TAX APPEALS TRIBUNAL
Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 185 OF 2023

ECOBANK UGANDA LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. EDWARD BIRYETEGA, HON. CHRISTINE KATWE

RULING

I. Introduction

1. This application challenges an administrative objection decision issued by the Respondent dated 30 September 2023, wherein the Respondent upheld additional Withholding Tax (WHT) assessments totalling Shs. 795,478,899. The Applicant approaches this Tribunal seeking:
   (i) an order setting aside and vacating the additional principal tax assessments in their entirety;
   (ii) a formal declaration that the Respondent's objection decision is erroneous in both law and fact;
   (iii) an award of general damages arising from administrative overreach; and
   (iv) an order for the recovery of the costs of this application.

2. The Applicant, Ecobank Uganda Limited, is a financial institution licensed to provide commercial banking and financial services pursuant to the provisions of the Financial Institutions Act, 2004.

II. Background Facts

3. On 1 April 2022, the Respondent served the Applicant with a formal audit commencement notice, launching a compliance tax review spanning the period January 2017 to April 2023. Subsequently, on 10 July 2023, the Respondent issued an Issue Audit Management Letter (Ref: URA/DT/LTO/SVS/1000073352), identifying initial additional Withholding Tax liabilities totaling Shs. 1,501,372,592 arising from alleged under-declarations of WHT on interest paid to customers and alleged failure to withhold tax on charges debited on the Applicant's foreign correspondent (Nostro) accounts.

4. The Applicant conceded and settled Shs. 705,893,693 comprising Shs. 477,153,808 in WHT on interest payments to non-exempt customers and Shs. 228,739,885 in WHT on periodic management and monthly account maintenance fees paid to foreign correspondent banks. On 10 August 2023, the Applicant lodged a formal objection against the disputed balance of Shs. 795,478,899.

5. During the administrative objection and reconciliation engagements held in September 2023, other audit queries, including Pay As You Earn (PAYE) adjustments and interest payments made to certain statutory exempt institutions, were resolved between the parties. On 30 September 2023, the Respondent issued its objection decision maintaining the disputed WHT assessments, which the parties crystallised in their joint scheduling notes and written submissions into two specific tax heads: Shs. 584,343,271 representing WHT on interest payments made to Oil Palm Uganda Limited (reviewed under Issue 1); and Shs. 104,680,834 representing WHT on transactional charges debited on the Applicant's Nostro accounts by foreign correspondent banks (reviewed under Issue 2).

III. Issues for Determination

6. Consistent with the parties' joint scheduling conference notes and written submissions, the following issues arise for adjudication by this Tribunal:

(i) Whether the Applicant is liable to pay Withholding Tax of Shs. 584,343,271 on interest payments made to Oil Palm Uganda Limited?

(ii) Whether the Applicant is liable to pay Withholding Tax of Shs. 104,680,834 on transactional charges debited on its Nostro accounts by foreign correspondent banks?

(iii) What remedies are available to the parties?

IV. Representation and Evidence

7. Mr. Edwin Echiba and Mr. Noah Opindeni from BDO East Africa Advisory Services represented the Applicant, while the Respondent was represented by Mr. Amanya Mishambi from the Respondent's Legal Services and Board Affairs Department.

The Applicant's Evidence

8. The Applicant led oral evidence through its Tax and Regulatory Manager, Ms. Sophie Businge, who adopted her signed witness statement under oath and was cross-examined by the Respondent. She testified that the Applicant paid interest on fixed deposits to Oil Palm Uganda Limited (OPUL) in 2019, 2020, and 2021 without deducting WHT because the Government of Uganda had contractually assumed all tax liabilities of OPUL for 25 years under a Memorandum of Understanding dated 4 April 2003 with BIDCO Oil Refineries Ltd (admitted as AEX 7 / Exhibit A3), which undertaking was expressly confirmed by a letter from the Minister of Finance, Planning and Economic Development dated 27 January 2025 instructing the Respondent to submit invoices to the Ministry for settlement (admitted as AEX 8 / Exhibit A4).

