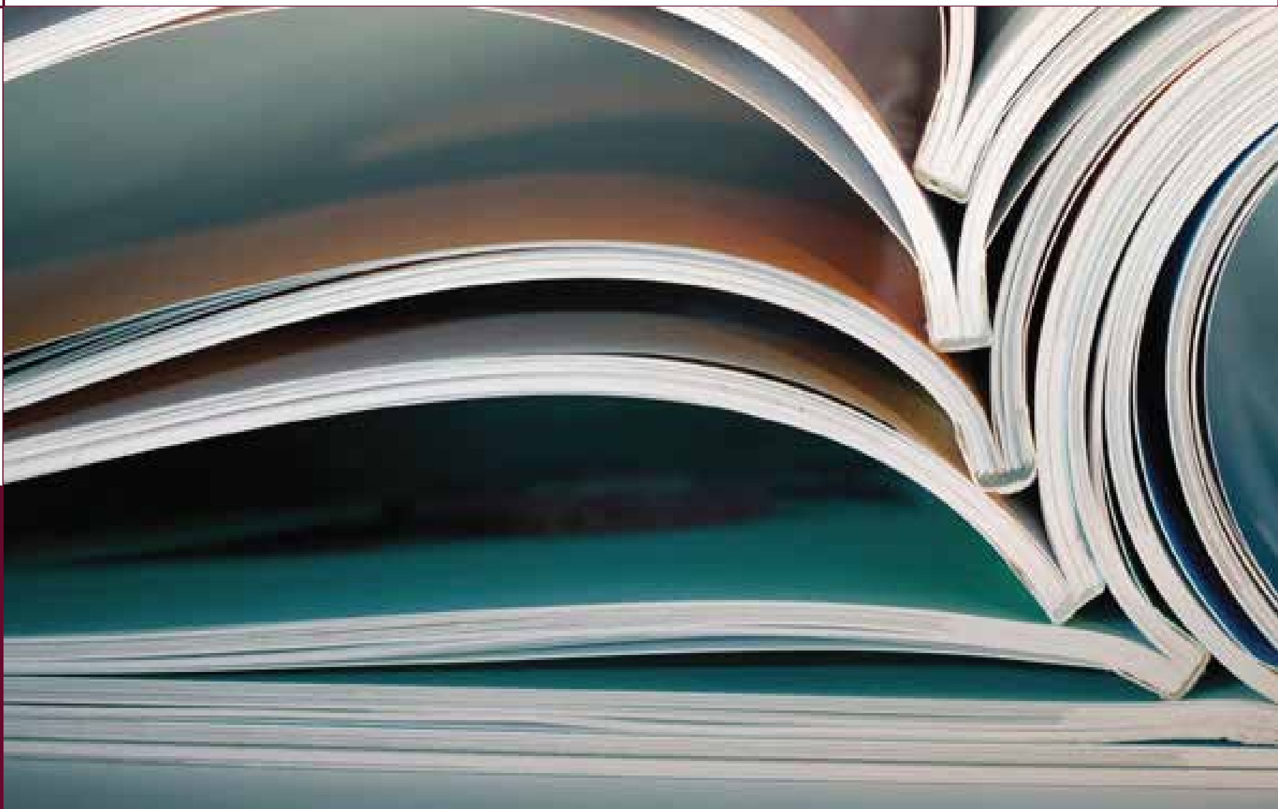
Cristal Advocates

Tax Alert

Uganda's proposed tax changes for the financial year 2024/25



Cristal Knowledge Series
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1. Introduction

The Minister of Finance, Planning, and Economic Development has presented to Uganda's Parliament for deliberation the proposed tax changes for the financial year 2024/25. These proposals are contained in the Value Added Tax (Amendment) Bill, 2024; the Tax Procedure Code (Amendment) Bill, 2024; the Income Tax (Amendment) Bill, 2024; the Excise Duty (Amendment) Bill, 2024; and the Stamp Duty (Amendment) Bill 2024. If approved by Parliament and subsequently assented to by the President, these tax proposals will be effective from 1st July 2024. This alert gives our analysis of these proposed tax amendments.

2. Income Tax Act (Amendment) Bill, 2024

The proposed amendments to the Income Tax Act ("ITA") are comprised in the Income Tax Act (Amendment) Bill, 2024.

