



**THE REPUBLIC OF UGANDA**

**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**

**APPLICATION NO. 274 OF 2025**

**ASAFALI WISSANJI..... APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY.....RESPONDENT**

**BEFORE: HON. CRYSTAL KABAJWARA, HON. STELLA NYAPENDI CHOMBO,  
HON. WILLY NANGOSYAH**

**RULING**

**I. Introduction**

1. This ruling is in respect of an application filed by the Applicant challenging the decision of the Respondent to subject the sale of undeveloped land to Capital Gains Tax and Withholding Tax on the basis that the land constituted a business asset. The application seeks a review and reversal of the Respondent's objection decision issued pursuant to the Income Tax Act.

**II. Background facts**

2. The Applicant is a registered taxpayer resident in Nakawa Division, Kampala, and was, at the material time, involved in rental-related economic activities.

3. The dispute concerns undeveloped land comprised in LRV KCCA 104 Folio 21, Plot M625, Nakawa Division Block, Ntinda, whose ownership history lies at the centre of the parties' disagreement. The land was originally leased by Kampala District Land Board to Wispro (U) Limited under a lease agreement dated 24 June 2014, with the permitted user expressly restricted to commercial purposes. The land was undeveloped at the time of leasing.
4. On 29 April 2015, Wispro (U) Limited formally acquired the leasehold interest in the said land from KCCA. At this time, the Applicant was a director of Wispro (U) Limited, although the land remained registered in the company's name and not in his personal capacity.
5. On 6 April 2023, the Applicant purchased the leasehold interest in the land from Wispro (U) Limited, thereby transferring ownership from the company to himself personally. The land remained undeveloped both at the time of acquisition and thereafter.
6. The Respondent later placed reliance on the fact that 6% tax was withheld at the time of this purchase, contending that such withholding treatment demonstrated that the land was recognised as a business asset. The Applicant disputes this inference, maintaining that the act of withholding tax on acquisition could not, of itself, determine the character of the land as a business asset in his hands.
7. As part of preparations for a subsequent disposal, the Applicant obtained consent to transfer the leased land on 18 December 2024. The consent was expressly granted subject to the terms and conditions of the original lease agreement, including the clause restricting use of the land to commercial purposes. The Respondent relies heavily on this restriction to support its view that the land was held for commercial use. The Applicant, however, contends that the restriction was not absolute, given that the lease permitted alternative use with the lessor's consent.
8. In early 2025, the Applicant entered into arrangements to sell the undeveloped land to Quaver Tec Hub Limited for a consideration of USD 650,000. Prior to completing the transaction, and with the intention of

ensuring compliance with his tax obligations, the Applicant wrote to the Respondent on 23 January 2025 seeking clarification on the tax treatment of the intended sale. He expressed the view that the transaction was VAT-exempt because the land was undeveloped, and that Capital Gains Tax and Withholding Tax did not apply because the land did not constitute a business asset.

9. By a letter dated 13 February 2025, the Respondent confirmed that the sale was VAT exempt on account of the land being undeveloped. However, the Respondent advised that the transaction attracted Capital Gains Tax and Withholding Tax at 6%, on the basis that the land was restricted to commercial use under the lease and was therefore held for commercial purposes within the meaning of sections 2 and 130(2) of the Income Tax Act. This response effectively crystallised the dispute between the parties.
10. The Applicant objected to this position, initially by a letter dated 18 February 2025, and later through a more detailed objection dated 9 May 2025. He maintained that the land was held in his personal capacity, had remained undeveloped, and had never been used in any trade or business. He further argued that the lease restriction could not, without more, convert the land into a business asset, especially given the possibility of non-commercial use with the lessor's consent.
11. On 19 March 2025, the Respondent issued an objection decision disallowing the Applicant's objection and maintaining that the transaction was subject to withholding tax at 6% as a disposal of a business asset. The Applicant persisted in challenging this conclusion and, by a letter dated 6 August 2025, relied on the Tribunal's decision in ***Amos Nzeyi v Uganda Revenue Authority, TAT No. 05 of 2025***, which he contended supported the proposition that undeveloped land held personally does not automatically qualify as a business asset. On the same date, the Respondent reiterated its position, declined to rely on the cited decision on the ground that it had been appealed, and again pointed to the prior withholding at acquisition as confirmation of the land's business character.

