

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 348 OF 2024

GULF LINK INTERNATIONAL LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MS. KABAKUMBA MASIKO,
MS. CHRISTINE KATWE

RULING

This ruling is in respect of an application challenging an income tax assessment amounting to Shs. 82,258,919 arising from the recharacterization of the Applicant's loan that did not attract interest as income by the Respondent.

1. Background facts

The Applicant is a company incorporated under the laws of Uganda with its principal business being provision of external labour recruitment.

On 25 August 2023, the Respondent issued the Applicant with an Administrative additional income tax Assessment amounting to Shs. 82,258,919 against the Applicant for the period of July 2021 to June 2022.

The said assessment was raised due to the Applicant's declaration of an unsupported loan that did not attract interest thus the Respondent reclassified the said loan as income hence the assessment.

On 4 June 2024, the Applicant objected to the assessment on ground that it has loan agreements and bank statements which show that the loan was obtained at 0% interest.

During the objection review process, the Respondent established that the Applicant obtained a loan of Shs. 315,586,000 from Credify limited at an interest rate of 0%. The Respondent further established that the said company is in the business of money lending and ought to have charged and deducted interest for the dispensed loan.

The Applicant failed to further adduce evidence in confirmation that the loan was received by the company.

Consequently, on 28 April 2024 the Respondent made an objection decision disallowing the objections owing to the Applicant's failure to avail sufficient information.

The Applicant contends that the tax assessed against the Applicant is improper and not justifiable.

The Applicant objected to the assessments on three grounds namely that the Applicant acquired the loan at zero interest in the ordinary course of its business from its related party, who had common director with the Applicant. Therefore, there was no need to charge interest.

The Respondent maintained the assessments amounting to Shs. 82,258,919 in respect of the tax periods of July 2021 to June 2022 on the basis that the Applicant failed to provide additional information to support the said assessments.

2. Representation

The Applicant was represented by Mr. Kitti Norman, their Accountant while the Respondent was represented by Mr. Orishaba Simon Peter.

3. Issues for determination

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

4. Submissions by the Applicant

The Applicant submitted that it is not liable to pay the tax as the Respondent's assessments and decisions were unlawful and in violation of Section 23(2) (b) of the Tax Procedures Code Act (as it was then) and should be dismissed.

The Applicant relied on Section 20(1) (e) of the Tax Appeals Tribunal Act Cap.341 which empowers this Honourable Tribunal with the discretion to dismiss any decision made by the Respondent that has not been subjected to review. The Applicant prayed that this honourable Tribunal dismisses the Respondent's objection decision and with costs.

The Applicant quoted Section 22(5) of the Tax Appeals Tribunal Act Cap.341 which provides that: "*a Tribunal may make an order for costs against any party, and the order shall be enforceable in the same manner as an order of the High Court.*"

5. Submissions by the Respondent

The Respondent raised a preliminary objection to the effect that the application is improperly before the Tribunal owing to the Applicant's failure to pay 30% of the tax in dispute as required by law.

The Respondent relied on **Section 15 (1) of the Tax Appeals Tribunal Act Cap 341 (TAT Act)** which provides inter alia that a taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater.

The Respondent submitted that the constitutionality of Section 15 of the TAT Act was long settled, first by the Constitutional Court and further cemented, on appeal, by the Supreme Court in the land mark decision of ***Uganda Projects Implementation and Management Centre Vs. Uganda Revenue Authority, Supreme Court Constitutional Appeal No. 2 of 1999***, where it was ruled that the statutory requirement in the then VAT Act (similar to s.15 of the TAT Act), requiring a taxpayer who has lodged a notice of objection to an assessment to, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater, is constitutional and did not infringe on the right to a fair hearing, under the Constitution of Uganda and the right to equal treatment before and under the law.

Furthermore, in the case of *Elgon Electronic Versus Uganda Revenue Authority HCCA 11 OF 2007* Hon. Justice Geoffrey Kiryabwire held that the provisions of **Section 15(1) of the Tax Appeals Tribunal Act** are mandatory. Accordingly, the requirement to pay 30% of the tax assessed or that part of the tax assessed not in dispute is a legal doctrine which is in line with the “pay now and argue later” principle.

It is the Respondent’s submission that the instant application was filed on 22 November 2024 and up to date, the Applicant has neither paid 30% of the tax in dispute. This deems the Application improper before this Tribunal and the Applicant did not avail to the Respondent at objection or the Tribunal any explanation, satisfactorily or otherwise as to why the Commissioner’s powers to re-characterise should be faulted. In the premises the Respondent’s decision to re-characterise the said loan as income was justified as no evidence to the contrary had been availed by the Applicant. The Applicant only provided the loan agreement and did not provide the bank statements thus the Respondent disallowing the objection raised and maintaining the tax assessed.