9. With respect to the Nostro charges portfolio, Ms. Businge testified that the Applicant maintains correspondent bank accounts with foreign financial institutions, namely Citibank (USA), Nedbank (South Africa), Bank of China (China), Commerzbank (Germany), and BHF Bank (Germany) governed by foreign banking agreements (admitted collectively as AEX 9) strictly to facilitate customers transacting internationally. She testified that while the Applicant accounted for and paid WHT of Shs. 228,739,885 on periodic

account management and monthly maintenance fees, the disputed Shs. 104,680,834 consisted solely of volume-contingent transactional fees debited directly from the Applicant's foreign-domiciled Nostro accounts whenever customers initiated international transfers.

The Respondent's Evidence

10. The Respondent led evidence through its witness, Ms. Rachael Katende, who adopted her witness statement and was cross-examined by the Applicant. She testified that the tax exemption under the 2003 Agreement with BIDCO was restricted strictly to income arising from core oil palm project activities defined in Article 2, and did not extend to passive interest earned by OPUL on fixed deposits. She further stated that the WHT assessment of Shs. 584,343,271 remained on the Applicant's tax ledger because the Ministry of Finance had not yet remitted payment.

11. With regard to the Nostro accounts, Ms. Katende testified that every cross-border transaction executed through the Nostro accounts is initiated by the Applicant's customers in Uganda, who have no contractual relationship with the foreign correspondent banks. She stated that the Applicant collects the transaction fee from its customers in Uganda and effects payment to the foreign correspondent banks, thereby triggering an obligation on the Applicant to withhold tax under the Income Tax Act.

V. The Applicant's Submissions

Burden of Statutory Clarity

12. Relying ***on Barclays Bank of Kenya Limited (Now ABSA Bank Kenya PLC) v. Commissioner of Domestic Taxes (Supreme Court Petition No. 12 (E014) of 2022)*** and ***Uganda Revenue Authority v. Siraje Hassan Kajura (Supreme Court Civil Appeal No. 9 of 2015),*** the Applicant submitted that in a taxing statute clear words are necessary to impose tax, there is no room for intendment or presumption, and the Respondent bears

the legal duty to state with clarity how a payment falls within the express terms of the Income Tax Act (ITA).

Issue 1: Interest Payments to Oil Palm Uganda Limited

13. The Applicant submitted that under Article 3(1) of the Agreement dated 4 April 2003 between the Government of Uganda and BIDCO Oil Refineries Ltd (AEX 7), BIDCO was granted the right to incorporate OPUL. Pursuant to Article 5(2) of the Agreement, the Government unconditionally undertook to pay company taxation for which BIDCO and its associated companies (including OPUL) are liable as and when it arises for a period of 25 years without recourse, and under Article 5(11) directed that the Respondent shall not collect any taxes which the Government has undertaken to pay. Furthermore, under Clause 5(12), the Government undertook to indemnify BIDCO and its associated companies against any claims or expenses arising from any breach of Article 5.

14. The Applicant contended that since WHT on interest is a mechanism for collecting income tax ultimately borne by OPUL, the liability falls squarely under Article 5(2). Reinforced by the uncontested letter dated 27 January 2025 from the Minister of Finance, Planning and Economic Development (AEX 8) which confirmed that the remaining tax liability would be borne by the Government through the Ministry and directed the Respondent to submit invoices to the Ministry's Accounting Officer for settlement the Applicant argued that the Respondent's failure to submit those invoices while maintaining the Shs. 584,343,271 liability on the Applicant's ledger is unlawful and prejudicial.

Issue 2: Transactional Charges on Nostro Accounts

15. Citing ***DFCU Bank Limited v. Fredrick Buwembo & 3 Others, HCCS No. 262 of 2011***, the Applicant submitted that Nostro accounts are foreign accounts opened to handle foreign exchange transactions, and that Nostro charges comprise two distinct components: periodic account

maintenance/management fees (on which the Applicant duly paid WHT) and customer-initiated transactional charges.

