



# GMS Flash Alert

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## United States – Totalization Agreement with Hungary Enters into Force

The new Social Security Totalization Agreement (“the Agreement”) between the United States and Hungary entered into force on September 1, 2016.<sup>1</sup> The Agreement was signed at a ceremony in Budapest, Hungary on February 3, 2015.

The agreement with Hungary is the 26<sup>th</sup> social security totalization agreement of the United States to enter into force.

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### WHY THIS MATTERS

The primary purpose of the Agreement is to help ensure that workers on international assignment from one country to the other will not pay double social security taxes. This can help to mitigate the costs of international assignments.

The Agreement also provides for the coordination of benefit payments by the U.S. and Hungary for individuals who have paid social security taxes in both countries during their careers, but who have not accrued sufficient periods of coverage in one country to qualify for benefits.

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### Important Terms

The provisions of the Agreement are similar to most other such agreements to which the United States is a party. The general rule is that a worker will be covered by the social security system of the country in which he or she is working. However, if the worker meets the requirements of the “detached worker exception,” then he or she can instead remain covered by the home country social security system.

The detached worker exception requires that:

- the worker be sent by a home country employer to work in the other (i.e., host) country;
- the employment relationship with the home country employer continue while the worker is on assignment in the host country;
- the worker be sent to work in the host country for a temporary period not to exceed five years.

The employer can obtain a Certificate of Coverage with regard to the worker's assignment in the host country, preferably before the assignment commences.

The Agreement allows that affiliates of a U.S. employer will be treated as the employer, so long as employment by the affiliate would also be subject to home country social security taxation. This provision accommodates employers that transfer international assignees to an affiliate before sending them on assignment.

The Agreement includes a transition rule which states that for individuals already present in the host country, whether as employees or self-employed, the five-year limit on coverage by the home country does not take into account periods in the host country prior to the date that the Agreement entered into force.

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## KPMG NOTE

For example, if a U.S. person has been working in Hungary since July 1, 2014, and expects to be there until June 30, 2020 – a period of six years – she would still qualify for a Certificate of Coverage because the period from the date that the Agreement entered into force (September 1, 2016) until the anticipated end of her assignment is less than five years in duration.

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## Other Notable Provisions in the Agreement

### ***Individuals from Third Countries***

If an assignee is sent from a third country to the host country, rather than directly from the home country to the host country, the Agreement will still apply if the service in the third country was subject to mandatory coverage in the home country.

### ***Self-Employed***

Self-employed persons will be covered by their home country self-employment tax, provided the period of self-employment in the host country is not expected to exceed five years. Under most such agreements, self-employment is subject to the laws of the country where the individual is ordinarily resident.

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## KPMG NOTE: 3.8-Percent Net Investment Income Tax and 0.9-Percent Additional Medicare Tax

The Agreement is the second to enter into force since the 3.8-percent tax on unearned income, known as the Net Investment Income Tax (or NIIT), was enacted.<sup>2</sup> The NIIT is referred to in the Internal Revenue Code as the *Unearned Income Medicare Contribution*. However, the NIIT is not part of FICA<sup>3</sup> and is not covered by social security totalization agreements that were in force at the time of its enactment.

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Due to the reference to Medicare in connection with the NIIT in the Internal Revenue Code, some commentators had surmised that future agreements might encompass this tax. However, the language of the Agreement with Hungary mirrors that in other such agreements, and does not encompass the NIIT. Thus, workers not subject to FICA due to the application of a totalization agreement may nonetheless be subject to the NIIT.

The Agreement, however, will apply to the 0.9-percent Additional Medicare Tax payable by certain higher-income taxpayers because this tax is part of FICA.

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## FOOTNOTES:

1 For the text of the Agreement, please see the U.S. Social Security Administration Web site at: [https://www.ssa.gov/international/Agreement\\_Texts/hungary.html](https://www.ssa.gov/international/Agreement_Texts/hungary.html) .

2 The NIIT and the 0.9-percent Additional Medicare Tax, which applied starting in 2013, were introduced by the 2010 *Patient Protection and Affordable Care Act* and the *Health Care and Education Reconciliation Act of 2010*.

3 “FICA” stands for Federal Insurance Contributions Act. The acronym is commonly used in the U.S. when referring to the combination of the Social Security tax and the Medicare tax.

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