Amendment	Commentary
a) Definition of retirement fund	• The definition of retirement fund is proposed to be expanded to include pension and provident funds established for among other purposes to provide benefits to members upon the termination of service or occurrence of specified events as stipulated in written law, agreements, or arrangements. • This amendment is lauded as it seeks to expand the reach of employers' retirement fund contributions which in accordance with the ITA are not taxable as employment income in the hands of employees thereby enhancing their welfare.
b) Gains on the disposal of non-business assets	• A final 5% tax is proposed to be imposed on gains from the disposal of non-business assets. These assets include the shares of a private company, land within cities or municipalities except the principal place of residence or rental properties already subject to rental tax under the ITA. • Gains arising from the involuntary disposal of non-business assets, such as through auction, court order, mortgages, divorce settlements, or spousal separation agreements, as well as accruing from the transmission of non-business assets of the deceased to a trustee or beneficiary, or from the disposal of investment interest in a registered venture capital fund or private equity, would not be subject to this tax. • Past proposals to tax land transactions have proven controversial and were rejected by Parliament. It remains to be seen whether Parliament will be persuaded this time round to pass this amendment. • It's worth noting that there might be legal barriers within section 21 of the ITA, which presently exempts from taxation capital gains not part of business income, except for gains from selling shares in private limited liability companies or commercial buildings. Without amending this provision, efforts to impose taxation on a broader range of non business assets could encounter obstacles.

Amendment	Commentary
c) Incomes exempt from taxation	• Additional incomes proposed to be exempt from taxation include: ✓ Income derived from or by private equity or venture capital funds regulated under the Capital Markets Authority Act. ✓ Income derived from the disposal of government securities on the secondary market. ✓ Income of a strategic investor operating a specialized hospital facility subject to investment conditions thereof. ✓ Income of a strategic investor engaged in manufacturing electric cars, electric batteries, electric vehicle charging equipment, or fabrication of the frame and body of an electric car subject to investment conditions thereof.
d) Non gain nor loss transaction	• Gains or losses arising on the transfer of assets between spouses are presently not recognised for income tax purposes. This is now proposed to be repealed.
e) Permanent Establishment	• The Bill proposes replacing the term branch with Permanent Establishment ("PE") whose definition aligns more closely with the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention but with some modifications especially regarding the instances and circumstances under which a PE can be established in Uganda. • The force of attraction rule is proposed to be anchored in the ITA. Under the force of attraction rule, not only would the profits directly earned by the PE be subject to taxation in the host country, but also certain other profits of the enterprise that are effectively connected with the PE's activities. This implies that income generated by the enterprise outside of the PE but closely related to its activities may also face taxation in the host country. • Given that a branch office is substantially an extension of its head office, the Bill affirms that certain transactions between the PE in Uganda and its Head Office would not be recognized for tax purposes. Consequently, incomes derived from such transactions would not be booked by the PE, nor would the associated costs be deductible. Impliedly, it is also plausible to infer that withholding tax ("WHT") would not be applicable to such intra-party transactions.
f) Income sourced from Uganda	• The Bill proposes to include insurance or reinsurance premiums derived by a non-resident in relation to a risk covered in Uganda in the category of income sourced from Uganda. Additionally, annuities paid to a non-resident person as expenditure of a

Amendment	Commentary
	business conducted through a PE in Uganda would also fall under income sourced from Uganda. • Unless the income of a non-resident tax person is demonstrated to be sourced from Uganda, it cannot be subject to taxation in Uganda. These amendments are thus intended to facilitate the proposed imposition of WHT thereon.
g) WHT on interest	• The proposed amendment to section 83(5) of the ITA seeks to eliminate the existing exemption from WHT on interest paid by resident companies for debentures issued to non-resident taxpayers, foreign banks, and financial institutions. In its place, it introduces a 2% WHT on such interest payments. However, this amendment also includes provisions that restrict the eligibility for the reduced 2% rate, resulting in certain interest being subjected to the higher 15% rate. This proposal is likely to increase the cost of credit locally. • Interest paid by the government to non resident persons in respect of debentures is however proposed to be exempt from WHT.
h) WHT on annuities to non-residents	• A WHT of 15% is proposed on annuities paid by a resident person to a non -resident person.
i) Transfer pricing documentation	• It is proposed that taxpayers with related party transactions must provide transfer pricing information together with the filings of income tax returns in of format that would be prescribed. Under the present Transfer Pricing Regulations, a taxpayer only needs to have the requisite transfer pricing documentation at hand by the due date of filing the applicable tax returns.
j) WHT on commission paid to a payment service provider	• The Bill proposes to introduce WHT on commission paid to a payment service provider at a rate of 10% of such commission. One would question whether this proposal is aligned with the government's objective of deepening financial inclusion and banking the unbanked in Uganda.
k) Listed organizations	• The Africa Reinsurance Corporation, the International Regulatory Board of the East African Power Pool and the Islamic Cooperation of the Development of the Private sector are proposed to be included among listed organisations • The income of listed organisation is exempt from income tax under the ITA.

