



FOREIGN NATIONALS TAX COMPLIANCE TRAINING

“How To Optimize Your Processing of Foreign Nationals and Current Issues Update”

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Presenters

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 - NC State University – International Employment and Taxation

Disclaimer: The information within this presentation does not constitute tax/legal advice and each participant should seek his/her own counsel in addressing specific situations.

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Training Agenda

- Requirements of Paying a Foreign National
- FATCA Guidance
- Review of Forms Issued by FATCA
- How to Establish a Foreign National (Audit) File
- Regulation Updates/Awareness of Current Issues

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Requirements of Paying a Foreign National

- All compensation for services performed in the United States is subject to taxation unless an exception applies
- Taxation depends on his or her U.S. tax status – resident alien or nonresident alien for tax purposes
- U.S tax residency status depends on his or her U.S. immigration status and U.S. presence over a 3-calendar year period.
- A resident alien, like a U.S. Citizen is subject to U.S. tax on worldwide income, even if the individual resides and works abroad, unless an exception applies.
- A nonresident alien is subject to U.S. taxation on U.S. source income and income effectively connected to the conduct of a U.S. trade or business (ECI), unless an exception applies.

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Requirements of Paying a Foreign National (cont.)

- All payments made by an employer to or on behalf of an employee, including cash and the FMV of benefits-in-kind, are wages subject to payroll taxes, unless an exception applies.
- Document the exception by submitting a completed form, signed under the penalties of perjury, to the employer or payer, otherwise the exception does not apply.
- The IRS enforces withholding by collection the tax, plus penalties and interest, from the payer who fails to withhold or to collect the necessary form for the exemption from withholding.

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FATCA Guidance

- Foreign Account Tax Compliance ACT – Chapter 4
 - Chapter 4 status means a person’s status as a U.S. person, specified U.S. person, foreign individual, participating FFI, deemed-compliant FFI, restricted distributor, exempt beneficial owner, nonparticipating FFI, territory financial institution, excepted NFFE, or passive NFFE (defined in section 1.1471-1(b))
- NRA Withholding – Chapter 3
 - Chapter 3 means Chapter 3 of the Internal Revenue Code (Withholding of Tax on Nonresident Aliens and Foreign Corporations)

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FATCA Guidance (cont.)

- Foreign Account Tax Compliance ACT – Chapter 4
 - Applies to U.S.-Source income that is fixed or determinable annual or periodical (FDAP) unless
 - Payment is FATCA-exempt
 - Payee is a FATCA-exempt beneficial owner, or
 - Payee is FATCA-exempt based on a valid withholding certificate or documentation
 - Reportable on 1042-S
 - Tax treaty exemptions do not apply for FATCA withholding purposes
- Implementation 12/31/2014, per Notice 2014-33 and IRS Official Public Statements for non FATCA payments
 - **Passes the FATCA Rules**
- NRA Withholding – Chapter 3
 - Determine application and potential withholding exception is available
 - Reportable on 1042-S

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FATCA Guidance – Exempt Payments

- Exempt from FATCA withholding (chapter 4) the general classification of “nonfinancial excludable payments”
 - Nonfinancial services
 - The use of property
 - Office and equipment leases
 - Software licenses
 - Transportation and freight

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FATCA Guidance – New Presumptions

- Income for both FATCA and NRA withholding purposes is presumed to be U.S.-source income unless the payer has evidence that the payment is foreign-source
- Pay for services performed outside the United States which is foreign-source should be so indicated in contracts and invoices.
- An entity is presumed to be foreign unless the payer has a valid Form W-9 or other documentary evidence that the entity is domestic
 - No longer allowing the “eyeball test” to exempt U.S. Corporations and Financial institutions from Form 1099 reporting.

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FATCA Guidance (cont.)

