



**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATION NO. 60 OF 2020**

ERICSSON AB.....APPLICANT

**VERSUS**

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: HON. CRYSTAL KABAJWARA, MS. CHRISTINE KATWE,  
HON. GRACE SAFI**

**RULING**

**I. Introduction**

1. This is an application challenging an assessment amounting to Shs. 10,288,140,569 being income tax of Shs. 569,540,049 and VAT of Shs. 9,718,600,521 comprising principal tax and interest.

**II. Background Facts**

2. The Applicant is a duly registered Ugandan branch of Ericsson AB incorporated in Sweden. It engages in long-term telecommunications services, including system integration, installation, testing, maintenance, repairs, upgrades, managed services, and similar services for mobile and fixed network operators in Uganda.

3. The Respondent commenced a returns examination of the Applicant's filed returns for the period 2013-2017 and, upon conclusion of the audit, communicated its findings in an audit management letter dated 27 May 2019. The Respondent subsequently issued additional Value Added Tax ('VAT) and Income Tax ('CIT') assessments, inclusive of interest and penalties as summarised below:

Tax Head	Principal Tax	Penalty	Interest	Total Payable
Income Tax	367,664,889	20,000,000	172,875,160	569,540,049
VAT	5,419,750,970		4,298,849,550	9,718,600,521
Total	5,796,415,859	20,000,000	4,471,724,710	10,288,140,569

4. The basis for the additional assessments was as follows:
- Variance between VAT and income tax sales in the year 2016, which reduced the Applicant's assessed loss as at 31 December 2017 from Shs. 88 billion to Shs. 79.7 billion.
  - Branch tax Shs. 569,540,049, which included principal tax of Shs. 367,664,889, including interest of Shs. 172,875,160 and penalties of Shs. 20,000,000. This arose from mismatches in the opening net assets and closing net assets of the preceding years 2014 and 2016
  - Value Added Tax of Shs. 9,718,600,521 arising from variances in 2013, 2014, 2015 and 2017 between aggregated monthly VAT sales and income tax sales. - 298,849,550 was issued against the Applicant in the respective periods.
5. The Applicant objected to the disputed taxes on 25 June 2019 on the following grounds:
- The variances arose from the differences in revenue recognition criteria for VAT and income tax purposes.
  - The Applicant provided a reconciliation of turnover declared for VAT and income tax purposes based on the accounting and tax, which demonstrates that:
    - Not all invoices issued in that year relate to revenue for the same year.

- (ii) Not all revenue declared in that year is invoiced in the same year.
  - c) With regard to the repatriated branch profit tax, the Respondent overstated the Branch's opening balance for the total assets in 2015 and also misstated the opening balances for total assets and liabilities.
6. The Respondent issued objection decisions disallowing the objections on grounds of failure to provide evidence in support of the objection grounds. It was the Respondent's claim that, having received no response from the Applicant, the Respondent issued third-party agency notices to the Applicant's bankers for the outstanding tax liability of Shs. 10,288,140,569.
7. The Applicant contended that the Respondent issued an agency notice on 20 June 2019 to the Applicant's banker, Standard Chartered Uganda Limited, several days before the due date for filing an objection, requiring a payment of Shs. 10,279,140,569. The Applicant paid Shs. 3,051,259,424, being 30% of the disputed tax. On 25 June 2019, the Applicant's banker, Standard Chartered Uganda Limited, complied with the agency notice and remitted Shs. 7,227,681,145 to the Respondent, accounting for the balance 70% of the tax in dispute.
8. Being aggrieved, the Applicant filed this application with the Tribunal. The parties undertook TAT-guided mediation, which led to the following adjustments by the Respondent:
- i. The assessed VAT liability of Shs. 9,718,600,520, comprising a principal liability of Shs. 5,419,750,970 and interest of Shs. 4,298,849,550, was computed based on an unreconciled variance between sales reported in the Applicant's VAT returns and those reported in the Applicant's corporate income tax return, totaling Shs. 35,529,478,581 for the periods FY 2013, FY 2014, FY 2015, and FY 2017.
  - ii. As a result, the Applicant's total unreconciled VAT variance for all the years under review was revised from Shs. 35,529,478,581 to

Shs. 21,429,037,787. The VAT principal liability and corresponding interest arising from the Shs. 14,100,440,794 variance were vacated.

**Table 2: Showing a summary of the movement in variance above.**

Period	Original Variance (UGX)	Revised Variance (UGX)
FY 2013	(6,430,311,499)	
FY 2014	(7,539,239,113)	(5,570,579,167)
FY 2015	(8,708,011,393)	(6,774,317,953)
FY 2017	(12,851,916,577)	(9,084,140,667)
<b>TOTAL</b>	<b>(35,529,478,582)</b>	<b>(21,429,037,788)</b>

- iii. The Applicant's CIT unreconciled variance for the period FY 2013 was revised from Shs. 6,430,311,499 to Shs. 40,560,209. Whereas the initial variance for the FY 2016 period was Shs. 8,361,667,723 was revised to Shs. 3,134,019,798 and the Applicant's assessed loss for the respective periods was reduced accordingly as settlement of the CIT tax arising from the revised variance.

**Table 3: Showing a summary of the movement in variance above.**

Period	Original Variance (UGX)	Revised Variance (UGX)	Movement (UGX)
FY 2013	6,430,311,499	40,560,209	6,389,751,290
FY 2016	8,361,667,723	3,134,019,798	5,227,647,925

- iv. The Respondent revised the Applicant's VAT liability from Shs. 9,718,600,520 to Shs. 9,881,236,584, comprising principal tax of Shs. 3,857,226,802, which was reduced from the initial assessment of Shs. 5,419,750,970, and interest of Shs. 6,024,009,782 computed by the Respondent during the reconciliation.
9. The parties filed a partial consent reflecting the above changes. However, they later undertook further reconciliation efforts, but the resulting agreement was not signed due to disagreements over the wording. The parties have

therefore referred this matter, together with the issues set out below, to the Tribunal for determination.

### III. Issues for determination

10. The following issues were set down for determination:
  - a) Whether the VAT liability of Shs. 3,857,226,802 from the unreconciled variance of Shs. 21,429,037,787 is due and payable.
  - b) Whether the Respondent's interest amounts to Shs. 6,024,009,782 is due and payable.
  - c) Whether the Respondent acted unlawfully in issuing a Third-Party Agency Notice against the Applicant.
  - d) Whether the Respondent erred in imposing additional branch profit repatriation tax of Shs. 569,540,049 is due and payable.
  - e) What remedies are available to the parties?

### IV. Representation and Evidence

11. Ms. Fancy Gender Laker, Mr. Blaise Okwero Alenyo, Ms. Balaba Shillah Nambi, Mr. Muhamed M. Ssempijja, Mr. Hamza. M. Ssali, Mr. Ronald Okoth and Mr. Sheldon Aine of Ernst & Young represented the Applicant, while Ms. Eseza Victoria Ssendege, Ms. Charlotte Katuutu and Ms. Doreen Amutuhaire represented the Respondent.
12. **Mr. Adedamola Jaiyeoba (AW1)**, the Tax Manager of the Applicant, testified that following the filing of this application, the parties carried out a reconciliation exercise and they entered a partial consent wherein they agreed that the total reconciled variance for the period FY 2013, FY 2014, FY 2015 and FY 2017 be revised from Shs. 35,529,478,581 Shs. 21,429,037,787.
13. They also agreed that the reconciled variance be revised from Shs. 6,430,311,499 Shs. 40,560,209 for FY 2013 and from Shs. 8,361,667,723 to Shs. 3,134,019,798 for FY 2016, using the Applicant's assessed loss for the respective period.
14. The Applicant is dissatisfied with the revised principal VAT liability after the reconciliation, amounting to Shs. 3,857,226,802 based on the Respondent's

findings in the reconciliation report, which facilitated the partial consent settlement because:

- a) Following a review of the reconciliation report that facilitated the partial consent settlement, the Applicant observed that the Respondent did not properly evaluate the Applicant's evidence during the reconciliation, thus ignoring the reconciling item amounting to Shs. 4,511,546,000 for the 2017 financial year.
  - b) During the court-appointed reconciliation, the Applicant shared a detailed explanation regarding the reconciling item; further to that, the Applicant conducted phone conversations with the Respondent's representatives to explain the reconciling item.
  - c) The reconciling item of Shs. 4,511,546,000 pertains to consulting fees accrued in Applicant's financial statements for the period FY 2017.
  - d) The Value Added Tax (VAT) arising from the consulting fees was duly paid and declared in the Applicant's VAT return for the period October 2018.
  - e) Had the Respondent reviewed the Applicant's evidence, they would have excluded the Shs. 4,511,546,000 VAT has already been accounted for, declared and paid. Consequently, the unreconciled variance would have been revised from Shs. 4,511,546,000, the unreconciled variance would have been revised from Shs. 35,529,478,581 to Shs. 16,917,491,788 instead of Shs. 21,429,037,787.
15. AW1 further testified that the initial principal VAT liability of Shs. 5,419,750,970 was calculated using a VAT-inclusive formula. However, the Respondent departed from the VAT-inclusive computation formula adopted by the audit review team and the objection review teams and instead adopted a VAT-exclusive formula. Further, the Respondent's adjustment from a VAT inclusive computation to a VAT exclusive computation was not accompanied by an additional assessment, despite a significant shift in the grounds for assessment.
16. AW1 also testified that the VAT liability is based on a lump sum unreconciled variance arising from a comparison of the sales in the Applicant's VAT returns

for the period FY 2013 to FY 2017 and the sales in the Applicant's corporate Income Tax returns for the periods FY 2013 to FY 2017 and not actual invoice copies. However, the appropriate formula in the case of levying tax on an unreconciled variance analysis is the VAT inclusive formula in accordance with Section 21(3), 24(2) and paragraph 1(a) of the fifth schedule of the Value Added Tax Act.

17. The witness testified that following a review of the reconciliation report that facilitated the partial consent settlement, the Applicant observed that the Respondent erroneously computed an additional interest amounting to Shs. 6,024,009,782 comprised of interest on CIT liability of Shs. 465,900,526, interest on VAT liability of Shs. 5,329,045,063 and a new interest of Shs. 694,964,719 relating to interest computed on late payment of unbilled revenue, which the Applicant disagrees with. Further, the total VAT interest of Shs. 5,329,045,063 was not capped against the principal VAT liability of Shs. 3,857,226,802 in accordance with Section 40 of the Value Added Tax Act.
18. The witness testified that the interest of Shs. 694,964,719 attributable to unbilled revenue is a newly introduced interest that does not constitute part of the initial assessment. The above interests relate to a period prior to 30 June 2020, wherein the Applicant is entitled to a tax waiver in accordance with Section 40 (c) of the Tax Procedure Code Act. The Applicant maintains that the principal VAT tax liability should be revised to Shs. 2,580,634,341, and that the additional interest amount of Shs. 6,024,009,782 above is not due and therefore not payable to the Respondent by virtue of the tax waiver.
19. **Mr Yusuf Abubakar (AW2)**, the Applicant's Project Manager, testified that the Applicant enters into agreements with its clients for the execution of long-term projects, which may span up to five years, depending on the complexity of the deliverables. These projects include network modernisation, network expansion, and network upgrades.

20. For purposes of undertaking the above projects and depending on the complexity, the Applicant breaks down the project into different internal milestones. These milestones help the project management team monitor and assess the project's progress. The witness testified that the internal milestones are derived from an estimated time plan that is based on the project manager's expert judgment. However, despite time estimates, delays can occur, impacting the completion time of specific tasks.
21. Each internal milestone is further broken down into smaller, manageable tasks. The weight of each task contributes to the overall project completion, measured as a percentage. The witness further testified that the Applicant uses a Work Breakdown Structure (WBS) to track the percentage of completion for revenue recognition purposes for each project, based on internal milestones and tasks.
22. The witness cited an example of an installation project, which can be broken into 3 internal milestones: prerequisites, hardware installation, and deployment. Under each milestone, there are tasks which need to be completed. These tasks include hardware certification, design revalidation, cable laying and labelling, etc., which once done are recorded as completed tasks.
23. AW2 also testified that the internal milestones are for internal project delivery purposes and not customer-focused. Once the Project Manager marks tasks as completed, they share the status with the Project Finance Manager, who books the revenue in the books to the respective WBS based on these completed tasks, as mentioned above, such as verification activities, cable laying activities, etc.
24. The witness also testified that, to the customer, the milestone applicable is deployment. From a service delivery perspective, the customer considers a service as completed once it is usable. Therefore, the project manager issues a certificate of completion to the client once all tasks are completed and the project can be handed over. Both the client and the project manager must

sign off on this certificate upon the client's satisfaction. Upon approval of the project completion, the project is considered complete.

