THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 280 OF 2022

GLOBAL WOODS AG (UNDER LIQUIDATION) ..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY ..... RESPONDENT

BEFORE: MRS. STELLA NYAPENDI CHOMBO, MR. SIRAJ ALI

MS. CHRISTINE KATWE

RULING

This ruling is in respect of an application challenging Value Added Tax and Withholding Tax (WHT) assessments of UGX 7,971.019,476. The dispute is premised on the Applicant's liability for VAT and WHT on imported services and WHT on interest payments arising out of loans advanced to the Applicant.

1. Background Facts

The Applicant is a Ugandan-registered branch of Global Woods AG; a German entity engaged in commercial forestry activities within Uganda. Pursuant to a Tree-Farming Licence issued by the National Forestry Authority (NFA), the Applicant operates in the Kikonda Forest Reserve under a 50-year lease arrangement. To fund its local operations, the Applicant relied on loans extended by its parent company, Global Woods AG (Germany), as well as other third-party lenders.

By 2019, the Applicant encountered substantial financial difficulties arising from a combination of adverse market conditions, including declining timber prices, currency volatility, and increased operational costs. In response, the parties to the loan agreements undertook a restructuring exercise, culminating in a revised repayment schedule which deferred the payment of both principal and accrued interest to 31 December 2025. As part of the renegotiated terms, the applicable interest rate was significantly reduced from 15% to 1%, a measure aimed at alleviating the Applicant's financial strain and ensuring business continuity.

Subsequently, the Uganda Revenue Authority (URA) raised concerns regarding the restructuring, particularly the deferral of interest and reduction of the applicable rate. The Respondent suggested that these amendments may constitute a tax avoidance scheme and sought to disallow the tax treatment adopted by the Applicant in respect of the interest obligations.

In 2019, International Woodland Company A/S (IWC), the primary manager of the Capricorn Forest Fund and a shareholder in Global Woods AG, decided to divest its stake in the parent company. To facilitate the divestment, IWC engaged Verdant Capital Limited, a Mauritius-based advisory firm specializing in corporate transactions to find potential buyers.

After a global search, Verdant identified Nile Fibreboard Limited, a Ugandan company, as a potential buyer for the Applicant's forestry assets. An agreement was reached to sell the assets for a consideration of USD 16.49 million and documents were signed subjected to certain closing conditions including proof of the buyer financing. Unfortunately, the above transaction did not occur due to the COVID-19 pandemic.

In May 2020, IWC transferred its shares and shareholder loan from Capricorn Forest Fund in Global Woods AG (Germany) to ASF Holdings MU (ASF), a Mauritius-based fund with a focus on forestry investments. ASF Holdings revitalized the stalled negotiations with Nile Fibreboard limited to conclude the sale of Kikonda forestry asset.

In November 2020, the Applicant finalized the sale of its forestry assets to Nile Fibreboard Limited for a consideration of USD 16.7 million. As required by Uganda's tax laws, Nile Fibreboard withheld 10% of the sale price as WHT, remitting Shs. 6,179,492,129 to the Respondent. The WHT was deducted on assumption that the transaction constituted income sourced in Uganda, although the Applicant argued that funds were derived from an international sale involving its parent company. The proceeds from the sale were used to settle operational debts and wind down the Applicant's Ugandan operations as part of its liquidation process.

Following the sale, the Applicant applied for a refund of the WHT withheld by Nile Fibreboard, asserting that the withholding was improperly applied. This prompted URA to initiate a

comprehensive audit of the Applicant's tax compliance for the period January 2015 to December 2020. The audit scrutinized various aspects of the Applicant's operations, including its financial records, loan agreements, and the engagement of Verdant Capital. The respondent concluded that the Applicant had underreported its tax liabilities, specifically VAT and WHT on imported services provided by Verdant and WHT on accrued but unpaid interest on shareholder loans.

The Respondent issued additional tax assessments totaling Shs. 8,196,387,421, which comprised Shs. 7,718,787,277 in WHT on shareholder loan interest and Shs. 477,600,144 in VAT and WHT on imported services. The Respondent argued that Verdant' s services were consumed in Uganda because they directly facilitated the sale of the Applicant's forestry assets. Additionally, the Respondent maintained that the deferral of loan repayments to 2025 was indicative of a tax avoidance scheme, as the cessation of the Applicant's business operations necessitated the immediate recognition of WHT on accrued interest.

The Applicant contested URA's assessments, arguing that Verdant's services were procured and paid for by the parent company, IWC. The Applicant also maintained that under Section 47(2) of the Income Tax Act, WHT on interest is payable only when interest is paid. Since the interest remained unpaid and the loan repayment dates had been lawfully extended, the Applicant argued that no WHT liability had arisen. Dissatisfied with URA's objection decision, which upheld the assessments, the Applicant filed this appeal before the Tax Appeals Tribunal, seeking to set aside the assessments and recover Shs. 5,945,124,196 as a refund of the WHT withheld by Nile Fibreboard.

2. Issues for Determination

The Tribunal identified the following issues for determination:

(i) Whether the Applicant is liable to pay the assessed Withholding Tax (WHT) and Value Added Tax (VAT)?

(ii) What remedies are available to the parties?

3. Representation

The Applicant was represented by Mr. Bruce Musinguzi, Mr. Ferdinand Tumuhaise, Mr. Thomas Kato and Mr. Julius Ceaser Ruhayana while the Respondent was represented by Ms. Charlotte Katuutu, Ms. Nakku Mwajjuma, Ms. Sheeba Tayahwe, Mr. Ronald Baluku and Ms. Barbara Nahone.

The Applicant presented one witness namely, Mr. Jim Heyes the Chairman of the Supervisory Board of Global Woods AG and Managing Director at Criterion Africa Partners

Mr. Jim Heyes, testified that Global Woods AG had structured its shareholder loans to accrue interest annually, with repayment deferred to specific maturity dates. The deferral was designed to manage financial constraints and avoid insolvency risks, especially given the company's operational challenges in Uganda. He contended that the loans were amended in July, 2020 to extend repayment date to December 31, 2025, reducing the interest rate from 15% to 1%. He further testified that WHT on interest was not due as no payments had been made and asserted that the deferral did not amount to a tax avoidance scheme.

Regarding Verdant Capital's services, Mr. Heyes clarified that these were procured by International Woodland Company (IWC), the parent company's shareholder, to facilitate the sale of its shares in Global Woods AG (Germany). He emphasized that the Applicant was neither a party to engagement with Verdant Capital nor did it derive benefits from their services. He argued that URA's characterization of these services as "imported services" consumed by the Applicant in Uganda was flawed.

Ms. Juliet Nsime, a Supervisor in the Domestic Taxes Department of URA, testified that the Applicant's deferral of loan repayments was part of a deliberate tax avoidance scheme. She contended that because the Applicant is expected to cease its business operations in Uganda by 2025, it is necessary to immediately impose Withholding Tax (WHT) on the accrued interest. This, she argued, is important to protect Uganda's tax revenue before the Applicant exits the jurisdiction. She further contended that Verdant Capital's services, which facilitated the sale of the Kikonda forestry assets, directly benefitted the Applicant and constituted taxable imported

services under Uganda's VAT Act. She maintained that the Applicant's failure to provide sufficient documentation to rebut these assertions justified the additional assessments.