16. On the characterisation of the charges, the Applicant argued that transactional fees do not constitute a 'management charge' under Section 77 and Section 82(1) of the ITA. Relying on **Jacobsen Uganda v. URA (TAT App. No. 11 of 2016, *upheld in URA v. Jacobsen Uganda, HCCA No. 26 of 2018)*** *and* ***Goal Relief Development Organisation v. Uganda Revenue Authority (HCCA No. 50 of 2023,*** *applying* ***IBM India (P) Ltd v. Commissioner of Central Tax)***, the Applicant submitted that managerial services require human functions of planning, organizing, staffing, directing, controlling, or coordinating another's business, whereas foreign correspondent banks act merely as passive technological conduits for customer-initiated transfers.

17. On the source of income, the Applicant cited ***Heritage Oil v. URA (TAT App. No. 26 of 2010****, relying on Vodafone International Holdings BV v. Union of India), the* ***Kenyan decision in Diamond Trust Bank Kenya v. Kenya Revenue Authority (TAT Appeal No. 54 of 2016),*** *and* ***Indian Tribunal rulings in Income Tax Officer (IT) v. The Hongkong & Shanghai Banking Corporation Ltd (ITA No. 2191/MUM/2022)*** *and* ***Oman International Bank SAOG v. Deputy Director of Income Tax (ITA No. 6800/MUM/2010).*** The Applicant submitted that the Nostro accounts are domiciled outside Uganda, transactions occur abroad, and fees are debited directly from foreign accounts without remittances from Uganda, a point confirmed by Ms. Katende during cross-examination.

18. The Applicant further contended that fees debited by Nedbank (South Africa) constitute 'other income' under Article 22 of the Uganda–South Africa Double Taxation Agreement (DTA) taxable exclusively in South Africa, and cited UAP Old Mutual Insurance Limited v. URA (TAT App. No. 105 of 2023) to argue that imposing a 15% WHT on top of the 12% excise duty burdens cross-border payment systems. Finally, the Applicant sought to distinguish

Standard Chartered Bank Limited v. URA (TAT No. 258 of 2022) and ***ABSA Bank Uganda Limited v. URA (TAT No. 57 of 2021)*** on the ground that those cases did not separate periodic maintenance fees from per-transaction charges or involve an admission that direct foreign debits are not sourced in Uganda.

VI. The Respondent's Submissions

Preliminary Legal Points: Burden of Proof and Withholding Obligation

19. Relying on ***URA v. Siraje Hassan Kajura (SCCA No. 09 of 2015) and Crane Bank v. URA,*** the Respondent submitted that the duty to pay taxes is constitutional and laws permitting tax exemptions must be construed strictissimi juris against the entity claiming them. Under Section 26 (now Section 28) of the Tax Procedures Code Act (TPCA), as affirmed in ***Williamson Diamonds Ltd v. Commissioner General [2008] 4 TTLR 167 and Atacama Consulting v. URA (TAT 38/2021),*** the burden of proving that an assessment is excessive or erroneous rests squarely on the Applicant.

20. Citing ***ABSA Bank Uganda Limited v. URA (TAT App. No. 57 of 2020), Ecobank Uganda Limited v. URA (TAT App. No. 185 of 2025),*** and ***Intertek Testing Services International Limited v. URA (HCCA No. 5 of 2002),*** the Respondent submitted that lack of privity between the Applicant's customers and foreign correspondent banks is immaterial; because the Applicant holds the Nostro accounts and effects payment on behalf of its clients, it is the entity legally obligated to withhold tax under Section 137 of the ITA.

Issue 1: Interest Payments to Oil Palm Uganda Limited

21. Relying on ***L Schuler AG v. Wickman Machine Tools Sales Ltd [1974] A.C. 235 and Atom Outdoor Limited v. Arrow Centre (U) Limited [2002-2004] UCLR 67***, the Respondent argued that commercial contracts must be given their clear commercial meaning, and that Article 5(2) of the 2003 Agreement restricts tax assumptions strictly to 'project activities' defined in

Article 2 (cultivation, processing, and oil extraction), excluding passive fixed-deposit interest.

