

OPINION & INSIGHTS

What cannabis legislation can teach us about foreign direct investment

AS I SEE IT



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(Part 2)

It is a known fact that in the ecosystem of foreign direct investment, investors in Saint Lucia and other Caribbean countries receive significant tax concessions such as but not limited to:

1. VAT relief on building material, furniture, equipment, and locally produced art and craft (Section 7 of the Act)
2. Income Tax
3. Property tax: "A 100 per cent exemption from property tax and aliens landholding licence fees for the duration of the development period."
4. Stamp duty: "A 100 per cent exemption from payment of stamp duty and vendor's tax, on the conveyance or transfer on sale of any immovable property for a tourism project, on the initial transfer."
5. Customs Duty: "100 per cent customs duty exemption on imports including fixtures and fittings for a period to be determined by Cabinet."
6. Tax credits
7. Corporate tax
8. Duty exemptions on imports of alternative energy and energy saving equipment

In this context, tax competition, according to the International Monetary Fund (IMF), including through lower statutory corporate income tax (CIT) rates (by all six ECCU countries), longer tax holidays (by Antigua and Barbuda), and loss carry-forward year (by Antigua and Barbuda and Grenada), and higher investment tax allowances/tax credits (by Antigua and Barbuda and Grenada), has intensified over the years. The IMF thus notes that "it is worth noting that, measured against employment, the cost of tax incentives is equivalent to as high as \$2 500 per job in the formal sector."

According to some research, academics note that some countries forgo almost nine and a half to 16 per cent of annual GDP in tax incentives without much noticeable impact.

Further, Foreign Direct Investment Reports and Trends notes "it is clear that the incentives are not only very generous, but it is worse because the conditions for employing are not often strict, and governments state their preferences with regards to foreign investment but these are not necessarily hard requirements."

Even beyond that, the argument is that without these, investment and job creation would not have happened. However, the data has found little evidence to support this argument from a cross-country perspective as seen by Chai and Goyal 2008 and Klemm and Parys 2012.

Notwithstanding the aforementioned, the Regulated Substance Authority (RSA) in tandem with other partners could focus on sectoral incentives, which are not carte blanche but instead are based on a few considerations such as but not limited to:

1. Business History
2. Record of Corporate Social Responsibility
3. Respect for Traditional and Local Communities
4. Environmental Protection
5. Business Ethics, Human Rights and Labour Standards
6. Compliance with National and International Law

7. Transfer of Technology Requirements
8. Human Resource Development
9. Pursuance of SDGs and other local development priorities
10. Minimum Standards on the Environment, Labour and Consumer Protection among others.

But, it is also important to note that the wider corpus of incentives which exist in the foreign direct investment ecosystem must be tackled regionally with the possibility for equal rates of tax incentives, as the race to the bottom approach will only yield a reduction in foreign investment for the host state which possibly makes sweeping changes to tax incentives legislation. It is for this reason that political officials are hesitant to change these laws on their own volition domestically, notwithstanding pressure from the population. As they are aware that once they make these legislative changes, investors would begin island hopping to facilitate their investment. They will easily set up shop in the country with the most favourable tax incentives and concessions rate.

But, what must be done in tandem with the aforementioned is to improve the ease of doing business in Saint Lucia to also increase the success of the cannabis industry and increase our competitiveness within the region and the world.

As such, the Ease of Doing Business Reports and Indices continually note the lower-performing areas within Saint Lucia include but are not limited to: the limited access to financing, weak insolvency mechanisms, property and contract inefficiencies, excessive red tape, and high energy costs among others.

Another important area of focus for the RSA is their deliberate attempt to facilitate the original growers and users of cannabis i.e., the Rastafari Community, under the Religious Cannabis Regulations.

Under these regulations, it permits a religious organisation that is registered with the ministry to designate a religious place for the utilisation of the sacramental herb. Consumption and the use of cannabis as noted by Section 4 (4) of the regulations is only permitted by the adult congregation of the religious origination at the religious place. Furthermore, it also empowers the Religious Community, i.e., Rastafari, to also engage in commercial marijuana if they so desire, by permitting them to apply for and be granted a traditional cultivation licence. This will also work in tandem with the personal possession which has already been legislated, i.e., 30 grammes of cannabis that everyone can cultivate and utilise.

These regulations are instructive because it carves out an area for the continuous utilisation of the herb by the Rastafari. Similarly, in other areas of foreign direct investment and development, there must be a deliberate focus on ensuring that it does not threaten or displace the traditional community and standard bearers of the products or inhabitants of the locations. Much can be done to ensure that it is done parallel to the foreign direct investment, such that they are deliberately included as part of the development, not displaced because of it.