3. Value Added Tax (Amendment) Bill, 2014

The proposed amendments to the Value Added Tax Act ("VATA") are outlined in the Value Added Tax (Amendment) Bill, 2024.

Amendment	Commentary
a) Auctioned goods	• The VATA is proposed to be amended to shift the responsibility of accounting for VAT in the case of a supply of goods through auction on the recipient of the proceeds of the auction. This builds upon the previous year's amendment of section 10 of the VATA, which designated the auctioneer as the supplier during the auction process for goods. • While this proposal was thought to target bank disposal of foreclosed property, it is unlikely to achieve its objective unless the scope of financial services that are exempt from VAT is narrowed to exclude activities relating to dealing with debt securities.
***b)* Persons required or permitted to register**	• The Bill proposes to repeal the supplementary provision that requires a person to register for VAT if at the beginning of any tax period of more than three calendar months, they had reasonable grounds to expect that the total value of taxable supplies to be made, exclusive of any tax, will exceed UGX 150,000,000. The import of this repeal is that a taxpayer is under obligation to register for VAT if their previous 3-month sales or prospective 3-month sales exceed or will exceed UGX 37,500,000.
c) Taxable Supplies by an employer	• Where an employer who is a taxable person makes a supply of goods or services to an employee, for no consideration, such a supply is proposed to be treated as a supply for consideration for VAT purposes. It can be contended that in respect of the application to own use provisions in the VATA, this proposed amendment may not be necessary.
d) VAT refunds	• It is proposed to increase the threshold for VAT refund claims from UGX 5 million to UGX 10 million.
e) Failure to withhold tax	• It is proposed that VAT withholding agents will be personally liable to pay the amount of VAT which they have not withheld; however, the withholding VAT agents will be entitled to recover the tax from the person. Questions linger on whether URA would continue to enforce this if it is demonstrated that the VAT registered taxpayer eventually accounted for the VAT in question that ought to have been withheld.
f) Public International Organizations	• The First Schedule to VATA is proposed to be amended by inserting the following entities as part of the Public International Organisations: ✓ African Reinsurance Corporation (Africa Re). ✓ International Regulatory Board of the East African Power Pool. ✓ Islamic Cooperation for the Development of the Private Sector.

	• Public International Organisations are entitled to a refund of the VAT that they incur on their operations.
g) Exempt supplies	• The following supplies are proposed to be exempted from VAT: ✓ hoes ✓ the supply of an electric vehicle locally manufactured or supply of frame and body of an electric vehicle locally fabricated ✓ the supply of electric vehicle charging equipment or supply of charging services of an electric vehicle ✓ the supply of pesticides; fertilizers, seeds and seedlings ✓ the supply of cooking stoves, that use fuel ethanol, assembled in Uganda, up to 30th June 2028. ✓ By inserting the word "safety" immediately after "lifesaving gear" in paragraph 1(x) such that the exempted supply is of safety headgear • The following exemptions from VAT are proposed to be repealed: ✓ Postage stamps ✓ goods and services used for personal and domestic purposes for the supply of goods and services to contractors and subcontractors of Hydro-electric power, solar power, geothermal power, or biogas and wind energy projects. ✓ supply of software and equipment installation services to manufactures, services incidental to tele-medical services and royalties paid in respect of agricultural technologies. ✓ Supply of seeds, fertilizers, pesticides, and hoes • The supply of seeds, fertilizers, pesticides, and hoes has previously been zero rated. While under both the exemption and zero-rated systems, there is actually no VAT payable on the supply, the exemption mechanism has the effect of increasing the final price of product to absorb the cost of the input VAT that a vendor of exempt supplies is unable to claim because of non-registration for VAT unlike with zero-rated suppliers.

