Faculty and Staff Working Overseas

Policy Statement

This policy sets forth the standards for the hiring, transfer, and management of employees with international assignments, including both US and non-US citizens hired directly by Columbia or by an affiliate.

The appropriate resources within the University must be contacted as soon as you become aware that an international assignment is likely to meet any of the following criteria: (i) office space will be leased in the host country (contact Office of General Counsel), (ii), a foreign bank account must be opened for the receipt of funds or payment of expenses (contact Treasury), (iii) employees based outside the United States will be hired (contact Human Resources or the Controller’s Office); (iv) the stay in a host country by Columbia faculty or staff normally based in the United States will exceed 180 days (contact Human Resources or the Controller’s Office). (Please see the list of appropriate personnel at the end of this document). With regard to the last criteria listed (number of days in country), keep in mind that stays much shorter than this may trigger tax and other regulatory compliance issues for the individual traveler and Columbia. Each country sets its own rules, and it is up to the individual in these cases to determine whether he or she will have tax or other obligations in the host country. Finally, a country may restrict the number of non-citizens that may be employed by an entity in their country; consequently it is important to project that as well. Where questions arise on this and other matters, please contact the resources listed at the end of this document.

Reason(s) for the Policy

Columbia faculty and staff frequently travel and work outside of the United States to engage in a variety of academic and research programs. If not properly designed, these activities can expose both the individual participants and the University to a complex and strict set of regulatory and tax requirements.

Faculty and staff normally based in the United States who work abroad may trigger local income tax filing requirements and other local employer obligations in the overseas host country, and, without appropriate advance arrangements, may even subject the University to taxation in the host country.

In addition, where the University wishes to employ host-country (i.e., local) employees to assist in research or academic programs in that country, the University typically must comply with local registrations, human resources and payroll rules and regulations.

These requirements vary from country to country, and must be reviewed on a case-by-case basis. Failure to comply with local laws and regulations can have severe consequences in the form of
tax penalties, fines, reputational damage, litigation by local employees, and even ejection from the host country.

**Primary Guidance to Which This Policy Responds**
This policy responds to various U.S. federal regulations as well as the tax and regulatory regimes of countries outside the United States.

**Responsible University Office**
Responsibility for the maintenance of this policy and for responding to questions of policy interpretation is jointly held by the Office of the Controller and the Office of the General Counsel. Questions about applying this policy to individual projects and assignments should initially be directed to the human resources professional responsible for the department as well as to the Controller’s Office.

**Revision History**
None.

**Who Is Governed By This Policy**
This policy applies to all (1) University faculty and staff who are responsible for hiring, managing, and/or transferring faculty and staff for overseas activity, and (2) University faculty and staff with an international assignment. This policy also applies to staff employed by affiliates established by the University to operate overseas.

**Who Should Know This Policy**
All University or affiliated faculty and staff with responsibility for managing or supporting overseas assignees, and all overseas assignees themselves.

**Exclusions and Special Situations**
Any exceptions to this policy must first be approved by the Office of the General Counsel, and because of the complexity of the issues involved, such approval should be sought in the early planning stages of an international program.

**Policy Text**
This policy provides a general overview of key issues that must be addressed before undertaking a program that involves working overseas by either Columbia or locally-based faculty and staff. Because legal and regulatory requirements differ from country to country, this policy cannot be all-inclusive. As indicated above, the University’s central administration is available and should be consulted to assist in navigating the overseas regulatory requirements.

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The policy is organized across three categories of faculty and staff:
1. Columbia U.S. faculty or staff who travel on University business to another country;

2. A citizen or permanent resident of another country who is hired to work in that country (host country national);

3. A citizen or permanent resident of one country outside the U.S. (e.g., England) who is hired to work in a different country outside the U.S. (e.g., Rwanda) (third country national).

Please note that this policy focuses primarily on tax filings and regulatory requirements that apply to the University and its affiliates as legal entities. Although we highlight certain areas of concern for individuals travelling or relocating overseas, the University is unable to provide individualized tax advice to faculty and employees. Personal tax compliance is the responsibility of the individual.

