TAX APPEALS TRIBUNAL

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 183 OF 2024

CAYMAN CONSULTS LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. STELLA NYAPENDI CHOMBO, HON. GRACE SAFI

RULING

I. Introduction

1. This ruling arises from an application challenging a Pay As You Earn (PAYE) assessment issued by the Respondent against the Applicant in the sum of Shs. 42,331,904,361 for the period 2019–2022. The dispute stems from a Project Implementation Agreement between the Applicant and Trigyn Technologies Inc., a United States-based company, under which the Applicant provided staffing and payroll management services to United Nations missions across multiple jurisdictions.

II. Background Facts

2. The Applicant is engaged in staff management and human resource outsourcing services. In 2009, it entered into a Project Implementation Agreement (PIA) with Trigyn Technologies Inc. (Trigyn), a US-based company, to provide information Technology (IT) staffing support services to United Nations missions in Uganda and other African countries, including South Sudan, Kenya, Somalia, Mali, Congo, and the Central African Republic.

3. In 2018, the Respondent conducted an audit on the Applicant in respect to its subcontract with Trigyn, and through a management letter dated 27 August 2018, it declared that the personnel that the Applicant manages on behalf of Trigyn for UN missions are non-employees for income tax purposes and that the income they receive is exempt under Section 21 of the Income Tax Act.

4. While relying on the guidance of the Respondent, the Applicant did not collect or remit PAYE from the personnel it manages, and neither did the Respondent demand the same since 2018. In 2023, the Respondent conducted a further audit exercise at the Applicant's premises, during which various documents relating to the Applicant's operations were obtained, following which PAYE assessments totalling Shs. 42,331,904,361 were issued.

5. According to the Respondent, the Applicant bore full responsibility for all staffing support provided through its resources. After the Respondent had confirmed in an audit that the Applicant was exempt in 2018, they conducted a further audit in 2023 and issued a PAYE assessment against the Applicant for Shs. 42,331,904,361. This was on the grounds that the Applicant was, in substance, an employer of the deployed personnel rather than merely a human resources management consultant as represented.

6. The Applicant objected to the above assessments on the basis of the Respondent's guidance in the management letter dated 27 August 2018.

7. The Respondent, in its objection decisions dated 21, 24, 26 and 28 June 2024, disallowed the objections. Being dissatisfied, the Applicant filed this Application on the following grounds;
   a) The personnel are not its employees, and their income is exempt under Section 21 of the Income Tax Act.
   b) The Respondent's assessments of 2019 were time-barred,
   c) The Respondent charged tax on non-residents, and
   d) It is bound by its management letter of 2018.

III. Issues for determination

8. The following issues were central for determination by the Tribunal;

   a) Whether the Applicant was the employer of the deployed personnel ;

   b) Whether the Applicant is liable to pay PAYE tax amounting to UGX 42,331,904,361 as assessed; and

   c) Whether the Applicant is entitled to the reliefs sought.

IV. Representation and Evidence

9. Mr. Ssekabira Isaac and Ms. Sarah Atai of M/S D.K Makubuya Advocates represented the Applicant, while the Respondent was represented by Ms. Gloria Twinomugisha, Ms. Joan Agasha and Ms. Charlotte Katuutu from the Legal Service and Board Affairs Department. The Applicant led two witnesses; Mr. Abubaker Luwaga Ssebatindira (AW1), the Director of the Applicant, and Mr. Harith Kabagambe, the Applicant's Tax consultant (AW2), while the Respondent led one witness Ms. Christine Nakiberu Balukusa (RW1) from the Tax Investigations Department.

The Applicant's evidence

10. Mr. Abubaker Luwaga Ssebatindira (AW1) testified that the Applicant's role through a Project Implementation Agreement (PIA) with Trigyn dated 5 May 2009 was limited to payroll administration and HR support services (annexure AEX2). AW1 further testified that personnel Recruitment, selection, supervision, and operational control of personnel were undertaken by Trigyn Technologies Inc. and the United Nations; salaries and allowances were determined by UN timesheets.

11. AW1 testified that the Applicant only processed payroll based on instructions received and that the Applicant earned a fixed commission of USD 110 (One Hundred Ten US Dollars) per employee.

12. AW1 testified that the Applicant in substance did not control work performance or deployment decisions as deemed by the Project implementation agreement due to the level of expertise required in IT and

the wide scope of countries for recruitment that the Applicant could hardly reach. He adduced evidence of staff introduction emails by Trigyn to the Applicant as their consultant, UN Trigyn Guidelines, evidence of time sheets originating from Trigyn, leave approval emails, instructions of termination, UN IDs for staff, notes to the Ministry of Internal Affairs introducing the staff as UN/ Trigyn contractors and bank statements .AW1 added that for the term of the agreement, the Applicant's role was limited to administrative support such as managing the payroll, and processing work permits for the staff.

13. AW1 testified that the UN remitted salaries and mission living allowances to Trigyn based on approved timesheets, after which Trigyn forwards the funds to the Applicant for disbursement to personnel. AW1 added that the Applicant successfully provided payroll and support services from 2013 to 2017, during which, its operations expanded across several UN Missions in Africa, leading to increased transactions volumes.

14. AW1 also stated that in 2018, the Respondent pursuant to comprehensive audit of 2017, issued a management letter (AEX20) confirming that the personnel were non-employees for PAYE purposes, and their income is exempt in accordance with Section.21 of the Income Tax Act. During cross-examination, AW1 testified that in May 2023 the Respondent entered the Applicant's offices during the audit exercise and obtained documents relating to the transactions under review, including copies of the 2018 management letter.

15. AW1 stated further that the Respondent disregarded all its explanations during the mediation, including its own management letter and maintained that the PAYE assessment of Shs. 42,331,904,361 was due and payable.

16. The Applicant's second witness **Mr. Harith Kabagambe (AW2)**, confirmed that he was present in the meetings between the parties and that all requested documentation, including contracts with Trigyn and UN and

agreements, was submitted to the Respondent during audit proceedings of 2018. AW2 added that notable documents included an introduction letter of the Applicant by UN to the United Nations (UN) Chief Regional Field Technology Service, Regional Service Centre Entebbe (RSCE) plus RSCE's and a disbursement letter.