12. Being dissatisfied with the Respondent's position, the Applicant lodged application No. 274 of 2025 before the Tax Appeals Tribunal in September 2025, seeking a review and reversal of the objection decision. The Respondent filed its statement of reasons on 30 September 2025, maintaining that the Applicant was liable to withholding tax on the sale of what it characterised as commercial property and praying that the Application be dismissed with costs.

### **III. Issues for determination**

13. The main issue for determination is whether the land disposed of by the Applicant constituted a business asset at the time of disposal, so as to render any gain derived therefrom taxable under the Income Tax Act.

### **IV. Representation**

14. At the hearing, the Applicant was represented by Mr. Amanyu Bruno and Mr. Bruno Kalibala whereas Ms. Amutuhaire Doreen appeared for the Respondent.

### **V. Submissions of the Applicant**

15. The Applicant submitted that they were not liable for the tax assessed. He argued that the land in question was not a business asset within the meaning of the Income Tax Act. The Applicant stated that he neither developed the land nor used it for any trade, business, or commercial activity. Accordingly, the land was subsequently sold to Quaver Tec Hub at a consideration of USD 650,000.

#### **Whether the land disposed of by the Applicant constituted a business asset at the time of disposal?**

16. The Applicant submitted that the taxation of gains from asset disposals by resident persons in Uganda was settled law. According to the Applicant, under Ss. 4, 18(1)(a), and 21(1)(j) of the Income Tax Act, gains derived from asset disposals were only taxable where the asset disposed of was a business asset, a commercial building, or shares in a private company.

17. The Applicant relied on the position in ***Chandaria Foundation Registered Trustees v Uganda Revenue Authority, TAT Application No. 331 of 2024***, and ***Amos Nzeyi v Uganda Revenue Authority, TAT Application No. 005 of 2024***, where the Tribunal held that gains arising from the disposal of land by a resident individual are only taxable if the asset disposed of constitutes a business asset, a commercial building, or shares in a private company.
18. The Applicant submitted that the land disposed of fell into none of the taxable categories, as it was neither a business asset, nor a commercial building, nor shares in a private company. Accordingly, any gain derived from the disposal was exempt under S.21(1)(j) of the Income Tax Act.

**Was the land a business asset?**

19. The Applicant submitted that S.18(1)(a) of the Income Tax Act included gains from the disposal of a business asset within business income. However, S.21(1)(j) exempted capital gains not included in business income, except for gains arising from the disposal of a commercial building or shares in a private company.
20. The Applicant further submitted that S.2 of the Income Tax Act defined a business asset as an asset used or held ready for use in a business, including an asset held for sale in a business, or an asset owned by a partnership or a company. The Applicant relied on ***Comfort Homes (U) Ltd v Uganda Revenue Authority, TAT Application No. 66 of 2020***, which clarified that an asset could only qualify as a business asset if it met one of the statutory criteria.
21. The Applicant submitted that it was an agreed fact that the Applicant owned the land in their individual capacity, and not as a partnership or company, rendering the category relating to partnership or company assets inapplicable.

22. With regard to use, readiness for use, or holding for sale, the Applicant submitted that a common and indispensable requirement was the existence of an identifiable business activity. The categorisation of an asset as a business asset necessarily depended on its connection to an ongoing business in which it was used, held ready for use, or held for sale.
23. The Applicant invoked S.2 of the Income Tax Act, which defined a business to include a trade, profession, vocation, or adventure in the nature of trade. In support of its position, the Applicant cited the case of ***Luwaluwa v Uganda Revenue Authority, Civil Appeal No. 43 of 2022***, in which the High Court held that the determination of whether property was used in a business depended on continuity and regularity of use, the taxpayer's operations, and the role of the asset in those operations.
24. The Applicant argued that they did not, at any material time, carry on a business. The Respondent had not produced evidence demonstrating continuity, regularity, or systematic activity suggestive of a land dealing or property trading business. The Applicant was neither a land dealer nor engaged in recurring land transactions, and the transaction in issue concerned a single parcel of land.
25. The Applicant further submitted that the land was undeveloped and vacant at the time of disposal and had never been used in any business or commercial venture. The Applicant stated that he was an employee and was not engaged in the business of buying and selling land; accordingly, the land constituted a personal investment asset.
26. In support of its position, the Applicant cited ***Amos Nzeyi v Uganda Revenue Authority, TAT Application No. 005 of 2024***, in which the Tribunal, on similar facts, ruled that undeveloped land lacking a nexus to an identifiable business activity was not a business asset and that gains derived from its disposal were not taxable. The Applicant, therefore, invited the Tribunal to reach the same conclusion.