4. Applicant's Submissions

WHT on loan interest upon cessation of business

The Applicant submitted that URA's assessment of Shs. 7,508,593,776 as WHT on loan interest was erroneous because the interest on the shareholder loans was deferred and not paid. The Applicant argued that under Section 47 of the Income Tax Act, interest is only subject to WHT upon payment. It emphasized that the loans were legally amended, deferring repayment of principal and interest until December 2025. At the time of the sale of its Ugandan assets in 2020, no payment had been made, and the branch was insolvent.

The Applicant highlighted that URA's assertion of taxing deferred interest based on the cessation of business was legally baseless. It argued that liabilities on its books could not be deemed a taxable conferment of a benefit to ASF Holdings MU (the creditor). The Applicant relied on financial evidence showing liabilities exceeding assets and maintained that deferred interest is not taxable under Uganda's tax laws unless it is paid. The Applicant relied on the Loan Agreements and the Loan Amendment Agreement dated July 2020, which deferred interest payments to December 2025 and financial statements for the years 2019 to 2022 to corroborate the non-payment of interest and outstanding liabilities.

VAT on imported services by verdant capital,

The Applicant disputed the VAT assessment imposed by URA on Verdant Capital's services, arguing that it neither procured nor received these services. The services were provided exclusively to International Woodland Company A/S (IWC), the parent company of the Applicant, as part of efforts to sell IWC's shares in the German parent entity. According to Sections 4(c) and 5(1)(c) of the VAT Act, VAT on imported services is payable only by the recipient of the service. The Applicant emphasized that it was not a recipient of the services, and there was no legal or contractual relationship between it and Verdant Capital.

The Applicant also referred to the definition of "imported services" under Section 1(j) of the VAT Act, which requires services to be brought into Uganda and consumed by a recipient within

Uganda. It asserted that the services rendered by Verdant Capital were performed outside Uganda, did not involve the Uganda branch, and were paid for by IWC. The Applicant cited ***Uganda Revenue Authority v. COWI A/S (Civil Appeal 34 of 2020)*** to explain that imported services are taxable only if rendered to and utilized by a Ugandan resident. The court in this case highlighted that the tax liability for imported services arises when the recipient is in Uganda and the services are consumed locally, which was not applicable here.

The Applicant presented several contractual documents to demonstrate that Verdant' s services were exclusively directed at IWC and not the Uganda branch. These included the Engagement Letter between IWC and Verdant and the Purchase and Assignment Agreement. Clause 8.8 of the Purchase and Assignment Agreement explicitly stated that only IWC was liable for Verdant' s fees. The invoice issued by Verdant showed that Verdant' s services were unrelated to the Uganda branch.

Further, the Applicant cited ***Airtours Holidays Transport Limited v. HMRC [2016] UKSC 21***, a United Kingdom Supreme Court decision that established that VAT liability cannot be imputed to a third party merely because they indirectly benefit from a service. The court held that VAT arises only where there is a legal relationship between the service provider and the recipient, and any benefit derived by a third party is irrelevant. The Applicant argued that, based on this principle, URA could not impose VAT on the Uganda branch simply because it may have indirectly benefited from the sale of IWC's shares.

The Applicant concluded that no imported services were received or consumed by the Uganda branch, as defined under Regulation 13(1) of the VAT Regulations, which provides that VAT on imported services arises only when the service is performed, payment is made, or an invoice is received. The Applicant demonstrated that none of these conditions were met in this case, as the invoice for Verdant' s services was issued to IWC after the sale of Global Woods AG to ASF Holdings MU, and no payment was made by the Applicant. Therefore, the VAT assessment was legally unsustainable, and the Applicant requested the Tribunal to set it aside.

WHT on imported services by Verdant Capital

The Applicant challenged URA's assessment of Shs. 210,193,500 as WHT on services provided by Verdant Capital, arguing that Verdant did not derive income from Uganda and that no payments were made by the Applicant to Verdant. The Applicant explained that Verdant's engagement was limited to services rendered to International Woodland Company A/S (IWC), the parent company, for the sale of its shares in the German parent entity, Global Woods AG. Under Section 79(c) (iii) (now Section 78) of the Income Tax Act, income is deemed to be derived from Uganda only if a payment for services is made by the subsidiary in Uganda, which did not occur in this case.

The Applicant emphasized that Verdant Capital's services were solely shareholder activities undertaken by IWC, as defined under Paragraphs 7.9 and 7.10 of the OECD Transfer Pricing Guidelines (2022). These guidelines classify shareholder activities as costs incurred by a parent company for its ownership interests, which should not be charged to subsidiaries or branches. Since the services facilitated the sale of IWC's shares in Global Woods AG and were unrelated to the Applicant's operations, no income was derived from Uganda, and no WHT could arise. The Applicant cited the Engagement Letter between IWC and Verdant and the Purchase and Assignment Agreement which explicitly excluded the Applicant and its parent company from any liability for Verdant' s fees.

The Applicant also presented Clause 8.8 of the Purchase and Assignment Agreement, which confirmed that Verdant's fees were solely the responsibility of IWC. The clause stated, "Only Seller, and not the Company or Purchaser, shall be liable for any fees, costs, and expenses payable to Verdant Capital Limited." Additionally, the Invoice issued by Verdant to IWC dated May 18, 2020 demonstrated that payment was made by IWC, not the Applicant. The Applicant argued that URA's reliance on the branch's status as an indirect beneficiary of the services was legally unsound and unsupported by any provision of the Income Tax Act.

The Applicant further argued that even if URA sought to recharacterize the transaction under Section 91 of the Income Tax Act, the prerequisites for applying this section were not met. Section 91 requires proof of a tax avoidance scheme, lack of economic substance, or a

mismatch between the form and substance of a transaction. The Applicant asserted that the contract between IWC and Verdant was a legitimate and enforceable agreement aimed at divesting IWC's ownership in Global Woods AG. It emphasized that the transaction had economic substance, as it resulted in the sale of IWC's shares to ASF Holdings MU, and Verdant's fees were duly invoiced and paid by IWC.

5. Respondent's Submissions

WHT on interest payments – Shs. 7,508,593,777

The Respondent argued that the Applicant is liable to pay WHT on interest payments to ASF Holdings MU, as the tax is due under Section 83(1) and (2) of the Income Tax Act. These provisions impose tax on interest derived from sources in Uganda by non-residents, calculated at the rate prescribed in the Act. The Respondent submitted that ASF Holdings, a non-resident incorporated in Mauritius, derived income in the form of interest from Uganda, as the loans were used to fund the Applicant's activities in Uganda. The Respondent further noted that the tax becomes payable when the borrower permanently leaves Uganda, as this circumstance constitutes a jeopardy to tax collection.

The Respondent highlighted that under Section 47 of the Income Tax Act, interest subject to WHT is generally deemed to be incurred when paid. However, it contended that this provision creates a rebuttable presumption and should be interpreted alongside Sections 83(1) and (2) and Section 79(k). These provisions define income as derived from Uganda if the debt obligation giving rise to the interest relates to business carried on in Uganda. The Respondent relied on ***Heritage Oil and Gas Ltd v. URA (TAT Application No. 26 of 2010***), where it was held that jeopardy assessments are lawful when a taxpayer sells its sole asset and leaves Uganda permanently. The Respondent asserted that allowing the Applicant to leave Uganda without paying WHT would result in an unjust outcome and potential capital flight.

