

EXCHANGE VISITOR TAX GUIDE 2019

Exchange Visitor Intern/Trainee Program Background:

The Exchange Visitor Intern/Trainee Program utilizes the J-1 non-immigrant visa category for individuals approved to participate in cultural exchange programs to train in U.S. companies.

Nonresident or resident alien:

An individual is considered a United States Resident for tax purposes if they meet the Green Card Test or the Substantial Presence Test. To meet the Substantial Presence test, they must be physically present in the United States, on at least:

- 31 days during the current year,
- 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
 1. All the days you were present in the current year, and
 2. 1/3 of the days you were present in the first year before the current year, and
 3. 1/6 of the days you were present in the second year before the current year.

Exempt Individuals: J-1 visa holders temporarily present in the U.S. who substantially comply with the requirements of the visa. You are considered to have substantially complied with the visa requirements if you have not engaged in activities that are prohibited by U.S. immigration laws and could result in the loss of your visa status. Presence during the period an individual is exempt are not being counted for the purposes of Substantial Presence Test.

You will not be an exempt individual as a trainee in the current tax year if you were exempt as a trainee for any part of 2 of the 6 preceding calendar years.

Determination of who must file a U.S. tax return:

1. You were a non-resident alien engaged in a trade or business in the U.S. during the tax year. Including:
 - A) If you do not have income from a trade or business conducted in the U.S.*
 - B) You have no U.S. source income**, or
 - C) Your income is exempt from U.S. tax under a tax treaty or any other section of the Internal Revenue Code.
 - D) *Income from a trade or business in the U.S. is characterized as Effectively Connected Income. Even if you don't have Effectively Connected Income you can still have reportable Non-Effectively Connected Income to a U.S. trade or Business.

** Summary of Source Rules for Income of non-resident aliens

Item of income	Factor determining source
Salaries, wages, other compensation	Where services performed
Business income:	
Personal services	Where services performed
Sale of inventory—purchased	Where sold
Sale of inventory—produced	Allocation
Interest	Residence of payer
Dividends	Whether a U.S. or foreign corporation*
Rents	Location of property
Royalties:	
Natural resources	Location of property
Patents, copyrights, etc.	Where property is used
Sale of real property	Location of property
Sale of personal property	Seller's tax home (but there are exceptions)
Pension distributions attributable to contributions	Where services were performed that earned the pension
Investment earnings on pension contributions	Location of pension trust
Sale of natural resources	Allocation based on fair market value of product at export terminal. For more information, see section 1.863-1(b) of the regulations.
*Exceptions include: a) Dividends paid by a U.S. corporation are foreign source if the corporation elects the American Samoa economic development credit. b) Part of a dividend paid by a foreign corporation is U.S. source if at least 25% of the corporation's gross income is effectively connected with a U.S. trade or business for the 3 tax years before the year in which the dividends are declared.	

The determination whether income is considered foreign or U.S. depends on the type of income. For example, if you perform personal services as a self-employed person or you are act as an employee, the income is considered to be U.S. if you are physically located in the U.S. while you perform the services you receive compensation for.

Definition of Foreign Employer and income you receive

- A non-resident alien individual, foreign partnership, or foreign corporation, or
- An office or place of business maintained in a foreign country or in a U.S. possession by a U.S. corporation, a U.S. partnership, or an individual who is a U.S. citizen or resident.

Income for personal services performed in the United States as a non-resident alien is not considered to be from U.S. sources and is tax exempt if you meet all three of the following conditions.

1. Individuals performing personal services as an employee of or under a contract with a non-resident alien individual, foreign partnership, or foreign corporation, not engaged in a trade or business in the United States; or you work for an office or place of business maintained in a foreign country or possession of the United States by a U.S. corporation, a U.S. partnership, or a U.S. citizen or resident.
2. You perform these services while you are a non-resident alien temporarily present in the United States for a period or periods of not more than a total of 90 days during the tax year.
3. Your pay for these services is not more than \$3,000.

This does not include subsidiaries of foreign companies in the U.S.

Non - VIE participants (normally, paid by the U.S. entity):

As an intern or trainee in the U.S., if your income is paid by your U.S. employer and the work you accomplish as part of your training program is physically carried out within the U.S., your U.S. employer will deduct tax from your income but you will still have an obligation to file your U.S. tax return, a 1040 NR form by the tax filing deadline April 15th 2019. Some countries, including France, have tax treaties with the U.S. that cover intern and trainee visas. France is one of these countries, so you may be due a U.S. tax refund when you file your tax return. The **French-American Chamber of Commerce New York (FACC-NY)** recommends Sprintax.com, it is a compliant and affordable U.S. tax self - preparation software specifically for U.S. non-residents and designed to help non-residents ensure you file a correct U.S. tax return as part of your visa obligations. The software has built in knowledge of 65 international tax treaties and exemptions, allowing you to apply the French – tax treaty (if applicable) and ensure you are refunded any overpaid tax.