25. The witness further testified that the client and the Applicant agree on specific invoicing points for each project, depending on mutually agreed terms.
26. **Ms. Aderonke Babalola (AW3)**, the Head of the Sub-Saharan Africa Tax Unit, was the Applicant's third witness. She testified that on 20 June 2019, during the 45 days for the Applicant to object to the additional assessments, the Respondent issued agency notices to the Applicant's bankers. The witness stated that the Applicant paid 30% of the disputed tax on the 24 of June 2019, with the intention of objecting to the assessment.
27. Despite the payment of the deposit, the Respondent engaged the Applicant's Bankers, who remitted an additional Shs. 7,227,881,145 in compliance with the Respondent's agency notice. On 26 June 2019, the Respondent cancelled the agency notice because the total amount of Shs. 10,288,140,569 had been fully recovered.
28. The witness testified that as a result of the illegal, unlawful and or irregular acts of the Respondent issuing the agency notices above, the Applicant faced difficulty in remitting the monthly salaries of her employees totalling to Shs. 2,600,000,000 for the 7 months of June – December 2019, as all the Applicant's funds in the Bank were depleted.
29. The witness further testified that the Applicant faced a great financial hardship to the extent that the Applicant had to seek a credit facility of USD 400,000 from its Group Company to meet day-to-day obligations. The acts of the Respondent issuing the agency notice before the lapse of the 45-day mandatory period required by law for the Applicant to lodge her objection were illegal.
30. On 5 July 2019, despite the Applicant's request for a refund of the money amounting to Shs. 7,227,881,145, the Respondent has never refunded the Applicant the money, which is still being held illegally by the Respondent.

31. The witness testified that the Respondent also alleged that the Applicant was liable for additional branch profit tax for the period FY 2015 and FY 2017, and issued an assessment in demand for the payment of Shs. 569,540,049. The Respondent did not properly evaluate the Applicant's evidence and thus erroneously maintained the assessment for branch profit tax, on the ground that the Applicant did not present documentary evidence.
32. The witness further testified that for the year 2015, the Respondent failed to properly evaluate the Applicant's evidence of the audited financial statements, as a result, the Respondent overstated the opening balance for the assets in 2015 to Shs. 52,234,374,000 instead of Shs. 51,088,882,000, which was the closing balance for the period FY 2014, disclosed in the final Audited financial statements.
33. For the year 2017, the Respondent failed to properly evaluate the Applicant's evidence of the audited financial statements; as a result, the Respondent overstated the opening balance for the assets in 2017 to Shs. 32,610,612,000 instead of Shs. 31,921,392,000, which was the closing balance for 2016, and understated the current liabilities to Shs. 8,660,694,000 instead of Shs. 9,337,079,000 disclosed in the final Audited financial statements.
34. At the time of filing the 2015 returns, the Applicant relied on the unaudited draft accounts for the year 2014 so as to comply with the filing obligations, as the statutory audit was not yet complete. The witness testified that the final 2014 audited accounts were subsequently completed by the Applicant's external auditors, PwC Certified Public Accountants, and were duly signed by the Applicant's Country Manager. The final audited financial statements of the period FY 2014 and FY 2017 depict the correct balances, which the Respondent should have considered for tax purposes.
35. The witness also testified that upon finalisation/completion of the audited accounts, the Applicant amended its returns based on the same; however, upon uploading the amended return, the Respondent's portal system rejected it.

36. **Ms. Joyce Namuyanja (AW3)**, the Applicant's Project Finance Manager, was the Applicant's fourth witness. She testified that the Applicant provides services which can be broadly classified into networks, managed services, and digital services. Due to the long-term nature of services provided, the Applicant accounts for VAT and revenue at different times. Whereas invoices are raised periodically, depending on commercially agreed terms with customers, and VAT is accounted for at that point, revenue is only recognised by the Applicant based on the percentage of completion in accordance with the Generally Accepted Accounting Principles (GAAP).
37. The witness testified that the Applicant creates and uses a Work Breakdown Structure (WBS) to internally track the percentage of completion of each project for the purposes of revenue recognition in its financial statement based on the internal milestones as determined by the Project Manager. The witness stated that the Project Manager shares with me the project status showing completed tasks as a percentage of completion, which is used to book revenue in the respective WBS and subsequently recognised in the Applicant's profit and loss statement as Revenue.
38. The witness also stated that once the agreed invoicing points or terms agreed with the customer have been met and approvals received, she processes the issuance of the tax invoice to the client, which includes VAT and is accounted for in the Applicant's books. She further stated that. The witness further stated that although the Applicant does not account for VAT and income tax simultaneously, as the applicable principles differ, all taxes are duly accounted for and subsequently paid.
39. The witness testified that schedule in pages 433-475 of the Applicant's trial bundle illustrates the service rendered to a customer, the year from which a contract begins, when revenue is first recognised basing on the percentage of completion, when the first and subsequent invoices are raised, when the service is completed, when payment is effected (extract of bank statements corresponding to the sample Invoices was attached under pages 874-876), and month in which VAT is accounted for.

She also stated that the tax assessed on the Applicant constitutes double taxation, which is contrary to Uganda's tax laws.

40. **Ms Teddy Kyaligoza (RW1)**, a Compliance Officer in the domestic taxes department of the Respondent, was the Respondent's first witness. She stated that, whereas the Applicant asserts that the invoices are always raised before the service is completed and are recorded in the accounts receivable books in the balance sheet, the Respondent established that:
- i) By posting the invoices under receivables, this implies that revenue is earned, but payment from the customer is not yet received. Additionally, to account for a receivable, the supplier must have provided a service, and revenue must be recognised accordingly.
  - ii) The witness testified that if revenue is recognised based on stage/percentage of completion and an invoice is raised in that aspect, as alleged by the Applicant, then VAT sales would equal income tax sales.
41. The Respondent also established that the deferred revenue declared in the Applicant's audited financial statements was different from the amounts indicated in the Applicant's revenue recognition analysis/ reconciliation. The Respondent also established that the unbilled revenue declared in the Applicant's financial statement was different from the amount indicated in the Applicant's revenue recognition analysis/reconciliation. Therefore, due to the inconsistencies and variances, the Respondent was unable to rely on the reconciliations submitted by the Applicant.
42. The witness also testified that the Applicant did not conclusively indicate the point at which it issues invoices to their customers. The Applicant's recognition of income as sales is contrary to Section 14 of the VAT Act.
43. **Mr. Moses Kyazze (RW2)**, a Supervisor in the Respondent's Large Taxpayers' Office, was the Respondent's second witness. He testified that the Respondent conducted a returns examination of the Applicant for the

period 2013-2017, which revealed variances between income tax sales and aggregated VAT sales, as well as between total inventory on the balance sheet and closing stock in the statement of profit and loss. The Respondent also established an under-declaration of tax on branch profits.

44. The witness also testified that on 11 March 2019, the Respondent communicated the audit findings to the Applicant through its registered email. The Applicant was also requested to provide documents and reply to the above-mentioned findings.
45. RW2 also testified that on 24 May 2019, the Respondent issued the Applicant with income tax and VAT Assessments of Shs. 5,796,415,859, being the principal tax. Having received no response from the Applicant, the Respondent issued third-party agency notices to the Applicant's bankers for the outstanding tax liability of Shs. 10,288,140,569 is the income tax of Shs. 569,540,049 and VAT of Shs. 9,718,600,521.
46. The witness testified that during the reconciliation, they reviewed the income tax returns and the revenue per VAT returns and established a variance of Shs. 16,917,491,788 for the years 2014, 2015 and 2017. The Respondent maintains that the variance established between income tax declarations versus VAT declarations was treated as:
  - i) VAT exclusive for purposes of establishing undeclared VAT; and
  - ii) Undeclared revenue under income tax was added back in the tax computation.
47. The witness testified that since the revenue in the Applicant's Audited Financial Statements is VAT exclusive and is the same revenue in the Applicant's income tax returns, by comparing the revenue in the income tax returns and the revenue in the VAT returns, the Respondent compared items of the same kind, thus confirming the variance.
48. The witness also testified that the Generally Accepted Accounting Principles (GAAP) require that income in the Audited Financial Statements is

recognised exclusive of VAT. Further, considering that the Applicant's main clients are telecommunication companies such as MTN (U) Ltd and Airtel (U) Ltd, which are VAT-registered, we found it improbable that the Applicant issued them invoices that were not VAT-inclusive. The witness testified that, when they reviewed the 2017 invoice for one of the reconciling items presented by the Applicant, which was one of the transactions that created the variance, they found that the invoice was VAT-exclusive.

49. The witness also stated that for unbilled revenues, the Respondent found that for certain transactions, whereas the Applicant declared and paid VAT, the said declarations were made late and the Respondent charged interest for late payment. The Respondent's decision was based on time of supply under Section 14 of the VAT Act, being the earlier of payment date, invoice date, or performance date.
50. The witness also stated that IAS 18 (currently IFRS 15) emphasises that recognising revenue when the entity has substantially completed its performance, has a reasonable expectation of receiving the economic benefit associated with that performance.

Further, during the reconciliation, the Respondent did not cap the interest because the final interest and the decision on whether it is to be capped depend on the final principal tax after the determination of this dispute. The witness also stated that the Respondent issued the third-party agency notices in accordance with the law.

51. **Ms. Agnes Busingye (RW3)**, a Supervisor, who conducted the Applicant's objections review, was the Respondent's third witness. She stated that the audit revealed variances between the Applicant's income tax sales and aggregated VAT sales. The Respondent also noted inconsistencies between inventory figures in the balance sheet and the absence of corresponding closing stock figures in the statements of profit or loss for the years under review.

52. Regarding the tax on branch profits, she stated that the audit was identified under the declaration of tax on branch profits. According to her, the Applicant amended its income tax returns and revised year-end balances but failed to amend the computation of branch profits. Differences were also noted between opening and closing net assets for certain years.
53. On 11 March 2019, the Respondent communicated the audit findings to the Applicant and requested supporting documents. Follow-up letters were sent on 21 March 2019 and 16 May 2019 after the Applicant allegedly failed to respond within the given timelines. Therefore, on 27 May 2020, the Respondent issued a demand for outstanding taxes amounting to Shs. 10,288,140,569.
54. The witness also stated that although the Applicant provided long-term contracts with Airtel Uganda Ltd and Smile Communication Uganda Limited, the Respondent found these insufficient to establish completion dates for the various services rendered. The Respondent requested certificates of completion and supporting invoices, but these were not provided. Consequently, if the revenue had been recognised for income tax purposes, it should also have been recognised for VAT purposes because the performance obligations would already have been completed and the risks and rewards transferred. Due to a lack of supporting documentation, the Respondent was unable to reconcile the variances.
55. The witness also testified that the figures used in the assessment were based on the Applicant's own online tax returns, which had never been amended. The audited accounts later submitted by the Applicant differed from the online returns, and no explanation was given for those alterations. The Respondent further reviewed the Applicant's reconciliation ledgers and found several inconsistencies, including transactions spanning different years, reversals without corresponding credit notes, and document numbers that differed from the invoice numbers declared in VAT returns. Due to these discrepancies, the Respondent considered the reconciliations unreliable.

## V. Submissions of the Applicant

### Issue 1: Whether the VAT liability of Shs. 3,857,226,802 is due and payable.

56. The Applicant broke down the above issue into two sub-issues as follows:
- a) Whether the Respondent erroneously disregarded the Applicant's reconciling item of Shs. 4,511,546,000 during the reconciliation process.
  - b) Whether the Respondent, during reconciliation, unlawfully treated the Applicant's variance between VAT and Income Tax sales as VAT exclusive, contrary to the VAT inclusive formula adopted by their Audit and Objection team.

