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Should Tax Uncertainty in Africa stop Business Investment?

Mariette Cruywagen (Partner/Director, Infinite Tax) · Friday, February 20th, 2015

Uncertainty

“When nothing is sure, everything is possible” – Margaret Drabble

So often when people find out that I travel to Africa, the first thing I am asked is whether I ever feel unsafe. My answer is always that I am as careful as I would be travelling to any other part of the world. I take all of the necessary security steps in most countries I travel to, just to be sure that I remain safe.

Once the person is satisfied that yes I am a women, and yes I do travel alone into Africa and yes, it is safe to travel in Africa, the question that I am then asked, is how I deal with the uncertainty that the tax legislation in Africa brings about.

Business as Usual

Africa is unique in the sense that the tax law in each country is different. Each country interprets its tax legislation in its own unique way, sometimes based on practises prevailing. Neighbouring countries may have borrowed some parts of their tax legislation from one another; an example is Namibia retaining the tax laws of South Africa upon independency. However, where Namibia has retained most of the original legislation, South Africa has amended most of the same original legislation, adopting tax legislation from countries such as Australia, New Zealand and Canada.

Angola, Cape Verde and Mozambique adopted legislation from Portugal, however the legislation has been advanced to cater for the countries own needs, hence the interpretation that the same legislation would follow in Portugal, will not be case for these countries.

And then of course there are the Francophone African countries; adopting much of its legislation from France, without the same interpretation. In fact, in practice Francophone African countries would not even follow each other’s interpretation although there are many talks of these countries forming a combined front of uniform rules and guidelines.

Should Tax Uncertainty be a Problem for Future Business?

Every uncertainty should be an opportunity. Most African countries are now starting to understand the importance of having a tax base and of applying tax legislation. The tax authorities in most of the African countries employ well educated people that will understand and counter argue any

excuse you may think of to not be tax compliant. It should be business as usual with the knowledge that Africa is just another jurisdiction where we have to be tax compliant. It may take more time and effort to fully understand the tax environment in Africa, but like in any other jurisdictions, if you do not fully appreciate the tax environment that you are operating in, it could come at a huge cost.

Therefore, Africa should be treated as any other Continent. A few facts to keep in mind when operating in the African landscape:

- Most pieces of legislation have not been tested in tax courts in Africa, unlike where in Europe precedents have been created;
- Tax legislation has been effective since its implementation date. Just because it has not been enforced by the tax authority, do not suppose that this legislation is therefore not applicable. It may only mean that the tax authority has not had the manpower to enforce the legislation and may be getting on track to do so;
- Do not suppose that a tax authority is incompetent and does not understand its own tax legislation. Their only weakness may be that they do not understand your business model.

“Information is the resolution of uncertainty” – Claude Shannon

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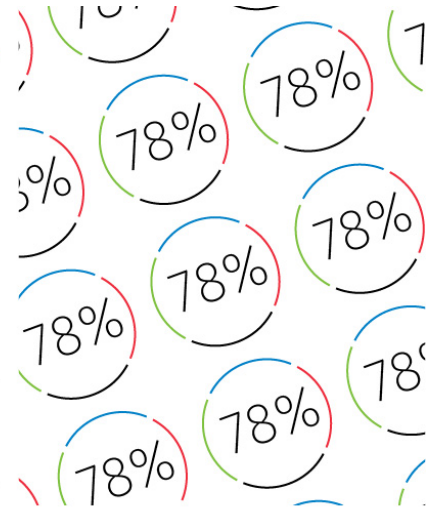
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