### University Faculty or Staff Working Overseas

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<th>Activities overseas can result in tax liabilities for both the individual and Columbia. Each country sets its own rules for (i) when an individual becomes subject to personal income tax in that country (even for income received from sources outside the country) and (ii) when the presence and activities of an employee in the country are deemed to create a “permanent establishment” (taxable presence) for the individual’s home institution, requiring that institution to file its own tax return in the country. Columbia’s tax exempt status does not necessarily shield it from tax and other liabilities in other countries. Even short term academic and research programs can trigger an overseas host country’s tax and regulatory regimes for both the individual traveler and Columbia. In general, the principal investigator or lead faculty member, working with the department administrator, retains responsibility for legal and regulatory compliance, including tax and social benefits issues. A department’s HR resources as well as the individuals listed at the end of this guidance are available to provide general guidance and assistance.</th>
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<tr>
<td>Although the country rules must always be reviewed in advance, as a rule of thumb, overseas trips and assignments</td>
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for 180 days or more will be considered long-term assignments and almost always will require careful review. Individuals working overseas for long-term assignments are routinely referred to as expatriates.

Expatriate assignments must take into account the income and social tax regulations of the local country, whether there are tax and social security treaties or bilateral agreements between that country and U.S. governmental entities, and whether any special exemptions have been granted to Columbia and its faculty and personnel by the country’s tax authorities.

For expatriate assignments, arrangements should be put in place to:

- Retain the individual’s compensation and benefits as a Columbia faculty or staff (unless the individual is transferring employment to an overseas entity).

- Minimize the risk that the individual will be deemed to trigger a “permanent establishment” status of the University in the overseas country, requiring Columbia to file tax returns and even pay income taxes in the country. One way of minimizing this risk is for the ex pat employee to be assigned (or “seconded”) to an overseas entity, which might be an affiliate of Columbia or an institution collaborating with Columbia. This usually involves, among other things, a written agreement between the University and the overseas host entity.

- Ensure that the faculty or staff understand that they must separately identify and handle any personal tax consequences of their working overseas – e.g., certain benefits received from the University or the local entity may be considered taxable income. In general, U.S. citizens and permanent residents are obligated to file an annual U.S. income tax return regardless of where they are stationed based on their worldwide income, subject to foreign tax credits and
- Customized compensation and benefits can trigger additional personal income taxes for the faculty member or personnel. As an example, tuition reimbursements, if offered by the local entity or Columbia, might be treated as taxable income to the individual in the United States, the host country, or both.

• Identify employer tax reporting and withholding obligations in the host country.

• Explore whether the individual will become subject to labor laws and regulations that apply to host-country employees. (Normally an expatriate will not become subject to the host country’s labor laws, but exceptions do apply).

• Consider potential conflicts between U.S. and local laws that might apply to the overseas faculty and staff. For example, as a general matter, many U.S. civil rights and non-discrimination laws apply to U.S. citizens working abroad – these may conflict with host-county customs and practices. Where this occurs, Columbia’s Office of General Counsel should be consulted to provide guidance.

Certain of the above arrangements may become unnecessary if an individual elects to be permanently reassigned to the host country entity. An individual might choose to cease being an employee of Columbia and be employed exclusively by the host country entity. An individual making that election should carefully review its impact from a tax and human resources perspective in the U.S. and in the host country.

Because the tax and regulatory regimes differ from country to country and are driven by specific circumstances of each project, this policy requires that a University resource listed
at the end of this policy be consulted during the **preliminary planning** stages of an overseas project with a duration of at least 180 days or where a host country’s labor and tax regimes are triggered for projects of shorter duration. Compliance with overseas regulations can be complex and difficult, and advance planning is essential.

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<th>Activities that are likely to create a legal presence overseas</th>
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<td>Regardless of the number of days spent overseas, University programs that require (i) leasing office space in the host country, (ii) opening a foreign bank account for receipt and/or payment of project funds and expenses, or (iii) hiring local employees, often require local registrations. Depending on the specific project needs and local laws, the University may be required to enter into collaborative agreements with entities already established in the country or (if the scope justifies the commitment) form a separate legal entity in the country to carry out the desired program. If you believe your program will require one of these actions, it is important that you confer with appropriate resources within the University’s Office of Treasury, Controller, or General Counsel, as early in the planning stage as possible. Please see the contact list at the end of this guidance. This option will be pursued only if the scope or nature of the project justifies it and there is no practical alternative, as the costs and time commitments are often considerable.</td>
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**A Citizen or Permanent Resident of a Country other than the U.S. is Hired to Work in that Country (“host country nationals”)**

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<th>Engaging local nationals to perform project activities in their home country, either as an employee or independent consultant</th>
<th>The engagement of a single overseas host country national to provide services for Columbia can trigger employment and tax obligations in that country. Engaging local nationals to perform work in their home countries raises the following issues:</th>
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<td>• If the individual is hired as an employee: the University</td>
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will need to comply with local employer obligations, such as tax registrations, withholdings, retirement, social security or social benefits, and other benefits required under applicable law. Among other things:

- The University’s payroll systems are designed for U.S. tax withholdings and other employer obligations and are not the appropriate vehicle for host country nationals. A locally-based method to handle compensation and benefits to the local employees must be in place. For that reason, it is vital to identify and address local employer obligations early in the planning stage.

