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International Government Contracting Workshop: Immigration, Tax, and Labor Law

What You Need to Know

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- Popular Myths
- Your Responsibility
- Immigration
- Labor Law
- Foreign Tax Law
- US Tax Considerations

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Popular Myths



- Americans can travel anywhere without special requirements
 - Some countries MAY grant easier requirements to tourist visits or business visits
 - Other countries MAY NOT grant special privileges for entry
 - Even protected status such as SOFA has a requirement for entry
- Foreign labor laws don't apply to Americans
 - If an individual performs works, per the country's definition, without any protected status, local labor law must apply
 - Sometimes local labor law applies, regardless
- Americans don't pay foreign tax for stays of less than 183 days.
 - While it may be a rule of thumb in some countries, it may not apply to work
 - Countries may require tax payment for lesser periods or from day 1 if work is being done for a permanent establishment

Most host country requirements apply to YOU!

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Your Responsibility



Who, what, when, why, how?

- **WHEN:** You should consider requirements before pursuing work
- **WHY:** Failure to comply with host country laws can result in
 - Deportation or detention
 - Fines, penalties, interest, bar from doing business, damage to reputation
- **WHAT:** Consider both travel and assignments overseas
 - Different requirements based on citizenship, activity, and length of stay
- **WHO:** All employees, contractors, and consultants
- **HOW:** Consult with functions within your company
 - Global mobility (or HR), law, security, export, infosec, risk management
 - Engage outside provider for advice

It's **NOT** better to beg for forgiveness than to ask for permission

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Immigration



- Understand the country rules for entry
 - Is there a requirement for business meetings?
 - What kind of work, if any, can be performed without a permit?
 - Understand that initial travel and later execution will have different requirements
- Is a sponsor needed for a visa, residence permit, or work permit?
 - Who can sponsor? Do you need an entity or registered branch? Can a third party sponsor?
 - Don't assume that the prime can or will sponsor a subcontractor
- Understand the lead time and process
 - 30 day transition is a challenge when a work visa takes 2-3 months

- Protected Status
 - Not all government contracts grant special status (e.g. SOFA, LOA)
- Exemptions vary by country
 - Special process for entry or work documentation
 - Exemption from host country tax
 - Relief from host country labor law
- Does not mean no requirement
 - Usually a government-issued document
 - Often a host country-issued accompanying stamp
- Ensure you have special status written in your contract

Don't assume you are exempt because it's a govt. contract!

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Labor Law



- Working Hours
- Overtime Requirements
- Time off (vacation, bank holidays)
- Mandatory Health Coverage
- Wage Protection System (WPS)
- End of Service Gratuity
- Other Accommodations

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Foreign Tax Law



- Understand the tax triggers in the host country
- Understand any company tax responsibility
 - Compliance cost – employer portion of any tax
 - Cost of administration
- Understand the required process for remitting tax & filing returns
 - In-house payroll setup
 - Hire a third party remit
 - Provider calculates

- Tax assistance is nearly always recommended if an employee will have a foreign tax liability
- Tax Equalization
 - Goal that assignment neither impact employee or create a windfall
 - Company withholds a hypothetical tax
 - Company remits actual foreign and US tax
 - Reconciles against
 - Ensures compliance with DFARS
- Tax Protection
 - Employee self-identifies
 - Analysis is performed
 - If employee is impacted, reimburse the amount of the impact
 - Good solution when assignment package exceeds the exclusion amount

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U.S. Tax Considerations



Department of the Treasury
Internal Revenue Service

- Business expenses for **short-term** assignments are tax-deductible
 - IRS defines short-term or temporary assignment as one to a single location that is realistically expected to last (and does in fact last) for 1 year or less
 - Reimbursements are tax-deductible, but any allowances paid as cash in the employee's paycheck are taxed as usual
- Business expenses for **long-term** assignments are NOT tax-deductible
 - Employee assignment reimbursements, payments made on the employee's behalf, and allowances are reported as taxable.
 - Taxes are withheld unless a person is tax equalized or has a 673 and W-4 marked as "exempt" on file
- Beware of serial assignments...

Don't game the IRS!

- Compensation earned overseas is exempt up to \$102,100 for 2017
- Must be a bonafide resident or meet the physical presence test
- Risks:
 - File 673/W-4 expecting to meet the physical presence test, but then circumstances change and the employee doesn't meet requirements
 - Needing to extend tax filing until the physical presence is met.
 - Gaming serial short-term assignments to double-dip
- Two countries to be wary of!
 - United Kingdom: Employees who work on intelligence work, are covered under SOFA and are paid out of a USG treasury account are NOT eligible
 - Australia: Employees who work under a closing agreement are NOT eligible

Refer to IRS Pub 54 to ensure eligibility

Questions?

