INVESTING IN UGANDA: LAW REGULATIONS & TAX CONSIDERATIONS

 

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Regulatory Environment

Incorporating/ Registering a Company: Investment vehicles in Uganda take on various forms including among others single member companies, private limited liability companies, incorporated and unincorporated joint ventures, partnerships and trusts. The most common vehicle for investment is the private limited liability company.

The process of incorporating a local company or registering a company in Uganda is governed by the Companies Act 2012. It is a fairly fast and straight forward process usually completed within 3 days of submission of the requisite company documentation with the Companies Registry. The documentation submitted covers details like shareholders, directors and share capital. Save for sector specific requirements, the Companies Act does not prescribe minimum share capital requirements and/or local or resident director requirements.

Investment Licence: Under the Investment Code Act (Cap. 92) (the "Code"), every foreign investor is required to obtain an investment licence from the Uganda Investment Authority ("UIA") before commencing business in Uganda. A foreign investor is defined to mean a person who is not a citizen of Uganda, a company in which a person who is not a citizen of Uganda holds more than 50% (fifty percent) of the shares, or a partnership in which the majority of the partners are non-citizens of Uganda. The application for an investment license is addressed to the Executive Director of the UIA in a prescribed form which contains the name and address of the applicant, proposed business activity, projected fixed capital investment costs over a period of 3 years and the number of jobs expected to be created by the project.

Following an administrative decision taken by the Board of UIA, an applicant for an investment license should attach to its application its bank statement reflecting a minimum balance of USD 100,000 (United States Dollars One Hundred Thousand).

No fees are payable on application for an investment licence and the licence will usually be issued within 3 (three) business days of an application being submitted to UIA provided all the supporting documentation is in order.

Certificate of Tax registration: Under the Tax Procedures Code Act 2014 (the "TPCA"), every person liable to pay tax in Uganda is required to apply to Uganda Revenue Authority ("URA") for registration. Upon registration, the person is issued a certificate of tax registration. A foreign investor looking to conduct business in Uganda would be liable to pay tax in Uganda and would therefore have an obligation to apply to URA for a certificate of tax registration.

An application for tax registration is made online via the URA web portal. The applicant is required to submit information regarding its legal status, place of business, bank account and contact details. The applicant can indicate in its online application the tax heads it would like to register for. These include income tax, value added tax and import and export duty.

If the applicant is a company, URA requires the company to have a tax representative that already possesses a tax identification number before it can be issued with a certificate of tax registration. Under the TPCA, the tax representative can be either the company's managing director, chief executive officer or any of its directors.

No fees are payable on application for a certificate of tax registration and provided URA is satisfied with the information provided by the applicant, the certificate will be issued within 3 (three) working days of the application being submitted.

Trade licence: Under The Trade Licensing Act (Cap. 101), every person is required to obtain a trade license before commencing business. The application for the trade license is submitted to the local authority where business is to be conducted together with the registration documents of the entity, the investment licence, the certificate of tax registration, the tenancy agreement for the premises where the business will be operated from and a tax clearance certificate issued by URA confirming that the applicant is tax compliant.

A trade licence fee is payable depending on the nature of business to be undertaken.

Restrictions on Investment

Foreign investment is generally allowed in all sectors of the economy and, save for certain regulated sectors like oil and gas and banking, companies may be 100% foreign-owned.

Investment Protection

Uganda's Constitution provides that no person shall be compulsorily deprived of property except where the acquisition is necessary for public use or public interest and the acquisition of property is made under a law which provides for payment of fair and adequate compensation, prior to the acquisition, and a right of access to a court of law by any person who has an interest or right over the property.

Under the Code, if a business enterprise of a licenced investor is compulsorily taken over, compensation in respect of the fair market value of the enterprise must be paid to such investor within a period not exceeding 12 months from the date of acquisition.

Repatriation of funds from Uganda

The Foreign Exchange Act 2004 (the "FEA") governs the transfer of funds out Uganda and requires all payments in foreign currency out of Uganda to be made through a bank.