### **Respondent's reliance on the lease agreement**

27. The Applicant submitted that the Respondent had erroneously classified the land as a business asset on the basis that the lease restricted its use to commercial purposes. The Applicant went ahead to state that the Respondent relied on Clause 2(d) of the lease agreement, which required the lessee to obtain the lessor's consent before using the land for non-commercial purposes.
28. The Applicant stated that the clause did not mandate commercial use. Rather, it permitted non-commercial use subject to prior written consent. Properly construed, the clause regulated use but did not impose an obligation to use the land commercially, nor did it evidence that the land was held or used in a business.
29. In conclusion of this point, the Applicant stated that the Respondent's conclusion amounted to a misinterpretation of the lease agreement and an erroneous application of the law. According to the Applicant, mere commercial capability, without evidence of an actual business carried on by the Applicant, cannot transform the land into a business asset. This position was inconsistent with the findings in *Luwaluwa v Uganda Revenue Authority (supra)*.

### **Respondent's disregard of Tribunal precedent**

30. The Applicant submitted that during the objection process, they had drawn the Respondent's attention to the Tribunal's decision in *Amos Nzeyi v Uganda Revenue Authority (supra)*. The Applicant emphasised that, although the Respondent did not dispute the factual similarity between the cases, it declined to consider the decision on the basis that an appeal had been lodged.
31. The Applicant submitted that this approach was untenable. Under Section 20(6) of the Tax Appeals Tribunal Act, a decision of the Tribunal had the

effect of and was enforceable as a court decision, unless stayed or set aside. The mere lodging of an appeal did not suspend the binding force of a Tribunal decision.

32. The Applicant relied on ***Massalia SMC Limited v Uganda Revenue Authority, Miscellaneous Application No. 2691 of 2025***, where the High Court criticised the Respondent for disregarding decisions of the Tribunal while appeals were pending and emphasised the importance of legal certainty and respect for adjudicative hierarchy.
33. The Applicant submitted that the Respondent's conduct undermined fairness, predictability, and the rule of law in tax administration.

#### **Withholding tax deduction on purchase**

34. The Applicant submitted that the Respondent had further erred by contending that the Applicant's deduction of 6% withholding tax upon purchasing the land from Wispro (U) Limited rendered the land a business asset in the Applicant's hands.
35. The Applicant submitted that withholding tax was imposed on the recipient of income, not the payer, and that the payer merely acted as a statutory collecting agent. According to the Applicant, this position had been affirmed in ***Machame Estates Limited v Uganda Revenue Authority, TAT Application No. 49 of 2025***.
36. The Applicant further submitted that while the land may have constituted a business asset in the hands of Wispro (U) Limited, a company, that characterisation did not attach to or transfer with the asset upon acquisition by the Applicant as an individual. Upon the Applicant's acquisition of the land, which was not used for any business, the land ceased to be a business asset.

37. The Respondent's reliance on the prior withholding tax deduction improperly conflated the tax status of the previous owner with that of the Applicant, contrary to Ss. 4, 18(1)(a), and 21(1)(j) of the Income Tax Act.
38. The Applicant concluded by submitting that the land disposed of was not a business asset and that any gain derived from its disposal was not subject to income tax. He accordingly prayed that the application be allowed and that costs be awarded in their favour.

#### **VI. Submissions of the Respondent**

39. The Respondent maintained that the Applicant was liable for the tax assessed. They argued that the leasehold land, though undeveloped, was held for commercial purposes and therefore constituted a business asset under the Income Tax Act. On that basis, the Respondent contended that the disposal was subject to withholding tax at 6%, notwithstanding its exemption from Value Added Tax.

