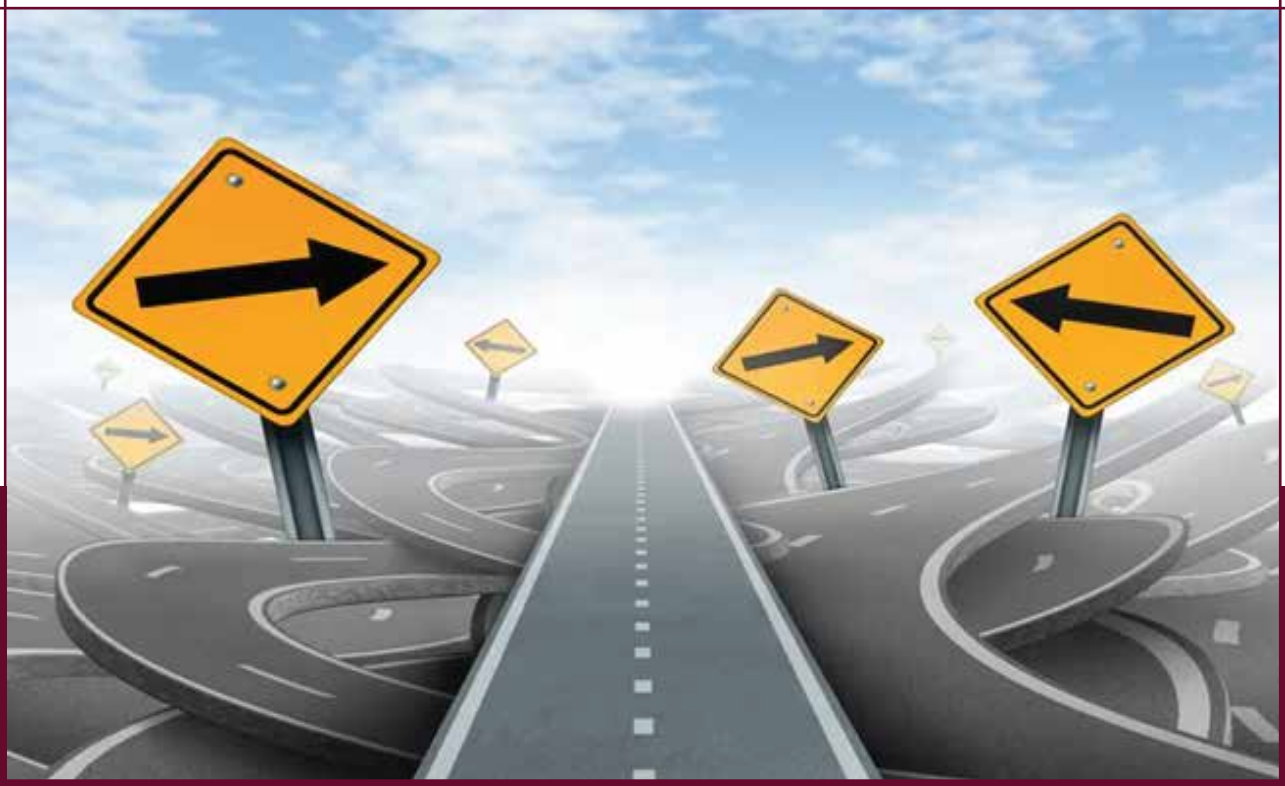
Cristal Advocates

VAT Treatment of Exported Services in Uganda
Uncertain Terrain



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1. Introduction

While the tax treatment of exported services under the Value Added Tax Act (VATA) might appear straightforward, its practical application has ignited conflicts between the Uganda Revenue Authority (URA) and taxpayers offering services to customers across borders. The challenge lies in determining when services are classified as 'used' or 'consumed' outside Uganda, thus qualifying as exports. This article examines how the lack of established local judicial precedents turns this issue into a potential minefield for tax disputes in Uganda.