Whether the Respondent erroneously disregarded the Applicant's reconciling item of Shs. 4,511,546,000 during the reconciliation process.

57. The Applicant submitted that at the time of filing these submissions, the parties had carried out further reconciliations regarding this sub-issue and issue 4; whereby, sub-issue 1 and issue 4 were fully resolved in favour of the Applicant. The Respondent confirmed to the Applicant that its ADR Oversight Committee approved the adjustments above; however, the parties have not yet executed a partial consent agreement.
58. The Reconciling item amounting to Shs. 4,511,546,000 for the 2017 financial year, revises the unreconciled variance from Shs. 35,529,478,581 to Shs. 16,917,491,788 instead of Shs. 21,429,037,787, and the VAT liability is also revised from Shs. 3,857,226,801.66 to Shs. 3,045,148,521.84. (Using the Respondent's VAT exclusive formula, which we, the Applicant, contest. The adjustments were made due to the following reasons:
- a. Following the review of the reconciliation report that facilitated the partial consent settlement, the Applicant observed that the Respondent did not properly evaluate the Applicant's evidence during the reconciliation, thus ignoring the reconciling item amounting to Shs. 4,511,546,000 for the 2017 financial year.
  - b. During reconciliation, the Applicant provided a detailed explanation regarding the reconciling item; further to that, the Applicant conducted meetings with the Respondent's representatives to explain the

reconciling item, which pertains to consulting fees accrued in the Applicant's financial statements for the period FY 2017.

- c. The VAT arising from the consulting fees was duly paid and declared in the Applicant's VAT return for the period October 2018. The reconciling item of Shs. 4,511,546,000 was not included among the unbilled items initially reviewed by the Respondent. Had the Respondent reviewed the Applicant's evidence, they would have excluded Shs. 4,511,546,000 as VAT has already been accounted for, declared and paid, and the unreconciled variance would have been revised from Shs. 35,529,478,581 to Shs. 16,917,491,788 instead of Shs. 21,429,037,787. Further, the VAT liability would also have been revised from Shs. 3,857,226,801.66 to Shs. 3,045,148,521.84.

Whether the Respondent unlawfully treated the Applicant's variance between VAT and Income tax sales as VAT exclusive, contrary to the VAT inclusive formula adopted by their Audit and Objections team

59. The Applicant argued that following a review of the reconciliation report that facilitated the partial consent settlement, the Applicant observed that the Respondent erred in computing the Applicant's revised VAT principal liability of Shs. 3,857,226,802, which is Shs. 3,045,148,521.84 after further reconciliation.
60. The initial principal VAT liability of Shs. 5,419,750,970 was calculated using a VAT-inclusive formula. The Respondent departed from the VAT-inclusive computation formula adopted by the Audit review team and Objection review teams and instead adopted a VAT-exclusive formula during TAT mediation. (Refer to the copy of the reconciliation report shared by the Respondent, Exhibit A23.
61. The Applicant submitted that, having discovered that the VAT liability arises from a variance analysis, the Respondent should have followed the provisions of the VAT Act, the audit team and objection team's work to treat

the variance as VAT inclusive, and the resultant tax from the variance would be Shs. 2,580,634,340.54 and not Shs. 3,857,226,802 (Shs. 3,045,148,521.84 after the further reconciliation) as assessed by the Respondent during reconciliations.

62. The Applicant submitted that Section 46 of the VAT Act provides:

*"Any price advertised or quoted for a taxable supply shall include tax and the advertisement or quotation shall state that the price includes the tax."*

Further, Section 21 (3) of the VAT Act provides:

*"Where a taxable supply is made without a separate amount of the consideration being identified as a payment of tax, the taxable value of that supply is the total amount of the consideration paid excluding tax."*

In addition, section 24(2) of the VAT Act provides:

*"Where the taxable value is determined under Section 21(2) or (3), the tax payable is calculated by the formula specified in paragraph 1(a) of Schedule 5 to this Act."*

The Applicant submitted that Paragraph 1. (a) of Schedule 5 provides:

*"For the purposes of Section 24(2), the following formula shall apply:  $A \times B$ ; where A is the taxable value as determined under Section 21(2) or (3); and B is the tax fraction."*

The "tax fraction" under Section 1 of The VAT Act means the fraction calculated in accordance with the formula 18/118.

63. The Applicant submitted that the Respondent assumes that a sale was made by the Applicant and that VAT was not remitted for the same, leading to the variance. Section 46 of the VAT Act requires that, in a case of a deemed sale, the price should be regarded as inclusive of VAT.
64. Further, the Applicant argued under Section 21(3) of the VAT Act, on the taxable value of a taxable supply, where the supply is made without a separate amount of the consideration being identified as payment for tax, the taxable value of that transaction is the amount paid without including tax. The

formula to be adopted in this case, as enshrined by Section 24(2) and Paragraph 1(a) of Schedule 5 to the VAT Act, is 18/118.

65. The Respondent's action of treating the variance as VAT exclusive and thereby applying the VAT rate of 18% on the transaction is contrary to the provision of the above sections and therefore unlawful.

66. The Applicant also submitted that whereas the Respondent's witness states in Paragraph 11 of his witness statement as follows:

*"Since the Revenue in the Applicant's Audited Financial Statements is VAT exclusive and is the same revenue in the Applicant's Income Tax returns, by comparing the revenue in the Income Tax returns and the revenue in the VAT returns, the Respondent compared items of the same kind, thus confirming the variance", the balance from the said comparison should be treated as VAT inclusive in accordance with the provision of the VAT Act since no invoices were issued to support the remaining variance.*

67. Furthermore, the Applicant submitted that the Respondent does not cite any provision of the said law, both in the witness statement and during the cross-examination, to support such assertions and adjustments.

68. In addition, in their witness statement, the Respondent stated in Paragraph 14 as follows:

*"Considering the Applicant's main clients are telecommunication companies such as MTN (U) Ltd and Airtel (U) Ltd, which are VAT registered, we found it improbable that the Applicant issued to them invoices which were not VAT inclusive".*

The Applicant maintained that no invoices were issued for this variance and, therefore, the treatment should be VAT-inclusive.

69. The Respondent's witnesses also stated that when they reviewed the 2017 invoice for one of the reconciling items presented by the Applicant, which was one of the transactions that created the variance, they found that the said invoice was VAT exclusive. The Applicant reiterates that the said invoice has already been used to reconcile the variance, and that the remaining variance

has no supporting invoice; therefore, it should be treated as VAT inclusive in accordance with the provisions of the VAT Act.

70. The Applicant submitted that the Respondent's adjustment shifting from a VAT inclusive computation adopted by the Audit and Objection team to a VAT exclusive computation was not accompanied by an additional assessment, despite a significant shift in the grounds for assessment.

71. Section 26(1) of The Tax Procedure Code Act provides:

*"A person who is dissatisfied with a tax decision may lodge an objection with the Commissioner General within forty-five days after receiving notice of the tax decision."*

72. Section 2 (a) of the TPCA provides that **"tax decision" means "a tax assessment; or...."**

Further, Section 2 of the TPCA defines a "tax assessment" to mean "a self-assessment, default assessment, advance assessment, or additional assessment."

73. The Applicant submitted that, by adopting the VAT exclusive formula instead of an inclusive formula which was adopted by their Audit and objections team, the Respondent issued the Applicant with an additional assessment without giving the Applicant an opportunity to object to the same, which is contrary to the provisions of section 26 of the TPCA.

74. The Applicant prayed that the Tribunal find that the Respondent, during reconciliation, unlawfully treated the Applicant's variance between VAT and Income tax sales as VAT exclusive and that the correct outstanding VAT payable by the Applicant on the unreconciled variance between sales in the VAT returns and turnover in the audited financial statements is Shs. 2,580,634,340.54.

**Issue 2: Whether the Respondent's interest of Shs. 6,024,009,782 is due and payable.**

75. The Applicant is dissatisfied with the erroneously computed additional interest amounting to Shs. 6,024,009,782 based on the Respondent's findings in the reconciliation report, which facilitated the partial consent settlement.
76. Following a review of the reconciliation report that facilitated the partial consent settlement, the Applicant observed that the Respondent erroneously computed an additional interest amounting to Shs. 6,024,009,782 comprised of interest on CIT liability of Shs. 465,900,526, interest on VAT liability of Shs. 5,329,045,063 and a new interest of Shs. 694,964,719 being interest computed on late payment of unbilled revenue that the Applicant disagrees to based on the following reasons:
- a) The total VAT interest amounting to Shs. 5,329,045,063 was not capped against the principal VAT liability of Shs. 3,857,226,802 and Shs. 3,045,148,521.84 after further reconciliation in accordance with Section 40 of the Value Added Tax Act.
77. The Applicant argues that the interest of Shs. 694,964,719, which is attributed to unbilled revenue, is a newly introduced component not included in the original tax assessment. They further contend that this amount was not due and payable as claimed by the Respondent and therefore should not attract interest. Additionally, the Applicant maintains that since the interest relates to a period before 30 June 2020, it falls within the scope of a tax waiver under Section 46 of the Tax Procedures Code Act (as amended), and should therefore not be chargeable.
78. The total interest on the CIT liability of Shs. 465,900,526, interest on VAT liability of Shs. 5,329,045,063 is still outstanding and ought to have been waived in accordance with the statutory tax waiver in section 46 of The Tax Procedure Code Act since it relates to periods prior to 30 June 2020. Further, during the reconciliation process, the Applicant requested the Respondent to

effect the waiver of interest in accordance with Section 46 of the Tax Procedure Code Act as amended, which provides:

*"Section 46 of The VAT Act provides: "The interest due and payable on unpaid tax shall not exceed the aggregate of the principal and penal tax."*

79. The Applicant submitted that, having submitted above, the correct VAT to be paid by the Applicant is Shs. 2,580,634,340.54; the interest should be capped under Section 65 of the VAT Act to Shs. 2,580,634,340.54. The Applicant further contended that the said interest should be removed from the outstanding tax, as it was waived under Section 46 of the TPCA, as amended.
80. The Applicant submitted that it was the Respondent's position that they did not cap the interest because the final interest and the decision on whether the same is to be capped or not is dependent on the final principal tax after determination of the dispute. During cross-examination, the Respondent's witness testified that the Shs. 5,329,045,063 in interest was not final and depended on whether the interest and penalties after the Tribunal's determination exceeded the principal. The Applicant prayed that the Tribunal find the correct tax to be Shs. 2,580,634,340.54, and that the interest is capped at Shs. 2,580,634,340.54, which is further waived by Section 46 of the TPCA as amended.
81. The Applicant cited ***Kansai Plascon V Uganda Revenue Authority (Application No. 64 of 2020)***, which held that Section 40 (c) of the Tax Procedures Code (Amendment) Act 2014 waived any interest and penalty outstanding as at 30 June 2020.
82. Further, the Respondent, during reconciliation, computed an interest amounting to Shs. 694,964,719 attributable to unbilled revenue, which is a newly introduced interest not constituting part of the initial assessment. The newly introduced interest amounts to an assessment to which the Applicant has not been allowed by the Respondent to object under Section 26 of the TPCA.

83. The Applicant submitted that the said interest relates to unbilled revenue, wherein some periods, the sales for income tax purposes exceeded the sales declared in the VAT returns. The Applicant accounts for VAT in accordance with Section 14 of the VAT Act, while recognising revenue at the fair value of consideration received, in line with the provisions of International Accounting Standard 18 ('IAS 18') and Section 42 of the Income Tax Act.
84. Under unbilled revenue, the Applicant has reached a milestone for revenue recognition for income tax, but not for VAT, since performance is not completed, no invoice has been issued, and payment has not been made.

