

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL AT KAMPALA
APPLICATION NO. 188 OF 2024

INTERNATIONAL SCHOOL OF UGANDAAPPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: MS. CRYSTAL KABAJWARA, MRS. STELLA NYAPENDI CHOMBO,
MS. PROSCOVIA REBECCA NAMBI

RULING

This ruling is in respect of an application challenging an income tax assessment of Shs. 315,903,143 on interest paid to the Applicant in respect of fixed deposits held by the Applicant with a financial institution.

1. Background

The Applicant provides education services and was granted an income tax exemption by the Respondent for the period 2016–2020.

In 2016- 2020, the Applicant earned interest of Shs.1,053,010,485 from fixed deposit accounts with Stanbic Bank and declared this interest as exempt income. The Respondent issued assessments totalling Shs. 315,903,143 for the same period, arguing that withholding tax (WHT) on interest from fixed deposits is not a final tax under the Income Tax Act.

The Applicant objected contending that WHT on interest paid to exempt organizations should be treated as a final tax with no further liability.

The Respondent upheld the assessment stating that WHT as a final tax applies only to treasury bills and government securities under **Section 139(a)** of the Income Tax Act) and not to fixed deposits.

The Applicant was dissatisfied with the objection decision lodged this application before the Tribunal.

2. Representation

The Applicant was represented by Ms. Jackie Aturinda and Ms. Linda Mugisha while the Respondent was represented by Ms. Doreen Amutuhair.

3. Submissions of the Applicant

The Applicant submitted that from July 2015 onwards, they were granted an Income Tax exemption by the Respondent for the period between 2016 and 2020. During the 2016-2020 period, the Applicant earned Shs. 1,053,010,485 as interest from fixed deposit accounts held with Stanbic Bank. The Applicant declared this interest as exempt income.

They asserted that the withholding tax (WHT) applied by Stanbic Bank on these interest payments constituted a final tax under Section 127 read with Section 139 of the Income Tax Act. Therefore, they argued that no further tax liability should be imposed on this income.

Interpretation of Section 139(a) of the Income Tax Act (ITA)

The Applicant submitted that Section 139(a) of the Income Tax Act required a person to withhold tax on any interest paid to another resident person and that Stanbic Bank withheld the tax on interest payments made to the Applicant and the same was remitted to the Respondent.

The Applicant further submitted that it was clear from the reading of Section 139 of the Income Tax Act that tax withheld on interest payments made by a financial institution to an exempt organization is a final tax.

The Applicant also submitted that substitution and amendment of the impugned provision in 2006 and 2008 did not restrict the finality of WHT on interest payments to only treasury bills and Government securities.

The Applicant contended that the Respondent's interpretation, which restricts the finality of WHT to only interest from treasury bills and government securities when paid by a financial institution, overlooks the express wording and legislative intent of the Act.

Legislative History and Intent

The Applicant argued that the amendments to the Income Tax Act in 2006 and 2008 did not limit the finality of WHT on interest payments solely to treasury bills.

They stated that the original position under Section 123 of the 1997 Act treated WHT on interest paid by financial institutions to resident individuals, trustees, retirement funds, or exempt organizations as final. The 2006 amendment extended this finality to treasury bills, and the 2008 amendment further included other Government securities, suggesting an intent to broaden the scope of final tax treatment, not restrict it.

The Applicant also referred to the Explanatory Notes to the Income Tax Bill, 1997, which supported their interpretation that Section 123 applied to interest paid by a financial institution to a resident individual and exempt organizations as a final tax.

The Applicant cited Article 152(1) of the Constitution of Uganda, 1995 and submitted that it was trite law that no tax shall be imposed except under the authority of an Act of Parliament. They cited the case of *URA v Siraje Hassan Kajura CA no. 26 of 2013* which cited the English case of *Cape Brandy Syndicate v IRC (1992) KB1* stating the cardinal principle of interpretation of tax statutes is that in a taxing Act, one merely needs to look at what is said and that nothing is to be read in nor implied and that one can only look fairly at the language used.

The Applicant prayed for a declaration that the tax withheld at source by Stanbic bank is a final tax and the assessment is unlawful; a declaration that they are not liable to pay the assessed tax of Shs. 315,903,143; an order for the Respondent to refund the 30% amount paid with interest from the date it was deposited and to be awarded the costs of the suit.

4. Submissions of the Respondent

The Respondent submitted that the Applicant operates an international school that provides general education. The Applicant held an income tax exemption from the Respondent for the period between 2016 and 2020. The Respondent assessed the Applicant for Shs. 315,903,143.00 due to un-declared interest income earned from fixed deposits.