22. Furthermore, invoking the doctrine of privity of contract in ***Dunlop Pneumatic Tyre Co. Limited v. Selfridge & Co. Limited [1915] AC 847, Dr. Vincent Karuhanga t/a Friends Polyclinic v. National Insurance Corporation and URA (HCCS No. 617 of 2002),*** and Section 65 of the Contracts Act, the Respondent submitted that the Applicant is a stranger to the Agreement between the Government and BIDCO/OPUL and cannot rely on it to extinguish its statutory WHT compliance duties.

Issue 2: Transactional Charges Debited on Nostro Accounts

23. Citing ***DFCU Bank Limited v. Buwembo & 3 Others (HCCS 262 of 2011), Metropolitan Life Limited v. Commissioner for SARS (A 232/2007), Intertek Testing Services International Limited v. URA (HCCA No. 5 of 2002), Esri Eastern Africa Limited v. URA (TAT App. No. 41 of 2023),*** *and* ***Ecobank Uganda Limited v. URA (TAT App. No. 185 of 2025),*** the Respondent submitted that Nostro agreements constitute 'Ugandan-source services contracts' under Section 84(1) and Section 84(4)(a) of the ITA whose principal purpose is facilitating cross-border settlements.

24. Invoking the economic substance principle in ***Placer Dome Inc v. Canada [1992] 2 CTC 98 (cited in Intertek Testing Services),*** the Respondent submitted that the Applicant earns its sole income in Uganda, funds the Nostro accounts using Ugandan-sourced revenue, and incurs transaction fees only when a customer in Uganda initiates an international transfer. Relying on ***Standard Chartered Bank Zimbabwe Limited v. Zimbabwe Revenue Authority (Civil Appeal No. SC 145/15)*** *and* ***Standard Chartered Bank Limited v. URA (TAT App. No. 258 of 2022),*** the Respondent maintained that the originating cause lies in Uganda, rendering the fees Ugandan-sourced income subject to WHT.

VII. The Determination

Issue 1: Whether the Applicant is liable to pay Withholding Tax of Shs. 584,343,271 on interest payments made to Oil Palm Uganda Limited?

25. It is not disputed that between 2019 and 2021, the Applicant paid interest on fixed deposits to OPUL, an associated company formed under Article 3(1) of the Agreement dated 4 April 2003 between the Government of Uganda and BIDCO Oil Refineries Ltd (AEX 7), without deducting WHT.

26. It is important to highlight that the payment of tax withheld at source under Section 127 (formerly Section 117) of the Income Tax Act is a primary, mandatory statutory obligation explicitly placed on the payer. While the Applicant relied on a customer agreement with the Government of Uganda, there is no evidence on the record that the Applicant undertook any due diligence to authenticate the agreement or verify the exemption with the Respondent or the Ministry of Finance before deciding not to withhold tax. The Tribunal therefore cautions taxpayers against substituting their statutory duties with third-party agreements without seeking prior administrative guidance from the Respondent and/or the Ministry of Finance.

27. Notwithstanding the above, the Respondent has not disputed the authenticity of the 2003 Agreement or the Ministry of Finance directive dated 27 January 2025 (AEX 8). Under Article 5(2) of the Agreement, the Government explicitly undertook to pay company taxation for which BIDCO and its associated companies (including OPUL) are liable as and when it arises for 25 years without recourse, and under Article 5(11) directed the Respondent not to collect such taxes. As confirmed during cross-examination, WHT is a mechanism for collecting income tax ultimately borne by OPUL.

28. Crucially, in Paragraph 2(ii) of the letter dated 27 January 2025, the Minister of Finance, Planning and Economic Development resolved any ambiguity regarding the scope of Article 5(2) by confirming that the remaining tax liability arising from the OPUL agreement *'will be borne by the Government through this Ministry'* and directing the Respondent to *'submit to the Accounting*

Officer of this Ministry the invoices of the outstanding tax due in that regard for settlement.'

