



Association of International
Education Administrators

2020 ANNUAL CONFERENCE

*Rethinking Comprehensive
Internationalization for a
Global Generation*

An Evolving Regulatory Environment: What SIOs Need to Know

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Key Takeaways for today

- Learn about today's "evolving" global regulatory environment and its potential impact on study abroad and other higher education programs
- Understand nexus risks with operating global programs
- Understand individual tax implications for employees working abroad
- Make more informed decisions to mitigate or reduce potential compliance risk associated with activities abroad

Just the facts please.....

- In last 5 years, 54% of US students study abroad in Europe. Of the five most popular destinations for US students to study abroad, four are in Europe.
- Asia seems to be a progressively popular destination as well, including Japan and China, the only non-European country in the top five most popular destinations
- 79% of institutions offer distance learning programs
- Distance student enrollments increased for fourteen straight years
- 44% of students exclusively enrolled online reside outside the state of the institution at which they are enrolled (per the Babson Survey)

Questions for the Audience

- Do you have study abroad programs which are 2 or more semesters in a 12 months period? (e.g. summer, spring, winter etc.)
- Do you have recurring study abroad programs in the same country every year?
- Do you offer distant learning courses to students in foreign countries? Is there an in-country “live classroom” component?

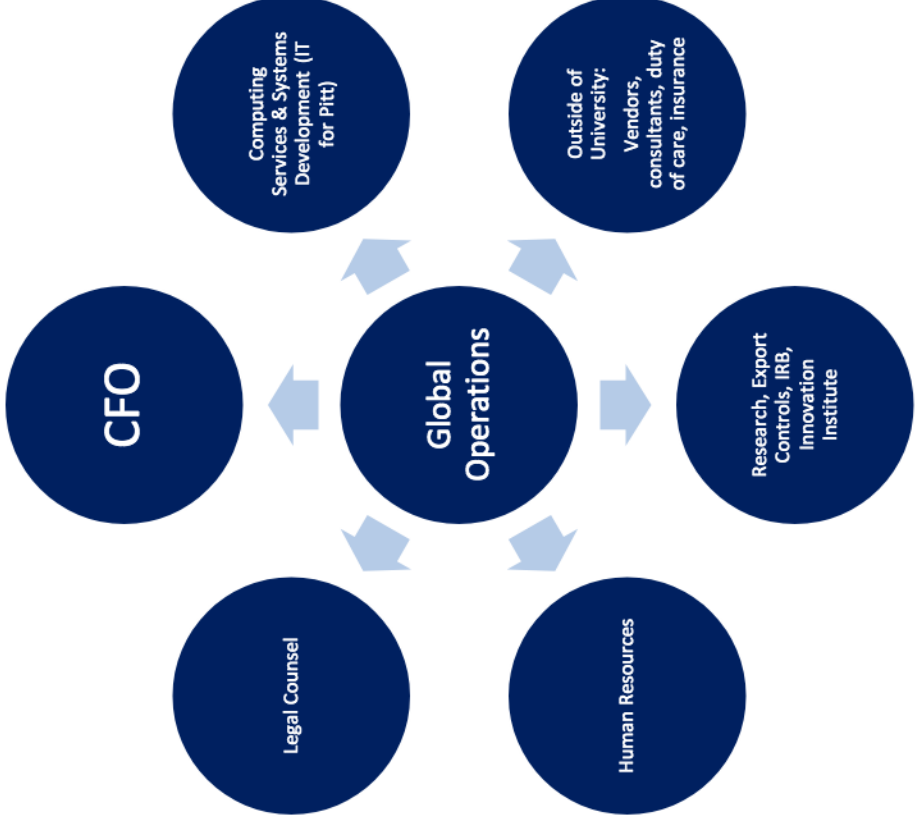
University of Pittsburgh Internationally

- Currently not registered in any other countries
- Study Abroad
 - 1,969 students studied abroad in AY 2019
 - 33% of Bachelor degree grads have studied abroad
 - 320 programs run in 80+ countries
- International Agreements
 - 180 currently active international agreements with institutions in 47 countries

