

International Assignments

Expatriate Bulletin

Southern African Edition

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In this issue we offer you a kaleidoscope of expat matters within a selection of four African countries, Kenya, the Democratic Republic of Congo, Mozambique and Uganda.

Kenya

Employee benefits under the Kenya taxman's scope



As the Kenya economy gathers steam, with quarterly growth rates now exceeding six to eight per cent, the country is enjoying an influx of foreign investment, with foreign companies either setting up shop or expanding their presence.

Kenya is also increasingly popular as a regional office location due to its strong financial services sector, availability of highly skilled human resources and in some measure due to the country's favourable climatic conditions and natural attractions including sandy beaches, and world famous wildlife. Kenya also offers a culturally diverse society with nationalities from all continents represented.

Whatever the driving reasons, most foreign companies setting up shop in Kenya also second employees to

take up key positions in the local company, usually to either protect the parent company's interests or brand, or to fill positions requiring specialised technical skills that are not available locally.

All this of course has not gone unnoticed and enter the Kenya taxman, who has identified rich pickings in the taxation of expatriate benefits.

Consequently, it is imperative that expatriates working in or planning to work in Kenya are well advised on the tax impact of their employment incomes.

Expatriate remuneration usually includes both salary and non-cash benefits. The tax rules applicable to salaries have remained relatively unchanged and most new expatriates

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coming to the country know to a degree of certainty how their salaries will be taxed. The case is, however, different with non-cash benefits. Certain benefits are taxed under vague and subjective application of inadequate tax laws. The rules also frequently change and one really needs to constantly keep abreast of the changes. The next round of changes is due to take effect from 1 January 2008.

Non-cash benefits where the mode of taxation will soon change include benefits related to Employee Share Ownership Plans, company cars and medical insurance cover.

As these benefits are commonly included in an expatriate's remuneration package, both employers and their employees need to be aware of the implications of the new legislation highlighted below.

Employee Share Ownership Plans

Employee Share Ownership Plans (ESOPs) are becoming increasingly popular in the local market as schemes to provide employees with the opportunity to acquire or purchase shares in the company. ESOPs are usually designed to provide incentives to employees, as a reward for good past performance or to align the interests of the employees with those of the shareholders.

Under ESOPs compensation schemes a company offers an employee shares either free or at a discounted price. The company

usually provides that the employee can only acquire the shares after a specified duration of employment with the company. This whole process goes through the following general stages:

- **Grant date** – date on which the employee is granted shares or share options
- **Grant price** – amount to be paid by the employee for shares taken up
- **Vesting period** – a restriction period within which employees cannot exercise their options
- **Vesting date** – first date on which options can be exercised
- **Exercise date** – date on which the employee uses the right to acquire the shares granted by accepting the shares and paying for them if required to make payment

These stages are crucial in determining when this benefit has been realised by the employee.

For a long time the Kenya Income Tax Act (ITA) did not address the taxation of ESOPs. One could only rely on the general tax provisions that relate to income from employment, which subjected benefits to tax. These provisions proved difficult to comply with because there was no guidance on the manner in which the tax was to be applied or remitted.

In 2006 the ITA was amended to provide for the taxation of ESOPs registered with the Kenya Revenue

Authority (KRA), as well as rules on the basis for determining the value of the benefit for tax purposes. There was no mention however, of when and how the tax was payable or the tax treatment of benefits from non-registered ESOPs. Overseas based plans would fall under this category.

Not surprisingly, in 2007 the ITA was amended again. This time the amendments addressed the issue of when the tax was due and payable. The Act provided that the tax point would be the earlier of the vesting date or date at which the option is exercised. The KRA has also issued preliminary guidelines providing that the tax would be deducted by the employer and collected through the monthly Pay as You Earn (PAYE) system.

These amendments, however, raised one other major issue. Using the vesting date to determine when the benefit accrues means there is a risk that an employee may be taxed without having exercised or realised the benefit. As indicated above, the vesting date is the date on which one is permitted to exercise an option and from the stages set out above, it would naturally follow that the benefit would be realised at the exercise date. It is only on this date that the employee takes up the shares and one would expect that the value of the benefit would be determined at this stage for tax purposes.

