IRS Reminds International Taxpayers of Tax Obligations; Clarifies Rules for Tax Withholding Agents

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WASHINGTON – The Internal Revenue Service today reminded non-U.S. citizens who may have taxable income, such as international students and scholars who may be working or receiving scholarship funds, that they may have special requirements to file a U.S. tax return.

The IRS also reminded withholding agents -- such as payroll professionals or universities -- that accurately filed Forms 1042-S help speed any refunds due to their non-U.S. citizen taxpayers. Errors on forms or returns could result in some refunds being delayed.

What Non-U.S. Citizen Taxpayers Must Do

The Internal Revenue Code generally requires non-U.S. citizens, whom the code defines as either resident or non-resident aliens, who are engaged in a trade or business within the U.S. to file tax returns. Non-resident aliens such as foreign students, teachers or trainees temporarily in the United States on F, J, M or Q visas are considered engaged in a trade or business.

Most individuals in F-1, J-1, M-1, Q-1 and Q-2 non-immigrant status are eligible to be employed in the U.S. and are eligible to apply for a Social Security number if they are actually employed in the United States. Those not eligible for an SSN but who have a tax filing requirement may request an Individual Taxpayer Identification Number from the IRS.

The non-U.S. citizen’s name must be reported exactly as it appears on the official documentation provided to the withholding agent (such as a Social Security Administration card or some other form of official governmental documentation).

Filing a Form 1040-NR or 1040NR-EZ is required by non-U.S. citizens who have a taxable event such as:

- A taxable scholarship or fellowship, as described in Chapter 1 of Publication 970, Tax Benefits for Education;
- Income partially or totally exempt from tax under the terms of a tax treaty; and/or
- Any other income, which is taxable under the Internal Revenue Code.

Non-U.S. citizens also must attach one copy (generally Copy B) for each Form 1042-S received to their tax returns. Non-U.S. citizens should review the Form 1042-S to ensure it accurately reflects their name and income. If the form does not contain accurate information, they must contact the withholding agent for an amended Form 1042-S.
What Withholding Agents Must Do

Generally, non-U.S. citizens who have taxable income also may have withholding of taxes by the source of their income. Withholding agents are required to complete Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.

Withholding agents must provide five copies of the Form 1042-S. Copy A should go to the IRS; Copies B, C and D to the recipient of the income; and copy E should be retained by the withholding agent. All information, including the name of the taxpayer, must match exactly on all copies of Form 1042-S.

If withholding agents create a substitute Form 1042-S, all five copies must be in the same physical format. The size, shape and format of any substitute form must adhere to the rules of Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns. The official Form 1042-S is the standard for substitute forms.

A common error is to have a Form 1042-S listing two or more recipients in box 13a. The 2016 instructions to Form 1042-S have been updated to clarify that in the case of joint owners, Form 1042-S can only list one of the owners in box 13a.

Withholding agents should review Fact Sheet 2017-3, where they can find the latest changes to Form 1042-S instructions and common errors that delay processing of tax returns.