



THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO. 130 OF 2025

ESERIA PROPERTIES LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE: HON. CRYSTAL KABAJWARA, HON. WILLY NANGOSYAH,
HON. KABAKUMBA MASIKO.**

RULING

I. Introduction

1. The ruling is in respect of an application challenging the Respondents recharacterization of the Shs. 4,362,511,638 into taxable income.

II. Background facts

2. The Applicant is a company duly incorporated in Uganda, carrying on the business of real estate, hotel business, and fuel dealership. The grounds of this application are laid out in the affidavit in support of the application deponed by Mr. Joseph Sanjula Lutwama, director in the Applicant company and sworn on 6 March 2026, stating as follows:

- (i) The Applicant is a private limited company duly incorporated under the laws of Uganda on 15 December 1969. The Applicant commenced business in the 1970's and carried on several businesses, including real estate, a hotel business, a fuel dealership under Shell Uganda

(later VIVO Energy), and agricultural ventures, specifically tree planting and maize farming.

- (ii) On 29 June 1989, the Applicant allotted shares to Mr. Yakobo Ntate Mayanja as the majority shareholder and Managing Director.
- (iii) Throughout its existence, the Applicant underwent several rounds of capitalisation to maintain its financial health. This capitalisation, however, was not effected through direct lump-sum transfers from shareholders' bank accounts to the company's accounts.
- (iv) Instead, Mr. Yakobo Ntate Mayanja, the Applicant's majority shareholder, continuously injected funds into the Applicant indirectly by channelling proceeds from his other businesses into the Applicant by financing the construction of the Applicant's assets (e.g., buildings on Entebbe Road, Plots 19 and 22/23) and the purchase of trucks used in the fuel (LPG) business.
- (v) The company's accounts were managed by George Zziwa, Certified Public Accountants, from 1990 to 2010, and later by Allied Certified Public Accountants from 2010 until 2023.
- (vi) The Respondent carried out the initial audit of the Applicant in 2014 for the period 2012 to 2013. During a tax audit by Uganda Revenue Authority (URA), Shs. 4,362,511,638 was disallowed and added back to income, leading to an additional tax assessment of Shs. 1,377,030,809.
- (vii) The Applicant, having objected to the tax assessment, was invited to a meeting by the Respondent on 4 April 2014. In the meeting, it was concluded that the shs.4,056,102,830 was a balancing figure and the Respondent advised the Applicant to amend their return.
- (viii) On 28 April 2014, the Applicant unanimously resolved that all Directors forfeit the recapitalisation of Shs. 4,056,102,830, which had been advanced to the Applicant since 1959. On the same date, Mr. Yakobo Ntate Mayanja swore a statutory declaration, confirming that

he and his co-directors had forfeited any claims to the injected funds and that no refunds would be made to any director.

- (ix) By 2016, the capitalisation of the Applicant stood at Shs. 4,362,511,638. Subsequently, the Applicant's income tax returns filed by the auditors, Allied Certified Public Accountants, for the years 2016 - 2023, show the figure of Shs. 4,362,511,638 was reflected in the Applicant's tax returns as "Due to related Parties".
- (x) Whereas the Applicant's tax returns were duly received by the Respondent, throughout the years 2016 to 2024, at no point did the Respondent ever raise the matter again, whether as an assessment or in any other form.
- (xi) In December 2020, the Applicant's majority shareholder, Yakobo Ntate Mayanja, died.
- (xii) In the Applicant's tax returns for the year 1 July 2023 – 30 June 2024, filed by their new auditors, the sum of Shs. 4,362,511,638 that had been erroneously reflected as "Due to related Parties" by the Applicant's previous auditors for the returns of 2016 to 2022, was corrected and stated as "Capital Reserve".
- (xiii) On 18 November 2024, the Applicant was informed by the Respondent of an intended audit for the period July 2022 to June 2023. On 29 November 2024, the Respondent stated that no supporting documents were provided for the related-party loan of Shs. 4,362,511,638.
- (xiv) The Respondent accordingly recharacterized the figure of Shs 4,362,511,638 into income and charged VAT and Income Tax.
- (xv) On 7 April 2025, the Respondent issued the Applicant with Rental Income Tax assessments of Shs. 1,308,753,491 for the period of June 2023 due to undeclared rental income and VAT Assessments of Shs. 785,252,094.84 for the period of July 2022 to June 2023.
- (xvi) On 7 April 2025, the Applicant objected to the assessments and submitted the relevant documentation to the Applicant. On 7 April

2025, the Respondent issued its objection decisions disallowing the Applicant's objections on the grounds that there were insufficient supporting documents provided by the Applicant to support the objections.

