Tax Information for International Postdocs

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How to Tackle Postdoc Tax Issues?

Am I a Resident or Nonresident?

What Type of Income am I Earning?

How is that Type of Income Taxed?

Can I claim a benefit from a tax treaty?

What Tax Forms Must I File?
Resident vs. Nonresident Tax Status

- Why is it important to determine whether you are deemed to be a Resident or Nonresident of the US?

  - US Resident - Worldwide Income
  - US Nonresident Alien - US Source Income

- Is it a choice?

- Does it correspond to your visa status?
Statutory Tests for Determining Residency Status

- **Greencard Test**
- **Substantial Presence Test**
  - At least 31 days in the US in the current year AND
  - At least 183 days in the US over the last 3 years (weighted-average)
- **But….
  - Closer connection exception could apply if in the US fewer than 183 days in the current year and have a closer connection to a tax home in a foreign country, or…
  - Tax treaty tie-breaker residency provisions, or…
  - Use of the “Exempt Individual” Rules
Exempt Individual

- Exemption from counting days NOT from being exempt from US tax
- May be able to protect nonresident status and avoid worldwide taxation in the US
- Exempt status provisions for teachers/trainees. To qualify, individual must be:
  - Temporarily in the US under a J or Q visa other than as a student
  - Can demonstrate compliance with standards of visa
  - Do not need to actually be teaching or being trained to qualify
- Immediate family
- Not an indefinite exemption- teacher/trainee cannot be an exempt individual for more than any part of two or more of the six calendar years preceding the testing year
Typical Nonresident Alien
Postdoc Income Sources

- Compensation for Services
- Fellowship Grant
- US Source Investment Income
# Nonresident Fellowship Grant vs. Compensation

<table>
<thead>
<tr>
<th>Category</th>
<th>Grant</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category</td>
<td>Generally post-doctoral fellows</td>
<td>Generally post-doctoral associates</td>
</tr>
<tr>
<td>Statutory Exclusions</td>
<td>IRC §117 (but generally postdocs won’t received exempt payments)</td>
<td>Limited exclusions</td>
</tr>
<tr>
<td>Sourcing</td>
<td>Residence of payor</td>
<td>Where services are performed</td>
</tr>
<tr>
<td>Withholding</td>
<td>Reduced 14% withholding rate on payments for nonqualified expenses; no Massachusetts withholding</td>
<td>Income tax withheld at source or through paycheck</td>
</tr>
<tr>
<td>FICA</td>
<td>Not subject to FICA withholding</td>
<td>Subject to FICA withholding (with some exceptions)</td>
</tr>
<tr>
<td>Tax Treaties</td>
<td>Student Article</td>
<td>Teacher/Researcher Article</td>
</tr>
</tbody>
</table>
FICA/Self-employment Taxes

- Nonresident alien FICA exemption
  - Nonresident under substantial presence test
  - Is an F, J, M or Q visa holder
  - Is performing services to carry out the purposes of his visa
  - Should be automatic
Treaty Benefits for Compensation

- Teacher/Researcher Article

- Variations in treaty language include:
  - What is the time limit of the available exclusion?
  - Must your visit be “expected to last” within that time frame?
  - Is the exemption lost retroactively if time period is exceeded?
  - Can you re-use the exemption?
  - Can you claim it immediately after a student exemption?
## Sample Treaty Provisions

<table>
<thead>
<tr>
<th>Treaty Country</th>
<th>Teacher/Researcher Article</th>
<th>Time Limit</th>
<th>Other Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>19</td>
<td>3 Years</td>
<td>Allows exemption for services at research institutions in addition to educational institutions</td>
</tr>
<tr>
<td>India</td>
<td>22</td>
<td>2 Years</td>
<td>Exemption lost retroactively if stay exceeds 2 years</td>
</tr>
</tbody>
</table>
| Poland         | 17                          | 2 Years    | • Cannot claim teacher/researcher benefits immediately following student benefits  
• Combination of teacher/researcher and student exemptions cannot exceed 5 years  
• Visit cannot be “expected” to last more than 2 years |
## Tax Treaty Countries Without Teacher/Researcher Provision

<table>
<thead>
<tr>
<th>Australia</th>
<th>Mexico</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Morocco</td>
</tr>
<tr>
<td>Barbados</td>
<td>New Zealand</td>
</tr>
<tr>
<td>Bermuda</td>
<td>Russia</td>
</tr>
<tr>
<td>Canada</td>
<td>South Africa</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Spain</td>
</tr>
<tr>
<td>Denmark</td>
<td>Sri Lanka</td>
</tr>
<tr>
<td>Finland</td>
<td>Sweden</td>
</tr>
<tr>
<td>Ireland</td>
<td>Switzerland</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>Tunisia</td>
</tr>
<tr>
<td>Malta</td>
<td></td>
</tr>
</tbody>
</table>
Nonresident Investment Income

- Sourcing Rules
- 30% FDAP Withholding
- Some statutory exclusions (i.e. portfolio interest exception)
- Some treaty exclusions and/or reduced treaty rates
- Still reportable on US tax return (assuming you have other types of income to report)
Withholding Forms

FORM 8233- COMPENSATION/TREATY BENEFITS

W-8BEN- NONCOMPENSATORY GRANTS & FDAP

W-4- WAGES/NO TREATY

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Nonresident Alien Federal and State Income Tax Returns

- **Form 1040NR**
  - Required for nonresident aliens deemed engaged in a US trade or business
  - Place to claim refunds for excess withholdings
  - Place to claim deductions for research expenses
  - Allows preservation of ability to claim deductions
  - Form 8843 for Exempt Status
  - Initial deadline of April 15th for the previous calendar year
  - Nonresidents can generally only claim a single personal exemption and not claim deductions for exemptions for a spouse or dependents (exceptions for residents of Canada, Mexico or South Korea)

- **Massachusetts Form 1 or Form 1 NR/PY**
  - MA residency?
  - Estimated tax payments
  - Generally follows tax treaties (still must file)
Information Reporting

- Resident aliens are subject to substantial informational reporting requirements including:
  - FBAR
  - Form 8938
- Need to be careful of this requirement in the year that status switches from nonresident to resident
- Penalties for noncompliance start at $10,000
Conclusion

Every Case = Fresh Analysis

US Tax Implications

Specific Facts (Purpose, Presence, Income Sources?)

US Tax Laws

Tax Treaty Provisions

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Conclusion

Identify opportunities within statute and tax treaties

Proactive compliance with income tax and withholding form obligations

Plan in advance if you anticipate a switch to US Resident status

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