It is also important to note that exercising the option must not necessarily take place on the vesting

Effective 1 January 2008, an employee with restricted use of a company car can make an application to the KRA for a lower rate of tax on this benefit.

date. Depending on the terms of the offer and the prevailing share price, one may choose to exercise the option one year after the vesting date. Only then can the benefit be said to have been realised. One might never have to exercise the option or end up forfeiting the option upon leaving employment if provided for under the ESOP rules. The changes to the ITA mean that an employee will be taxed on the vesting date, even though the benefit might never be realised.

The amendments have unfortunately also failed to address the issue of the tax treatment of benefits from unregistered ESOPs or those based outside the country, and these continue to remain an area of uncertainty. Hopefully this will be addressed through the KRA practice guidelines or in the 2008 budget amendments.

Company car benefit

The current tax treatment of a company car benefit does not recognise that some employees have little or restricted private use of the vehicle. The value of the benefit for tax purposes is taken to be the higher of the value determined by the rates prescribed by the KRA, based on the car's engine size rating or 2% of the car's initial cost to the employer. This benefit is computed monthly and taxed on the employee.

The KRA-prescribed rates are very conservative and employees who receive this benefit find that they are usually taxed on the purchase price of the vehicle. This means that each year, an employee would be taxed on 24% of the initial capital cost of the vehicle!

Effective 1 January 2008, an employee with restricted use of a company car, can make an application to the KRA for a lower rate of tax on this benefit. The provision does not, however, provide criteria for determining the lower rate and therefore it is up to the employee to present their case to the KRA who will use their discretion to determine the rate to be applied.

This new provision does not also help the employee who has unrestricted access to the motor vehicle. Such employees will still be taxed at 24% of the initial cost of the car provided and would need to evaluate the value of the benefit vis-à-vis the taxes paid to determine whether they may be paying too much for the value received.

The KRA has, however, issued draft guidelines on the application of the provision and has invited comments from stakeholders.

Medical insurance

The value of medical services provided by an employer has been exempt from tax for full-time

employees, provided that the facility is formalised and made available to all employees. If the service is only available to a small number of employees then it would be deemed a benefit and taxable along with other taxable benefits.

Most employers provide medical services through medical insurance covers. The ITA has now been amended to provide that tax exemption will apply only to medical covers provided by an insurance provider approved by the local Commissioner of Insurance.

This is probably the most significant amendment affecting expatriates, because most of them are on international medical schemes provided by companies, usually from their home countries.

These schemes will be considered taxable benefits and therefore come 2008, they face a reduction in their take-home pay.

We recommend that employers contact their tax advisers for guidance on the tax implications of their pay package to ensure compliance, take advantage of tax planning opportunities and avoid very costly penalties for incorrect taxation of employment benefits.

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Democratic Republic of Congo

Labour procedure

An expatriate who intends to work in the DRC must comply with the following formalities:

- A local employment contract must be concluded with a local company.
- A work permit must be obtained from the Ministry of Labour.
- The work permit is obtained after examination of the application by a Commission, based on the qualifications of the expatriate, his experience and the fact that the employer did not find local employees with the same knowledge and experience.
- Obtaining of a resident permit (“visa d’établissement”) from the Immigration Services of the State.
- As soon as the employee is granted a work permit, the employer must then apply (on the employee’s behalf) for a resident permit.
- A resident permit granted to an employee is valid for two years.
- An entry/exit visa (for a seven-month period) must be obtained.

The costs incurred in such a procedure are about USD 2,140 per expatriate employee.

Please also note that foreigners are also required to obtain a “resident card” from the Ministry of Interior Affairs.

Quota regulations

The DRC applies quota regulations, which are:

Categories I to V	Supervisor and junior executives	Senior executives
2% of the total workforce	2.5% of the total workforce	2% of the total workforce

Certain specific waivers can be granted by the Minister of Labour, but within the limit of 50% of the maximum authorised by law.

To our knowledge, to date Labour inspectors have never challenged the presence of expatriates in companies beyond the thresholds above.

