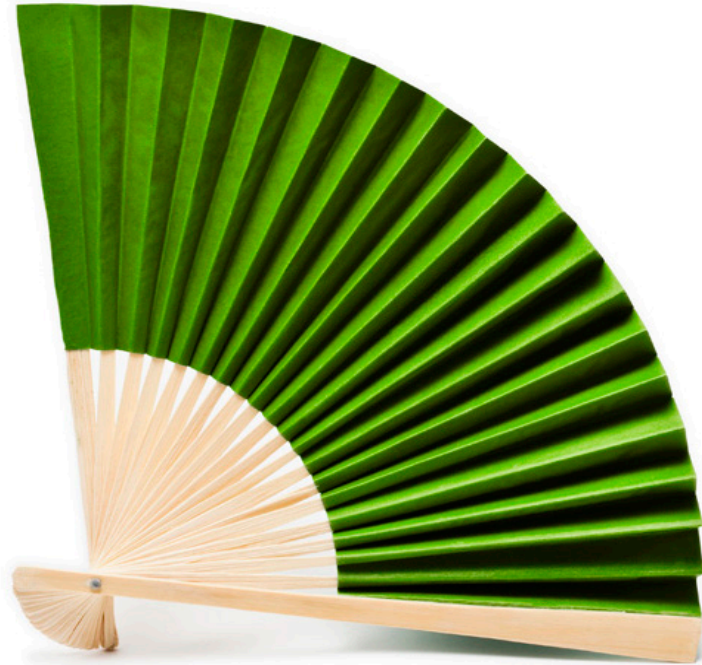


Taxation of cross-border transactions in services

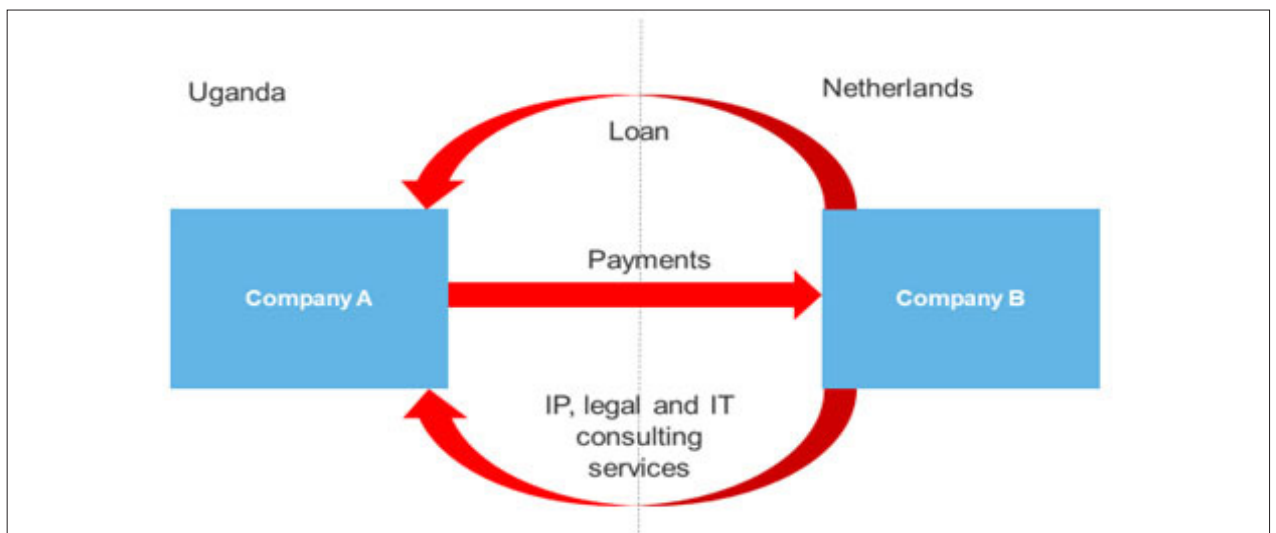


I. Introduction

This is the first in a series of short articles that will look at some of the key tax issues that arise for businesses in Uganda in relation to cross-border transactions. The aim is not to provide a comprehensive guide to all relevant aspects of tax law and practice, but to highlight some key issues of which business owners and managers should be aware of.

Cross-border investment plays a key role in the global economy and is particularly important for developing economies such as Uganda.

Cross-border investment plays a key role in the global economy and is particularly important for developing economies such as Uganda. The following diagram shows some of the key flows of services that may be found in the case of a typical foreign group establishing a business in Uganda.



In this example, Company A operates a business in Uganda in agro-processing and food production. Company B is based in the Netherlands and provides the following services to Company A:

- Loan financing for the expansion of Company A's processing plant in Jinja. Interest on the loan is charged and paid at six-monthly intervals.
- Accounting, tax, legal, HR and information technology ('IT') advice and support are provided by a shared service centre located near Amsterdam and invoiced monthly.
- Patented technology in relation to the food production process (intellectual property – 'IP') is owned by Company B and provided under licence to Company A. Royalties are paid annually by Company A.

