

Overview of Payments to Foreign Suppliers

This overview pertains to payments made for services performed by foreign suppliers, both individuals and entities, that are independent and do not have any other type of employment relationship with the University.

Foreign Persons (IRS Publication 515):

A foreign person includes a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, foreign estate, and any other person that does not fall under the definition of a U.S. person.

Forms Used for Foreign Suppliers

Florida Atlantic University uses both domestic and international companies for contracted services. There are specific tax rules related to payments made to foreign entities just as there are rules for payments to foreign individuals.

The Internal Revenue Service (IRS) requires that all payments made to foreign suppliers be made in accordance with IRS Regulations. These Regulations require that when the services are provided inside the U.S., taxes must be withheld from payments made to foreign suppliers, unless the income is exempt under a provision of a tax treaty between the foreign supplier's country of residence and the U.S.

When services are performed entirely on foreign soil by a foreign supplier, the transaction is not subject to US tax reporting or withholding. The rules below apply only to payments received for work performed in the US.

Payments made to foreign suppliers will be subject to U.S. federal income tax withholding of 30% unless:

1. All forms that are required by the IRS, have been completed and submitted to the University, and
2. Payments made to the foreign supplier are
 - a. Exempt due to a tax treaty
 - b. Are effectively connected with the conduct of a trade or business in the U.S. or
 - c. Made to a foreign entity with U.S. tax-exempt status.

Note: These instructions relate only to services, they do not apply to the purchase of goods. There is no tax withholding requirement for goods shipped from abroad as the ownership of the goods would pass to the University. However, when services are rendered along with a purchase of goods, or when any type of services can be reasonably expected from supplier in the future, Part III of the W-8BEN-E must be completed in full to avoid the mandatory 30% tax withholding. An example would be an equipment purchase from a foreign manufacturer where set up and installation costs are part of the purchase agreement or when a foreign supplier provides repair, maintenance or any other type of services throughout the year in addition to selling goods.

It is highly recommended by the Tax Services Department that all foreign entities submit a tax treaty claim in Part III of W-8BEN-E to avoid the delays in receiving payments. In addition, if the Tax Services Department reclassifies any payment for goods as service related, the whole

amount will automatically become taxable and 30% withholding will be made from the supplier invoice.

Foreign suppliers who wish to claim various exemptions from tax withholding on U.S. source income, or who must notify the University of their U.S. or foreign status, are required to complete the following Withholding Certificate Forms.

- Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for U.S. Tax Withholding and Reporting (Individuals only);
- Form 8233, Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual;
- Form W-8BEN-E, Certificate of Status of Beneficial Owner for U.S. Tax Withholding and Reporting (Entities only);
- Form W-8ECI, Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the U.S.

Form W-8BEN is used by a foreign supplier, who is an individual, to claim an exemption from tax withholding on a non-service type of income, such as scholarship, fellowship, and royalties. It must be submitted to the University by every foreign supplier, regardless of whether they are claiming a reduced rate of, or exemption from withholding. For a valid tax treaty claim, Part II of the W-8BEN must be completed in full.

Form 8233 is used by a foreign supplier, who is an individual, to claim an exemption from withholding on compensation for personal services income (Independent Contractor) due to an income tax treaty between the United States and their country of residence. ***For a valid tax treaty exemption, the individual must have a U.S. issued tax identification number (ITIN).***

IMPORTANT: Prior to engaging a foreign individual, it is required that a Nonresident Alien Questionnaire is filled out and submitted to the Tax Services Department at tax@fau.edu to ensure that an individual is allowed to receive payments based on their visa type and immigration status. This must be done before the services are performed.

All payments for services are subject to a 30% tax withholding. The tax will be deducted from the supplier payment and remitted to the IRS. Tax withholding can be avoided if there is a valid tax treaty between the United States and supplier's country of tax residence. For nonresident alien individuals, a tax treaty claim is made by submitting Form 8233.

Form 8233 must be submitted in addition to W-8BEN by every individual who chooses and who is eligible to claim a tax treaty. To be valid, an individual must have a U.S. issued tax identification number (ITIN).

In a situation where an individual receives a non-compensatory scholarship or fellowship in addition to personal services income, Form 8233 is required. But if only a non-compensatory scholarship or fellowship is received, Form W-8BEN is sufficient.

In every case, to claim an exemption from tax withholding on personal services income, the individual must have either a U.S. issued SSN, or an ITIN. An individual taxpayer identification number (ITIN) can be applied for by using Form W-7.

Form W-8BEN-E is used by foreign entities to certify their status under the Internal Revenue Code Sections 1441-1443 (Chapter 3) and 1471-1474 (Chapter 4), both of which require Withholding of Tax on Nonresident Aliens and Foreign Entities on US source income. It also enforces reporting on certain foreign accounts under the Foreign Account Tax Compliance Act (FATCA).

