

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL AT KAMPALA

TAT APPLICATION NO.20 OF 2024

GUARANTY TRUST BANK (UGANDA) LTD.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MR. SIRAJ ALI, MS. ROSEMARY NAJJEMBA

RULING

This ruling is in respect of an application challenging a Pay As You Earn (PAYE) assessment of Shs. 515,416,972 on the grounds that the assessments were unlawful.

1. Background

The Applicant is a financial institution licensed by the Bank of Uganda to provide financial services. The Respondent conducted an audit and assessed the Applicant Pay As You Earn ("PAYE") amounting to Shs. 7,104,132,970 on account of non-declaration of PAYE on certain employee benefits for the period January 2017 to December 2021.

On 13 and 14 October 2023, the Applicant objected to the PAYE liability of Shs. 847,553,020 on grounds that it had been assessed on benefits for which PAYE was already accounted for and on benefits that were not provided to employees. On 11 and 12 January 2024, the Respondent issued objection decisions partially allowing the objection hence leaving two issues of PAYE on Mobility Premium and Relocation Allowance; and PAYE arising from the remuneration of Acting Executive Directors, both with a combined tax liability of Shs. 515,416,972.

2. Issues for Determination

The issue for determination is whether the Applicant is liable to pay the assessed tax.

3. Representation

The Applicant was represented by Mr. Cephas Birungi, Mr. Maxwell Okeng Denish and Mr. Chesuro Martin, while the Respondent was represented by Mr. Sam Kwerit and Mr. Simon Peter Orishaba.

The Applicant's first witness was its Financial Controller, Mr. Alex Kihumuro ("AW1"). The witness testified that the Applicant is a financial institution licensed by the Bank of Uganda. He stated that on 15 September 2022, the Respondent issued an audit commencement notice to the Applicant, leading to a comprehensive audit covering the period January 2016 to December 2021. The audit culminated in the issuance of an audit management letter and a tax assessment totalling Shs. 1,688,614,770.

AW1 further stated that the Applicant objected to part of the PAYE liability amounting to Shs. 847,553,020 on the grounds that PAYE had been assessed on benefits for which PAYE had already been accounted for, and on benefits that had not been provided to the employees.

On the issue of mobility premium and relocation allowances, Mr. Kihumuro testified that the Applicant's seconded employees, namely Olufemi Omotoso, Irenosen Ohiwerei, Olalekan Sanusi, and Oluwole Shodiyan, received mobility premiums and relocation allowances from Guaranty Trust Bank Nigeria prior to their deployment to Uganda.

He emphasized that the Applicant did not pay these benefits and hence had no obligation to account for PAYE on them. He made reference to the International Transfer Policy Manual, particularly Article 4 and Article 9, which he tendered as Exhibit AEX 8. He further relied on the employees' payslips and written confirmation from Guaranty Trust Bank Nigeria showing payment of these benefits prior to relocation, as exhibited in Exhibit AEX 10 and AEX 11.

The witness further testified that after February 2021, the Applicant did not have an Executive Director. The Managing Directors who oversaw the functions of the Executive Director did not receive any acting allowances.

At re-examination, the witness stated that basing on the principles of corporate governance, there is a presumption that the bank must have both the Executive Director and the Managing Director. He further stated that since the MD was not present, the presumption was to the effect that the ED performed two roles which was not the case given that there was no appointment letter to that effect.

The witness went ahead to state that there was no contract or payroll documentation indicating payment of acting allowances to Managing Directors Olalekan Sanusi and Oluwole Shodiyan.

He referred to payroll records and employment contracts that were part of Exhibit AEX 12, and further pointed to correspondence and communications with the Bank of Uganda evidencing the process of seeking approval for a substantive Executive Director, as contained in Exhibits AEX 13 and AEX 14.

Mr. Kihumuro further explained that the Applicant complied with tax obligations concerning other benefits, such as motor vehicle provision and school fees, and that the Respondent had accepted the explanations provided on these items during the objection process.

The Respondent called one witness, Ms. Racheal Katende, a Supervisor in the Large Taxpayers Office("RW1"). She stated that she was familiar with the audit and objection processes relating to the Applicant's tax matters.

The witness testified that the Respondent audited the Applicant from January 2016 to December 2021, revealing unaccounted PAYE on employee benefits.

RW1 testified that during the audit, the Respondent reviewed the Applicant's Transfer Pricing Policy Manual, which stated that senior staff were entitled to a Mobility Premium and a Relocation Allowance upon relocation.

She cited Exhibit AEX 8 and noted that, despite the Applicant's claim that these payments were made by the Nigerian parent company, the Respondent maintained

that PAYE was chargeable in Uganda, as the benefits were enjoyed there and the Applicant was the employer.