#### **Whether the sale constituted a disposal of a business asset?**

40. The Respondent submitted that the income earned by the Applicant from the sale of the land to Quaver Tec Hub Limited was business income arising from the disposal of a business asset. It was argued that the land in issue was commercial property, having been leased expressly for commercial purposes, namely the erection of buildings for occupation. According to its submissions, the land had originally been leased to Wispro (U) Limited, a company in which the Applicant was a director, and the Applicant later acquired the land without altering the purpose for which it had been leased.
41. The Respondent further submitted that the Applicant was engaged in the rental business, which was consistent with the commercial purpose for which the property had been acquired and held. Reference was placed on S.2(c) of the Income Tax Act, which defines a "business asset" as an asset used or held ready for use in a business, including an asset held for sale in a business.

42. In support of its position, the Respondent referred to the decision of the Tribunal in *Comfort Homes v Uganda Revenue Authority, TAT Application No. 66 of 2020*, where it was ruled that an asset qualifies as a business asset if it is used in a business, held ready for use in a business, held for sale in a business, or owned by a partnership or company.
43. The Respondent argued that the land was leased strictly for commercial purposes, and that this purpose had never changed. The lease agreement expressly restricted the use of the land to the erection of buildings for occupation, and this restriction applied throughout the period of ownership, including when the Applicant acquired the property. The land was therefore held ready for use in a business, namely the construction and operation of rental premises.
44. The Respondent contended that the Applicant's sale of the land constituted disposal of a business asset within the meaning of section 2(c) of the Income Tax Act. The Respondent urged the Tribunal to distinguish this case from *Amos Nzeyi v Uganda Revenue Authority, TAT Application No. 005 of 2024*, on the basis that in Amos Nzeyi the land was privately acquired and disposed of as private property, whereas in the present matter the land was commercial in nature and subject to a predetermined commercial purpose which had never been altered.
45. The Respondent therefore invited the Tribunal to resolve the first issue in the affirmative and to find that the sale constituted a disposal of a business asset.

**Was there a duty to withhold 6% withholding tax?**

46. Having submitted that the sale involved a business asset, the Respondent argued that Quaver Tec Hub Limited, as the purchaser, was under a statutory duty to withhold tax at the rate of 6% pursuant to S.130(2) of the Income Tax Act. According to its submissions, the Respondent emphasised that the above legal provision requires a resident person who purchases a business or business asset to withhold tax at the prescribed rate.

47. The Respondent submitted that all statutory requirements under S.130(2) were satisfied, that is, that the purchaser was a resident person; that there was a purchase; the subject of the purchase was a business asset; and the purchaser was therefore obligated to withhold tax.
48. Further, the Respondent called the attention of the Tribunal towards S.18 of the Income Tax Act, which defines business income as including any gain derived on the disposal of a business asset. The Respondent cited the Tribunal's decision in *Silver Springs Hotel Limited v Uganda Revenue Authority, TAT Application No. 43 of 2022*, where it was held that the duty to withhold arises at the moment a business asset is purchased.
49. The Respondent maintained that the sale of the land was therefore liable to withholding tax at the rate of 6%, and that Quaver Tec Hub Limited was lawfully required to withhold and remit the tax upon payment to the Applicant.
50. In light of the foregoing submissions, the Respondent prayed that the Tribunal dismiss the application and find that the transaction constituted a disposal of a business asset liable to withholding tax at the rate of six per cent. The Respondent further contended that the Applicant had failed to discharge the burden of proof imposed by law and, on that basis, prayed that the application be dismissed with costs to the Respondent.

#### **VII. Submissions of the Applicant in rejoinder**

51. In rejoinder, the Applicant reiterates and wholly relies on its earlier submissions and briefly responds to the Respondent as follows.
52. The Applicant argued that the Respondent's contention that the unimproved leasehold land constituted a business asset is misconceived and unsupported by evidence. The Applicant equally emphasised that the mere existence of a commercial user clause in the lease, which was never operationalised, does not convert unused and unimproved land into a business asset.

53. It is on the basis above that the Applicant contended that the Respondent had failed to demonstrate that the land was used or held ready for use in the Applicant's rental business, as required under S.2 of the Income Tax Act.
54. The Applicant further stated that the Respondent's case rests entirely on speculation drawn from the Applicant's ownership of other rental properties, without any factual evidence linking the disputed land to an existing business. Accordingly, the Applicant maintains that the land did not qualify as a business asset, rendering the provisions of section 130(2) of the Income Tax Act on withholding tax inapplicable. In conclusion, the Applicant reiterates his prayers that the Respondent's position be rejected in its entirety and relies fully on his earlier submissions on the appropriate remedies.