- Apart from payroll obligations, often the University cannot legally hire an overseas national in his/her home country without first registering as an entity within that country. Registering directly as an entity in the country could expose the University to tax, regulatory, and potentially other liabilities within that country. For that reason, the University explores various options to support overseas programs, including (i) establishing a local affiliate organization that could register in country and have its own legal presence or (ii) collaborating with a local organization that can hire local resources and support the project. Both these options require advance planning and investment to be successfully implemented.

- Appropriate due diligence should be performed to understand the local labor law and regulatory scheme. For example, the U.S. concept of “at will” employment, under which an employer has wide latitude in terminating employees, typically is not followed in other countries. The conditions of employment generally will follow local laws, and these must be reviewed on a country and regional basis.
- For independent contractors: Hiring a local individual as an independent contractor can sometimes provide beneficial tax implications for the University, but that is not the case in all countries. Each country has its own criteria for determining whether an individual is properly treated as an independent contractor versus as an employee. For example, depending on the level of control that Columbia exercises over the hours, working conditions, and performance of the local national, the tax authorities in a particular country may determine that a person engaged as an independent contractor should actually be treated as an employee of Columbia, exposing the University retroactively to numerous obligations, including social benefits and other employer payroll and benefit requirements. The University’s central administration, particularly Human Resources, can assist in analyzing how an individual should be characterized. (Please see the contact list at the end of this guidance.)

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<th>A Citizen or Permanent Resident of one Country outside the U.S. is Hired to Work in a Different Country outside the U.S.</th>
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<td><strong>Engaging nationals from one country outside the U.S. to perform project activities in another country outside the U.S. as an employee or independent consultant (third country nationals)</strong></td>
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<td>Columbia sometimes needs the services of non-U.S. citizens to work outside their home country (e.g., a Ugandan citizen working in Kenya). In addition to all the issues mentioned above, some additional key challenges that arise with hiring third country nationals include:</td>
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- Determination of which jurisdiction’s social benefit, pension, and other employment obligations apply. They could be those of the citizen’s home country, or the host overseas country.

- The possibility of multiple jurisdictions in which tax withholdings/payments must take place.

- The application of the proper jurisdiction’s laws regarding
hiring and termination.

These issues must be approached on an individualized basis, and the analysis in each case must take into account any tax treaties or other specific guidance applicable to the particular program for which third country nationals will be hired. The resources listed at the end of this guidance can provide assistance in working through these issues.

| Offering University benefits to host country and third country nationals based overseas | Unlike expatriates (U.S. citizens and residents assigned to work overseas), host country and third party nationals do not normally receive University benefits. These individuals generally are hired by an overseas entity -- which may include a Columbia affiliate established by Columbia to operate a program in another country -- and normally receive benefits offered by that entity and not by Columbia. These packages are customized to meet local needs and customs, and should be part of initial budget planning. Where a Columbia appointment is important, the University may be able to provide a zero-salary appointment to the individual, conferring certain limited privileges such as library access. Because of tax and other regulatory issues, it is generally not appropriate to have Columbia directly hire host country or third country nationals working overseas or offer University benefits to such individuals. In the rare situation where it is believed that an exception is warranted, the Office of the Controller (noted below) must approve this arrangement before an offer is extended. |

Select other polices and resources:

Note that individual faculty members and personnel are responsible for obtaining any required travel authorizations, visas, and other governmental approvals that may be required under the laws of the United States and the visited country. Note also that travel to and transactions
within certain countries and their citizens and governments are restricted under U.S. laws. See http://www.ustreas.gov/offices/enforcement/ofac/programs.

In addition, the U.S. government warns against travel to certain regions and countries for personal safety reasons. http://travel.state.gov/travel/cis_pa_tw/cis_pa_tw_1168.html

Other policies relevant to overseas travel include:


Petty Cash: http://policylibrary.columbia.edu/petty-cash-policy


International Risk Management Procedures: http://www.columbia.edu/cu/administration/policylibrary/policies/rsch/00bb9e6715814c870115b5fcb13a0004.html

For questions and assistance, contact any of the following individuals:

Human Resources: Timothy Price

Controller’s Office: Julia Shanahan or Mark Hawkins

Treasury: Colin Redhead

General Counsel: Donna Fenn, Ed Silver, or Beryl Abrams