- (xvii) The Applicant, being dissatisfied with the decision, made a formal application for Alternative Dispute Resolution (ADR) on 11 April 2025. That the Applicant was invited for a meeting by the Respondents' ADR team on 2 May 2025. Whereas the Applicant submitted the information requested for, to date, the Respondents' ADR team has yet to communicate its position.
 - (xviii) On 6 May 2025, the Applicant lodged this application with this Honourable Tribunal seeking orders that the assessments raised by the Respondent be vacated. The Applicant paid the mandatory 30% required to have their application determined.
3. The Respondent replied by way of an affidavit in reply deposed by Mr. Amon Twijukye, an Officer in the Independent Review of the Domestic Taxes Department of the Respondent and sworn on 27 April 2026, stating:
- (i) The Applicant deals in the letting out of property to earn rental income and is engaged in several other businesses, including hospitality, trade of petroleum products and agriculture.
 - (ii) The Respondent conducted an audit on the Applicant's tax affairs and established undeclared rental income and unsupported related party loans of Shs. 4,362,511,638, which the Respondent recharacterized as income and charged VAT and Income Tax.
 - (iii) Consequently, the Respondent issued the Applicant VAT assessments of Shs. 785,252,094 for the period July 2022 to June 2023 and rental income tax assessment of Shs. 1,308,753,491 for the period of June 2023 due to undeclared rental income and unsupported related party loans.
 - (iv) The Applicant objected to the rental income tax assessment on the grounds that Shs. 4,362,511,638 was injected into the business by the

directors to keep it operational, and the money has been accumulated over the last 15 years.

- (v) The Respondent requested the Applicant to provide documents to support her objection grounds, to wit: loan ledger, loan agreements, bank statements, and audited books of account, but they were not provided.
- (vi) On 7 April 2025, the Respondent issued the objection decision disallowing the Applicant's objection for failure to provide sufficient support documents. Therefore, the outstanding rental income tax liability of Shs. 1,308,753,491 is lawful, due and payable by the Applicant.

III. Issues to be determined

- 4. At the scheduling of this application, the parties agreed that the following issues would be determined by the Tribunal:
 - (i) Whether the Applicant is liable to pay tax assessed by the Respondent?
 - (ii) What remedies are available to the parties?

IV. Representation and evidence

- 5. Mr. Patrick Kabagambe of Birungyi Barata & Associates represented the Applicant, while Ms. Christine Mpumwire represented the Respondent.

V. Submissions of the Applicant

Steps taken after initial audit

- 6. The Applicant submitted that, having objected to the tax assessed, it was mutually agreed that the said figure of Shs. 4,362,511,638 did not represent a loan from a financial institution or any related parties; rather, it resulted from shareholder capitalisation.
- 7. The Applicant submitted that in the same meeting held on 4 April 2014, the Respondent directed Mr. Mayanja Ntate to amend the company's tax returns. The Applicant further submitted that on 28 April 2014, the Applicant's directors unanimously resolved and swore statutory declarations, confirming that they had forfeited any claims to the injected

funds and that no refunds would be made to any director. The resolution and statutory declarations were submitted to the Respondent.

8. Therefore, having forfeited their capitalisation in the Applicant, the same cannot be characterised as a loan as no payment of the same was expected. The Applicant added that as far back as 2014, the Respondent was aware and satisfied that the figures of Shs. 4,362,511,638 amounted to the capitalisation of the Applicant, and that no repayment was expected from the Applicant to its directors.

Effect of income tax returns

9. The Applicant submitted that by the year 2016, the capitalisation had increased to the tune of Shs. 4,362,511,638. Furthermore, through their auditors, Allied Certified Public Accountants, they filed income tax returns for the financial years 2016 – 2023. All the returns were duly received by the Respondent.
10. The Applicant further submitted that for all the affected years, the Shs. 4,362,511,638 was in their books and in the Respondent's knowledge. The Applicant also submitted that, whereas the Respondent duly acknowledged receipt of the Applicant's income tax returns for the years 2016 to 2023, at no point did the Respondent raise any issue regarding the figure of Shs. 4,362,511,638 that had appeared in the returns for all the years.