4. Tax Procedure Code (Amendment) Bill, 2024

The proposed amendments to the Tax Procedures Code Act ("IPCA") are contained in the Tax Procedure (Amendment) Bill, 2024.

Amendment	Commentary
a) Procedure before destruction of damaged goods	• It is proposed that a taxpayer must inform the Commissioner in writing before destroying damaged or expired goods/stock if they are to claim a deduction or credit for the value of such goods. Failure to do so disqualifies them from claiming the deduction or credit.

5. Excise Duty (Amendment) Bill, 2024

The proposed amendments to the Excise Duty Act are contained in the Excise Duty (Amendment) Bill, 2024.

Amendment	Commentary
a) Definitions	• The Bill proposes to provide definitions of "fruit juice", "undenatured spirits", "powder for reconstitution into beer" and "vegetable juice" hence impacting how they are taxed for excise duty purposes.
b) New or revised duty rates	• For fruit and vegetable juice, the amendment seeks to expand the reach of excisable juice from that whose composition is less than 30% pulp to also include juice whose composition is at least 30% of the total composition of each juice package of fruits and vegetables grown in Uganda. The duty imposed is 12% or Shs. 250 per litre whichever is higher. • The amendment proposes to reduce the tax payable by local manufacturers of non-alcoholic beverages using fermented sugary tea solution with a combination of yeast and bacteria. The maximum tax payable has been reduced from Shs. 250 per litre or 12% per litre whichever is higher to Shs. 150 or 12 % whichever is higher. • The amendment also proposes a lower limit on the excise duty payable by manufacturers of drinking water to shs. 75 per litre or 10% whichever is higher. • The amendment seeks to reduce excise duty on opaque beer from 20% or Shs. 230 per litre whichever is higher to 12% or Shs. 150 per litre whichever is higher. • The amendment also proposes to reduce the excise duty payable on other unspecified alcoholic drinks from a rate of 20% or Shs. 230 per litre whichever is higher to 12% or Shs. 150 per litre whichever is higher. • The amendment proposes an imposition of excise duty of Shs. 2500 per kilogram on Powder for reconstitution into beer. This was initially tax-free. • The amendment proposes an increase in tax on gasoline and gas oil by Shs. 100 each per litre and illuminating kerosene by Shs. 300 per litre. • In the proposal, excise duty is nil on furnishings and fittings, or locally produced materials for construction of premises and other infrastructure for a hospital facility developer. This rate applies to a developer whose minimum investment capital is at least USD 10,000,000 for a foreigner and USD 1,000,000 for a citizen. Previously, this rate was restricted to hospitals at a national level, which is now proposed not to be the case. • The amendments further seek to exempt from excise duty construction materials of a manufacturer of an electric vehicle, electric battery, electric charging equipment or a fabricator of the frame and body of an electric vehicle for a foreigner investing at least USD 35 million and a

Amendment	Commentary
	citizen at least USD 5 million. • The Amendment proposes to introduce a tax of 0.5% of the value of cash withdrawn through a payment system apart from withdrawal services provided by a financial institution or a microfinance deposit-taking institution. • The proposal imposes a 30% or Shs. 550 per litre duty whichever is higher on any other fermented beverages including cider, perry, mead or near beer produced from locally grown or produced raw materials. • There is a proposal to subject international calls from Burundi and the United Republic of Tanzania to preferential excise duty rates. • The amendment seeks expand the classification of Item 7 beyond cement, to include adhesives, grout, white cement or lime that are subject to a duty rate of Shs. 500 per 50kg.

6. Stamp Duty (Amendment) Bill,2024

The proposed amendments to the Stamp Duty Act are included in the Stamp Duty (Amendment) Bill, 2024.

