Cristal Advocates

Taxation of cross-border transactions in goods in Uganda

Keeping you informed

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1. Introduction

In this article, we look at some of the key tax issues that arise for businesses in Uganda in relation to cross-border transactions in goods. The aim is not to provide a comprehensive guide to all relevant aspects of tax law and practice, but to highlight some of the main issues. Our previous articles have covered cross-border transactions in services and transfer pricing. They may be found on our website at www.cristaladvocates.com.

2. Imports

Import transactions have traditionally been an important source of tax revenues for governments and this remains the case in Uganda. When goods are being imported, the following key issues must be considered.

a) Prohibited or restricted imports

There are instances where the importation into Uganda of certain goods is either prohibited or restricted. Prohibited goods cannot under any circumstances be brought into Uganda while the restricted ones may be imported once the requisite permissions or import permits have been obtained.

b) Customs duties

Customs duties can be specific but most times are applied as a percentage of the value of goods which is determined in accordance with the specific procedure set out in the 2004 East African Community Customs Management Act ('EACCMA'). The rates of duty vary:

- Raw materials, capital goods and essential commodities – 0%
- Semi-processed goods – 10%
- Finished products – 25%

Certain items are classified as sensitive imports with a view of protecting domestic manufacturers and these usually attract duties higher than the 25%. Payment must be made before goods can be released for 'free circulation' though deferrals and exemptions are available for goods imported by diplomats, goods in transit, temporary imports, and goods held in a bonded warehouse or free-trade zone.

The East African Community ('EAC')[1] established a customs union in 2005 and goods originating in a member state may freely circulate within the EAC without the imposition of customs duties. (Note the goods which have been previously imported into another EAC member state are not eligible for this treatment. It is only those goods meeting the EAC rules of origin that would benefit from the nil customs duty applicable to intra EAC importations).

c) Value Added Tax ("VAT")

VAT also applies to imports the law sets out and must also be paid prior to the release of goods for free circulation. The normal rate is 18% which applies to the customs value plus any applicable customs duties and related charges. Once paid, import VAT counts as input VAT so most importers will be able to take a credit for the VAT paid against the output VAT they are required to account for on their sales. Goods which are exempt from customs duty under the EACCMA are generally also exempt from import VAT.

d) Income Tax

Income tax should also be considered when importing goods. Tax at a rate of 6% of the customs value should be paid at importation. Though usually referred to as 'withholding tax' this is effectively an advance payment of the annual income tax liability of the importer and an exemption may be obtained from the URA for compliant taxpayers. In the case of imports purchased from a related party transfer pricing issues should also be considered.

e) Excise duty

Excise duty at varying rates applies to the importation of certain goods such as tobacco products, alcoholic and non-alcoholic beverages, petroleum products, cement and cooking oil.

1 In addition to Uganda, the members are Burundi, Kenya, Rwanda, South Sudan and Tanzania.

f) Other levies

Infrastructure Development Levy applies to imports at the rate of 1.5% of the CIF[2] value. There is also an environmental levy imposed on imports of used motor vehicles at varying rates depending on the year of manufacture.

3. Exports

Generally speaking, tax compliance in respect of export transactions is less burdensome than that required in respect of import transactions. The following need to be considered:

a) Prohibited or restricted exports

There are instances where the exportation from Uganda of certain goods is either prohibited or restricted. Prohibited goods cannot under any circumstances be taken out of Uganda while the restricted ones may be exported once the requisite permissions or export permits have been obtained.

b) Customs duties

Customs duties do not apply to exports though in some instances export levies may be imposed on certain goods.

c) Value Added Tax

VAT applies to export sales but the rate is zero per cent.VAT enthusiasts will be aware of the important distinction between exemption (where no VAT is charged on a sale) and zero rating (where VAT is charged but at a rate of zero per cent). VAT exempt sales restrict the taxpayer's right to credit input VAT on purchases of goods and services used in its business. No such restriction applies in the case of zero-rated export sales.

It is important to ensure that there is sufficient evidence to satisfy the Uganda Revenue Authority that the goods in question have actually been exported. This evidence should include:

- a copy of a bill of entry or export certified by the customs authorities,
- a copy of the invoice issued to the foreign purchaser with VAT shown at 0%, and
- evidence that the goods have been exported, eg contract with foreign purchase, bill of lading, airway bill, transport document, consignment note.

d) Income Tax

Income tax is also potentially a concern. Where export sales are made to a related party transfer pricing issues will need to be considered.

e) Excise duty

Excise Duty is not payable in respect of excisable goods which are exported.

4. Conclusion

Companies which engage in cross-border transactions in goods must be mindful of the potentially complex tax issues that arise. Transactions of this nature tend to be time-sensitive with delays at border crossings having financial implications for importers and exporters. There is also the risk of additional tax, fines and penalties if taxpayers get it wrong. It is therefore important that relevant finance and logistics staff are familiar with the compliance requirements and top management have a good grasp of how to deal with the issues which may arise. At Cristal Advocates we have experience of assisting companies with all the tax issues associated with both imports and exports. We can provide not only advisory services on transactions, but also training so that your in-house team is better equipped to minimise the risk of problems and delays at the border.

2 The 'CIF' value includes the cost of the goods plus insurance and freight.

Contacts for 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.

He holds a Bachelor of Laws degree from Makerere University and a Post Graduate Diploma in Legal Practice from the Law Development Centre and various other qualifications. ■

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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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Francis leads the litigation and dispute resolution practice at the firm. He is an Advocate of the High Court of Uganda with expertise in oil and gas, infrastructure and dispute resolution. He has been part of teams advising on projects in Uganda, Tanzania, Mozambique and South Africa. He specializes in regulatory compliance, national content, health and safety and dispute resolution.

He joined Cristal Advocates from Kizza, Tumwesige, and Ssemambo Advocates. He previously worked with the Advocates Coalition for Development and Environment (ACODE). He also undertook a traineeship with the oil and gas division of Webber Wetzel in Johannesburg, South Africa.

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