# Taxation of expatriate employees

## The case of Uganda

### 1. Introduction

This article looks at some of the key tax issues that arise for businesses in Uganda in relation to cross-border transactions with emphasis on expatriate employees. The aim is not to provide a comprehensive guide to all relevant aspects of tax law and practice, but to highlight some key issues of which business owners and managers should be aware. Previous articles in the series have covered cross-border transactions in goods, services and transfer pricing. They may be found on the Cristal Advocates website ([www.cristaladvocates.com](http://www.cristaladvocates.com))

### 2. Expats

Internationally mobile employees ('expats') are a normal feature of business for Ugandan subsidiaries of multinationals. As the country moves steadily towards oil development, the number is likely to increase, at least in the short to medium term until more Ugandans become experienced in the oil and gas industry.

Expats can be rather demanding: they are picky about where they live, grumble about power cuts, medical facilities, schools and poor roads, worry about spouses and offspring and expect all kinds of pampering that your local staff wouldn't dream of asking for[1]. Their tax affairs are also likely to be more complicated and entail additional costs in terms of compliance.

1 The author was an expat for many years, though hopefully not too troublesome to his local colleagues!

## 3. Resident or non-resident?

The first critical issue is to establish the residence of an expat for tax purposes. Residence is important because residents are taxable on their worldwide income, whilst non-residents are taxable on only their Ugandan source income.

A resident expat who has non-Ugandan source investment income and gains will be required to file a tax return and potentially will have additional tax liabilities if any tax payable in the source jurisdiction is insufficient to offset the Ugandan income tax on those amounts[2].

Under domestic tax law, the critical issue is likely to be the time that the individual spends in Uganda.

a) An employee who is present for 183 days or more in any 12-month period will be resident, from the date of first arrival until the date of final departure.
b) An expat who is present on average for more than 122 days in a year and the preceding 2 years will also be resident in Uganda from the date of first arrival until the date of final departure.

It is possible that some expats may be tax resident in more than one jurisdiction simultaneously. Such complex situations need to be addressed on a case by case basis.

## 4. How will income tax be calculated?

Under the Income Tax Act[3], most payments and benefits in kind which are provided to an employee are taxable, including the benefit arising from share options arrangements, accommodation, vehicles available for personal use, hardship payments, etc.

A limited range of exemptions are provided, including medical expenses, reimbursement of business travel costs, contributions to a retirement fund, etc. Where secondment arrangements are used (see below) it is important that the team responsible to ensuring correct application of Pay As Your Earn ("PAYE") in Uganda has a good understanding of all the benefits provided to ensure that the correct amount of tax is accounted for.

Frequently, expats remuneration will be 'equalised' so that their employment income after tax is equivalent to what it would have been if they had stayed in their home jurisdiction. This takes into account any difference in tax rates. A hypothetical home jurisdiction tax calculation is prepared to determine what the expat's net remuneration after tax would be in their home jurisdiction and then the income in Uganda is calculated which will result in the same net amount after deduction of PAYE.

Where non-cash benefits, such as accommodation, are provided, the expat will usually receive an uplift in the local remuneration to reflect the Ugandan tax applicable to the benefit, so that (s) he remains equalised on an after-tax basis.

In cases where an employee is non-resident for tax purposes in Uganda but is taxable on local sourced remuneration from employment here, Uganda will have the right to tax the income. The jurisdiction where the individual is resident may provide an exemption from income tax, or, credit for Ugandan income tax paid against the home jurisdiction income tax due.

## 5. Impact of double tax treaties

Double tax treaties are agreements usually between two countries which are designed mainly to protect against the risk of double taxation where the same income is taxable in both jurisdictions. As noted above it is possible that an expat may be tax resident in Uganda and another jurisdiction under their respective domestic laws and in such cases a double tax treaty may be helpful by providing a 'tie-break'[4]. A treaty will also usually state that a resident of one of the signatory states will only be taxed on employment income in that state unless the employment is carried out in the other state, in which case it may be taxed there.

Double tax treaties may also provide an exemption from Ugandan tax in certain narrowly defined circumstances. For example, under the tax treaty with the UK[5] a UK resident can be exempt from Ugandan income tax provided that:

- (s)he is present in Uganda for a period or periods not exceeding in the aggregate 183 days in any period of twelve months; <u>and</u>

2 Via the foreign tax credit mechanism set out in section 81 of the Income Tax Act.

3 See in particular Section 19 and the valuation rules provided in the Fifth Schedule

4 At the time of writing treaties are in force with Denmark, India, Italy, Mauritius, Netherlands, Norway, South Africa, the UK and Zambia.

5 Article 16 Dependent Personal Services

- the remuneration is paid by, or on behalf of, an employer who is not a resident Uganda; and
- the remuneration is not borne by a permanent establishment or a fixed base which the employer has in Uganda.