2. The provisions of the law

Effectively navigating the taxation of exported services under the VATA and its regulations can entail complexities. Paragraph 1(a) of the Third Schedule to the VATA zero-rates services exported from Uganda to the extent such are provided by a taxpayer exclusively handling goods for export at a port of exit or are used or consumed outside Uganda. The VAT regulations reiterate similar requirements, stating that services supplied by a registered taxpayer to a person outside Uganda qualify for zero rating but only with evidence of usage/consumption outside Uganda or if the service is for a building/premise outside Uganda.

Thus, the eligibility of services for zero rating hinges on when such services are determined to be used or consumed outside of Uganda. It is relatively clear when services are provided outside of Uganda but intricate when carried out in Uganda for foreign vendors located outside the country. Courts have grappled with determining whether such services are used or consumed outside Uganda, adding complexity to the matter.

3. Decided cases

The absence of well-established precedents in Uganda's domestic tax jurisdiction broadly guiding on what amounts to use or consumption of services outside Uganda has added to the ambiguity concerning the VAT treatment of exported services.

In the most recent decision on the matter in March 2020 in the case of Aviation Hangar Services Limited versus the URA, the Tax Appeals Tribunal ("Tribunal") further contributes to the uncertainty. The Tribunal concluded that since aircraft maintenance services were provided in Uganda, the use or consumption of the service by the customer was also in Uganda.

The Tribunal relied on the Black's Law Dictionary definition of the word "consume" that meant to use up. Reliance on the dictionary definition of "consume" oblivious of the neutrality and destination principles, which provide the conceptual framework for the VAT treatment of cross-border transactions can however lead to erroneous conclusions.

4. Our view

In specific scenarios, categorizing services as exported can be straightforward, while in others, it can pose challenges depending on the fact pattern. Nevertheless, it is our view that the VAT principles of neutrality and destination should primarily guide the tax treatment.

The destination principle governs cross-border VAT transactions, specifying that VAT should be levied in the country where the final consumer is located, not where the production or supply occurs. As a result, exports are typically zero-rated for VAT in the country of origin, while imports are subject to VAT in the destination country. This ensures that the tax burden aligns with consumption, prevents tax competition between countries, and deters tax evasion in cross-border trade.

However, the application of the destination principle to services and intangible products poses greater challenges due to the absence of customs controls to verify exports or enforce VAT at importation. Notwithstanding, the standard practice involves taxing internationally traded services and intangibles according to the rules of the jurisdiction where the services are consumed. In the context of business-to-business supplies, the taxing authority typically resides with the jurisdiction of the customer.