#### **VIII. The determination**

55. Having heard the evidence and read the submissions of both parties, this is the ruling of the Tribunal.

**Issue one: Whether, at the time of disposal, the land constituted a business asset within the meaning of the Income Tax Act so as to render the gain taxable and subject the transaction to WHT at 6%?**

56. This Application challenges the Respondent's objection decision treating the Applicant's disposal of an undeveloped leasehold interest in land comprised in LRV KCCA 104 Folio 21, Plot M625, Ntinda (Nakawa Division) as a disposal of a business asset, thereby attracting Capital Gains Tax consequences and withholding tax at 6%. The Applicant's position was that the land was held by him personally, remained undeveloped, was never used in any trade or business, and that the restrictive user clause in the lease agreement could not, without evidence of actual business deployment, convert the land into a business asset in his hands.

57. The Respondent's position, on the other hand, was that the land was commercial by reason of the lease restriction to commercial purposes, coupled with the Applicant's rental-related economic activity and the withholding treatment at acquisition, and that it therefore qualified as a business asset.
58. The parties agreed that the dispute turned on the construction and application of the Income Tax Act. The statutory framework is clear. Section 2 of the Income Tax Act defines the following terms as follows;

*"Business" includes any trade, profession, vocation or adventure in the nature of trade, but does not include employment.*

*"Business asset" means an asset which is used or held ready for use in a business, and includes any asset held for sale in a business and any asset of a partnership or company.*

*"Business income" has the meaning in section 18."*

59. Section 18 defines business income as;

*"Business income*

*(1) Business income means any income derived by a person in carrying on a business and includes the following amounts, whether of a revenue or capital nature—*

- (a) the amount of any gain, as determined under Part VI which deals with gains and losses on disposal of assets, derived by a person on the disposal of a business asset, or on the satisfaction or cancellation of a business debt, whether or not the asset or debt was on revenue or capital account;*
- (b) any amount derived by a person as consideration for accepting a restriction on the person's capacity to carry on business;*
- (c) the gross proceeds derived by a person from the disposal of trading stock;*

- (d) *any amount included in the business income of the person under any other section of this Act;*
  - (e) *the value of any gifts derived by a person in the course of, or by virtue of, a past, present or prospective business relationship;*
  - (f) *the interest derived by a person in respect of trade receivables or by a person engaged in the business of banking or money lending; and*
  - (g) *rent derived by a person whose business is wholly or mainly the holding or letting of property.*
- (2) *An amount included in business income under subsection (1)(f) or (g) retains its character as interest or rent for the purposes of any section of this Act referring to such income.*
  - (3) *Where, as a result of any concession granted by, or a compromise made with, a taxpayer's creditors in the course of an insolvency, the taxpayer derives a gain on the cancellation of a business debt, section 38(3) applies in lieu of including the gain in the business income of the taxpayer under subsection (1).*
  - (4) *In this section, "business asset" does not include trading stock or a depreciable asset".*

60. Section 4 of the Income Tax Act, which is the charging provision, states as follows:

*"(1) Subject to and in accordance with this Act, a tax to be known as income tax shall be charged for each year of income and is imposed on every person who has chargeable income for the year of income".*

61. While section 15 defines chargeable income as gross income less allowable deductions. Section 17 classifies gross income to include business income, and section 18(1)(a) brings into business income any gain derived on the disposal of a business asset.

62. The Tribunal notes that liability to income tax on gains arising from the disposal of assets must arise within the framework of the charging provisions of the Income Tax Act. Under sections 4, 17, and 18 of the Act,

gains become taxable where they constitute business income, including gains arising from the disposal of a business asset. The central question, therefore, remains whether the land disposed of by the Applicant constituted a business asset within the meaning of section 2 of the Act.

63. The determinative statutory question, therefore, becomes whether the asset disposed of falls within the definition of a “business asset” under S.2.

64. The Respondent relied on S.130(2) of the Income Tax Act, arguing that the purchaser was obligated to withhold tax at 6% on the purchase of a business asset and states;

*“(2). A resident person who purchases a business or business asset shall withhold tax at a rate specified in Part X of Schedule 4 to this Act”.*

65. Therefore, the Applicant’s case was that the above provision cannot arise unless the threshold condition, namely that the asset is a business asset, is first satisfied.