The witness stated that while the Applicant provided documents showing payments by the parent company, it failed to prove the benefits were unrelated to Ugandan employment income. She noted the absence of clear financial records distinguishing Nigerian and Ugandan salary obligations and referenced Exhibit REX3, where the Applicant acknowledged certain benefits.

RW1 also testified that after the previous Executive Director's departure in February 2021, Managing Directors assumed the role without formal appointment or declared acting allowances. The Respondent requested evidence of the arrangement, but none was provided. In its absence, the acting allowance was calculated based on the former Executive Director's salary—Shs. 20,196,527 monthly—referencing email communications in Exhibit REX4.

4. Submissions of the Applicant

The Applicant submitted that under Section 116(1) of the Income Tax Act, a taxpayer is obligated to withhold PAYE from employment income that is "paid" to an employee.

According to the Applicant, since the Applicant did not make payments of mobility premium, relocation allowance, or acting allowance to its employees, there was no obligation to withhold PAYE on the alleged benefits.

Further, the Applicant referred to section 19(1) of the Tax Appeals Tribunal Act, which places the burden of proof on the Applicant to demonstrate that the assessment is excessive.

The Applicant submitted that they had discharged the burden by providing documentary evidence, including the International Transfer Pricing Policy Manual (Exhibit AEX 8), payslips, payment vouchers from Guaranty Trust Bank Nigeria (Exhibits AEX 10 and AEX 11), and payroll records (Exhibit AEX 12) to show that the benefits in question were either paid elsewhere or were not paid at all.

The Applicant argued that since it did not pay the mobility premiums, relocation allowances, or acting allowances, there was no employment income and no PAYE

obligation. Counsel cited Exhibit AEX 8 and Exhibit AEX10, confirming these payments were made by the parent company, not GT Bank Uganda.

The Applicant referenced Section 101(1) of the Evidence Act, Cap 8, which requires proof of facts for a court judgment. He argued that the Applicant met this burden by providing evidence that mobility premiums and relocation allowances were paid by the Nigerian parent company before deployment and that no acting allowances were paid to Managing Directors.

In support of the legal arguments, the Applicant cited ***Safaricom PLC v Commissioner of Domestic Taxes (Tax Appeal E826 of 2023)***, where it was held that the obligation to deduct PAYE under tax law is pegged on the employer making the payment. Further, the Applicant argued that the Tribunal should adopt the same reasoning and find that since the Applicant did not make the disputed payments, it was not liable to deduct or remit PAYE thereon.

The Applicant also relied on ***Noorbrook Uganda Ltd v Uganda Revenue Authority, TAT Application No. 18 of 2018***, where the Tribunal held that once a taxpayer provides credible evidence, the burden shifts to the tax authority to disprove their position.

The Applicant argued that sufficient documentary evidence had been presented, which the Respondent failed to rebut. Additionally, they contended that mere entitlement to a benefit without actual disbursement does not create a PAYE obligation.

The Applicant submitted that no formal appointment or remuneration was made for Managing Directors to act as Executive Directors. Counsel argued that the Respondent's assessment was based on assumptions rather than evidence, making it unlawful.

In relation to the above, during the cross-examination of the RW1, she admitted that there was no record of acting allowance payments, reinforcing the Applicant's position.

The Applicant emphasized that taxation should be based on evidence and not speculation. Therefore, the assessments were unlawful and excessive and prayed that they be vacated and the Respondent refunds the 30% deposit with interest.

5. Submissions of the Respondent

The Respondent submitted that the Applicant was properly assessed to PAYE on the mobility premium, relocation allowances, and acting allowances, all of which constituted employment income or benefits within the meaning of the law. The Applicant emphasized that the law imposes an obligation on the employer to withhold PAYE whenever a payment or a benefit is provided to an employee.

The Applicant also relied on Section 4(1) of the Income Tax Act which states:

"Subject to, and in accordance with this Act, a tax to be known as income tax shall be charged for each year of income and is imposed on every person who has chargeable income for the year of income."

The Respondent submitted that as the Applicant's expatriate staff derived employment benefits, the imposition of PAYE was both lawful and mandatory. Further, Counsel cited Section 19(1)(a) and (b) of the Income Tax Act, which provides:

"Employment income means any income derived by an employee from any employment and includes the following amounts, whether of a revenue or capital nature-

(a) any salary, wages, leave pay, payment in lieu of leave, overtime pay, fees, commissions, gratuity, bonus, or the amount of any travelling, entertainment, utilities, cost of living, housing, medical, or other allowance;

(b) the value of any benefit granted."