The Respondent's Evidence

17. Ms. Christine Nakiberu Balukusa (RW1), an officer in the Respondent's Tax Investigations Department, testified that in February 2023, the Respondent commenced investigations into the Applicant's tax affairs based on intelligence information and available tax data. The investigations allegedly revealed overstatement of costs and non-declaration of income arising from the Applicant's labour externalization business.

18. RW1 testified that during an entry meeting held on 17 March 2023, the Applicant explained that it provided staffing support services to United Nations Missions in Africa. The Applicant subsequently furnished documents including the Project Implementation Agreement with Trigyn Technologies Inc., sample employment contracts, payroll records, and bank statements for review. The Respondent concluded that the Applicant provided staffing support services to United Nations Missions in Africa and that personnel deployed under the arrangement were employees of the Applicant.

19. RW1 testified that the PIA and employment contracts demonstrated an employer-employee relationship between the Applicant and the deployed personnel. She stated that the Respondent consequently assessed PAYE amounting to Shs. 42,331,904,361 for the period January 2019 to December 2022 on the basis that the Applicant had failed to withhold and remit PAYE on payments made to those personnel.

20. However, during cross-examination, RW1 acknowledged that the employment contracts relied upon by the Respondent related to personnel

whose engagements commenced between 2013 and 2014 and expired between 2014 and 2015. She further admitted that no renewal or extension agreements had been attached and that no employment contracts covering the assessment period of 2019 to 2022 had been produced before the Tribunal.

21. RW1 also confirmed during cross-examination that although the Respondent relied on the Applicant's bank statements in making the assessment, the bank statements themselves had not been tendered before the Tribunal. She further acknowledged that she was unable to demonstrate from the documents before the Tribunal how the PAYE assessment of approximately UGX 42 billion had been computed.

22. RW 1 also acknowledged that the management letter dated 27 August 2018 related to the period 2014 to 2017, was not the basis of the impugned assessment, and stated that she was unaware whether it had ever been revoked or whether any PAYE demand had been raised following that review.

23. RW1 acknowledged further that the Applicant had previously been subjected to a return examination resulting in a management letter dated 27 August 2018 covering the period 2014 to 2017. While she maintained that the impugned assessment arose from a separate comprehensive audit covering January 2019 to December 2022, she admitted during cross-examination that she was unaware whether the 2018 management letter had ever been revoked or whether any PAYE demand had been raised following that review.

24. RW1 admitted that the Respondent assessed taxes on personnel deployed to United Nations Missions in countries including Congo, Sudan, Ivory Coast, Kenya, Somalia and Mali, and confirmed that the sample personnel whose contracts were relied upon were not Ugandan residents. During cross-examination, RW1 admitted that the Respondent had not obtained

any new information beyond that which had been provided by the Applicant. She further confirmed that the Respondent had not identified any amendment to the Project Implementation Agreement relied upon in making the assessment.

25. RW1 also acknowledged that, unlike the assessments under the other tax heads contained in REX 4, the PAYE assessment did not indicate the specific years of assessment or provide a breakdown of the taxes attributable to each year. She stated that she was unable to explain the omission or identify the amount attributable to any particular year without referring to the underlying tax computation documents.

26. During re-examination, RW1 reiterated that the disputed assessment related exclusively to PAYE for the period January 2019 to December 2022 and maintained that the assessment was based on documentary evidence including the Project Implementation Agreement, employment contracts, payroll records, and bank statements. She further stated that the payroll records provided by the Applicant corresponded with the contracts reviewed by the Respondent.

27. RW1 also maintained during re-examination that the management letter dated 27 August 2018 was not the basis of the present dispute, explaining that it arose from a return examination for the period 2014 to 2017 whereas the impugned assessment resulted from a comprehensive audit. She RW2 further testified that the Respondent considered all personnel deployed under the Trigyn arrangement to be employees of the Applicant deriving income from Uganda and therefore subject to PAYE.

V. Submissions of the Applicant

28. The Applicant submitted that the Assessments in issue relate to PAYE, and require proof of the existence of an employer/employee relationship between the Applicant and the personnel it manages, and whether the latter earns employment income.

29. The Applicant submitted that section 2 of the Income Tax Act defines an employee to mean an individual engaged in employment, and defines employment to mean the position of an individual in the employment of another person, a directorship of a company, a position entitling the holder to a fixed or ascertainable remuneration, the holding or acting in any public office. The Act also defines employment income to mean any income derived by an employee from any employment and includes any amounts, whether of a revenue or capital nature.

30. The Applicant cited the case of ***Uganda Insurers Association Vs Uganda Revenue Authority TAT App No. 12 of 2012***, the Tribunal cited with approval, the case of ***Fukasi Kabugo V. Attorney General [1975] 336***, wherein it was held that to determine whether an employer-employee relationship exists, the following need to be proved;

i. The employer's power to select the employees
ii. The employer's right to pay wages or salary.
iii. The employer's ability of controlling the method of doing work
iv. The employer's right of suspension

31. The Applicant submitted that it entered into an implementation agreement with Trigon Technologies Inc. a US based company to supply staff. Trigyn relieved it of most of its obligations under the above agreement including placement services to UN missions.

The employer's power to select the employees

32. The Applicant submitted that AWI testified during cross examination testified that he is never involved in the recruitment process of the personnel including interview, selection, and that this whole process is conducted by Trigyn and the UN. He was only informed about the personnel after recruitment and adduced AEXS at page 33 to 132 which are emails from Trigyn introducing the personnel to the Applicant as its consultant after they have been approved, positions determined and wages agreed upon.

33. He further testified that adverts for jobs were posted on the Trigyn website, interviews were conducted without its knowledge or involvement, and led evidence of EX18 at page 669 which are IDs describing the personnel as UN contractors, a Note Verbale wherein the UN introduces the personnel as UN/ Trigyn contractors.

The employer's right to pay wages or salary

34. The Applicant submitted that the payment for salary and mission living allowance are computed by the United Nations based on time sheets. These are sent to Trigyn which subsequently forwards them to the Applicant for billing. The UN pays the money to Trigyn, and the latter sends it to the Applicant to remit to the staff, and this was supported by bank statements that the Applicant submitted.

