Cristal Advocates

Application to own use or self-supply for VAT purposes
The law and Practice in Uganda

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1 Introduction

The Celtel Uganda Limited versus Uganda Revenue Authority case, which was decided in the Tax Appeals Tribunal up to the Court of Appeal from 2004 to 2010, drew considerable attention to the notion of application to own use for Value Added Tax (VAT) purposes. The prominence of this case notwithstanding, many taxpayers continue to struggle with the clarity of this concept, thereby exposing themselves to potential tax liabilities. This article aims to simplify and elucidate the concept, discussing its implications.

2. Application to own

Also known as self-supply, application to own use is widely recognized in VAT systems worldwide. In Uganda, there is self-supply for VAT purposes when a taxpayer redirects goods or services originally acquired for business purposes to personal or non-business use. Taxpayers who provide self-produced goods or services to others, themselves, or related parties for either business or non-business activities at no charge or reduced prices can also fall under the realm of application to own use provisions in the VAT Act.

The provisions of application to own use serve two main objectives: promoting fairness and neutrality within the VAT system and safeguarding against potential revenue erosion. This is achieved by ensuring that the personal, own business, and non-business use of goods and services is treated as a self-supply for VAT purposes and, therefore, taxed as any other ordinary commercial transaction.

3. The law and practice

The concept of application to own use is well-canvassed within Uganda's VAT legislation. By drawing upon the provisions of the VAT Act and the analysis in the Celtel Uganda Limited versus URA case, we can delve deeper into how self-supplies for VAT purposes arise.

a) Free business goods and services

Under normal circumstances, the provision of business goods and services at zero consideration is a self-supply for VAT purposes. This includes situations where an audit firm offers free audit services, a telecommunication company provides free airtime, a business owner utilizes business goods for personal or non-business purposes, a chain store gives away free goods to customers, or a restaurant offers complimentary meals to its employees. If the Uganda Revenue Authority (URA) is able to identify such transactions, they will require the taxpayer to self-assess and charge VAT accordingly, and subsequently remit the VAT amount to the authority.

b) Supply of own goods and services for one's business activities

The provision of self-produced goods and services for one's own business activities without any consideration is also a self-supply for VAT purposes. Examples of such include a telecommunication company offering free airtime to customers as part of its business promotional activities, a power generating firm using some of the power it generates in the process of producing more power, a chain store providing free goodies to customers as part of its business promotion activities, and a water treatment firm utilizing some of the water it treats while treating additional water.

In these cases, although output VAT on the supply of the goods and services should be accounted for, the taxpayer is also entitled to an equivalent credit in the form of input VAT. This is because the goods or services in question are consumed for the purpose of one's business activities. As a result, the taxpayer can generate a self-billed invoice and use it as the basis for declaring the output VAT and claiming the corresponding input tax.

