Cristal Advocates

Uganda Compliance Issues for Expatriate Workers

Strength through Diversity

Cristal Knowledge Series

February 2021

1. Introduction

Expatriates refer to those individuals employed in a foreign country. In today's interconnected world, the global mobility of employees is common and encouraged. Companies with mobility programmes do not only attract new talent but also retain it. International companies in Uganda usually facilitate their employees to work in other countries as part of their talent development agenda boosting their business knowledge, skills and exposure to other cultures and markets.

There are benefits that accrue from Uganda inbound expatriates. They bring in skills not readily available thus diversifying the local talent pool in the medium to long term. With the imminent final investment decision for Uganda's crude oil development, it is expected expatriates will initially occupy some critical roles where requisite skills may be lacking progressively improving the capacity of the locals that would eventually take over. As businesses ponder expatriate deployment decisions, this publication sheds light on the key Ugandan compliance issues.

2. Structures for expatriate deployment

3 common structures are used to deploy expatriates. Expatriates in the first instance work for a specified period of time in a foreign country before returning home. In the second instance, expatriates can be paid both in their home and host countries under the split payroll arrangement. Expatriates can also be employed in a country where the sending employer has no legal presence. There are arising legal and tax consequences of the foregoing 3 that must be considered before choosing the most appropriate structure.

3. The employment relationship in Uganda

Employment exercised in Uganda is principally regulated under the provisions of the Employment Act 2006. Courts in Uganda enforce the rights of expatriates in the same manner as applicable to Ugandan nationals. Clauses in the employment contract are unenforceable at law to the extent they limit or exclude the application of the Employment Act to the detriment of the employee. However, an expatriate can apply to the Minister responsible for labour matters to exclude part or whole of the Act as long as he or she can prove that they have a special arrangement which affords protection that is equivalent to or even better than that provided in Uganda's law.

It is noteworthy that employees recruited at a place of work which is more than one hundred kilometres from their home have the right to be repatriated at the expense of the employer to and from the place of engagement upon termination of duty or death amongst other considerations.

4. Right of entry and work in Uganda

It is illegal for a foreigner to enter, stay and work in Uganda unless that person has a valid work and residence permit or pass. There are several classes of work permits but class G2 applies to expatriates which they must obtain before taking up employment in Uganda. There are punitive consequences for working in Uganda without authorisation. Expatriates cannot however venture into other forms of business or trade without the necessary permits under the law.

5. Tax consequences

The tax consequences for expatriates in Uganda principally depend on whether the individual in question is a resident or non-resident person. Resident persons are taxed on their world-wide income while non- residents are taxed only on income sourced in Uganda. A resident individual is one who has a permanent home in Uganda or is present in Uganda for 183 days or more in a 12month period that begins or ends during the year of income or is present for periods averaging more than 122 days per year for the last 3 years Non-resident individuals do not benefit from the exempt income threshold that is available to resident persons in as far as Pay As You Earn (PAYE) is concerned. Foreign source income earned by a short term resident is however exempt from taxation in Uganda. A short term resident is a resident individual other than a Ugandan Citizen present in Uganda for a period or periods not exceeding two years.

6. Social security

In Uganda, the body in charge of social security is called the National Social Security Fund (NSSF). Employers with 5 or more employees are mandated to register with NSSF. The standard contribution to be remitted by an employer to NSSF on behalf of an employee is 15% of the employee's wages. The employer is legally allowed to deduct 5% from the employee's wages and pay the remaining 10%. However, the employer can choose to settle the entire cost. The expatriate is ordinarily entitled to all the social security contributions at the end of his or her contract when they are leaving Uganda.

