

PAYMENTS TO NON-EMPLOYEE NONRESIDENT ALIENS FAQs

Q: I have subcontracted with a citizen of the United Kingdom to perform work on my project. The work will be performed entirely in the United Kingdom, and the independent contractor will not be in the United States during the dates of service. Do I withhold 35% for payments to this individual?

A: No. If the work is being performed entirely in the United Kingdom, or on any foreign soil, then payments to the contractor are considered to be “foreign-sourced” and are not subject to withholding.

For compensation purposes, in order to be considered “U.S. Source Income”, the location of the activity needs to occur in the United States.

Q: I have asked an assistant researcher from Columbia University to come and speak at KU Medical Center and I have promised to pay a \$1000.00 speaker fee as well as travel expenses. This researcher is in the United States on an H1-B visa, and has informed me that other universities have provided direct payment for services, so this is OK, right?

A: No, regardless of what “other universities” have done, compensating an individual with an H1-B visa for independent personal services is not allowed. An individual with this visa type can only be reimbursed as an employee *by the sponsoring agency*. Columbia University may submit an invoice to your department for your speaker’s services, payable to Columbia University. You may, however, reimburse your speaker for the travel expenses.

Although this may not be a popular answer for the speaker, it does protect the individual’s immigration status. Possible repercussions of not following federal guidelines in reimbursing nonresident aliens include deportation for the individual, and fines for the paying agency.

Q: I have a speaker coming in on a B-1 visa, and his country has a tax treaty with the United States, but I don’t want to have to fill out the forms. Do we have to claim the tax treaty, or can we just withhold 35% from his payment?

A: That is not your decision. If your guest has a tax treaty and he wishes to claim his tax treaty in order to avoid having 35% of his payment withheld, then it is your responsibility to assist your guest in obtaining all of the necessary documentation.

Q: My guest is from Japan and wants to claim the tax treaty, but according to the IRS Tax Treaty list, there is no article number for independent personal services; it’s blank. What does that mean?

A: The tax treaty article specifically addressing independent contractors was removed from the U.S.-Japan Treaty. Independent contractors from Japan are now covered under Article 7 of the treaty: Business Profits. This is true for several other treaties; if you are having difficulty finding the correct article, you may contact KUMCRI Accounts Payable for assistance.

Q: I don't understand the B-2 limitation. What do you mean that my guest speaker can't come over on a B-2 visa and get reimbursed for services?

A: In order to reimburse a B-2 visa holder, that individual must have already been in the United States as a visitor when you invited the individual to speak or provide services. You may invite an individual to the university to perform services for a limited time on a B visa, but that individual must enter the United States on a B-1 visa. This is an immigration issue, and the RI adheres to the rules and regulations of the USCIS.