#### **Analysis and determination of issue one**

66. In the Applicant’s correspondence, specifically his request for guidance dated 23 January 2025, the Applicant described the property as undeveloped land and asserted that the disposal would not attract tax because it was not a business asset.

67. This factual characterisation was not controverted by the Respondent, which expressly accepted in its response of 13<sup>th</sup> February 2025, that the land was unimproved/undeveloped, going further to confirm that the transaction was exempt from VAT on that basis. The evidential significance of this concession is considerable. It establishes, in fact, that the land remained undeveloped and had not undergone any transformation that might signal its integration into a business activity.

68. Evidence of the sale agreement reinforces this evidential position. The property was sold in its existing condition, with no reference to ongoing development, commercial exploitation, or operational use by the Applicant. The contractual provisions instead reflect a passive holding and a singular act of disposal, with the parties structuring the payment obligations around the uncertainty of withholding tax treatment rather than around an ongoing business arrangement. This supports the Applicant's submission that the transaction was a one-off capital realisation, not a disposal in the course of business.
69. The Leasehold Certificate of Title in LRV KCCA 104, Folio 21, further clarifies the ownership context. It shows that the land was formerly held by WISPRO (U) Limited, registered on 29/04/2015 at 3:38 pm vide instrument no. KCCA-00019430, but was transferred to the Applicant in his individual capacity, who was subsequently registered on 6/4/2023 at 11:00 am vide instrument no. KCCA-00103534.
70. The information above supports the Applicant's submission that the character of the asset must be assessed in his hands at the time of disposal, not by reference to its historical ownership. The Respondent's reliance on the earlier withholding at acquisition, as reflected in its objection decision, does not alter this position. The fact that withholding tax was deducted when the Applicant acquired the land from a company does not establish that the land remained a business asset in his hands thereafter.
71. The Respondent's case rests principally on the lease clause restricting use to commercial purposes and the inference drawn from it that the land was "held for commercial use." This reasoning is reflected consistently in its correspondence, which concludes that the land was a business asset because its use was restricted to commercial purposes and therefore fell within S. 2 and 130(2) of the Income Tax Act. The Tribunal finds, however, that this evidential basis is insufficient to satisfy the statutory test.

72. The Applicant's correspondence directly addresses this point, arguing that the lease clause does not impose an absolute obligation of commercial use but merely regulates permissible use subject to consent. More importantly, the Applicant emphasised that the actual state of affairs remained unchanged: the land was undeveloped, unused, and not deployed in any business. This submission is consistent across his correspondence and is not rebutted by any contrary evidence from the Respondent.
73. The Tribunal finds that the Respondent's approach effectively treats permissive legal character as equivalent to actual economic use, thereby collapsing the distinction that the statute clearly draws. S.2 does not define a business asset as land that is capable of commercial use, but as land that is used or held ready for use in a business. The Respondent has not pointed to any evidence demonstrating that the Applicant took steps to develop, commercialise, or otherwise integrate the land into a business enterprise. There is no evidence of construction, leasing, planning approval, advertising, or any activity that would objectively indicate readiness for business use.
74. The Tribunal recognises that an asset need not necessarily be actively used in an ongoing business before qualifying as a business asset under section 2 of the Income Tax Act. An asset may still qualify where the evidence demonstrates that it was being prepared, positioned, or maintained for identifiable business use. However, in the present case, the Respondent did not produce evidence demonstrating that the Applicant had taken steps showing that the land was being held ready for use in a business enterprise. There was no evidence of development approvals, construction activity, financing arrangements for commercial development, marketing for commercial exploitation, or any other objective indicators linking the land to an identifiable business operation.
75. The Tribunal is fortified in this conclusion by the reasoning in ***Chandaria Foundation Registered Trustees v Uganda Revenue Authority, TAT***

**No. 331 of 2024**, which emphasised that only assets employed in or held for a business enterprise qualify as business assets. Similarly, in ***Dr Amos Nzeyi v Uganda Revenue Authority, TAT Application 005 of 2024***, the Tribunal ruled that classification must be grounded in evidence of actual business activity, rather than inference, noting that a one-off transaction involving undeveloped land is indicative of a capital investment rather than a business asset. The present case is materially analogous. The Respondent's reliance on inference mirrors the evidential deficiency identified in the case of ***Dr Amos Nzeyi V URA ( Supra)***.

