Global considerations for mid-market companies

Letter and spirit of compliance
Qualifying to do business

This article is part of a series devoted to global expansion considerations for US businesses, particularly those in the middle market segment

There are many factors that can influence a company's decision whether to expand internationally. For example, market studies can help an organization determine if there is potential demand for its products or services. A bank or a body of investors can weigh in on the financial feasibility. But no matter what counsel is received, a company that seeks to begin doing business in a new locale should respect the authority of the local authorities.

There are a number of different categories in which rules and requirements impinge upon the plans of potential business owners. And they vary from place to place in their construction, their intent, and their enforcement. On paper, rules and regulations are public resources: You are deemed to be knowledgeable about them, you can look them up, and you resolve to obey them. The nuances come when you try to interpret these rules and regulations, which can be a challenge in your home country, let alone in a new and unfamiliar environment. Indeed, failure to comply with statutory obligations can have potentially severe consequences for the company, its shareholders, or its directors — or all three.

Adhering to the requirements of an overseas business environment is about more than checking boxes. It's a visible way to show respect to the people, institutions, and culture in a country where a company is bidding to make a new home. Alongside investments in community involvement, the hard work of understanding and adhering to legally required qualifications can remove business roadblocks and set a path for success for a new company.

International, local business, and industry-specific requirements

Knowing the lay of the land and region you are operating in encompasses local knowledge of people, authorities, customs, and the local suppliers and other business partners who operate under the same set of regulatory conditions. Some of the people with whom an expanding company does business may be able to help sort out the particulars. But others will be competitors with their own priorities. A company should take it upon itself to:

- Review and understand local commercial requirements and regulations
- Comply with local registration, filing and/or disclosure requirements
- Determine the terms and operation of required local licenses, permits, and operational agreements
- Assess the business and tax requirements that the company and its contractors should consider with respect to employment, immigration and international assignments, statutory reporting, and employment structure verification
- Review the employment tax and social security regime, and payroll requirements
- Identify intellectual property and non-disclosure agreement rules in the context of efficient global tax planning and review the necessary filings
- Evaluate the terms of real estate ownership and rental agreements from both a tax and business perspective
- Assess the impact of duty and import requirements for bringing goods into the new market, as well as product registration or other applicable requirements.

In some locations, local government representatives may reach out to be helpful as part of a business development program. In others, the company may be left to depend on the resources it can acquire or hire. But the stakes are the same.

Registration and licenses

Depending upon the location and the nature of the business, it is likely an overseas expansion will incur various fees. Knowing the agencies that administer them, how, and when is important, especially when import-export authorization is involved. Failure to adhere with customs regulations might place a company's entire value chain in limbo.

Core considerations in this area include:

- Identifying the requisite local customs and other government agency registrations, including importer/exporter licenses and product licenses, required to clear the goods through customs
- Determining whether bank guarantees or bonds are required, and on what terms
- Reviewing formal license requirements and establishing timeframes for registration
- Identifying and satisfying employment and immigration registration requirements
- Evaluating the need to apply for payroll and other tax allowances based on the local legal status of mobile or inbound employees
- Assessing the nature of services needed, such as notarization, legalization, apostille, and official translation and reaching out to the right advisors to assist
- Securing specific authorizations, licenses, and permits required to do business in a certain location

Remember that whatever is on paper in statutes or published regulation, that's likely only the beginning of how companies operate under the new location's regulatory regime.

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Corporate and regulatory issues

An expanding company that is conscientious about properly qualifying to do business in a new locale can earn the stability, process knowledge, and time it needs to perform as intended. The effect of falling short in this effort can manifest over the long term. But the need to get it done is immediate. Companies should approach the regulatory challenge by:

- Reviewing corporate tax and other regulatory requirements for establishing the business platform and incorporation process, including determination of the appropriate business structure legal form (entity type, branch, representation office, etc.)
- Meeting ongoing corporate compliance requirements such as filing, registration, publication, and reporting needs
- Confirming that each compliance system duly addresses the requirements of local cultures, market challenges, and the statutory requirements of different countries where the corporation operates (for example, foreign corruption/cartel laws, anti-money laundering requirements)
- Evaluating employment tax law and obligations toward employees and contractors
- Quantifying which direct and indirect employer-related taxes and social security contributions apply
- Identifying specific requirements pertinent to the industry, such as operational permits and authorization or competition/anti-trust rules
- Reviewing environmental requirements and determining the tax treatment of the costs to comply
- Determining which initial registrations and filings are required at the provincial, state and/or local level — for example, income, payroll, sales/use tax, value added tax, and others

Conclusion

No reputable company sets out with the intention of violating local country rules and regulations. But in the global corporate landscape, obeying the rules is seldom simple, and satisfying this requirement takes more than good intentions. It takes a deliberate investment in research and counsel.

Ask: What could failure look like? How might unseen or misunderstood regulatory hurdles interfere with the business plan that so much effort went into?

Ultimately, one of the most valuable resources in an overseas expansion is the same for companies' US-based operations: people who know the local landscape first-hand. There is a degree and richness of knowledge that only local experience can provide. Fortunately for many companies, thanks to globalization, those local resources may turn out to be people who are already familiar to the home office.

Perspectives

This report is the fourth in a series on global expansion and just one example of Deloitte research on topics of interest to mid-market private companies. Presented by Deloitte Growth Enterprise Services, Perspectives is a multifaceted program that utilizes live events, signature reports, research publications, webcasts, and other vehicles to deliver tailored and relevant insights in an integrated fashion.

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