Statutory limitation on requirements for documents

11. The Applicant submitted that the Respondent's reason for the decision, that is, insufficient documentation in 2024, is not accurate, as the Respondent had duly acknowledged receipt of the Applicant's returns for each consecutive year since 2016 and raised no query. The Applicant submitted that, having filed returns consecutively, the duty shifted to the Respondent to inform the Applicant which period the "insufficient documentation" related to.

12. The Applicant further submitted that the Respondent is, save for exceptional circumstances, barred from considering matters outside the statutory timelines. The Applicant submitted that the Respondent has not adduced any evidence to demonstrate that this case fell within such exceptional circumstances under section 25 of the Tax Procedures Code Act.
13. The Applicant further submitted that, in an attempt to circumvent the law, the Respondent disallowed the sum of Shs. 4,362,511,638 in the course of the audit of the period 2022-2023, despite the fact that the said amount relates to a period from 2014. The Applicant further submitted that Shs. 4,362,511,638 was on an increment from the Shs. 4,056,102,830, which had been decided as a balancing figure in 2014 but not as income.
14. The Applicant further submitted that if indeed the Shs. 4,362,511,638 is the income, as the Respondent claims, the Respondent would have raised assessments as far back as 2014. The Applicant submitted that the framers of the law, by setting a five-year time frame, imposed a duty on both the taxpayer and the Respondent to conclude tax matters within that period. Save for the exceptional cases, the Respondent is estopped from auditing and/or raising an assessment for transactions outside the statutory period.
15. The Applicant submitted that adherence to statutory timelines for keeping records was pronounced by the Honourable Tribunal in the matter of ***Explorer (U) Ltd v Uganda Revenue Authority (URA TAT No.87 of 2023)***, where this court held inter alia;
"The Respondent also requested evidence of receipts for purchases made, receipts for wages paid to the workers who carried out the renovations of the property in 2004. This is not only erroneous, but also not practical and is not consistent with sound business management principles".

Erroneous re-characterisation.

16. The Applicant cited the power to recharacterise income and deductions is provided in ***Section 117 of the Income Tax Act Cap 338***, which states;

- (1) For purposes of determining liability for tax under this Act, the Commissioner General may:
- (a) Re-characterise a transaction or an element of a transaction that was entered into as part of a tax avoidance scheme
 - (b) Disregard a transaction that does not have a substantial economic effect; or
 - (c) Re-characterise a transaction the form of which does not reflect the substance.
17. The Applicant submitted that the Respondent had not demonstrated that any of these statutory thresholds were satisfied. The Applicant further submitted that, notwithstanding the Respondent's powers to recharacterize, these powers ought to be exercised judiciously. Section 117 Income Tax lays out requirements that the Respondent must satisfy before recharacterizing.
18. The Applicant cited ***Explorer (U) Ltd v Uganda Revenue Authority, TAT No.87 of 2023***, where the Tribunal held:
"While the Respondent's powers to recharacterize a transaction are statutory, they must be exercised judiciously and rationally."
The Applicant submitted that, in the instant case, the Respondents claimed they "observed" during the 2024 audit that no supporting documents were provided for the related-party "loan" of Shs. 4,362,511,638.
19. This observation was arrived at despite the following;
- (i) The applicant had filed income tax returns from 2016 to 2023 consistently reflecting the figure of Shs. 4,362,511,638.
 - (ii) For each consecutive year, the Applicant received an acknowledgement of receipt of their returns.
 - (iii) No query was raised by the Respondent for all years they acknowledged receipt of the Applicant's returns.
 - (iv) The Applicant's new auditor realised the error committed by the Applicant's previous auditor in reflecting the figure of Shs. 4,362,511,638 due to the related party, and corrected the same in the returns of 2023 to "Capital Reserves"

20. The Applicant further submitted that in recharacterizing the Applicant's transactions, the Respondent acted irrationally and in abuse of their powers. The facts the Respondent claims to have "observed" in 2024 for them to recharacterize were at all material times in their knowledge and did not warrant recharacterisation.