Tax Issue	Proposed amendment
a) Nominal share capital or increase or transfer	• The bill proposes to exempt stamp duty on the nominal share capital or any increase of shares, or transfer of shares or other securities of a private equity or venture capital fund.
b) Strategic Investment Projects	• The Stamp Duty Act, of 2014 provides for NIL stamp duty chargeable in respect of an instrument executed by or on behalf of a company or government for the sole purpose of implementing the strategic investment project of an operator within an industrial park or free zone or an operator of a single factory or other business outside the industrial park who meets certain requirements. Some of these requirements are proposed to be amended as; ✓ By substituting for the words "capacity to employ a minimum of one hundred citizens" the words "employs at least seventy percent of its employees being citizens earning an aggregate wage of at least seventy percent of the total wage bill", wherever they appear. ✓ By substituting for the words "capacity to use at least fifty percent of the locally produced raw materials, subject to availability" the words "capacity to use at least seventy percent of the locally produced raw materials, subject to availability", wherever they appear. ✓ Paragraph (d) by deleting the words "at the level of a national referral hospital"

c) Electric cars	• The Bill proposes a NIL stamp duty charge in respect of an instrument executed by or on behalf of a company or government for the sole purpose of implementing the strategic investment project of a manufacturer of an electric vehicle, electric battery, or electric vehicle charging equipment or fabricator of the frame and body of an electric vehicle meeting the investment requirements therein.

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Contacts for this Publication

Denis Yekoyasi Kakembo

Denis is the Managing Partner of the Firm. He is qualified both as a Lawyer and Chartered Accountant with UK training and vast experience serving local, regional and international companies in Sub Saharan Africa. He is recognized as a notable corporate and commercial law practitioner in Uganda.

Before joining Cristal Advocates, Denis spent nearly 10 years at Deloitte, an international professional services firm, where he started his career and rose to senior roles. While with Deloitte, he worked and lived in Uganda, Kenya, Tanzania and the United Kingdom.

Education

a) Master of Laws in Petroleum Taxation and Finance with distinction - University of Dundee, UK
b) Certified Public Accountant (Uganda) - ICPAU
c) Certified Chartered Accountant (“ACCA”) – ACCA
d) Post Graduate Diploma in Legal Practice - Law Development Center, Uganda
e) Bachelor of Laws degree - Makerere University, Uganda

John Teira

John is a Partner with the firm but presently on sabbatical leave. Before joining Cristal, he worked as a Private Secretary to the President of Uganda. Prior to this role, he had worked with Shonubi Musoke & Company Advocates and Post Bank Uganda Limited.

John is presently a Member of Parliament representing Bugabula County North in Kamuli District in Uganda National Assembly.

Education

a) Post Graduate Diploma in Legal Practice - Law Development Centre, Uganda
b) Bachelor of Laws (Honours) - Makerere University, Uganda
c) Diploma in Law (First Class) - Law Development Centre, Uganda
d) Basic Philosophy of Public Service Administrative Communication - Uganda Management Institute, Uganda

Dickens Asiimwe Katta

Dickens is a Partner at Firm where he also leads the oil and gas practice. Before joining Cristal Advocates, Dicken had served as Company Secretary of the Uganda Refinery Holding Company Limited (URHC) and the Uganda National Oil Company (UNOC) where he played key role in its formation.

Prior to joining the UNOC, Dickens had spent five years as Legal Counsel at the Petroleum Directorate of the Ministry of Energy and Mineral Development, where he evaluated several oil and gas transactions, negotiated contracts, and participated in the preparation of Uganda’s oil laws and regulations.

Education

a) Master of Laws in Petroleum Law and Policy with merit - University of Dundee, UK
b) Post Graduate Diploma in Legal Practice - Law Development Center, Uganda
e) Bachelor of Laws degree - Makerere University, Uganda

Bill Page

Bill is a Senior Advisor at the Firm and is a leading global energy and tax practitioner with extensive international experience.