35. According to the Applicant, AW1 testified during cross examination that it only earns a commission of USD 110 from Trigyn for the personnel it manages, which is the commercial agreement between it and Trigyn wherein under Paragraph 3 it states that payment for the personnel shall be as directed by Trigyn.

The employer's ability of controlling the method of doing work

36. The Applicant submitted that AW1 presented Trigyn guidelines (AEX7 of the Applicant's Trial Bundle) that the personnel follow while executing their obligations (how work is done), a time sheet generated, and approved by Trigyn as shown at page 205 to 325 which indicate that the Applicant did not determine the. The Applicant stated that they had visibility of the work done at the billing stage. The witness also adduced staff introduction emails to show that they did not determine the position of work/post (thing to be done) or the place of work (location).

37. Furthermore, the leave approval at page 794-712 of the Applicant's Trial Bundle showed that the UN and Trigyn approve leave for the personnel and the same is only communicated to the Applicant after for record purposes. The Applicant did not have any form of control over the personnel or how they execute their work.

The employer's right of suspension

38. The Applicant also adduced instructions from Trigyn to the Applicant to serve notice of termination on the personnel after all processes have been concluded (Exhibit AXE20 at page 713 to 717 of the Applicant's Trial Bundle). This showed that the Applicant is not involved in the termination process of the personnel in issue and is only informed of the same after the decision has been made by Trigyn and the UN and its role is only to communicate the same.

Fixed or ascertainable remuneration

39. The Applicant submitted that the personnel are paid for hours worked, and adduced evidence of a time sheet (Exhibit AEX8 at Page 205 to 328 of the Applicant's Trial Bundle). The amount of payment due to the personnel is not fixed and cannot be ascertained as the time sheet is prepared by the UN Trigyn. During cross examination, AW1 testified that the Applicant does deal in the supply of IT services and lacks the knowledge or expertise to recruit such personnel or even control them.

Tax on non-existing employees/expired contracts

40. The Applicant submitted that all the personnel that formed the basis of the Respondent's assessment did not have any relationship with the Applicant nor Trigyn at the time of the assessment, be it as independent contractors or casual labourers because their contracts had ended/ expired way before the period of assessment, that is, 2019-2022.

41. The Respondent's witness stated in her witness statement that they relied on staff contracts (exhibited as REX 3 in the Respondent's Trial bundle) to conclude that the personnel in issue are employees of the Applicant and made the assessments of Shs. 42, 331,904, 361. However, on review of the said contracts and during cross examination, it was established that the staff contracts deputation agreements relied on by the Respondent had ended way before the period of assessment (2019-2022) and there was no employer-employee relationship at the time of assessment to give rise to PAYE tax raised by the Respondent.

42. The Applicant submitted that in this case, the first staff contract/ deputation agreement of Harmeek Singh relied on by the Respondent was issued on 5 November 2013, and expired on 31 October 2014. The Second contract that the Respondent relied on was for Sam Mathis, which was issued on 18 August 2014 and expired on 31 October 2015. This was before the period of assessment. The Applicant argued that even during cross-examination, the Respondent witness also confirmed that there were no notices of extension or renewal of the said contracts to confirm that the above personnel were still employed during the period of assessment.

43. The Respondent witness further testified that apart from the expired contracts above, they relied on the bank statements from the Applicant's banker (Eco Bank). However, since the bank statements were not adduced in court, this cast doubt on the veracity of the assessments. The Applicant submitted that the personnel above were not in the position of employment with the Applicant for the period of assessments, and therefore the Respondent's decisions dated 21, 24, 26 and 28 June 2024 are baseless and ought to be set aside.

Legitimate expectation/ Management letter

44. The Applicant submitted that AWI testified that in 2018, the Respondent conducted an audit on the Applicant for the period of 2014 to 2017 on the above Project Implementation Agreement and on 27 August 2018, it issued a management letter. In the letter, the Respondent declared that the personnel that the Applicant manages are non-employees for income tax purposes and that the income they receive is exempt under Section 21 of the Income Tax Act.

45. According to the Applicant, while relying on the declarations of the Respondent in the management letter, it did not collect or remit PAYE from the personnel. However, the Respondent argued that the management letter in issue was for a different year of assessment; it related to

corporation tax, and it was as a result of a return examination not a comprehensive audit and that private ruling is not binding.

46. The Applicant submitted that it was making contributions to Liaison Pension Fund for the personnel and expensing the same for corporation tax, and having found that the personnel are non-employees of the Applicant, the Respondent disallowed the expenses and added the same back. The Respondent did not impose PAYE on the personnel managed under the project implementation agreement but rather only the internal staff working with the Applicant at its offices.

47. The Applicant submitted that the Respondent witness testified that the Applicant paid all the tax demanded in the management letter and the Respondent did not demand for PAYE from the Applicant. Furthermore, the management letter was neither recalled nor revoked.

48. The Applicant submitted that the Respondent witness further testified that all of the staff contracts in were issued during the period of the management letter and were therefore subject to the audit period of 2014 to 2017. Furthermore, the Respondent's witness testified that they did not receive any new information to warrant a change in their position.

Tax on Non-Residents

49. The Applicant cited section 9 of the Income Tax Act which provides:

> *"Subject to subsections (2) and (3), an individual is a resident individual for a year of income if that individual;*
>
> *a) has a permanent home in Uganda,*
>
> *b) is present in Uganda-for a period of or periods amounting in aggregate to, one hundred eighty -three days or more in any twelve-month period that commences or ends during the year of income, or during the year of income; or*

c) *During the year of income and in each of the two preceding years of income for periods averaging more than One hundred twenty two days in each such year of income,*

d) *Is an employee or official of the Government of Uganda posted abroad during the year of income"*

50. The Applicant submitted that it is not in dispute that it managed personnel in Mali, Congo, Sudan, Kenya, Somalia and Ivory Coast. During cross-examination, the Respondent witness confirmed that none of the personnel is resident in Uganda, and that the Respondent taxed the Congolese in Congo, Sudanese in Sudan, Kenyans in Kenya, and Somalis in Somalia.