29. While the Respondent invoked the doctrine of privity of contract (Dunlop v. Selfridge), the Applicant is not suing to enforce a third-party contract; rather, the issue is whether the Respondent can maintain an assessment against a withholding agent when the primary tax debt has been expressly assumed by the Treasury. Even if the Applicant were forced to pay the WHT up front and recover it from OPUL under Section 142(1) of the ITA, OPUL would immediately recover the equivalent sum from the Government under the indemnity in Clause 5(12) of the Agreement. Being fully seized of the binding directive from its supervising Ministry, the Respondent must seek settlement directly from the Treasury rather than maintaining the liability on the Applicant's ledger. Consequently, the WHT assessment of Shs. 584,343,271 is set aside.

Issue 2: Whether the Applicant is liable to pay Withholding Tax of Shs. 104,680,834 on transactional charges debited on its Nostro accounts by foreign correspondent banks?

30. The Applicant conceded and paid WHT on periodic management and monthly maintenance fees (Shs. 228,739,885), but disputes the assessment of Shs. 104,680,834 on volume-contingent transactional charges debited by foreign correspondent banks. We address the Applicant's four main arguments in turn.

31. First, regarding the characterisation of the charges, the Applicant relied heavily on ***Goal Relief Development Organisation v. URA (HCCA No. 50 of 2023)*** and ***Jacobsen Uganda v. URA (TAT No. 11 of 2016)*** to argue that non-resident WHT under Section 82(1) is restricted to 'management charges' requiring active human oversight, whereas foreign banks act merely as passive automated conduits. However, Section 84(1) of the ITA is a distinct, standalone charging provision operating independently of the seven categories listed in Section 82(1) which imposes tax on every non-resident person deriving income under a 'Ugandan-source services contract '.

32. This is defined under Section 84(4)(a) as any contract (other than employment) whose principal purpose is the performance of services giving rise to income sourced in Uganda. As held by the High Court in ***Intertek Testing Services International Limited v. URA (HCCA No. 5 of 2002)***, Section 84 is not confined to physical services executed on Ugandan soil, but captures any service contract whose principal purpose generates income sourced in Uganda under Section 78. Consistent with this Tribunal's decision in ***Standard Chartered Bank Limited v. URA (TAT App. No. 258 of 2022)***, international clearing and settlement operations conducted by correspondent banks to execute cross-border currency transfers constitute specialised banking and administrative services under a service contract, not passive non-taxable utilities.

33. Second, regarding the source of income in Uganda, the Applicant cited persuasive Kenyan (***Diamond Trust Bank Kenya v. KRA, TAT Appeal No. 54 of 2016)*** and Indian ***(ITO v. HSBC Ltd; Oman International Bank SAOG v. DDIT)*** decisions, alongside ***Heritage Oil v. URA (TAT No. 26 of 2010),*** as well as Ms. Katende's cross-examination response, to argue that because the Nostro accounts are domiciled abroad and debited directly in foreign jurisdictions without remittances from Uganda, the fees are not sourced in Uganda. That contention cannot stand against the express statutory text of Section 78(d) (ii) of the Income Tax Act, which provides that income is derived from sources in Uganda to the extent to which it is *'a fee for the provision of services (ii) paid by a resident person, other than as an expenditure of a business carried on by a person outside Uganda through a branch."*

34. Unlike Section 78(d)(i), which turns on where services are physically rendered, Section 78(d)(ii) establishes Ugandan source based strictly on the tax residence of the payer. Here, the payment is made by a resident person (the Applicant, a Ugandan-incorporated and licensed commercial bank) to non-resident persons (the foreign correspondent banks) as consideration for cross-border clearing and settlement services, and there is no evidence that

the Applicant incurred these fees as an expenditure of a business carried on outside Uganda through a foreign branch.

35. Consequently, the foreign domicile of the Nostro accounts and the place where the electronic clearing occurs are legally immaterial. Furthermore, a witness's opinion during cross-examination on a pure question of statutory interpretation cannot override the clear command of Section 78(d)(ii).