- W-8BEN
 - Only for individuals
 - Requires a foreign taxpayer identification number or date of birth (identification purposes in information exchange).
 - Request country of citizenship (this may not be the same as country of residence for treaty benefits).
- Changes to form
 - Part 1
 - Line 2 – Country of Citizenship
 - Line 3– Type of Beneficial Owner – Removed
 - Line 6 – Foreign TIN – No longer states Optional
 - Line 9 – Date of Birth – New
 - Part 2
 - Simplified
 - Signature line
 - Print name of Signer - New

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FATCA Guidance (cont.)

- W-8BEN-E
 - BRAND NEW Form
 - Only for Entities
 - 8 pages
- Some highlights
 - Part 1
 - Line 5 – FATCA Status (31 boxes)
 - Line 8/9 – US TIN and/or Foreign TIN (BIG CHANGE)
 - Part 3
 - Similar to Treaty in former W-8BEN
 - Signature line
 - Print name of Signer – New
 - Check box certify authority to sign
- Please read directions for all details of W-8BEN-E

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FATCA Guidance (cont.)

- W-8ECI
 - Serves to exempt the payment from FATCA withholding
 - Serves to exempt the payment from NRA withholding
 - EXCEPTION – N/A for independent personal services or income paid to a personal holding company.
- Changes to form
 - Part 1
 - Line 2 – Country of residence for tax purposes
 - Line 5 – Permanent residence (same as line 2)
 - Line 7 – U.S. TIN – required
 - Line 8 – Foreign TIN – no longer optional
 - Line 10 – Date of Birth – New
 - Signature line
 - Print name
 - Box to check – certify capacity to sign

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Additional Forms

- **Form 8233** - Exemption from Withholding on compensation for Independent (an certain Dependent) Personal Services – last updated June 2011
 - Purpose: To claim tax treaty withholding exemptions from:
 - Compensation for independent personal services performed in the U.S.
 - Compensation for dependent personal services performed in the U.S.
 - Noncompensatory scholarship or fellowship income and personal services income from the same withholding agent.

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Additional Forms (cont.)

- **Form 8233**
 - Answer all applicable questions COMPLETELY
 - Specify the tax year
 - Attach the required statement described in line 10 for foreign student, trainee, professor/teacher, or researcher
 - Complete 11-14 in sufficient detail to allow the IRS to determine the tax treaty benefit you are claiming.
 - Claim the proper number of personal exemptions on line 15.
 - Complete required certification on Part 3.

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Additional Forms Example

- Employee and Self-Employment
 - Example: A nonresident alien is primarily present in the United States as a professor, but also is occasionally invited to lecture at another educational institution. These lectures are not connected with his teaching obligations but are in the nature of self-employment.
 - For each year the professor must complete TWO forms 8233 and give one to each withholding agent to claim tax treaty benefits on the separate items of Income.
 - What issues do you see with this....are there any?

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Additional Forms Example (cont.)

- Noncompensatory Scholarship
 - Example: XYZ University awards a scholarship to Judy, a nonresident alien student. The only condition of scholarship is that Judy attends classes and maintains a minimum level of academic performance. The scholarship income is not compensatory because Judy is not required to perform services as an employee as a condition for receiving the scholarship

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Additional Forms (cont.)

- Form W-4 - Employee's Withholding Allowance Certificate
 - Line 2 – Required to enter SSN
 - Line 3 – Check single box
 - Line 5 – Claim 1 withholding allowance
 - Unless from Canada, Mexico, or South Korea; a student from India; or a U.S. national – claim additional allowances
 - Line 6 – NRA above dotted line
 - Line 7 – DO NOT claim you are exempt

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Frequently Asked Questions – IRS

- Responsible for the validity of documentation presented by foreign payee?
 - To rely on documentation, it must be valid!
 - To be valid – the documentation must meet the requirements of Treasury Reg. 1.1441 and must be completed in accordance with the applicable form instructions
 - To be valid – the withholding agent must not know, or have reason to know, that the information provided on the documentation is unreliable or incorrect.
 - If the documentation is invalid for any reason, the withholding agent must apply the presumption rules set forth in Treasury Reg. Section 1.1441.1.