Requirement to prove income

21. The Applicant submitted that chargeable income is provided for under **section 15 of the Income Tax Act**, which provides:

"Subject to section 17, the chargeable income of a person for a year of income is the gross income of the person for the year, less total deductions allowed under this act for the year."

Further, **section 17 of the Income Tax Act** states:

"Subject to this act, the gross income of a person for a year of income is the total amount of

i. Business income,

ii. Employment income; and

iii. Property income during the year by a person, other than income exempt from tax..."

22. The Applicant submitted that the sum of Shs. 4,362,511,638 reclassified by the Respondent as income does not fall within the statutory definition of gross income under Section 17 of the Act. Specifically, the amount in question does not constitute business income, employment income, or property income. Consequently, it does not meet the threshold of "gross income" upon which chargeable income can be computed under Section 15 of the Act. Accordingly, the said amount is not subject to income tax.

23. The Applicant submitted that for the Respondent to re-characterise a transaction, there ought to have been equivalent income earned. The Applicant submitted that they did not earn the income alleged by the Respondent, and that the resulting income tax and VAT assessments were illegal. The Applicant also submitted that the income tax assessment raised by the Respondent in 2025 for the period 1 July 2022 to 30 June 2023 shows that the Applicant earned rental income of shs. 4,362,511,638.

24. The Applicant referred to ***Explorer (U) Ltd v Uganda Revenue Authority, TAT No.87 of 2023***, where the Tribunal held:

"Whilst the Respondent has alleged that the loan was income, they have not provided any scintilla of evidence to demonstrate how the purported income arose..."

25. The Applicant requested the Tribunal to uphold its decision and find that in the present case, the Respondent had not adduced any evidence of any alleged income earned by the Applicant, and hold that the re-characterisation of the Applicant's transaction was done in error.

VI. Submissions of the Respondent

Preliminary objection

26. The Respondent raised a preliminary objection to the effect that this Application is bad in law on the grounds that the Applicant has not paid the 30% of the tax in dispute and is therefore not properly before the Tribunal. The Respondent cited section 15 of the Tax Appeals Tribunal Act, which provides:

"A taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay thirty per cent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."

27. The Respondent relied on ***Order 15 rule 2 of the Civil Procedure Rules (CPR) SI 71-1*** empowers the Court to try the issues of law if it deems that the case or any part of it be disposed of on the issues of law only.

28. The Respondent submitted that in the case of ***Mukisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Ltd [1969] EA 696***, Sir Charles Newbold, summarised the law on preliminary points of law as follows;

"A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which, if argued as a preliminary point, may dispose of the suit..."

29. The Respondent submitted that in paragraph 8 of the Statement of Reasons for the taxation decision filed before this Tribunal on 7 March 2025, they stated that the instant Application is improperly before this Tribunal owing to the Applicant's failure to pay 30% of the tax in dispute as required by law.
30. The Respondent cited the Supreme Court decision in ***Uganda Projects Implementation and Management Centre Vs. Uganda Revenue Authority, Supreme Court Constitutional Appeal No. 2 of 1999***, where it was held that the 30% deposit is constitutional, and did not infringe on the right to a fair hearing, under the Constitution of Uganda and the right to equal treatment before and under the law.
31. The Respondent invited the Tribunal to take into consideration the ruling in the matter of ***A Better Place Ltd Vs URA High Court Civil Appeal No. 37 of 2019***, where Section 15(1) of the Tax Appeals Tribunal Act, which provides for payment of 30%, is still good law and the Tax The Appeals Tribunal has the mandate to enforce that law.

Burden of proof

32. The Respondent submitted that the burden of proof is on the Applicant to prove that the tax assessments raised were not due and payable. Section 18 of the Tax Appeals Tribunal Act places the burden of proving that an assessment is erroneous or excessive on the Applicant. The Respondent submitted that Section 101 of the Evidence Act provides that he who alleges must prove.
33. The Respondent, citing ***Cooper Motor Corporation (U) LTD vs. Uganda Revenue Authority TAT NO. 67 of 2018***, submitted that the Applicant had failed to discharge the burden of proof.

Whether the administrative additional tax assessment issued by the Respondent is valid?