The Respondent refuted the Applicant's claim that interest payments were deferred until 2025. It argued that under the original loan agreements interest was due either by February 2022 or when Capricorn Forest Fund K/S divested its shareholding. Since Capricorn divested its shares on May 8, 2020, the interest became payable on that date. The Respondent maintained that

the subsequent extension of the payment date to December 2025 was an attempt to circumvent tax obligations, particularly as the Applicant had already sold its only asset the Kikonda Forest and ceased operations in Uganda.

The Respondent also contended that the Applicant's claim of financial difficulties was unsupported by evidence. The Applicant had transferred $14.73 million (approximately UGX 53 billion) to its parent company as payment for shareholder equity after selling its assets, indicating sufficient funds to pay the interest. The Respondent cited the ***Agri Uganda Ltd v. URA (TAT Application No. 18 of 2019)*** and ***ATC Uganda Ltd v. URA (HCCA No. 32 of 2020)*** decisions, which distinguished between ongoing businesses and entities leaving Uganda. Unlike the taxpayers in those cases, the Applicant had ceased operations, making the imposition of jeopardy assessments both lawful and necessary.

The Respondent concluded that WHT is due because the Applicant is permanently leaving Uganda, transferring liabilities to a non-resident parent company, and thus creating challenges for tax collection. It submitted that the Applicant's claims of liquidation were unsupported by evidence, as branches cannot undergo liquidation independently under Ugandan law.

The Respondent urged the Tribunal to uphold the WHT assessment and dismiss the Applicant's objections as baseless and an attempt to evade its tax obligations. On VAT on imported services, the Respondent submitted that the Applicant is liable to pay VAT on imported services received from Verdant Capital Ltd, which were consumed in Uganda. Under Section 4(c) of the VAT Act, VAT is imposed on the supply of imported services unless exempt. The Respondent argued that Verdant Capital, a Mauritian company, provided sale management services directly benefiting the Applicant, and these services were taxable as they were consumed locally. The Respondent outlined that VAT arises when there is a supply of services, importation of those services, and their consumption in Uganda.

The Respondent argued that Verdant Capital's activities constituted a supply of services as defined under Section 11(1)(a) of the VAT Act, which includes any performance of services for another. The scope of Verdant's engagement, as outlined in AEX 1 (Engagement Letter), included identifying potential buyers, preparing documentation, and structuring transactions for

the sale of Kikonda Forest. Additionally, Verdant's status as a non-resident was confirmed in REX 28 (Respondent's Trial Bundle Volume II, page 238), which described it as a Pan-African firm based in Mauritius. The Respondent further cited URA v. COWI A/S (HCCA No. 34 of 2020) to argue that imported services are taxable when provided by a non-resident to a Ugandan resident and consumed in Uganda.

The Respondent maintained that the Applicant, as a Ugandan branch, was the intended recipient of these services, fulfilling the criteria for importation under Section 1(j) of the VAT Act. Evidence included Verdant's correspondence with bidders, such as REX 21 (Respondent's Trial Bundle Volume II, pages 221–223), which showed Verdant coordinated meetings and due diligence on behalf of the Applicant. The Respondent argued that this evidence established that Verdant's services were imported into Uganda and consumed by the Applicant.

The Respondent submitted that Verdant Capital's services were taxable supplies under Section 18(1) of the VAT Act, as they were provided for consideration and were not exempt. The invoice issued by Verdant to Capricorn Forest Fund K/S for these services confirmed that the services were paid for. The Respondent emphasized that the services were integral to the sale of the Kikonda Forest and directly benefited the Applicant, as evidenced by Verdant's role in coordinating the sale process.

The Respondent also relied on Apollo Hotel Corporation v. URA (HCCA No. 48 of 2022) and URA v. COWI A/S (HCCA No. 34 of 2020) cases to reinforce that VAT liability arises under the destination principle, which taxes services consumed within the jurisdiction. By this principle, Verdant's services, which facilitated sale of the Applicant's assets in Uganda, constituted taxable supplies consumed locally.

The Respondent argued that although the contract for Verdant's services was executed with Capricorn Forest Fund K/S, the Applicant was the ultimate recipient and consumer of the services. The Respondent pointed to evidence in REX 21 that decisions regarding the sale of Kikonda Forest, such as accepting bids and selecting buyers, were made by the Applicant. Additionally, Verdant coordinated directly with the Applicant during the sale process, as shown in communications and sale agreements.

The Respondent submitted that Verdant explicitly stated it acted for the Applicant in a letter to the Respondent which described the Applicant as the decision-maker in the sale process. The sale agreements executed between the Applicant and Nile Fibreboard Ltd further confirmed that the Applicant consumed the services locally. The Respondent concluded that the Applicant's involvement as the recipient of the services made it liable for VAT under Section 5(1)(c) of the VAT Act.

The Respondent argued that the transaction between Verdant Capital Ltd and Capricorn Forest Fund K/S (through IWC) was an artificial arrangement designed to avoid taxes in Uganda. Citing ***URA v Crane Autos Ltd & 5 Ors (HCMA No. 372 of 2024)***, the Respondent applied the "substance-over-form" test, asserting that the Applicant was the actual recipient of the services. It argued that involving Capricorn Forest Fund in the transaction had no legitimate business rationale and was intended solely to evade tax. The Respondent invoked Section 47(1) of the VAT Act and Section 25(2) of the Tax Procedures Code Act, which empower the Commissioner to disregard artificial arrangements and impose tax based on the substance of transactions. The Respondent concluded that Verdant's services were provided for the benefit of the Applicant, not Capricorn, and the VAT assessment was therefore valid and enforceable.

<u>WHT on imported services</u>

The Respondent argues that the payments made to Verdant Capital Ltd qualify as management charges and are thus subject to WHT under Section 83(1) of the Income Tax Act, as they relate to services rendered in Uganda. The Respondent asserts that Verdant Capital Ltd, a non-resident, provided sale management services for the Applicant's Kikonda Forest in Uganda, and the Applicant is liable for the withholding tax.

The Respondent further contends that an artificial arrangement between Verdant Capital and Capricorn Forest Fund (through IWC) was created to evade the tax liability. The Respondent disputes the Applicant's interpretation of the contract between Verdant Capital Ltd and Capricorn Forest Fund K/S, clarifying that the subject of the contract was the sale of the Ugandan branch and its Kikonda Forest asset, not the sale of shares in the parent company. The Respondent also rejects the Applicant's claim that the agreement was terminated and later

executed in November 2020, pointing out that the agreement was amended, not terminated, and the sale occurred in March 2020.

The Respondent refutes the applicability of the *Airtours* case, arguing that the contractual documentation does not reflect the economic reality of the situation, where the Applicant was the true recipient of Verdant Capital Ltd.'s services. The Respondent emphasizes that the Applicant, not Capricorn Forest Fund K/S, should be liable for VAT. Finally, the Respondent clarifies that the payments to Verdant Capital Ltd, reflected in the invoice (AEX 2), were for the sale of Kikonda Forest, not for the sale of shares to AFS Holdings MU.

6. Applicant's Submissions in Rejoinder

In rejoinder to the VAT on Imported Services and Tax Avoidance Allegations, the Applicant points out that this issue was not raised during the objection stage and thus should not be introduced at the hearing per Section 16(4) of the Tax Appeals Tribunal Act, which restricts new grounds from being introduced unless the Tribunal grants leave. As per this section, the grounds of application should be confined to those raised in the initial objection.