51. Further, the Respondent witness testified that they taxed non-residents because the income was sourced in Uganda. The Applicant submitted that it is not a disputed fact that the Applicant is resident in Uganda, however, PAYE is a tax on employees not the employer. It was erroneous for the Respondent to tax non-residents.

52. The Applicant further contended that the payments to the personnel were made by a party outside Uganda as reflected in REX3 of the Respondent's Trial Bundle, the services performed by the personnel were rendered outside Uganda. The Applicant contended that the income in issue neither arose from a source in Uganda nor from a resident person.

53. The Applicant contended that the Respondent witness testified that the Respondent raised assessments for a period of 4 years. However, this is contrary to section 25(2) of the Tax Procedures Code Act, which requires additional assessments to be raised within a period of 3 years except where there is fraud, willful neglect, or discovery of new information.

54. The Applicant stated that the Respondent witness testified that they did not receive any new information from the Applicant. Further, the Respondent did not claim of fraud in its pleadings as a ground for the assessment issue.

55. The Applicant also referred to AW2's testimony, who stated that all information requested for by the Respondent was shared, and as such the Applicant is not guilty of any willful neglect. Therefore, the Respondent's assessments for the year 2019 are barred by time, and ought to be set aside. The Applicant prayed that the Tribunal sets aside objection decisions dated 21, 24, 26 and 28 June 2024 and assessments with costs of this application awarded to the Applicant.

VI. Submissions of the Respondent

The Applicant was the employer of the deployed personnel

56. The Respondent submitted that there was an employer-employee relationship between the Applicant and the personnel it managed. The Respondent argued that while the Applicant contends that they were a mere "consultant" or intermediary and that the real employer was Trygyn, the label. of "consultant" cannot obscure what the evidence reveals when examined through the lens of established legal principle

57. The Respondent cited the case of ***Uganda Insurers Association v Uganda Revenue Authority, TAT Application No. 12 of 2012***, where the Tribunal approved the test laid down in ***Fukasi Kabugo v Attorney General [1975] 336***, identifying four hallmarks of an employer-employee relationship:

    i. *"The power to select or recruit employees;*
    ii. *the right to pay wages or salary;*
    iii. *the ability to control the method of doing work; and*
    iv. *the right of suspension or termination."*

The power to select and recruit

58. The Respondent relied on Clause 1.2 of the Project Implementation Agreement, which states:

> *"CAYMAN shall be fully responsible for selection of trained, qualified and experienced personnel..."*

59. The Respondent submitted that during cross-examination, AW1, a Director of the Applicant, confirmed that, in accordance with the Project Implementation Agreement, the Applicant bore full responsibility for selecting trained, qualified, and experienced personnel. He further confirmed that the employment contracts were drawn up on the Applicant's own letterhead, were signed as agreements between the Applicant and the individual employees, and related to positions within the Applicant's own organisation. The Respondent submitted that it does not matter whether TTI or the UN conducted the initial screening. What matters is that the Applicant was the legal entity that formally contracted with each individual.

The right to pay wages and salaries

60. The Respondent submitted that this badge is not in dispute since the Applicant admitted to paying the personnel.

61. The Respondent submitted that under Paragraph 18 of AW1's witness statement, and confirmed under cross-examination, funds were received from Trigyn into the Applicant's bank account, and the Applicant then directly remitted those funds to the staff. Clause 1.5 of the agreement obligated the Applicant to pay its personnel such wages and other benefits as required by applicable law, and to bear responsibility for any non-compliance.

62. The Staff Appointment Letters and Client Deputation Agreements (AEX6) make the position even clearer. They identify the Applicant as the party with authority to issue monthly living expenses, overtime pay, and prorated payments, which are the full suite of wage obligations ordinarily associated with an employer.

63. The Respondent submitted that Section 117(1) of the ITA provides the obligation to deduct and remit PAYE falls on the entity making the payment of employment income. Since the Applicant made the payments, the source of the funds, whether from TTI or elsewhere, is entirely irrelevant to the PAYE obligation. The Applicant was the paying hand, and the PAYE obligation followed.

The right to control the method of work

64. The Respondent submitted that the argument that the Applicant exercised no control over how the personnel performed their duties was misleading and that it misapprehends the modern legal standard. As the English Court held in ***Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497***, the test for control is not whether the employer exercised minute-to-minute supervision, but whether there existed *a sufficient framework of control* over the worker. Applying that standard to the facts, the Applicant's degree of control is overwhelming.

65. The Respondent cited Clause 1.3 of the Project Implementation Agreement (**AEX2**), which states in unambiguous terms that the Applicant:

> *"Shall be fully responsible for all the Staffing Support provided by its resources under the contract as well as the acts and omissions of its employees and any other person or entities engaged or assigned by [the Applicant."*

66. The Respondent submitted that AW1 confirmed under cross-examination that the Applicant was responsible for the timely reporting of employees to their respective missions, at the Applicant's own cost. He further confirmed that personnel reported to the Applicant's office in Uganda for administrative purposes. The Applicant managed leave, processed timesheets and handled all administrative and operational oversight of the personnel. The Respondent submitted that these are not the functions of a passive consultant but the functions of a direct employer.

67. The Respondent submitted that the annexures, AEX3, address only the fees payable, reimbursements, and payment terms, and do not relieve the Applicant of its obligations as regards recruitment, provision of working tools, termination, or leave management. Further, AEX4 is simply a letter acknowledging the Applicant as a subcontractor to Trigyn and does not alter anything in the underlying agreement.

The right of suspension and termination

68. The Respondent argued that the Applicant admitted to having communicated termination notices to the personnel. The ability to communicate termination, even where the decision to terminate was initiated elsewhere, is a function of the employer. To the individual personnel, the Applicant was the face and voice of the employment relationship. It was to the Applicant they looked for appointment, payment, assignment, and, ultimately, dismissal.

69. The Respondent submitted that the Applicant satisfies each and every criterion of an employer. The personnel was recruited by the Applicant, paid by the Applicant, administratively controlled by the Applicant, and terminated by the Applicant. The characterization of the arrangement as a "management consultancy" is a label that simply cannot withstand scrutiny of these facts.