**Issue 3: Whether the Respondent acted unlawfully in issuing a Third-Party Agency Notice against the Applicant**

85. The Applicant submitted that the Respondent occasioned an illegality on the Applicant by issuing an agency notice and collecting the entire tax in dispute even before the Applicant had exhausted the dispute procedures that are provided for under the tax law.
86. In this respect, AW2 testified that on 20 June 2019, within the 45 days for the Applicant to object to the additional assessments, the Respondent issued agency notices to the Applicant's bankers. However, to object to the additional assessments raised by the Respondent, the Applicant paid 30% of the disputed tax on 24 June 2019. That despite the payment of the 30% tax in dispute, the Respondent engaged the Applicant's Bankers, who remitted an additional Shs. 7,227,881,145 in compliance with the Respondent's agency notice.
87. The Applicant submitted that as a result of the illegal, unlawful and or irregular acts of the Respondent issuing the agency notices above, the Applicant faced difficulty in remitting the monthly salaries of her employees totalling Shs. 2,600,000,000 for the months of June – December 2019, as all the Applicant's funds in the Bank were depleted. The Applicant had to seek a USD 400,000 credit facility from its Group Company to meet its day-to-day obligations. The

Applicant provides copies of the audited financial statement for the period FY 2019 and proof of correspondence, collectively attached hereto as Exhibit A19.

88. The acts of the Respondent issuing the agency notice before the lapse of the 45-day mandatory period required by law for the Applicant to lodge her objection are illegal, unlawful, and or irregular, and we pray the tribunal to declare the same against the Respondent.
89. The Applicant submitted that on the 5 of July 2019, the Applicant wrote to the Respondent requesting a refund of the Shs. 7,227,881,145 illegally collected from the Applicant's bank account and had never been refunded. Section 26(1) of the TPCA states that a person who is dissatisfied with a tax decision may lodge an objection within forty-five days after receiving notice of the tax decision.
90. The Applicant cited the case of *Housing Finance Bank Ltd V Commissioner General, URA, HCCS No. 259 of 2014*, the High Court held that, after an assessment, the taxpayer who is dissatisfied may lodge an objection to the assessment with the Commissioner within 45 days of service of the notice of assessment. The foregoing means that the taxpayer, upon being notified of the assessment, is insulated from the issuance of an agency notice until the 45-day period has expired.
91. The court additionally held that an agency notice issued before the expiration of the 45 days within which a taxpayer can object to such action deprives the taxpayer of the chance to object to the assessment. In this case, the third-party agency notice issued simultaneously with the defendant's assessment on 13 October 2011 is illegal by reason of having been issued ultra vires and is therefore vacated.
92. The Applicant submitted that its statutory 45 days to object as stipulated under Section 26 of the TPCA had not yet lapsed and thus the actions of the

Respondent, in issuing agency notices to the Applicant's customers and bankers on 24 June 2019, were unlawful.

93. The Applicant's contention is that the Respondent's actions were ultra vires and thus the interest and penalty illegally collected by the Respondent through agency notices should be refunded to the Applicant with interest.

**Issue 4: Whether the Respondent erred in imposing additional branch profit repatriation tax on the Applicant.**

94. The Applicant contended that issue 4 has been fully resolved in favour of the Applicant, and it is pending a partial consent agreement. The issue was resolved due to the following reasons:

- a) The Respondent did not properly evaluate the Applicant's evidence and thus erroneously maintained the assessment on branch profit tax on the ground that the Applicant did not present documentary evidence. The Applicant submitted that they had furnished the Respondent with documents, including their audited accounts, before the Respondent made their objection decision.
- b) For the year 2015, the Respondent failed to properly evaluate the Applicant's evidence of the audited financial statements; as a result, the Respondent overstated the opening balance for the assets in 2015 to Shs. 52,234,374,000 instead of Shs. 51,088,882,000, which was the closing balance for the period FY 2014, disclosed in the final Audited financial statements.
- c) With respect to 2017, the Respondent failed to properly evaluate the Applicant's evidence of the audited financial statements; as a result, the Respondent overstated the opening balance for the assets in 2017 to Shs. 32,610,612,000 instead of Shs. 31,921,392,000, which was the closing balance for 2016, and understated the current liabilities to Shs. 8,660,694,000 instead of Shs. 9,337,079,000 disclosed in the final Audited financial statements.
- d) At the time of filing the 2015 returns, the Applicant relied on the unaudited draft accounts for the year 2015 so as to comply with the filing obligations, as the statutory audit was not yet complete.

- e) The final audited financial statements of the period FY 2015 and FY 2017 depict the correct balances, which the Respondent should have considered for tax purposes. In fact, upon finalisation/completion of the audited accounts, the Applicant amended its returns accordingly; however, upon uploading the amended return, the Respondent's portal system rejected it.
  - f) The Applicant prayed that the Tribunal rule on this matter as per the agreement with the Respondent's counsel, which was also confirmed during the hearing of this application.
95. In light of the above submissions, the Applicant prayed for the following remedies;
- (i) An order varying and setting aside the Respondent's objection decisions.
  - (ii) An order that any interest accruing as at 30 June 2020 was waived by the Tax Procedure Code Amendment Act, 2020.
  - (iii) A declaration that the correct tax to be paid by the Applicant is Shs. 2,580,634,340.54, and that the same is deducted from the tax already collected by the Respondent.
  - (iv) An order that the Respondent caps the interest on the VAT liability to Shs. 2,580,634,340.54, and that the said interest is waived by Section 47B of the TPCA.
  - (v) An order that the Respondent refund the balance of Shs. 7,707,506,228.46 unlawfully recovered from the Applicant's customer/bankers and 30% tax paid.
  - (vi) An order that the respondent pay interest to the Applicant for unlawful recovery of the monies from its customer/bankers.
  - (vii) An order that the Respondent pay interest on any sums refunded in accordance with local tax laws.
  - (viii) An order for costs of this application.

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

96. The Respondent submitted that whereas the Applicant proposed four issues for determination, which were the issues in the first partial consent, there has

since been new developments in the second partial consent following the second reconciliation and the Respondent proposed to go by the issues as proposed in the second partial consent with an addition of one issue (issue v) on remedies available to parties.

97. It is the Respondent's submission that the Tribunal should drop the issue on page 5 of the Applicant's submissions concerning the reconciling item of Shs. 4,511,546,00 and issue 4 in the Applicant's submissions on page 11 relating to the additional branch profit repatriation.
98. It was the Respondent's position that these two issues were reconciled, hence informing the second partial consent served on the Applicant on 3 Feb 2026, and they prayed that the same be disregarded. The Respondent prayed that the Tribunal adopt the three issues as proposed in the second partial consent, namely:
- (i) Whether the VAT liability of Shs. 3,045,148,522 is due and payable.
  - (ii) Whether the Respondent erroneously computed an additional interest amounting to Shs. 5,513,829,577.
  - (iii) Whether the Respondent acted unlawfully in issuing a Third-Party Agency Notice against the Applicant.
  - (iv) What remedies are available to the parties?

**Issue 1: Whether the VAT liability of Shs. 3,045,148,522 is due and payable.**

99. The Respondent submitted that Section 4(a) of the VAT Act provides:
- "A tax to be known as value added tax shall be charged in accordance with the Act on-*
- a) *every taxable supply made by a taxable person*

Further, section 5(1) of the VAT Act provides for the person liable to pay tax and states:

*"Except as otherwise provided in this Act, tax payable;*

- a) *in the case of a taxable supply, is to be paid by the taxable person making the supply;*

100. In addition, section 14 of the VAT Act provides:

*“Except as otherwise provided under this Act, a supply of goods or services occurs*

*c) in any other case, on the earliest of the date on which:*

*i) the goods are delivered or made available, or the performance of the service is completed;*

*ii) payment for the goods or services is made; or*

*iii) a tax invoice is issued.*

101. Section 21(3) of the VAT Act provides that where a taxable supply is made without a separate amount of the consideration being identified as a payment of tax, the taxable value of that supply is the total amount of the consideration paid excluding tax.

102. The Respondent submitted that IAS 18 (currently IFRS 15) provides that revenue is measured at the fair value of consideration received or receivable and represents the amounts receivable for services provided in the normal course of business, net of value-added tax.

103. The Respondent submitted that the Applicant had underdeclared taxable supplies, thus the variance between Income Tax sales and VAT sales, which the Respondent treated as VAT exclusive. It should be noted that the revenue in the Applicant's audited financial statements is VAT exclusive and is the same revenue in the Applicant's income tax returns. By comparing the revenue in the Income Tax returns and that in the Applicant's VAT returns, the Respondent compared items of the same kind, thus confirming the variance.

104. The Respondent also submitted that following a review of the reconciliation report that facilitated the partial consent settlement, the Respondent computed the Applicant's revised VAT principal liability of Shs. 3,045,148,521 after further reconciliation, which informed the second partial consent. During the reconciliation, the Respondent reviewed the Applicant's revenue per Income Tax Returns and the revenue per VAT returns and established a variance of Shs. 16,917,491,788 for the period 2014, 2015 and 2017.

105. The Respondent maintained that the variance between income tax declarations was treated as VAT-exclusive for purposes of establishing undeclared VAT and undeclared income tax, and was added back in the tax computation. Since the revenue in the Applicant's audited financial statements is VAT exclusive and is the same revenue in the Applicant's income tax returns, by comparing the revenue in the income tax returns and the revenue in the VAT returns, the Respondent compared items of the same kind, thus confirming the variance.
106. That the Respondent's position is in accordance with Section 21(3) of the VAT Act, as it then was and the International Accounting Standards (IAS)-18. The Generally Accepted Accounting Principles (GAAP) require that income in the Audited Financial Statements is recognised exclusive of VAT. This is in accordance with a note in revenue.
107. The Respondent submitted that, given that the Applicant's main clients are telecommunication companies such as MTN (U) Ltd and Airtel (U) Ltd, which are VAT-registered, the Respondent found it improbable that the Applicant issued them invoices that were not VAT-inclusive. The Respondent submitted that it is a cardinal principle of law that an amount is declared in returns net of VAT per Section 21(3) of the VAT Act. The Respondent argued that the entire submission of the Applicant's counsel does not dispute the fact that VAT is charged on the supply of the goods in the domestic market, and it is also not disputed that the Applicant made tax payable supplies.
108. The Respondent contended that the Applicant cites per Section 46 of the VAT Act- Price quoted to include tax, 'any price advertised or quoted for a taxable supply shall include tax and the advertisement or quotation shall state that the price includes the tax. It is the Respondent's submission that they didn't pick any invoices that were never declared in Income tax. All amounts used were in the Applicant's ledgers and income tax returns. Hence, Section 46 of the VAT Act is not applicable.

## **International Accounting Standard (IAS 18)**

109. The Respondent IAS 18 defines revenue as 'the gross inflow of economic benefits during the period arising in the course of the ordinary activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants' (1).
110. The Respondent submitted that Revenue should be stated before the deduction of costs of sale. Revenue is recognised on the provision of goods and services that relate to the ordinary activities of the entity. If an entity disposes of property, plant and equipment at the end of its useful economic life, the proceeds of disposal are not revenue for the entity. Instead, the profit or loss on disposal is treated as a deduction from operating expenses (or as a separate line item in the statement of profit or loss, if it is sufficiently material). Sales taxes (VAT) that are collected from the customer are remitted to the relevant authorities, and they are not 'revenue'.
111. The Respondent submitted that hypothetically, if goods are sold for \$110, inclusive of recoverable sales taxes of 10%, the revenue is \$100, not \$110. The Respondent argues that, as per the above principle, Value-added tax is collected from customers and remitted to the Respondent. This is never considered revenue by the client. This principle is part of the requirement of IAS 1 relating to the presentation of financial statements in audited books. This was clearly followed by the Applicant's Auditors in preparing the audited financial statement. There was no justification for comparing VAT declarations, which are exclusive of tax, with Revenue as per income statements, which is 'purportedly' inclusive of VAT, as per the Applicant's argument. Such would be comparing unlike items.
112. The Respondent argued that one would wonder why the Applicant would account for their revenue inclusive of VAT. VAT is not the Applicant's revenue but rather a remittance to the collecting authority, and for all intents and purposes, the Applicant would not account for their revenue inclusive of VAT.

