

Increasing regulatory and compliance requirements with International Activities

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(Please note: this article discusses various U.S. regulatory and reporting requirements which may apply to academic or research programs for a U.S.-based institution. U.S. or other country reporting and regulatory requirements related to endowment and asset management are beyond the scope of this article and not discussed, though some of the requirements for academic and research activities may also apply to investment activities.)

For many of us, worrying about regulatory and reporting requirements for international activities can mean sleepless nights, but actually trying to read and understand the rules puts us quickly to sleep. I hope this article won't cause the latter, but the sobering reality is that regulations and reporting requirements are on the rise, and have been for the past 10 years. From simply sending cash abroad to interacting with foreign governments, institutions with activities outside the U.S. have seen *significant* changes in filing and regulatory requirements both at home and abroad, taxing (no pun intended) already-thin internal resources and forcing institutions to think about increased levels of administrative support for activities in foreign countries.

The reasons for the increase in requirements are probably obvious to those of us living in the U.S. for the past decade. The events of September 11 touched off a worldwide trend of governments wanting to know where funds are being sent when crossing borders, what their amounts are, and what they're being used for. Whether or not you believe big brother is watching, he is certainly asking. And you're not falling out of your seat when I tell you that the Internal Revenue Service (IRS) is looking for every new revenue source it can find too. In the case of international, it's clamping down on foreign income sources by strictly enforcing its ability to tax "worldwide income." This has most recently led to the IRS's announcement of the Offshore Voluntary Disclosure Initiative in February 2011, aimed at encouraging the reporting of foreign-source taxable income. Foreign tax authorities want their cut too, and thus, reporting has increased on that end as well. Overall, these efforts are not likely aimed at institutions of higher education, but universities are certainly feeling the painful administrative effects. In most cases, nonprofit institutions may not have actual tax *payments* due, but reporting requirements are often necessary.

A great example of this is the Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, more lovingly known as the FBAR report. Most institutions are required to report bank accounts overseas and certain aspects of activity in the accounts, but also, *employees* of institutions with signatory authority for these accounts but with no personal financial interest may also be required to make a disclosure on their own Forms 1040 and file a report with the U.S. Department of Treasury. This pushes university tax departments into that squishy, uncomfortable territory of whether to assist employees with individual tax matters, but many have blinked first and are now doing so.

International activities of colleges and universities, though just academic in nature and intent, often trigger multiple domestic and foreign requirements, as well as increase the stress levels of university finance officers. Once the registration or legal requirements have been contemplated and established, the result is often compliance and regulatory requirements which must be

adhered to at the onset of activities, monthly, quarterly and on an annual basis at home and abroad.

U.S. REPORTING AND REGULATIONS

One of the first challenges with domestic regulations and compliance for a U.S.-based institution is just trying to understand which filings or reporting requirements even apply. Trying to capture those specific application requirements here might quickly turn the ACUA Journal into the sequel to *War and Peace*, but determining factors may include type of institution (e.g., public vs. private), types of activities (e.g., research vs. educational), and the nature of transactions. So before sliding some cash to the mayor of a foreign city to expedite the registration process, don't forget Uncle Sam may be looking over your shoulder.

Requirements may also be recurring in nature (e.g., Form 990, Return of Organization Exempt From Income Tax) or on a per-occurrence basis (e.g., export control reporting). Opening physical locations and bank accounts, being awarded sponsored research funds, and granting monies to individuals and institutions are other examples of activities which commonly trigger domestic reporting. Chances are if you send a wire or employee abroad, it's probably triggering something.

The most common U.S. reporting and compliance reporting requirements are included below. The list is not intended to be exhaustive or include every regulation or reporting requirement which may be required for an institution (our lawyers made me say that). It is strongly recommended that your institution obtain professional assistance in determining which reports or regulations apply to your specific organization (OK, that too).