Tax issues

Personal income tax (IPR)

Residency rules

The notion of individual tax residence in the DRC is widely defined. Article 62 of Ordinance 69/009 dated 10 February 1969, provides that an individual shall be considered as effectively residing in the DRC if:

- He/she has a real, effective and permanent home available to him/her, or
- If his/her domus, his/her family, his/her centre of vital interests, his/her centre of business are situated in the DRC.

The Tax Authorities shall examine whether the foreigner:

- Has a permanent position in the DRC company and appears on the organisational chart;
- Has business cards displaying the local company name and a local address;
- And so on.



If these elements are verified by the Tax Authorities, the individual shall be considered to be resident in the DRC since his/her entry into the Congolese territory and therefore subject to Personal Income Tax in the DRC on his/her global income related to his/her activities in the DRC since this date.

Taxable basis

The taxable basis of IPR is determined by Articles 47 and following of the Tax Code.

According to these provisions, the various taxable elements of the remuneration are:

- Salary and wages;
- Allowances that do not correspond to the refunding of professional expenses;
- Bonuses and other indemnities;

- Payments made by the employer in the case of breach of contract (notice allowance), excluding damages;
- Benefits in kind for their real value, except for:
 - Legal family allowances (only extra-legal amount is taxable);
 - Housing: not taxable provided the amount of the housing allowance is limited to 30% of the gross salary;
 - Transport: not taxable but amount limited to four taxi (executives) or four bus tickets (other employees) per day; and
 - Medical insurance.

According to the tax doctrine, the indemnities paid in relation to professional expenses (entertainment allowance or assignment allowance for example) are exempted from IPR, provided:

- They are used in accordance with their nature: the Tax Authorities may, in case of control, request evidence;
- They are not overstated as regards the position of the employee concerned; and
- They relate to the activity of the company.

As the Tax Authorities are very strict on these conditions, it appears that it is quite difficult to allow employees a “professional” indemnity, mainly due to the fact that the employee must prove that a certain expense is linked to the payment of that indemnity.

Moreover, the following tax treatment applies to:

Allowance/Benefit	Tax treatment
Airfares within the DRC	Provided airfares are necessary to join the workplace or to perform the activity, they cannot be considered a taxable benefit in kind.
Airfares for expats during contract term	Such expenses cannot be considered a taxable benefit in kind, unless they are clearly stated in the employment contract. However, the Revenue Authorities usually try to challenge that position or to consider that such an expense is not deductible from a corporate tax point of view.
Accommodation and meals supplied by the company	Accommodation: Such a benefit in kind is not taxable as per the Tax Code. However, the Revenue Authorities usually try to challenge that position. Meals: Meals are considered as a taxable benefit in kind, and must be included in the IPR (and IERE) taxable basis.
Vehicle	In theory, the use of a company car is considered as a taxable benefit in kind for the employee concerned. However the Revenue Authorities face difficulties in determining the value of such a benefit in kind. In practice both the employer and the Revenue Authorities add back a portion of the costs incurred (maintenance, fuel) to the corporate tax result (from 10% to 30%)
Telephone accounts	Considered as benefits in kind taxable to IRP.
Any other benefits provided to employees	Costs of domestic servants, water and electricity at accommodation are considered as benefits in kind taxable to IRP. Regarding security and basic maintenance costs (in connection with the accommodation) our opinion is that they must not be considered as benefits in kind, as these costs are incurred in relation to the properties leased or owned by the employer.

Note

The salary of an expatriate employee to be declared (and therefore taxable) in the DRC cannot be less than the legal minimum salary in his/her country of origin.

In the Katanga province, the provincial Tax Authorities have established minimum levels to be declared, depending on the nationality of the expatriate employees.