113. The Respondent also submitted that they laboured to explain invoice number 1800000309 exhibited as REX7 on page 63 of the Respondent's Trial Bundle. The said invoice was declared in the 2017 income tax return under other income. This was recognised in the income tax returns as exclusive of tax. This clearly demonstrates that the Applicant is aware of how revenue should be declared in income tax returns.
114. The Respondent contended that, under no circumstances, can it be estopped from carrying out its statutory obligations in tax administration. In the case of ***Uganda Revenue Authority v Tamale & Co. Advocates Civil Appeal No:11 of 2020***, Hon Justice Patricia Mutesi held:
- "...as a general rule, equity follows the law, and estoppel, which is a doctrine of equity, cannot stand in the face of clear statutory words...As such, the clear wording of the above-mentioned statutes overrides any claim of equity or estoppel that would have arisen...."*
115. The Respondent submitted that revenue should be declared net of VAT and as such, the variance between cannot be treated as inclusive. They also stated that Section 21(3) of the VAT Act *provides that* where a taxable supply is made without a separate amount of consideration being identified as a payment of tax, the taxable value of that supply is the total amount of consideration paid, excluding tax.
116. IAS 18 (currently IFRS 15) provides that revenue is measured at the fair value of consideration received or receivable and represents the amounts *receivable for services provided in the normal course of business, net of value-added tax*. The Respondent submitted that the above statutory provision, together with the cited GAAP (Generally Accepted Accounting Principles), requires that the Applicant declare revenue exclusive of VAT, and it is clear that the Applicant in the instant case declared their revenue net of VAT, as evidenced in their financials.
117. The Respondent submitted that its prerogative of issuing the objection decision under Section 26(6) of the Tax Procedure Code Act in a period of 90 days from the date of the objection is solely to allow the taxpayer enough time

to submit evidence to address the issues raised at the audit or assessment level. The Respondent stated that if the objection decision was informed by incomplete evidence, the Respondent reserves the right to make necessary changes at a later stage, provided it is in accordance with the law.

118. The Respondent invoked **Section 26(9) formerly Section 24(9) of the Tax Procedure Act** which provides:

*"The time limit for making an objection decision is waived where a review of the records of the taxpayer is necessary for settlement of the objection and the taxpayer is notified".*

119. The Respondent argued that the Applicant did not provide information on time, and even after the time was extended, the Applicant failed to provide it until the Respondent's objection decision was issued. The Respondent submitted that during cross-examination, the Respondent led evidence that both the assessors and the objection officers did not have complete evidence, unlike at mediation, where the Respondent was given complete evidence and had to treat the variance with the correct methodology in accordance with the law.

120. During cross-examination of the Respondent's witness (RW1), he explained that the Applicant did not provide enough information at the assessment level, and there was complete reconciliation done. The Respondent cited exhibit REX1, which is an email printout dated 11 March 2019, sent from the Respondent's auditors to the Applicant notifying them of the issues/variance identified and requesting the Applicant to provide:

- i. Audited financial statements for the period 2013 to 2017
- ii. Trial balances for the period 2013 to 2017
- iii. Ledgers showing international payments from 1<sup>st</sup> January to 2013 to date. This should be on a supplier-by-supplier basis and indicate payment dates and amounts.
- iv. Breakdown of project-related expenses with clear narration of what each individual cost relates to.

121. The Respondent submitted that subsequently, on 21 March 2019, the Respondent issued the Applicant with a management letter communicating the assessed tax and requesting the Applicant to provide appropriate responses to all issues raised, which was never responded to and the Applicant's first Batch of supporting documents was submitted in August 2019, five months from the date the audit team communicated its findings and requested supporting documents. The Respondent cited Exhibit A10 of the Applicant's Trial Bundle, at page 59, which contains the Applicant's email printout dated 10 September 2019, indicating that they did not have all the contracts at the time.
122. On 28 May 2020, the Respondent disallowed the Applicant's objection on the ground that the Applicant's representatives did not provide the certificates of works completed to enable the review team to ascertain the revenues recognised each year and explain the variance. This was because the Respondent was constrained to proceed with a timely and efficient review without the Applicant providing all the supporting evidence.
123. The Respondent submitted that, during the Tribunal proceedings, the parties were sent for mediation, during which the Applicant had ample time to provide all evidence not provided at the audit level, and the Respondent carried out a comprehensive reconciliation. Hence, having been given this opportunity to review the variances, the Respondent could not maintain a wrong approach by the assessing officers who did not do a comprehensive reconciliation due to the Applicant's delay in providing complete evidence. Hence, the Respondent's application of the correct methodology, which is the proper approach in the treatment of variances.

**Issue 3: Whether the Respondent erroneously computed an additional interest amounting to Shs. 5,513,829,577**

124. The Respondent submitted that, according to Section 40 of the VAT Act, the interest due and payable on unpaid tax shall not exceed the aggregate of the principal and penal tax. The Respondent contended that in this matter, Shs.

10,288,140,569 was recovered pursuant to the third-party agency notice dated 24 June 2019. The Respondent is aware of interest capping rules and has computed and reconciled the interest due up to 24 June 2019, thus revising the interest from Shs. 6,024,009,782 to Shs. 5,513,829,577 as indicated in the second partial consent. Nothing had been computed after that period.

125. Interest is a factor in the principal tax, which is still in dispute. Therefore, until this dispute has been resolved, the Respondent is unable to determine the exact interest to be charged.

#### **Interest on unbilled revenue**

126. The Respondent submitted that section 39(3) and Schedule 6 of the VAT Act impose interest on late payment of tax at a rate of 2% per month, compounded. The Respondent contended that the Applicant attributed part of the variance to unbilled revenue and submitted supporting evidence, which was reviewed. The Respondent reconciled the transactions, leading to the first and second partial consents.
127. In the instant case, AW2, Adedamola Jaiyeoba, stated in her witness statement that one of the reconciliation items was Shs. 4,511,546,000, which relates to consulting fees accrued in the Applicant's financial statements for the period FY 2017. The VAT arising from this item was paid and declared in the Applicant's VAT return for the period October 2018.
128. The Respondent submitted that, since the Applicant admitted not having accounted for VAT on the transactions within the required period and the VAT was subsequently accounted for in later years, it follows that the Respondent was justified in computing interest for the late payment of tax.

#### **Outstanding interest as at 30 June 2020**

129. The Respondent cited Section 46 of the Tax Procedure Code Act provides:  
*"Any interest and penalty outstanding as at 30th June, 2020, is waived."*

130. The Respondent submitted that the Applicant had no outstanding interest as of 30 June 2020 because the Respondent had recovered all liability by 24 June 2019, and thus Section 46 of the Tax Procedure Act is not applicable to the Applicant. The Black's Law Dictionary, 11th Edition, defines outstanding as "unpaid; uncollected".
131. The Respondent maintained that there was no uncollected interest(outstanding) as the Respondent had recovered it on 24 June 2019 before the enactment of Section 46 of the TPCA. The taxes and interest in question were recovered on 24 June 2019, and the waiver applies to liabilities outstanding as at 30 June 2020; thus, the waiver does not apply to the Applicant's interest, as the recovery was made before 30 June 2020.

#### **The lawfulness of the agency notice**

132. The Respondent cited Section 25 (7) of the Tax Procedure Act, which provides that the service of a notice of an additional assessment under this section does not change the due date for payment of tax payable under the assessment as determined under the tax law imposing the tax, and penal tax and interest shall remain payable based on the original due date. The rationale of Section 25(7) of the TPCA is to limit the due dates of payment to those specified in the taxing laws.
133. In the present case, the assessments in issue are all additional assessments; therefore, Section 25(7) of the Tax Procedure Act applies. The Respondent submitted that the assessment notice indicated due dates for the payment of tax. The date of 24 June 2019, when the Agency Notices were issued, was after the due date of payment specified in the assessment notice dated 7 June 2019.
134. The Respondent further cited section 32 (1) of the VAT Act and submitted that the tax payable under the VAT Act is due and payable, either on the date of lodging the return or on the date specified in the assessment.

**Harmonisation of the 45 days within which the taxpayer can object and the due date upon which the Respondent can collect**

135. In the alternative, the Respondent submitted that the rationale for enacting the Tax Procedure Code Act was to harmonise procedures for administering specified tax laws in Uganda, as stated in its long title. The Respondent stated that the TPCA provides for objections for dissatisfied taxpayers as well as the due payment of taxes.
136. The Respondent argued that the rationale of the Tax Procedures Code Act is to harmonise the procedures for the proper administration of the specified tax laws. Therefore, while the TPCA provides for objections by dissatisfied taxpayers, it also sets due dates for tax payments.
137. The Respondent concluded that the third-party agency notices were rightly issued under Section 25(7) of the Tax Procedure Act since the due date specified in the assessment notice had already lapsed.

**Issue 4: Remedies**

138. The Respondent submitted that it has proved that the Applicant is liable to pay the taxes as assessed and further submitted that the Applicant is not entitled to interest on the refund of 30% of the disputed amount paid at the filing of the Application. The Respondent further prayed for orders that:
- (i) This Application is dismissed.
  - (ii) The administrative additional VAT assessments of Shs. The sum of 3,045,148,522 for the period 2013-2017, issued by the Respondent against the Applicant, is justified and was due and payable by the Applicant.
  - (iii) That the interest of Shs. 5,513,829,577 was properly computed.
  - (iv) The Applicant is not entitled to the prayers sought.
  - (v) Costs of this application are awarded to the Respondent.

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

139. The Applicant reiterated their earlier submissions regarding the issues raised by the Respondent. However, the Applicant rejected the Respondent's

submission requesting the Tribunal to adopt the unsigned partial consent. The Applicant argued that they neither signed the consent nor was it endorsed by the Tribunal.

140. The Applicant submitted that the Respondent shared the draft partial consent settlement agreement on 23 January 2026, and on 26 January 2026, the Applicant proposed edits that the Respondent did not consider. To date, the Respondent has not provided the Applicant with an adjusted Second Partial Consent Agreement.
141. The Applicant submitted that, while they agree with the tax adjustments to the liabilities made by the Respondent, which resolve Sub issue 1 of Issue 1 and Issue 4, they do not agree with the narratives under Paragraph 5(b) of the Second Partial Consent Settlement Agreement. The Applicant therefore prayed that the Tribunal make a Ruling confirming the tax adjustments based on the evidence shared by the Applicant and the parties' intention. This will also be in line with the prayers of both parties, which is to make the said tax adjustments.
142. Regarding the treatment of the VAT variance as tax-exclusive, the Applicant submitted that the Respondent assumes taxable sales were made, resulting in the VAT-to-income tax variance. The Applicant's witness already stated that the variance arose due to foreign exchange difference, and no taxable sales were made. Had any taxable sales been made, the invoices would have been used to reconcile the variance, since, as the Respondent has already noted, the Applicant deals with VAT-registered entities.
143. Therefore, the Respondent's continued assumption of sales having been made to treat the variance as VAT exclusive is flawed since the assertion is made without any regard to the facts before the tribunal, where the Applicant is being subjected to the said additional tax due to the lack of invoices to reconcile the variance.

144. Regarding the waiver of interest, the Applicant reiterated that it was outstanding as at 30 June 2020 and was waived under Section 46 of the TPCA. The Applicant stated that the newly introduced interest amount of Shs. 694,964,719 relates to a period prior to 30 June 2020, wherein the Applicant is entitled to a tax waiver under Section 46 of the Tax Procedures Code Act as amended.
145. The Applicant submitted that the Respondent collected the tax by illegally issuing an agency notice within a 45-day period during which the Applicant had the right to object. Furthermore, the Applicant submitted that the interest of Shs. 694,964,719 attributable to unbilled revenue is a newly introduced interest that does not constitute part of the initial assessment. The interest arises from unbilled revenue, which the Applicant believes is not due and payable since none of the time-of-supply rules was met. The Respondent is barred by law from issuing that new interest at the Tribunal without assessing the same and allowing the Applicant a chance to object to the same as the law provides.

#### **Third Party Agency Notice**

146. Regarding the Respondent's submission on section 25 (7) of the TPCA as a defence for the agency notice, the Applicant submitted that The Applicant submitted that the provision does not negate the rights of a taxpayer from objecting to an assessment within 45 days, in any case should the taxpayer be held liable to the said tax, the interests and penalties will count from the due date in the law that established the said tax.
147. In any case, in issuing the Agency Notices, the Respondent should have taken into consideration the 45days within which the Applicant had a right to object to the assessments. The Respondent relied on Section 25(6) of the TPCA and stated that the provision prevented the Respondent from any recovery measures, issuance of third-party agency notices, before the expiration of the 45 days.