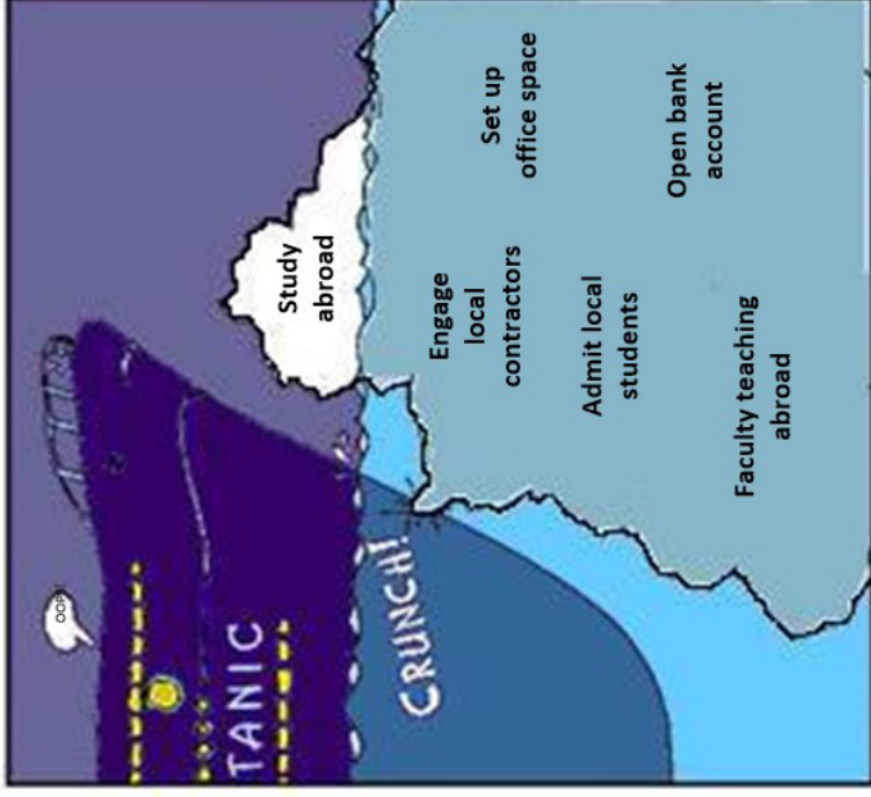
Roles and Functions at Pitt

- Initial point of contact for faculty, staff, and researchers working on behalf of University internationally or from campus on international activities
- Connects those working on international-related projects with resources and offices to provide guidance, consultation and risk assessment/avoidance
- Informs of policies and procedures to operate internationally
- Manages the Global Operations website
- International Travel Support: insurance, trip registration, etc.
- Foreign Payments: honoraria, vendors, independent contractors, remote work request, fellowships
- Contracting with international institutions
- International Research Support
- Various: visas/translation, external consultant arrangements, training, project guidance