34. The Respondent submitted that Section 22(1) of the Income Tax Act provides:

“Subject to this Act, for the purposes of ascertaining the chargeable income of a person for a year of Income, there shall be allowed as a deduction-

a) all expenditures and losses incurred by the person during the year of Income to the extent to which the expenditures or losses were incurred in the production of Income included in the gross income;

35. The Respondent submitted that from the import of the above section, the most important precondition for the Respondent to allow a taxpayer any expense is for them to prove that the same was incurred in the taxpayer's production of income. Thus, in instances where the taxpayer does not prove that an expense was incurred, the Respondent has no option but to disallow the same and add it back to the tax computation.
36. The Respondent submitted that Section 117 of the Income Tax Act empowers them to re-characterise income and deductions. The Respondent further submitted that the Applicant's bank statements showed undeclared sales compared to the VAT returns filed for the same period and unsupported expenses resulting in a total administrative additional tax liability of Shs. 2,888,000,885. The Respondent submitted that, following the Applicant's objection, the Respondent partially allowed the Applicant's objection for the expenses that were supported.
37. The Respondent argued that the assessments are lawful, based on the finding that the Applicant made more sales than what was declared in its VAT return.
38. The Respondent relied on **Section 25 of the Tax Procedures Code Act**, which grants the Respondent powers to issue additional assessments;
(1)The Commissioner General may make an additional assessment amending a tax assessment made for a tax period to ensure that—(a)for an assessed loss under the Income Tax Act, the taxpayer is assessed in respect of the correct amount of the assessed loss for the period;(b)for an excess input tax credit under the Value Added Tax Act, the taxpayer is assessed in respect of the correct amount of the excess input tax credit for the period, or(c)in any other case, the taxpayer is liable for the correct amount of tax payable in respect of the period.

39. The Respondent further submitted that the additional assessments were necessitated by new information uncovered in subsequent audits. The Respondent contends that the existence of a subsequent evaluation does not automatically invalidate earlier ones, provided the subsequent assessment corrects or consolidates the liability.
40. In addition to the above, the Respondent submitted that the assessments were issued following a comprehensive audit on the Applicant's tax affairs, and the Applicant's failure to support the claimed related party loans, whereby the Respondent resorted to treating the unexplained income in accordance with Section 117 of the Income Tax Act that allows the Respondent to recharacterize income.
41. The Respondent submitted that in the light of the Applicant's failure to produce complete and reliable records, the Commissioner is entitled to employ the methods under **Section 28 of the Tax Procedures Code Act, Section 32 of the VAT Act, and Section 117 of the Income Tax Act**, a principle also affirmed in *URA v Balondemu David, Civil Appeal No. 0002 of 2023*, where the court held:
- "The Tax Authority may resort to estimating when a taxpayer fails to keep full and accurate records."*
42. When the Applicant failed to provide complete bank details and sales records, the Respondent relied on bank deposits, available sales data and VAT sales declared, treating the unexplained difference between sales in their returns and VAT sales declared as undeclared sales, thereby using the method supported by Section 32 of the VAT Act and Section 117 of the Income Tax Act.
43. The Respondent submitted that due to the Applicant's failure to provide the required documents in support of their claimed related party loan/ capital injections, the Respondent could not verify the additional capital since it had

no notes or a ledger to explicitly explain how it was arrived at or how it was utilised by the Applicant.

The power to make additional and estimated assessments

44. The Respondent relied on Section 23 of the Tax Procedures Code Act (TPCA), which provides for default assessment in instances where a taxpayer does not furnish a self-assessment return for a tax period. The Respondent also cited section 25 of the TPCA, which empowers the commissioner to raise additional assessments.
45. The Respondent submitted that they reviewed the Applicant's documents and established:
 - a) The Applicant is engaged in several businesses, including real estate and hotel businesses, fuel dealership and agriculture. The Applicant earns income from all these business ventures.
 - b) The Applicant claimed unsupported related party loans of Shs. 4,362,511,638 for the period July 2022 to June 2023. For the period 2010 to 2015, the Applicant reported the same loan of Shs. 4,056,102,830 under other loans, and for the period 2017 to 2023, the Applicant reported Shs. 4,362,511,638 as a related party loan.
 - c) In 2014, the Respondent advised the Applicant to amend their returns, and this was not done. The Respondent also requested that the Applicant provide documents to support their grounds of objection, to wit: loan ledger, loan agreements, bank statements, and audited books of account, but the Applicant provided only the audited books of account, which reported the Shs. 4,362,511,638 as additional capital.
 - d) Due to the Applicant's failure to provide the required documents, the Respondent issued her objection decision disallowing the Applicant's objection.
46. The Respondent submitted that for the purposes of determining whether a person has chargeable income for the year of income, Section 117 (1) of the Income Tax Act grants the Commissioner General powers to disregard