Companies A and B are part of a multinational group headquartered in Germany, where the direct parent entity of Company A is located. Similar flows of services and payments may be found in other businesses, for example financial services, the energy industry, fast-moving consumer goods, etc..

2. Income tax aspects

The key issue to focus on in the case of income tax is whether payments made by Company A to Company B should be subject to the deduction of income tax at source, normally referred to as *withholding tax* ('WHT'). The Income Tax Act provides that payments to non-residents which constitute Ugandan source income should be subject to WHT and a comprehensive definition of Ugandan source income is provided at Section 79. This includes payments in respect of the following which are relevant for Company A:

- Interest on loans;
- Management charges and fees for services (which

are widely defined and would include the various services provided by Company B); and

- Royalties.

Any dividends paid by Company A to its parent in Germany would also be subject to WHT.

The rate of withholding for most categories of payment is 15%. WHT deducted should be paid to the Uganda Revenue Authority ('URA') within 15 days of the end of the month in which the payment was made. It is also important to remember the requirement to report to the URA agreements with a non-resident for the provision of services under section 121 of the Income Tax Act.

Most tax jurisdictions (though not all) provide relief for foreign WHT deducted from income of residents. This may be via exemption of that income from domestic tax, or via the provision of a tax credit (which reduces the domestic tax due on that income by the amount of foreign WHT).

A non-resident service provider may be present in Uganda for some period in order to provide the services. This can create a requirement to register for tax in Uganda as a branch.

3. Double tax treaties

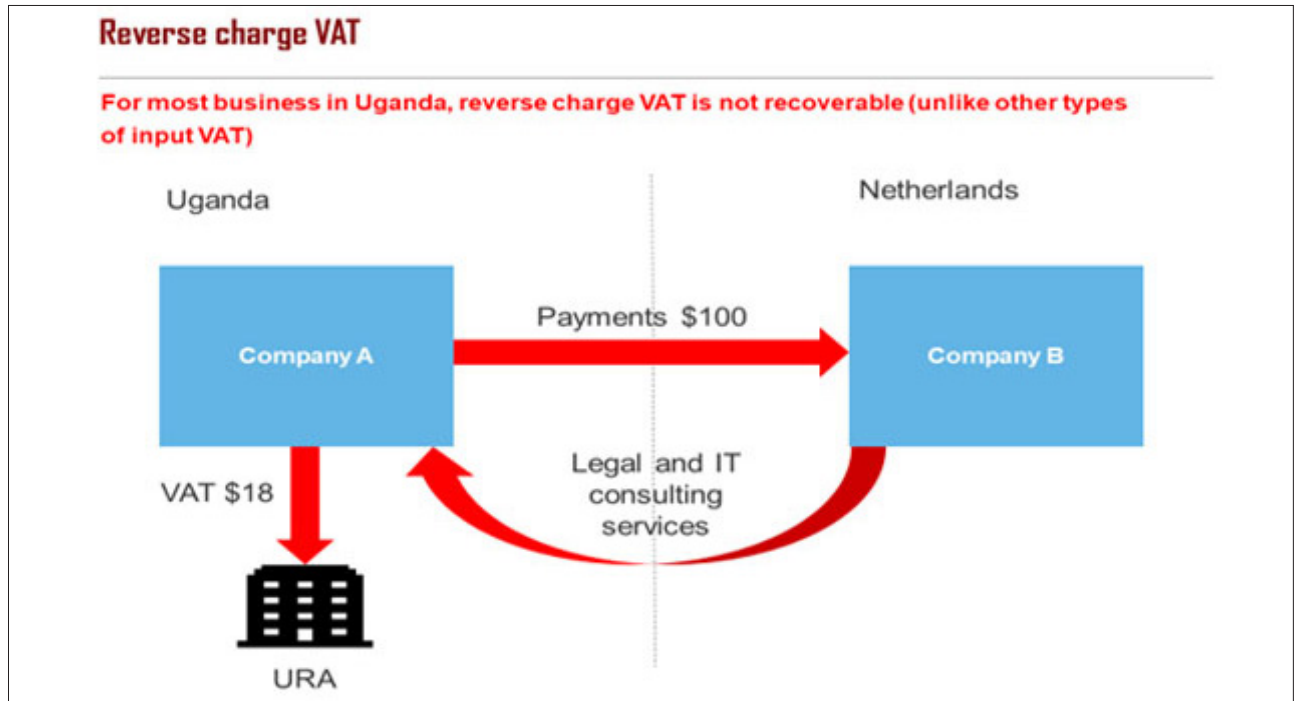
The taxation of non-residents (both corporates and individuals) may be different if the jurisdiction where they are tax resident has a tax treaty with Uganda that provides for exemption from WHT or a reduction in the rate applicable. Currently Uganda has the 9 tax treaties in force which specify the maximum rates of WHT applicable to various categories of income. It should be noted that the Netherlands and Zambia treaties exempt business income such as management charges and fees from the application of WHT.