Managing International Business Activity at the University of Pittsburgh



Study abroad..... hidden risk factors



STUDY ABROAD

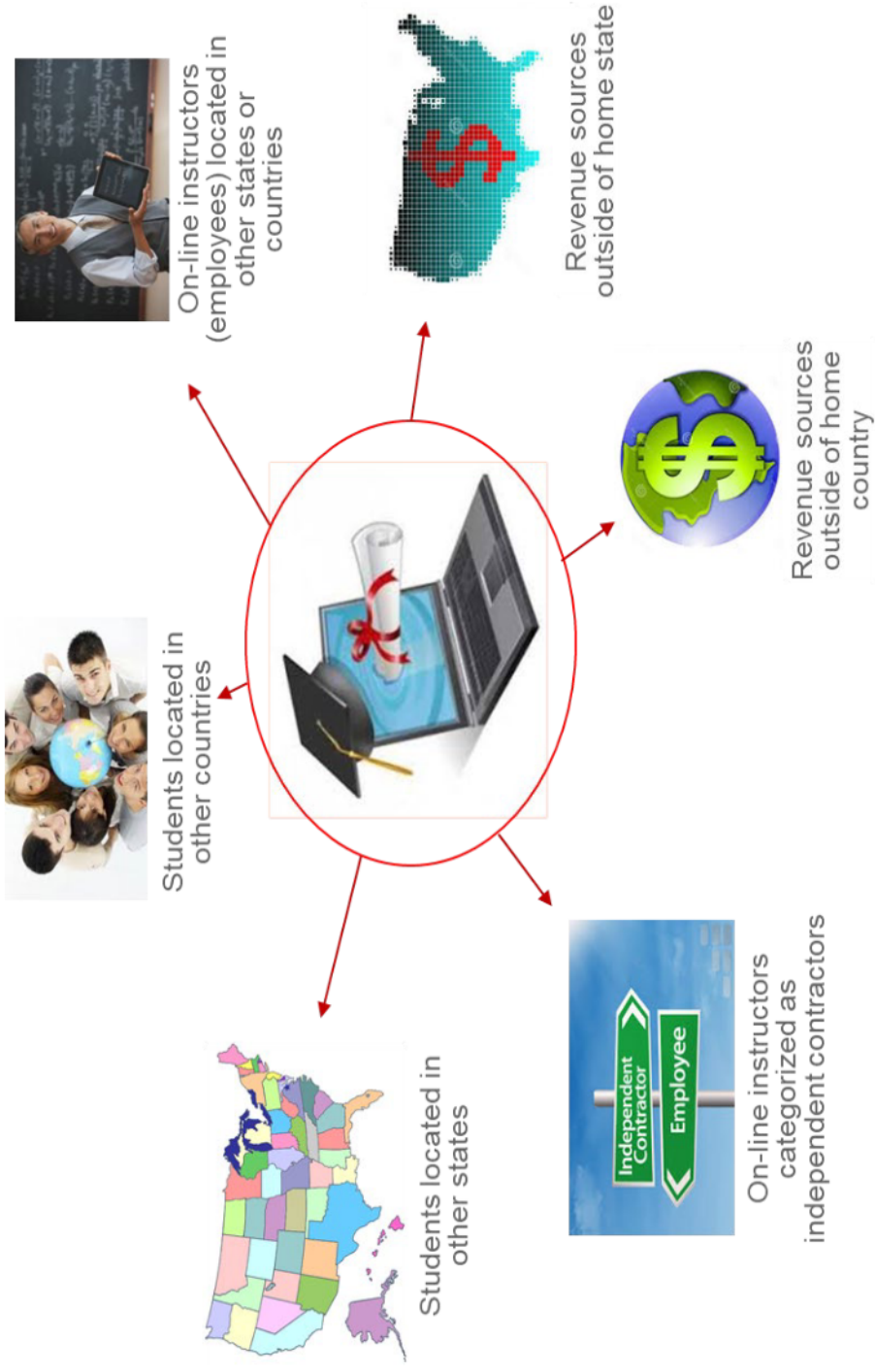
JUST THE TIP OF THE ICEBERG?

Common assumptions with international

(which may get us into trouble)

- ✓ “We don’t have to be compliant ... We just do study abroad and research.”
- ✓ “We’ve been operating this way for years.... we must be doing it right”
- ✓ “Our foreign partners take care of everything and are responsible for issues, not us”
- ✓ “Educational or research activities don’t require registration and are non-profit abroad too”
- ✓ “Our foreign contractors would never turn on us”
- ✓ “Employees on U.S. payroll don’t have tax or immigration obligations abroad”
- ✓ “Other schools are doing it this way....they must be doing it right”

Distance Learning Business Characteristics



Questions for Discussion

- Does your university utilize facilities in a foreign country?
- Has the university registered in a foreign country? Have you ever considered doing so?
- Does the university have staff dedicated to overseeing foreign activities?
- What steps do you take to ensure compliance abroad?

What is PE?