a transaction that does not have a substantial economic effect, or re-characterise a transaction the form of which does not reflect the substance, for purposes of determining the liability under the Act.

47. The Respondent relied on ***Bullion Refinery Limited v Uganda Revenue Authority TAT Application no. 87 of 2021***, where the Tribunal found that the Respondent was justified in considering the unexplained sums of the Applicant as undeclared income and taxed them accordingly.
48. The Respondent argued that the Applicant never provided any documentation to prove that the said loan was received, as the bank statements and audited books did not indicate that the Applicant ever received such money as claimed by the Applicant, and therefore, the Respondent was justified in re-characterising the same as income.
49. The Respondent submitted that the Applicant adduced some documentation which was not made available to the Respondent at audit, assessments, at objection and ADR. These documents have been provided at the submission stage in contravention of Section 49 (4) of the TPCA, which provides:
"Where a taxpayer fails to provide the information requested under this section, the taxpayer shall not be allowed to provide that information at objection to a tax decision or during alternative dispute resolution procedure proceedings."
50. The Respondent submitted that it was justified in recharacterizing the said unsupported loans as income, and therefore the income tax assessed of Shs. 32,853,819 is payable.

VII. Submissions of the Applicant in rejoinder

51. In rejoinder, the Appellant reiterated its earlier submissions and added the following new arguments in reply:
 - (i) Regarding the 30% deposit, the Applicant stated that they paid Shs. 392,626,047, being 30% of the tax disputes, in two instalments on 29 January 2026 and 3 February 2026, respectively.

- (ii) The Respondent has not submitted the bank statements and VAT return that they allege to have reviewed to establish the alleged inconsistency.
- (iii) For avoidance of doubt, the Applicant reiterates that the initial audit on the Applicant was carried out in 2014, and the issues the Respondent claims to have established in the audit of November 2024 were in the knowledge of the Respondent as far back as 2014.
- (iv) The Applicant invites the Tribunal to study annexure REX 3, the "Request for Documents" in the Respondent's trial bundle, which mentions the documents the Respondent requested from the Applicant.
- (v) The Respondent submitted that when filing the affidavit in support of their application, the Applicant adduced "some documentation" which was not made available to the Respondent at audit, assessments, at objection, and ADR. The Respondent, however, does not mention which document(s) were allegedly adduced at a later stage and which document(s) they have an issue with.
- (vi) The Respondent submitted that they were justified in re-characterising the unsupported loans as income and therefore the income tax of Shs. 32,853,819 is due and payable by the Applicant.
- (vii) The Applicant submitted that we are unaware of any tax assessment of Shs. 32,853,819. This submission, therefore, is not related to the instant application and, as such, is misplaced.

VIII. The Determination

- 52. The dispute arises from the Respondent's decision to recharacterize the sum of Shs. 4,362,511,638 reflected in the Applicant's books as "Due to related parties" into taxable income, resulting in rental income tax assessments of Shs. 1,308,753,491 and VAT assessments of Shs. 785,252,094.84 for the period July 2022 to June 2023.
- 53. The Applicant contends that the impugned amount represented shareholder capitalisation accumulated over several years and not income,

while the Respondent maintains that the amount constituted unsupported related party loans which were lawfully recharacterized into income pursuant to Section 117 of the Income Tax Act.

54. Before considering the substantive issue, the Tribunal shall first dispose of the preliminary objection raised by the Respondent regarding payment of the mandatory 30% of the assessed tax.

Preliminary objection on payment of 30%

55. The Respondent alleges that the Applicant did not pay 30% of the tax in dispute and therefore has no standing before this Tribunal. The Applicant, however, produced evidence showing that it paid the deposit of Shs. 392,626,047 in two instalments on 29 January 2026 and 3 February 2026, respectively, marked as exhibit "Q".
56. The preliminary objection therefore fails and is accordingly overruled.

