

Africa Mobility Risks: Practical examples

Common mobility tax risks being experienced by our clients when moving employees around Africa and exploring how these risks could be mitigated.

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Background

▶ Tax facts i.r.o. individual taxes in the following countries:

- | | | | |
|---------------|------------|--------------|----------|
| ▶ Botswana | DRC | Gabon | Ghana |
| ▶ Ivory Coast | Kenya | Madagascar | Malawi |
| ▶ Mauritius | Mozambique | Namibia | Nigeria |
| ▶ Rwanda | Senegal | South Africa | Tanzania |
| ▶ Uganda | Zambia | Zimbabwe | |

▶ Immigration facts in respect of the following countries :

- | | | | |
|-----------|--------------|-------------|------------|
| ▶ Gabon | Ghana | Ivory Coast | Madagascar |
| ▶ Nigeria | South Africa | Tanzania | Uganda |
| ▶ Zambia | | | |

Mobility risks in Africa

For each risk we would like to explore with you in this discussion:

- A. Some **risks** companies are exposed to in respect of their expatriates in Africa
- B. How to **manage these risks** for new companies investing in Africa
- C. Some **cost saving ideas** to improve the overall performance of the company

Categories of mobility risks identified



Risk 1 – Regulatory/ Compliance risks



A. Risk 1 – Regulatory/ Compliance

Companies are exposed to the following Regulatory / Compliance Risks in regard to both short term (less than 6 months incl “business trips) and long term assignees

- ▶ Immigration law breaches
- ▶ Employment tax law breaches

A. Exposure to immigration law breaches

The following can lead to immigration law breaches:

- ▶ Assignees working on a business/visitors visa. Various visa / permit types in Africa and comparison of what you can do on each – topic for a future EMG discussion?
- ▶ Conditions/Restrictions of permits not adhered to e.g. police clearance
- ▶ Fraudulent permits
- ▶ Contract being issued by host country, but person working on business visa and not a work permit

A. Key risks for the Expatriate

- ▶ Uncertainty regarding relocation date
- ▶ Entry requirements e.g. harassment at borders/airports
- ▶ Onerous personal documentary requirements e.g.. police clearance requirement for all countries worked per CV
- ▶ Conditions/restrictions on permit e.g.. renewal of permit
- ▶ Dependant requirements
- ▶ Corrupt Immigration officials

B. Examples of how to manage immigration law breaches

- ▶ Tracking of expatriates travel days in host locations
- ▶ Compliance reviews
- ▶ Immigration policy
- ▶ Educate line and the expats on the time to gather information / documentation i.e. don't hope to do it in 2 weeks!!
- ▶ Understand what you can and cant do on each permit / visa for each location i.e. tailor it to your specific business

A. Exposure to employment tax law breaches

Companies should be aware of the following to prevent employment tax law breaches:

1. When does an expatriate become liable for tax in a host country
2. The tax requirements for a foreign national in the host country
3. The companies responsibility as an employer of foreign nationals

Exposure to employment law breaches – basis of taxation for individuals – 1. Liability for tax

Basis of taxation for individuals		
Non residents (expatriates)	Residents	
<p>Worldwide income – Gabon and Senegal (in practice they are taxed on source)</p> <p>Source income – All other countries</p> <p><i>Generally source of employment income is where the foreign national renders the service irrespective of where the services are paid</i></p>	Source income	Worldwide income
	<p>Angola</p> <p>Botswana</p> <p>DRC</p> <p>Ghana</p> <p>Madagascar</p> <p>Malawi</p> <p>Namibia</p> <p>Zambia</p> <p>Zimbabwe</p>	<p>Gabon</p> <p>Ivory Coast</p> <p>Mauritius</p> <p>Mozambique</p> <p>Kenya</p> <p>Nigeria</p> <p>Rwanda</p> <p>Senegal</p> <p>South Africa</p> <p>Tanzania</p> <p>Uganda</p>

Exposure to employment tax law breaches - Basis of determining Tax residency in Africa

Tax residency in Africa	
General criteria:	Exceptions:
Spend 183 days in the country	Kenya, Tanzania, Uganda – regarded as a resident if expatriate spent:
Botswana Madagascar <i>Namibia</i> Rwanda Zimbabwe	Ghana Malawi Nigeria Zambia
Spend 180 days in the country	Mauritius – regarded as resident if expatriate:
Mozambique – an expatriate becomes a resident if he spends 180 days in the country	<ul style="list-style-type: none"> ▶ 183 days in the country ▶ An aggregate of 270 days in the country in the current and preceding 2 tax years
No days test	South Africa – regarded as a resident of expatriate:
Angola Gabon Senegal	DRC Ivory Coast
	<ul style="list-style-type: none"> ▶ 91 days in aggregate during the current tax year if assessment; and; ▶ 91 days in aggregate during each of the preceding 5 tax years; and ▶ 915 days in aggregate during these 5 preceding tax years