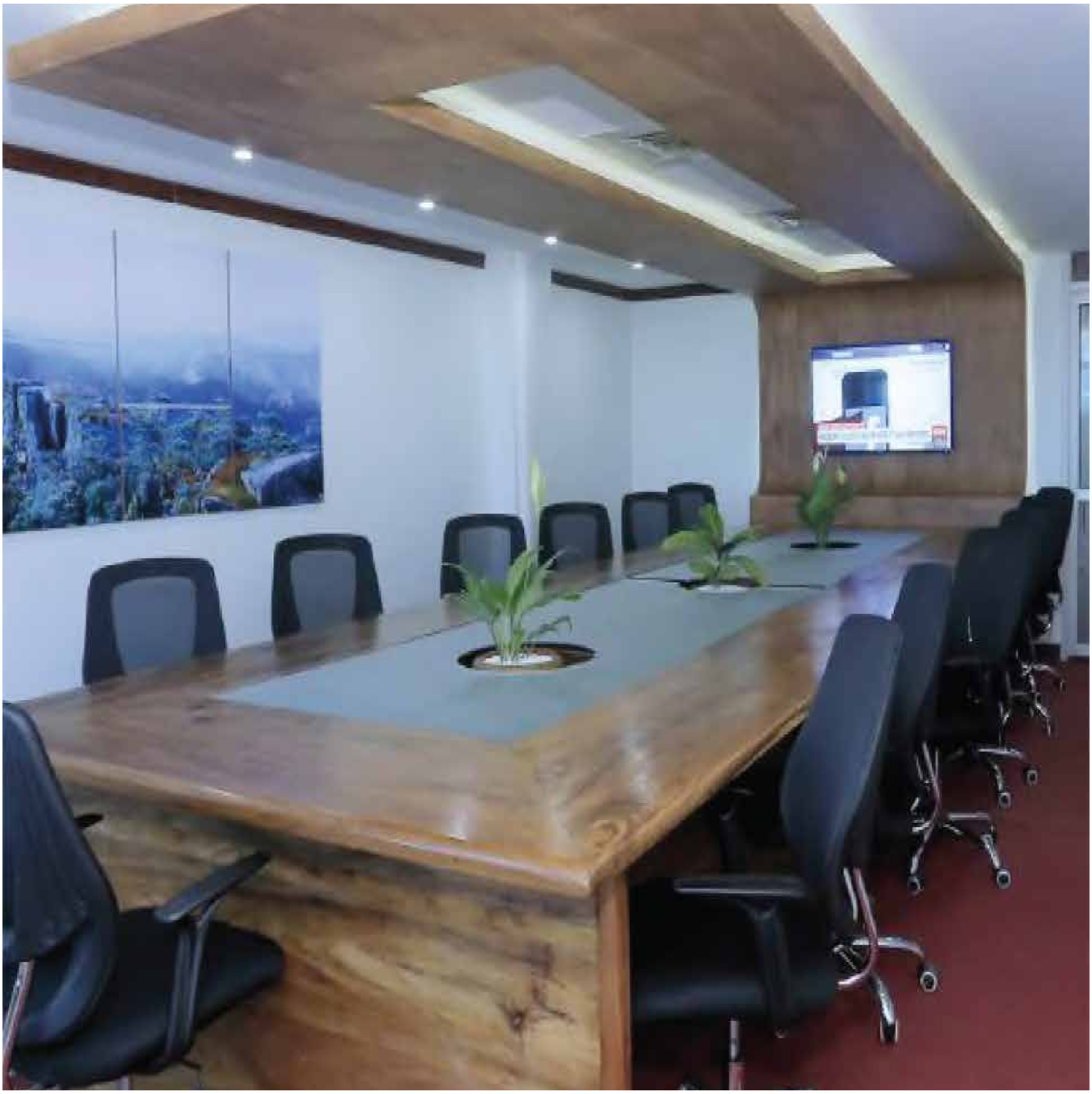
c) The supply of business goods and services to an associate

The supply of business goods and services to an associate at reduced or zero consideration is also considered a self-supply for VAT purposes in Uganda. According to Section 3 of the VAT Act, an associate is defined as any person who acts or is likely to act in accordance with the directions, requests, suggestions, or wishes of another person, regardless of whether those directions or requests are communicated.

The taxable value, on which VAT is calculated, is determined based on the fair market value of the goods and services at the time of the supply. Therefore, when sales are made to related parties at no charge or for a value lower than the fair market value, VAT is applicable on the difference between the transaction price and the fair market value.

4. Conclusion

Similar to the reverse charge VAT mechanism, the concept of self-supply or application to own use is unclear to many taxpayers. However, it remains an important aspect of the VAT system in Uganda. The purpose of self-supply provisions is to ensure accountability for value added, even when goods or services are redirected for personal or non-business use. By treating self-supplies as taxable transactions, the VAT system effectively captures taxable value, prevents revenue erosion, and promotes fairness. Taxpayers, therefore, need to familiarize themselves with the relevant provisions of the VAT Act to avoid potential tax exposure. As the URA seeks to increase revenue collections, understanding and adhering to self-supply provisions becomes even more crucial for taxpayers in Uganda.



Contacts for this Publication

Denis Yekoyasi Kakembo
dkakembo@cristaladvocates.com
+256 751 834 168

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. ■

Bill Page
bpage@cristaladvocates.com

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. ■

John Teira
jteira@cristaladvocates.com
+256 704 493 997

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. ■

Dickens Asiimwe Katta
dasiimwe@cristaladvocates.com
+256 772 370 021

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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Contact us

Cristal Advocates
32 Lumumba Avenue
4th Floor, Padre Pio House
Lumumba Avenue

P.O. Box 1769 Kampala, Uganda
Tel: +256 (414) 671 274
Email; admin@cristaladvocates.com
www.cristaladvocates.com