Appendix B - Checklist of Regulatory and Taxation Issues

The following table includes key issues that will need to be considered in relation to establishment of an offshore presence. It is recommended it be used as a "checklist" for the Organisational Lead, together with Legal Services, Finance (CFOG) for finance and tax considerations, and other relevant stakeholders as identified below. While some items on the checklist will be relevant in circumstances where the University is establishing an entity, most items will be relevant irrespective of the structure.

Category	Key Considerations	University Stakeholders
1. Licence to Operate	The administrative requirements and time involved in establishing a presence in a country can depend on whether the University is seeking to establish an entity or a non-entity presence. A general checklist of factors that can be determinative of the regulatory and administrative requirements and time are set out below. • Does the University need to obtain any approvals or permissions to operate in the country for the expected activity? • Is registration required with a local corporate/regulatory authority? • What is the cost and timeframe of establishing and maintaining incorporation/registration or any other licences to operate? • Does the University/a local authority require a physical office? • Does the University/a local authority require a registered mailing address? Jurisdiction specific regulatory advice should be obtained to cover the expected activities.	Legal
2. Requirements to Establish an Entity	Where the University is establishing an entity, the following factors are relevant: • What type of entity is proposed? • Does the entity require a constitution? • Are there specific local laws that must be incorporated into the entity's constituent documents?	CFOG Legal Governance

	• Are there any language requirements for these constituent documents? • Is there a minimum number of directors required? • Is a local director or local chair required? • Are there any specific shareholder requirements? • What if any, are the capital controls that might impact the establishment and maintenance of the proposed entity? Generally, each country will have specific administrative requirements that must be met each year. A list of the types of the administrative requirements for entities can include: • Does the entity need to notify a regulator of its shareholders or directors? • Does the entity need to register its business name? • Does the entity need a corporate identification number? • What are the director registration requirements? • Are there any statutory records or other documents an entity must prepare by the law applicable to the foreign company (board minutes, disclosure of ultimate beneficial ownership, etc.) • What capital controls apply to the entity and what are the consequences of these on how any capital including working capital can be made available to the entity.	
3. Financial Reporting	Generally, each country will have specific financial reporting requirements and timeframes. • Does the entity need to prepare a balance sheet, cash flow statement and profit and loss account according to specific accounting standards? • Is there a requirement that the financial statements are audited? • Does the financial information need to be filed with the local regulator? If so, generally this would be within	CFOG

	certain timeframes or when a specific event happens.	
4. Taxable Presence	Where the University has a local taxable presence, consideration should be given to the local tax compliance obligations. This can include the following types of taxes: • Income tax; • Indirect taxes such as value added taxes or goods and services taxes (**VAT/GST**); • Capital Gains Tax (**CGT**) • Withholding Taxes (**WHT**) • Employee taxes, which can also non-exhaustively include superannuation/social security, pension, and health and welfare obligations and payroll taxes. To the extent that the University transfers individuals to another jurisdiction, apart from visa and other legal considerations, the University should consider the impact of the transfer on the person's personal tax obligations (in Australia and overseas). For example, depending on the length of the person's stay in an overseas jurisdiction, the person may acquire an obligation to file tax returns (or similar) in the foreign jurisdiction while potentially remaining an Australian tax resident with Australian filing obligations. Advice should also be sought on the risk of creating a "Permanent Establishment" for the University in the local jurisdiction.	CFOG
5. Tax Compliance – Tax returns, Credits and Incentives	Generally, most jurisdictions have a default year end for financial and tax reporting purposes, however this should be verified. Generally, each country has specific tax credits or incentive regimes which may be accessed. Consideration should be given to: • What tax credits and incentives may the University or the entity be entitled to? • Are foreign income tax offsets (**FITO**) available on foreign taxes paid?	CFOG

6. Tax Residency	Consider the criteria for determining tax residency in the particular jurisdiction. Confirm whether tax residency is driven by place of incorporation, or place of central management and control. If, by reference to central management and control, central management and control protocols need to be established to confirm jurisdictional taxing rights. It is possible that a company incorporated in one country may have its central management and control in another country for which advice should be sought.	CFOG
7. Other Tax Considerations	Examples include: • Assess impact of proposed expansion into new foreign jurisdictions on University tax exempt status. • Transfer pricing of transactions between related parties that are subject to tax – need to be arm's length and properly documented and supported. Such transfer pricing must be taken into account within any budgeting and business planning. • Funding considerations – debt or equity and associated limitations. • Controlled Foreign Company – assessment of risk of Australian attributable income of CFC net income.	CFOG
8. Repatriation of Profits/Transfer of Funds	In respect of the repatriation of profits, the following factors should be considered: • Ease of repatriation • Subject to tests such as solvency test? Withholding tax to be paid? Again, does a double taxation agreement apply? • How are repatriated profits taxed as a specific legal entity type? • Are profits considered non assessable non-exempt (NANE) in Australia? • Any tax offsets available?	CFOG

9. Employment and OH&S	Local employment and OH&S laws including applicable benefits should be considered. Note that engaging in-country personnel as independent contractors either directly or via a third-party arrangement (such as an Employer of Record) will require local advice to ensure that the University mitigates any misclassification risks, associated penalties and risks around Permanent Establishment.	CFOG (in relation to advice on potential independent contractor arrangements and/or of service providers) Legal Workplace Relations
10. Intellectual Property and Data Security	Consider whether trademark and other applications should be filed within the relevant jurisdiction. The use of University branding may have taxation implications and advice should be sought. Consideration also should be given to whether local privacy and data security laws are comparable to Australian laws.	Brand and Marketing Cybersecurity Information Governance Services KT&T on intellectual property matters Legal
11. Wind-up or exit issues	As part of establishing an offshore presence in any form, it is important to consider the full lifecycle of the activity. Advice should be sought on the processes, costs, and typical timeframes for exiting and winding-up the presence. If there is potential for a commercial exit (e.g., sale, merger or other liquidity event), the advice should also include the implications of such events.	CFOG Governance RIC