70. The Respondent submitted that the parties expressly reduced their arrangement into writing under the Project Implementation Agreement (AEX2), which placed full responsibility for recruitment, deployment, and management of personnel on the Applicant. It further relied on the individual contracts (REX3) as evidence that the employment relationship existed between the Applicant and the personnel. The Respondent argued that where contractual terms are clear, the Tribunal must give effect to the parties' intention as expressed in the agreement.

The PAYE obligation

71. The Respondent submitted that, having established that the Applicant was the employer, the analysis of PAYE liability flows naturally from that finding. The Respondent submitted that section 126 of the ITA provides:

> *"Every employer shall withhold tax from a payment of employment income to an employee as prescribed by regulation made under Section 151."*

72. The Respondent submitted that the two conditions must be satisfied for the obligation to arise: first, there must be an employer-employee relationship and the employee must be earning employment income. The personnel in this case were earning employment income within the meaning of Section 19 of the ITA.

73. The Respondent submitted that Section 78(d) of the ITA provides that income is derived from sources in Uganda where it is paid by a resident person other than as expenditure of a business carried on outside Uganda through a permanent establishment. The Applicant is a resident Ugandan company. The payments were made from a Ugandan bank account pursuant to a contract with a Ugandan entity. The income was therefore sourced in Uganda regardless of where the personnel were physically located when performing their duties.

74. The Respondent further submitted that Section 126(2) of the Income Tax Act makes clear that the obligation to withhold PAYE is not reduced or extinguished by any competing obligation the employer may have to make other deductions. Section 126(3) further provides that the obligation applies notwithstanding any other law which purports to shield employment income from reduction or attachment.

75. The Respondent cited clause 5.2 of the Project Implementation Agreement (AEX2), the Applicant invoiced Trigyn for amounts that expressly included the recruits' salaries and benefits, as well as the Applicant's own fees. The Applicant then disbursed those salaries and benefits directly into the recruits' individual accounts. The payment chain is clear; the money flowed through the Applicant's hands and out to the employees. There is no legal basis, contractual, statutory, or otherwise, upon which that payment obligation could be transferred to Trigyn or the United Nations.

76. The Respondent contended that the Applicant has suggested that because the recruits served UN Missions, they might be exempt as UN employees.

They were contracted to, paid by, administratively managed by, and ultimately answerable to the Applicant. Therefore, the PAYE obligation resided with the Applicant/

The 2018 management letter

77. The Respondent submitted that the 2018 management letter was issued in the specific context of a corporation tax audit for the years 2014 to 2017. The finding that certain staff were "non-employees" was made for that specific tax period and in the specific context of disallowing pension contributions.

78. The Respondent argued that it was not to be read as a blanket, prospective ruling binding the Respondent for all future tax years and all future transactions. The 2023 audit covered the period 2019 to 2022, involved a fresh review of the staff contracts then in place, and uncovered material facts that had not been fully assessed in 2018.

79. The Respondent further submitted that a management letter is not a legal instrument. The TPCA provides specific and carefully designed mechanisms through which the Commissioner General may issue binding guidance, that is, by way of a private ruling under Section 53(1), available upon a taxpayer's written application. A management letter, which is an internal audit communication, carries no such legal force. It cannot override, suspend, or waive the clear obligations imposed by the ITA. The Applicant never sought, and never received, a private ruling. The Respondent, upon conducting a fresh and more thorough audit, corrected a position that had been reached on the basis of incomplete information.

The Assessments are not time-barred

80. The Respondent submitted that Section 25(2)(a) of the TPCA provides that an additional assessment may be made at any time where there is evidence of fraud, gross or willful neglect on the part of the taxpayer, or where new information has been discovered in relation to the tax payable. The three-

year limitation is not an absolute bar; it is subject to these exceptions. The 2023 audit uncovered precisely such new information, the Project Implementation Agreement, sample employment contracts, and bank statements that had not previously been before the Respondent in a form that would have disclosed the true character of the arrangement.

81. Furthermore, the sustained failure by the Applicant to declare PAYE liabilities over multiple years, notwithstanding the existence of employment contracts that plainly attracted that obligation, can be properly characterized as gross neglect. The Applicant cannot now take shelter behind a limitation period that its own conduct was instrumental in obscuring.

Tax on non-resident personnel

82. The Respondent submitted that Section 78(d) of the ITA provides that income is sourced in Uganda to the extent to which it is employment income or a fee for the provision of services paid by a resident person, other than as an expenditure of a business carried on outside Uganda through a permanent establishment.

83. The Respondent argued that the Applicant is a Ugandan company and therefore a resident person for tax purposes. The employment contracts were with a Ugandan entity. Furthermore, the funds passed through a Ugandan bank account. In addition, the administrative management of the personnel was conducted from Uganda. The income in question is sourced in Uganda, and the employee's residency does not extinguish the employer's obligation to withhold and remit PAYE.

84. The Respondent submitted that the Commissioner General is empowered under Section 25 of the TPCA to raise an assessment to the best of her judgment, based on the information available. The Respondent's witness testified that the assessments were anchored in the staff contracts and the funds flows were evident from the Applicant's bank records, both of which formed part of the audit exercise.

85. The Respondent argued that all the evidence shows the Applicant was the true employer of the personnel it deployed, since it handled recruitment, contracts, payment, administration, and termination. It maintained that the 2018 management letter does not override statutory tax obligations. The assessments were made within the allowed time, the income was earned in Uganda, and the assessment method was appropriate.

86. The Respondent submitted that, having demonstrated that the Applicant was the employer of the deployed personnel and was obligated to withhold and remit PAYE under Section 126 of the ITA, there is simply no legal or factual basis upon which the reliefs sought by the Applicant can stand. The Respondent argued that the assessment of Shs. 42,331,904,361 was lawfully issued. The Respondent prayed that the Tribunal make the following orders:

(i) The Application be dismissed in its entirety.
(ii) The Respondent's objection decisions dated 21, 24, 26, and 28 June 2024 be upheld.
(iii) The Applicant is liable to pay PAYE taxes amounting to Shs. 42,331,904,361.
(iv) The costs of this application be awarded to the Respondent.