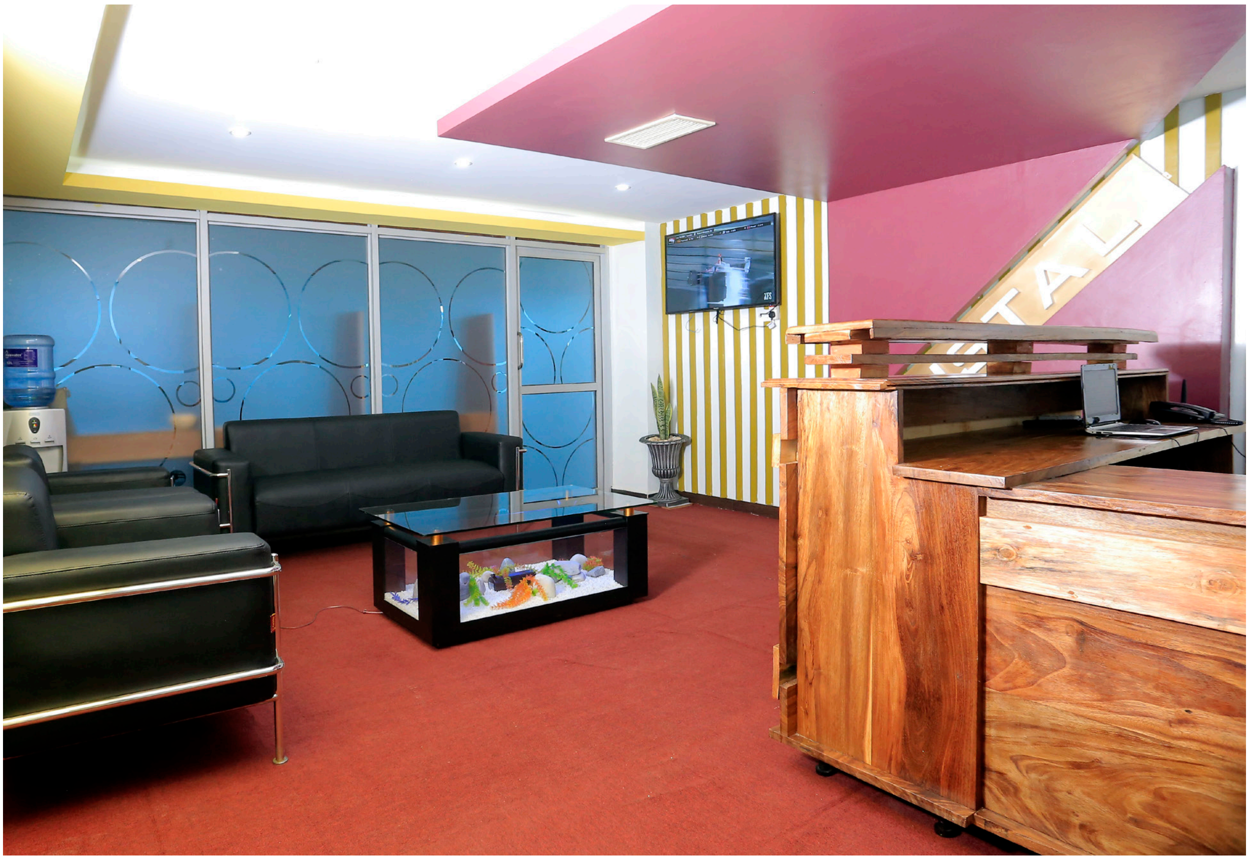
The need to establish whether an expatriate is a resident employee or a non-resident is also important when dealing with social security obligations in Uganda. This is because non-resident employees are exempt from remitting contributions to NSSF. A non-resident employee for NSSF purposes means an employee not ordinarily resident in Uganda who is to be employed in Uganda for a continuous period of not more than three years or such a longer period as approved by the Managing Director of NSSF.

An employer with expatriates who are not eligible for registration with NSSF must however remit a special contribution of 10% of the employee's wages to a reserve account provided by the NSSF. This contribution cannot be claimed by the employee at the end of their tour of duty.

It is worth noting that expatriates can be exempted by the Managing Director of NSSF from making contributions. This can be achieved if the expatriate can prove that they are already making contributions to a similar social security scheme in another country.

7. Conclusion

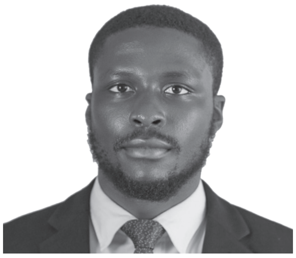
The law governing employment relationships in Uganda is more inclined towards the interests of the employees. Expatriates seeking deployment in Uganda should therefore be reassured of a robust legal framework that would protect their employment rights. The compliance issues notwithstanding, what usually is more challenging for the expatriates is settling into their new work environment. Obtaining suitable accommodation, social clubs, and schools for children and the requisite regulatory registrations can be overwhelming if not planned out well in advance. For more information about pertinent expatriate deployment issues in Uganda, please contact your usual Cristal adviser.



Contacts for this Publication

Gloria Wanyenze
Co-Author
gwanyenze@cristaladvocates.com

Gloria is a Legal Trainee under the firm's Graduate Trainee Program. She holds a Bachelor of Laws Degree from Uganda Christian University. She is finalizing her studies at the Law Development Centre for the award of a Post Graduate Diploma in Legal Practice. ■



Mugerwa Brian Paul
Co-Author
bmugerwa@cristaladvocates.com

Brian is a Legal Trainee under the firm's Graduate Trainee Program. He holds a Bachelor of Laws Degree from Makerere University. He is finalizing his studies at the Law Development Centre for the award of a Post Graduate Diploma in Legal Practice. ■

Denis Yekoyasi Kakembo
Co-Author
dkakembo@cristaladvocates.com
+256 751 834 168

Denis is the Managing Partner at Cristal Advocates where he also leads the energy and tax practice. He is qualified both as a Lawyer and Chartered Accountant with vast experience serving various industries in Sub Saharan Africa. Before joining Cristal Advocates, he had worked for close to 10 years with Deloitte and Touche where he started his career and rose to senior managerial positions.

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.

He holds a Master of Laws degree in Petroleum Taxation and Finance from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■

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Contact us

Cristal Advocates
32 Lumumba Avenue
4th Floor, Padre Pio House
Lumumba Avenue

P.O. Box 1769 Kampala, Uganda
Tel: +256 (414) 671 274
Email; admin@cristaladvocates.com
www.cristaladvocates.com