148. The Respondent, however, omitted to submit that the said Section 25(6) of the TPCA was repealed in 2021, while the Agency Notice in dispute in this case was issued on 20 June 2019. Therefore, at the time the agency notice was issued on 20 June 2019, Section 25(6) of the TPCA was still in force. Therefore, by the Respondent's own admission, the provision prevented the Respondent from any recovery measures and the issuance of third-party agency notices, before the expiry of 45 days.

149. Additionally, the Respondent omitted to submit that only the word "due" was repealed from the provision. Section 25(6) (d) of the TPCA currently provides that:

*"Where the Commissioner General has made an additional assessment under this section, the Commissioner General shall serve the taxpayer with notice, in writing, of the additional assessment specifying the date [due] for payment of any tax, penal tax and interest, being a date that is not less than forty-five days from the date of service of the notice"*

150. The Applicant submitted that the Respondent, in issuing an agency notice within the 45-day period, acted against the provisions of Section 26 and that the said agency notice was illegal.

151. Regarding the taxation of the branch's profits, the Applicant submitted that the issue is part of the matters sought to be resolved by the Second Partial Consent. The Applicant prayed that the Tribunal make a Ruling confirming the tax adjustments based on the evidence shared by the Applicant and the parties' intention.

152. The Applicant reiterates its submissions in regard to remedies and prays that the Application be allowed with costs and states that the Respondent is not entitled to any Remedies sought in the Respondent's submissions.

### **VIII. The determination**

153. Having considered the parties' pleadings, evidence, and submissions, the Tribunal makes the following decision.

### **Background**

154. It is important to provide a background to this matter. This is one of the very few matters before the Tribunal that remained unresolved for a long time. The Applicant filed this application in 2020, and the parties have since been engaged in mediation and reconciliation, which has been partially successful, albeit after a protracted period. Having realised that the parties were not making headway, the Tribunal conferenced the matter in May 2024. Following this, the Tribunal made recommendations and provided technical guidance on how most of the issues should be resolved.
155. Specifically, we addressed the VAT treatment of the variance at great length. The parties did not heed our advice and proceeded with the hearing. Tax disputes are a cost to both the government and taxpayers. Both the revenue authority and taxpayers must adopt a commercial approach to dispute resolution. Every opportunity to resolve a tax dispute must be seized at the earliest. It is unfortunate when tax disputes become a risk management strategy. It says a lot about the system's trust deficit: instead of resolving disagreements, they become strategic plays, and everyone loses in the long run.
156. It is through this lens that we now address the substantive dispute before us. In disposing of the issues, we shall begin with those where the parties have reached an agreement.

### **Assessment of Shs. 569,540,049 arising from the taxation of repatriated branch profits**

157. Both parties have agreed that the assessment of Shs. 569,540,049, arising from the branch profit repatriation tax, is no longer in dispute after the Respondent agreed to vacate it. This followed a reconciliation exercise in which the Applicant presented their audited financial statements showing the correct opening and closing balances of the assets for the respective years in dispute in this issue.
158. The power to give effect to the parties' agreements is provided for under Section 27 of the Tax Appeals Tribunal Act and it provides:

"(1) If, at any stage during a proceeding, the parties to the proceeding agree in writing as to the terms of a decision of the tribunal in the proceeding or in relation to a part of the proceeding or a matter arising out of a proceeding and the tribunal is satisfied that a decision in those terms is within the powers of the tribunal, the tribunal, may-

(a) where the agreement reached is as to the terms of a decision of the tribunal in the proceeding, make a decision in accordance with those terms without holding a hearing or, if the hearing has commenced, without completing the hearing; or

(b) where the agreement reached relates to a part of a proceeding or a matter arising out of a proceeding, in its decision in the proceeding, give effect to the terms of the agreement without dealing at the hearing with that part of the proceeding or the matter arising out of the proceeding to which the agreement relates."

159. Furthermore, in the case of **UVAN v URA, App No. 264 of 2024**, the Tribunal stated:

*"Given that the Applicant is seeking closure on this issue through the Tribunal, it is within the Tribunal's jurisdiction to proceed with a ruling based on the terms agreed upon during the Respondent's internal ADR processes. This ruling will serve to effectively close the matter at hand, bringing finality to the issues raised by the Applicant".*

160. The Tribunal further ruled:

*"The Tribunal finds that the parties have reached a mutual understanding, as reflected in the ADR Settlement Agreement, which explicitly outlines the terms of resolution. The terms of the agreement are valid and binding, and the Tribunal is empowered to enter a ruling based on these terms under Section 27 of the Tax Appeals Tribunal Act. It is also in the interest of justice and judicial economy to finalize the matter through a ruling, as the agreement provides a clear resolution of the issues raised."*

161. Consequently, the dispute concerning this assessment is hereby resolved by agreement of the parties and the assessment of Shs. 569,540,049 is hereby set aside.

**The reconciling item of Shs. 4,511,546,000 (consulting fees)**

162. This item relates to consulting fees accrued in Applicant's financial statements for the period FY 2017. According to AW2, the Applicant accrued consulting fees in its FY 2017 financial statements. However, the VAT arising from this item was paid and declared a year later, in the Applicant's VAT return for the period October 2018.
163. The Applicant further submitted that had the reconciling item been taken into consideration, the variance would have reduced from Shs. 35,539,478,681 Shs. 16,917,491,788 instead of Shs. 21,429,037,787.
164. However, the record shows that following the filing of the first partial consent, the parties held additional reconciliation meetings, during which the Respondent considered the item and further reduced the variance to Shs. 16,917,491,788 for the period 2014, 2015 and 2017. In fact, the Respondent prayed that this issue be dropped because it had been reconciled and formed part of the second partial consent filed in favour of the Applicant on 3 February 2026.
165. However, the Applicant disputes the second partial consent on the grounds that the Respondent did not consider the Applicant's edits. We have reviewed the record, and indeed, the issue was reconciled. The Applicant does not dispute the reconciled amount; they dispute the explanation of deferred revenue.
166. Therefore, since the Respondent reconciled the amount to Shs. 16,917,491,788 in line with the Applicant's expectations following reconciliation (save for the issue of treating the amount as VAT exclusive), we hereby drop this issue and proceed on the basis of the new reconciled amount.

**Whether the VAT liability of Shs. 3,857,226,802 from the unreconciled variance of Shs. 21,429,037,787 is due and payable.**

167. The dispute regarding the variance is two-pronged:

- (i) The Applicant alleges that the Respondent disregarded the Applicant's reconciling item of Shs. 4,511,546,000 in respect of consulting fees. This would have reduced the unreconciled variance from Shs. 35,529,478,581 Shs. 16,917,491,788 instead of Shs. 21,429,037,787. This has been addressed above and is no longer an issue.
- (ii) In determining the liability, the Respondent ought to have treated the variance as VAT inclusive and not VAT exclusive.

We now turn to item (ii) above.

### **The VAT treatment of the unreconciled variance**

168. The dispute over the VAT treatment of the variance is interesting. It is not in contention that at the objections stage of this dispute, the Respondent's objections officer treated the variance as subject to VAT on a VAT-inclusive basis. However, during mediation, the Respondent departed from its earlier position and treated the variance as VAT-exclusive.
169. Specifically, the Applicant contended that, following a review of the reconciliation report that facilitated the partial consent settlement, they observed that the Respondent departed from the VAT-inclusive computation formula adopted by the Respondent's audit and objections review teams and instead adopted a VAT-exclusive formula during TAT mediation. The Applicant argued that this resulted in a new assessment, to which they were not given the opportunity to object, as required by section 26 of the TPCA.
170. The Respondent contended that the objection decision was informed by incomplete evidence and, as such, they reserved the right to make the necessary changes at a later stage, provided it is in accordance with the law. The Respondent further stated that they could not maintain a wrong approach by the assessing officers who did not do a comprehensive reconciliation due to the Applicant's delay in providing complete evidence, hence the application of the correct methodology, which is the proper approach in the treatment of variances.

171. This raised the question of whether the Respondent can vary an objection decision at mediation without a binding interparty agreement. The Respondent has argued that the objection decision was based on incomplete evidence and, as such, the Respondent reserves the right to make necessary changes at a later stage, provided they are in accordance with the law. In the present case, the "later stage" is the mediation stage at the Tribunal.

172. Section 18 of the Tax Appeals Tribunal Act provides mediation. It states:

*(1) "A tribunal may, prior to hearing any application filed with the tribunal, refer the matter for mediation to a Registrar or to a mediator in accordance with the Judicature (Mediation) Rules.*

*(2) The Judicature (Mediation) Rules shall apply, with necessary modifications, to mediation under this Act."*

173. Rule 16 of the Judicature (Mediation) Rules, 2013 provides as follows:

*"(1) Where the parties resolve some or all the issues that are the subject of mediation, the parties shall enter an agreement setting out the issues on which they agree.*

*(2) The agreement under subrule (1) shall be in writing and signed by the parties...*

*(5) Where there is no agreement on all the issues subject to mediation, the mediator shall refer the matter to the court."*

174. In the present case, following mediation, the parties failed to reach an agreement on the VAT treatment of the variance. While the Applicant agreed with the VAT-inclusive treatment accorded by the Respondent's Objections Officer, the Respondent sought to depart from their objection decision. Consequently, the matter was referred to the Tribunal in line with Rule 16 (5) of the Judicature (Mediation) Rules.

175. This begs the question – what has been referred to the Tribunal? Is it the objection decision or the mediation position? Does the Tribunal have jurisdiction to review a mediation decision/position, if such a thing exists? To answer this question, we must turn to the TAT Act, which confers jurisdiction on the Tribunal.

176. Section 14 of the TAT Act provides:

*“Any person who is aggrieved by a decision made under a taxing Act by the:*

- i Uganda Revenue Authority; or*
- ii Committee established under the Tax Procedures Code Act,*  
*may apply to the tribunal for a review of the decision.*

177. Section 14 of the TAT Act confers jurisdiction on the Tribunal to review decisions made under a taxing Act. In the present case, only one decision was made under a taxing act: the objection decisions of 28 May 2020 and 3 June 2020, which were made under the VAT Act. The Respondent's change of heart at mediation does not amount to a decision made under a taxing Act. Mediation is provided for under the TAT Act. The TAT Act is not a taxing Act because it does not impose tax (see section 1 of the TAT Act).

178. Furthermore, upon issuing an objection decision, the Respondent became functus officio. The ***Hon. Justice Ocaya in Uganda Revenue Authority v Rwenzori Bottling Company Limited, HCCA 10 of 2023*** cited with authority, the decision in ***MacMillan Bloedel Ltd vs. Minister of Finance (1985), 60 BCLR 145***, which considered the term functus officio and stated:

*“...To me, the term means that the person who decides something is precluded from again considering the matter even if new evidence or arguments are presented to him.”*

179. Therefore, once the Respondent issues an objection decision and the Applicant files an application before the Tribunal, the Respondent becomes functus officio and is precluded from further consideration of the matter. While parties are at liberty to engage in mediation, this is done on a “without prejudice” basis and does not confer upon the Respondent the powers to vary their objection decision for purposes of proceedings before the Tribunal.

180. There are times when the Respondent may discover new information that affects their decision on the objection. If such information is obtained, the correct approach is to issue an additional assessment in accordance with

section 26 of the TPCA. This would provide the Applicant with the opportunity to object to the assessment.

181. In the case of *MTN Uganda Limited v URA, Misc App No. 05 & 06 of 2026*, the Tribunal stated:

*"This statutory structure ensures both efficient tax administration and procedural fairness to taxpayers. Due process is not a mere procedural matter; it goes to the core of any tax dispute, requiring tax authorities to act fairly, transparently, and within legal bounds, protecting taxpayers from arbitrary, excessive, or unverified assessments. More specifically, the dispute-resolution mechanism under the TPCA requires the Respondent to notify taxpayers of their liabilities and give them the opportunity to contest the assessments."*

182. Consequently, the decision that is appropriately before this Tribunal is the objection decision dated 28 May 2020 and 3 June 2020 and not the Respondent's subsequent position at mediation.