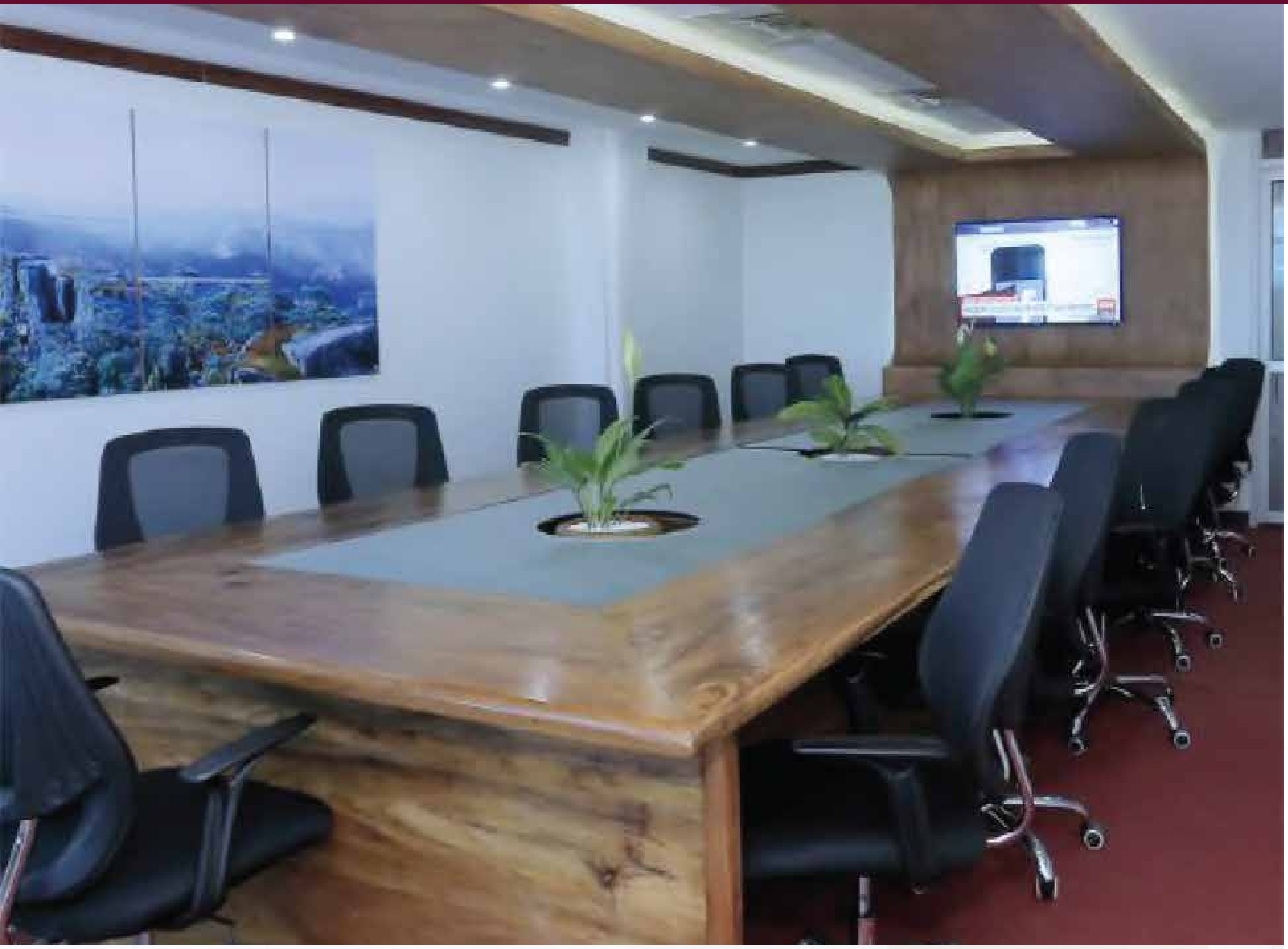
From 1986 to 1998, Bill worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan, working across the Caspian region with Deloitte during a period of major infrastructure development for crude oil production.

From 2004 to 2008, Bill worked in Russia, leading Deloitte's oil and gas industry group and establishing the firm's Sakhalin office. In 2009, he moved to East Africa, where he led Deloitte’s energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia, and Mozambique. Initially based in Kampala, Uganda, he later relocated to Dar es Salaam, Tanzania.

In 2014, Bill returned to the UK to support Deloitte UK teams on projects investing in Africa and remained a key member of Deloitte UK's energy and resource practice until his retirement in September 2018.

Education

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



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Contact us

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

P.O. Box 1769 Kampala, Uganda
+256 (414) 971274
admin@cristaladvocates.com
www.cristal advocates.com