Lastly, the consultative process undertaken by the RSA is also a lesson for the wider legislative and policy agenda for foreign direct investment and other development projects in Saint Lucia. Currently, the RSA has gone throughout the country in all lengths and breadths, ensuring that as many

individuals can engage in the process and share their concerns, views, and aspirations among other things.

The RSA is thus doing more than what should be occurring with pieces of legislation as noted by the Standing Orders of Parliament, which dictates under Section 48(2) in the House and Section 49(2) that there be an interval of four days and five days respectively, between the first and second readings of a bill to facilitate public consultation.

The Constitution thus also notes under Section 41(6) that any bill to alter the provisions of this Constitution or the Supreme Court Order shall not be submitted for assent unless there has been an interval of not less than 90 days between the first and second reading. This is also to facilitate public consultation and engagement.

Further, the mandatory gazetting of the bill, as per the Standing Orders section 49(3) also shows an intention for the public to be aware of the legislative intentions of Parliament.

And, albeit this is not the forum for the critical analysis of public engagement in the law-making process, it is worth noting that, in some respects, the utilisation of Section 48(2) and 49(2) of the same Standing Orders which permits the three readings of a bill in the same Sitting undermines the public consultation and engagement intention of the authors. Such that Parliament can pass a bill within one sitting without the engagement of the wider public in order to ascertain their views and perspectives.

As such, the RSA's engagement across the country with the draft legislation provides us with a suitable comparator and guide for what should be occurring with other pieces of legislation, prior to them being tabled in the House.

It is not limiting it to select esoteric 'interest groups' alone, as if ordinary people are averse to having views, perspectives and solutions on relevant industries, and development. It is not limited to the political elite, who will then translate the message to the people, after a determination has been made.

Time will tell though on the extent of the consultative process and how integrated the recommendations, views, concerns are within the final draft legislation and policy. What will be important is to publish for all to see the completed consultation views and report and how it has been deliberately included in the final draft. This will provide the public with greater trust in the consultative process, as most times they believe that they speak, and no one is listening or implementing.

The institutions normally respond though that they do integrate, or they already integrated prior to the consultation, but are unable to identify where and how.

What needs to be done though, in order to assist in marijuana legalisation expert Andre De Caires' aversion as well, is the consultative process needs to engage in an overt way with the small-scale and traditional growers and sellers to hear their perspectives and solutions on how to integrate them within the wider ecosystem. Further, with parents and guardians who may be concerned about the health and safety of their children.

Beyond the aforementioned, it is also important for critical research to occur on the best cultural, technological, and social methods and mechanisms to engage the Saint Lucian people, as such policymaking necessitates public engagement in the development process.

It may provide best practices for government, civil society and international organisations who are engaging in the policymaking process, and alleviate the constant complaints by ordinary people that they are not consulted, or that the consultation did not reach them, or they were unaware and totally oblivious to what and when it was occurring.

We must therefore develop the culturally appropriate methods and mechanisms to engage our people.

And while we do so, we must change the tenor of our engagement, such that we seem to be engaging the public as a favour, as opposed to a necessity for good governance and democracy. This tenor is reflective in our constant nagging that 'people are not coming' and 'we gave them a chance to come, and they did not show up' as opposed to interrogating our own practices, procedures and processes of engagement.

The former is in sync with CLR James' lamentation of Caribbean democracy, which is as he said, not a strong democratic tradition as is being propounded, but "the tendency is to naked power and naked brutality, the result of West Indian historical development, and that no part of the Caribbean has ever been able to make the conception of democracy an integral part of its existence, and the experience of the upper and lower classes was the tradition of power and obedience or terrified silence or rebellion."

Dr Tennyson Joseph, in CLR James and the 21st Caribbean, is thus instructive on the above mentioned, and charting a way forward when he noted that, "notwithstanding the gradual emergence of more inclusive forms of democratic engagement, through civil society, middle class led advocacy, The Social Partnership in Barbados, Integrity Movements et cetera, there has not been the full widening of democracy, such that there are live airing of parliamentary debates on dedicated channels, and the proliferation of talk shows, call in programmes, town hall meetings, and live chats involving government officials, but the tendency has been to stifle these possibilities, and there has been no clear organic shifts in the formal political institutions, practices, legislation or practice on the back of the technological platforms. A case can certainly be made for the popular call-in programme to be used more fundamentally as mechanisms for genuine public participation in decision making rather than as entertainment talk shops, or as fodder for political ratings. Further, existing internet technology allows for new voting mechanisms that can facilitate direct people participation, plebiscites and direct decision making which have not been considered in the Caribbean."

In the end, the RSA provides us with a good starting point for regulating investment for the benefit of our peoples, while also providing us with spots for reflection and improvement in the wider investment ecosystem.

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