The assessment for VAT on imported services is based on the Respondent's allegation that the Applicant was the consumer of Verdant Capital's services under the Agreement with Capricorn Forest Fund. However, the issue of tax avoidance related to VAT was never raised by the Respondent before and should not be considered at this stage. Furthermore, the Applicant submits that the Respondent erroneously claims that Capricorn Forest Fund lacked the legal standing to contract Verdant for the sale of the Kikonda Forest. The Respondent contends that the Applicant, which owned the forest, should have been the party to the contract, but this view misinterprets the facts. Capricorn Forest Fund, as a shareholder of Global Woods AG, contracted Verdant for the sale of its shares in Global Woods, not the Kikonda Forest itself.
The contractual documents clearly indicate that Capricorn Forest Fund engaged Verdant Capital for the sale of shares in Global Woods AG, not the sale of the forest. This agreement clearly states that the purpose was the sale of shares, not assets, such as the forest.

The consideration for the engagement was calculated as a percentage of the Realized Enterprise Value, which is defined in the Agreement (Clause 3) to include the Realized Equity

Value and the Net Debt of the company. This shows that the payment to Verdant Capital was linked to the sale of shares in Global Woods AG, not the sale of the Kikonda Forest. After the sale of shares to ASF Holdings MU on 8 May 2020, Verdant Capital issued an invoice to Capricorn Forest Fund confirming that the services were related to the sale of shares, not the sale of the forest.

In rejoinder to Verdant Capital's role and payments made, the Applicant stated that the contractual documents indicate that Verdant Capital was contracted by Capricorn Forest Fund to advise on the sale of shares in Global Woods AG, and it was Capricorn Forest Fund that made payments to Verdant. The agreement (Clause 1 and Clause 3) specifies that Verdant Capital was to provide services to Capricorn Forest Fund and not to the Applicant directly. No evidence has been provided to support the claim that Verdant dealt with the Applicant directly or was paid by the Applicant for any services related to the forest. The only payment made to Verdant was for the sale of the shares in Global Woods AG, as evidenced by the invoice issued to Capricorn after the transaction was concluded.

The final sale of the Kikonda Forest to Nile Fireboards was not facilitated by Verdant Capital, and no payment was made to Verdant for this transaction. The sale to Nile Fireboards was never concluded, and the agreement was terminated by March 2020, prior to the sale of shares to ASF Holdings. The Purchase and Assignment Agreement (AEX 3, pages 9-20, Joint Trial Bundle Volume 1) clearly states in Clause 5.5 that the seller (Capricorn Forest Fund) was not liable for any claims arising from the failed transaction with Nile Fireboards. Verdant Capital was only involved in the sale of shares, not the sale of the forest.

7. The determination of the Tribunal

Having listened to the evidence, perused the exhibits and read the submissions of the parties this is the decision of the Tribunal.

Whether the Applicant is liable to pay the tax assessed?

Through identical loan agreements dated 27th September, 2013, 27th March, 2014 and on 23rd June, 2014, the Applicant borrowed the sum of USD 894,000, USD 110,000 and USD 725,000, respectively, from the Capricorn Forest Fund K/S (Lender).

Clause 5 of all three loan agreements, provided for Repayment and Pre-payment of the loans. Clause 5 stated as follows;

5. REPAYMENT AND PRE-PAYMENT

The loan and all interest accrued thereon, and all fees in connection therewith, shall be repaid on the 1st February 2022 (`**Repayment Date**`) or, if earlier, on the date required for repayment in accordance with the below provision or the provision of Clause 11.5 hereof.

Irrespective of the above provision, the Loan and all interest accrued thereon, and all fees in connection therewith, shall fall due for immediate repayment, if the Lender disburses (in any way or form) of more than fifty (50%) per cent of its shareholding in global woods AG. The repayment date shall in such case be equal to the closing date (effective date) of such share transfer

The Borrower shall have the right to prepay the Loan, in full or in part, at any time before the Repayment Date with no penalties. In case of such early repayment, the Borrower shall repay the interest accrued on the amounts repaid by the date of early repayment.

Clause 6 which provided for interest stated as follows;

6. INTEREST

The rate of interest on the Loan shall be fifteen (15%) per cent per annum(`**Interest**`).
Interest will start to be accrued on the Loan when it is advanced as from the Advance Date, and the interest shall accrue annually on the 31st December of each year.

Any interest accruing under this Agreement shall be calculated on the basis of a year of 365 days and the actual number of days in the period for which the interest is due.

Borrower will pay any accrued interest on the Loan on the Repayment Date or upon early repayment as provided in Clause 5 hereof.

On 8th May, 2020, the Lender, sold all its shares in the Applicant, to ASF Holdings MU, a Private limited company incorporated in Mauritius. The sale constituted more than 50% of the Lender`s shareholding in the Applicant. Accordingly, the repayment terms of Clause 5 above, came into operation and the loan and interest, fell due for immediate repayment by the Applicant. Payment of interest on the loans, would give rise, to a WHT assessment, payable by ASF Holdings MU, under S. 82(1) of the ITA.

At this time, the Applicant had resolved to sell Kikonda forest and had received a final offer of USD 17.000,000 (United States Dollars Seventeen Million Only) from Nile Plywood Uganda Ltd, on behalf of its sister company, Nile Fibreboard Ltd. (See REX22).

The said final offer was contained in a letter addressed to Verdant. The letter which was dated 22nd November 2019, set out certain conditions, pursuant to which, a sale of the forest could be concluded between the Applicant and Nile Fibreboards Ltd. The most significant of these for our purposes was the following;

"The audited accounts for the current year be filed with Uganda Revenue Authority prior to signing of the agreement so that all the figures are clear and there are no outstanding shareholder loans beyond the net bid amount and there is clarity of the amount due to third party lenders"

In light of the fact, that the loan and interest, had fallen due for immediate repayment, in accordance with the terms of Clause 5 referred to above, the requirement by Nile Fibreboards Ltd, for the Applicant to file audited accounts with Uganda Revenue Authority, clearly setting out its outstanding shareholder loans posed a significant challenge to the Applicant.

Audited accounts filed with URA, setting out fact, that the Applicant`s loans and interest had fallen due for payment, would force the Applicant to pay the loans and interest and the resulting WHT. However, this challenge could be avoided by fraudulently deferring the repayment dates of the both the loans and interest.

On 28th July 2020, in order to avoid payment of the WHT, which as stated above, would arise from the payment of the loan and interest, the Applicant and ASF Holdings MU, entered into an Amendment to Loan Agreements (Exhibit AEX5). This agreement purported to defer the repayment of the above-mentioned loans and interest, to 31st December, 2025, by changing the term of all the loans to 31st December 2025 and reducing the interest rates on the loans, from 15% per annum to 1% per annum.

The following day, on 29th July 2020, the Applicant sold, its sole asset in Uganda, a commercial forest plantation, in Kikonda Central Forest Reserve, for **USD 16,490,000(United States Dollars Sixteen Million Four Hundred and Ninety Thousand Only)** to Nile Fibreboards Ltd (Exhibit REX14).

Following this sale, the Applicant transferred **USD 14,730,000 (United States Dollars Fourteen Million Seven Hundred and Thirty Thousand only)** to its head office in Germany, without ever paying the loan and interest and the resulting WHT.