Burden of proof

57. Section 19 of the Tax Appeals Tribunal Act places the burden upon the Applicant to prove that an assessment is excessive or erroneous. However, whereas the initial burden lies upon the taxpayer, once prima facie evidence is adduced explaining the disputed transaction, the evidential burden shifts to the Respondent to justify the assessment raised. The Tribunal must therefore examine whether the Applicant provided a plausible explanation regarding the impugned amount and whether the Respondent justified the decision to recharacterize the same into taxable income.
58. It is not disputed that the amount of Shs. 4,362,511,638 appeared in the Applicant's books and tax returns over several years. The Applicant contends that the amount represented capitalisation by directors and shareholder injections accumulated over time, while the Respondent treated the amount as unsupported related-party loans and ultimately recharacterized it as income.

59. The Tribunal notes that the Respondent conducted an earlier audit in 2014 during which the same figure was questioned. According to the Applicant, a meeting was held on 4 April 2014 and the Respondent allegedly concluded that the amount represented a balancing figure and advised the Applicant to amend its returns. The Applicant further produced evidence showing that the directors had made resolutions and statutory declarations, thereby forfeiting any claim to the injected funds. Marked as exhibit "G" and "H" respectively.
60. The Tribunal further notes that from 2016 to 2023, the amount continued appearing in the Applicant's returns as "Due to related parties" and the Respondent acknowledged receipt of the returns without raising any queries during that period. The Applicant argued that the amount was later corrected by new auditors in the 2023–2024 returns and reflected as "Capital Reserve", which subsequently triggered the present audit.
61. The Respondent relied on Section 117 of the Income Tax Act which provides:
- "(1) for the purposes of determining liability to tax under this Act, the Commissioner General may-*
- (a) Re-characterise a transaction or an element of a transaction that was entered into as part of a tax avoidance scheme;*
 - (b) Disregard a transaction that does not have a substantial economic effect; or*
 - (c) Re-characterise a transaction the form of which does not reflect the substance*
62. This section empowers the Commissioner General to recharacterize transactions whose form does not reflect their substance. The Tribunal agrees that these powers are statutory and lawfully exercisable where circumstances justify such intervention. However, those powers must be exercised judiciously, rationally and upon sufficient evidential basis. This position was affirmed in ***Explorer (U) Ltd v Uganda Revenue Authority TAT No. 87 of 2023*** where the Tribunal held that the Respondent's powers to recharacterize transactions must be exercised judiciously and rationally.

63. In the present case, the Respondent justified the recharacterisation on the grounds that the Applicant failed to provide supporting documents such as loan agreements, loan ledgers and bank statements. However, the record shows that the Applicant provided the following documents:
- (i) Income tax returns from 2016 to 2023 which demonstrates Shs. 4,362,511,638
 - (ii) Acknowledgement of receipt of returns by the Respondent.
64. It should be noted that the standard of proof that is applied in tax matters is the balance of probabilities. This means that a claim or fact is more likely than not to be true. On the whole, the Applicant's explanation and evidence suggest that it is more likely than not that the contested transactions were capital injections. Having established that, the evidential burden shifts to the Respondent.
65. The mere absence of supporting documentation does not automatically convert a transaction into taxable rental income. The Respondent is still required to demonstrate how the impugned amount constitutes income within the meaning of Sections 15 and 17 of the Income Tax Act.
66. The Tribunal observes that although the Respondent alleged that the amount constituted undeclared rental income, no evidence was adduced identifying the property from which the alleged rental income arose, the tenants who paid the alleged rent, tenancy agreements, rental schedules, or corresponding income streams demonstrating accrual of the alleged rental income.
67. The Respondent also referred to undeclared sales and discrepancies in bank statements and VAT returns. However, the Tribunal notes that the alleged bank statements and VAT returns relied upon to establish those discrepancies were not produced before the Tribunal for scrutiny.
68. Further, the Tribunal finds merit in the Applicant's submission that the impugned figure had remained within the Respondent's knowledge for several years through filed tax returns without any demonstrated objection

or assessment until the 2024 audit. Although the Respondent is empowered under Sections 23 and 25 of the Tax Procedures Code Act to issue additional assessments where underassessment is discovered, such powers must still be exercised within the confines of the law and on a sufficient factual basis.

