<u>Business in Swaziland</u>

Background

Swaziland is a small country surrounded by South Africa to the north, south and west and by Mozambique in the east. As a result its economy is largely influenced by the South African economy and the majority of its trade is with South Africa.

The currency in Swaziland is the Emalangeni and the exchange rate as at 2 October 2013 against:

South African Rand amounted to E1 =ZAR	1.0000
United States Dollar amounted to E1 =USD	0.833
Great Britain Pound amounted to E1=GBP	0.0625

Investment

Business entities

Non-resident investors can operate in Swaziland either through a branch or by forming a local subsidiary company.

Statutory requirements

There are no minimum capital requirements for setting up a company in Swaziland. Nor are there any requirements to have resident directors or shareholders; however a local representative must be appointed as a public officer to represent the company in respect of tax and statutory issues. In the event that the shareholders are resident outside the CMA (South Africa, Lesotho and Namibia) this would require Central Bank approval.

Trading License application

In order to apply for a trading license several criteria have to be met before an application can be considered, namely:

- A copy of a fully executed lease for the business premises or a copy of the title deed for owned premises.

- Company's current bank statement

-Copy of a director/manager's birth certificate or copy of their entry permit for a non Swazi director/manager.

-A copy of the company's Memorandum and Articles of Association

-A health report for the business premises etc.

-SNPF and Labour compliance Certificate

Application for trading licenses are normally carried out by Swaziland registered attorneys.

Employment requirements

Statutory requirements

A work permit is required for non Swazi nationals working in Swaziland. The permit applications are normally reviewed monthly therefore it takes approximately two months to secure a permit due to the volume of applications. The period can be shorter where there are urgent reasons that satisfy the Chief Immigration Officer and the board members.

Work Permit requirements

The requirements of non-Swazi employees regarding entry permits are as follows:

Completion of an application form

Police report from home country

Finger prints

Two passport size photographs

Medical certificate

Professional qualifications

Employment contract

Dependants photographs (two for each)

E1200 per year granted (usually two)

E900 per year for dependants pass

Exchange control

Swaziland forms part of the common monetary area which comprises Lesotho, Namibia, South Africa and Swaziland.

Exchange control regulations govern the rules relating to thin capitalisation.

All capital transfer to Swaziland from outside the Common Monetary Area require the prior approval of the Central Bank of Swaziland. In practice, this approval is routinely granted where required for genuine investment activities.

The raising of capital in Swaziland by issues of shares, bonds, etc., in aggregate amounts of more than E100,000 during any period of 12 months requires the prior approval of the Central Bank.

Companies with more than 25% of their capital (including equity, shareholders' loans and retained earnings) owned directly or indirectly by non-residents require the permission of the Central Bank of Swaziland to raise loans or use bank overdrafts or advances within the Common Monetary Area.

There is no restriction on the transfer of current or capital funds within the Common Monetary Area. There is a restriction on financial institutions in Swaziland, which are required to maintain certain funds within Swaziland in accordance with the Financial Institution Order, 1973. Exchange control regulations therefore apply only to the transfer of funds between Swaziland and areas outside the Common Monetary Area.

Temporary residents are persons who are domiciled abroad and have resided for less than six years in Swaziland. After living in Swaziland for six years, they may apply to the Central Bank of Swaziland for permission to continue to be treated as temporary residents for exchange control purposes. They are allowed to transfer funds from Swaziland to areas outside the Common Monetary Area as follows:

Up to one-third of an expatriates local income or as much as half if he is required to support his family abroad, (family means spouse and children only) may be remitted from Swaziland each year.

On expiry of contract expatriates may transfer their gratuity up to an amount not exceeding 30% of gross income, leave pay, up to a maximum of 30 days and bonuses to their country of normal residence.

The Central Bank will normally permit the transfer of saving of up to one third of the expatriates total income earned whilst in Swaziland.