It is apparent, that the Amendment to Loan Agreements, was part of a tax avoidance scheme by the Applicant. A perusal of the agreement shows that it lacked any substantial economic effect. The Lender, ASF Holdings MU, received no consideration, in spite of the fact, that it had agreed to the deferment of the date for the repayment of the loans and interest from 8th May 2020 (when the loan and interest became due following the transfer by Capricorn Forest Fund K/S of more than 50% of its shares in the Applicant) to 31st December 2025, and to the reduction of the interest on the loans, from 15% per annum to 1% per annum.

No lender, concluding a genuine commercial transaction, would have agreed to the above terms without adequate consideration.

The deferment of the repayment date, of the loan and interest, a day before the sale of the forest, clearly showed that the sole purpose of the Amendment of Loans Agreement, was to avoid the payment of the WHT, which would arise upon the payment of the loan and interest by the Applicant.

By concluding the agreement to defer the payment of the loans and interest, the Applicant could state in its audited accounts that its outstanding shareholder loans were due for payment on 31st December 2025.

A tax avoidance scheme has been defined in S. 91 of the ITA as follows;

91. Re-characterization of Income and Deductions

(1) For the purposes of determining liability to tax under this Act, the Commissioner may-

a) Re-characterize 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 substantial economic effect; or
c) Re-characterize a transaction the form of which does not reflect the substance.

(2) A "tax avoidance scheme" in subsection (1) includes any transaction, one of the main purposes of which is the avoidance or reduction of liability to tax.

In **Newton vs. FCT (1958) CLR 1, 8 (PC)**, after considering **S. 260,** a General Anti-Avoidance Rule (GAAR) of the **Australian Income Tax and Social Services Contribution Assessment Act 1936-1950**, the Privy Council, whose judgment was delivered by Lord Denning, stated as follows;

"In order to bring the arrangement within the section you must be able to predicate – by looking at the overt acts by which it was implemented – that it was implemented in that particular way so as to avoid tax. If you cannot so predicate, but have to acknowledge that the transactions are capable of explanation by reference to ordinary business or family dealing, without necessarily being labelled as a means to avoid tax, then the arrangement does not come within the section. Thus, no one, by looking at a transfer of shares cum dividend, can predicate that the transfer was made to avoid tax. Nor can anyone, by seeing a private company turned into a non-private company, predicate that it was done to avoid Div. 7 tax, see W.P. Keighery Pty. Ltd. V. Commissioner of Taxation. Nor could anyone, on seeing a declaration of trust made by a father in favour of his wife and daughter, predicate that it was done to avoid tax, see Deputy Federal Commissioner of Taxation v. Purcell. But when one looks at the way the transactions were effected in Jacques v. Federal Commissioner of Taxation; Clarke v. Federal Commissioner of Taxation, and Bell v. Federal Commissioner of Taxation- the way cheques were exchanged for like amounts and so forth-there can be no doubt at all that the purpose and effect of that way of doing things was to avoid tax".

In the instant case, the agreement to defer the repayment dates of the loans and interest was a sham, whose sole purpose, was the avoidance of tax. The Applicant was under a legal duty to pay WHT on the outstanding interest, which it avoided by purporting to defer a repayment date which had already taken effect.

The Amendment to Loan Agreements dated 28th July 2020, is accordingly disregarded. The assessment of Shs. 7,508,593,776 on WHT on loan interest is upheld.

VAT on Imported Services by Verdant Capital

VAT is charged on supplies of imported services in accordance with **S. 4(c)** of the **VAT Act.**

S. 5(1) (c) of the VAT Act provides that the person liable to pay VAT on imported services is the person receiving the supply.

The term `imported services` was defined in **Uganda Revenue Authority vs. COWI AS (Civil Appeal 34 of 2020) (2021) UGCA 134 (18 October 2021)** as;

"Imported services in essence involve a supply of services that is made by a supplier who is resident or carries on business outside Uganda to a recipient who is a resident of or carries on business in Uganda to the extent that such services are utilized or consumed in Uganda...."

Relying on the above decision, for VAT to arise in respect of imported services, the following must be present;

i. There must be proof of a supply of services.
ii. The supplied services must qualify as imports.
iii. The services supplied must be taxable services.
iv. The services must be consumed or utilized in Uganda.

We will proceed to determine whether the above requirements have been met in the instant case.

Proof of a supply of services.

The letter of engagement between Capricorn Forest Fund K/S and Verdant dated 28th February 2019 and admitted in evidence as exhibit AEX1, shows that Verdant was engaged by Capricorn Forest Fund K/S, to act as its exclusive advisor and arranger for the sale of the Applicant. Exhibit REX28, a letter from Verdant to the Respondent, dated 22nd December 2021, shows that Verdant was retained to manage the sale process with the objective of selling the Applicant company and its assets and securing the highest price for the transaction. The term `services` has been defined under **S. 1(t)** of the **VAT Act** to mean anything that is not goods or money. The services in question were advisory services. We believe that the above constitute a supply of services.

Services consumed or utilized in Uganda.

The following pieces of evidence will shed light on whether the services supplied by Verdant were consumed in Uganda.

The first is a letter by Verdant to potential purchasers of the Applicant pursuant to the letter of engagement (Exhibit AEX1). This letter which is dated 21st April 2019 and admitted in evidence as Exhibit REX21, contains representations made by Verdant to the said potential purchasers.

Verdant informs the potential purchasers that he acts on behalf of IWC and the object of his letter is the sale of the Applicant. The letter states that the Company (Global Woods AG) holds

an exclusive tree farming license from the National Forestry Authority over Kikonda Forest Reserve until 2051.

In the second paragraph Verdant states that the transaction for the sale of the Applicant is being managed by it as the Applicant`s advisor. At paragraph 5 of page 222 of the Joint Trial Bundle, Verdant indicates that following the submission of indicative bids, the Applicant will select a small number of potential bidders for inclusion in the due diligence phase. The selected potential bidders will be provided access to the electronic data room for the transaction and will be invited to arrange a site visit as well as detailed meetings with the Applicant`s senior management.

In the second paragraph at page 223, Verdant states that the Applicant and Verdant expressly disclaim all liability for representations, warranties and / or statements contained in the information memorandum.

In the following paragraph Verdant states that the Applicant reserves the right without liability and at its sole discretion to, amongst other things, change or accelerate the process at any time, to accept or reject any or all bids and to terminate negotiations and discussions at any time and for any reason, without being obliged to give any reason for so doing.

in the penultimate paragraph of the same page Verdant states that in connection with the transaction it acts solely for the Applicant and no one else and will not be responsible to anyone other than the Applicant.

The above representations show the level of control that the Applicant retained over the entire transaction. For instance, it reserves the right at its sole discretion to accept or reject the bids. It reserved the right to decide which potential bidders could advance to the due diligence stage. Meetings with potential bidders were arranged with the Applicant. further the representations by Verdant that it was acting solely for the Applicant and as the Applicant`s Advisor, all show that the Applicant was not a passive party in the transaction. It did not only play an active role; it controlled the entire transaction right from the beginning.

The second piece of evidence is Exhibit REX28. It is a letter from Verdant to the Respondent. it is dated 21st December 2021. In the second paragraph at page 238 of the Joint trial bundle, Verdant informs the Respondent that the transaction process was managed by it as the Applicant`s advisor. On the last page of the letter Verdant informs the Respondent that the highest bidder was Nile Fibreboard Ltd and that the board of the Applicant had elected to sell

the Applicant`s Uganda assets to Nile Fibreboard Ltd for the sale consideration of USD 17 million.

