreign National researcher invited to perform paid research services for the benefit of the university

- Generally, the foreign vendor should come under a short-term J -1 visa.
 - A. When the activity is for less than 6 months, the short-term J - 1 visa is recommended.
 - B. A vendor payment must meet the Purchasing and HR department's qualification for independent contractor status versus employee (independent contractor status is not recommended for UCF sponsored J-1 professionals; it may conflict with immigration regulation).
 - C. Associated expenses are reimbursable for activity
- The honorarium or salary amount is taxable at 30% unless the foreign vendor is claiming a tax treaty from his home country; if so, then an SSN or ITIN will be needed along with a completed IRS Form 8233 and a treaty letter.
- ISC will need a completed IRS Form W8-BEN, ISC's Form C, passport, copy of voucher/invoice, ISC's Form A, visa, and I-94 card.

3 . Foreign National invited to perform independent research at the university for travel and expense reimbursement only

- Generally, the foreign vendor may come under a B-1 visa when the activity is for less than 6 months.
 - A. The research must be independent without any benefit to the university.
- A tax withholding is applicable at 30% on the reimbursement.
- ISC will need a completed IRS Form W8-BEN, ISC's Form C, ISC's Form A, passport, visa, and I-94 card.

4 . Foreign National student paid through accounts payable for independent services

- Generally, a student who is authorized to work at the university due to their enrollment, CPT authorization, or OPT status may receive vendor payments when under an F-1 or J-1 student visa.
 - A. A vendor payment must meet the Purchasing and HR Department's qualification for independent contractor status versus employee status.
- Under IRS regulations, the amount may be considered self-employment income, and a 30% tax withholding may be assessed unless a tax treaty is applicable.
- ISC will need a completed IRS Form W8-BEN, ISC's Form D, ISC's Form A, passport, copy of voucher/invoice, I-94 card, visa, and EAD if applicable.

5 . Foreign National individual is reimbursed travel and incidental expenses associated with a candidacy for employment at the UCF

- Generally, a foreign national candidate traveling from abroad for a job interview may come under a B-1 visa, but the candidate must return home where he should obtain the proper work visa if offered U.S. employment
- The reimbursement is non-taxable and reportable if it meets the IRS Interview Rules and the Away-From-Home Rules; if not, a 30% tax withholding is applicable.

- ISC will need a completed IRS Form W8-BEN, ISC's Form C, passport, copy of voucher, visa, and I-94 card.

6 . Foreign National vendor perform services for UCF entirely outside of the U.S.

- Generally, a verification of the vendor's residency status is needed, which includes items such as a passport.
- Under IRS regulations, the payment is non-taxable and reportable since the income is deemed foreign-sourced
 - A. The invoice needs to state where the services were completed
- ISC will need a completed IRS Form W8-BEN, ISC's Form C, and passport.

Note: The list of proposed activities contains only a limited amount of examples. Please e-mail the ISC's Employment & Taxation Unit for updated requirements on vendor activities at vendorrequest@ucf.edu

Documents Required by ISC	Submission Timeline
Original IRS Form W8-BEN	Before activity/approval
Passport	Before activity/approval
ISC's Form C	Before activity/approval
Visa (if required)	Before activity/approval
ISC's Form B	Before activity/approval
EAD (if applicable)	Before activity/approval
I-94 Card	While traveler in U.S.
Copy of reimbursement voucher/Invoice (via F & A)	Before payment processing
ISC's Form A	Before payment processing
Original IRS Form 8233 & SSN (if tax treaty applies)	Before payment processing

ISC's Primary Determinations

- A foreign national's immigration status, such as visa status, work authorization, etc.
- Activity associated with a foreign national's reimbursements, such as work, service, etc.
- If activity is reportable or taxable based on the Accountable Plan rule, such as business purpose, substantiation, etc.
- Whether the foreign national is a resident alien or nonresident alien (Substantial Presence Test, LPR, etc.)
- Whether or not the foreign national is performing services
- Whether or not the time frame associated with expenses is reasonably related to the activity
- Whether or not the foreign national is anticipated to stay more than one year
- Whether or not the associated activity will be considered work under immigration guidelines

The Three-Pronged Test: Developed to determine if an activity is employment/service or not

- Is the income from a U.S. source for services?
- Does it cause displacement of a U.S. job opportunity?
- Does a U.S. company or source receive primary benefit?

If any of the three above applies, the activity is deemed to be employment and is not permissible activity under a non-work authorized visa such as a B visa status unless immigration law allows for an exception.

Job Interviews

Expenses associated to a foreign national traveling for a job interview are excludable and non-reportable under IRS Revenue Ruling 63-77, 1963-1 C.B 177.

Usual Academic Activity: Proposed regulation in 2002

Lecturing
Teaching
Sharing knowledge
Master classes
Readings
Meetings for the benefit of institution

Normal B-1 Activity

- (1) Engage in commercial transactions, which do not involve gainful employment in the United States (such as a merchant who takes orders for goods manufactured abroad)
- (2) Negotiate contracts
- (3) Consult with business associates
- (4) Litigate
- (5) Participate in scientific, educational, professional, or business conventions, conferences, or seminars
- (6) Undertake independent research

Canadian and Mexican visitors have a list of acceptable B - 1 activities that are defined by NAFTA. A list may be requested upon request.

Appendix:

The chart below may be used as a reference for general visa information related to travel reimbursements, payments and ISC's requirements. All visa statuses below are assuming that UCF is the sponsor when applicable. If UCF is not the sponsor, different requirements may apply.

Visa type/Status	Classification	Vendor Documentation
B-1	Visitor for temporary business	Not eligible if vendor's activity exceeds 9 days, or if the vendor was paid or reimbursed by more than 5 United States institutions in a 6 month period. W8-BEN, passport, visa, Form B,I-94 Card, Form A sheet
B-2	Visitor for pleasure, tourism	Not eligible if vendor's activity exceeds 9 days, or if the vendor was paid or reimbursed by more than 5 United States institutions in a 6 month period. W8-BEN, passport, visa, Form B,I-94 Card, Form A
F-1	UCF Student	W8-BEN, passport, visa, I-94 Card, Form A
	Non-UCF Student	W8-BEN, passport, visa, I-94 Card, Form A, CPT, OPT documents
H-1B	Temporary Worker	W8-BEN, passport, visa, I-94 Card, Form A
J-1	Exchange Visitor	W8-BEN, passport, visa, I-94 Card, Form A
P-1	Athlete internationally recognized	W8-BEN, passport, visa, I-94 Card, Form A
P-2	Artists or Entertainers	W8-BEN, passport, visa, I-94 Card, Form A
Permanent Resident	Permanent Resident	Permanent Resident card or I-551 stamp in passport.
TN	Visitor from Canada or Mexico	W8-BEN, passport, visa, I-94 Card, Form A,
WB	Waiver for business	Not eligible if vendor's activity exceeds 9 days, or if the vendor was paid or reimbursed by more than 5 United States institutions in a 6 month period. W8-BEN, passport, visa, honorarium form,I-94 Card, Form A
WT	Waiver for pleasure, tourism	Not eligible if vendor's activity exceeds 9 days, or if the vendor was paid or reimbursed by more than 5 United States institutions in a 6 month period. W8-BEN, passport, visa, Form B,I-94 Card, Form A