#### **The VAT treatment of the variance**

183. Having resolved the above procedural issue, we now turn to the VAT treatment of a variance. It should be noted that although the Respondent's objection team treated the variance as VAT inclusive for tax purposes, the Tribunal has the power to either affirm, vary or set aside the decision. This is in accordance with section 20 of the TAT Act.

184. The Applicant submitted that, as per the Respondent's management letter and additional assessments, the Respondent computed an initial principal liability of Shs. 5,419,750,970 using a VAT inclusive formula. However, following reconciliation, the Respondent computed a revised liability of Shs. 3,857,226,802, which was further reduced to Shs. 3,045,148,521 using a VAT exclusive formula. The Applicant's position is that, had the Respondent maintained the VAT-inclusive formula, the resulting tax from the variance would be Shs. 2,580,634,340.

185. The Respondent has argued that the revised VAT liability of Shs. 3,045,148,521, arrived at using a VAT-exclusive formula, is due and payable. This is on the grounds that revenue in the Applicant's audited financial statement is reported as VAT exclusive. Further, this is the same revenue in the Applicant's income tax returns. The Respondent relied on Generally Accepted Accounting Principles (GAAP) and cited IAS 18 (currently IFRS 15).
186. It is worth noting that the unreconciled variance arises from mismatches between the Applicant's sales declared in their income tax returns and the sales reported in the VAT returns. The Respondent established that the sales revenue in the Applicant's financial statements exceeded the sales revenue declared in the VAT returns and computed VAT on the variance by adding VAT to it, thereby arriving at a VAT liability of Shs.3,045,148,522.
187. The Respondent's basis for treating the variance as VAT exclusive and adding VAT to it is grounded on the accounting treatment of revenue. To this end, the Respondent cited accounting standards that require revenue to be reported on a VAT-exclusive basis.
188. It is important to note that differences between financial accounts and VAT accounts are expected. This is because financial accounting records transactions on an accrual basis, that is, when they are *earned or incurred* to reflect true economic performance. In contrast, VAT accounting primarily relies on the *time of supply* (on an invoice or cash basis). This difference creates timing gaps between when revenue is booked and when VAT becomes payable. For this reason, the Respondent should always seek to establish the cause of the variance, rather than treat each instance of variance as taxable.
189. In the present case, the Applicant explained that the variance arose from timing and foreign exchange differences. Specifically, the variance did not arise from actual sales invoices, but sales were "deemed" by the Respondent as having been made by the Applicant, regardless of the absence of a sales invoice. Both parties agree that the Applicant deals with VAT-registered taxpayers, such as large telecommunication companies in Uganda. The

Applicant's customers are known to the Respondent because the Applicant transacts with businesses and not individual consumers. Therefore, through circularisation, the Respondent ought to have established whether the variances are real or perceived by, for example, the Respondent could have written to all the Applicant's suppliers to provide the Respondent with all the sales invoices that the Applicant issued in the audit period.

190. These should then have been compared with the Applicant's declarations to determine whether the Applicant correctly accounted for VAT and income tax on its sales. However, the Respondent did not perform any circularisation. Consequently, the inference is that the unreconciled variance is more likely than not attributable to "notional" sales.

The importance of circularisation in tax audits

191. We have on several occasions urged the Respondent to use circularisation to ensure audit completeness (*see Iliso Consulting (pty) Limited v Uganda Revenue Authority, TAT No. 244 OF 2022*). Circularisation is a cornerstone of robust tax audits, enabling validation of deductions and verification of declared revenues. We urge the Respondent to prioritise ongoing training for officers to reinforce best practices in transaction legitimacy. Lately, we've noticed a worrying trend — a departure from rigour towards a more perfunctory approach. Let's get back to thorough verification. Prioritising speed over rigour and focusing on quick wins rather than thorough validation can backfire. We encourage the Respondent to continuously provide its audit and objections officers with refresher training on audit protocols, emphasising the importance of circularisation.
192. Having established that the unreconciled variance created "deemed" or "notional" sales, we now turn to their VAT treatment. The logical inference is that these were "un invoiced" sales, since there is no evidence that the Applicant issued a tax invoice to any specific customers for the sales.
193. While the Applicant's audited financial statements and income tax returns recognise revenue net of VAT, we must determine the proper statutory basis

for determining taxable value in accordance with the VAT Act. This is because tax must be imposed on the basis of a taxing act rather than accounting principles, especially for a tax such as VAT, which often departs from accounting principles. If accounting standards are by themselves sufficient, as the Respondent would like us to believe, there would be no need for tax laws; accounting profit before tax would be the same as chargeable income and every sale would be a taxable supply!

194. Therefore, we must evaluate the VAT treatment of the variance not through financial reporting standards but by the clear provisions of the VAT Act. To this end, section 21 of the VAT Act provides as follows:

*"(1) Except as otherwise provided under this Act, the taxable value of a taxable supply is the total consideration paid in money or in kind by all persons for that supply.*

*...(3) "Where a taxable supply is made without a separate amount of the consideration being identified as a payment of tax, the taxable value of that supply is the total amount of the consideration paid excluding tax."*

195. From the above provisions, it is clear that section 21(1) of the VAT Act addresses scenarios in which the consideration is separately delineated from the VAT amount on an invoice. For example, a typical invoice that falls under section 21 (1) would show:

*Cost: Shs. 100*

*VAT: 18*

*Total amount payable: Shs. 118*

196. However, not all suppliers charge VAT, and in such cases, section 21(3) assumes that the tax is included in the total consideration. For example:

*Cost: 100.*

*In such a case, the tax will be derived using the formula:*

*$(100/1.18) = \text{Shs. } 84.75$*

197. Therefore, section 21(3) deals with situations in which taxable supplies are made and the supplier does not separate the consideration from the tax. In the present case, based on the variance, the Respondent proceeded on the

assumption that the Applicant made taxable supplies. However, there are no invoices that validate the actual provision of supplies by the Applicant to its customers. The Applicant's customers are known to the Respondent, and the Respondent could have obtained any potentially undeclared invoices from the Applicant's customers for purposes of determining (i) the consideration and (ii) the tax.

198. Consequently, in the absence of any invoices to that effect, the presumption as per section 21 (3) of the VAT Act is that the current variance of Shs. 16,917,491,788 represents "deemed / notional" sales that were not invoiced by the client. Consequently, the VAT Act treats such sales as VAT inclusive and requires that the taxable value be determined by excluding the tax from the amount.
199. In view of the above, we affirm the principle applied by the Respondent's Objections Officer in treating the unreconciled variance as VAT inclusive. Therefore, the Respondent ought to maintain this approach and treat the unreconciled variance as VAT inclusive in line with section 21 (3) of the VAT Act.
200. Consequently, we find that the Respondent's attempts during reconciliation to treat the variance as VAT exclusive were unlawful. The correct outstanding VAT payable by the Applicant, using the VAT-inclusive formula, is Shs. 2,580,634,340 and not the Shs. 3,045,148,521, derived from the VAT-exclusive formula.

**Whether the interest of Shs. 6,024,009,782 is due and payable**

201. The above interest comprises of two elements:
- (i) Shs. 465,900,526, arising from a CIT liability;
  - (ii) Shs. 5,329,045,063 being interest on the VAT liability; and
  - (iii) Shs. 694,964,719 the interest computed on the late payment of unbilled revenue; and
202. The Applicant argued that the interest under item (ii) should have been capped to the principal tax in line with section 40 of the VAT Act. Furthermore,

regarding both items (i) and (ii), the Applicant has argued that the interest should then have been waived pursuant to section 46 of the TPCA, which waived all interest outstanding as at 30 June 2020. Further, with regard to the interest under item (iii), the Applicant argued that the interest of Shs. 694,964,719 is a newly introduced component not included in the original tax assessment.

203. We now address each of the above below.

Capping of interest

204. The Applicant submitted that the total VAT interest of Shs. 5,329,045,063 was not capped against the principal VAT liability of Shs. 3,045,148,521.84 after further reconciliation in accordance with Section 40 of the Value Added Tax Act. The Respondent computed and reconciled the interest due up to 24 June 2019, thus revising the interest from Shs. 6,024,009,782 Shs. 5,513,829,577. The Respondent submitted that the interest due for late payment of Value Added Tax (VAT) is 2% per month compounded in accordance with Schedule 6 of the VAT Act.

205. The Applicant submitted that since the principal tax payable by them is Shs. 2,580,634,340.54, the Applicant avers that the interest should be capped under Section 40 of the VAT Act to Shs. 2,580,634,340.54. Furthermore, the Applicant submitted that interest should be removed from the outstanding tax, as it was waived under Section 46 of the TPCA, as amended.

206. It was the Respondent's position that the Shs. 5,329,045,063 in interest was not final and depended on whether the interest and penalties after the determination by the Tribunal exceeded the principal. The Applicant prayed that the Tribunal find the correct tax to be Shs. 2,580,634,340.54, and that the interest is capped at Shs. 2,580,634,340.54.

207. Section 40 of the Value Added Tax Act, which provided:

*"The interest due and payable on unpaid tax shall not exceed the aggregate of the principal and penal tax."*

This means that the interest amount should not exceed the principal tax.

208. The Respondent has argued that they did not cap the interest because reconciliations were still ongoing. This argument does not hold water – at the time of the assessment, and when the objection decision was made, the Respondent assessed both principal tax and interest. At the objection decision stage, the interest amount was less than the principal tax; therefore, there was no need to cap. During reconciliation, the capping should have been provided for in the computation of the revised assessment – it only takes a simple Microsoft Excel formula.

209. Therefore, the Respondent does not dispute the application of section 40 to the present facts; rather, their explanation is that they were unable to cap due to ongoing reconciliations. Now that we have established that the principal tax derived from the VAT inclusive formula is Shs. 2,580,634,340, it follows that the interest on this tax should not exceed the principal tax. **Consequently, the interest of Shs. 5,329,045,063 is hereby set aside and substituted with Shs. 2,580,634,340.**

**Whether the Applicant is entitled to a waiver of interest under section 46 of the TPCA.**

210. Section 46 of the TPCA provides:

*“Any interest and penalty outstanding as at 30 June 2020 is waived.*

211. The Tribunal noted that interest is intended to compensate the revenue authority for the late payment of tax that is lawfully due and payable. However, such interest must be founded on a valid and lawful underlying tax assessment and must be computed in accordance with the applicable statutory provisions.

212. The Respondent submitted that the Applicant had no outstanding interest as of 30 June 2020 because the Respondent had recovered all liability by 24 June 2019, and thus Section 46 of the TPCA is not applicable to the Applicant. The **Black’s Law Dictionary 11 Edition** defines outstanding as: *“unpaid; uncollected”*

213. The Respondent maintained that there was no uncollected interest (outstanding) as the Respondent had recovered it on 24 June 2019 before the enactment of Section 46 of the TPCA. The taxes and interest in question were recovered on 24 June 2019, and the waiver applies to liabilities outstanding as at 30 June 2020; thus, the waiver does not apply to the Applicant's interest, as the recovery was made before 30 June 2020.
214. We do not agree with the Respondent's position. The Respondent issued the Applicant a VAT assessment of Shs. 9,718,600,521, which was made up of Shs. 5,419,750,970 being principal tax and Shs. 4,298,849,550. The Respondent went on to collect the entire amount by agency notice despite the Applicant having filed an objection. The principal tax has since been reconciled to Shs. 2,580,634,340, which in turn affects interest because it varies with the principal tax.
215. Therefore, while the Respondent has argued that there was no outstanding interest because the amount was collected by way of agency notice. However, we have established that the collection was unlawful as the reconciliations have revealed that only Shs. 2,580,634,340 was payable and not the Shs. 5,419,750,970. Therefore, the excess principal tax and corresponding interest were unlawfully collected and had it not been for the Respondent's action, the amount would have remained "outstanding" as at 30 June 2020. Therefore, the Respondent's actions artificially wiped out the Applicant's interest, and this Tribunal cannot condone an illegality and must look at the substance and not the form.
216. In addition to the above, the capped interest of Shs. 2,580,634,340 relates to the periods 2014, 2015 and 2017, which precede 2020. Therefore, the interest, although computed after the filing of this application, relates to a period before 2020 and should be capped in accordance with section 40 of the VAT Act (*Kansai Plascon v Uganda Revenue Authority, TAT Application 64 of 2020*).
217. In view of the above, the interest amount of Shs. 2,580,634,340 is hereby waived in accordance with section 40 of the VAT Act.

