

**Are your recovered expenses disbursements
or reimbursements?**
The Ugandan tax position

DISBURSEMENTS



1. Introduction

The tax treatment of the recovery or recharge of third party expenses incurred by vendors while serving their customers is intricate and some taxpayers have been hit with tax assessments arising from this. Though it is commonly taken for granted that recharges of third party expenses incurred and recovered by vendors from their customers are disbursements, some of these repayments are actually reimbursements for tax purposes. We draw the distinction and highlight the applicable tax treatment for each in this article.

2. Disbursement or reimbursement

The distinction between disbursements and reimbursements for tax purposes is instructive. This is because while the recovery of third party costs from customers strictly qualifying as disbursements is out of scope for Value Added Tax (“VAT”) and withholding tax (“WHT”) purposes, the reimbursement of third party costs to vendors by customers is subject to VAT and WHT where applicable.

Though Uganda’s tax legislation does not define the foregoing terms, case law is exhaustive. In general terms, the recovery of third party costs from a customer qualifies as a disbursement if the expenses were incurred by a vendor as agent of the customer. A recharge of third party expenses from customers incurred by vendors is a reimbursement if the expenses were borne by the vendors as principal in the course of serving the customer.

Issue	Disbursement	Reimbursement
Principal user	The vendor only incurs an expense on behalf of the customer who primarily is the user of the item or supply procured	The item purchased facilitates the vendor to provide the services or supplies that the customer contracted for.
Duty to pay	The vendor is not ordinarily under duty to pay for supplies from third parties if it were not for the request of the customer to incur payment on their behalf.	The vendor is under duty to pay for the third party supplies procured.
Examples	Company registration fees Taxes paid on behalf of a client Court fees Land registration fees Assessments for building plans Any such fees ordinarily payable by the customer especially so where the assessments or invoices are issued in the name of the customer	Airtickets, accommodation, transport fare, printing, fuel and telephone costs among others incurred by the vendor in the course of project execution to facilitate their contract performance but recharged to the customer.

3. The tax position

It is now a settled position of the law that billings for the recovery of third party costs to customers qualifying as disbursements do not represent a charge for the provision of services or supplies. They are out of scope for tax purposes. A vendor should not charge VAT on the same. Similarly, the customer ought not to deduct WHT if it were to be applicable.

Billings for the recovery of third party costs to customers qualifying as reimbursements represent part of the cost or charge for providing the services and supplies. A vendor should charge VAT on the same if applicable. The customer must equally deduct WHT if eligible.

Reimbursements take on the character of the service or supply contracted for by the customer. If the vendor incurs third party costs that support the performance of services that are exempt from VAT, such underlying reimbursements are also exempt from VAT on billing. Disbursements also ought to be recharged at actual cost. Any mark up on such recovery of costs will be taxable.

4. Judicial precedents

There are several decided cases both internationally and locally that set out the tax position on disbursements and reimbursements.

In a 2017 United Kingdom (UK) case, the question for determination was whether property search fees were part of the overall client bills and thus subject to tax or represented disbursements that are outside the scope of taxation. It was held that because the Solicitors were using the information as 'part and parcel' of its overall service, the search fees were not disbursements. Such would have qualified as a disbursement if they had been passed on to the customer without analysis or comment. However, if the firm provides advice or makes a report on the basis of the search, it was concluded the recharged cost would form part of the charges for its services that is subject to taxation.

In an earlier case, Court in the UK held that costs incurred by the vendor in obtaining medical records were disbursements because the solicitor could only obtain the documents with the client's consent, and the client was considered as the 'owner' of the information within the document. The solicitor was 'merely an intermediary used to facilitate payment.

In the 2019 case of Prime Solutions Limited versus Uganda Revenue Authority (URA), the issue considered was whether expenses incurred by the vendor for the purposes of facilitating the effective performance of services were chargeable to VAT. In considering the arguments of the parties, Uganda's Tax Appeals Tribunal relied on various decisions and drew a distinction between disbursements and reimbursements.

Reimbursements are included within the consideration of the provision of a service by a taxable supplier and are consequently subject to VAT. On the other hand, disbursements are expenses incurred on behalf of a client in what would be an agency relationship that are not subject to VAT. The Tribunal agreed with the URA and held that expenses such as transport costs and accommodation were reimbursements. They were expenses incurred during the provision of the service to the client and included in the total consideration to which VAT was chargeable.

In the 2018 case of Bank of Africa versus URA, the issue considered was whether expenses such as air tickets, per diem, payroll costs and hotel accommodation incurred by the vendor and recharged to the customer were subject to VAT and WHT. In its determination, Uganda's Tax Appeals Tribunal distinguished between a disbursement and a reimbursement for purposes of VAT. Relying on the 1975 case of Rowe & Maw versus Commissioner for Customs and Excise, the Tribunal held that VAT would be levied on any such payment incurred by the service provider to enable them effectively perform and which is reimbursed since it will be a part of the consideration the client will be paying for the service. On that basis, the Tribunal agreed with the URA and found that VAT was rightly charged on the foregoing reimbursed costs because they were incurred on the employees of the vendor providing services to the customer.

5. Conclusion

As highlighted above, distinguishing between reimbursements and disbursements is very important for tax purposes. Professionals like lawyers, accountants, surveyors among others that periodically recharge their customers for third party costs incurred in the provision of their professional services must pay more attention to this difference to mitigate avoidable tax exposure.

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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.

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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 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.

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