The Applicant objected to this assessment, arguing that WHT on interest from a financial institution to an exempt organization is a final tax, meaning no further tax liability. The Respondent reviewed and upheld the assessment, stating that withholding tax (WHT) on interest earned from fixed deposits is not a final tax.

The Respondent submitted that the burden of proof rests with the Applicant to demonstrate that the assessments raised by the Respondent are either incorrect or erroneous, and that the Applicant is not liable to pay the taxes.

Interpretation of Section 139(a) of the Income Tax Act (ITA)

The Respondent contended that Section 139(a) of the Income Tax Act considers withholding tax a final tax only on payments of interest on treasury bills or other government securities when paid by the Bank of Uganda or a financial institution to a resident individual or an exempt organization. They assert that fixed deposits do not fall under these categories.

The Respondent argues that Section 21(1)(f) of the Income Tax Act specifies that property income (including interest on fixed deposits) is not exempt unless specifically stipulated under the law or exemption certificates. Therefore, the interest earned by the Applicant on its fixed deposits, despite the withholding tax charged, does not fall under the exemptions or finality provisions of Section 139(a), as fixed deposits are neither treasury bills nor government securities.

The Respondent submits that the plain meaning of Section 139(a) must apply, and the law specifically limits the finality of WHT to interest earned from treasury bills or government securities. They argue that fixed deposits are not included, and thus, the withholding tax on interest earned from them does not qualify as final tax.

The Respondent also submitted that the Applicant's exemption certificate does not cover property income such as interest from fixed deposits, and even if the Applicant is an exempt organization, income from fixed deposits remains taxable.

The Respondent emphasizes that the plain language of the statute must be adhered to, stating there is no ambiguity in this regard, and thus, the withholding tax on interest earned from fixed deposits does not qualify as final tax, and the Applicant must pay the assessed tax.

Property Income and Taxability

The Respondent submits that property income (including interest on fixed deposits) is not exempt unless explicitly stated under the law or exemption certificates, making the Applicant liable for the assessed taxes.

They maintain that the tax assessment of Shs. 315,903,143.00 is justifiable because the withholding tax on interest from fixed deposits does not meet the conditions for final tax treatment under Section 139(a) as it is not related to treasury bills or government securities. They conclude that the Applicant is liable to pay the taxes assessed, as the interest on fixed deposits does not qualify for final tax treatment.

The Respondent submits that the burden of proof rests with the Applicant to demonstrate that the assessments raised by the Respondent are either incorrect or erroneous, and that the Applicant is not liable to pay the taxes, or that the taxation decision should not have been made, or should have been made differently.

5. Submissions of the Applicant in rejoinder

In rejoinder, the Applicant reiterated their earlier submissions.

The Applicant submitted that the Respondent deliberately ignores the part of the same section which reads

'... or by a financial institution to a resident individual, ...or to an exempt organisation'.

The Applicant submitted that Section 139(a) of the ITA envisages two scenarios:

- (i) The first being where an interest payment is made by the Bank of Uganda on treasury bills or other Government Securities to any person; and

- (ii) The second where an interest payment is made by a financial institution to a resident individual, or to an exempt organisation.

The word 'or' is a disjunctive, which denotes that tax withheld on the payment of interest by a financial institution to an exempt organisation is a final tax. Under Section 139(a) of the ITA, withholding tax is a final tax if paid in respect to treasury bills or other Government securities by the Bank of Uganda to any person or if paid by a financial institution to a resident individual, other than in the capacity of trustee, resident retirement fund, or to an exempt organization.

Regarding the Respondent's submission that property income is not exempt from tax under section 21(1) (f) of the ITA, the Applicant submitted that it objected to the assessments on the ground that "the tax withheld on the payment of interest by a financial institution to an exempt organisation is a final tax and no further tax liability should be imposed on such income." Therefore, the Respondent is bound by the grounds upon which the assessments were raised and the objection decision was made.

6. The determination of the Tribunal

Having carefully considered the representations, evidence, and submissions presented by both parties, this is decision of the Tribunal.

The Applicant earned interest of Shs.1,053,010,485 from their fixed deposits with Stanbic Bank. The Respondent argued that withholding tax (WHT) on fixed deposit interest was not a final tax. The Applicant objected, contending that WHT on interest paid to exempt organizations is a final tax. The Respondent upheld the assessment, asserting that final tax treatment applies only to treasury bills/government securities.