218. Accordingly, the interest of Shs. 465,900,526, arising from a CIT liability and interest of Shs. 694,964,719 also waived in accordance with section 46 of the TPCA.

**Interest Shs. 694,964,719 arising from unbilled revenue**

219. The Applicant submitted that the Respondent erroneously computed an additional interest amounting to Shs. 694,964,719 attributable to unbilled revenue, which is a newly introduced interest not constituting part of the initial assessment. The Applicant submitted that the interest arose from late payment of unbilled revenue, and the Applicant believes it is not due and payable since none of the time of supply rules had been met.

220. The Respondent referred to the witness testimony of AW2, who stated that one of the reconciliation items was Shs. 4,511,546,000, which relates to consulting fees accrued in the Applicant's financial statements for the period FY 2017. However, the VAT arising from this item was paid and declared in the Applicant's VAT return for the period October 2018.

221. The Respondent submitted that, since the Applicant admitted not having accounted for VAT on the transactions within the required period and the VAT was subsequently accounted for in later years, it follows that the Respondent was justified in computing interest for the late payment of tax.

222. According to the evidence on record, AW2 testified that the said amount constituted "unbilled revenue" recognised in the Applicant's financial statements under the percentage of completion method. The Applicant maintained that, because invoices had not been issued and payment had not yet been received, VAT was not due when the revenue was accrued in the financial statements.

223. The Tribunal has considered Section 14 of the VAT Act on the time of supply, which provides:

*"(1) Except as provided under this Act, a supply of goods or services occurs*

.....

- (c) in any other case, on the earliest of the dates on which-*
- i. the date the goods are delivered or made available, or the performance of the service, completed services*
  - ii. Payment for the goods or services is made; or*
  - iii. A tax invoice is issued”.*

224. The evidence before the Tribunal shows that the disputed amounts were accrued as revenue in the Applicant’s audited financial statements for FY2017. However, the accrual of income in financial statements under accounting standards does not automatically establish completion of performance for VAT purposes.
225. The evidential burden shifts to the Respondent, who did not adduce evidence demonstrating that the consulting services had been completed in FY2017, nor did the Respondent establish that payment had been received or tax invoices issued during the same period.
226. The Tribunal is unable to conclude that VAT became due during that period because the Applicant recognised accrued revenue in its financial statements. VAT on unbilled revenue arises not from the act of invoicing but from the occurrence of a taxable supply under the VAT Act. Once services are completed, the time of supply is triggered, and VAT becomes due.
227. The timing of service determines when output VAT must be accounted for in the relevant tax period. The Tribunal therefore finds that the Respondent did not sufficiently establish that the Applicant’s VAT declarations in October 2018 constituted late payment of VAT within the meaning of Section 39(3) of the VAT Act, which provides:

*“(3) A person who fails to pay tax imposed under this Act on or before the due date is liable to pay a penal tax on the unpaid tax rate specified in Schedule 6 to this Act for the tax which is outstanding.”*

228. In the circumstances, **the additional interest of Shs. 694,964,719 attributed to unbilled revenue was improperly imposed and is hereby vacated.**

### The lawfulness of the third-party agency notice

229. The Applicant submitted that the Respondent illegally issued an agency notice and collected the entire tax in dispute even before the Applicant had exhausted the dispute procedures provided for under the tax law. On 20 June 2019, while the Applicant was within the 45-day objection period, the Respondent issued agency notices to the Applicant's bankers. Despite the payment of the 30% tax in dispute, the Respondent engaged the Applicant's Bankers, who remitted an additional Shs. 7,227,881,145 in compliance with the Respondent's agency notice.
230. On 26 June 2019, the Respondent cancelled the agency notice because the total assessed amount of Shs. 10,288,140,569 had been fully recovered. The Applicant submitted that the Respondent had no authority to issue an agency notice and collect the additional Shs. 7,227,881,145 before the lapse of the 45-day mandatory period required by law for the Applicant to lodge her objection. The Applicant prayed that the Respondent refund the same with interest.
231. The Respondent submitted that the assessment date is the issuance date on which the Assessment Notice is issued, the due date of the assessment is the date when the return was supposed to be filed, and the "amount payable by" date is the date when the assessed amount is supposed to be paid in accordance with Section 25(7) of the TPCA.
232. It is the Respondent's submission that the third-party agency notices were rightly issued per Section 25(7) of the Tax Procedure Act since the due date specified in the Assessment Notice had already lapsed. Section 25 (7) states:

*"(7) The service of a notice of an additional assessment under this section does not change the due date for payment of the tax payable under the assessment as determined under the tax law imposing the tax, and penal tax and interest shall remain payable based on the original date".*

According to the above, the issuance of a notice for an additional assessment under this section does not alter the due date for tax payment as specified by

the relevant tax law. Consequently, any penalties, taxes, and interest will still be payable based on the original due date communicated.

233. However, it was the Applicant's position that the Respondent introduced Section 25(6) of the TPCA and stated that the provision prevented the Respondent from any recovery measures, issuance of third-party agency notices, inclusive before the expiration of the 45 days. The Applicant also submitted that Section 25(6) was repealed in 2021, while the agency notice at issue in this case was issued on 20 June 2019. Therefore, at the time the Agency Notice was issued on 20 June 2019, Section 25(6) that is being relied on by the Respondent was still in force.

234. The objection process is provided for in Section 26 (1) of the Tax Procedure Code Act, which provides:

*"(1) A person who is dissatisfied with a tax decision may lodge an objection with the Commissioner General within forty-five days after receiving the notice of the tax decision".*

235. In the case of ***Housing Finance Bank Ltd V Commissioner General, URA HCCS NO. 259 of 2014***, the court held:

*"The foregoing means that the taxpayer, on being notified of the assessment, is insulated from the issuance of an agency notice until the expiration of 45 days. Unfortunately, it has become common for the tax body to issue the assessment notice simultaneously with the Agency Notice. This deprives the taxpayer of the chance to object to the assessment".*

236. Furthermore, in ***Babibaasa Frank v The Commissioner General URA HCCS No. 434 of 2011***, where the Defendant served the Plaintiff with the tax assessment and soon thereafter served him with an agency notice. The court held:

*"The Plaintiff whistleblower was still entitled to the 45-day window period within which to object to the assessment. It proceeded to vacate the Agency Notice. In the instant case, the Defendant issued both the assessment notice and the Agency Notice on the same day in complete disregard of the procedure as*

*provided for in the tax laws. Such an Agency Notice cannot be allowed to stand."*

237. Furthermore, in the case of ***Nile Breweries v URA, Misc. App No. 12 of 2026***, the court ruled:

*" Section 29(2) of the Tax Procedures Code Act requires the Commissioner to issue a notice of demand before resorting to enforcement measures. That requirement is not a mere technicality. It is an integral part of the statutory scheme, intended to give the taxpayer notice and an opportunity to comply...Agency notices should only be resorted to when there has been a clear failure by a taxpayer to pay a tax liability following the Commissioner's issuance of a demand notice."*

238. In the present case, while the Respondent relies on the "due date for payment" indicated in the assessment notice, the Tribunal is not persuaded that this overrides the statutory objection process. The existence of a payment due date does not extinguish or suspend the taxpayer's right to object within 45 days, nor does it authorise enforcement measures that render the objection process nugatory.

239. Accordingly, the Tribunal finds that the Respondent acted unlawfully in issuing and enforcing the third-party agency notices against the Applicant within the statutory objection period.

### **Remedies**

240. The Applicant sought the following remedies, which we hereby address.

**(i) An order varying and setting aside the Respondent's objection decisions.**

Having established that the principal VAT liability is Shs. 2,580,634,340, the Respondent's VAT assessment is hereby set aside and substituted with Shs. 2,580,634,340.

**(ii) An order that the Respondent caps the interest on the VAT liability to Shs. 2,580,634,340.54.**

Having established that the Respondent ought to have applied section 40 of the VAT Act to cap the interest to the principal tax, the

interest payable by the Applicant is hereby capped to the principal tax of Shs. 2,580,634,340.

- (iii) An order that any interest accruing as at 30 June 2020 was waived by the Tax Procedures Code (Amendment) Act, 2020**

Having established that the Applicant is entitled to a waiver of interest outstanding as at 30 June 2020, the interest amounts of Shs. 465,900,526 arising from the CIT liability is hereby waived.

In addition, the interest amount of Shs. 694,964,719 is hereby set aside.

- (iv) A declaration that the correct tax to be paid by the Applicant is Shs. 2,580,634,340, and that the same is deducted from the tax already collected by the Respondent.**

Having established that the outstanding liability is Shs. 2,580,634,340.54, this shall be offset from the Shs. 10,288,140,549 that the Respondent collected.

- (v) An order that the Respondent refunds the balance of Shs. 7,707,506,228.46 unlawfully recovered from the Applicant's customer/bankers and 30% tax paid.**

Having established that the Applicant's outstanding liability is Shs. 2,580,634,340, the Respondent is hereby directed to refund the balance of Shs. 7,707,506,228.46, as well as the 30% deposit that the Applicant paid.

- (vi) An order that the respondent pay interest to the Applicant for unlawful recovery of the monies from its customer/bankers.**

Having established that the Respondent unlawfully collected the Applicant's funds using an agency notice, despite the Applicant having paid the 30% deposit and while the objection process was in progress, and having declined to refund the excess of the 30% deposit despite requests from the Applicant, the Respondent is hereby ordered to refund the monies above with interest at the prevailing commercial bank lending rate. These powers have been exercised in accordance with section 22 of the Tax Appeals Tribunal Act.

The Tribunal is further guided by the decision of the High Court in *Uganda Revenue Authority v Pentecostal Assemblies of God, App No. Civil Appeal No. 0117 of 2025*, where it was held

*"In circumstances involving the illegal collection of tax, the URA must be held to the highest standard of administrative integrity. The tax collector does not possess an inherent right to keep funds simply because they have entered the public coffers. Furthermore, the refund of illegally collected tax should never be viewed as an act of administrative grace or a discretionary waiver. It is a debt of justice. In a system governed by the rule of law, the state must lead by example in its respect for property rights."*

**(vii) An order for costs of this Application.**

Costs follow the event and costs are hereby awarded to the Applicant.

241. In view of the above, a summary of the Tribunal's orders is as follows:

- (i) The Respondent's objection decision wherein the Respondent assessed and collected Shs. 10,288,140,569 is set aside;
- (ii) The Applicant's revised liability is principal VAT of Shs. 2,580,634,340 and interest on this liability is hereby capped to Shs. 2,580,634,340;
- (iii) The interest of Shs. 2,580,634,340 arising from the VAT liability and interest of Shs. 465,900,526 arising from the CIT liability is hereby waived;
- (iv) The interest of Shs. 694,964,719 arising from the unbilled revenue is hereby set aside.
- (v) The Respondent's execution of the agency notice during the subsistence of the objection proceedings was unlawful;
- (vi) The Respondent is hereby directed to offset the liability of Shs. 2,580,634,340 from the amount of Shs. 10,288,140,549 that was unlawfully collected and refund the Applicant the balance of Shs. 7,707,506,228. The Respondent is also directed to refund the 30% deposit that was paid by the Applicant.

- (vii) The refund of the Shs. 7,707,506,228, and the 30% deposit shall be refunded with interest at a rate of 2% per month from the date of collection until payment of the monies.
- (viii) Costs of this application are hereby awarded to the Applicant.

**IT IS SO ORDERED**

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



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**HON. CRYSTAL KABAJWARA  
CHAIRPERSON**



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**MS. CHRISTINE KATWE  
MEMBER**



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**HON. GRACE SAFI  
MEMBER**