Report or regulation	General information required or how it may apply for activities outside U.S.
Form 990 and 990-T	- Revenue, expense and grant information - Offices and employees - Bank accounts Information available at www.IRS.gov
Form TD F 90-22.1 (FBAR)	- Bank or financial account information (Note: employees with signatory authority may also be subject to individual filings and disclosure on Form 1040) Information available at www.IRS.gov
Export controls compliance	- Disclosing export of restricted items from the U.S. (most common for research projects exporting equipment or contracts restricting information to foreign nationals) More information available at: http://www.bis.doc.gov/
OFAC compliance (Office of Foreign Assets Control)	- Prohibits dealings with certain countries and individuals OFAC Country Sanctions and List-Based Sanctions are available at: http://www.treasury.gov/resource-center/sanctions/
FCPA (Foreign Corrupt Practices Act)	- Prohibits payment to a foreign official to influence the foreign official in his or her official capacity Information available at: http://www.justice.gov/criminal/fraud/fcpa/
Clery Act	- Campus crime and security policies (Note: may apply to certain study abroad programs as well)

	Information available at: http://www2.ed.gov/admins/lead/safety/handbook.pdf
BE-125 Report	- Quarterly survey of transactions in selected services and intangible assets with foreign persons Information available at: (http://www.bea.gov/surveys/pdf/be125.pdf)
IRS Form 5713	- International Boycott Report if doing business with certain countries Information available at www.irs.gov
Antiboycott Compliance	- Prohibits furthering or supporting the boycott of Israel Information available at: http://www.bis.doc.gov/complianceand enforcement/antiboycottcompliance.htm
FFATA (Federal Funding Accountability and Transparency Act)	- Reporting required for engaging under certain terms and thresholds with foreign subrecipients (Information available at: https://www.fsrcs.gov/)

FOREIGN COUNTRY COMPLIANCE AND REGULATORY REQUIREMENTS

As if U.S. requirements weren't enough, activities in a foreign country often trigger local requirements as well. In most cases, reporting obligations will be dictated by how your institution is legally registered in the foreign country. Improper registration or failure to register qualifying activities can have very serious reputational and financial ramifications for a university. No university wants to be on the headlines of the *New York Times*, or even the *Zhōngguó Rìbào* (that's if you're named and shamed in China).

Hiring local workers, teaching, and opening offices or other locations are all examples of activities which often trigger local country reporting and compliance requirements. Not to be underestimated is the importance of establishing a sound infrastructure for the back-office support functions. Depending on the materiality of activities, it may be necessary to approach back-office support in two phases, by establishing first a temporary structure to support initial activities and later a more permanent structure to support long-term operations.

To state the obvious, reporting and local compliance requirements vary greatly country-to-country, so you'll likely need professional assistance again. The following are examples of ongoing reporting and compliance requirements which may be necessary on a monthly or quarterly basis (again, not intended as an exhaustive list):

- Preparation and filing of monthly financial statements with the local authorities
- Maintaining books and records in accordance with local GAAP (generally accepted accounting principles) in local currency
- Preparation, filing and coordinating payment of relevant statutory taxes, typically including business taxes and foreign entity income taxes
- Preparation, filing and coordinating payment of VAT/GST (Value Added Tax/Goods and Services Tax) returns, where applicable
- Employee payroll income tax filings associated with the payroll of local nationals and foreign employees (expatriates and third country nationals)

- Computation of statutory employees' and employer's social insurance contributions, and additional required contributions in compliance with local regulations
- Bookkeeping obligation that all books and records are appropriately "available for inspection" by local authorities

Annual reporting requirements may include:

- Completion of an audit of the statutory financial statements by a locally authorized professional, often required prior to the renewal of a business license every year
- Completion and filing of the annual corporate tax returns and coordinating required payments
- Annual inspection and renewal of business registration and licenses with government authorities
- Preparation and filing of annual payroll forms

A U.S. not-for-profit institution registered in a foreign country may need to apply separately for tax-exempt status in the host country. This status should *never* be assumed based on the tax-exempt status of the institution in their home country. To add insult to injury, tax-exempt entities are not recognized in every country, so there may even be cases where income taxes must be paid even when no revenue exists. Institutions should also check registration requirements for VAT, GST, consumption taxes or similar taxes levied on goods and services. Exemption from the registration of these types of taxes is usually separate and distinct from determination of income tax status.

As you may have gathered by now, foreign and domestic regulation and compliance laws are complex and change on a regular basis. Reporting requirements should continue to increase to help ensure governments' sufficient visibility into transactions and business dealings that cross borders. In addition to professional assistance, adequate budgeting and administrative support to ensure institutions meet these obligations is *critical* to help minimize the reputational and financial risks that accompany international activities and programs for U.S. colleges and universities. Happy sleeping and reporting!