Sprintax.com provides simple and easy tax return preparation. You just need to:

- **Create** an account
- Follow the simple instructions and answer a few questions
- Let Sprintax.com do all the calculations for you!



Please have the following documents available when using Sprintax.com:

- Your **passport**
- All payments **forms** you've received – this is typically a **Form W-2 and/or final payslips**
- Visa details that can be found on your **DS-2019**
- **Social Security Number (SSN)**

Estimated price for filing: \$109 – \$128 (use discount code SpxFACCN5F to receive a \$5 discount)

Forms that Taxback will assist you to complete:

- 1040NR (plus all appropriate schedules)
- 1040NR-EZ (if income is only from wages, salaries, tips, taxable refunds, scholarship and fellowship grants)
- 8843 (If you are an alien individual you must file Form 8843 to explain the basis of your claim that you can exclude days of presence in the United States for purposes of the substantial presence test)
- 8833 (a taxpayer who takes a treaty-based return position must disclose that position, unless reporting is specifically waived)

VIE participants (paid by Business France/company in France):

If you are a VIE participant and your income is paid by a foreign entity, the work you do as part of your employment is physically carried out within the U.S., therefore you have an obligation to file a 1040 NR form and declare this income in the U.S. by the tax filing deadline April 15th, 2019. There no self - preparation software available to complete a U.S. non-resident tax return with foreign income. However, if you require assistance, FACC-NY recommends you contact Taxback.com. Taxback.com will prepare and file a U.S. non-resident tax return, with your foreign income and apply the relevant French- U.S. tax treaty to remove any U.S. tax liability, on your behalf.

To prepare and file your tax return with Taxback.com, please register [here](#)

Participants need to send Taxback the following documents:

- A copy of their pay statements from “**Civiweb Espace Personnel**” for VIE or their W2 for non-VIE
- A copy of their visa and passport photo page
- A completed application form pack, which will be provided by Taxback

Participants can scan and email documents or just take a photo on their phones and email as long the document is clear.

Estimated price for VIE filing: \$72 for federal and \$36 for state tax filing

Taxback will complete the tax return on your behalf, including:

- 1040NR (plus all appropriate schedules)
- 1040NR-EZ (if income is only from wages, salaries, tips, taxable refunds, scholarship and fellowship grants)
- 8843 (If you are an alien individual you must file Form 8843 to explain the basis of your claim that you can exclude days of presence in the United States for purposes of the substantial presence test)
- 8833 (a taxpayer who takes a treaty-based return position must disclose that position, unless reporting is specifically waived)

J-2 Dependents

Spouses and children that come to the U.S. under the J-2 dependent status **must also file a tax return with the IRS if they have U.S. income, and if not, complete an 8843 form**. Additionally, J-2 dependents must pay Social Security and Medicare taxes if they are permitted to work. Visit the [IRS website](#) for additional information and [Sprintax.com](#) in order to receive assistance in filing.

Types of Income

1. Income effectively connected with a U.S. trade or business. This income is taxed at the same rates that apply to U.S. citizens and residents. Under some circumstances, items of income from foreign sources are treated as effectively connected with a U.S. trade or business. Other items are reportable as effectively connected or not effectively connected with a U.S. trade or business, depending on how you elect to treat them. The following categories of income are usually considered to be connected with a trade or business in the United States:
 - a) You are considered to be engaged in a trade or business in the United States if you are temporarily present in the United States as a non-immigrant on an "F," "J," "M," or "Q" visa. The taxable part of any U.S. source scholarship or fellowship grant received by a non-immigrant in "F," "J," "M," or "Q" status is treated as effectively connected with a trade or business in the United States.
 - b) If you are a member of a partnership that at any time during the tax year is engaged in a trade or business in the United States, you are considered to be engaged in a trade or business in the United States.
 - c) You usually are engaged in a U.S. trade or business when you perform personal services in the United States.
 - d) If you own and operate a business in the United States selling services, products, or merchandise, you are, with certain exceptions, engaged in a trade or business in the United States. For example, profit from the sale in the United States of inventory property purchased either in this country or in a foreign country is effectively connected trade or business income.
 - e) Gains and losses from the sale or exchange of U.S. real property interests (whether or not they are capital assets) are taxed as if you are engaged in a trade or business in the United States. You must treat the gain or loss as effectively connected with that trade or business.
 - f) Income from the rental of real property may be treated as ECI if the taxpayer elects to do so.

2. U.S. income not effectively connected with a U.S. trade or business. This income is taxed at 30% unless a treaty between your country of residence (as defined under the treaty) and the United States has set a lower rate that applies to you.

3. Income exempt from U.S. tax. If the income is exempt from tax by treaty.

Types of Tax

J-1 visa holders paid by the U.S. entity are liable to Federal Income tax, State, local (including city and county) income tax, but are exempt from paying Social Security and Medicare (FICA) tax.