Residents are obliged to declare any foreign assets that they intend bringing into the country in order to avoid duties and to ensure that they will be allowed to repatriate them from Swaziland on departure. If these assets are disposed of in Swaziland Customs duties will be levied. The consent of the Central Bank of Swaziland is required before a resident may enter into any obligation to a non-resident. This does not apply to purchases of goods in the ordinary course of trade (provided that import permits have been obtained when required).

Consent is generally given for the repatriation of capital imported from outside the Common Monetary Area for investment in Swaziland with the approval of the Central Bank. Income receivable by non-residents in the form of dividends or interest is normally freely remittable, after deduction of the withholding taxes. Payment for directors' fees, travelling expenses, royalties, and technical services and management fees are subject to prior Exchange Control approval. Permission is normally given for reasonable requests.

Taxation

Corporate taxation

Companies, other than mining companies (see below), are subject to a flat rate of 27.5% of taxable income from a source within or deemed to be within Swaziland. Dividends received by a company are exempt from income tax.

Investment incentives for qualifying investments, particularly those in export-driven manufacturing, mining, and international services, include a 10 percent corporate tax rate, as opposed to the standard 27.5 percent; no withholding tax on declared dividends etc.

A branch of a foreign company is taxed on the profits derived in Swaziland as though it were a resident company.

Losses may be carried forward so long as the company trades continuously. i.e. . Declared dormancy renders losses unclaimable thereafter.

There are no capital gains taxes.

Audit of Financial Statements

Financial statements submitted in support of any return of income shall deem not to have been submitted unless they have been audited by an auditor, registered with the Swaziland Institute of Accountants.

The keeping of business records and other records

All source documents, books of account, bank statements cash books etc. whether in manual, mechanical or electronic formats, **must be kept in Swaziland.**

Provisional Tax Returns

During the course of the Income Tax year Provisional tax returns have to be submitted; one after six months of commencement of the financial year, the second at the financial year end and finally a third which has to be paid within 6 months after the company's year end and has to be within 90% of the finally determined taxable income. The third payment must discharge the liability.

Estimates of taxable income for provisional tax purposes should not be lower than the last assessed income without good cause. Penalties may be imposed if this is found to be the case.

An extension of time for rendering the company's income tax return must be applied for if the accounts are not ready by the year end. This will only be granted if the previous year has been submitted for assessing.

Transfer pricing regulations

There are no specific transfer pricing restrictions in Swazi law however a broad anti avoidance provision exists which permits the Commissioner to attack transactions entered into between related parties at below market values.

<u>Special rules relating to Hire Purchase arrangements</u>

Hire Purchase/ Income Tax - Debtors allowances

According to the Income Tax Order 1975, as amended, regarding this subject although not specific some provision is made for this in Section 20:

If any taxpayer has entered into any agreement with any other person in respect of any property the effect of which is that, in the case of movable property, the ownership shall pass, or, in the case of immovable property, transfer shall be passed, from the taxpayer to such other person, upon or after the receipt by the taxpayer of; the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of such amount shall, for the purpose of this Order, be deemed to have accrued to the taxpayer on the day on which the agreement was entered into:

Provided that

(i) the Commissioner, taking into consideration any allowance he has made under section 14 (1) (q) - *(refers to bad debts) may make such further allowance, as under the special circumstances of the trade of the taxpayer seems to him reasonable, in respect of all amounts which are deemed not been received at the close of the taxpayer's accounting period:*

(ii) any allowance so made shall be included as income in his returns for the following year of assessment and shall form part of the income of the taxpayer.

General Notes

Provisions for expenditure such as doubtful debts and future costs are not normally deductible for tax purposes.

Administration/Management fees paid to a non-resident attract a final withholding tax of 15% (Relief may be available if there is a Double Taxation Treaty in place with the country involved).

Administration/Management fees paid to any person ordinarily resident or carrying on business in Swaziland will deemed to be income from a Swaziland source and added to taxable income.

