



## Welcome to the Finance Administration & Legal Track

### Wednesday

- ▶ 3:45 PM | 2022 A&A Update: Be Audit You Can Be!

### Thursday

- ▶ 8:30 AM | Vendor Risk Management
- ▶ 1:45 PM | International Accounting Update
- ▶ 3:45 PM | Dealing with Risk in Unstable Countries

### Friday

- ▶ 9:00 AM | Latest Developments in Legislative and Legal Matters

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# Missio Nexus – International Accounting Update

Orlando, FL

Ted Batson, Partner and Tax Counsel  
9.29.22 1:45 p.m. Grand Ballroom E



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## International Accounting Update – Agenda

- Brief update on Schwab Charitable audit
- An update on best practices regarding internal controls over the transfers of cash to international fields, including in-person transfers and FinCEN Form 105 reporting
- A discussion of best practices and pros and cons of using personal accounts for the transmission of mission funds
- Office of Foreign Asset Control (OFAC) reporting and best practices regarding frequency of inquiry and persons submitted for review
- Employing non-U.S. citizens and foreign nationals

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## Ways to Do Business in Foreign Countries

- **Branch or Field Office**
  - The U.S. charity registers to do business in the country as a branch/field office, but a separate legal entity is not established
  - Included in Form 990
    - Specifically: Statement of Revenue (Part VIII), Statement of Functional Expense (Part IX), Balance Sheet (Part X)
  - Requires filing IRS Form 8858

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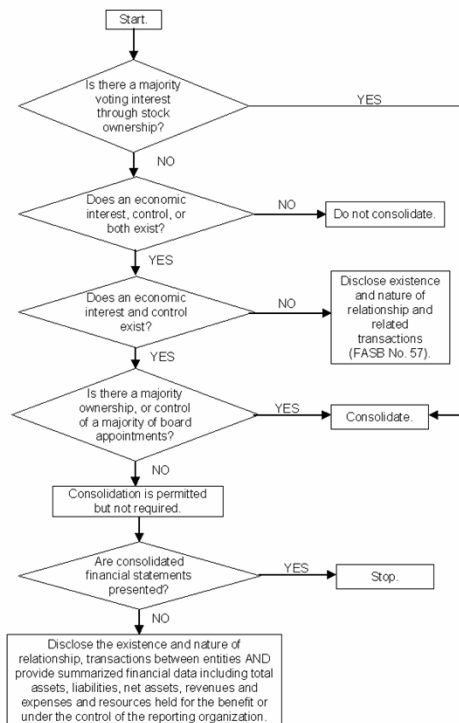
## Ways to Do Business in Foreign Countries (continued)

### • Controlled Entity

- The U.S. charity creates a separate corporate entity recognized in the foreign country and they legally control it. This entity is included in consolidated financial statements.
  - All such relationships are disclosable on Form 990 Schedule R
  - Disregarded foreign entities are included in Form 990 financial information
  - Other types of foreign entities are typically not included in Form 990 financial information (other than perhaps Schedule R)
    - May require filing IRS Form 5471

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## Ways to Do Business in Foreign Countries (continued)

- **Affiliated Entity/Partner\***

- A separate foreign entity is established or engaged with and the U.S. charity “affiliates” with it through a written affiliation agreement
- Typically, the U.S. charity does not control/consolidate this entity and funds via periodic grants
- Typically, this relationship is not disclosed on the Form 990
  - May be described in Schedule O if important to the reader

\*“Affiliate” in this context describes an informal relationship and not an affiliate relationship as that term is used in GAAP

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## Ways to Do Business in Foreign Countries (continued)

- **Business as Mission**

- Establishing a taxable entity in a foreign country. Ownership of this entity may be by the charity, employees, or by local individuals.
- Ownership by anyone other than the charity, but capitalized with funds from the charity, should be accompanied by agreements granting the charity recourse in the event of profitability or failure.
- Other methods??

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## Ways to Transfer Cash/Funds – Foreign Fields

- International banks
- Global business-to-business (B2B) payment provider
- ATMs
- Credit cards
- Carrying in cash (with the general \$10,000 limit; FinCEN 105)
- Use of personal accounts
- Other?