The above pieces of evidence show the extent to which the Applicant benefited from the services supplied by the Verdant. The biggest beneficiary of Verdant`s services was the Applicant. As the biggest beneficiary of Verdant`s services, the Applicant consumed the services in question and must be regarded as the recipient of these services.

Supplied services were imports.

It is not in dispute that Verdant was a non-resident for tax purposes with its principal place of business at Ebene, Mauritius. The Applicant who received and consumed the services carries on business in Uganda through its registered branch.

The term `import` has been defined under S. 1(j) of the VAT Act as `to bring, or cause to be brought, into Uganda from a foreign country or place`. In the instant case, it is clear that the services supplied by Verdant were imports because they were brought from Mauritius and consumed in Uganda by the Applicant.

Supplied Services must be taxable Services.

It is not disputed that the services supplied by Verdant were taxable services. No assertion has been made by any of the parties that the services in question were exempt. Verdant received consideration for the services in question.

The above shows that all the requirements for VAT to arise in respect of imported services are present in the instant case. The services supplied by Verdant were imported services which were consumed in Uganda by the Applicant. The Applicant being the recipient of the said services is the party liable to pay VAT in accordance with **S. 5(1) (c)** of the **VAT Act** and **Regulation 13(1)** of the **VAT Regulations.**

The **Airtours case**, upon which, a substantial part of the Applicant`s arguments rests, is not applicable to the instant case.

A significant distinguishing feature between the facts in the Airtours case and the facts in the instant case, is that the Airtours case was concerned with the supply of services by a person resident in the United Kingdom to another person resident in the United Kingdom. The instant case is concerned with the supply of imported services to Uganda by a non-resident person.

Indeed, the question for resolution in both cases are completely different. In the Airtours case, the question for resolution was whether there was a supply of services by PwC to Airtours? While in the instant case the question for resolution is whether there was a supply of imported services to the Applicant by Verdant Capital?

Given the glaring differences, in the facts between the two cases, we fail to see how the Airtours case, can be of help to us, in determining the instant case.

Withholding tax on imported services

S. 82(1) of the ITA imposes WHT on every non-resident person who derives any dividend, interest, royalty, rent, natural resource payment, agency fee in case of Islamic financial business or management charge from sources in Uganda.

The term `management charge` has been defined under S. 77 as any payment made to any person, other than a payment of employment income, as consideration for any managerial services, however calculated.

In order for the payment received by Verdant to be liable to WHT under S. 82(1) above, it must be shown that;

i. Verdant is a non- resident person.
ii. That Verdant has derived a management charge from sources in Uganda.

It is not in dispute that Verdant is a non-resident person. It is also clear that the consideration paid to Verdant as per the letter of engagement is a management charge, as it was consideration for managerial services provided by Verdant. What is in dispute is whether the management charge was derived from sources in Uganda?

The Applicant has submitted that it did not make any payment to Verdant and therefore no management charges were derived by Verdant in Uganda. The Applicant stated that the only reason WHT was imposed on Verdant by the Respondent was because the Applicant was a beneficiary of the services rendered by Verdant. The Applicant stated that for the Respondent to impose WHT on Verdant, Verdant must have derived income from sources in Uganda. The Applicant submitted that the Respondent had not cited a single provision of the ITA that imposes WHT on a beneficiary of a transaction.

The Respondent on the other hand submitted that the payments made to Verdant constituted management charges for services rendered in Uganda and are subject to WHT. The Respondent relied on **Ss. 78(b)**, **79(c)** and **83(1)** of the **ITA**.

The Respondent submitted that it was not in dispute that Verdant is a non-resident entity for tax purposes which provided sale management services to the Applicant for the sale of its forest in Uganda. The Respondent submitted that the Applicant was therefore liable to withhold tax on the fees paid to Verdant.

S. 78 of the ITA sets out the circumstances under which income is said to be derived from sources in Uganda.

78. Source of Income

Income is derived from sources in Uganda to the extent to which it is-

(t) Attributable to any other activity which occurs in Uganda, including an activity conducted through a branch in Uganda.

The consideration paid to Verdant is income attributable to the sale of the Applicant`s commercial forest at Kikonda. The sale of the forest was an activity which occurred in Uganda and was conducted through a branch in Uganda.

Exhibit REX22 which is a letter from Nile Plywood, a sister company of Nile Fibreboard, to Verdant, sets out Nile Fibreboards final offer to the Applicant for the sale of Kikonda forest.

The above letter shows that the work in respect of which Verdant was paid took place in Uganda and was attributable to activity which occurred in Uganda.

We accordingly find that the consideration paid to Verdant was a management charge derived from sources in Uganda and is liable to WHT in accordance with S. 82(1) of the ITA.

Having determined as above, this application is dismissed with costs.

Dated at Kampala this.....27th.....day of.....June.....2025.

SIRAJ ALI
MEMBER

CHRISTINE KATWE
MEMBER

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

APPLICATION NO. 280 OF 2022

GLOBAL WOODS AG (UNDER LIQUIDATION) .....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY .....RESPONDENT

BEFORE: MS. STELLA N. CHOMBO, MR. SIRAJ ALI, MS. CHRISTINE KATWE

RULING (DISSENTING)

I have had the opportunity of reading in draft, the ruling of my colleagues, and wish to dissent as follows.

The background, the grounds and submissions by Counsel for the parties are ably summarized in that draft.

This ruling pertains to an application contesting Value Added Tax (VAT) and Withholding Tax (WHT) assessments amounting to UGX 7,971,019,476. The core of the dispute concerns the Applicant's alleged tax liability in respect of VAT and WHT on imported services, as well as WHT on interest payments arising from loans extended to the Applicant.

VAT and WHT on Imported Services

The resolution of this issue hinges on whether the Applicant, Global Woods AG (Under Liquidation), was the actual recipient of transactional advisory services rendered by Verdant Capital Ltd, and whether those services were consumed within Uganda such as to constitute imported services under Ugandan tax law.

The Applicant has consistently maintained that the services provided by Verdant Capital Ltd were never imported into Uganda and that it was neither the contractual recipient nor consumer of those services. According to the Applicant, the services were procured entirely by Capricorn Forest Fund, a non-resident investment vehicle, acting through International Woodland Company A/S, the parent company of the Applicant. Consequently, the Applicant submits that

no VAT or WHT liability can arise on a transaction in which it had neither contractual involvement nor financial obligation.

The Respondent, however, takes a contrary position. It contends that VAT and WHT are due on the basis that the services ultimately facilitated the disposal of the Applicant's primary asset, namely the Kikonda Forest Plantation, and that the Applicant was the economic beneficiary of the transaction. The Respondent argues that although the contract was formally executed by Capricorn Forest Fund, the substance of the arrangement points to the Applicant as the true recipient of the services.