VII. The Applicant's submissions in rejoinder

87. The Applicant reiterated its earlier submissions and further contended it led evidence that:

(i) The Respondent relied on expired staff contracts to assess the tax in issue as set out in REX B3 of the Respondent's Trial Bundle;
(ii) The staff in issue are non-employees, through AEX2 at pages 27-29 of the Applicant's Trial Bundle, AEX3 at page 30 of the Applicant's Trial Bundle, AEX4 at pages 31 to 32 of the Applicant's Trial Bundle, AEX5 at Pages 33 to 132, AEX8 at pages 205 to 325 of the Applicant's Trial Bundle, AEX9 at pages 326 to 410 of the Applicant's Trial Bundle,

AEX18 at page 669 of the Applicant's Trial Bundle, and AEX20 of the Applicant's Trial Bundle.

(iii) In 2018, the Respondent issued a management letter stating that the staff are not employees for income tax purposes and that their income is exempt from tax in accordance with section 21 of the IRA;

(iv) Further, the Applicant proved that the Respondent taxed non-residents for income not sourced in Uganda; and

(v) The assessments for 2019 are barred by time, when the Respondent assessed the Applicant for 4 (years) and the same was confirmed by RWI during cross-examination.

VIII. The Determination.

93. The Tribunal has carefully considered the pleadings, oral testimony, documentary evidence adduced by both parties, the submissions of Counsel, and the applicable law.

94. The dispute before the Tribunal arises from PAYE assessments amounting to Shs. 42,331,904,361 raised by the Respondent against the Applicant for the period 2019–2022 on the basis that personnel deployed to various United Nations Missions under the Trigyn arrangement were employees of the Applicant. The central issue for determination is whether the Applicant was, in substance and law, the employer of the deployed personnel and therefore liable to withhold and remit PAYE under Section 126 of the Income Tax Act.

Parameters for Determining an Employer–Employee Relationship

95. Section 2 of the Income Tax Act defines an employee as an individual engaged in employment, while employment includes the position of an individual in the employment of another person. In determining whether an employer–employee relationship exists, this Tribunal in ***Uganda Insurers Association v Uganda Revenue Authority, TAT Application No. 12 of 2012***, adopting the principles in ***Fukasi Kabugo v Attorney General [1975] HCB 336***, identified the relevant indicators as including the power to

recruit or select employees, the right to pay wages or salary, the power to control the manner of work, and the right of suspension or termination.

96. The Tribunal is also guided by the decision in ***Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497, where MacKenna J*** held that the existence of a contract of service depends not merely on contractual wording, but on the practical realities of the relationship, including whether the worker is subject to sufficient control by the alleged employer.

Recruitment and selection of personnel

97. The Respondent relied heavily on Clauses 1.2 and 1.3 of the Project Implementation Agreement (AEX2), which provided that the Applicant would be *"fully responsible for selection of trained, qualified and experienced personnel" and responsible for "the acts and omissions of its employees."* The Respondent further relied on sample employment contracts and deputation agreements contained in REX3, which were drawn on the Applicant's letterhead and signed between the Applicant and the deployed personnel, as evidence of an employer–employee relationship.

98. However, the Tribunal finds that the documentary and oral evidence adduced by the Applicant materially qualified the formal wording of the Project Implementation Agreement and demonstrated that the practical implementation of the arrangement differed substantially from the Respondent's characterization. AW1 testified that recruitment, interviews, technical screening, and approval of personnel were undertaken exclusively by Trigyn Technologies Inc. and the United Nations Missions, and that the Applicant only became involved after personnel had already been approved, assigned positions, and had their remuneration determined.

99. This evidence was corroborated by AEX5, comprising emails from Trigyn introducing already approved personnel to the Applicant. The Applicant also adduced the Trigyn introduction letter to the United Nations identifying the Applicant as a subcontractor responsible for "people management and work permit processing services" (AEX4,). Furthermore, EX18, together with the UN Note Verbale, identifies the deployed personnel as "UN contractors" or "UN/Trigyn contractors."

100. The Tribunal further notes that the Respondent did not adduce evidence demonstrating that the Applicant independently advertised positions, interviewed candidates, shortlisted personnel, or exercised substantive discretion in recruitment during the assessment period of 2019–2022. More importantly, RW1 admitted during cross-examination that the employment contracts relied upon by the Respondent related to engagements commencing between 2013 and 2014 and expiring between 2014 and 2015, and that no employment contracts covering the assessment period of 2019–2022 had been produced before the Tribunal. The Tribunal therefore finds that the evidence on record establishes that substantive recruitment and selection functions rested with both Trigyn Technologies Inc. and the United Nations, rather than with the Applicant.

Wages and remuneration

101. With regard to the payment of wages and remuneration, the Respondent argued that the Applicant was the "paying hand" because funds passed through its Ugandan bank account before being remitted to the deployed personnel, thereby creating a PAYE obligation. The Tribunal accepts that the Applicant physically disbursed funds to personnel. However, the evidence adduced demonstrates that the Applicant acted as a payroll intermediary rather than the substantive source of remuneration.

102. AW1 testified that salaries and Mission Living Allowances were first computed and approved by the United Nations based on approved timesheets generated under UN and Trigyn supervision, after which the

funds were remitted by the United Nations to Trigyn and thereafter transferred to the Applicant solely for onward disbursement to personnel.

103. The Applicant further adduced Ecobank statements (AEX9) demonstrating receipt of funds from Trigyn Technologies Inc., onward remittance of those funds to deployed personnel, and the Applicant's retention of only a fixed administrative commission of USD 110 per person managed. The Tribunal finds this evidence consistent with the Applicant's contention that its role was limited to payroll administration and human resource support services under the Trigyn arrangement.

104. In contrast, although RW1 testified that the Respondent relied on the Applicant's Ecobank bank statements to compute the impugned PAYE assessments, she admitted during cross-examination that the said bank statements were never tendered before the Tribunal and that she was unable to demonstrate how the assessment of approximately Shs. 42 billion had been computed. The Tribunal considers this omission material.