Deductions from gross income

2018 Update:

1. You can deduct state and local income taxes you paid or that were withheld from your salary during 2018 on income connected with a U.S. trade or business up to \$10,000 (for Single filers).
2. You can deduct contributions or gifts you gave to U.S. organizations that are religious, charitable, educational, scientific, or literary in purpose. Donations to organizations that work to prevent cruelty to children or animals can also be deducted.
3. If you made a gift and received a benefit in return, such as food, entertainment, or merchandise, you generally can deduct only the amount that is more than the value of the benefit.
4. In 2018, you can only deduct a non-business casualty or theft loss if it is from a federally declared disaster.
5. Other: In general, casualty and theft losses of income-producing property or from the sale of such. Loss from other activities from Schedule K-1 (partnership), deduction for repayment of amounts under a claim of right if over \$3,000, certain unrecovered investment in a pension, impairment-related work expenses of a disabled person.

Certain miscellaneous deductions (from schedule A) and job related expenses that have been claimed on form 2106 are suspended for the period 2018-2025.

Personal exemption is suspended for the period 2018-2025.

Forms

- 1040NR (plus all appropriate schedules)
- 1040NR-EZ (if income is only from wages, salaries, tips, taxable refunds, scholarship and fellowship grants)

- 8843 (If you are an alien individual you must file Form 8843 to explain the basis of your claim that you can exclude days of presence in the United States for purposes of the substantial presence test)
- 8833 (a taxpayer who takes a treaty-based return position must disclose that position, unless reporting is specifically waived)

Taxation of U.S. Income in country of citizenship

As French residents who are temporarily present in the U.S., they are taxed on worldwide income in France. They can use as a credit against tax on their French return, the U.S. tax paid, or liable to pay according to their U.S. tax return.

Tax Day

If you were an intern or trainee under a J-1 visa and received wages subject to U.S. income tax withholding, file Form 1040NR by the 15th day of the 4th month after your tax year ends. A return for the 2018 calendar year is due by April 15, 2019.

Extension of time to file.

If you cannot file your return by the due date, file Form 4868 to get an automatic 6-month extension of time to file. You must file Form 4868 by the regular due date of the return. Instead of filing Form 4868, you can apply for an automatic extension by making an electronic payment by the due date of your return.

An automatic 6-month extension to file does not extend the time to pay your tax. If you do not pay your tax by the original due date of your return, you will owe interest on the unpaid tax and may owe penalties.

France – U.S. tax treaties

Article 21 – Students and trainees

1. (a) An individual who is a resident of a Contracting State immediately before his visit to the other Contracting State and who is temporarily present in the other Contracting State for the primary purpose of:
 - (i) studying at a university or other recognized educational institution in that other Contracting State;
 - (ii) securing training required to qualify him to practice a profession or professional specialty; or

(iii) studying or doing research as a recipient of a grant, allowance, or award from a not-for-profit governmental, religious, charitable, scientific, artistic, cultural, or educational organization, shall be exempt from tax in that other State with respect to amounts referred to in subparagraph (b).

(b) The amounts referred to in subparagraph (a) are: (i) gifts from abroad for the purposes of his maintenance, education, study, research, or training; (ii) a grant, allowance, or award described in subparagraph (a) (iii); and (iii) income from personal services performed in the other Contracting State in an amount not in excess of 5,000 United States dollars or its equivalent in French francs for any taxable period.

(c) The benefits of this paragraph shall only extend for such period of time as may be reasonably or customarily required to effectuate the purpose of the visit, but in no event shall any individual have the benefits of this Article and Article 20 (Teachers and Researchers) for more than a total of five taxable periods.

(d) The provisions of subparagraph (a) shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

2. An individual who is a resident of a Contracting State immediately before his visit to the other Contracting State, and who is temporarily present in that other State as an employee of, or under contract with, a resident of the first-mentioned State for the primary purpose of:

(a) acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned State, or

(b) studying at a university or other recognized educational institution in the other State, shall be exempt from tax by that other State for a period of 12 consecutive months with respect to his income from personal services in an aggregate amount not in excess of 8,000 United States dollars or its equivalent in French francs.

States that recognize tax treaties:

STATE	TAX TREATY										
AL	NO	DE	YES	KS	YES	MN	YES	NY	YES	RI	YES
AZ	YES	GA	YES	KY	YES	MS	NO	NC	YES	SC	YES
AR	NO	HI	NO	LA	YES	MO	YES	ND	NO	UT	YES
CA	NO	ID	YES	ME	YES	MT	YES	OH	YES	VT	YES
CO	YES	IL	YES	MD	NO	NE	YES	OK	YES	VA	YES
CT	NO	IN	YES	MA	YES	NJ	NO	OR	YES	WV	YES
DC	YES	IA	YES	MI	YES	NM	YES	PA	NO	WI	YES

A special thank you to Sprintax and Taxback for creating this tax guide!