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Are you still awake????

- Where do you keep your Tax Assessment Documentation?
 - A. Human Resource Maintains this in the HR File
 - B. We maintain a separate file
 - C. We don't maintain any records of tax assessments
 - D. All the above.
 - E. This doesn't apply to me.

Please chat in your answer

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Creating a Foreign National File

- Where do I start?
 - Who is your population?
 - How do I ensure I appropriate documentation?
- Procedures for annual renewals/changes
 - New Foreign National
 - Tax Assessments August
 - Tax Assessments January
 - Friendly Reminders

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Creating a Foreign National File (cont.)

- Who is your population
 - Creating a Foreign Payee
 - Vendor, Employee, Student, Contractor, etc.
 - Audit your databases
 - Payroll
 - Accounts Payable
 - Determine a schedule auditing your databases
 - Potential Suggestive Dates
 - OSC – Quarterly for Payroll and Accounts Payable
 - NCSU – Each Payroll

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Creating a Foreign National File (cont.)

- Work with the various departments to share information
 - I-9s
 - Contracts
 - Invoices/Purchase Orders
 - Communicate to OIS
 - Communicate with Purchasing Departments

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IRS Recommendation for Identifying Foreign National

- Address Field
 - Country – not U.S.A. or Blank
 - State – not a U.S. State or Blank
 - City – Foreign City
 - Zip – not a U.S. pattern – XXXXX-XXXX
- Foreign Employer I.D. Number
 - Usually begins with 98-XXXXXXX
- Foreign ITIN
 - Usually begins with 999 and 4th digit is a "4" or "7"
- Foreign Vendor Numbers
 - Required by accounting system?
 - Do you have a policy for establishing "fake" vendor numbers?

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How can we identify this population?

- HR/AP System (example: PeopleSoft, Banner or NCAS)
 - Visa Panel
 - Tax Panel
 - Queries
 - I-9's
 - W-9's or W-8's
- Office of International Students and Scholars
 - Building relationships with the groups that sponsor your foreign nationals' visas.
 - Building relationships with your department representatives (HR or Payroll).
- Windstar
 - Where you store all this information and produce your tax documents.

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How can we identify this population? (cont.)

- Critical Questions - Visa Panel:
 - Who updates your visa panels?
 - Are you utilizing this panel property?
 - Is the information in this panel accurate?
 - Are you tracking data/expiration?

How can we identify this population? (cont.)
PeopleSoft

How can we identify this population? (cont.)
PeopleSoft

How can we identify this population? (cont.)
Banner


Creating a Foreign National File (cont.)

- Let's review suggested Checklist
 - Documents necessary documentation
 - Provides an audit trail for compliance
 - Easily accessible for annual assessments
 - Organized documentation for USCIS or IRS Audit
- Foreign National Processing
 - Initial meeting with foreign national – often times in August
 - Annual processing – December/January timeframe (every year)
 - Change in status – who should the foreign national notify?
 - Change in location of employment – SEVIS update necessary?

Common Payment Issues

- Scholarship Disbursements
 - Statutory Rates – 14%
 - SSNs
 - Application Process
 - Necessary documentation
 - Qualified vs. Non-Qualified
 - Sourcing
- Funding
 - Assistantship not listed on Immigration Documents
 - Work Authorization
- Vendor/Contractor Payments
 - Method of payment?
 - Vendor entry in accounting system

Current Issue – July 2014



Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY (07/2014)

Section references are to the Internal Revenue Code unless otherwise noted.

Revised: 07/2014

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Current Issue – July 23, 2014



Glitch Crashes Global US Passport, Visa Operations

Technical problems hit US passport, visa issuance at embassies worldwide

By MATTHEW LEE
The Associated Press

WASHINGTON

The State Department's global database for issuing travel documents has crashed, resulting in major delays for potentially millions of people around the world waiting for U.S. passports and visas, officials said Wednesday.