Entities are required to provide their identifying information as well as FATCA classification type in Part I and certify in Part XXIX that the entity is not a US person for tax purposes. Part III of the form is used to claim a tax treaty exemption from the mandatory 30% income tax withholding. ***For a valid tax treaty exemption, the entity must provide a U.S. employer identification number (EIN) or a Foreign TIN.*** If an entity does not have a U.S. issued EIN, Form SS-4 is can be used to apply for one.

Form W-8ECI is to be completed by suppliers who are claiming an exemption from withholding on income that is effectively connected with a trade or business in the United States. The form stipulates that the foreign supplier files yearly U.S. tax returns to report all income connected with a U.S. trade or business. In order for the form to be completed properly, a U.S. tax identification number must be provided.

The suppliers must establish that:

- They are not U.S. persons.
- Claim that they are the beneficial owners of the income for which Form W-8ECI is being provided.
- Claim that the income is effectively connected with the conduct of a trade or business in the United States.

Below is the table that provides a quick reference in regard to which form(s) must be submitted when requesting payment to a foreign supplier. The type of form used depends on the type of supplier and the type of payment that they receive. **The completed forms must be submitted for review to the Tax Services Department at tax@fau.edu**

If supplier is...	Type of payment	Example	Form(s) to request
Foreign supplier (individual)	Non-service	Royalty, interest payments, travel	Form W-8BEN
Foreign supplier (individual)	Personal services compensation	Independent contractor payments, honoraria, guest speaker fees, consultant fees	Form 8233* & W-8BEN

Foreign supplier (entity)	Non-service & personal services compensation	Any type of payments for service, honoraria, guest speaker fees, consultant fees	Form W-8BEN-E
Foreign supplier (individual)	Non-compensatory scholarship or fellowship	Taxable scholarship, fellowship, stipend	Form W-8BEN
Foreign students, teachers, trainees & researchers	Non-service & personal services compensation		Form 8233* & attachment (Appendix A & B Pub. 519) & W-8BEN
Foreign supplier (individual)	Scholarship or fellowship & personal services compensation		Form 8233* & W-BEN

*Form 8233 must be used if the foreign supplier (individual) is claiming a tax treaty or a reduced rate of withholding on the personal services income.

Payment to U.S. Agent

If the University makes a payment to a U.S. person or entity acting as an agent on behalf of the foreign supplier, the University must treat the payment as being made to the foreign supplier. The gross amount of the payment would therefore be subject to 30% tax withholding, and reported to the IRS on Form 1042-S.

Completion of Withholding Certificate

To be acceptable, every form where a supplier claims a tax treaty or reduced withholding, must be completed in full and according to the IRS instructions. Incomplete forms will result in a 30% tax withholding from the supplier's payment.

Any withholding agent who receives any W-8 type form or Form 8233 without a payee TIN (when required) for the purpose of claiming a tax treaty benefit, is not allowed to grant that benefit until the proper form that does report the payee's TIN is received. In short, this means that, in the case of payments to foreign suppliers, if a supplier does not report his/her TIN to the withholding agent or does not meet an exception, the withholding agent is required to withhold 30% federal income tax on the payment(s) and the supplier is not entitled to any tax treaty benefit until the TIN is provided.

Travel Expenses

Following the IRS accountable plan guidelines, travel expenses can be reimbursed to a foreign individual upon receipt of the following information:

- A copy of the individuals I-94 or visa form which indicates the visa status (B-1, B-2, W-B, WT, TN, JI);

- **Original receipts** for expenses for which reimbursement is requested. If original receipts are not submitted, the reimbursement is treated as payment for Independent Personal Services, and it is subject to 30% tax withholding.

An Individual Taxpayer Identification Number (ITIN) - Guidance for Foreign Suppliers

Regulations under IRC §1441 require that all suppliers who claim an income tax treaty exemption have a Social Security Number or ITIN. If a supplier submits a tax treaty exemption form without an appropriate taxpayer identification number or proof that such a number has been applied for, the withholding agent must withhold tax.

An Individual Taxpayer Identification Number (ITIN) is a tax processing number issued by the Internal Revenue Service. The IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number, but who do not have and are not eligible to obtain a Social Security number (SSN) from the Social Security Administration.

Form W-7, Application for IRS Individual Taxpayer Identification Number, is used to apply for ITIN.

A U.S. TIN for an entity is an employer identification number (EIN) even if the entity has no employees in the United States. An EIN is the TIN for all types of entities with a federal tax administrative requirement even if the entity is exempt from U.S. taxes.

A U.S. EIN is applied for on Form SS-4.