Royalties attract a withholding tax of 15%.

Payments made to non-resident persons in respect of services provided in terms if a Swaziland source service contract (other than an employment contract) are to be subject to a withholding tax of 15% such being a final tax.

Tax registration

Before trading begins the company/branch will be required to register with the Department of Taxes for PAYE (Registration Of Employer) IRP 1 Form and registration as a taxpayer.

PAYE

All members of staff are required to supply their employer with their Graded Tax Number. Application forms are obtained from the Income Tax Department. This form requires answers to standard questions such as Full Name, Date of Birth, Temporary Residence Permit Number (copy also required to be submitted with application), date of entry into Swaziland – Swazi Nationals need to provide their birth certificate and state the name of their Chief and Induna.

Once the company has registered as an employer (Form IRP 1), received their PY number (TIN Number) and ensured that all its members of staff have registered for tax it can start deducting PAYE and Graded Tax from them.

Returns should be made monthly and should be remitted before the 7th of the succeeding month and FORM PAYE & GRADED TAX FORM NO. 4 should be completed for this purpose. Penalties for late payment of PAYE is 20% of the PAYE due for that month plus interest calculated at 1.5% per month.

At the year end an annual reconciliation of PAYE and Graded Tax deductions and Final Deduction System (FDS 001) should be completed, IRP5 forms are filled out for all members of staff regardless of whether PAYE was deducted from them or not.

Copies of the IRP5's are submitted with the annual reconciliation which must be in agreement with the PAYE that was deducted on the IRP5's issued. Adjustments must be made by the employer at the year end, either recovering shortfalls or refunding over deductions. The deadline for this annual submission is 30 September.

With effect from 1 July 2013

Rates of Tax in the case of Persons other than Companies

RATES OF NORMAL TAX FOR INDIVIDUALS FOR 2013/2014

Taxable Income Exceeds	But does not exceed	Rates
E0	E100 000	0 + 20% of the excess of E0
E100 000	E150 000	E20 000 + 25% of the excess of E100 000
E150 000	E200 000	E32 500 + 30% of the excess of E150 000
E200 000		E47 500 + 33% of the excess of E200 000

A rebate of E8 200 per annum to be applied to the annualized tax calculated (over 60's receive an additional annual rebate of E 2 700.00per annum

Link to SRA tables:
http://www.sra.org.sz/index.php?option=com_content&view=article&id=141&Itemid=301

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In essence no tax is payable below an annual taxable salary of E41 000 per annum.

Taxation of Commission

When deducting tax from employees earning a basic salary plus commission the commission element must be annualised and taxation calculated thereon.

Individual Income Tax Returns

Individuals are only required to furnish returns if a part year has been worked, the employee has changed employer during the year and if additional income is claimed such as lump sum payments etc.

Employees Social Security Taxes

No formal social security taxes exist in Swaziland, however, employers are required to insure against worker's compensation claims. This has to be taken out as "Workmen's Compensation" and has to be brokered in Swaziland.

Employers are also required to also required to register with "The Swaziland National Provident Fund" and to contribute to the Fund on behalf of their employees who are Swazi citizens, at a rate of 5% of their salaries up to a level of E1 700.00/month. A further 5% is payable by the employee which has to be deducted by the employer monthly. This deduction from the employee is allowable for tax purposes. In addition, graded tax of E1.50 per employee is deducted from the employee and payable by employers to the Commissioner of Taxes.

All benefits-in-kind must be included in taxable income.

Link to Guide to benefits on Swaziland Revenue Authority website

http://www.sra.org.sz/index.php?option=com_content&view=article&id=89&Itemid=217

Non-resident employees

Non-residents are taxed in the same manner as residents on income from a source within or deemed to be within Swaziland at a current rate of 10% or the greater of the amount calculated per the tax deduction tables.