I shall begin by considering whether the impugned services were "imported" for purposes of the **VAT Act. Section 1 of the Act** defines "import" to mean:

> *"To bring, or cause to be brought, into Uganda from a foreign country or place."*

Further, **Section 4(c) of the VAT Act** imposes VAT on the import of services, other than those expressly exempted. This obligation is further clarified by Regulation 13(1) of the VAT Regulations, which states:

> *"A person who receives imported services other than an exempt service shall account for the tax due on the supply, and the taxpayer shall account for that service when performance of the service is completed or when payment for the service is made or when the invoice is received from the foreign supplier, whichever is earliest."*

The High Court decision in ***Apollo Hotel Corporation Ltd v Uganda Revenue Authority, HCCA No. 48 of 2022***, provides useful guidance. In that case, the Court affirmed that the importation of a service involves its provision by a person who is resident or carries on business outside Uganda to a person who is resident or carrying on business within Uganda. The Court also clarified that the term "consumption" means *"the act of destroying a thing by using it, or the use of a thing in a way that exhausts it."* Most significantly, the Court stressed that in determining the identity of the service recipient or consumer, one must generally be guided by the contractual arrangements, except where the law provides otherwise or there is an established exception.

In the present case, the Engagement Letter dated 28th February 2019 (AEX1) explicitly identifies Capricorn Forest Fund, a non-resident investment fund, as the party engaging Verdant Capital Ltd, a Mauritius-based non-resident advisor, to act as its exclusive financial consultant and arranger in relation to the divestiture of its equity interest in the Applicant.
The contractual documentation is unequivocal and establishes the following material facts:

1. Verdant Capital was contracted exclusively by Capricorn Forest Fund to provide advisory services in relation to the disposal of shares in the Applicant.
2. Clause 1 and Clause 3 of the agreement clearly outline that the scope of services was to be rendered solely to Capricorn Forest Fund, not to the Applicant.
3. All payments for the services were made by Capricorn Forest Fund, and not the Applicant. No invoice, payment instruction, or correspondence linked the Applicant to the financial obligation.

The Respondent has not provided any documentary or oral evidence to show that Verdant Capital rendered services directly to, or was paid by, the Applicant. While the Respondent argues that the ultimate result of the transaction—namely, the sale of Kikonda Forest—benefited the Applicant, this alone does not constitute evidence of service receipt for purposes of VAT liability under Section 4(c).

I reiterate the Tribunal's earlier decision that economic benefit alone is insufficient to create a tax liability in the absence of a contractual relationship or statutory obligation. The Applicant is neither a party to the engagement contract nor the consumer of the services within the meaning assigned by the VAT Act and the authority in *Apollo Hotel* (supra).

On the basis of the evidence, I find that there existed no legal, contractual, or functional nexus between the Applicant and Verdant Capital Ltd. The true beneficiary of the services was Capricorn Forest Fund, acting through International Woodland Company A/S, both of whom are non-resident entities for tax purposes.

Accordingly, I find that the services rendered by Verdant Capital Ltd were neither received nor consumed within the territory of Uganda. There is no evidence that the services were brought into the country or that the Applicant took any action to cause them to be rendered within

Uganda. In light of this, the services do not meet the criteria required to be classified as imported for value-added tax purposes, and the VAT assessment issued in respect thereof cannot be sustained.

Similarly, the I have examined whether the imposition of Withholding Tax on the transaction was justified. Withholding Tax obligations arise only where the payment in question is made by a resident party to a non-resident in connection with services rendered in Uganda or where the underlying income can be said to have a source within Uganda. For the WHT to be lawfully imposed, the Respondent was required to establish that:

1. Verdant Capital derived income from a Ugandan source, and
2. The Applicant was the actual payer or beneficiary of the services rendered.

In the absence of any evidence that the Applicant paid for, controlled, or consumed the services, and given that the contracting party was a non-resident, I find that the Respondent failed to meet the legal and evidentiary threshold to justify the imposition of WHT under Ugandan tax law. Consequently, I conclude that the VAT and WHT assessments issued in respect of services rendered by Verdant Capital Ltd were unlawful and without basis in fact or law, as the evidence adduced does not support the finding that the Applicant was the recipient or consumer of the services, nor that any income was derived from Uganda in a manner contemplated under Section 4(c) of the VAT Act or Section 85 of the Income Tax Act.

Withholding tax on interest payments.

The question to be answered is whether withholding tax is due on accrued interest, even though payment was deferred to 2025 and whether the Respondent was justified in issuing a "jeopardy assessment".

The Respondent submitted that under the loan agreements, interest was payable on 1st February 2022 or upon Capricorn Forest Fund divesting more than 50% of its shareholding in Global Woods AG whichever was sooner. The Respondent further asserted that the Applicant's extension of due date for interest payment to a date when the applicant will no longer be in Uganda was a move calculated to frustrate tax payment. The Respondent submitted it properly assessed the Applicant on account of cessation of business.

The Applicant submitted that the Withholding Tax point of the branch's deferred interest arises at the time the interest is paid and that in this instance the interest remains on the branch's books and was neither paid in cash or kind nor was there any value or benefit conferred on ASF as the lender because of the branch ceasing its operations. The Applicant further submitted that where deferred interest has not been paid, WHT cannot be due and further that cessation of business does not result in interest being paid.

The provision that requires withholding tax on interest and which is relied upon by the Applicant in objecting to liability is Section 45 (2) of the Income Tax Act Cap 338 which by the time of submissions was Section 47 of the Income Tax Act Cap 340 and it provides that:

> *"(1) Subject to subsection (2), interest in the form of any discount, premium, or deferred interest shall be taken into account as it accrues.*
> *(2) Where the interest referred to in subsection (1) is subject to withholding tax, the interest shall be taken to be derived or incurred when paid".*

I have perused the books of accounts which consistently indicate that the loan amount still exists on the Applicant's books of accounts as shown on pages 52, 72, 107, 155 of the Joint Trial Bundle Volume 1.

I am relying on the case of ***ATC Uganda Ltd v Uganda Revenue Authority, Civil Appeal No. 32 of 2020***, where the Commercial Court held that "the import of [Section 45(2)] is that the requirement to withhold tax arises at the time the interest is paid and not when it accrues." I find this to be a binding and persuasive authority on the interpretation of Section 45(2) of the Income Tax Act Cap 338.

The provision expressly states that "interest shall be taken to be derived or incurred when paid" in the context of withholding tax. The language is clear and creates a statutory threshold: liability arises not upon accrual, but upon actual payment. This interpretation preserves the principle that tax obligations must be certain and predictable, and that a taxpayer should not be assessed on obligations that have not materialized.

The Respondent argued that the deferral of interest payments constituted a tax avoidance scheme, and that the Applicant's prospective departure from Uganda justified invoking anti-

avoidance and jeopardy assessment provisions. While I acknowledge the Respondent's legitimate concern to safeguard Uganda's tax base, I find no legal basis to override the statutory condition in Section 45(2). The deeming provision is neither ambiguous nor subject to discretionary override—it mandates that tax on interest subject to withholding is only triggered "when paid."

Furthermore, I find that the Respondent's reliance on the cases of ***Heritage Oil and Gas Ltd v URA (TAT No. 26 of 2010) and Game Discount World v URA (HCMA No. 29 of 2021)*** is distinguishable. Unlike the above cases, there was no concealment or misrepresentation by the Applicant. The loan restructuring and interest deferral to 2025 were transparently documented, commercially rational, and supported by contemporaneous financial statements demonstrating the Applicant's financial distress.

In light of the above, I would hold that the Applicant is not liable to withholding tax on deferred interest until such time as the interest is actually paid. I have perused the evidence which indicates that the loan amount still exists on the Applicants books of accounts.

Recharacterization

Recharacterization is an exceptional tool available to tax authorities and courts, allowing them to disregard the legal form of a transaction where it is proven that the transaction lacks commercial substance and is primarily motivated by tax avoidance.