The FEA does not impose any exchange control requirements and/or restrictions on repatriation of funds out of Uganda. The Governor of the Central Bank is empowered under the FEA to impose temporary restrictions on payments from Uganda where the country experiences severe balance of payments difficulties. This temporary restriction is not to exceed 3 months unless the consent of the Minister of Finance is obtained to extend it for a further period not exceeding 3 months, and, thereafter, for such further period as may be authorised by Parliament by resolution.

The Governor is yet to exercise this power, and there are currently no restrictions in place on the transfer of funds out of Uganda.

Capital Markets

The Capital markets industry in Uganda is regulated by the Capital Markets Authority ("CMA") established under the Capital Markets Authority Act (Cap.84). CMA approves the offers of all securities to the public and licences market players including fund managers, investment houses, trustees, custodians or depositories.

CMA is also empowered to licence stock exchanges and has to date only issued a licence to the Uganda Securities Exchange ("USE"). Currently 16 companies are listed on the USE, with the last listing having taken place in 2012. CMA is also empowered to licence stock exchanges and has to date only issued a licence to the Uganda Securities Exchange ("USE").

The Capital Markets Authority Act (Cap. 84) was amended in 2016 to broaden the powers of CMA to include acting as the supervisory authority for anti-money laundering in the capital markets as well as tracing and freezing any assets of any person engaged in fraudulent dealings in securities or insider trading.

Taxation

Income Tax: Income tax in Uganda is imposed under the Income Tax Act Cap.340 ("ITA") and is based on whether a person is a resident or non-resident for tax purposes. Residents are taxed on their worldwide income whereas non-residents are taxed only on income sourced in Uganda.

A company is resident in Uganda if it is incorporated or formed under Ugandan law, has management and control of its affairs exercised in Uganda or the majority of its operations are carried out in Uganda during the year of income.

An individual is a tax resident if they have a permanent home in Uganda, spend at least 183 days in any 12-month period in Uganda or are present in Uganda for an average of more than 122 days during 3 consecutive tax years.

Tax rate: The ITA imposes tax on every person who has chargeable income for the year of income. Chargeable income under the ITA is a person's gross income less their allowable deductions. The corporate tax rate under the ITA is 30% for resident companies and branches of foreign companies. The rate for individuals ranges from 10% to 45% depending on their chargeable income.

Withholding Tax: Withholding tax ("WHT") of 15% is imposed on every non-resident person who derives any dividends, rent, natural resource payment, interest, royalties and management fees from sources in Uganda.

Value-added tax ("VAT"): VAT is chargeable on taxable supplies of goods and services in Uganda and the import of certain goods. The standard rate of VAT is 18%. However, the supply of certain goods and services like unprocessed agricultural produce, financial services and insurance services (health insurance, micro-insurance, re-insurance and life insurance) are exempt from VAT.

Double Tax Agreements ("DTA's"): Uganda has DTA's with 9 countries i.e., Denmark, India, Italy, Mauritius, Netherlands, Norway, South Africa, United Kingdom and Zambia. The purpose of these DTA's is to eliminate double taxation and allocate taxing rights.

The ITA however imposes restrictions on the enjoyment of benefits under these DTA's. It lays down 3 (three) conditions that must be fulfilled before a non-resident can benefit from a DTA that Uganda has signed with their country. The non-resident must be the beneficial owner of the income, have full and unrestricted ability to enjoy the income as well as determine its future use and have economic substance in the treaty country.

Conclusion

The Government of Uganda continues to encourage both local and foreign investment across the various sectors by ensuring relative political stability and economic growth through policies intended to liberalize the economy.

Special emphasis has been placed on the public infrastructure and energy sectors largely due to the infrastructural deficiency in the country particularly in light of the projected boom associated with Uganda's oil production in 2020. This emphasis is evidenced by the bulk of Government expenditure for the financial year 2017/2018, estimated at UGX 4.9 trillion being allocated to infrastructure.

Other historically prioritized sectors for investment among others include health care, education, agriculture, agro processing, manufacturing, tourism and hospitality, micro finance.

Contributors Profiles

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