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SOCIAL SECURITY

Uganda's Expatriate Social Security Considerations

Keeping you informed

1. Introduction

Expatriate workers often face more difficulty with regard to social security coverage and entitlement to benefits compared to their local counterparts. This is because social security regimes are established under domestic legislation that leans more towards domicile concerns. For this reason, the International Labour Organisation has been at the forefront of encouraging countries to sign up to conventions and standards committing to uphold the equality of treatment for social security purposes for all workers regardless of whether they are domestic or expatriate staff. This article gives an overview of the key social security considerations for expatriates in Uganda's private sector.

2. Overview of Uganda's social security retirement regime

There are 3 main social security retirement schemes in Uganda namely voluntary private, mandatory contributory and non-contributory. The National Social Security Fund ("NSSF or the Fund") is the only mandatory contributory retirement scheme in Uganda. It covers all employees in the private sector including state agencies excluded from the non-contributory public sector pension regime. The Fund established under the provisions of the NSSF Act Cap 222 is a provident fund meaning it pays out in lump sum members' retirement benefits when due.

Organisations can also operate supplementary voluntary private retirement benefit schemes in addition to the mandatory contributory NSSF. Government of Uganda employees are covered by the non-contributory public service pension arrangement financed directly by tax revenues from the consolidated fund. Through the Ministry of Public Service, periodic pension payments are made to retired civil servants including members of the armed forces.

Since 2010, several measures to reform and streamline Uganda's retirement benefits sector have been pursued by the government. In 2011, the Uganda Retirement Benefits Regulatory Act was enacted establishing the Uganda Retirement Benefits Regulatory Authority ("URBRA"). The URBRA eventually set up in 2013 oversees the regulation, establishment, management and operation of retirement benefits schemes both in the private and public sector.

It had been expected that Uganda's pension sector would be liberalised by initially breaking up the monopoly on the mandatory contributory retirement benefits scheme currently run by the NSSF but this appears to have stalled. A draft law to effect this change titled the Uganda Retirement Benefits Sector Liberalisation Bill was tabled in Parliament in 2011 for deliberation. Following opposition by some stakeholders especially the National Organisation of Trade Unions, this legislation was abandoned. The Uganda Retirement Benefits Sector Liberalisation Bill, 2011 had proposed among others to liberalise Uganda's retirement benefits sector whereby employees in the private sector could opt for other licensed schemes other than the NSSF. It had also recommended the extension of coverage of social security to all employees in the formal sector as well as the portability and transferability of retirement savings to other registered schemes in Uganda and the East African Community.

The government has recently tabled before Parliament for deliberation proposed amendments to the NSSF Act. The NSSF (Amendment) Bill, 2019 offers among others to make social security retirement contributions compulsory for all

workers in the formal sector but also allows employees in both the formal and informal sector to make additional voluntary contributions.

The Bill also seeks to change the timing of taxation to the point of members exiting the fund and receiving their retirement benefits subject to some exceptions. NSSF members are currently making retirement contributions to the Fund out of their taxed income.

3. Overview of the National Social Security Fund

NSSF presently has the monopoly over the mandatory contributory retirement benefit scheme in Uganda. All employers with 5 or more eligible employees must register with the Fund as contributing employers. It is also possible for an employer with less than 5 employees to register with the Fund under the voluntary window. If the proposed amendments to the NSSF Act pass, employers with one or more eligible employees will be required to register as contributing employers for NSSF purposes. This is intended to expand the reach of social security coverage in Uganda.

The NSSF Act defines eligible employees as those employees above the age of 16 years but below the age of 55 years except for employees in excepted employment set out in the first schedule, non-resident employees and employees not employed in Uganda. The Minister responsible for NSSF however has power to declare any other persons outside the foregoing category as eligible employees for NSSF purposes.

NSSF presently has the monopoly over the mandatory contributory retirement benefit scheme in Uganda. All employers with 5 or more eligible employees must register with the Fund as contributing employers.

Contributing employers must remit standard and special contributions to the Fund in respect of their employees. A standard contribution of 15% of eligible employees' wages must be made to the Fund within 15 days next following the last day of the month the relevant wages are paid. The employer can contribute the entire 15% or deduct 5% of the employees' wages topping up the remaining 10%. The penalties are dire if contributions are not made timely.

Contributing employers must also make a special contribution equivalent to 10% of ineligible employees' wages to the Fund within 15 days next following the last day of the month the relevant wages are paid. This contribution is incurred by the employer. Ineligible employees include but are not limited to non-resident employees who are not eligible employees or employees of or above the age of fifty-five years in respect of whom the Minister responsible for NSSF has specifically designated.

Please note that while special contributions are credited to the Fund reserve account, standard contributions are reflected on the member's account. This means that special contributions cannot be claimed as a benefit by an employee/member on exit from the fund while standard contributions can.