76. The Tribunal also adopts the caution articulated in ***Makerere University Retirement Benefits Scheme Ltd v URA, TAT No. 17 of 2021*** that tax statutes must be construed strictly, and the statutory definition of "business asset" must not be expanded beyond its terms. The Tribunal is unable to accept the Respondent's interpretation because it would substantially broaden the statutory definition of a business asset beyond the language employed by Parliament under section 2 of the Income Tax Act.
77. The Tribunal has also considered whether the transaction could properly be characterised as an "adventure in the nature of trade" within the meaning of section 2 of the Income Tax Act. However, the evidence before the Tribunal does not disclose a pattern of land trading, commercial dealing, or organised profit-making activity connected to the disputed property. The transaction concerned a single undeveloped parcel of land held by the Applicant in his individual capacity, and no evidence was produced to demonstrate that the acquisition and disposal formed part of a broader land trading operation.
78. Finally, ***Luwaluwa Investments Ltd v Uganda Revenue Authority, Application no. 39 of 2021***, underscores that the enquiry must focus on the factual nexus between the asset and a business, not on labels or contractual form. The Respondent has not demonstrated that nexus in this case.

79. Upon a careful evaluation of the law, evidence, and submissions of the parties, the Tribunal is not satisfied that the Respondent established a sufficient nexus between the disputed land and any identifiable business activity of the Applicant. While the Respondent relied on the commercial user clause in the lease agreement, the Applicant's rental-related economic activity, and the withholding treatment at acquisition, those factors, without further evidence of actual or intended business deployment of the land, are insufficient to satisfy the statutory definition of a business asset under section 2 of the Income Tax Act.
80. In the absence of evidence that the land was used in, held ready for use in, or held for sale in a business within the meaning of S.2 of the Income Tax Act, the Tribunal finds that the land did not constitute a business asset at the time of disposal. Consequently, any gain arising from its disposal did not constitute taxable business income under S.18(1)(a).

**Whether the transaction attracted withholding tax at 6%?**

81. Having resolved issue one in the negative, the Tribunal turns to the consequential question arising from the Respondent's position, namely, whether the transaction attracted withholding tax at 6% under the Income Tax Act.
82. The Respondent's case, as reflected in its guidance and objection decision, was that the purchaser, Quaver Tec Hub Ltd, was obligated to withhold tax at the rate of 6% on the purchase price pursuant to S.130(2) of the Income Tax Act, on the footing that the transaction involved the purchase of a "business asset."
83. The Tribunal notes that that position was consistently maintained in the Respondent's correspondence, where it reasoned that, because the land was restricted to commercial use, it was held for commercial purposes and therefore fell within the statutory definition of a business asset, thereby triggering the withholding obligation. The Respondent further relied on Ss.

4(1), 18(1)(a) and Part VI of the Act to assert that the Applicant would be liable to account for the gains arising from the disposal.

84. The Applicant, on the other hand, argued that the withholding obligation under S.130(2) is not freestanding but arises only where the subject of the transaction is in fact a "business asset" within the meaning of S.2 of the Income Tax Act. It was the Applicant's case that, since the land was never used in any business, was not held ready for use in any business, and remained a personal capital asset, the statutory condition precedent for the imposition of withholding tax was not satisfied.
85. The above position was consistently articulated in the Applicant's correspondence, including the request for guidance and subsequent objections, where it was emphasised that the land had remained undeveloped and had not been utilised in any commercial or business activity, and that reliance on the lease clause disregarded the substance of the transaction.
86. The Tribunal finds that the resolution of this issue turns on a proper appreciation of the statutory framework governing WHT. S.130(2) of the Income Tax Act imposes an obligation on a resident person to withhold tax only where the transaction involves the purchase of a business or a business asset.
87. It follows that the withholding obligation is not automatic, but is contingent upon the legal character of the asset forming the subject of the transaction. The provision must therefore be read together with the definition of a "business asset" under S.2 of the Act, which supplies the threshold criterion for its application. Where, upon examination, the asset does not meet that statutory definition, the legal basis for invoking section 130(2) does not arise.
88. In determining issue one, the Tribunal has already found, after careful evaluation of the law, evidence, and authorities, that the land disposed of

by the Applicant did not constitute a business asset at the time of disposal. That finding was grounded on the lack of evidence that the land was used in, held ready for use in, or held for sale in an identifiable business of the Applicant, and in the insufficiency of the Respondent's reliance on the lease restriction, general economic activity, and prior withholding treatment to satisfy the statutory test.