Internationally, the **OECD Transfer Pricing Guidelines (2022)** affirm that recharacterization should be reserved for cases where:

i. The arrangement is commercially irrational; or
ii. Independent entities would not have entered into such an arrangement absent tax motivations.

I agree with the Respondent that the Commissioner General is empowered to counteract arrangements that are artificial, fictitious, or without commercial purpose, especially where their primary effect is to avoid or reduce tax liability. These powers provided by law under **Section 117 Income Tax Act** are not to be invoked lightly and require a careful examination of the facts and the economic substance of the arrangements in question.

Section 117 Income Tax Act states

Re-characterization of income and deductions

"(1) For the purposes of determining liability to tax under this Act, the Commissioner General may—

(a) re-characterize 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 substantial economic effect; or

(c) re-characterize a transaction the form of which does not reflect the substance.

(2) A "tax avoidance scheme" in subsection (1) includes any transaction one of the main purposes of which is the avoidance or reduction of liability to tax".

Re-characterization of Loan Deferment – Withholding Tax on Interest

The Applicant contends that the deferment of loan repayment to ASF Holdings MU until 31st December 2025 was a genuine business decision necessitated by financial constraints arising from the cessation of operations in Uganda. Relying on Section 45(2) of the Income Tax Act, the Applicant argues that no withholding tax is due until interest is actually paid. They maintain that the transaction was neither fictitious nor artificial and cite the decision in ***Commissioner of Domestic Taxes v Dominion Petroleum Kenya Ltd*** **[2021] eKLR**, where the Kenyan Court of Appeal upheld the sanctity of contractual freedom in tax matters absent fraud or sham.

The Respondent argues that the deferment was an artificial scheme aimed at postponing tax liability on accrued interest. They claim that since the Applicant had ceased operations and disposed of its only income-generating asset, the deferment lacked commercial substance. The Respondent invoked Section 91 (which is now S.117) of the Income Tax Act, contending that the arrangement should be recharacterized as a taxable interest payment at the point of accrual.

I find that while Section 117 of the Income Tax Act empowers the Commissioner General to recharacterize transactions deemed artificial or fictitious, such authority must be exercised with caution and grounded in demonstrable evidence of tax avoidance. In the present case, the Applicant's decision to defer loan repayment was formally communicated in writing and aligned with its post-disposal financial position.

In **Explorer Logistics Ltd v Uganda Revenue Authority, TAT Application No. 87 of 2023,** the Tribunal emphasized that the recharacterization power must be applied judiciously and rationally and noted that it was not enough for the Respondent to recharacterize a transaction, but that there must be some basis for the recharacterization.

Applying this principle, I am satisfied that the Applicant's deferment of repayment obligations was commercially driven, not a contrived or artificial arrangement. The transaction was properly documented, transparently disclosed to the Respondent, and rooted in real financial constraints. Accordingly, the Respondent's attempt to recharacterize the deferment as a tax avoidance scheme lacks sufficient evidentiary foundation.

Furthermore, it is not uncommon for businesses to restructure their loan obligations and in fact, lenders commonly offer loan restructuring. For example, during the COVID 19 epidemic, several businesses restructured their loan obligations to help them conserve cashflow and remain afloat.

Therefore, the Applicant's loan restructuring is consistent with normal business practice and is therefore neither peculiar nor irregular.

Consequently, I find that the applicable provision governing the timing of tax liability is Section 45(2) of the Income Tax Act, which stipulates that interest is taken to be incurred or derived when paid, and not Section 117 on recharacterization. In light of this, the Respondent's attempt to treat the deferred interest as constructively paid is not legally sustainable. I am of the view that the withholding tax on the deferred interest is not yet due.

Recharacterization of Imported Services – VAT and WHT on Verdant Capital Services

The Applicant submits that the advisory services rendered by Verdant Capital Ltd were contracted and paid for by Capricorn Forest Fund, the parent company, in connection with the sale of shares in Global Woods AG (Germany). The Applicant was not a party to the engagement letter, was not invoiced, and made no payments to Verdant. The Applicant argues that it did not "receive" services as defined under Section 4(c) of the VAT Act, and that there is no basis to impose VAT or WHT. The Applicant relies on Apollo Hotel Corporation Ltd v URA,

HCCA No. 48 of 2022, where the High Court held that VAT on imported services must be premised on actual consumption by a resident person.

The Respondent contends that despite the formal contract with Capricorn, the economic substance of the transaction shows that the Applicant was the actual recipient of the services, as it benefited from the advisory work that led to the disposal of the Kikonda Forest. The Respondent argues that the arrangement is an "artificial structure" and should be recharacterized under Section 45(1) of the ITA Act and Section 117 to reflect the Applicant as the true recipient.

It is my observation that recharacterization must follow clear proof of artificiality or misrepresentation. In this case, the contractual documents (Engagement Letter AEX1) show Verdant was engaged by Capricorn Forest Fund, and all fees were paid by that entity. The Applicant was neither invoiced nor did it exercise any control over the services. The mere fact that the transaction had incidental benefit to the Applicant does not suffice to establish it as the "recipient" of the service under Section 4(c) of the VAT Act.

A transaction cannot be recharacterized solely on account of its outcome; the identity of the recipient must be established through contractual, financial, and operational control. I reiterate the Tribunal' s position taken in **Explorer Logistics Ltd v URA TAT No.87 of 2023,** where it underscored the importance of establishing a nexus between the Applicant the and the transaction in question. In the present facts, the Applicant had no such control or financial obligation.

I am reminded on the principle laid down in **Salomon v A. Salomon & Co. Ltd [1897] AC 22** which is a foundational doctrine in company law, affirming that a duly incorporated company has a separate legal personality distinct from its shareholders, parent companies, or affiliates. Once incorporated, a company becomes an independent legal entity capable of owning property, entering into contracts, and being liable for its own debts and obligations. This principle protects subsidiaries and affiliates from being treated as one and the same with their parent companies unless there is compelling evidence of fraud, sham, or the piercing of the corporate veil under exceptional circumstances.

I agree with the Applicant that the Respondent's first introduction of the "tax avoidance scheme" theory occurred at the submissions stage, well after the objection and assessment proceedings had concluded. In the instant case, the Respondent had not previously characterized the engagement of Verdant Capital as a tax avoidance scheme or notified the Applicant that the transaction would be recharacterized as such. This approach contravenes established principles of tax procedure and natural justice.

My decision would be incomplete if I did not also point out that where recharacterization is contemplated under anti-avoidance provisions, it must be properly raised and particularized at the time of assessment. The Commissioner General cannot rely on post-assessment submissions to reconstruct the legal foundation of a tax assessment. Therefore, the recharacterization of the transactions as a tax avoidance scheme at the submissions stage was procedurally defective and cannot be used to retrospectively to validate the assessments.

Accordingly, I find no legal or factual basis for recharacterizing the transaction, and vacates the VAT and WHT assessments on imported services rendered by Verdant Capital.

In view of the above reasons, I would have allowed this Application and made the following orders;

1. The assessments issued by the Respondent in respect of Value Added Tax (VAT) and Withholding Tax (WHT) amounting to Ugx 7,971,019,476 are hereby set aside.
2. The Respondent is directed to refund WHT Ugx 5,945, 124,196.
3. The Applicant is awarded the costs of this application.

Dated at Kampala this...27th...day of ...June..... 2025

MRS. STELLA NYAPENDI CHOMBO
CHAIRPERSON