4. NSSF contributions for expatriates

As we expound further below, all contributing employers must make special or standard contributions to the NSSF in respect of all expatriate workers unless specifically exempted. The quantum of contribution and whether the expatriate can claim their retirement benefit contributions on emigration from Uganda depends on whether the expatriate in question is an eligible or ineligible employee for NSSF purposes.

An expatriate is an eligible employee and therefore registerable as a member of the Fund if he/she is resident in Uganda. The NSSF Act defines a non-resident person as an employee not ordinarily resident in Uganda who is to be employed in Uganda for a continuous period of not more than 3 years or such longer period as is allowed in any particular case by the Managing Director of the NSSF. The Act does not define "not ordinarily resident in Uganda'. So we take this to imply someone who has come to Uganda for a limited period of time specifically for work and who will return to their home abroad at the end of this period.

Given that the NSSF Act does not explicitly designate who a resident person is, it can be inferred from the definition of a non-resident person that an expatriate is a resident person for NSSF purposes if he/she is expected to work in Uganda for a continuous period of more than 3 years. A resident expatriate is eligible for membership to the NSSF while a non-resident is ineligible. We would like to note that the NSSF does not strictly enforce the above criteria and there are instances expatriates are registered as eligible members of the Fund even if they are to stay and work in Uganda for a period of less than 3 years.

a) *Eligible expatriate employees*

A standard contribution of 15% of the eligible expatriates' wages must be made to the Fund within 15 days following the last day of the month the relevant wages are paid. The employer can contribute the entire 15% or deduct 5% of the employees' wages topping up the remaining 10%.

b) *Ineligible expatriate employee*

Contributing employers must make a special contribution of 10% of the ineligible expatriates' wages to the Fund

within 15 days following the last day of the month the relevant wages are paid. This contribution is incurred by the employer. Ineligible employees include but are not limited to non-resident employees who are not eligible employees or employees of or above the age of fifty-five years in respect of whom the Minister responsible for NSSF has specifically designated.

5. Exemption from standard and special contributions

Under the provisions of the NSSF Act, an employer can apply to the NSSF Managing Director ("MD") for exemption from making either standard or special contributions for expatriate workers. The persons in respect of whom the MD of NSSF may grant a certificate of exemption to an employer are:

- Persons not ordinarily resident in Uganda who are liable to contribute to or are or will be entitled to benefit from the social security scheme of another country, if that scheme is approved by the Minister responsible for NSSF for this purpose;
- Persons not ordinarily resident in Uganda who are liable to contribute to or are or will be entitled to benefit from any scheme associated with their employment under which benefits comparable to the benefits under the NSSF Act are provided, if that scheme is approved by the Minister responsible for NSSF.

The process of applying for approval of the social security scheme of another country by the Ugandan Minister responsible for the Fund is however lengthy and the outcome is uncertain.

6. Emigration grant

An emigration grant is due to an employee who emigrates permanently from Uganda to a country with no reciprocal arrangement under the NSSF Act. If the retirement benefit contributions have been paid in respect of a member to the fund during 4 financial years, the expatriate is entitled to the full balance of his or her account in the Fund; and in any other case, he or she is entitled to his or her own 5% contribution, and the rest comprising the employer's 10% contribution is paid into the reserve account.

7. Conclusion

Though the NSSF Act contains provisions for reciprocity of social security arrangements, we are not aware that these have been operationalised. The transferability and portability of retirement benefits to their home country schemes when expatriates are emigrating from Uganda is currently not possible though there are efforts amongst East African Community countries to effect this. It would also be fair given that secondments are usually short term that expatriates unlock their entire contribution to the Fund at emigration regardless of the number of years they have contributed to the NSSF. At the moment, expatriates can only claim 5% benefit representing their own contribution to the Fund unless they have been members to the Fund for 4 or more years in which case they would also be entitled to the employers10% contribution.

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At Deloitte, he lived and worked in Uganda, Kenya, Tanzania and the United Kingdom for over 6 years and subsequently became the firm's chief of staff for the Energy and Resources Industry Group seeing him play a lead advisory role in Uganda, Kenya, Tanzania, Mozambique, South Sudan, Somalia and Ethiopia.

Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

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Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

Bill is a graduate of Oxford University and completed his inspectors' training with the UK Inland Revenue in 1989. ■

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John leads the public policy and advocacy practice at the firm and combines unique public and private sector experience.

Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

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Dickens leads the oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holding Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

Dickens was instrumental in UNOC's formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

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He joined Cristal Advocates from Kizza, Tumwesige, and Ssemambo Advocates. He previously worked with the Advocates Coalition for Development and Environment (ACODE). He also undertook a traineeship with the oil and gas division of Webber Wetzel in Johannesburg, South Africa.

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