- Permanent establishment (PE) is a form of nexus and indicates a fixed place of business through which the foreign enterprise carries on its business
- Once PE is created, the US entity becomes subject to tax reporting in the foreign country and potential registration of its activities
- Many countries have taken stricter positions on PE in recent years due to the OECD initiatives (discussed on a later slide)

Changes to Traditional PE Model

- The Organization for Economic Co-operation and Development (OECD) through its previous base erosion and profit shifting (BEPS) project has recommended changes to the traditional PE model
- A 2nd BEPS proposal proposes changes to **revisions to nexus rules & establishing new global minimum tax rules** to ensure that all business income is subject to at least an agreed minimum level of tax
- No-carve out for non-profit entities as yet
- **Significant political momentum** has been driving project forward
- **Broad reach:** 137 jurisdictions actively participating

Examples of Activities Potentially Impacted With New Nexus Rules

- Distance learning
- Recruitment
- Contracts with foreign universities (such as to deliver curriculum or other IP developed in US)
- Telemedicine (for academic medical centers)
- Joint programs (certain structures involving IP or tuition-sharing)

Examples of Countries With Stricter Interpretations of PE Impacting Higher Education

- China - Bulletin 11 - Presence of a foreign party of a non-legal entity Sino-foreign cooperative education institution will constitute a PE.
- India - Recent ruling have determined PE in India with minimum in-country presence of foreign entity employees, based on permanency/reoccurring nature of projects and having facility at disposal.
- Italy - Mandatory registration requirement in Italy according to law referred to as “Barile Bill” which formally authorizes foreign universities and cultural institutions to operate in Italy.

What the University Should Be Thinking About

Work at the OECD is ongoing and new global tax rules are still being developed, but there are actions for the University to take now:

1

Monitor OECD developments

2

Understand perspectives of countries that are relevant to business footprint

3

Model impact of proposals

4

Assess implications of potential new tax compliance obligations

5

Communicate with management stakeholders

6

Engage with OECD and government policymakers to provide input on technical details

Foreign Peer Institutions Taking Action

Two prominent UK non-profit trade associations have submitted responses to the OECD on the proposed PE guidelines, explaining how universities and non-profits may be unintentionally impacted by these new proposals.

Examples of points discussed:

- The “income inclusion rule” would seek to tax the income of overseas branches or subsidiaries of UK headquartered charities in the parent jurisdiction
- Practical example of impact due to ‘income inclusion rule’: If the UK non-profit owns an overseas operation that itself benefits from an overseas charitable exemption, then an additional tax would be charged on the UK non-profit in respect of the untaxed surplus in those overseas operations
- A “carve-out” or exemption for non-profit entities is the most appropriate way forward, but, if this is not possible, another possible approach could be to introduce a de minimis carve-out for smaller global entities

Value-added Tax (VAT) Considerations

- The digital economy continues to raise complex issues for VAT systems
- Trend toward digital supplies becoming taxable in the country of consumption
- Distant learning revenues likely to be taxable if considered electronically supplied services (e.g. Italy) or online information services (referred to as online information and database access or retrieval “OIDAR” in India)
- Tax authorities are going digital:
- Increasing global governmental cooperation

Case study examples



Example case study

- Activity type:** Study abroad program established in 2010
- Location:** Beijing, China
- Collaboration:** Partnering with local Chinese institution, use of classroom space in exchange for participation in classes taught by US faculty
- Program staff:** Locally hired contractor paid by US university
- 2 US faculty spend 2 semesters in China teaching
- Students:** Local Chinese students and U.S. students
- Governance:** No formal ongoing reviews for compliance
- Administrative:** 2 faculty bank accounts; Partner markets program
- Legal:** No registration; partner agreement whereabouts unknown
- Facilities:** Office rental and classroom noted above
- Other considerations:** Business school has executed program in Shanghai

Considerations with Faculty and Staff Working Abroad



Questions for Discussion

- Do you have employees traveling internationally for extended periods of time? Do you have a mechanism to track such travel dates and purposes of travel?
- Do you engage individuals in foreign countries? Do you classify them as employees or independent contractors?
- What are the pros/cons of opening a university foreign bank account vs utilizing an employee's personal account?
- Pros/cons of carrying large amounts of cash across borders
- Do you have policies and procedure in place for the University's international activities (e.g. procurement, cash management and banking)?