Withholding taxes

Dividends paid to a non-resident of the CMA	15.00%
Dividends paid to a resident of the CMA	12.50%
(Rate varies-dependant on DTAs)	
Interest	10.00%
Royalties	15.00%
Management/Administration fees	15.00%

VAT etc

Customs duties

Since Swaziland is a member of the Southern Africa Customs Union, goods imported from member countries are not subject to import duties but only to the payment of VAT.

Goods imported from outside the SACU may attract import duties and surcharged levies in terms of the Customs and Excise Act, 1964.

VAT is imposed on the importation of most goods (some goods are exempt whilst others are zero rated) and on the rendering of local services such as accountancy and secretarial services etc

The rate is 14% of the taxable value.

VAT PROCEDURES

VAT is currently 14% payable at the border or placed on account. Application for this ASYCUDA/VAT deferment account should be made prior to trading. Prior to approval a bond may be set to act as a form of security. The level that the bond is set at will be determined by the company's declaration of estimated purchases from over the border. Once this has been determined and paid an account will be set up and a deferment VAT number allocated. A certificate will be issued reflecting this unique number and certified true copies of this certificate should be given to the company's major transporters. This gives the transporters the authority they need to utilise the company's account number and avoids the need for cash payments and thus fraud and or theft.

Land and Property

Transfer of immovable property are subject to transfer duty at the rate of 2% on the first E40,000, 4% on the next E20,000, and 6% on the excess over E60,000 of the purchase consideration. The duty is payable by the transferee. Annual rates on property are payable to the Town Councils, based on the council valuation of the property.

Capital Taxes

No annual wealth or capital worth taxes are levied except for the tax on mineral rights.

Stamp Duties

Stamp duties are payable on numerous documents. The transfer of marketable securities attracts a stamp duty of 1.5% which is payable by the purchaser.

Double Tax Agreements

General tax treaties exist between Swaziland and the United Kingdom, Mauritius, and South Africa.

Incentives

Exemption is granted in respect of interest receivable by non-residents on loans made to the King in trust for the Swazi Nation. Inducements to invest in additional productive capacity are given by way of special deductions allowed in respect of the cost of new industrial buildings and of new plant and machinery brought into use in a process of manufacture, any other similar process, or the hotel industry. The deductions also apply in respect of second-hand plant and machinery which has not previously been used in Swaziland and to leased plant and machinery.

The deductions are as follows:

Initial allowance on new plant and machinery brought into use	50% of cost
Initial allowance on used machinery housed in a building that qualifies for initial allowance, used in Swaziland for the first time and not replacing other machinery	50% of depreciated value
Initial allowance on new industrial buildings placed in service that house machinery qualifying for the initial allowance	50% of cost
Annual Wear & Tear on cost of industrial buildings	4% p.a.
Annual Wear & Tear on improvements to industrial Buildings	4% p.a.

The introduction of an "infrastructural initial allowance" amounting to 50% of the cost incurred by the tax payer on infrastructural machinery, plant and transmission equipment used in the provision of infrastructural services on or after 01 July 2000. The taxpayer will be entitled to deduct the aforementioned 50% in determining his taxable income.

Exemptions

Exemption from tax is granted in respect of interest receivable by non-residents on loans made to the King in trust for the Swazi Nation. Non-resident investors in stocks issued by the Government or any local authority or approved statutory or quasi-government corporations are also exempt from tax on the income, if the investor is not carrying on business in Swaziland.

Swaziland Promotion Investment Authority (SIPA)

SIPA was established in 1998 with the primary objective of promoting Foreign Direct Investment (FDI) into Swaziland and providing an Investor Facilitation Service (IFS) to both local and foreign investors together with the provision of aftercare services and small and medium enterprise development and promotion.

The object of IFS is to ensure that investors have to deal with only one agency while in the process of establishing business in Swaziland. This drive has resulted in the establishment of an investor facilitation "one-stop-shop", which aims to avoid the lengthy procedure of knocking on different doors and having to consult with too many people – a formula that can drive away potential investors.

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