## 6. Directors

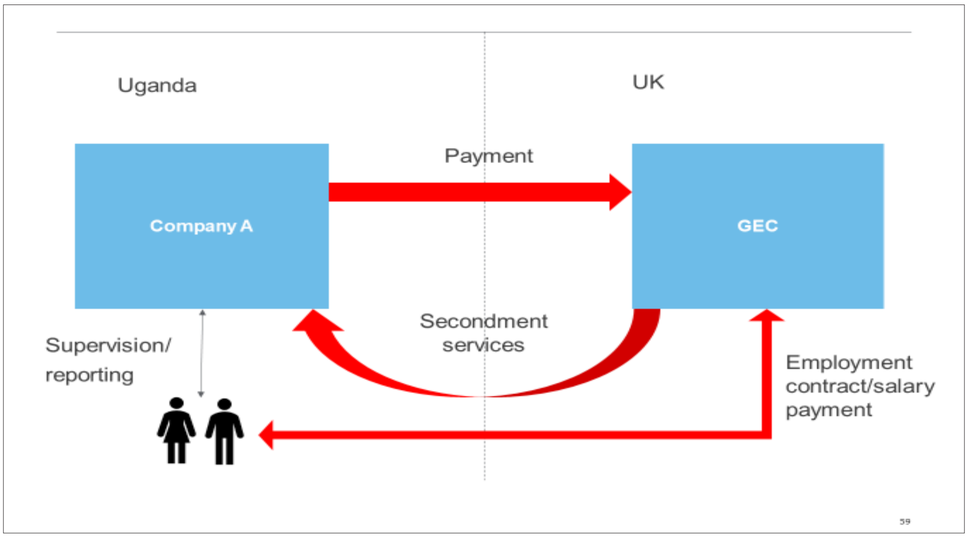
Many Ugandan companies have foreign directors who only come to the country for the purposes of attending board meetings. Fees received by directors of a Ugandan company are subject to tax in Uganda under domestic law and any relevant double tax treaty regardless of where the director is tax resident.

## 7. Secondment arrangements

In the past it was not uncommon for expats to be seconded between companies in a multinational group on an *ad hoc* basis, often with individually negotiated packages[6]. The lack of a standardised approach was difficult to administer and often expensive, so over the last 20 years or so, most multinationals have moved to a centralised and more uniform approach.

This usually involves the use of a Global Employment Company ('GEC') which holds employment contracts with globally mobile employees. This structure makes it easier to ensure that employees are treated fairly with no 'special deals' and complex areas like share options, pensions and tax equalisation are dealt with consistently.

The GEC will then provide its employees to the relevant jurisdiction under a secondment agreement which provides that they will act under the supervision and control of the entity to which they are seconded. In the following example, employees of a UK resident GEC are seconded to Company A in Uganda.




As Company A is the effective employer of the secondees, it will be responsible for operation of PAYE on their remuneration. It will also need to deal with NSSF and work permits (see below). The GEC however also retains a close contractual relationship with the expats and will deal with such aspects as pensions, share options and payroll calculations.

Applying transfer pricing principles (see our previous article http://cristaladvocates.com/?mdocs-file=22101 ) the payments by Company A to the GEC will need to include an administration fee with a profit element as well as reimbursement of the direct employment costs of the expats. The administration fee will be subject to Ugandan withholding tax at 15% and reverse charge VAT at 18% will need to be accounted for by Company A[7].

## 8. National Social Security Fund

Many expats will make social security contributions in their home jurisdiction in order to secure entitlement to state pension and other benefits, even in periods when they are non-resident for tax purposes.

However, contributions to Uganda's National Social Security Fund ('NSSF') are also likely to apply to any expat who is expected to be employed in Uganda for more than 3 years[8]. Where an employee is subject to NSSF, the employer makes a

6 A former colleague, sent to Moscow from the UK in the late 1980s, was reputedly entitled to receive monthly shipments with cassette tapes of his favourite BBC Radio soap opera, The Archers. History does not record how this was taxed.

7 Reverse charge VAT is normally not available for credit as input VAT under the VAT Act.

8 Expats may in theory be exempted, but in practice the NSSF does not give exemptions.

monthly contribution of 10% of cash remuneration and an additional 5% may be deducted from the payment to the employee. The expat is entitled to a refund of all contributions made when (s) he permanently leaves Uganda.

Where expats do not contribute to NSSF, a special contribution of 10% of cash remuneration is imposed on the employer. This is 'special' in the sense that it is not reimbursable to either the employee or the employer at any point: effectively it is a tax.

## 9. Other issues to consider

Short term visitors to Uganda require a visa which can be obtained online or on arrival at Entebbe. This does not entitle the holder to exercise employment. An expat who arrives to work in Uganda will require a work permit. Temporary work permits are issued in the case of an assignment not exceeding 6 months. Longer term work permits (for periods up to 2 years) are available and may be renewed at the discretion of the relevant government bodies (which vary depending on the nature of the business activity in which the expat is involved).

## 10. Conclusion

This article gives a flavour of some of the complex tax and related issues which arise in relation to expat employees.
Ugandan companies which have expats will need to consider carefully:

- tax residence and potential taxation of investment income and gains;
- how remuneration packages are structured;
- how PAYE will be applied;
- the impact of relevant double tax treaties;
- VAT and withholding tax which may apply to ancillary costs (such as administration fees from a GEC);
- NSSF liabilities; and
- Visa and work permit requirements.

Cristal Advocates seasoned team of tax and employment law experts are available to guide you through the complexities. If you any questions, please do not hesitate to contact us.



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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.

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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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