The Respondent submitted that it is trite law that the burden of proof lies with the Applicant to prove that an assessment is excessive, where the taxation decision is an objection decision in relation to an assessment, as per Section 19 of the Tax Appeals Tribunals Act Cap 341. The Applicant did not provide the bank statements to the Respondent despite requests for the same right from the time the Applicant objected to the assessment, which was on 4 June 2024 to 28 August 2024, when the objection decision was made maintaining the assessment. Furthermore, the bank statements for the period July 2021 to June 2022, covering the assessed period as requested by the Respondent are a reasonable demand which would enable it verify the existence of the loan, whether the loan was ever received if at all. Without such crucial documents/information, the Respondent was justified to re-characterise the same as income under Section 117 (1) of the Income Tax Act because the form did not reflect the substance.

The above was the position in *East Africa Breweries International Limited v URA Application No. 14 of 2017*, where the Tribunal stated that the Commissioner’s powers to re-characterise a transaction cannot be faulted unless there are satisfactory explanations and the Tribunal will not interfere with such powers unless it is shown

that the decision of the Respondent was illegal, irrational or was made with procedural impropriety.

The Respondent invited the Tribunal to consider the ruling in *Bullion Refinery Limited v Uganda Revenue Authority TAT Application no. 87 of 2021*, where it was found that the Respondent was justified to consider the unexplained sums of the Applicant as undeclared income and taxed them accordingly. It is also important to note that the present Application is distinguishable from the case of *Explorer Limited vs Uganda Revenue Authority TAT No. 87 of 2023*, as in that case, the Applicant had adduced the loan agreements, bank statements and a letter from the shareholders extending the loan. It is the combination of all 3 documents which was deemed sufficient by the Tribunal to find for the Applicant. Therefore, a loan agreement alone is not sufficient to prove the existence and disbursement of a loan.

The Respondent submitted that this honourable Tribunal finds that the assessment of Shs. 82,258,919 is justified and upholds the same as the Respondent justifiably exercised its mandate to recharacterize the purported loan as income due to the Applicant's failure to submit documentation to prove receipt of the said monies.

6. The determination of the issues

We have carefully read and considered the submissions of both parties, and this is our decision.

A preliminary objection was raised by the Respondent that this matter is improper before the Tribunal because the Applicant has not deposited 30% of the tax in dispute.

This requirement to pay 30% is a preliminary point of law which if argued successfully will dispose of this suit.

The Tribunal shall resolve this matter as a point of law, applying the principle of "pay now, argue later" and examining relevant case law and statutory provisions.

The requirement to pay 30% is set out in **Section 15 of the Tax Appeals Tribunal Act** which provides:

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

In the case of ***Sanctum Investments Limited V Uganda Revenue Authority, Application No. 157 Of 2024***, the Tribunal discussed the key elements of section 15 (1) of the Tax Appeals Tribunal Act Cap 341 (TAT Act) as follows:

a. Filing a notice of objection

This legal provision applies after a taxpayer has lodged a notice of objection to an assessment with the Commissioner General. This is the first step in the tax dispute process, where the taxpayer formally disputes the assessment.

b. Pending final resolution of the objection

While awaiting the final resolution of the objection by the Commissioner General, the above legal provision imposes a legal obligation onto the taxpayer to make a partial payment.

c. Payment requirement

The taxpayer is required to pay thirty percent of the tax in dispute or that part of the tax assessed not in dispute

d. Timing of payment

The thirty percent deposit of the disputed or undisputed amount must be paid during the objection process and before escalating the dispute to the Tax Appeals Tribunal. This payment can be said to be a mandatory precondition to filing an application before the Tribunal.

In ***Bullion Refinery Ltd Vs Uganda Revenue Authority TAT application no. 36 of 2021***, it was held by this Tribunal that *“a tax payer who objects to an assessment will still be required to pay 30% of the tax assessed in the objection.”*

Hon. Mr. Justice Boniface Wamala in ***A Better place Uganda limited v URA, Civil Appeal No. 37 of 2019*** stated:

“...the requirement to pay then 30% of the tax assessed or the part of the tax not in dispute, is set in motion when the taxpayer lodges with the Commissioner a notice of objection to an assessment...Where the portion of the tax was not collected at the time the objection was considered by the Commissioner, as was the case in the instant matter, the TAT is obliged to enforce that payment”.

The Applicant has neither adduced any evidence to demonstrate that the 30% payment was effected nor has a rejoinder been filed to controvert the Respondent's averments in this regard. In the circumstances and in the absence of any credible rebuttal, the Tribunal finds that the Respondent's assertion remains unchallenged and must therefore be deemed as established.

The requirement to pay thirty percent of the tax in dispute is a statutory requirement which the Applicant ought to have complied with. Consequently, the preliminary objection is sustained and disposes of this suit.

This application is therefore dismissed with costs to the Respondent.

Dated at Kampala this 20th day of June 2025.

<u><i>Crystal Kabajwara</i></u>	<u><i>Kabakumba Masiko</i></u>	<u><i>Christine Katwe</i></u>
CRYSTAL KABAJWARA	KABAKUMBA MASIKO	CHRISTINE KATWE
CHAIRPERSON	MEMBER	MEMBER