Pitt Managing Travel & Activity Abroad

- Single official University travel agent
- Single travel management & expense system
- Duty of Care Provider and Insurer for all travel abroad on business
- Trip Registration via Duty of Care Provider
- Travel Cards issued to faculty and staff - feeds to expense system
- Global Risk, Health, Safety and Security Committee
- Global Risk, Health, Safety and Security Manager position (NOW HIRING)

Pitt Managing Work Abroad

- Standardized International Service Agreements for both contractors & companies abroad authored by counsel housed in purchasing - 20 factor test etc.
- Remote Work Agreements for employees (domestic & international)
- Outside consultation when necessary (E&Y, outside counsel)
- Pricing arrangements with visa service providers
- Interdepartmental cooperation is key to support activities abroad

Pitt Managing Work Abroad

- Partnerships/outsourcing to company preferred
- Independent contracting structured and evaluated
- Remote work requires Remote Work Agreement, consultation with Global Operations and various units across campus (legal, HR, payroll, tax, dept., school), outside consultation (E&Y, outside counsel) and if necessary, elevation of topic to Global Risk, Health Safety and Security Committee for review

Human Resources Considerations

- Visas and work permits (immigration)
- Individual taxation
 - Could start on day 1, most likely 90-183 days
 - Social insurances may also apply
- FBAR reporting (for individuals)

Immigration

- Applies to expats (US employees working abroad) and TCNs
- Visas often require a local host to sponsor
- Without correct visa, employee is illegally entering country
- “Tourist” visas commonly not legally compliant form of documentation for employees working in a foreign country
- University may be considered responsible by local authorities
- Tax treaties do not offer benefits for immigration!

Summary of Options to Support Employees Abroad

- Standard treaty exemption period?
- Do teaching or research exemptions apply? (Application often required)
- “Manage” days working in foreign country (employees on US payroll only)
- Special exemption granted by foreign gov’t? (bi-lateral agreements)
- Third party “partner” (university, subcontractor or other locally registered org acting as employer)
- Professional employment organization (PEO)
- Non-resident employer registration (NRE), engaging payroll provider
- Registration (e.g., branch, subsidiary), engaging payroll provider

NOT A RECOMMENDED OPTION!

- Telling the employee it is their responsibility to report and pay their own taxes

Local Employee Considerations

- Employment contracts (often required by law, and in local language)
- Understand termination regulations before hiring
- Compensation and Benefits
 - Local laws and customs relate differently to local nationals, US expats, third-country nationals, and contractors
 - There should be an understanding of what benefits are mandatory in-country, then what incrementally would be “market norm”
 - Comparison with a US benefit plan can certainly be a factor in evaluating local benefits, but it shouldn’t be the only one

Engaging Independent Contractors

- Employee vs contractor - #1 compliance issue today
- Assume that foreign employee vs contractor classification in foreign country is as stringent as the U.S.
- An agreement that the individual is a contractor does not determine classification
- Countries taking aggressive measures to encourage “whistleblowers”
- Fines often far exceed cost of hiring as employee

Red Flag Characteristics

- The worker is paid a fixed amount not tied to completion of tasks
- The worker has decision-making authority and can sign or negotiate contracts on behalf of university
- Worker does not have discretion on how and when to complete tasks
- A high percentage of the worker's income comes from the university
- The worker is not part of a separate organization of 3 or more people, and does not have a distinct separate identity (such as business cards)
- The worker works a set number of hours as specified by a contract
- The worker is offered benefits, such as paid leave, bonuses or health insurance
- The worker is provided with equipment or tools of trade (such as a computer)

Tips on Hiring an Independent Contractor

Don't do this

- ✓ Pay for time worked →
- ✓ Give them tools →
- ✓ Worker self-employed →
- ✓ Paid leave (vacation) →
- ✓ Supervise and direct daily →
- ✓ Nothing in writing →
- ✓ Require contractor to perform all work →
- ✓ Executing contracts or making decisions →

Do this!

- Pay for milestone or task
- Worker provides own tools
- Works for company (3 or more)
- No "employee" benefits
- Flexibility to set own hours
- Contract stating terms
- Work can be performed by others at worker's discretion
- No decision making on behalf of university!