Exposure to employment tax law breaches

2. When is a Tax return for an individual required Africa

No tax return required (if individual only received employment income)	Tax return required
<p>Angola Botswana DRC Ghana Ivory Coast Madagascar Nigeria Senegal Tanzania Zambia Zimbabwe*</p> <p>* Employee must only have worked for 1 employer in the year</p>	<p>Kenya Gabon Malawi Mauritius Namibia Rwanda South Africa Uganda (if not on the local payroll)</p>

Exposure to employment tax law breaches – Is the employer obliged to deduct Employees tax in Africa

- ▶ In all of the countries, the employer is obligated to withhold tax on a monthly basis
 - ▶ Botswana
 - ▶ Ivory Coast
 - ▶ Mauritius
 - ▶ Rwanda
 - ▶ Uganda
 - ▶ DRC
 - ▶ Kenya
 - ▶ Mozambique
 - ▶ Senegal
 - ▶ Zambia
 - ▶ Gabon
 - ▶ Madagascar
 - ▶ Namibia
 - ▶ South Africa
 - ▶ Zimbabwe
 - ▶ Ghana
 - ▶ Malawi
 - ▶ Nigeria
 - ▶ Tanzania
- ▶ Ghana - The associate of the employer or the third party benefiting from the employment of the employee will be responsible for paying the taxes.
- ▶ Namibia/South Africa – employee can register as a provisional tax payer in certain circumstance.
- ▶ The employer must pay the taxes over to the Revenue Authorities as per the statutory requirements in the country which could be monthly; quarterly; annually etc.

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B. Managing employment tax law breaches

Help manage your compliance of foreign nationals by:

- ▶ Identify accidental expatriates by tracking movements of expatriates
- ▶ Set up of payroll in the host country to calculate and pay over the required employees' tax
- ▶ Shadow payrolls if foreign national remains on home country payroll
- ▶ Tax return completion and submission for the individuals in countries where this is a requirement

Employment tax law breaches

C. Cost saving proposals

- ▶ Source vs worldwide income
 - ▶ Understand tax laws and days requirements in country
 - ▶ Maintain a calendar of days
 - ▶ Consider double tax agreements

- ▶ Employees tax withheld by employer
 - ▶ Ensure taxes are being correctly withheld and paid by employer
 - ▶ Annualised salaries, bonus payments, share options
 - ▶ Payroll reviews

- ▶ Tax return submitted
 - ▶ Submitted by employees in countries that require tax returns
 - ▶ Expatriate tax compliance services

- ▶ Perform final tax calculation prior to expatriate exiting country

Risk 2 – Business reputation risks



Risk 2 – Business reputation risks

- ▶ Non compliance could lead to business reputation risk
 - ▶ Non compliance may lead to companies not being allowed to operate in a country –
 - ▶ business risk may have an effect on the reputation of the company as a whole if it is published in news papers or hefty fines are imposed
 - ▶ Non compliance with immigration risks may result in the expatriate not being able to obtain a permit to work in that specific country
 - ▶ The expatriate may even be prohibited from visiting the country
 - ▶ The expatriate may be exited from the country – could be costly

Risk 3 – Financial risk



A. Financial risk

Income tax and social security

Non compliance with income tax legislation can expose the company to the following:

- ▶ Penalties for non submission of tax returns
- ▶ Penalties on late submission of returns/payments
- ▶ Interest for late payments

A. Financial risk

Gross up calculations

- ▶ Companies not performing gross up calculations for the expatriates
- ▶ Gross up calculations are being calculated incorrectly for that jurisdiction (e.g. once off gross up, full gross up, rolling etc)

B. Managing financial risk

How to manage the risk of the company:

- ▶ Implement global mobility policies
- ▶ Introduce standard procedures and operating manuals (possibly per country if volumes justify) to
 - ▶ manage the expatriate process around benefits etc
 - ▶ Manage tax payments including the monthly payrolls,
 - ▶ completion of annual tax returns,
 - ▶ immigration and work permit application process etc.

Financial risk

C. Cost saving ideas

Ideas on how to save costs:

- ▶ Adapting global policies to circumstances in Africa
- ▶ Consistent approach to payroll functions centrally and in host countries
- ▶ Considering the outsourcing of certain functions:
 - ▶ shadow payrolls,
 - ▶ expatriate tax return compliance,
 - ▶ International assignee management,
 - ▶ Immigration.

Financial risk













C. Ideas on how to save costs cont

Non taxable benefits - Are you as a company structuring salaries to the best advantage of the expatriates

Other payments tax structuring e.g.. social security, bonuses, share options and other common assignment benefits in Africa – topic of another presentation

- ▶ Timing of payment of retention bonus
- ▶ Housing allowance/Accommodation
- ▶ Entertainment allowance
- ▶ Flights

Summary of common risks and exposures experienced in Africa – Myth or Fact?

Description	Myth	Fact
Employees can work on business visa's		
Employees are not taxable in a country if they are there for less than 183 days		
Responsibility for compliance is that of the employee - Individual tax return is submitted in host country		
Expatriates are only taxed on portion of salary paid in host country (split contracts)		
Share options and bonuses paid in home country are not taxed in host country		
Net salary must be paid in the host country		

Questions?

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