89. The Tribunal further finds that the Respondent's approach amounted to treating commercial permissibility as determinative of business classification, which is inconsistent with the definition under S.2 of the Income Tax Act.
90. It follows, as a necessary legal consequence of that finding, that the statutory condition precedent for the operation of S.130(2) is not met. The Tribunal emphasises that the withholding provision is not intended to enlarge the scope of taxation beyond what is provided under the charging and definitional provisions of the Act. Rather, it operates as a mechanism for collecting tax where liability has arisen under the substantive provisions. To apply S.130(2) in the absence of a qualifying business asset would, in effect, detach the withholding obligation from its statutory foundation and impose a tax obligation where the Act does not provide for one.
91. The Respondent's reliance on the fact that withholding tax was deducted at the time the Applicant acquired the land from Wispro (U) Ltd does not alter this conclusion. That prior transaction must be assessed within its own context, particularly in light of the nature of the vendor at the time, and does not, without more, determine the character of the asset in the hands of the Applicant at the time of its subsequent disposal. As already observed in the determination of issue one, the classification of an asset as a business asset is specific to the taxpayer's factual circumstances and the period in question, and cannot be transposed from one transaction to another.
92. Similarly, the contractual provisions in the sale agreement providing for the application for a withholding tax exemption and allocating tax

responsibilities between the parties do not determine the legal incidence of tax. Those provisions merely reflect the parties' anticipation of potential tax implications based on the Respondent's guidance; they cannot, as a matter of law, create or sustain a withholding obligation where the statutory conditions are not satisfied.

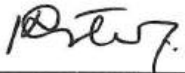
93. In light of the foregoing, and applying S.130(2) of the Income Tax Act in conjunction with the definition of "business asset" under S.2, the Tribunal finds that the transaction did not attract WHT at 6%. The Respondent's conclusion to the contrary was premised on an erroneous classification of the land as a business asset, and consequently, the withholding obligation asserted cannot be sustained.

**What remedies are available to the parties?**

94. Section 22 (5) and (6) of the Tax Appeals Tribunal Act grants this Tribunal broad powers to make orders regarding costs, damages, interest or any other remedy against any party. Given the findings above, the Tribunal finds that the Application should be allowed and that the assessment should be set aside.
95. Accordingly, the Tribunal finds that the Respondent failed to demonstrate that the land was used in, or held ready for use in, any identifiable business of the Applicant within the meaning of S.2 of the Income Tax Act. The Respondent's reliance on the lease restriction, general economic activity, and prior withholding treatment was insufficient to satisfy that statutory threshold. It follows that the gain arising from the disposal did not fall within business income under S.18(1)(a) of the ITA, and the consequent imposition of capital gains tax and withholding tax was unfounded.
96. In the circumstances, the Tribunal orders as follows;
- (i) This Application is allowed.
  - (ii) The Respondent's objection decision is set aside.

- (iii) The gain arising from the disposal does not constitute taxable business income under section 18(1)(a) of the Income Tax Act.
- (iv) The transaction is not subject to WHT under S.130 (2) of the Income Tax Act.
- (v) Any tax paid pursuant to the impugned assessment or withholding treatment shall be dealt with in accordance with the applicable refund procedures under the law.
- (vi) Costs are awarded to the Applicant.

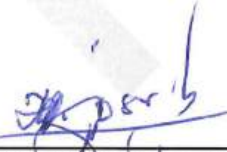
Dated at Kampala this 29<sup>th</sup> day of May 2026.



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**HON. CRYSTAL KABAJWARA**  
**CHAIRPERSON**



\_\_\_\_\_  
**HON. STELLA NYAPENDI CHOMBO**  
**MEMBER**



\_\_\_\_\_  
**HON. WILLY NANGOSYAH**  
**MEMBER**