The Respondent further submitted that the mobility premium, relocation allowance, and acting allowance fell within the scope of employment income and therefore attracted PAYE. In addition, the Respondent cited Section 4 of the Income Tax Act, Cap 338, which provides:

"The charge of income tax shall be imposed upon the income of any person for each year of income."

The Respondent also cited section 17(1)(b) of the Income Tax Act, which provides:

"The gross income of a person for a year of income is the total amount of-

(b) employment income;"

The Respondent submitted that income is not confined to salaries and wages and cited the case of *HMRC v Apollo Fuels Ltd [2016] EWCA Civ 157 ("Apollo CA")*, where it was held:

"Income is not confined to salary, wages, or other payments in money. Income may be received in other forms, such as benefits in kind. It is not surprising that the income tax legislation brings such benefits into charge, by ascribing a value to them and treating them as income."

The Respondent also cited *Commissioner of Income Tax v Kiranbhai H. Shelat & Ors [1999] 235 ITR 635 (GUJ)* where it was stated:

"It will be noted that S. 2(24) of the Act speaks of benefits and allowances granted to the assesseees to meet with expenses for the performance of duty and not the expenses incurred in the performance of duty. This is done with a view to see that under the guise of payment of special allowances/benefits granted to meet with expenses for performance of duty, there is no evasion of income-tax where it results in salary."

The Respondent also relied on *Infectious Diseases Institute v Uganda Revenue Authority, High Court Civil Appeal No. 006 of 2022*, where it was stated that:

"Where an employee derives a benefit as a result of his or her employment relationship, the value of that benefit constitutes employment income and is subject to PAYE, regardless of whether the employer or a third party directly provides the benefit."

The Respondent submitted that the documentary evidence, including the Transfer Pricing Policy Manual (Exhibit Aex 8), payslips (Exhibit Aex 10), and the Taxpayer Engagement Capture Form (Exhibit REX3), clearly demonstrated that the benefits were received by the employees in Uganda and arose from their employment relationship with the Applicant. Accordingly, the Respondent prayed that the Tribunal dismisses the Applicant's appeal, upholds the assessments, and awards costs to the Respondent.

6. The submissions in of the Applicant in rejoinder

In rejoinder, the Applicant's argued that the Respondent misunderstood the PAYE obligations as PAYE is only applicable when an employer makes direct payments to employees.

The Applicant pointed to Article 9 of the International Transfer Pricing Policy, which states that mobility premium and relocation allowances are paid by the home country, Guaranty Trust Bank Nigeria—not GT Bank Uganda. Evidence, including payslips and payment confirmations, demonstrated that the Applicant did not make these payments and, therefore, had no obligation to withhold PAYE.

Regarding acting allowances, payroll records and correspondence with the Bank of Uganda, the Applicant confirmed that no such payments were made to Managing Directors for acting in Executive Director roles. The Respondent's reliance on assumptions and estimations, rather than actual proof of payment, was flawed.

The Applicant cited *Uganda Revenue Authority v K-Files Ltd, TAT No. 28 of 2022* where it was held that tax assessments must be based on concrete evidence, not presumptions. The Applicant also distinguished the cases cited by the Respondent, arguing that they involved clear employer-provided benefits, unlike the present case where payments originated from a different jurisdiction.

7. The determination of the issues

The Respondent carried out an audit of the Applicant in September 2022 and issued its findings in October 2023 to the effect that the Applicant had not accounted for PAYE on certain employment benefits. The benefits in question are:

- (i) Mobility and relocation allowances that were paid to the Applicant's seconded employees by the employees' home country; and
- (ii) An acting allowance that the Respondent deemed as payable to the Applicant's Managing director for performing the duties of an absent Executive Director.

We address each of the above matters below.

Mobility and relocation allowances

We have perused an employment offer letter relating to the Applicant's managing director, who is one of the employees in question (as per AEX 9) of the Joint Trial Bundle (JTB)). The Managing Director was on 19 March 2022 and the offer letter

states in paragraph (a) the salary and benefits that will be paid to the employee including benefits that are contained in the company's International Transfer Pricing Policy.

The International Transfer Pricing Policy, which is exhibited at AEX 8 of the JTB provides for the payment of mobility premium and relocation allowances to staff on transfer / secondment. Consequently, the employees at the centre of this dispute were paid the mobility and relocation allowances. However, the allowances were paid by GT Bank Nigeria, the home country and not the Applicant. It is on this basis that the applicant argues that they were under no obligation to account for PAYE since they were not the payor.

We shall now proceed to determine whether the Applicant ought to have withheld and accounted for PAYE on the allowances.