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## Recent Developments

- Local governments restricting and monitoring transfer of funds into country
  - India (2020 FCRA Act)
  - Nicaragua
  - Brazil
  - Other

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## Best Practices Observed

- Obtain a signed “Banking Agreement” or Memorandum of Understanding (MOU)
- See if “read only” access can be obtained and monitored outside the country
- Remit and review bank statements and recs timely
- Require two signers on account. If only one missionary unit in country, second signer could be a local businessperson or resident.
- Many clients have moved to setting up separate U.S.-based accounts with their banks for each missionary unit and issuing ATM cards for withdrawing cash. Could consider one individual holding the ATM card and a second individual having the PIN number so that two individuals are involved in withdrawing cash. Limits on the amount of cash that can be withdrawn at a time.
- Advance funds and reporting back

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## Best Practices Observed (continued)

- Separation of missionary account vs. field project funds
- Use of B2B services like Cambridge Global Services or Western Union
- Safes used with high cash-on-hand balances and strong dual controls on access and daily counts
- Some countries’ banking systems can be set up for personal accounts where a random number generator device is issued to a separate individual and needed to withdraw any funds by the account holder
- Limit funds held in country
- Use a partner organization. For example, for Cuba, can send funds to Spain and Canada, who can send to Cuba.

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## Personal Accounts in Foreign Locations and Other Considerations

- Government requiring funding of a personal account to secure individual as part of the visa process
  - If mission funds used to fund this account, memorialize mission's recourse to the funds upon leaving the field, divorce, or other life events
  - Understand limitations on recovering these funds in the event of individual liability of the missionary for tort claims
- Use of intermediaries to shield the U.S. charity from additional scrutiny
- FBAR reporting (more to follow)
- Limitations and taxes on transferring funds outside of foreign countries

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## Understanding FBAR Reporting

- The FinCen 114 Report, or FBAR, is a required filing for:
  - a U.S. person
  - having a **financial interest** in or **signature authority** over foreign financial accounts
  - where the **aggregate value** of the foreign accounts **exceeds \$10,000 at any time** during the calendar year
- A U.S. person includes an individual, a partnership, a limited liability company, or a corporation — including a nonprofit corporation

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## Understanding FBAR Reporting (continued)

- A U.S. person has a financial interest in a foreign financial account if:
  - The U.S. person is the owner of record or holder of legal title; or
  - The owner of record or holder of legal title is one of the following:
    - An agent, nominee, attorney, or a person acting in some other capacity on behalf of the U.S. person with respect to the account; or
    - An entity in which the U.S. person either owns more than 50% of the value or controls more than 50% of the voting power (loose paraphrase; see instructions)

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## Understanding FBAR Reporting (continued)

- The form is due on April 15 of each year (beginning with 2016 reports filed in 2017)
  - **However**, there is an automatic six-month extension with no requirement to file an extension form
- The form must be filed electronically
  - There is no paper-file option
  - Go to <http://bsaefiling.fincen.treas.gov/main.html> to file
  - A third party, such as an accountant or attorney, may prepare and file the form

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## FinCEN Form 105 Reporting

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- Required to be filed by any person transporting or receiving currency or monetary instruments exceeding \$10,000 in or out of the U.S.
- Not required if person is not a U.S. citizen or resident and is mailing or shipping currency through the postal service or common carrier
- Does not apply to traveler's checks after they have been negotiated

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## FinCEN Form 105 Reporting (continued)

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- Recipients of currency over \$10K are to file the Form 105 within 15 days of receipt to the Customs office in charge of the port
- Travelers carrying currency over \$10K shall file the Form 105 at the time of entry or departure from the U.S.
- Penalties for non-filing can be up to \$500,000 and imprisonment up to 10 years

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## Office of Foreign Assets Control (OFAC)

- Administered by the U.S. Department of the Treasury
- To ensure that entities comply with all statutes, orders, and regulations that restrict or prohibit U.S. persons engaging in activities in violation of economic sanctions
- Examples – [Report of 2020 Senate Finance Committee Investigation - World Vision?](#)
- Organizations should develop a policy and follow it
- Review an example policy

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## OFAC Reporting

- Office of Foreign Assets Control
  - Published [U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities](#)
    - Includes robust recommended practices around:
      - Governance, financial accountability, programmatic verification, and anti-terrorist financing
  - Maintains OFAC [Specially Designated Nationals And Blocked Persons List](#)
    - Can be accessed electronically at <https://sanctionssearch.ofac.treas.gov/>

