



Are Reimbursements subject to Tax in Uganda? **An Overview**



1. Introduction

The tax treatment of the recovery or recharge of thirdparty expenses incurred by vendors while serving their customers had been a subject of contention a few years back. While the issue seemed to have been settled, the Uganda Revenue Authority (URA) recently threw a spanner in the works by disabling, in the Electronic Fiscal Receipting and Invoicing System (EFRIS), the option for taxpayers to exclude VAT on thirdparty recharges when invoicing clients. By this step, the URA posits that all thirdparty recharges are subject to VAT, a position that is not entirely tenable under the law, as we discuss in this updated version of our earlier article.

2. Disbursements or reimbursements

To simplify our discussion, we categorize the recovery

or recharge of third-party costs into two types namely disbursements and reimbursements. A third-party cost recharge is considered a reimbursement if the vendor incurred the expense as a principal while serving the customer. Conversely, it qualifies as a disbursement if the vendor incurred it as an agent for the customer.

For tax purposes, the recovery of thirdparty costs classified as disbursements is out of scope for VAT and withholding tax (WHT), as it does not represent billing for any supply made to the customer. It is simply a recovery of costs that ordinarily should have been incurred by the customer. In contrast, reimbursements of thirdparty costs to vendors by customers are subject to VAT and WHT where applicable, as these costs are directly incurred by the vendor in providing the supplies.

Issue	Disbursement	Reimbursement
Principal user	The vendor incurs an expense on behalf of the customer, who is the primary user of the item or supply procured.	The item purchased enables the vendor to provide the services or supplies that the customer contracted for.
Duty to Pay	The vendor is not obliged to pay for supplies from third parties unless specifically requested by the customer to incur such expenses on their behalf.	The vendor is obligated to pay for the thirdparty supplies as they are procured in own right.
Examples	Company registration fees, taxes paid on behalf of a client, court fees, land registration fees, assessments for building plans, and similar fees that are ordinarily payable by the customer— particularly when the assessments or invoices are issued in the customer's name.	Any such fees including airtickets, accommodation, transport fares, printing, fuel, telephone costs, and similar expenses incurred by the vendor during project execution to facilitate contract performance but subsequently recharged to the customer.

3. The tax position

It is our considered position 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. Equally so, URA must reconfigure its EFRIS system to enable taxpayers raise invoices for the recovery of thirdparty costs without VAT to the extent it is not applicable as has been set out in the foregoing discussion.

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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.

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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.

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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.

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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.

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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.

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



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