The tribunal is tasked with determining whether the tax withheld at source by Stanbic bank to the Applicant is a final tax.

The provisions that are at the heart of this dispute are sections 127 and 139 of the ITA.

Section 127 (1) of the ITA, provides as follows:

“...a resident person who pays interest to another resident person shall withhold tax on the gross amount of the payment at the rate prescribed in part ix of schedule 4 to this act.”

In the present case, Stanbic Bank, a resident person, paid interest to the Applicant, another resident person. Therefore, Stanbic bank was required to withhold tax at a rate of 15%, which the bank rightfully withheld.

However, section 139(a) ITA provides:

“Where

(a) tax has been withheld under Section 127 on a payment of interest on treasury bills or other Government securities by the Bank of Uganda to any person, or by a financial institution to a resident individual, other than in the capacity of trustee, resident retirement fund, or to an exempt organization:

(b)

(c).....

the withholding tax is a final tax, and –

(d)no further tax liability is imposed upon the taxpayer in respect of the income to which the tax relates....”

The Applicant argues that the tax withheld by Stanbic Bank was a final tax. On the other hand, the Respondent argues that the tax was not final and the Applicant ought to have declared the interest income and it should have borne additional tax at a rate of 30%.

It is therefore critical to analyse the import of section 139 of the ITA and examine the plain meaning of the provision (**URA v. Siraje Hassan Kajura, SCCA No. 9 of 2015**).

For tax withheld to be treated as a final tax under section 139, the transaction must fall within the two scenarios envisaged by the provision namely:

- (i) The tax should have been withheld on the payment of interest on treasury bills or other government securities by the bank of Uganda to any person: OR

- (ii) The tax should have been withheld by a financial institution to a resident individual, other than in the capacity of trustee, resident retirement fund, or to an exempt organization.

The two scenarios are alternate as they are separated by the conjunction “or”.

The first scenario does not apply to the present facts as the interest payment in question did not arise from government securities.

The second scenario, which concerns payment by financial institutions is the relevant part of the provision that we must now apply ourselves to.

First, the payment must have been made by a financial institution, which was the case in the present case as Stanbic Bank is a financial institution. Secondly, the interest should have been paid to either:

- (i) A resident individual; or
- (ii) An exempt organisation.

The Applicant is not an individual, therefore, we should now establish whether they are an exempt organisation.

Section 2 of the ITA defines the term “exempt organisation” to mean:

“any company, institution or irrevocable trust-

(a) which is –

(i)...

(ii) a ...educational institution...

(b) which has been issued with a written ruling by the Commissioner General currently in force stating that it is an exempt organisation; and

(c) none of the income or assets of which confers, or may confer, a private benefit on any person;”

In the present case, the Applicant, an educational institution, was issued a written ruling by the Commissioner General, stating that it is an exempt organisation. This is as per the certificate of exemption exhibited as A1, A2 and A3 at pages 1-6 for periods 1 July 2015 to 30 June 2021 of the Applicant’s Trial Bundle.

The Respondent has not denied the issuance of the said exemption certificate. Therefore, it is reasonable to conclude that the Applicant is an exempt organisation within the meaning of section 2 of the ITA.

Having established the above, the logical conclusion is that the Applicant fulfils all the conditions contained in section 139 of the ITA. Therefore, the tax that was withheld by Stanbic bank from interest payments to the Applicant was a final withholding tax.

In line with section 139 (d) of the ITA, no further tax liability ought to be imposed on the Applicant in respect of the income to which the tax relates. Therefore, the Respondent's assessment is not grounded in law.

We have taken note of the Respondent's arguments that section 21 (f) of the ITA does not exempt property income from taxation. While that is true of section 21, it should be read in harmony with the other provisions of the ITA (*Farid Meghani v URA, Civil Appeal No. 0006 of 2021*).

In recognition of the non-exempt status of property income such as interest earned by the Applicant, section 127 imposes withholding tax on the said income. This tax was withheld by the Stanbic Bank.

The dispute before us is whether the tax on the said property income is a final tax or not. We have established that the tax is a final tax within the meaning of section 139 of the ITA. Therefore, the Respondent ought not have subjected the interest income to additional tax.

In the circumstance this application is allowed with costs to the Applicant.

Dated at Kampala this 2nd day of July 2025.



CRYSTAL KABAJWARA
CHAIRPERSON



STELLA NYAPENDI CHOMBO
MEMBER



PROSCOVIA REBECCA NAMBI
MEMBER