Section 4 of the Income Tax Act (ITA) imposes income tax on every person who has chargeable income for the year of income.

Chargeable income is defined by section 15 of the ITA to mean the gross income of the person for the year, less total deductions allowed under the Act.

Gross income is defined by section 17 (1) of the ITA as the total amount of business income, employment income and property income.

Section 19 of the ITA defines employment income to mean any income derived by an employee from any employment and includes the amount of any travelling, entertainment, utilities, cost of living, housing, medical or other allowance.

The term "employment" is defined to mean the position of an individual in the employment of another and includes a directorship of a company or a position entitling the holder to a fixed or ascertainable remuneration (section 2 of the ITA).

Taking the above provisions in consideration, it is reasonable to conclude that the period in question, the individuals in question were:

- (i) Employees of the Applicant for income tax purposes on account of their positions;

- (ii) Earned employment income as a result of their employment in Uganda with the Applicant. The employment income included their salary and allowances; and
- (iii) Liable to income tax in their total employment income by virtue of section 4 of the ITA.

The Applicant's position is that they were under no obligation to withhold tax from the employee's allowances as they were paid by the home country and not the Applicant. The Applicant also argued that the amounts were paid before the employees relocated to Uganda.

This argument does not hold.

Section 126 of the ITA places an obligation on every employer to withhold tax from a payment of income to an employee. The provision states as follows:

"Every employer shall withhold tax from a payment of employment income to an employee...."

Is the Applicant an employer? Yes

Was a payment made to the employees? Yes – mobility and relocation allowances.

Do the payments constitute employment income? Yes. Employment income includes allowances.

Did the employer withhold tax? No

There is nothing in the ITA that that restricts the withholding tax obligation only to employers who physically or directly remit monies to the employee.

As long as employee has earned income as a result of their employment in Uganda, the employer must withhold PAYE.

PAYE is a tax on the employee's personal income. It is not borne by the employer. The employer's duty is to facilitate the collection of the tax by withholding and remitting the same to the Respondent. It was the duty of the Applicant to inform their employees and the home country of the PAYE obligations in Uganda in respect of the relocation and mobility allowances.

Despite not being the payor, the Applicant ought to have recovered the taxes from the employee's earnings for the respective month i.e. the earnings such as the salary, which the Applicant paid the employees.

It is common practice for expatriate employees to have part of their wages paid in their home country and the other part paid in Uganda. This does not do away with the employer's obligation to withhold and account for PAYE on the employee's total employment income.

In addition, it does not matter that the allowances were paid before the employees relocated to Uganda. As long as the monies relate to the exercise of their employment in Uganda, and in this particular case, as depicted in the offer letter of the Managing Director, the allowances are taxable as employment income. Therefore, the Applicant ought to have withheld tax and accounted for the same to the Respondent.

Therefore, the Respondent acted lawfully when they assessed the Applicant PAYE as section 142 of the ITA makes the employer personally liable for the tax that has not been withheld.

Acting allowance

Regarding the acting allowance, both parties agree that this was not paid to the Managing Director. The Respondent however assessed tax on the acting allowance that "must have been paid to the Managing Director".

The question as to whether a person earned income is a question of fact. Either the person received income or did not. While deemed income provisions exist in certain jurisdictions, there is nothing in the Income Tax Act that allows the Respondent to deem the income of an employee.

The Respondent does not have the powers to force an employer to pay amounts, which the Respondent considers due to a person. There is a lot of unpaid work in this country and the world at large, for example, unpaid overtime, unpaid mothers, unpaid wives, unpaid husbands and unpaid workers.

However, the Respondent's role is to collect taxes on income that that has been earned and received. Although the Managing Director took on the additional responsibilities of the Executive Director role, the Applicant demonstrated that the

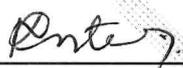
additional roles were not remunerated. Further, the Respondent also agrees that they were not remunerated.

Therefore, the Respondent did not have the right to tax income that was not earned or received.

In light of the above, the Tribunal makes the following final orders:

- (i) The assessment in respect of the mobility and relocation allowances is hereby maintained;
- (ii) The assessment in respect of the acting allowance is set aside;
- (iii) The Respondent should determine the amounts due under (i) and (ii) above by 23 June 2025; and
- (iv) Each party shall bear their own costs.

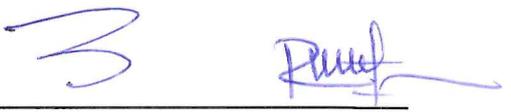
Dated at Kampala this 23rd day of May 2025.



CRYSTAL KABAJWARA
CHAIRPERSON



SIRAJ ALI
MEMBER



ROSEMARY NAJJEMBA
MEMBER