

Guidance on U.S. Market Entry Seminar and webinar hybrid event for Hungarian companies, Debrecen and Budapest, Hungary, June 25-26, 2024

An Introduction to the U.S. Legal Framework

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Visa Developments: ESTA

- Visa Waiver Program allows people from 40 countries to travel to the U.S. for business or tourism up to 90 days
 - Hungary is included
- CBP implemented the Electronic System for Travel Authorization (ESTA) to collect biographical data and answer VWP questions.

New U.S. Rules

As of August 1, 2023, the U.S. government implemented new rules. Main changes:

1. If Hungarian passport (citizen) but not born in Hungary, then not eligible for ESTA.
2. If Hungarian passport and born in Hungary, then can apply for ESTA for only one year.
Previously was two years.

Taxation

- Hungary was notified on July 8, 2022, that the United States would terminate its tax treaty with Hungary.
- For most purposes, the treaty will cease to have effect on January 1, 2024.
- Treaty benefits enjoyed by individual taxpayers under the U.S.-Hungary Income Tax Treaty will no longer be available once the treaty termination is effective. As a result, benefits of lower tax rates on certain income (e.g., interest, dividends), exclusion for certain employment income, as well as relief from double taxation would expire with the termination. This could give rise to double taxation without relief for individual taxpayers.

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- Follows Hungary's opposition to a global corporate tax overhaul.
- The EU has been trying to implement unanimously global minimum corporate tax rules. It seeks to ensure that large multinational companies pay an effective tax rate of 15 percent in the countries in which they operate.
- The Hungarian parliament adopted a resolution on June 21 to reject the new rules. All EU tax directives require unanimity among EU states for implementation.
- Hungary's opposition effectively blocks the directive from being implemented.

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Double taxation effect:

- The first step in determining tax liabilities is to establish tax residence. In the absence of the double tax treaty, it may occur that both countries consider an individual as a tax resident, i.e. his/her worldwide income - including the employment income, income from investments, and all other types of income - is taxable in both countries

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- After the treaty expires, Hungarian investors will be subject to a 30 percent tax and an additional five percent Hungarian personal income tax, so the amount of total tax burden will be 35 percent.

FRAMEWORK

for advising foreign companies on U.S. market entry

1. First question: are you **ready**?
2. Find a good local advisor who can help navigate –
Who is your “entry point”?
Legal?
Potential partner?
Other?
3. Analyze forms of business entry
4. Tax and finance/accounting needs
5. Permits and other “doing business” needs
6. Labor and Employment
7. Contracting – memorializing the “deal”
8. Regulatory Compliance

PERFORM LEGAL DUE DILIGENCE: RETAIN LEGAL COUNSEL

- **Importance: lawyer as counselor**
qualified, trust and credibility
- **Initial research**
You are competing in this beauty contest
- **Issues to be discussed**
 - Firm size and experience, individuals who will handle the account
 - Billing rates, etc.
 - Substantive areas
 - Cultural Sensitivity
 - Well-connected

CORPORATE CONSIDERATIONS

- Location (each state has its own corporate law [but many similarities])
- Legal entity forms (no minimum capital/equity required)
 - Corporation
 - Limited liability company (LLC)
 - Partnership (general or limited partnership)
- Taxation
 - Corporate/company taxation: cooperate with an accounting firm
 - Personal taxation (income, estate)
- Management and HR
 - Immigration? Employment at will, Right to work?

LABOR & EMPLOYMENT / HR

- Right to Work – organized labor
- Employment at Will – ER's right to terminate
- Employment Contracts & Work Rules
- Immigration – visa requirements

Contract Drafting – Laws in the U.S.

Different Legal Systems:

- Many laws at state level (50 states – sometimes significant differences)
- Historically, **Common Law** (case law)
- Freedom of contract

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- Do not use contracts from home and simply translate them
- Litigation in U.S. is costly and very time consuming, often unpredictable (right to trial by jury)
 - *Arbitration is often a better solution – consider inserting an arbitration clause*
 - *Have the agreement pre-determine the place of litigation/arbitration and applicable law*
- Cover special “risk” issues:
 - IP – **big issue**: protect your ownership and use interests
 - products (for defects) liability,
 - allocation of risk between parties/ indemnification/ compliance

THANK YOU!

**I WILL BE PLEASED TO
ANSWER ANY QUESTIONS
YOU MAY HAVE.**