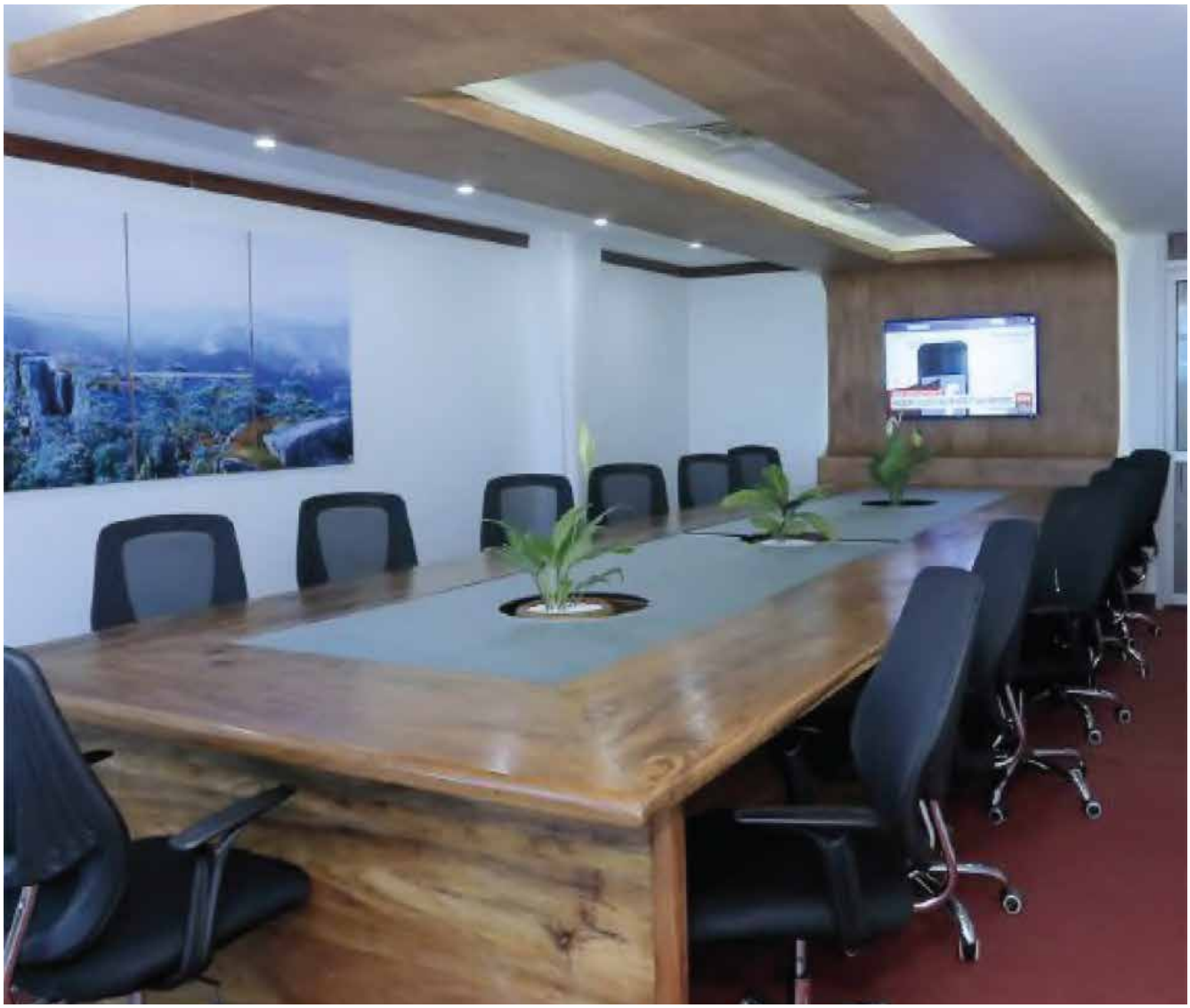
Illustrations from Kenya, with its well-developed jurisprudence on the tax treatment of exported services are instructive. For instance, in the Coca-Cola East, Central, and West Africa Limited Appeal case, Kenya's Tax Appeals Tribunal noted that while marketing and promotion services were carried out in Kenya, establishing that every Kenyan exposed to the advertisement made a purchase was challenging. The pivotal criterion was the consumer's location, not the service's provision. Consequently, the US-based entity contracting the marketing and promotion services in Kenya was considered the consumer, resulting in the service being treated as exports for VAT purposes.

Likewise, in the Total Touch Cargo case, the High Court rejected the idea that Kenyan farmers were the beneficiaries of the provided services. The court affirmed that the location of service provision doesn't dictate service export status; instead, the crucial factor is the location where the service is used or consumed. Hence, emphasis should be on the service consumer's location rather than the service's place of execution.

5. Conclusion

In conclusion, the qualification of services as exports for VAT purposes can present complexities. To navigate these intricacies, it is our strong view that the VAT destination principle should serve as the guideline. For instance, when Kenya asserts that services provided to a Ugandan taxpayer are subject to Kenyan VAT, the Ugandan vendor would also shoulder an additional 18% VAT burden in Uganda via the reverse charge mechanism.

This underscores the paramount significance of upholding destination-based VAT principles. This approach ensures that taxation harmonizes with the jurisdiction of final consumption, effectively sidestepping potential double taxation. It thus establishes an equitable and streamlined taxation framework for cross-border services, championing VAT neutrality through the categorization of exports as zero-rated.



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