Country	Dividends	Interest	Royalty	Technical/ Management/Professional fees
Denmark	10%	10%	10%	10%
India	10%	10%	10%	10%
Italy	15%	15%	10%	10%
Mauritius	10%	10%	10%	10%
Netherlands	5% (0%)	10%	10%	Not explicitly provided for.
Norway	10%	10%	10%	10%
South Africa	10%	10%	10%	10%
United Kingdom	15%	15%	15%	15%
Zambia	Exempt	Exempt	Exempt	Exempt

4. Value Added Tax ('VAT') aspects

VAT may also apply to services which are provided by a non-resident where they are deemed to be supplied in Uganda under the 'place of supply' rules in the VAT Act. Where the non-resident isn't VAT registered in Uganda the business importing the service should account for the out-

put VAT on the services itself by including it in the VAT return for the relevant month. This is referred to as 'reverse charge' VAT and it is a standard approach in VAT systems globally. In most jurisdictions the importer of the services is entitled to a credit for the reverse charge VAT, though this may be restricted in the case of a business which makes supplies of goods or services which are exempt from VAT, such as a bank.



Uganda's VAT rules only permit a credit for reverse charge VAT in the case of businesses involved in specific businesses such as petroleum exploration and production, so for most businesses it must be paid to the Uganda Revenue Authority and is simply a cost.

For a more detailed discussion of reverse charge VAT, readers may refer to our article here <http://crystaladvocates.com/?mdocs-file=22041>

5. Other issues to consider

A Ugandan subsidiary of a multinational group is likely to have some non-resident directors. It is important to remember that such fees fall within the definition of Ugandan source income and tax should be deducted at source.

Transactions with non-residents which are related parties (eg members of a multinational group of companies) are subject to Uganda's transfer pricing rules. Where the price charged is not equivalent to that which would apply to a similar transaction between unrelated parties operating at arm's length, the URA has the power to adjust the tax liabilities of the Ugandan party for both income tax and VAT purposes. Taxpayers which are within the scope of the

transfer pricing rules are obliged to maintain documentation demonstrating the basis for pricing intra-group transactions.

In the case of loan financing, a Ugandan taxpayer also needs to consider the restriction in section 25 of the Income Tax Act which limits interest deductions to 30% of earnings before interest, tax, depreciation and amortization ('EBITDA') in the case of a company which is part of a group.

6. Summary

Ugandan companies which enter into transactions with non-residents must take care to ensure they comply with the relevant tax provisions as this is a key area of focus for the URA.

Coming back to the example outlined in the introduction to this article, the following tax issues will need to be addressed:

- Tax deductions for interest may be restricted, if they exceed 30% of EBITDA.

- Payments to the shared service centre in the Netherlands are subject to 15% WHT under domestic law, though this may be reduced to zero under the Uganda-Netherlands double tax treaty. Reverse charge VAT at 18% should be accounted for by Company A on the payments and this will not be creditable input VAT.
- Royalties paid to Company B will be subject to WHT though the rate may be reduced from 15% to 10% under the treaty. Reverse charge VAT will also apply as in the case of the service charges.
- Dividends payable to Company A's parent in Germany will be subject to 15% WHT. No rate reduction is possible as there is no double tax treaty between Uganda and Germany. Dividends are not subject to VAT.
- Company A should apply WHT to fees payable to any non-resident directors.

Cristal Advocates accepts no responsibility for any loss occasioned to any person acting or refraining from acting as a result of material contained in this publication. Further advice should be taken before relying on the contents of this publication.



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Denis is the Managing Partner at Cristal Advocates where he also leads the energy and tax practice. He is qualified both as a Lawyer and Chartered Accountant with vast experience serving various industries in Sub Saharan Africa. Before joining Cristal Advocates, he had worked for close to 10 years with Deloitte and Touche where he started his career and rose to senior managerial positions.

At Deloitte, he lived and worked in Uganda, Kenya, Tanzania and the United Kingdom for over 6 years and subsequently became the firm's chief of staff for the Energy and Resources Industry Group seeing him play a lead advisory role in Uganda, Kenya, Tanzania, Mozambique, South Sudan, Somalia and Ethiopia.

Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

He holds a Master of Laws degree in Petroleum Taxation and Finance from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■



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Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

Bill is a graduate of Oxford University and completed his inspectors' training with the UK Inland Revenue in 1989. ■



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John leads the public policy and advocacy practice at the firm and combines unique public and private sector experience.

Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

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Dickens leads the oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holding Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

Dickens was instrumental in UNOC's formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

He is a certified project control specialist (IFP) and holds a Master of Laws Degree in Petroleum Law and Policy from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■



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