Unspecified glitches in the department's Consular Consolidated Database have resulted in "significant performance issues, including outages" in the processing of applications for passports, visas and reports of Americans born abroad since Saturday, spokeswoman Marie Harf said. She said the problem is worldwide and not specific to any particular country, citizenship document, or visa category.

"We apologize to applicants and recognize this may cause hardship to applicants waiting on visas and passports. We are working to correct the issue as quickly as possible," she said.

Harf said the problems with the database have resulted in an "extensive backlog" of applications, which has, in turn, hampered efforts to get the system fully back on line.

It was not immediately clear how many people are affected, but two U.S. officials familiar with the situation said some 50,000 applicants were hit in one country alone. The officials spoke on condition of anonymity because they were not authorized to discuss the matter publicly or identify the country.

The database is the State Department's system of record and is used to approve, record and print visas and other documents to ensure that national security checks are conducted on applicants.

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Current Issue – August 4, 2014

Information Regarding Ongoing Consular Consolidated Database (CCD) Performance Issues and Steps Taken

Revised: 8/2014

Consular Consolidated Database: Updates on Operational Status.

- We have made significant progress and issued most of the worldwide backlog of nonimmigrant visa cases. We are working to bring the Consular Consolidated Database back to full operational capacity.
- We continue to prioritize immigrant visas, adoption cases, and emergency nonimmigrant visa cases. We are printing visas for these cases with very few delays.
- We are aware of a small number of visa cases still in process because of system performance issues. We are working diligently to clear those cases.
- Visa applicants are advised they might still experience delays of up to one week in addition to normal processing times. Applicants should take this into consideration when making travel plans.
- Please check with the embassy or consulate where you will apply for additional information.

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International Tax Navigator Changes

- **Release 2014-05**
 - August 31, 2014 – last day the W-8BEN will be created for Entities
 - W-8BEN-E – will not be added to TN
 - September 1, 2014 – TN will no longer run treaty analyses for royalty income for entity recipients.
- **Change Date reporting**
 - Other Defaults - Within Tax Navigator

Data entry format for date dd-mm-yyyy mm-dd-yyyy

Display format for date dd-mm-yyyy mm-dd-yyyy

- **EFTPS**
 - Access
 - Training Video

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Current Issues We Are Researching

- **Statewide Dual Employment Rules for State Employees**
 - This includes State Agencies and Universities
 - Community Colleges are excluded
- **FATCA Guidance**
 - As we learn more we will share.
- **Affordable Care Act (ACA)**
 - Impact on Foreign Nationals

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BEST PRACTICE!!!


Best practices in making payment to non-resident Aliens (NRAs)

- Implement policies and procedures for meeting IRS due diligence.
 - Recommend posting them to your website
- Keep up-to-date on rules and forms procedures – they have changed drastically this year!

Migration risk for your institution

- **Unauthorized workers performing services**
 - Non-sponsored employees performing services for your institution
 - Foreign nationals not authorized to perform independent services
 - Have you established a process to ensure your departments know who they can and can't contract with?


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Summary

- Review of the rules as they relate to Foreign National Taxation
- Knowledge of minimal FATCA Guidance
- Awareness of changes to forms
- How to identify your population to create foreign national files
- Familiar with regulation updates and current issues
- Be prepared for an IRS audit – where is your audit trail????

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Contact Information

- Any questions that are not handled within this presentation will be responded to via email.
- Follow-up questions can be submitted to Jennifer Pacheco, with the NC Office of the State Controller, at jennifer.pacheco@osc.nc.gov or 919-707-0764.
- Additional Resources – Michelle Anderson, at michelle.anderson@ncsu.edu.
- For additional training opportunities please visit:
 - http://www.osc.nc.gov/Foreign_Nationals/training.html

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THANK YOU!

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