105. Where the Respondent alleges that PAYE liability arose from identifiable payment flows, the underlying bank statements constitute primary evidential material necessary to establish the identity of recipients, the nature of the payments, the relevant years of payment, and the basis upon which the alleged PAYE liability was computed. In the absence of those records, the Tribunal is unable to verify the factual basis of the impugned assessments.

106. The Tribunal further notes that the Applicant demonstrated that it accounted separately for PAYE obligations for its own internal employees, thereby distinguishing those employees from personnel deployed under the Trigyn arrangement. The Respondent did not rebut the Applicant's banking evidence or the commission-based structure with contrary financial evidence.

Control and supervision of Personnel

107. On the issue of control, which remains one of the strongest indicators of employment, the Applicant adduced substantial evidence demonstrating that operational control over the deployed personnel rested with Trigyn Technologies Inc. and the United Nations Missions. AW1 testified that Trigyn and the United Nations determined work assignments, deployment locations, reporting structures, and technical duties; that the personnel operated under Trigyn/UN operational guidelines contained in AEX7. Furthermore, timesheets were generated and approved by Trigyn/UN before transmission to the Applicant. In addition, leave approvals and operational supervision were exercised by Trigyn and the United Nations.

108. The Applicant further adduced leave approvals and operational correspondence under AEX20, demonstrating that leave decisions originated from Trigyn and the United Nations and were merely copied to the Applicant for administrative record purposes. AW1 also testified that the Applicant lacked the technical expertise necessary to supervise IT personnel substantively and did not determine how, where, or when the personnel performed their duties. Although the Respondent relied on Clauses 1.2 and 1.3 of the Project Implementation Agreement, the Tribunal finds that the practical implementation of the arrangement demonstrates that substantive operational control rested with Trigyn and the United Nations Missions rather than the Applicant.

Authority to suspend and terminate

109. Regarding suspension and termination, the Applicant adduced evidence under AEX20 demonstrating that termination decisions originated from Trigyn and/or the United Nations, with the Applicant merely communicating decisions already taken. While the Respondent argued that the communication of termination notices itself constituted evidence of the employer's authority, the Tribunal disagrees.

110. The evidence before the Tribunal demonstrates that the Applicant did not independently initiate disciplinary or termination proceedings, and that instructions regarding termination originated from Trigyn and the United Nations Missions. The Tribunal therefore finds that the ultimate authority to suspend or terminate personnel rested with Trigyn and the United Nations rather than the Applicant.

Reliance on expired Contracts

111. A matter of considerable significance is that the Respondent relied on sample employment contracts and deputation agreements that had expired between 2014 and 2015, whereas the impugned assessments relate to the period 2019–2022. RW1 expressly admitted during cross-examination that no contracts covering the period 2019–2022 had been produced, no renewals or extensions existed on record, and that the Respondent relied on historical contracts only.

112. The Tribunal finds that expired contracts cannot, either in fact or in law, establish an employment relationship in a subsequent, distinct assessment period. PAYE liability arises in relation to employment income earned and paid within a specific year of income, and the existence of an employment relationship must therefore be established for the particular period under assessment.

Legitimate expectation and the 2018 management letter

113. The Tribunal further takes cognisance of the management letter dated 27 August 2018 (AEX10), issued by the Respondent following an earlier audit covering the same Trigyn arrangement, wherein the Respondent expressly treated the personnel managed under the arrangement as non-employees for PAYE purposes and treated the income as exempt under Section 21 of the Income Tax Act.

114. AW1 testified that the Applicant relied on this position in structuring its affairs and, consequently, did not deduct or remit PAYE for the deployed personnel. AW2 further testified that all relevant information, including the

Project Implementation Agreement, bank statements, and operational documentation, had been made available to the Respondent during the 2018 audit.

115. Importantly, RW1 admitted during cross-examination that the management letter had never been revoked, that no PAYE demand had been raised following the 2018 review, and that the Respondent had not obtained materially new information beyond what had already been supplied during the earlier audit.

116. The Tribunal is persuaded by the reasoning of the ***High Court in National Social Security Fund v Uganda Revenue Authority, HCCA No. 29 of 2020***, where it was held that interpretations adopted and communicated by the Respondent in execution of its statutory mandate create legitimate expectations capable of being relied upon by taxpayers unless lawfully altered or revoked. The Tribunal therefore finds that the Applicant legitimately relied on the Respondent's 2018 position in structuring its PAYE treatment.

117. The Tribunal has also considered Section 25(2) of the Tax Procedures Code Act, which permits additional assessments outside the ordinary limitation period only where there is fraud, willful neglect, or discovery of new information. The Respondent contended that the 2023 audit uncovered new information, including the Project Implementation Agreement, employment contracts, and bank statements. However, RW1 admitted during cross-examination that the Respondent had not received any materially new information beyond what the Applicant had already supplied during the 2018 audit.

118. AW2 equally testified that all relevant agreements, bank statements, and operational records had been submitted to the Respondent as early as August 2018. The Tribunal therefore finds that the Respondent failed to establish the existence of new information capable of extending the

statutory limitation period under Section 25(2) of the Tax Procedures Code Act. No evidence of fraud or willful neglect was pleaded or proved by the Respondent.

Non-Residence and Source of Employment Income

119. The evidence further established that a significant number of the deployed personnel worked outside Uganda in countries including Kenya, Sudan, Somalia, Mali, Congo, and the Ivory Coast. RW1 admitted during cross-examination that many of the personnel relied upon in REX3 were non-residents working outside Uganda.

120. Section 78(d) of the Income Tax Act provides that:

> *"Employment income is sourced in Uganda only to the extent that the employment is exercised in Uganda or the payment is made by a resident person other than as expenditure of a business carried on outside Uganda through a permanent establishment."*

121. The Tribunal finds that the Respondent did not provide individualised analysis establishing the residence status of each personnel, where the services were rendered, how each payment was sourced in Uganda, or the legal basis upon which PAYE applied to non-resident personnel serving outside Uganda. In the absence of such analysis, the blanket inclusion of non-resident personnel in the impugned assessment lacked sufficient factual and legal foundation.