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## OFAC Reporting (continued)



### Sanctions List Search

This Sanctions List Search application ("Sanctions List Search") is designed to facilitate the use of the Specially Designated Nationals and Blocked Persons list ("SDN List") and all other sanctions lists administered by OFAC, including the Foreign Sanctions Evaders List, the List of Persons Identified as Blocked Solely Pursuant to E.O. 13599, the Non-SDN Iran Sanctions Act List, the Part 561 list, the Sectoral Sanctions Identifications List and the Non-SDN Palestinian Legislative Council List. Given the number of lists that now reside in the Sanctions List Search tool, it is strongly recommended that users pay close attention to the program codes associated with each returned record. These program codes indicate how a true hit on a returned value should be treated. The Sanctions List Search tool uses approximate string matching to identify possible matches between word or character strings as entered into Sanctions List Search, and any name or name component as it appears on the SDN List and/or the various other sanctions lists. Sanctions List Search has a slider-bar that may be used to set a threshold (i.e., a confidence rating) for the closeness of any potential match returned as a result of a user's search. Sanctions List Search will detect certain misspellings or other incorrectly entered text, and will return near, or proximate, matches, based on the confidence rating set by the user via the slider-bar. OFAC does not provide recommendations with regard to the appropriateness of any specific confidence rating. Sanctions List Search is one tool offered to assist users in utilizing the SDN List and/or the various other sanctions lists; use of Sanctions List Search is not a substitute for undertaking appropriate due diligence. The use of Sanctions List Search does not limit any criminal or civil liability for any act undertaken as a result of, or in reliance on, such use.

[Download the SDN List](#)

[Visit The OFAC Website](#)

[Download the Consolidated Non-SDN List](#)

[Program Code Key](#)

**Lookup**

Type:	All	Address:	
Name:	Osama Bin Laden	City:	
ID #:		State/Province:	
Program:	All	Country:	All
	561List	List:	All
	BALKANS		
	BELARUS		
Minimum Name Score:	100	Search	Reset

Lookup Results: 1 Found

Name	Address	Type	Program(s)	List	Score
<a href="#">BIN LADEN, Osama</a>		Individual	SDGT, SDT	SDN	100

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## OFAC Reporting (continued)

- Office of Foreign Assets Control (continued)
  - Approves a **risk-based approach** that **permits tailoring vetting procedures** to an assessment of the risk of a transfer
    - Has published a [risk-matrix tool](#) to use in assessing risk
  - Reference the OFAC [Guidance Related to the Provision of Humanitarian Assistance by Not-for-Profit Non-Governmental Organizations](#)
    - Describes conceptual framework for working with OFAC and working with and in sanctioned countries

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## Paying Foreign Workers

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- A U.S. organization can pay a foreign worker as part of their foreign ministry grant program
- The organization may not act merely as a conduit of funds for a foreign recipient
  - Remember the requirement for “discretion and control”
- The ministry grant to the recipient must further the organization’s exempt purposes
- Pre-grant due diligence – information about the recipient, information about the project or work
- Special Designated Nationals (SDN) search
- Written grant agreements approved by the organization

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## Paying Foreign Workers (continued)

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- Approval of grant by the governing board (or management)
- Determination documentation that grant is accomplishing the ministry purpose of the organization
  - Milestone reports and regular updates
  - On-site visits (insufficient by themselves)
  - Oversight and supervision
- Making sure all other funding sources (if any) are made known to the organization
- Consider tax reporting requirements of the foreign country

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## Fundraising by Foreign Nationals in the U.S.

- Organization can set up a board-approved ministry project fund that will be used to fund the ministry grants to the foreign national
- If the foreign national is coming to the U.S. to fundraise here, please consult with your legal counsel on the proper entry visa needed
- Fundraising can also be done by the foreign national by contacting U.S. donors through email, Skype, newsletters, etc.
- Make sure the person is adequately trained by the organization in proper deputized fundraising protocol
- Remember that your organization must have and exercise “discretion and control” over donated funds raised by the foreign national
  - How does your organization document this level of control?