IPR rate

IPR is calculated according to the following progressive tax table:

Rate basis	Yearly intervals	Difference per interval	Tax per interval	Total IPR	Tax pressure
3%	0 to 72,000	72 000	2 160	2 160	3%
5%	72,001 to 126,000	54 000	2 700	4 860	4%
10%	126,001 to 208,000	82 800	8 280	13 140	6%
15%	208,001 to 330,000	121 200	18 180	31 320	9%
20%	330,001 to 498,000	168 000	33 600	64 920	13%
25%	498,001 to 788,400	290 400	72 600	137 520	17%
30%	788,401 to 1,200,000	411 600	123 480	261 000	22%
35%	1,200,001 to 1,686,000	486 000	170 100	431 100	26%
40%	1,686,001 to 2,091,600	405 600	162 240	593 340	28%
45%	2,091,601 to 2,331,600	240 000	108 000	701 340	30%
50%	Above	-	-	-	-

IPR is limited to 30% of the taxable salary. Then, as the tax intervals are very low, companies usually apply the ceiling rate of 30%, based on the taxable salary.

The indemnities and allowances paid to an employee in relation to a breach of his/her terms of employment are taxed to IPR at the specific rate of 10%.



Modalities of payment of IPR

IPR is withheld at source by the employer and paid monthly by the 10th day of the month following the month of payment of the salary.

There is neither obligation nor possibility for employees to file an individual tax return and to pay IPR directly.

Exceptional tax on expatriates' wages (IERE)

Where a company hires expatriates, it has to pay an exceptional tax called IERE.

We draw your attention to the fact that this tax is not withheld at source on the expatriates' salaries, but taken in charge by the employer.

This tax is not deductible from a corporate tax point of view, except for mining companies.

The IERE is calculated on the IPR basis.

The common tax rate is 25% (except for mining companies, in which case it is 10%).

The IERE is payable according to the same modalities as IPR.

Social contributions

Social contributions are as follows:

- INSS (national insurance fund): 3.5% for the employees' share (withheld at source by the employer) and 5% for the employer's share (9% in the Katanga);
- INPP (national office for the professional training): Ministerial Order dated 14 February 2006, provides that the INPP contribution is:

- 3% for state-owned companies and private companies with up to 50 staff members;
- 2% for private companies with between 51 and 300 employees;
- 1% for private companies with over 300 employees.

The INPP contribution is paid only by the employer.

The social contributions are calculated on the same basis as IPR.

The employee's part of INSS contribution is withheld at source by the employer and all INSS and INPP contributions are paid monthly.

Expatriate employees are not exempted from paying such social contributions.

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Mozambique

Mozambique's new labour law and employment of foreign workers

The past three years have seen a major reform of Mozambique's core legislation by the government of that country. In 2003 new corporate and individual income tax codes were enacted, a new commercial code came into force in 2006, and, most recently Parliament has approved and enacted a new labour law.

This new Mozambican Labour Law was approved on 1 August 2007 and came into force on 31 October 2007.

A main focus of this new legislation is a revision of the rules relating to employment of foreign employees, which we believe will have a significant impact on foreign investment into the country.

In terms of the legislation, when contracting foreign employees the employer must communicate this fact to the Minister of Labour or an entity to which the Minister has delegated this competency.

However, this mere communication of employment of foreign employees is limited to the following quotas (percentage) according to the enterprise classification established in the Labour Law:

- 5% of the total number of employees in large companies (large company is defined as an enterprise employing more than 100 employees);
- 8% of the total number of employees in medium-sized companies (medium-sized company is defined as an



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enterprise employing more than 10 but not more than 100 employees); and

- 10% of the total number of employees in small company (small company is defined as an enterprise employing up to 10 employees).

The Labour Law also foresees special treatment for foreign individuals employed under investment projects duly approved by the Government, including the employment of a certain number of foreigners.

In both instances – employees within the percentages indicated above, and employees foreseen in investment projects – the company must merely issue a notification to the Minister of Labour, within 15 (fifteen) days after the entry of the foreign individual into Mozambique.

In all other instances, e.g. hiring of foreign employees over and above the percentages legally defined, the company is required by law to apply for a work permit authorisation from the Ministry of Labour.

The process and requirements for such work permit applications will be defined by new regulations yet to be approved by Government. Note, however, that the new Labour Law indicates that such work permit applications will have to demonstrate that there are no Mozambicans to fill the post/function in question.