122. Upon evaluation of the totality of the evidence, the Tribunal is not satisfied that the Respondent established the existence of an employer–employee relationship between the Applicant and the personnel deployed under the Trigyn arrangement during the assessment period of 2019–2022. The evidence demonstrates that the Applicant functioned principally as a payroll and administrative intermediary, while the substantive incidents of employment, including recruitment, operational supervision, deployment,

control of work performance, and termination, rested with Trigyn Technologies Inc. and the United Nations Missions.

123. The Respondent relied on expired employment contracts, failed to produce the Ecobank statements allegedly used in computing the impugned assessments, and did not establish PAYE liability on a year-by-year basis or demonstrate a sufficient tax nexus in relation to the non-resident personnel included in the assessments. The Tribunal further finds that the Respondent departed from its 2018 position without establishing the existence of any materially new information capable of justifying the impugned assessments.

124. Accordingly, the Tribunal finds that the PAYE assessments of Shs. 42,331,904,361 for the period 2019–2022 were not lawfully or factually sustainable. The Application accordingly succeeds.

Issue Two: Whether the Applicant Is Entitled to The Reliefs Sought

125. Having found under Issue One that the Respondent failed to establish that the Applicant was the employer of the personnel deployed under the Trigyn arrangement during the assessment period of 2019–2022, the Tribunal now turns to consider whether the Applicant is entitled to the reliefs sought in this application.

126. The Applicant prayed that this Tribunal set aside the Respondent's objection decisions dated 21st, 24th, 26th, and 28th June 2024, together with the PAYE assessments amounting to Shs. 42,331,904,361. Under Section 20(1)(c) of the Tax Appeals Tribunal Act, this Tribunal is empowered, in reviewing a taxation decision, to exercise all the powers and discretions conferred upon the decision-maker and to make a decision in writing setting aside the decision under review.

127. The Tribunal has found that the Respondent failed to establish the existence of an employer–employee relationship between the Applicant

and the deployed personnel during the relevant assessment period; relied on expired contracts; failed to adduce the Ecobank statements allegedly used in computing the impugned PAYE liability; failed to establish the existence of new information sufficient to justify reopening prior tax positions; and included non-resident personnel without establishing a sufficient tax nexus to Uganda. The Tribunal further found that the Applicant legitimately relied on the Respondent's Management Letter dated 27th August 2018, in which the Respondent had treated the deployed personnel as non-employees for PAYE purposes.

128. In the circumstances, the Tribunal finds that the impugned assessments were issued without sufficient legal and evidential foundation and therefore cannot stand. Consequently, the objection decisions dated 21st, 24th, 26th, and 28th June 2024, together with the resulting PAYE assessments amounting to Shs. 42,331,904,361 are hereby set aside.

129. The Applicant further prayed for a refund of the statutory 30% tax deposit paid in compliance with the requirements of the Tax Appeals Tribunal Act, together with interest thereon. The Tribunal notes that once an assessment is vacated or declared unsustainable, any monies paid pursuant to that assessment cease to have a lawful basis for retention by the revenue authority. Taxes paid under an invalid or unsustainable assessment ought to be refunded to prevent unjust enrichment.

130. Having found that the impugned PAYE assessments were not lawfully raised, the Tribunal finds that the Applicant is entitled to a refund of any sums paid toward the disputed tax liability, including the statutory 30% deposit, together with applicable interest at a rate of 2 per cent per month from the date that the payment was made.

131. The Applicant also sought costs of this Application. Section 22(5) of the Tax Appeals Tribunal Act grants this Tribunal discretion to make orders as to costs, enforceable in the same manner as orders of the High Court.

132. The Tribunal notes the Applicant's contention that these proceedings were prolonged through repeated adjournments and that AW1, the Applicant's Director, travelled from Canada to Uganda to testify owing to the magnitude and seriousness of the impugned assessment. The Applicant also incurred legal and administrative expenses in challenging the assessments.

133. In the absence of any sufficient reason to depart from the general principle that costs follow the event, and having succeeded in its Application, the Tribunal finds that the Applicant is entitled to costs.

Obiter

134. Before we make our orders, we find it necessary to comment on the handling of this dispute. This application is a classic example of one of the many cases that should not have reached the Tribunal in the first place. In particular, the applicant underwent an audit that culminated in the 2018 management letter. The Respondent, rightfully, reached the conclusion, at that time, that the personnel were not employees of the Applicant. What changed in 2019 - 2023?

135. Why did the Respondent change goal posts? What informed the assessor's position? The Respondent's witnesses admitted that the Respondent did not discover any new information. This raises the question of who sanctioned the assessment and why. Why weren't these issues nipped in the bud at the objections stage? Why do we have an assessment for the period 2019 – 2023 with no contracts for that period? Why didn't the assessing and objections officers look into the residence of the personnel?

136. Furthermore, the Respondent assessed Shs. 42 billion in PAYE. Going by a back-of-the-envelope calculation, that would translate into a wage bill of roughly Shs. 140 billion over four years. What is the business of the taxpayer? What is this kind of economic activity that generates income that has a wage bill of Shs. 140 billion. What is its annual sales revenue? Clearly, for one to have this kind of wage bill, they must be a multi-billion-dollar business in the economy!

137. This was a substandard audit and was a waste of taxpayers' money. The Respondent should consider holding officers accountable who fail to conduct audits in accordance with the Respondent's standards and best practices.

Orders

138. Accordingly, the Tribunal makes the following orders:

a) The Respondent's objection decisions dated 21st, 24th, 26th, and 28th June 2024 are hereby set aside.

The PAYE assessments amounting to Shs. 42,331,904,361 for the period 2019–2022 are hereby vacated.

b) The Respondent is directed to refund to the Applicant any sums paid toward the disputed assessments, including the statutory 30% deposit, together with simple interest at a rate of 2 per cent per month from the date of payment of the deposit.

c) Costs of this application are awarded to the Applicant.

Dated at Kampala this **29th** day of **May** 2026.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. STELLA NYAPENDI CHOMBO
MEMBER

HON. GRACE SAFI
MEMBER