69. It should also be noted that Section 15(1)(c) of the TPCA limits record retention obligations to five years, save for exceptional circumstances. The Respondent did not demonstrate exceptional circumstances warranting reliance on transactions dating back more than a decade. ***In Katonga Farms Limited v Uganda Revenue Authority App.No.45 of 2024, and Explorer Uganda Ltd (supra)***, the Tribunal cautioned against requiring taxpayers to produce records beyond the statutory retention period where such expectation is impractical and inconsistent with sound business principles.
70. In the present case, Mr. Mayanja advanced money to the Applicant, which occurred over a period of approximately 40 years, financed the construction of buildings and purchase of trucks, and was fully disclosed in the Applicant's audited financial statements and tax returns for over a decade. (Copies of Applicants certificate of occupation, payments for ground rent, certificate of Titles attached and marked "E")
71. By the Respondent's own admission, they advised the Applicant to amend their tax returns in 2014. However, the audit in question, which gave rise to the impugned assessment, covered the period July 2022 to June 2023. In other words, the audit period in issue came eight years after the 2014 audit.
72. Timelines are not mere technicalities. They are crucial for the orderly conduct of business and for guaranteeing fairness (***Stop and See (U) Limited v Tropical Africa Bank, Misc. Application 333 of 2010***). With specific regard to tax matters, deadlines provide closure, allowing individuals and businesses to move forward without the perpetual threat of tax assessments hanging over them.

73. Section 15 (1) of the TPCA provides:
“(1) ... every taxpayer shall, for the purposes of a tax obligation –
(c) retain the record for five years after the end of the tax period to which it relates or other period as specified in the tax law.”
74. The above provision is mandatory – it requires taxpayers to retain records for five years after the end of the tax period. In the present case, the Respondent contends that they asked the Applicant to submit documents, including loan agreements, loan ledgers and bank statements. However, the Applicant stated that the funds that were advanced to the Applicant dated as far back as 1959. In addition, the Applicant provided a statutory declaration stating that the shareholders had forfeited the capital they had injected into the business over the years.
75. It is impractical and unreasonable for the Respondent to expect the Applicant to have retained records going as far back as 1959. We find the case of *Uganda Revenue Authority v Pentecostal Assemblies of God, 2026 UGCommC 217*, instructive, in which the High Court stated that mandatory timelines exist to prevent protracted uncertainty. Timelines protect taxpayers from administrative overreach and the burden of keeping decades-old financial records, while also allowing governments to effectively close their fiscal books
76. Therefore, the Applicant's inability to furnish extensive documentation is reasonably explained by the passage of time from the date such documentation may have been created to the time the Respondent requested it. On the other hand, the Respondent equally failed to establish, on a balance of probabilities, that the impugned amount constituted taxable rental income or any other form of chargeable income under Sections 15 and 17 of the Income Tax Act.
77. The Tribunal further finds that the Respondent did not sufficiently demonstrate the factual basis upon which the amount of Shs. 4,362,511,638 was converted into rental income, thereby attracting

VAT and rental tax assessments. Accordingly, the Tribunal finds that the Respondent's recharacterisation of the impugned amount into taxable income was not justified.

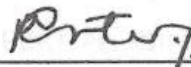
Orders

78. In the circumstances, the Tribunal makes the following orders:

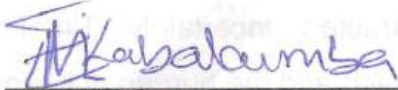
- (i) The application is allowed, and the assessment set is hereby set aside.
- (ii) The Respondent is ordered to refund the 30% deposit that was paid by the Applicant.
- (iii) Costs are hereby awarded to the Applicant

It is so ordered.

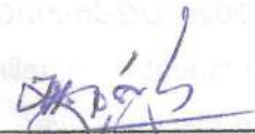
Dated at Kampala this 28th day of May 2026.



HON. CRYSTAL KABAJWARA
CHAIRPERSON



HON. KABA KUMBA MASIKO
MEMBER



HON. WILLY NANGOSYAH
MEMBER