This effectively means that, in principle, the new regulations to be passed by Government for the work

permit applications will require the company to prove that it tried to find a Mozambican for the position. This could mean the launching of recruitment processes prior to applying for the work permit.

Good news in terms of taxation of foreign employees is Mozambique's recent signing of a Double Taxation Treaty with South Africa, ratification of which by the Parliaments of both countries is expected early in 2008. This treaty will further facilitate the employment of South African individuals in Mozambique and vice versa, as in principle it will reduce or even waive the risk of double taxation of employment income in these two countries.

For further clarification or information on the new Mozambique Labour Law or any other aspect of the Mozambique tax environment, contact PwC in Maputo.

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Uganda

Immigration controls and taxation of expatriates

Immigration controls are an indispensable inconvenience; nonetheless, any foreigner wishing to legally take up employment in Uganda must comply with them. In Uganda, the Uganda Citizenship and Immigration Control Act, Cap 66 (the Act) governs entry into the country.

Employees on short-term contracts

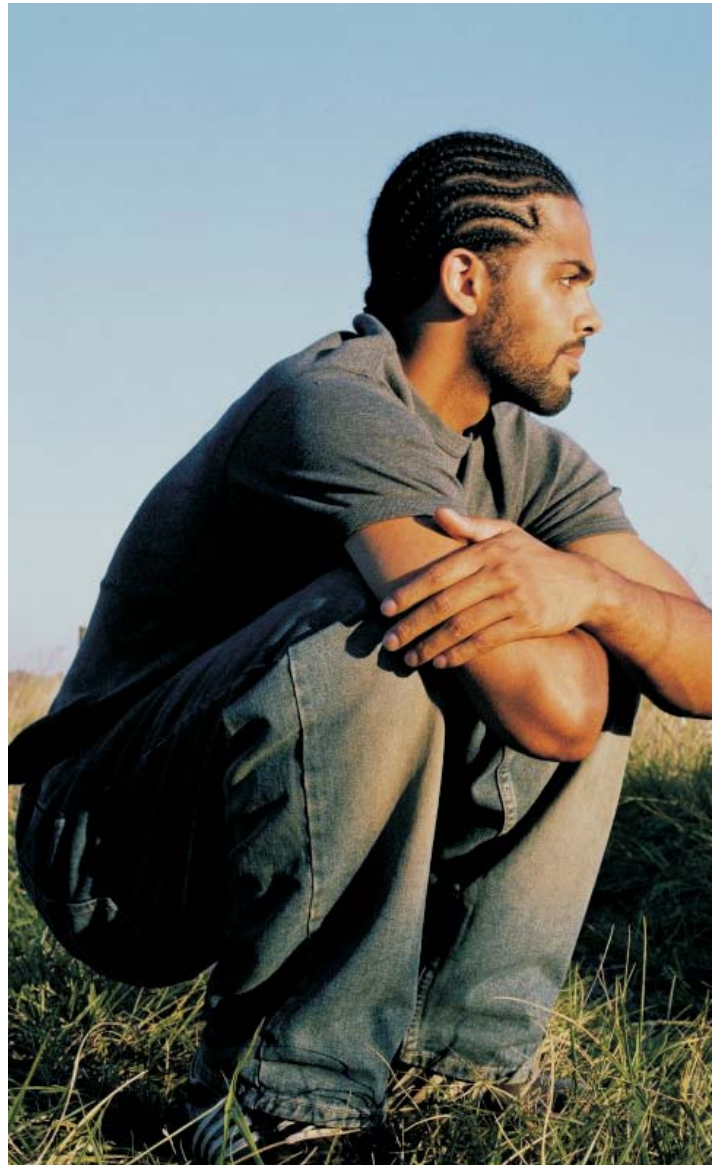
Every person entering Uganda must possess a valid entry permit or pass. Entry permits are divided into classes A to G, whereas passes include special pass, visitor's pass, pupil's or student's pass, in-transit pass and dependant's pass. Special passes are given to persons intending to take up employment on a short-term contract of not more than three months.