36. Looking at the commercial substance of the transaction ***(Placer Dome Inc v. Canada)***, the Applicant funds the Nostro accounts from its Ugandan banking operations, initiates the transfers upon instructions from customers in Uganda, and recovers the charges by debiting its customers' accounts in Uganda, confirming that the originating cause lies in Uganda ***(Standard Chartered Bank Zimbabwe Limited v. ZIMRA, Civil Appeal No. SC 145/15).***

37. Third, we find no basis to depart from our decisions in ***Standard Chartered Bank Limited v. URA (TAT No. 258 of 2022)*** and ***ABSA Bank Uganda Limited v. URA (TAT No. 57 of 2020).*** Whether a correspondent bank structures its remuneration as a fixed monthly maintenance fee or a per-transaction clearing fee, both arise under the same correspondent banking service contract to facilitate cross-border transactions paid for by a resident person. Because the Applicant's customers have no contractual privity with the foreign banks and the Applicant controls the Nostro accounts and ledger reconciliations, the Applicant is legally the 'person making the payment' under Section 137(1) of the ITA.

38. Fourth, regarding the Applicant's reliance on Article 22 of the Uganda South Africa DTA in respect of Nedbank, the burden rested on the Applicant under Section 26 (now Section 28) of the TPCA to adduce evidence isolating the exact quantum of WHT attributable specifically to Nedbank out of the five correspondent banks (Citibank, Commerzbank, BHF Bank, Bank of China, and Nedbank) and establishing entitlement to treaty relief. No such disaggregated computation or residency documentation was placed before the Tribunal.

39. By failing to declare and deduct WHT on these cross-border payments from a resident person to non-resident persons, the Applicant became personally liable under Section 140 of the ITA. The Respondent's assessment of Shs. 104,680,834 is therefore lawful, justified, and is upheld in full.

Issue 3: What remedies are available to the parties?

40. Having found that the contested assessment under Issue 1 (Shs. 584,343,271) is unsustainable while the assessment under Issue 2 (Shs. 104,680,834) is legally justified, the Applicant is entitled to partial relief under Section 22(6) of the Tax Appeals Tribunal Act. The final liabilities are summarised in the table below:

Tax Head Issue Portfolio	Amount Found NOT Payable	Amount Found PAYABLE
Issue 1: OPUL Interest WHT	**Shs. 584,343,271**	**Shs. 0**
Issue 2: Nostro Account Fees WHT	**Shs. 0**	**Shs. 104,680,834**

41. Since the Applicant paid the mandatory 30% tax deposit upon filing this Application and the Tribunal has established a final liability of Shs. 104,680,834, the Respondent is directed to offset the upheld liability against the deposit and refund the excess amount to the Applicant in accordance with Section 123(4) of the Income Tax Act.

General Damages

42. The Applicant prayed for an award of general damages arising from the Respondent's purported administrative overreach. However, the Applicant has not demonstrated any administrative overreach, malice, or abuse of power by the Respondent, which acted within its statutory mandate to audit and raise additional assessments. The prayer for general damages is accordingly declined.

Costs

43. Under Section 27 of the Civil Procedure Act, costs follow the event unless the Tribunal for good reason orders otherwise. Because the Applicant has succeeded on the substantially larger portion of the dispute (vacating Shs. 584,343,271 out of the adjudicated assessments), the Applicant is awarded 80% of the taxed costs of this Application.

VIII. Final Orders

(i) The Application is allowed in part.

(ii) The Withholding Tax assessment on interest payments made to Oil Palm Uganda Limited (Issue 1: Shs. 584,343,271) is hereby set aside and vacated in full, and the Respondent is directed to pursue settlement directly with the Ministry of Finance, Planning and Economic Development.

(iii) The Withholding Tax assessment on foreign correspondent Nostro account charges (Issue 2) totalling Shs. 104,680,834 is upheld and declared lawfully payable to the Respondent.

(iv) Since the Applicant had paid the 30% deposit and the Tribunal has established a liability of Shs. 104,680,834, the Respondent is hereby directed to offset the liability and refund the excess amount to the Applicant in accordance with Section 123(4) of the Income Tax Act.

(v) The prayer for general damages is declined.

(vi) 80% of the costs are hereby awarded to the Applicant.

Dated at Kampala this ....16th.... day of ....November.... 2026.

HON CRYSTAL KABAJWARA
CHAIRPERSON

HON EDWARD BIRYETEGA
MEMBER

HON. CHRISTINE KATWE
MEMBER