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## Fundraising by Foreign Nationals in the U.S. (continued)

- **Affiliated Project Fundraiser (individuals)**
  - Not considered an employee or volunteer
  - Still involves screening the candidate with an application
  - Aligns with the values and mission of your organization
  - Agreement with your statement of faith
  - Must complete organizational training in proper fundraising, donor communication, donor relations, etc.
  - Raises funds for the ministry project fund

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## Grants – Honoring Donor Intent

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- Generally, the obligation to honor donor intent is driven by U.S. GAAP and state law considerations and not given as high a significance by international standards
- The exception would be if funding comes from a foreign government, agency, or foundation that has very specific reporting requirements

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## Grants – Honoring Donor Intent (continued)

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- There are several examples/templates of grant agreements that can be provided for you to modify for your use.
- It is important that you require periodic reporting back on the “program” accomplishments or outcomes that have been achieved by the funding.
- Consider adding a clause in the grant agreement that you have the right to request additional supporting documentation to substantiate the expenditures. For significant grants, also the right to conduct an audit of the program.

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## Grants – Honoring Donor Intent (continued)

- Disbursing the funds overseas does not relieve the 501(c)(3) entity of the fiduciary responsibility to ensure that donor intent is met
  - This applies also to gifts-in-kind (GIK) as there has been increased scrutiny by regulatory bodies of the control exercised by the organization, the accomplishment of missional objectives, and valuation
- If the foreign entity/recipient is consolidated, then supporting documentation for the related program expenses should be obtained and reviewed for adequacy of releasing a donor restriction

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## Grants – Honoring Donor Intent (continued)

- If the disbursement is to an unconsolidated foreign entity, then the following should be considered:
  - Budget for the expenditure and have underlying support that the related program in the foreign country is accomplishing the mission of the U.S. 501(c)(3) entity
  - If possible, fund the foreign entity program with unrestricted funds, too
  - Have a formal grant agreement (can use a dollar threshold for practical purposes)

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## Grants – Honoring Donor Intent (continued)

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- If foreign expenditures make up a significant part of your annual budget, it is highly recommended that you develop an “internal audit” function where you verify that the foreign entity is complying with basic controls and procedures. This can be done by a U.S. employee or even a peer review by another foreign country close by. If this is not in place, the external auditor may need to conduct their own audit procedures based on their risk assessment.

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## Other Compliance Considerations

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- Local annual/periodic charity/corporate filings
- Payroll and employer tax filings
- Sales tax reporting on purchases (VAT)
- Other benefit requirements
  - Government healthcare plans
  - Government-administered retirement plans

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## Other Topics (General Discussion)

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- Security measures
  - IT (data protection, website portals)
    - Data encryption and security measures to protect staff and data in the field and the future viability of the mission in the country, and to avoid potential litigation
    - Policies on safeguarding computers and other portable electronic devices
    - Backup options if website portals go down

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## Moving Expenses (Refresher)

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- Essentially, costs to move household furnishings and transportation costs of children and non-employee spouses are not reimbursable or tax-deductible
- Transportation cost of an employee
  - Argument that the EE's travel costs are ordinary and necessary business expenses and therefore are tax deductible/reimbursable
  - Another view is that because the EE is changing his/her "tax home", it is not deductible/reimbursable

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## Moving Expenses (continued)

- EE travel expenses if on a temporary assignment (i.e., on furlough) for less than one year are reimbursable
  - However, family's expenses are not unless you can substantiate that they are performing work assignments in their role
- If the assignment extends beyond a year, all costs from the point that extension is determined on are not deductible/reimbursable

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## Moving Expenses (continued)

- IRS Publication 521 provides guidance on how to treat moving expenses
- It is advisable for the missionary to raise sufficient support to be able to cover anticipated moving expenses
- Exception to this change in treating moving expenses is if you are active-duty military changing duty stations
- Consider the pros/cons of having the spouse be an EE

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## Furlough Considerations

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- Organizational policies will vary significantly
- Reporting for functional expense purposes under GAAP and for Form 990
- Important to periodically survey missionaries
- Unreasonable to allocate all to program; should be a higher % for fundraising than when in the field
- Vacation time vs. business purpose
- Continuation of benefits

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## Furlough Considerations (continued)

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- Joint Cost guidance
  - Purpose
  - Audience
  - Content

Normally results in a split between program and fundraising (occasionally general and administrative)

Note that this area is complex and the required analysis is, consequently, complex

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## Contact Details

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