In order to obtain a special pass, an applicant must complete the prescribed form, which should be accompanied by a letter from the organisation that has appointed the applicant, the applicant's passport and a fee of approximately US\$52.

Long-term employment

Persons intending to take up employment in Uganda require Class G entry permits and may only enter Uganda after their application for the entry permit has been granted. This is usually the case with employees whose employment contract period is more than a year.

Applicants must submit an application letter for the work permit addressed to the Commissioner, Immigration Control Board. This should be accompanied by a letter of



Foreign sourced income of short-term residents, that is residents whose stay in Uganda does not exceed two years, is exempt from tax.

appointment; certificate of incorporation of the employer; Memorandum and Articles of Association, if applicable; a curriculum vitae plus copies of educational qualification certificates; two passport-sized photographs; and for applicants already in the country, a visa showing how they entered the country.

In addition, applicants must pay a fee of approximately US\$ 200 per year together with a security bond equivalent to the cost of a one-way airfare ticket to the country where the foreign employee is a citizen/resident. This amount is refundable when the foreign employee leaves the country after the expiration of the contract.

Dependants

Dependants of foreign employees must apply for dependants' passes if they wish to settle with the employee. Generally, dependants are mainly spouses, children or persons other than the immediate family who are wholly or substantially dependent on the person for the provision daily necessities.

Dependant applicants must pay a fee of approximately US\$260, and their passes are valid for the period that the foreign employee's work permit is valid.

Taxation of expatriates

Taxation in Uganda is based on the source of the income; therefore, regardless of where the payment is made, a person will be taxed on income that is deemed to have been sourced in Uganda. Further, the tax payable is also determined by whether a person is a resident or non-resident for tax purposes.

Foreign employees are deemed resident for income tax purposes if they have permanent homes in Uganda or are present in Uganda for at least 183 days during the year of

income or for an average of 122 days or more during the year of income and the two preceding years.

However, where the employee is a resident of a country that has entered into a Double Taxation Agreement with Uganda, the definition of residence as contained in the DTA takes precedence over that contained in the Act.

Residents are entitled to a foreign tax credit for any foreign income tax paid by the taxpayer in respect of foreign source income included in the gross income of the taxpayer. However, foreign sourced income of short-term residents, that is residents whose stay in Uganda does not exceed two years, is exempt from tax.

Non-resident individuals such as expatriates on short-term contracts are taxed at non-resident rates.

Taxation of fringe benefits

According to Uganda's tax law, the value of any benefit granted to an employee from employment forms part of the employment income. The common benefits offered to expatriates in Uganda include motor vehicles, housing/accommodation, utilities, leave passages and net pay salary contracts.

However, certain benefits are not taxed, such as the cost of passage to or from Uganda in respect of appointment or termination of employees recruited from outside Uganda; reimbursement of medical expenses or contributions to medical insurance policies; allowances for or reimbursement of expenses incurred on travel, accommodation, meals and refreshments while travelling in the course of performing duties of employment; employer's contributions to a retirement fund; and benefits that are less than the Uganda Shillings equivalent of approximately US\$6.

Motor vehicles

The use or availability for use, of a motor vehicle wholly or partly for the private purposes of the employee, constitutes a benefit and is calculated according to a given formula.

Housing

Housing benefits usually take the form of houses directly owned by the employer, houses rented by the employer on behalf of the employees, or reimbursement of rental expenses.

In the case of reimbursement of rental expenses, the amount of the reimbursement is deemed to be the value of the benefit. In the other two cases the value of the benefit is calculated to be the lower of the market value of the accommodation, reduced by any payment made by the employee; or 15% of the employment income, including market rent.

For the majority of benefits, the cost incurred by the employer in providing the benefit is deemed to be the value of the benefit, reduced by the employee's contribution if any.

Conclusion

Uganda is renowned for its investor friendliness and the hospitality of its people. Expatriates settling in the country should encounter no major obstacles save for the ordinary inconvenience that comes with settling into a new environment. However, in order to avoid any unnecessary

complications, it is important that expatriates comply with the laws of the country, especially regarding immigration and taxation.

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